413

JOINT COMMITTEE ON

INDIAN CONSTITUTIONAL REFORM

[SESSION 1933-34]

VOLUME I
(PART I)
REPORT

[The PROCEEDINGS of the Joint Committee [*Session 1933-34*] will be found in Volume I (Part II).]

[The RECORDS of the Joint Committee [*Session 1933-34*] will be found in Volume II.]

[*The PROCEEDINGS, EVIDENCE, and RECORDS of the Joint Committee* [Session 1932-33] *will be found in the following Parliamentary Papers of 1933:* H.L. 79 (I), (II A, B, C, and D), and (III); *or* H.C. 112 (I), (II A, B, C, and D), and (III).]

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SESSION 1932-33

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SESSION 1933-34

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† These discussions were held in private and the transcripts of them have been destroyed by order of the Joint Committee, with the exception of the preliminary discussion between the Joint Committee and the Delegates from Burma on the 6th and 7th December, 1933, which was published in Record B1, (*vide* page 115, Vol II, Records of the Joint Committee (Session 1933–34).)

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* The Joint Committee decided to consider the Draft Report laid before them by the Lord in the Chair.

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REPORT

BY THE SELECT COMMITTEE OF THE HOUSE OF LORDS APPOINTED TO JOIN WITH A COMMITTEE OF THE HOUSE OF COMMONS TO CONSIDER THE FUTURE GOVERNMENT OF INDIA AND, IN PARTICULAR, TO EXAMINE AND REPORT UPON THE PROPOSALS CONTAINED IN COMMAND PAPER 4268.

ORDERED TO REPORT:—

That this Committee was appointed at the commencement of the present Session.

The Minutes of Evidence taken before, and Records reported from, the original Committee were referred to us. For purposes of convenience this Report treats the present Committee as though it had been in existence since the appointment of the original Committee on the 11th April, 1933.

We record with profound regret the death of two of our members, Lord Burnham and Miss Pickford, and we are deeply sensible of the loss which we have sustained by being deprived of the aid of their experience and judgment in the preparation of our Report.

We were empowered to call into consultation representatives of the Indian States and of British India, and we accordingly invited the following Delegates to attend our deliberations:—

Delegates from the Indian States

Rao Bahadur Sir V. T. Krishnama Chari, C.I.E.
Nawab Sir Liaqat Hyat-Khan, O.B.E.
Nawab Sir Muhammad Akbar Hydari.
Sir Mirza Muhammad Ismail, C.I.E., O.B.E.
Sir Manubhai Nandshanker Mehta, C.S.I.
Sir Prabhashankar Dalpatram Pattani, K.C.I.E.
Mr. Y. Thombare.

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Delegates from Continental British India

His Highness the Right Honourable Sultan Sir Mohamad Shah, Aga Khan, G.C.S.I., G.C.I.E., G.C.V.O.
Sir C. P. Ramaswami Aiyar, K.C.I.E.
Dr. B. R. Ambedkar.
Sir Hubert Carr.
Mr. A. H. Ghuznavi.
Lieut.-Colonel Sir Henry Gidney.
Sir Hari Singh Gour.
Mr. A. Rangaswami Iyengar.
Mr. M. R. Jayakar.
Mr. N. M. Joshi.
Mr. N. C. Kelkar.
Begum Shah Nawaz.
Rao Bahadur Sir A. P. Patro.
Sir Abdur Rahim.
The Right Honourable Sir Tej Bahadur Sapru, K.C.S.I.
Sir Phiroze Sethna.
Dr. Shafa'at Ahmad Khan.
Sardar Bahadur Buta Singh.
Sir Nripendra Nath Sircar.
Sir Purshotamdas Thakurdas, C.I.E., M.B.E.
Mr. Zafrullah Khan.

Delegates from the Province of Burma

Sra Shwe Ba.
Mr. C. H. Campagnac, M.B.E.
Mr. N. M. Cowasji.
U Kyaw Din.
Mr. K. S. Harper.
U Chit Hlaing.
U Thein Maung.
Dr. Ba Maw.
U Ba Pe.
Dr. Ma Saw Sa.
U Shwe Tha.
Mr. S. A. S. Tyabji.

All the above were able to attend with the exception of Mr. Kelkar, who was prevented by illness from coming to England. We have learned with very great regret of the death of Mr. Rangaswami Iyengar since his return to India.

The Delegates took part in more than seventy of our meetings, some of which were devoted to discussion between the Delegates and ourselves, and others to the hearing of evidence.

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We desire to place on record our appreciation of the assistance which we have derived from our full and frank discussions with the Delegates, for many of whom so long an absence from their own country must have caused great personal inconvenience and sacrifice. Their advice and co-operation have been of the greatest value to us. Many of them have furnished us with separate memoranda on various points, but we would mention in particular the Joint Memorandum signed by all the British Indian Delegates who were still in England, which has been of great service to us as focussing British Indian views and to which we shall have occasion often to refer in the course of our Report.

We have held 159 meetings in all and have examined over 120 witnesses, whose evidence has been printed in Volumes 2A, 2B and 2C of the Minutes of Evidence published in the autumn of 1933. We are much indebted to all the witnesses for the assistance which they gave us, but our special gratitude is due to the Secretary of State for India, who, though a member of the Committee, took the perhaps unprecedented course of tendering himself as a witness, and who replied to nearly 6,000 questions during the nineteen days over which his evidence extended. In no other way could we have been so effectively enabled to distinguish, and to examine in all their bearings, the intricate and difficult issues which we are charged to consider.

We have also been fortunate in having at our disposal the practical knowledge of Indian affairs acquired by many of our own number from their personal experience in high office or in other work in India.

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REPORT OF THE JOINT SELECT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM

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1

SECTION I

THE PRINCIPLES OF A CONSTITUTIONAL SETTLEMENT

The Statutory Commission's survey.

1. The conditions of the problem with the examination of which we have been entrusted are brilliantly described in the comprehensive survey which forms Volume I of the Report of the Statutory Commission. We are not aware that the accuracy of this survey has been impeached, and we are content to take it both as the starting point and the text book of our own investigation. Nor, indeed, could we do otherwise ; for it would have been impossible for us in the time at our disposal to have accumulated and digested so vast a mass of fact and detail. We desire to place on record our deep obligation to the work of the Commission and our conviction that, if we had not had before us the fruits of their patient and exhaustive enquiries, we should scarcely have found it possible to complete within any measurable space of time the task which Parliament has imposed upon us. Nevertheless, if the labours of the Commission have happily relieved us of the task of restating by way of introduction the conditions of the Indian problem, there are certain elements in it which must so sensibly affect the judgment which we are invited to form and the recommendations which it will be our duty to make that we may be permitted briefly to refer to them.

The peoples of India.

2. The sub-continent of India,[1] lying between the Himalayas and Cape Comorin, comprises an area of 1,570,000 square miles with a population now approaching 340,000,000. Of this area British India comprises about 820,000, and the Indian States 700,000, square miles, with populations of about 260,000,000 and 80,000,000 respectively. It is inhabited by many races and tribes, speaking a dozen main languages and over two hundred minor dialects, and often as distinct from one another in origin, tradition and manner of life as are the nations of Europe. Two-thirds of its inhabitants profess Hinduism in one form or another as their religion ; over 77,000,000 are followers of Islam ; and the difference between the two is not only one of religion in the stricter sense, but also of law and of culture. They may be said indeed to represent two distinct and separate civilisations. Hinduism is distinguished by the phenomenon of caste, which is the basis of its religious and social system and, save in a very restricted field, remains unaffected by contact with the philosophies of the West ; the religion of Islam on the other hand is based upon the conception of the equality of man. In addition to these two great communities, and to the Indian Christians now numbering some 6,000,000, there is also to be found an infinite variety of other religions and sects, ranging from the simple beliefs of Animism to the mystical speculations of the Buddhist. The

[1] *i.e.*, excluding Burma : *see infra*, para. 47.

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great majority of the people of India derive their living from the soil and practise for the most part a traditional and self-sufficing type of agriculture. The gross wealth of the country is very considerable, but owing in large part to the vast and still rapidly growing number of its inhabitants the average standard of living is low and can scarcely be compared even with that of the more backward countries of Europe. Literacy is rare outside urban areas, and even in these the number of literates bears but a small proportion to the total population.

The Indian States.

3. In its political structure India is divided between British India and the Indian States. The latter are nearly 600 in number. They include 109 States, among them great States like Hyderabad, Mysore, Baroda, Kashmir, Gwalior and Travancore, the Rulers of which are entitled to a seat in the Chamber of Princes (though in point of fact not all of these six have been continuously, and some have never been, represented, and none of them has taken an active part in the work of the Chamber since 1933) ; 126 which are represented in the Chamber by 12 of their own order elected by themselves ; and some 300 Estates, Jagirs and others, which are only States in the sense that their territory, sometimes consisting only of a few acres, does not form part of British India. The more important States enjoy within their own territories all the principal attributes of sovereignty, but their external relations are in the hands of the Paramount Power. The sovereignty of others is of a more restricted kind, and over others again the Paramount Power exercises in varying degrees an administrative control.

British India.

4. British India consists of nine Governors' Provinces (excluding Burma), together with certain other areas administered under the Government of India itself. The Governors' Provinces possess a considerable measure of executive and legislative independence ; but over all of them the Government of India and the Central Legislature can exercise executive and legislative authority. In respect of certain matters, known as transferred subjects, the Provincial Executives are responsible to their Legislatures ; but the Governor-General in Council is independent of the Central Legislature and responsible only to the Secretary of State and through him to Parliament ; and the same is true of the Governors in Council in relation to the reserved subjects in the Provinces. An official *bloc* forms part of both the Central and Provincial Legislatures and in general acts in accordance with the wishes of the Governor-General and Provincial Governors respectively. British India is administered through a number of services, some of them all-India services, and some provincial.

Features of present Constitution.

5. Such in the barest outline is the present constitutional structure of British India, into the details of which we shall have occasion to enter with more particularity when we deal with the specific proposals of the White Paper in their order. It will be seen that its main features are a Central Executive, responsible only to the Secretary of State and through him to Parliament ; Provincial

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Executives exercising powers over a wide field, responsible in certain matters but not in others to the Provincial Legislatures; and Central and Provincial Legislatures exercising the law-making power, but with no constitutional control over the Executive in one case and with only a limited control in the other. Yet notwithstanding the measure of devolution on the Provincial authorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralised Government, with the Governor-General in Council as the keystone of the whole constitutional edifice; and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their responsibilities for the peace, order and good government of India.

The British Achievement.

6. The record of British rule in India is well known. Though we claim for it neither infallibility nor perfection, since, like all systems of government, it has, at times, fallen into error, it is well to remember the greatness of its achievement. It has given to India that which throughout the centuries she has never possessed, a Government whose authority is unquestioned in any part of the sub-Continent; it has barred the way against the foreign invader and has maintained tranquillity at home; it has established the rule of law, and, by the creation of a just administration and an upright judiciary, it has secured to every subject of His Majesty in British India the right to go in peace about his daily work and to retain for his own use the fruit of his labours. The ultimate agency in achieving these results has been the power wielded by Parliament. The British element in the administrative and judicial services has always been numerically small. The total European population of British India to-day, including some 60,000 British troops, is only 135,000. The total British element in the Superior Services is about 3,150, and of these there are approximately 800 in the Indian Civil Service and 500 in the Indian Police.

The Mogul Empire.

7. The success of British rule cannot be justly estimated without reference to the condition of things which preceded it. The arts of government and administration were not indeed unknown to the earlier Hindu kings, and the strong hand of the Mogul Emperors who reigned between 1525 and 1707 maintained a State which ultimately embraced the larger part of India and did not suffer by comparison with, if it did not even surpass in splendour, the contemporary monarchies of Europe. But the strength of the Mogul Empire depended essentially upon the personal qualities of its ruling House, and when the succession of great Emperors failed, its collapse inevitably followed; nor during its most magnificent period was its authority unchallenged either within or without its borders. Its system of government resembled that of other Asiatic despotisms. The interests of the subject races were made subservient to the ambitions, and often to the caprices, of the monarch; for the politic toleration of Akbar and his immediate successors disappeared with Aurungzeb. The imperial splendour became

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the measure of the people's poverty, and their sufferings are said by a French observer, long resident at the Court of Aurungzeb, to have been beyond the power of words to describe.

The post-Mogul period.

8. There are pages in the history of India, between the collapse of the Mogul Empire and the final establishment of British supremacy, which even to-day cannot be read without horror. With but brief intervals of relief, vast tracts were given over to the internecine struggles of the princes, the guerilla warfare of petty chiefs, and the exactions of Indian and European adventurers; and to townsmen and peasants alike, the helpless victims of malice domestic, foreign levy, and anarchy, it might have seemed that the sum of human misery was complete. It is in the improvement which has taken place in Indian agriculture since the establishment of peace and security that the Royal Commission in 1928 found a measure of the extent to which husbandry had been injured and its progress delayed by the long period of disorder and unrest that preceded the establishment of the unity of India under the British Crown.

Restoration of peace and order.

9. Such were the conditions out of which British rule gradually, with the aid and co-operation of many Indians, created a new and stable polity. Peace and order were re-established, the relations of the Indian States with the Crown were finally determined, and the rule of law made effective throughout the whole of British India. On this solid foundation the majestic structure of the Government of India rests, and it can be claimed with certainty that in the period which has elapsed since 1858, when the Crown assumed supremacy over all the territories of the East India Company, the educational and material progress of India has been greater than it was ever within her power to achieve during any other period of her long and chequered history. At the same time the surveys and settlement of the land including the recognition and determination by law of land tenures, and the just assessment of the land revenue, together with the preparation and revision from time to time of the record of rights and customs, have afforded guarantees of security to the vast agricultural population upon which has depended the welfare of the whole sub-continent.

Influence of British constitutional ideas.

10. We have emphasised the magnitude of the British achievement in India because it is this very achievement that has created the problem which we have been commissioned by Parliament to consider. By transforming British India into a single unitary State, it has engendered among Indians a sense of political unity. By giving that State a Government disinterested enough to play the part of an impartial arbiter, and powerful enough to control the disruptive forces generated by religious, racial and linguistic divisions, it has fostered the first beginnings, at least, of a sense of nationality, transcending those divisions. By establishing conditions

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in which the performance of the fundamental functions of government, the enforcement of law and order and the maintenance of an upright administration, has come to be too easily accepted as a matter of course, it has set Indians free to turn their mind to other things, and in particular to the broader political and economic interests of their country. Finally by directing their attention towards the object lessons of British constitutional history and by accustoming the Indian student of government to express his political ideas in the English language, it has favoured the growth of a body of opinion inspired by two familiar British conceptions; that good government is not an acceptable substitute for self-government, and that the only form of self-government worthy of the name is government through Ministers responsible to an elected Legislature.

Reality of Indian political aspirations.

11. The Indian problem cannot be understood unless the reality of these political aspirations is frankly recognised at the outset. There is ample evidence that enlightened Indian opinion has a very just appreciation of the benefits derived from the British connection, but the attachment of a people to its government is not always determined by a dispassionate calculation of material interest, still less by sentiments of mere gratitude. The subtle ferments of education, the impact of the War, and the beginnings of that sense of nationality to which we have referred, have combined to create a public opinion in India which it would be a profound error for Parliament to ignore. It is true, of course, that those who entertain these aspirations constitute but a small fraction of the vast population of India and that, in these circumstances, alleged manifestations of public opinion are often of doubtful value. Nevertheless, a public opinion does exist, strong enough to affect what has been for generations the main strength of the Government of India —its instinctive acceptance by the mass of the Indian people. To the cultivators who make up nine-tenths of the population, an equitable land revenue settlement and the timely advent of the monsoon may be of more importance than any projects of constitutional reform; but, when they find that neither just administration nor good monsoons can ensure a remunerative price for their produce, their lack of political ideas may make them more, rather than less, susceptible to political agitation. History has repeatedly shown the unwisdom of judging the political consciousness of a people by the standard of its least instructed class, and the creation of the British Empire, as we know it to-day, has been mainly due to the fact that, for the last hundred and fifty years, British policy has been guided by a more generous appreciation of the value, and a juster estimate of the influence, of what is sometimes called a politically-minded class.

The Preamble to the Act of 1919.

12. British policy has certainly been so guided in India, notably during recent years. It has conferred on the people of India, by the Act of 1919, wide powers of self-government

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during the last six or seven years, from the appointment of the Statutory Commission onwards, it has been consistently directed to working out, in free collaboration with Indians themselves, the lines of a new and more permanent Constitution. In particular, for the first time in the history of India, representatives of her Princes and peoples have sat for many months in counsel with representatives of His Majesty's Government and of the great political parties of the United Kingdom; and, for the first time in the history of Parliament, Indian delegates have taken part in the proceedings of a Joint Select Committee and have illuminated our discussions, even if circumstances forbade them to share our responsibilities. But, above all, in the Preamble to the Act of 1919, Parliament has set out, finally and definitely, the ultimate aims of British rule in India. Subsequent statements of policy have added nothing to the substance of this declaration, and we think it well to quote it here in full, as settling once and for all the attitude of the British Parliament and people towards the political aspirations of which we have spoken :—

> " Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the empire :
>
> " And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :
>
> " And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples :
>
> " And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility :
>
> " And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities : "

Constitutional theory and practice.

13. But a recognition of Indian aspirations, while it is the necessary preface to any study of Indian constitutional problems, is an insufficient guide to their solution. Responsible government, to which those aspirations are mainly directed to-day, is not an automatic device which can be manufactured to specification. It is not even a machine which will run on a motive power of its own. The student of government who assumes that British constitutional

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theory can be applied at will in any country misses the fact that it could not be successfully applied even in Great Britain if it were not modified in a hundred ways by unwritten laws and tacit conventions. It is not unnatural that, in the words of the Statutory Commission, most of the constitutional schemes propounded by Indians should closely follow the British model, but the successful working of that model postulates the existence of certain conditions, which are as essential as they are difficult to define. As Lord Bryce has remarked, " the English Constitution, which we admire as a masterpiece of delicate equipoises and complicated mechanism, would anywhere but in England be full of difficulties and dangers . . . It works by a body of understanding which no writer can formulate and of habits which centuries have been needed to instil ". It is superfluous to adduce examples, but two of the most important may be cited ; the powers of the Prime Minister and the position of the Civil Service. Of the first Mr. Gladstone said that " nowhere in the world does so great a substance cast so small a shadow " ; of the second Professor Lowell has pointed out that both the civil servant's abstinence from politics and his permanence of tenure have been " secured by the force of public opinion hardening into tradition, and not by the sanction of law." Above all, the understanding and habits of which Lord Bryce speaks are bound up with the growth of mutual confidence between the great parties in the State transcending the political differences of the hour. Experience has shown only too clearly that a technique which the British people have thus painfully developed in the course of many generations is not to be acquired by other communities in the twinkling of an eye ; nor, when acquired, is it likely to take the same form as in Great Britain, but rather to be moulded in its course of development by social conditions and national aptitudes.

Difference between the letter and spirit of British Constitutional doctrine.

14. Experience has shown, too, how easily the framers of written constitutions may be misled by deceptive analogies, succeeding only in reproducing what they suppose to be the letter of British constitutional theory, while ignoring the spirit and the living growth of British constitutional practice. The classic instance of such misconceptions is offered by the Constitution of the United States, whose authors decided " to keep the legislative branch absolutely distinct from the executive branch," largely because " they believed such a separation to exist in the English, which the wisest of them thought the best, Constitution."[1] That error may seem absurd enough to modern students of politics, but the mere copyist of British institutions would fall into even more dangerous errors to-day if he were to assume that an Act of Parliament can establish similar institutions in India merely by reproducing such provisions as are to be found in the constitutional law of the United Kingdom. It is certain, on the contrary, as we shall show, that such an Act must

[1] Bagehot : *The British Constitution.*

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seek to give statutory form to many "safeguards" which are essential to the proper working of parliamentary government, but which in Great Britain have no sanction save that of established custom; and, when this is done, it will remain true that parliamentary government in India may well develop on lines different from those of government at Westminster.

Constitutional development should be evolutionary.

15. If, then, the long collaboration of Englishmen and Indians during recent years is to result in the enactment of a Constitution which will work successfully under Indian conditions, we shall do well to discard theories and analogies and, instead, to base our scheme on the government of India as it exists to-day. That was the line of approach which was adopted by the Statutory Commission and has increasingly been followed in the deliberations of the Round Table Conferences and in our own consultations with the Indian delegates. It is also the line which Parliament has followed in the past in framing the Constitutions of the self-governing Dominions. If the Constitutions of Canada, Australia, New Zealand and South Africa were framed on the British model, it was not because Parliament decided on theoretical grounds to reproduce that model in those countries, but because government in those countries had been long conducted on British principles and had already grown into general conformity with British practice. If these Constitutions, enacted over a period of more than forty years, differ from one another in certain points, those differences are not to be attributed to changes in British constitutional theory, so much as to variations in the experience and practice of the particular communities themselves. In India, too, there is already a system of government which, while possessing many special characteristics, is no less based on British principles, and is no less a living organism. Already, long before either the Morley-Minto or the Montagu-Chelmsford reforms, that government had shown a marked tendency to develop on certain lines. The safest hypothesis on which we can proceed, and the one most in accordance with our constitutional history, is that the future government of India will be successful in proportion as it represents, not a new creation substituted for an old one, but the natural evolution of an existing government and the natural extension of its past tendencies.

Provincial Autonomy a natural development.

16. It is from this point of view that Parliament may well approach the first and basic proposal which has been submitted to us, the proposal to found the new constitutional system in India on the principle of Provincial Autonomy. That proposal has been so fully considered and so precisely formulated by the Statutory Commission that we do not propose to discuss its details in this introductory part of our Report. It is, however, important to observe that, far-reaching as is this constitutional change, it is not a break with the past. Every student of Indian problems, whatever his prepossessions, from the Joint Select Committee of

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1919 to the Statutory Commission, and from the Statutory Commission onwards, has been driven in the direction of Provincial Autonomy, not by any abstract love of decentralisation, but by the inexorable force of facts. Moreover, the same facts had already set the Government of India moving in the same direction, long before the emergence of the constitutional problem in its present form. When that problem did emerge, a long and steady process of administrative devolution from the Government of India to the Provincial Governments had already profoundly affected the whole structure of Indian administration. In particular, this gradual course of devolution had produced three important results. It had tended to remove provincial administration from the immediate purview of His Majesty's Government and, by thus weakening the direct accountability of Indian administrators to Parliament, it had, perhaps, rendered inevitable the introduction, in some degree, of local responsible government. At the same time, it had tended to make the Provinces the centres of the development of social services; and it had also tended to transfer to the Provincial Executives the prime responsibility for the preservation of law and order. From these three changes the three main features of Provincial Autonomy are directly derived.

Abolition of dyarchy approved.

17. In the first place, the Act of 1919 introduced a large measure of responsible government in the Provinces, and the governments thus established have now been in operation for more than a decade. Opinions may differ widely as to the success of this experiment, but we agree with the conclusion reached by the Statutory Commission, that its development has now reached a stage when it has outgrown the limits imposed upon it by the Act of 1919. The present dyarchic system in the Provinces was designed to develop a sense of responsibility and it has in fact given a considerable number of public men experience of the responsibilities of government, either as Ministers or Executive Councillors, or as members of the majority on which Ministers have relied for support in the Legislatures. On the other hand, the dyarchic system has sometimes tended to encourage a wholly different attitude. A sense of responsibility is an attribute of character born of experience, not a garment to be put on or discarded at will, according to the particular social function which the wearer may be attending at the moment. The Statutory Commission rightly observes that it can only be acquired by making men responsible politically for the effects of their own actions; and their sense of responsibility must be enormously weakened if the government functions in watertight compartments, partitioned off by the clauses of a Constitution. Hence the recommendation of the Statutory Commission, which we endorse, that the dyarchic system should be abolished, and that Provincial Ministers should be made generally responsible over the whole field of Provincial government.

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Responsible government and social legislation.

18. Secondly, in the sphere of social administration, it is evident that a point has been reached where further progress depends upon the assumption by Indians of real responsibility for Indian social conditions. Englishmen may legitimately claim that, for the greater part of her progress, India has been mainly indebted to British rule. But from one aspect of Indian life British rule has tended to stand aside : it has followed a policy of neutrality and non-interference in all matters which touch the religions of India. This attitude of non-interference has not, indeed, prevented the Government of India from introducing reforms in many matters, to use Lord Lansdowne's words, " where demands preferred in the name of religion would lead " to practices inconsistent with individual safety and the public peace, " and condemned by every system of law and morality in the world." Yet it must be recognised that, in a country where the habits and customs of the people are so closely bound up with their religious beliefs, this attitude, however justifiable it may have been, has sometimes had the result of making it difficult for the Government to carry intc effect social legislation in such matters (to name only two obvious instances) as child marriage and the problem of the untouchables. It has become increasingly evident in recent years that the obstacles to such legislation can only be removed by Indian hands. We are under no illusion as to the difficulty of that task, but we are clear that under responsible government alone can it be attempted with any prospect of success.

Responsible government and the enforcement of law and order.

19. But the third aspect of Provincial Autonomy is still, as it has been from time immemorial, the most difficult and the most important. Among the many problems arising out of the process of devolution, the most vital one is how best to ensure the continuity of the Provincial Executives in the performance of what, in an earlier paragraph, we referred to as the fundamental functions of government : the enforcement of law and order, and the maintenance of an upright administration. Because these are the fundamental functions of government and because there is no greater danger to good government than the tendency to take their performance for granted, we have come, as will later appear, to the same conclusion as the Statutory Commission, that Provincial Ministers must be made responsible for their performance. But it is well to remember what, according to British constitutional practice, is the nature of that responsibility. It is a responsibility which no Executive can share with any Legislature, however answerable it may be to that Legislature for the manner of its discharge. That has been true of the relationship of the Government of India to Parliament in the past ; it must remain true of the relationship of Provincial Ministers to Provincial Legislatures in the future. In the special circumstances of India it is appropriate that this principle of executive independence should be reinforced in the Constitution by the conferment of special powers and responsibilities on the Governor as the head of the Provincial Executive. This raises a wider question on which a further word must be said.

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British conception of parliamentary government.

20. In establishing, or extending, parliamentary government in the Provinces, Parliament must take into account the facts of Indian life. It must give full weight, indeed, to the testimony of the Statutory Commission that, in spite of the disadvantages of dyarchy on which the Commission laid such stress, Indians have shown, since 1921, a marked capacity for the orderly conduct of parliamentary business, a capacity which has grown steadily with the growth of their experience. We cannot doubt that this apprenticeship in parliamentary methods has profoundly affected the whole character of Indian public life, both by widening the circle of those who have had practical contact with the affairs of government and by stimulating the growth of a public conscience amongst the educated classes as a whole. But other facts must also be frankly recognized. Parliamentary government, as it is understood in the United Kingdom, works by the interaction of four essential factors: the principle of majority rule; the willingness of the minority for the time being to accept the decisions of the majority; the existence of great political parties divided by broad issues of policy, rather than by sectional interests; and finally the existence of a mobile body of political opinion, owing no permanent allegiance to any party and therefore able, by its instinctive reaction against extravagant movements on one side or the other, to keep the vessel on an even keel. In India none of these factors can be said to exist to-day. There are no parties, as we understand them, and there is no considerable body of political opinion which can be described as mobile. In their place we are confronted with the age-old antagonism of Hindu and Muhammadan, representatives not only of two religions but of two civilisations; with numerous self-contained and exclusive minorities, all a prey to anxiety for their future and profoundly suspicious of the majority and of one another; and with the rigid divisions of caste, itself inconsistent with democratic principle. In these circumstances, communal representation must be accepted as inevitable at the present time, but it is a strange commentary on some of the democratic professions to which we have listened. We lay stress on these facts because in truth they are of the essence of the problem and we should be doing no good service to India by glozing them over. These difficulties must be faced, not only by Parliament, but by Indians themselves. It is impossible to predict whether, or how soon, a new sense of provincial citizenship, combined with the growth of parties representing divergent economic and social policies, may prove strong enough to absorb and obliterate the religious and racial cleavages which thus dominate Indian political life. Meanwhile it must be recognised that, if free play were given to the powerful forces which would be set in motion by an unqualified system of parliamentary government, the consequences would be disastrous to India, and perhaps irreparable. In these circumstances, the successful working of parliamentary government in the Provinces

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must depend, in a special degree, on the extent to which Parliament can translate the customs of the British Constitution into statutory "safeguards."

Nature and objects of safeguards.

21. That word, like other words repeatedly used in recent discussions, has become a focus of misunderstandings both in England and India. To many Englishmen it conveys the idea of an ineffective rearguard action, masking a position already evacuated; to many Indians it seems to imply a selfish reservation of powers inconsistent with any real measure of responsible government. Since it is too late to invent a new terminology, we must make it clear that we use the word in a more precise and quite different sense. On the one hand, the safeguards we contemplate have nothing in common with those mere paper declarations which have been sometimes inserted in constitutional documents, and are dependent for their validity on the goodwill or the timidity of those to whom the real substance of power has been transferred. They represent on the contrary (to quote a very imperfect but significant analogy) a retention of power as substantial, and as fully endorsed by the law, as that vested by the Constitution of the United States in the President as Commander-in-Chief of the Army—but more extensive both in respect of their scope and in respect of the circumstances in which they can be brought into play. On the other hand, they are not only not inconsistent with some form of responsible government, but in the present circumstances of India it is no paradox to say that they are the necessary complement to any form of it, without which it could have little or no hope of success. It is in exact proportion as Indians show themselves to be, not only capable of taking and exercising responsibility, but able to supply the missing factors in Indian political life of which we have spoken, that both the need for safeguards and their use will disappear. We propose to examine later in this Report the nature of the safeguards required, but we think it right to formulate here what seem to us to be the essential elements in the new constitutional settlement which these safeguards should be designed to supply.

Need for flexibility;

22. The first is flexibility, so that opportunity may be afforded for the natural processes of evolution with a minimum of alteration in the constitutional framework itself. The deplorable and paralysing effect of prescribing a fixed period for constitutional revision requires no comment in the light of events since 1919; but we are also impressed with the advantage of giving full scope for the development in India of that indefinable body of understanding, of political instinct and of tradition, which Lord Bryce, in the passage which we have quoted, postulates as essential to the working of our own Constitution. The success of a Constitution depends, indeed, far more upon the manner and spirit in which it is worked than upon its formal provisions. It is impossible to foresee, so strange and perplexing are the conditions of the problem, the exact lines which constitutional development will eventually follow, and it is, therefore, the more desirable that those upon whom responsibility will rest

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should have all reasonable scope for working out their own salvation by the method of trial and error. In other words, as the Statutory Commission emphasised in their Report, the new Indian Constitution must contain within itself the seeds of growth.

for a strong Executive;

23. Next, there is the necessity for securing strong Executives in the Provinces. We have little to add to what the Statutory Commission have written on this point, and in our judgment they do not exaggerate when they say that nowhere in the world is there such frequent need for courageous and prompt action as in India and that nowhere is the penalty for hesitation and weakness greater. We do not doubt that Indian Ministers, like others before them, will realise this truth, but, in view of the parliamentary weaknesses which we have pointed out, the risk of divided counsels and therefore of feebleness in action is not one which can be ignored. We have no wish to underrate the legislative function; but in India the executive function is, in our judgment, of overriding importance. In the absence of disciplined political parties, the sense of responsibility may well be of slower growth in the Legislatures, and the threat of a dissolution can scarcely be the same potent instrument in a country where, by the operation of a system of communal representation, a newly elected Legislature will often have the same complexion as the old. We touch here the core of the problem of responsible government in the new Indian Constitution, and we shall examine it in greater detail in the body of our Report. Here, we content ourselves with saying that there must be (to quote again the Statutory Commission) an executive power in each Province which can step in and save the situation before it is too late. This power must be vested in the Governor, and so strongly have we been impressed by the need for this power, and by the importance of ensuring that the Governor shall be able to exercise it promptly and effectively, that, among other alterations in the White Paper, we have felt obliged to make a number of additional recommendations in regard to the Governor's sources of information, the protection of the police, and the enforcement of law and order.

for an efficient administration;

24. But, further, a strong Executive is impossible and the power thus vested in the Governor would be useless, in the absence of a pure and efficient administration, the backbone of all good government. The establishment of a strong and impartial public service is not the least of the benefits which British rule has given to India, and it is perhaps the most prized. In no country perhaps does the whole fabric of government depend to a greater degree than in India upon its administration; and it is indeed literally true, as the Statutory Commission observe, that the life of millions of the population depends on the existence of a thoroughly efficient administrative system. But no service can be efficient if it has cause for anxiety or discontent. It is therefore essential that those whose duty it is to work this system should be freed from anxiety as to their status and prospects under the new Constitution, and that new entrants should not be discouraged by any apprehension of

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inequitable treatment. We have every hope that such anxieties or apprehensions will prove unfounded, but they may be none the less real on that account ; and, so long as they exist, it is necessary that all reasonable measures should be taken to remove them.

and for an impartial authority to hold scales evenly between conflicting interests.

25. Lastly, there must be an authority in India, armed with adequate powers, able to hold the scales evenly between conflicting interests and to protect those who have neither the influence nor the ability to protect themselves. Such an authority will be as necessary in the future as experience has proved it to be in the past. Under the new system of Provincial Autonomy, it will be an authority held, as it were, in reserve ; but those upon whom it is conferred must at all times be able to intervene promptly and effectively, if the responsible Ministers and the Legislatures should fail in their duty. This power of intervention must, generally speaking, be vested primarily in the Provincial Governors, but their authority must be closely linked with, and must be focussed in, a similar authority vested in the Governor-General, as responsible to the Crown and Parliament for the peace and tranquillity of India as a whole, and for the protection of all the weak and helpless among her people. This leads us naturally to a consideration of the next point in the Indian constitutional problem—the form and character of the Central Government.

Provincial Autonomy requires a re-adjustment at Centre.

26. If the establishment of Provincial Autonomy marks, not so much a new departure, as the next stage in a path which India has long been treading, it is the more necessary that, on entering this stage, we should pause to take stock of the direction in which we have been moving. We have spoken of unity as perhaps the greatest gift which British rule has conferred on India ; but, in transferring so many of the powers of government to the Provinces, and in encouraging them to develop a vigorous and independent political life of their own, we have been running the inevitable risk of weakening or even destroying that unity. Provincial Autonomy is, in fact, an inconceivable policy unless it is accompanied by such an adaptation of the structure of the Central Legislature as will bind these autonomous units together. In other words, the necessary consequence of Provincial Autonomy in British India is a British-India Federal Assembly. In recent discussions, the word " federation " has become identified with the proposals for an All-India Federation and for the establishment, in the common phrase, of " responsibility at the Centre," both of which proposals we shall have to discuss in a moment. But federation is, of course, simply the method by which a number of governments, autonomous in their own sphere, are combined in a single State. A Federal Legislature capable of performing this function need not necessarily control the Federal Executive through responsible Ministers chosen from among its members ; indeed, as we shall show later, the central government of a purely British-India Federation could not, in our opinion, be appropriately framed

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on this model. But a Federal Legislature must be constituted on different lines from the Central Legislature of a unitary State. The Statutory Commission realised this truth and proposed a new form of Legislature at the Centre, specifically designed to secure the essential unity of British India. We have devoted particular attention to the form of the Central Legislature and shall have to recommend the substitution of an alternative scheme for the White Paper proposals.

Necessity for guarding against centrifugal tendencies.

27. Of course, in thus converting a unitary State into a Federation, we should be taking a step for which there is no exact historical precedent. Federations have commonly resulted from an agreement between independent or, at least, autonomous governments, surrendering a defined part of their sovereignty or autonomy to a new central organism. At the present moment, the British-Indian Provinces are not even autonomous, for they are subject to both the administrative and the legislative control of the Government of India, and such authority as they exercise has in the main been devolved upon them under a statutory rule-making power by the Governor-General-in Council. We are faced, therefore, with the necessity of creating autonomous units and combining them into a federation by one and the same act. But it is obvious that we have no alternative. To create autonomous units without any corresponding adaptation of the existing Central Legislature would be, as the Statutory Commission saw, to give full play to the powerful centrifugal forces of Provincial Autonomy without any attempt to counteract them and to ensure the continued unity of India. We obviously could not take the responsibility of recommending to Parliament a course fraught with such serious risks. If Parliament should decide to create an All-India Federation, the actual establishment of the new Central Legislature may without danger be deferred for so long as may be necessary to complete arrangements for bringing the representatives of the States into it; but the form of that Legislature must be defined in the Constitution Act itself.

The Indian States and an All-India Federation.

28. This brings us to the further proposal laid before us, that the Constitution Act should also determine the conditions upon which an All-India Federation is to be established, which includes the Indian States. This is a separate operation, which may proceed simultaneously with the introduction of Provincial Autonomy and the reconstitution of the Central Legislature, but which must be carried out by different methods and raises quite distinct issues of policy. We will leave questions of method to be considered in the body of our Report, but the issues of policy must be briefly discussed here.

Difficulties of a Federation composed of disparate units.

29. The Statutory Commission looked forward to the ultimate establishment of a Federation of Indian States and Provinces, and they recommended that, until this ideal could be realised, policies affecting British India and the States should be discussed between the parties in a consultative, but not legislative, Council of Greater India, consisting of representatives drawn from the States and the

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British Indian Legislature. The Commission did not anticipate that the Princes would be willing to enter an All-India Federation without some preliminary experience of joint deliberation on matters of common concern, and no doubt the Commission saw in this procedure the means of overcoming, by a process of trial and error, the difficulties of establishing an All-India Federation. These difficulties are obvious and, again, they are quite distinct from the difficulties involved in the constitution of a British-India Federation. The main difficulties are two: that the Indian States are wholly different in status and character from the Provinces of British India, and that they are not prepared to federate on the same terms as it is proposed to apply to the Provinces. On the first point, the Indian States, unlike the British-India Provinces, possess sovereignty in various degrees and they are, broadly speaking, under a system of personal government. Their accession to a Federation cannot, therefore, take place otherwise than by the voluntary act of the Ruler of each State, and after accession the representatives of the acceding State in the Federal Legislature will be nominated by the Ruler and its subjects will continue to owe allegiance to him. On the second point, the Rulers have made it clear that, while they are willing to consider federation now with the Provinces of British India on certain terms, they could not, as sovereign States, agree to the exercise by a Federal Government in relation to them of a range of powers identical in all respects with those which that Government will exercise in relation to the Provinces on whom autonomy has yet to be conferred. We have here an obvious anomaly: a Federation composed of disparate constituent units, in which the powers and authority of the Central Government will differ as between one constituent unit and another.

Unity of India endangered without a constitutional relationship between States and British India.

30. Against these undoubted difficulties, we have to place one great consideration of substance, which appears to us to outweigh the disadvantages of these anomalies. The unity of India on which we have laid so much stress is dangerously imperfect so long as the Indian States have no constitutional relationship with British India. It is this fact, surely, that has influenced the Rulers of the Indian States in their recent policy. They remain perfectly free to continue, if they so choose, in the political isolation which has characterized their history since the establishment of the British connection. But they have, it appears, become keenly conscious of the imperfections of the Indian polity as it exists to-day. A completely united Indian polity cannot, it is true, be established either now or, so far as human foresight can extend, at any time. In most respects, the anomalies to which we have referred are the necessary incidents, not merely of the introduction of an All-India Federation at this moment, but of its introduction at any time in the future. So far as we are aware, no section of opinion in this country or in British India is prepared to forego an All-India Federation as an ultimate aim of British policy. Certainly, the Statutory Commission was not prepared to do so, and it is the ideal

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indicated in their report which has since won so much support among the Indian Princes. The question for decision is whether the measure of unity which can be achieved by an All-India Federation, imperfect though it may be, is likely to confer added strength, stability and prosperity on India as a whole—that is to say, both on the States and on British India. To this question, there can, we think, be only one answer, an affirmative one; and that answer does not rest only, or even chiefly, on the kind of general considerations which naturally appeal most strongly to the people of this country. From their point of view it is evident enough that Ruling Princes who in the past have been the firm friends of British rule have sometimes felt their friendship tried by decisions of the Government of India running counter to what they believed to be the interests of their States and Peoples. Ruling Princes, however, as members of a Federation, may be expected to give steadfast support to a strong and stable Central Government, and to become helpful collaborators in policies which they have sometimes in the past been inclined to criticise or even obstruct. But an even stronger, and a much more concrete, argument is to be found in the existing economic condition of India.

Economic ties between States and British India.

31. The existing arrangements under which economic policies, vitally affecting the interests of India as a whole, have to be formulated and carried out are being daily put to an ever-increasing strain, as the economic life of India develops. For instance, any imposition of internal indirect taxation in British India involves, with few exceptions, the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or, in default of such agreement, the establishment of some system of internal customs duties—an impossible alternative, even if it were not precluded by the terms of the Crown's treaties with some States. Worse than this, India may be said even to lack a general customs system uniformly applied throughout the sub-Continent. On the one hand, with certain exceptions, the States are free themselves to impose internal customs policies, which cannot but obstruct the flow of trade. Even at the maritime ports situated in the States, the administration of the tariffs is imperfectly co-ordinated with that of the British-India ports, while the separate rights of the States in these respects are safeguarded by long-standing treaties or usage acknowledged by the Crown. On the other hand, tariff policies, in which every part of India is interested, are laid down by a Government of India and British-India Legislature in which no Indian State has a voice, though the States constitute only slightly less than half the area and one-fourth of the population of India. Even where the Government of India has adequate powers to impose internal indirect taxation or to control economic development, as in the cases of salt and opium, the use of those powers has caused much friction and has often left behind it, in the States, a sense of injustice. Moreover, a common company law for India, a common

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banking law, a common body of legislation on copyright and trade-marks, a common system of communications, are alike impossible. Conditions such as these, which have caused trouble and uneasiness in the past, are already becoming, and must in the future increasingly become, intolerable as industrial and commercial development spreads from British India to the States. On all these points the Federation now contemplated would have power to adopt a common policy. That common policy would be subject, no doubt, to some reservation of special treaty rights by certain States and, in the States generally, its enforcement would in many respects rest with officers appointed by the State Rulers; but, even so modified, it would mark a long step from confusion towards order. The rights of the States to impose internal customs duties cannot be abolished, but, as we shall indicate [1] later, moderation in the use of them can be made a condition of federation. In these times, when experience is daily proving the need for the close co-ordination of policies, we cannot believe that Parliament, while introducing a new measure of decentralisation in British India, would be wise to neglect the opportunity now offered to it of establishing a new centre of common action for India as a whole.

The States and responsibility at the Centre.

32. An All-India Federation thus presents solid advantages from the point of view alike of His Majesty's Government, of British India, and of the Indian States. But the attraction of the idea to the States clearly depends on the fulfilment of one condition: that, in acceding to the Federation, they should be assured of a real voice in the determination of its policy. The Princes have, therefore, stated clearly in their declaration that they are willing now to enter an All-India Federation, but only if the Federal Government is a responsible and not an irresponsible government. This brings us to the last of the main issues which have been submitted to our consideration, the issue whether, in the common phrase, there shall or shall not be any degree of "responsibility at the Centre".

Responsibility without the States not a solution of the problem.

33. It is obvious at the outset that the very ground on which the Princes advocate responsibility at the Centre in an All-India Federation constitutes the strongest possible argument against responsibility at the Centre in a purely British-India Federation; for a British-India Centre would have to deal, as now, with matters intimately affecting the States, yet would, as now, be unable to give the States any effective voice in its deliberations. If the States are irked by the exercise of such powers by the present Government of India, their exercise by Ministers responsible to a purely British-India electorate could hardly fail to lead to serious friction. Indeed, the position of the Governor-General in such circumstances, as the sole representative of the Crown in its treaty relations with the States and, therefore, as the sole mediator between a British-India electorate and the State Rulers, would be an almost impossible one. We agree, therefore, with the Statutory Commission in thinking

[1] *Infra*, para. 264.

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that a responsible British-India Centre is not a possible solution of the constitutional problem, or would, at most, only be possible at the price of very large deductions from the scope of its responsibility.

The Statutory Commission and responsibility at the Centre.

34. But the Statutory Commission went further than this. They considered the question of responsibility at the Centre from another angle also. It is unnecessary to repeat all that they said on the subject, but they realised, as every student of the problem must realise, that responsible government at the Centre could not in any case extend to all departments of the Central Government, and that, in any case, it would be necessary to reserve Defence and Foreign Affairs from the sphere of ministerial responsibility. Hence any measure of responsible government at the Centre must involve a system of dyarchy, and the Commission held strongly the view that a unitary Government at the Centre was essential and should be preserved at all costs. "It must be a Government," they wrote, "able to bear the vast responsibilities which are cast upon it as the central executive organ of a sub-continent, presenting complicated and diverse features which it has been our business to describe"; and they expressed the opinion that a plan based on dyarchy was unworkable and would, indeed, constitute no real advance in the direction of developing central responsibility. In this connection we may usefully quote one passage from the Report of the Statutory Commission on the working of dyarchy in the Provinces. "The practical difficulty in the way of achieving the objective of dyarchy and of obtaining a clear demarcation of responsibility arises not so much in the inner counsels of government as in the eyes of the Legislature, the electorate and the public. Provincial Legislatures were by the nature of the Constitution set the difficult task of discharging two different functions at the same time. In the one sphere, they were to exercise control over policy; in the other, while free to criticise and vote or withhold supply, they were to have no responsibility. The inherent difficulty of keeping this distinction in mind has been intensified by the circumstances under which the Councils have worked to such an extent that perhaps the most important feature of the working of dyarchy in the Provincial Councils, when looked at from the constitutional aspect, is the marked tendency of the Councils to regard the Government as a whole, to think of Ministers as on a footing not very different from that of Executive Councillors, to forget the extent of the opportunities of the Legislatures on the transferred side, and to magnify their functions in the reserved field."

Possible divisions of responsibility:

35. These are undoubtedly formidable objections, but they do not, we think, exhaust the question. It is impossible adequately to discuss the real issues involved in a decision for or against the introduction of some measure of responsibility at the Centre if the discussion is confined to the Centre itself and is conducted in terms of "dyarchy." Like so many other words used in political controversy, "dyarchy"

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has collected round it associations which tend to obscure issues rather than to clarify them. The truth is that, in any Constitution, and above all in a Federal Constitution, there must be a division of responsibility at some point, and at that point there will always be a danger of friction. In framing a Constitution, the problem is to draw the line at a point where these necessary evils will be minimised, and the line will be drawn at different points according to the character and problems of the particular country concerned. It may be drawn at a point where the powers which are reserved from the normal operation of the Constitution have, in ordinary times, little or no practical effect on the formulation and execution of policy—as, for instance, the line drawn in the British North America Act between the powers of the Governor-General and the powers of the Governor-General in Council. But in India no easy solution of this kind is possible. There the line drawn must reserve to the Governor-General large powers which will have an important effect upon the policy of the government as a whole. Broadly speaking, three possible lines of division have been suggested to us, each of which deserves to be briefly discussed.

(1) in the provincial sphere;

36. One is a line drawn within the sphere of the Provincial Governments in such a way as to reserve to the Provincial Governors the responsibility for the maintenance of law and order, and to the Governor-General the responsibility for all central subjects. This solution eliminates dyarchy at the Centre, but perpetuates it in the Provinces; and we have already indicated our reasons for rejecting it. We shall discuss these reasons more fully in the body of our Report.

(2) between Centre and Provinces;

37. The second line suggested to us is one coinciding with the line of division between the Provincial Governments and the Central Government, the former being wholly responsible governments and the latter wholly irresponsible. This was the immediate (though not, as we shall suggest in a moment, the ultimate) line of division recommended by the Statutory Commission, and it is the one which we should probably have felt constrained to recommend if we had been considering a purely British India Federation. But it is, we think, open to very serious objections which could not be fully present to the mind of the Statutory Commission. Though it might appear at first sight to eliminate altogether the evils of dyarchy, its real effect is rather to conceal dyarchy than to eliminate it. Its actual effect would be to reserve to the Governor-General much of the unpopular duty of taxation, while allotting to responsible Provincial Ministers the agreeable task of spending the money so raised. It must be remembered that the Statutory Commission based their financial recommendations on an estimate of the future revenues of India far more sanguine than would now be accepted by any expert. They, therefore, felt able to recommend the establishment of a Provincial Fund, fed by automatic allocations from central revenues which in turn would be automatically distributed

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among the Provinces. In a State so happily provided with ample revenues that their division between two distinct sets of public authorities could be fixed in advance by the Constitution for all time, the existence of an irresponsible government at the Centre side by side with responsible governments in the Provinces might no doubt have been expected to work reasonably well. It is, however, impossible for Parliament to-day to base its policy on any such assumption. The Central and Provincial Governments must, as we shall show when we come to our financial recommendations, be financed from year to year largely out of the same purse. That purse, for some time to come at least, will be at best barely adequate for the needs of both. In these circumstances, Central policies of taxation and Central economic policies, on which the wealth of India and the volume of her public revenue will depend, must be of the most immediate and fundamental interest to the Government of every Province. A line of division which withheld this whole range of policy from the consideration of responsible Ministers could hardly fail to become the frontier across which the bitterest conflicts would be waged; and its existence would afford to Provincial Ministers a constant opportunity to disclaim responsibility for the non-fulfilment of their election promises and programmes.

(3) in the Central Government itself.

38. Lastly, the line can be drawn within the Central Government itself, in such a way as to reserve the Departments of Defence and Foreign Affairs to the Governor-General, while committing all other Central subjects to the care of responsible Ministers, subject to the retention by the Governor-General of special powers and responsibilities, outside his Reserved Departments, similar to (though not necessarily in all respects identical with) those which we contemplate should be conferred on the Provincial Governors. The nature of the Central safeguards which would in that event be necessary will be discussed, like the Provincial safeguards, in the body of our Report; but, subject to them, the effect of drawing the line at this point would be to make Indians responsible for legislation and administration over the whole field of social and economic policy. It is, we think, a fair conclusion from the Report of the Statutory Commission that this was the line at which they contemplated that the division of responsibility would ultimately be made. They contemplated an eventual All-India Federation. They believed that the Constitution which they recommended for the Central Government would contain in itself the seeds of growth and development. It was, no doubt, for that reason, and foreseeing the course of that development, that they suggested that the protection of India's frontiers should not, at any rate for a long time to come, be regarded as a function of an Indian Government in relation with an Indian Legislature at all, but as a responsibility to be assumed by the Imperial Government. Apart from the difficulties of this suggestion, to which we shall have to return in the body of our Report, it obviously involves a dyarchy of much the same

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kind as would result from a frank reservation to the Governor-General of the Department of Defence. In fact, the reservation of Defence, with the reservation of Foreign Affairs as intimately connected with Defence, is the line of division which corresponds most nearly with the realities of the situation. It is also the line of division which, on the whole, creates the least danger of friction. As the Statutory Commission pointed out in the passage we have already quoted, dyarchy has not, even in the Provinces, raised any insuperable difficulties "in the inner counsels of the government"; and the danger of friction in the inner counsels of the Central Government will be even smaller, for the administration of Defence and Foreign Affairs will normally, at any rate, have few contacts with other fields of Central administration under the new Constitution.

The Central Legislature and the Army Budget.

39. The one real danger of friction, and that a serious one, lies in the very large proportion of Central revenues which is, and must continue to be, absorbed by the Army Budget. It is true that this difficulty is inherent in the facts of the situation. It exists at the present day. Ever since the Act of 1919, the Central Legislature has constantly sought to "magnify its functions in the reserved field" of the Army Budget. The serious friction thus caused would be likely to manifest itself in an even stronger form in the future in a Central Legislature such as was proposed by the Statutory Commission—a Legislature largely representative of Provincial Legislatures, yet denied all effective control over any branch of Central finance. It is also true that the Statutory Commission's own scheme for a reservation of Defence to the Imperial Parliament would raise the same difficulty in an even more acute form. It is even true that the friction which now exists over Army expenditure could hardly be intensified and might be substantially mitigated by the existence of a Ministry generally responsible to the Legislature for finance. The existence of a large standing charge for Defence circumscribes but by no means destroys the financial responsibility of Ministers. Far the greater part of most national budgets are, in effect, unalterable because they are the results of commitments arising out of the past in the field of foreign relations or of social reform. The margin of discretion which is available to Ministers anywhere in increasing or reducing taxation or altering expenditure is usually small, and this margin, in India, will be within the control of Ministers, subject to the Governor-General's special responsibility in the financial sphere. Ministers will naturally wish to save money on defence in order that they may spend it on "nation building" departments under their own charge, but we believe that responsible Indian Ministers will be not less anxious for adequate defence than the Governor-General, and will usually after discussion with him support his view of what is necessary and will be able to convince their following in the Legislature that it is sound. Yet in spite of these weighty considerations, the danger of friction

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between the Governor-General and the Legislature over the Army Budget undoubtedly furnishes an additional argument against responsibility at the Centre in a purely British India Federation. But that is not the proposition we are now discussing. We have already made it clear that, in such a Federation, we should have felt constrained to draw our line of division at another point, notwithstanding the disadvantages of the alternatives to which we have drawn attention above. What we are now discussing is an All-India Federation, and in regard to the Army Budget, as in regard to the broader issues of the relations between British India and the States, the declaration of the Princes, indicating their willingness to enter an All-India Federation, has introduced a new and, in our judgment, a determining factor. It is reasonable to expect that the presence in the Central Executive and Legislature of representatives of the Princes who have always taken so keen an interest in all matters relating to defence will afford a guarantee that these grave matters will be weighed and considered with a full appreciation of the issues at stake. It is, indeed, one of the main advantages of an All-India Federation that it will enable Parliament to draw the line of division between responsibility and reservation at the point which, on other grounds, is most likely to provide a workable solution.

Governor-General's power of effective intervention not increased by retention of irresponsibility at the Centre.

40. Before leaving this subject we ought, perhaps, to refer to one argument which has been urged upon us in favour of a wholly irresponsible Central Government, and also to one particular danger which we think Parliament should be careful to avoid. The argument to which we refer is that an irresponsible Centre would constitute a reserve of power which could be used at any moment by the Governor-General to redress the situation in any Province, if responsible government in that Province should break down. This argument seems to us to rest on a misapprehension. The Governor-General in an irresponsible Centre would have no more and no less power of intervention in the Provinces, either to forestall a constitutional breakdown or to restore the situation after such a breakdown, than he would possess under our recommendations. Our recommendations do, in fact, reserve to him such power through the interaction of his own and the Provincial Governors' special powers and responsibilities; but, in so far as his opportunities of intervention are limited, they are limited, not by the constitution of the Central Government, but by the establishment of autonomous Provincial Governments. The danger which we think Parliament should avoid lies in the fact, on which we have already insisted, that ministerial responsibility is not itself a form of government which can be created or prevented at will by the clauses of a statute, so much as a state of relationships which tends to grow up in certain circumstances and under certain forms of government. It follows that a Constitution Act cannot legislate against ministerial responsibility at the Centre, if its other provisions, or the facts of the case,

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are such as to encourage the development of such responsibility. It has been suggested to us that, while the Central Government should be declared by the Constitution to be an irresponsible Government, the Governor-General should be free to select any of his Executive Council from among the members of the Central Legislature, and that a member of the Legislature assuming ministerial office should not be obliged to resign his seat in the Legislature. There is much to be said for such a proposal, but it is in fact a proposal, not for the perpetuation of an irresponsible Government, but for the gradual introduction of a responsible one. It would tend to introduce responsible government at the Centre by insensible degrees without any statutory limitation of the scope of ministerial power and responsibility. That is, indeed, broadly speaking, the way in which responsible government actually grew up in Canada. It may be difficult to draw any satisfactory line of division between reserve powers and responsible government, but, under the conditions of the problem that we are examining, Parliament should be careful not to draw a definite line in principle, only to blur it in practice.

Weakness of present Central Government.

41. We cannot leave this subject without asking the vital question which Parliament will have to answer: whether a Central Government of India constituted as we propose would fulfil the condition we have already laid down—whether it would provide a Central authority strong enough to maintain the unity of India and to protect all classes of her citizens. That question cannot be answered apart from a consideration of the strength or weakness of the Central Government as it now exists. As our enquiries have proceeded, we have been increasingly impressed, not by the strength of the Central Government as at present constituted, but by its weakness. It is confronted by a Legislature which can be nothing but (in Bagehot's words) "a debating society adhering to an executive". The members of that Legislature are unrestrained by the knowledge that they themselves may be required to provide an alternative government; their opinions have been uninformed by the experience of power, and they have shown themselves prone to regard support of government policy as a betrayal of the national cause. It is no wonder that the criticism offered by the members of such a Legislature should have been mainly destructive; yet it is abundantly clear from the political history of the last twelve years that criticism by the Assembly has constantly influenced the policy of Government. As a result, the prestige of the Central Government has been lowered and disharmony between Government and Legislature has tended to sap the efficiency of both. Indeed, the main problem which, in this sphere, Parliament has now to consider is how to strengthen an already weakening Central Executive. We believe that the Central Government which we recommend will be stronger than the existing Government and we see no other way in which it could be strengthened.

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42. We would close this introductory part of our Report with one final word. At its outset we recorded our recognition of Indian aspirations and our sense of the weight to be attached to them. Having done so, we have examined the problem from another angle, concentrating our attention on the facts of Indian government and of Indian social conditions. Our study of these facts has led us to certain concrete conclusions which in the body of our Report we shall have further to elaborate and justify. But, having thus reached our conclusions by the exercise of our judgment on the facts of the case, we may be permitted to urge their acceptance as embodying, in their broad lines, a policy on which responsible public opinion both in this country and in India may unite. We have already referred to the long process of collaboration through which successive Governments in this country have sought to ascertain whether any substantial measure of agreement was possible upon the principles which should inform a new constitutional settlement in India. It can scarcely have been expected by the members of the Statutory Commission, or by the participants in the Round Table Conferences, that free and unfettered discussion of issues so formidable and complex would succeed in achieving so substantial a measure of common agreement as that which has emerged in the course of the last two years. No scheme for the future government of India is, of course, at present in existence which can be said to have been agreed even unofficially between representatives of the two countries. Indeed, we recognize that even moderate opinion in India has advocated and hoped for a simpler and more sweeping transfer of power than we have felt able to recommend. Moreover, it must not be forgotten that there is a section of opinion in India with whom the prospect of agreement appears to be remote. But, from the discussions and personal contacts of recent years, there has emerged in each country what may fairly be described as a body of central opinion which has at least reached a juster appreciation both of the difficulties which impress and the motives which inspire a similar body of opinion in the other country. It is now possible to discern much common ground where previously the dividing gulf might have seemed to be unbridgeable. Not only has this movement of opinion been observable both in this country and in British India, but the Indian States also, in making their contribution to recent discussions, have shown their willingness to go much further than seemed possible at the time of the Statutory Commission's Report in the direction of agreement with His Majesty's Government and with representatives of public opinion in British India on a new and far-reaching policy of Federation. On the common ground thus marked out we believe that the foundations of a firm and enduring structure can be laid.

Emergence of body of central opinion in United Kingdom and in India.

43. Parliament is, indeed, confronted with grave problems, but it is also offered a great opportunity. There are moments in the history of nations when a way seems to be opened for the establishment between people and people of new relations more in harmony

Issues with which Parliament is faced.

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with the circumstances of the time, but when that way is beset by all the dangers inherent in any transfer of political power. Such moments are a sharp test of political sagacity, of the statesman's instinct for the time and manner of the change. If that instinct fails, either from rashness or from over-caution, there is small chance of recovery. In the present issue, the dangers of rashness are obvious enough. They have been urged upon us by some to whom the majestic spectacle of an Indian Empire makes so powerful an appeal that every concession appears to them almost as the betrayal of a trust ; but they have been urged on us also by others whose arguments are based on the undeniable facts of the situation. Those arguments are, for instance, that no self-governing nation of the British Empire has ever been faced within its borders at one and the same time by all the problems with which India has to deal : by the ever present risk of hostilities on her frontier, by the cleavage between communal interests, by innumerable differences of race and speech, by a financial system largely dependent for its credit on centres outside India, and by a vast population in every stage of civilisation. Against all this, the dangers of over-caution are no less plain. The plea put forward by Indian public men on behalf of India is essentially a plea to be allowed the opportunity of applying principles and doctrines which England herself has taught ; and all sections of public opinion in this country are agreed in principle that this plea should be admitted. No one has suggested that any retrograde step should be taken, very few that the existing state of things should be maintained unaltered. The necessity for constitutional advance, at least within the limits of the Statutory Commission's Report, may be regarded as common ground. We have given our reasons for believing that the constitutional arrangements which we recommend, including a measure of responsibility at the Centre, follow almost inevitably from these accepted premises. If this conclusion is rejected, the rejection will be generally regarded in India as a denial of the whole plea and two consequences at least must be faced : the prospect of an All-India Federation will disappear, perhaps for ever, but certainly for many years to come, and the measure of harmony achieved in British India by the co-operative efforts of the last few years, together with that body of central opinion which we have described, will be irretrievably destroyed.

Parliament's choice must be resolute and decisive.

44. These are grave issues and, if we do not enlarge further upon the consequences of a failure to make the right use of the present opportunity, it is because we believe that the choice that is now to be made must be made without fear and without favour, on a just estimate of the facts of a situation and the feelings of a people, on a cool calculation of the risks involved in any of the alternative courses open to us, but without hesitations born of timidity. We have recommended the course which appears to us to be the right one, but whatever course Parliament may eventually choose, it is

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above all necessary that its choice should be resolute and decisive. By general admission, the time has come for Parliament to share its power with those whom for generations it has sought to train in the arts of government; and, whatever may be the measure of the power thus to be transferred, we are confident that Parliament, in consonance with its own dignity and with the traditions of the British people, will make the transfer generously and in no grudging spirit.

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SECTION II

PROVINCIAL AUTONOMY

(1) Preliminary Remarks

The Committee's terms of reference.

45. Our terms of reference direct us to consider the future government of India and in particular to examine and report upon the proposals in Command Paper 4268, commonly known as the White Paper.[1] The latter, in fact, embodies a complete scheme for Indian constitutional reform; and we have found it convenient to make it the basis for the setting out of our conclusions, although we desire to make it quite plain that our deliberations have in no way been restricted to the proposals which it contains.

Arrangement of White Paper.

46. The proposals in the White Paper fall under three main heads, which have been commonly referred to as Provincial Autonomy, Federation, and Responsibility at the Centre. It is our intention to examine these proposals and to state certain general conclusions at which we have arrived, and thereafter to examine separately the proposals in relation to the following complementary or subsidiary matters:—Distribution of Legislative Powers, Finance, the Services, the Judiciary, Commercial Discrimination, Constituent Powers, the Secretary of State and the Council of India, the Reserve Bank, the Future Administration of Indian Railways, Audit and Auditor-General, Advocates-General, and Transitory Provisions. This appears to us the more convenient course to adopt, in order that the essential elements of the scheme put forward by His Majesty's Government may be seen in their proper perspective, unobscured by the mass of detail which the White Paper necessarily contains. We should add that we have not thought it necessary to mention in our Report every matter of detail with which the White Paper deals, but only those which appear to us of sufficient general importance to warrant discussion. It may be assumed that we have no comment to offer on the proposals in the White Paper to which we make no special reference, and we are content to leave them to be dealt with at the discretion of His Majesty's Government in the legislative proposals which they will lay before Parliament.

Burma.

47. The proposals in the White Paper do not deal specifically with the question of Burma in relation to Indian constitutional problems, because opinion in Burma on the future of the country had not at the date of the issue of the White Paper become crystallized. The Statutory Commission recommended that Burma should cease to be a part of British India, and we have arrived at the same conclusion. In these circumstances it is our intention to deal fully with the future constitution of Burma in Section VI of our Report,[2] where we shall set out and discuss the reasons which have appeared to us to justify our recommendation.

[1] Reproduced for convenience as the First Appendix to this Volume (pp. 282–380).
[2] *Infra*, p. 245.

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(2) The Autonomous Provinces

48. The scheme of Provincial Autonomy, as we understand it, is one whereby each of the Governors' Provinces will possess an Executive and a Legislature having exclusive authority within the Province in a precisely defined sphere, and in that exclusively provincial sphere broadly free from control by the Central Government and Legislature. This we conceive to be the essence of Provincial Autonomy, though no doubt there is room for wide differences of opinion with regard to the manner in which that exclusive authority is to be exercised. It represents a fundamental departure from the present system, under which the Provincial Governments exercise a devolved and not an original authority. The Act of 1919 and the Devolution Rules made under it, by earmarking certain subjects as "Provincial subjects," created indeed a sphere within which responsibility for the functions of government rests primarily upon the Provincial authorities; but that responsibility is not an exclusive one, since the Governor-General in Council and the Central Legislature still exercise an extensive authority throughout the whole of the Provinces. Under the proposals in the White Paper, the Central Government and Legislature would, generally speaking, cease to possess in the Governors' Provinces any legal power or authority with respect to any matter falling within the exclusive Provincial sphere, though, as we shall explain later, the Governor-General in virtue of his power of supervising the Governors will have authority to secure compliance in certain respects with directions which he may find it necessary to give.

Definition of Provincial Autonomy.

49. "The Provinces are the domain," wrote the authors of the Montagu-Chelmsford Report, "in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit." Their intention was to give an independent life to the organisms which would in future form the members of a British-India Federation, an ideal at that time not within measurable distance. To-day, so rapid has been the march of events since 1919, we are discussing not only a Federation of British India, but an All-India Federation; and we could not ourselves contemplate such a Federation, whether it comes about in the immediate or more distant future, which in its British Indian aspect is composed of other than autonomous units, independent within their own sphere of any central control. We have arrived, therefore, at the same conclusion on this subject as the Statutory Commission, and substantially on the same grounds.[1] Of all the proposals in the White Paper, Provincial Autonomy has

The principle accepted.

[1] Report, Vol. II, para. 27.

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received the greatest measure of support on every side. The economic, geographical, and racial differences between the Provinces on the one hand and the sense of provincial individuality on the other, have greatly impressed us. The vast distances of India and the increasing complexity of modern government are strong additional arguments in favour of the completion of the process begun in 1919, and of a development in which the life of each Province can find vigorous and adequate expression, free from interference by a remote Central Government. We proceed, therefore, to consider the manner in which the proposals of His Majesty's Government give practical effect to the autonomy principle.

The Ambit of Provincial Autonomy

Distribution of legislative powers between Centre and Provinces.

50. The first problem is to define the sphere within which Provincial Autonomy is to be operative. The method adopted by the White Paper (following in this respect the broad lines of Dominion Federal Constitutions) is to distribute legislative power between the Central and Provincial Legislatures respectively, and to define the Central and Provincial spheres of government by reference to this distribution.[1] In Appendix VI, List II, of the White Paper are set out the matters with respect to which the Provincial Legislatures are to have exclusive legislative powers, and the sphere of Provincial Autonomy in effect comprises all the subjects in this list. The subjects in List II (the exclusively Provincial List) represent generally with certain additions those which the Devolution Rules under the Act of 1919 earmarked as "Provincial subjects" and we are of opinion that in its broad outline the List provides a satisfactory definition of the Provincial sphere. We shall have certain suggestions and recommendations to make later, when we come to consider the List in detail, and there are a few subjects included in it with regard to which a complete provincialization might, as it seems to us, be prejudicial to the interests of India as a whole. It will, however, be convenient to leave this aspect of the matter for subsequent examination.

Concurrent legislative powers.

51. There is, however, another List (Appendix VI, List III), in which are set out a number of subjects with respect to which it is proposed that the Central Legislature shall have a power of legislating concurrently with the Provincial Legislatures, with appropriate provision for resolving a possible conflict of laws.[2] Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature, and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the Central Legislature should also have

[1] White Paper, Proposal 114.
[2] White Paper, Proposals 111, 112.

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a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout the country, in others to guide and encourage provincial effort, and in others again to provide remedies for mischiefs arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single Province. Instances of the first are provided by the subject matter of the great Indian Codes, of the second by such matters as labour legislation, and of the third by legislation for the prevention and control of epidemic disease. It would in our view be disastrous if the uniformity of law which the Indian Codes provide were destroyed or whittled away by the unco-ordinated action of Provincial Legislatures. On the other hand, local conditions necessarily vary from Province to Province, and Provincial Legislatures ought to have the power of adapting general legislation of this kind to meet the particular circumstances of a Province.

Provincial legislation to meet local requirements.

52. We had at first thought that the case could be met by so defining the powers of the Central Legislature as to restrict its competence in this sphere to the enacting of broad principles of law, the Provincial Legislatures being left to legislate for the Provinces within the general framework thus laid down. We are, however, satisfied that, with regard at any rate to some of the subjects in List III, the local conditions in a Province may require the enactment of legislation modifying a general law applicable to the Province, and that the power of enacting complementary legislation alone would not suffice. If it be said that this difficulty could be met by entrusting the Central Legislature with the power themselves to legislate for the purposes of meeting the particular needs of a single Province, our answer would be that it is wrong in principle to give the Central Legislature power to enact legislation for one Province only, on a matter which *ex hypothesi* must necessarily be one of exclusively local concern. There is no analogy between local legislation enacted by the Parliament at Westminster at the instance of a single local authority, and a power to legislate for an autonomous British-Indian Province. Nor can we disregard the obvious fact that the necessity for obtaining Central legislation might in practice cause grave difficulties to a Province, especially in cases where the demand for an amendment of the law is immediate and urgent.

Conflicts of law in concurrent field.

53. The White Paper proposes that, where there is conflict between the Central and Provincial legislation with respect to a subject comprised in List III, the Central legislation shall prevail, unless the Provincial legislation is reserved for and receives the assent of the Governor-General.[1] This appears to us an appropriate method for effecting a reconciliation between the two points of view, and it has the further merit of avoiding the legal difficulties which any attempt further to refine the definitions in List III for the purposes of

[1] White Paper, Proposal 114.

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distributing the legislative power between the Central and Provincial Legislatures would of necessity create. We, therefore, approve the principle of the Concurrent List, though we reserve for subsequent consideration the question of the particular subjects which in our opinion ought to be included in it.

The residuary legislative power.

54. We have pointed out above that in List II are set out the matters with respect to which the Provincial Legislatures are to have exclusive legislative powers and that, generally speaking, this List provides a satisfactory definition of the provincial sphere. List I in Appendix VI similarly sets out the matters with respect to which the Central Legislature is to have exclusive legislative powers; and these two Lists (together with the Concurrent List) are so widely drawn that they might seem at first sight to cover the whole field of possible legislative activity, and to leave no residue of legislative power unallocated. It would, however, be beyond the skill of any draftsman to guarantee that no potential subject of legislation has been overlooked, nor can it be assumed that new subjects of legislation, unknown and unsuspected at the present time, may not hereafter arise; and therefore, however carefully the Lists are drawn, a residue of subjects must remain, however small it may be, which it is necessary to allocate either to the Central Legislature or to the Provincial Legislatures. The plan adopted in the White Paper is that the allocation of this residue should be left to the discretion of the Governor-General, and settled by him *ad hoc* on each occasion when the need for legislation arises. It would be necessary under this plan to make provision for the formal record of the Governor-General's decisions as having statutory force.

Difficulty of White Paper proposal.

55. This scheme of allocation of powers has obvious disadvantages. It will be observed that, for the purpose of reducing the residuary powers to the smallest possible compass, the lists of subjects dealt with in all three Lists are necessarily of great length and complexity; whereas, apart from the question of the Concurrent List, if it had been possible to allocate residuary legislative powers to e.g., the Provinces, only a list of Central powers would have been required, with a provision to the effect that the legislative powers of the Provinces extended to all powers not expressly allocated to the Centre; and conversely, if the residue had been allocated to the Centre. This, broadly, is the plan which has been adopted in Canada and Australia, the residuary powers being vested, in the case of Canada, in the Dominion Legislature, and, in the case of Australia, in the Legislatures of the States. Even so, experience has unhappily shown that it has been impossible to avoid much litigation on the question whether legislation on a particular subject falls within the competence of one Legislature or the other; and it seems clear that the attempt made in the White Paper to allocate powers over the whole field of legislation

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by the expedient of specific enumeration must tend considerably to increase the danger of litigation by multiplying points of possible inconsistency.

Cleavage of opinion in India.

56. On the other hand, there are two grounds on which the White Paper scheme may be defended, one of immediate political expediency and the other of constitutional substance. On the first point, we gather from our discussions with the Indian delegates that a profound cleavage of opinion exists in India with regard to the allocation of the residuary legislative powers ; one school of thought, mainly Hindu, holding as a matter of principle that these powers should be allocated to the Centre, and the other, mainly Muhammadan, holding not less strongly that they should be allocated to the Provinces. Where an apparently irreconcilable difference of opinion thus exists between the great Indian communities on a matter which both of them appear to regard as one of principle, the proposals of His Majesty's Government may be defended as a reasonable compromise. On the point of constitutional substance, it seems to us that, if a choice were to be made between the two alternative principles to which we have just drawn attention, the logical conclusion of the proposals in the White Paper would be the allocation of all residuary legislative powers to the Provincial Legislatures; but this solution would we think, require to be accompanied by the insertion in List I of some general overriding power of Central legislation in matters of All-India concern, since a new subject of legislation cannot be left to fall automatically into the provincial field, irrespective of its national implications. But it is precisely an overriding clause of this kind which has led to litigation in other non-unitary States. On the whole, therefore, we are unwilling to recommend an alteration of the White Paper proposal[1] in a field in which experience shows that no wholly satisfactory solution is possible.

Existing and Future Governors' Provinces

The present Governors' Provinces.

57. The existing Governors' Provinces are the Presidencies of Bengal, Madras and Bombay, and the Provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam, the North-West Frontier Province, and Burma. We have considered the problem of Burma in a separate part of our Report,[2] and it is unnecessary to say more in this place than that we have come to the conclusion, as we have already indicated,[3] that Burma should cease to be a part of British India. The White Paper proposes that there shall in future be a new Province of Sind and a new Province of Orissa, the former being carved out of the Presidency of Bombay, and the latter mainly out of the Province now known as Bihar and Orissa, but also including a portion of what is now Madras territory, and a very small area from the Central Provinces.

[1] We deal in para. 236 below with the position as it would affect the Indian States.
[2] *Infra*, p. 245.
[3] *Supra*, para. 47.

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Sind.

58. On the constitution of Sind as a separate Governor's Province, we quote the following passage from the Statutory Commission's Report: "We have great sympathy with the claim, but there are grave administrative objections to isolating Sind and depriving it of the powerful backing of Bombay before the future of the Sukkur Barrage is assured and the major readjustments which it will entail have been effected. Even if it were held that the time is ripe for the separation of Sind to be seriously considered there would have to be a close and detailed enquiry into the financial consequences which would follow from such a step before a decision could be taken."[1] When this opinion was recorded the Barrage was still under construction; but it is now completed and successfully in operation, though the general fall in agricultural prices has necessarily affected the financial position. The financial difficulties involved in the creation of an autonomous Sind have been examined first by an expert committee and later by a conference of representatives of Sind presided over by an official, and the findings of both Committees have been reviewed by the Government of India and by His Majesty's Government. We are informed that it is now anticipated that the new Province would start with an initial yearly deficit of about ¾ crore, which would be gradually extinguished in about 15 years, and that after that period the Province should be able to dispense with assistance. We discuss elsewhere the effect of the separation of Sind from Bombay upon both Central and Bombay finances, and it is sufficient to say here that the difficulties do not appear to be of such magnitude as to form any insuperable bar to the establishment of a separate Province.

Case for separation from Bombay.

59. The difficulty of administering from Bombay a territory racially and geographically separated from the rest of the Presidency has proved capable of being overcome under present arrangements; but the case for separation, which is strong under any form of administration, is greatly strengthened if the administration of Bombay is transferred to an Executive responsible to the Legislature. The question is, however, one which has aroused acute communal controversy. The case for separation has been pressed not merely by the Sindi Muhammadans but also by Muhammadan leaders elsewhere in India. Separation has been as strongly opposed by the Hindu minority in Sind who, though they only form about 27 per cent. of the population, are economically powerful and under the present provincial franchise actually form a majority of the voters. It is impossible not to sympathise with the desire of the Hindu community in Sind to remain under the rule of the richer Bombay Government, which is also likely to share their communal sympathies. Nevertheless, it seems to us that, apart from other considerations, the communal difficulties that would arise from attempting to administer Sind from Bombay would be no less great than those which may face a separate Sind administration.

[1] Report, Vol. II, para. 38.

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It is proposed that the Hindus shall be allotted a considerable proportion of the seats in the Legislature, and they will of course enjoy the protection of the special safeguards for minorities which will apply to the minorities in other Provinces; and it may be noted that a Sindi Muhammadan witness who appeared before us recognized that the Hindus must play an important part in the government of the Province.[1] The alternative of a union between Sind and the Punjab has long been discussed, and there are very strong arguments in favour of it, especially in view of the joint interest of the two territories in the waters of the Indus. Unfortunately, this alternative now seems to be opposed by practically all sections of opinion concerned. On a review of all the factors in the problem, we have reached the conclusion that the constitution of Sind as a separate Governor's Province is the best solution possible in present circumstances. In view of the very special importance to the Province of the continued success of the Barrage project and of the very large financial issues involved, which will concern the Federal Government as well as the Province of Sind, it is proposed that the Governor of Sind should have a special responsibility for the administration of the Barrage.[2] This seems to us an essential provision and is one to which we understand that little or no objection has been taken.

Orissa.

60. The Statutory Commission describe the union which now exists between Orissa and Bihar as "a glaring example of the artificial connection of areas which are not naturally related"[3]; and the demand of the Oriyas for separation has been long and insistent. The main difficulty here is a financial one, since Orissa is now and may well remain a deficit area. A separate Province of Orissa would however be perhaps the most homogeneous province in the whole of British India, both racially and linguistically; the communal difficulty is practically non-existent; and its claim appears to have the sympathy and support of all parties in India. The financial effect of the creation of the proposed new Province upon the finances of the Federation is discussed elsewhere, and it appears to us that any financial difficulties likely to be caused thereby are not serious enough to outweigh the advantages which will accrue from the separation. In these circumstances we recommend that a new Province of Orissa be constituted.

The Central Provinces and the Berars.

61. We may here mention the situation which exists in the Central Provinces in connection with the territory known as the Berars. This territory forms part of the dominions of His Exalted Highness the Nizam of Hyderabad, but has since 1853 been under British administration and in 1902 was made the subject of a perpetual lease granted by His Exalted Highness. It is administered with, but not as part of, the Central Provinces. The inhabitants elect a

[1] Minutes of Evidence, Vol. IIc, p. 2164, A.496.
[2] White Paper, Proposal 70.
[3] Report, Vol. II, para. 38.

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certain number of representatives, who are then formally nominated as members of the Central Provinces Legislature; and legislation both of that Legislature and of the Central Legislature is applied to the Berars through the machinery of the Foreign Jurisdiction Act. It has been announced that an arrangement has now been made between the Government of India and His Exalted Highness, whereby, without derogation from His Exalted Highness's sovereignty, the Berars shall be administered as part of a new Province to be known as the Central Provinces and the Berars, that is to say, if and when Provincial Autonomy is established under the new Constitution. We have learned with great satisfaction of this arrangement, which will obviate the difficulties which might otherwise have arisen if the setting up of responsible government in the Central Provinces had necessitated a severance between two areas which have so long been in substance, if not in form, under a single administration; and we think that the successful working of Provincial Autonomy in the Central Provinces will owe much to His Exalted Highness's wise and far-seeing action.

Provincial boundaries.

62. The White Paper proposes that the present Governors' Provinces shall retain the boundaries which exist at the present time, with such alterations as the establishment of Sind and Orissa may involve.[1] In the case of Sind, the new Province is to comprise the whole area at present under the jurisdiction of the Commissioner in Sind, and it is suggested that the boundaries of Orissa shall be those recommended by a Committee which inquired into the subject in 1932, with certain modifications considered desirable by the Government of India. We understand that in the case of Orissa the boundaries proposed have given rise to local controversy; but the question has been re-examined by the Secretary of State for India with the assistance of several of our members and we recommend that the boundaries should be in accordance with the conclusions[2] thus reached, namely that there should be added to the Province as defined in the White Paper[3]:—

(*a*) that portion of the Jeypore Estate which the Orissa Committee of 1932 recommended should be transferred to Orissa;

(*b*) the Parlakimedi and Jalantra Maliahs;

(*c*) a small portion of the Parlakimedi Estate, including Parlakimedi Town.

The White Paper does not refer to the possibility of a future revision or adjustment of provincial boundaries, but provision will have to be made in the Constitution Act for this purpose. We think that the actual alteration of boundaries should be carried out by Order in Council, but that the initiative should come from the

[1] White Paper, Proposal 61.
[2] *Vide* Col. II (Session 1933–4) Records p. 361.
[3] White Paper, Proposal 61, second footnote.

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Provinces concerned and should receive the concurrence of the Central Government and Legislature. We make recommendations later in this Report with regard to changes to be effected in the Act by Order in Council and the parliamentary control to be exercised over them.

Constitution of future Governors' Provinces.

63. It is possible that in the future it may be found desirable to constitute new Governors' Provinces, either by a sub-division or an amalgamation of existing areas. We think that the power to create a new Governor's Province should be reserved to the Crown and to Parliament, but that appropriate provision should be made in the Constitution Act to ensure that the Provinces affected and the Central Government are given adequate opportunities for expressing their views.

Constitutional advance in the provincial field.

64. If effect is given to our recommendations, there will be in India eleven autonomous Provinces. Of these the area of Bengal is approximately 78,000 square miles, and its population approximately 50,000,000; the corresponding figures for Madras are 136,000, and 45,000,000; for Bombay (excluding Sind) 77,000, and 18,000,000; for the United Provinces 106,000, and 48,000,000; for the Punjab 99,000, and 24,000,000. It is over these immense areas and populations that Indians would in future be responsible for every function of civil government in the provincial sphere. The area of Great Britain is 89,000 square miles, with a population of 45,000,000; of France 212,000 square miles, with a population of 42,000,000; of Italy 120,000 square miles, with a population of 42,000,000. We make these comparisons because they illustrate the scope which will be afforded to Indian statesmen by the grant of responsible government in the provincial field, as well as the burden which in every Province will fall upon Indians in both Legislatures and Governments. It is no doubt natural that the attention of political opinion in India should at the time of our enquiry be concentrated rather upon the question of responsibility at the Centre; and we think that it is therefore all the more important that we should in this place emphasise the magnitude of the constitutional advance which we contemplate in the Provinces and emphasise the extent of the opportunity thus presented to Indians to justify in the service of their respective Provinces their claim for self-government.

(3) The Provincial Executive

The Provincial Executive.

65. We come now to the proposals of the White Paper on the subject of the Provincial Executive, and it will be convenient in this part of our Report to consider two general questions, first, the Provincial Executive as such, and second, its relation to the Provincial Legislature.

The present Executive.

66. The Statutory Commission in the first part of their Report describe the Provincial Executive as it at present exists, and it is unnecessary for us to repeat in detail what they have already

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said.[1] In brief, the "provincial subjects" with which the Provincial Executive is now concerned are sub-divided into "transferred subjects" and "reserved subjects." The first group are administered by the Governor acting with Ministers, the second by the Governor in Council. The Members of the Governor's Council, who may not exceed four and of whom by an invariable rule at least half are Indians, are appointed by His Majesty, and one at least must have been for not less than twelve years in the service of the Crown in India; the Ministers are appointed by the Governor. The Governor presides at meetings of his Executive Council, where ordinarily the decision of the majority prevails, though the Governor has, in case of equality of votes a casting vote and in certain circumstances a right to over-rule his Councillors. The Ministers are chosen by the Governor from the elected members of the Provincial Legislative Council and are not members of the Executive Council, though in many Provinces both Executive Councillors and Ministers meet regularly under the presidency of the Governor for the purpose of discussing matters of common interest; in Madras, for example, we understand that it has been always the practice to regard Councillors and Ministers as forming as it were a single body, by which all questions of policy are discussed, though the responsibility for actual decisions upon them rests upon the Governor in Council or on the Governor advised by his Ministers, as the case may be, according to the nature of the subject. The Governor is required to be "guided by" the advice of his Ministers in relation to transferred subjects, unless he sees sufficient cause to dissent, in which case he may require action to be taken otherwise than in accordance with that advice. Ministers hold office at the Governor's pleasure, but the financial powers of the Legislature give the latter the means of influencing ministerial policy. The Members of Council, though *ex-officio* members of the Legislature, are independent of it and in practice are appointed for a fixed term of five years.

Executive power and authority to be vested in Governor.

67. The White Paper proposes to do away with this dyarchical system. It vests the whole executive power and authority of the Province in the Governor himself, as the representative of the King, and it provides the Governor with a Council of Ministers to "aid and advise" him in the exercise of any powers conferred on him by the Constitution Act, except in relation to such matters as will be left by that Act to the Governor's discretion.[2] The proposal, therefore, is to give Ministers, who (according to the White Paper) may not be officials and will be members of a Legislature

[1] Report, Vol. I, paras. 156–161.

[2] White Paper, Proposal 66. There will be in a few Provinces certain "Excluded Areas" (*i.e.*, tracts where any advanced form of political organization is unsuited to the primitive character of the inhabitants). These will be administered by the Governor himself and Ministers will have no constitutional right to advise him in connection with them.

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to which they will look for support, the constitutional right to advise the Governor over practically the whole of the provincial sphere. It will be observed that Provincial Autonomy does not necessarily imply a system of government of this kind, and the two should not be confused; but since, for the reasons which we have given earlier in this Report, we think that the time has now come for enabling Indians to assume a greater measure of responsibility for the government of the Provinces, in our opinion (though we reserve for subsequent consideration the details of the scheme) the proposal in the White Paper which we have described above is the correct constitutional method of bringing about that result. It is according to precedent, and it is based upon English constitutional theory and practice. It follows from what we have said above that the Ministers will not be concerned with the appointment of the Governor himself.

Analogy with British constitutional system.

68. The adoption of English constitutional forms need not however imply, and the White Paper does not contemplate, the establishment in each Province of a system analogous in all respects to that which prevails in the United Kingdom at the present day; nor is there any inconsistency in this, as some have supposed. A brief examination of the manner in which from time to time those forms have been adapted in practice to the needs of other communities in allegiance to the Crown will sufficiently make this clear.

British constitutional theory.

69. In English theory all executive power (with certain exceptions not here relevant) is to-day, as it has been from the earliest times, vested in the Monarch. The limits of this power are determined in part by common law and in part by statute, but within those limits the manner of its exercise is not subject to any legal fetter, save in so far as a statute may specify formalities for the doing of a particular executive act. But at all times in English history the Monarch has had councillors to aid and advise him in the exercise of his power, and their status and functions at different periods mark the successive stages of constitutional development. The great nobles, who had claimed a prescriptive right to be consulted and who were often powerful enough to subject to their will a weak or reluctant King, gave place, as the complexity of government increased, to a more permanent Council, whose members were the King's servants, selected by him from nobles and commoners alike, whom he consulted or not as he pleased, and who became the instruments of his own policy. The growing influence of the House of Commons at a later date made it necessary for the King always to number among his advisers persons who were members of that body; and the last stage was reached when he sought the advice, not of the Council as a whole, but only of those members of it who represented the predominant political party of the day. By the middle of the 19th century, constitutional usage and practice had so far supplemented constitutional law that the powers possessed in legal theory by the Sovereign were almost entirely exercised on the advice of Ministers possessing for the time being the confidence of Parliament.

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Its flexibility.

70. This ingenious and convenient adjustment of a legal framework to the successive stages of political evolution has given a flexibility to the English Constitution which it would have been impossible to secure by any Act of Parliament or written Declaration of Rights. To imprison constitutional practice and usage within the four corners of a written document is to run the risk of making it barren for the future. This was foreseen by the framers of those Dominion and Colonial Constitutions which have followed the British model; and, since it by no means followed that the circumstances of a new State were appropriate for the application of the whole body of English doctrine in its most highly developed form, recourse was had to another device, no less flexible, for the purpose of indicating to the Governor-General or Governor how far in the exercise of the executive power he was to regard himself as bound by English precedent and analogy. This is the Instrument of Instructions; and, though Dominion and Colonial Constitutions, and especially the former, necessarily embody much that is still regulated by usage and custom in the United Kingdom, the Instrument of Instructions long preserved (and in many cases still preserves) a sphere in which constitutional evolution might continue without involving any change in the legal framework of the Constitution itself.

Adaptation to different stages of constitutional development.

71. It has thus been found possible in communities in every state of development which possess Constitutions based upon the English model, without doing violence to existing forms of government, to bring them into harmony with the political circumstances of the time. Constitutional usage and practice is an ever changing body of doctrine and not an immutable body of dogma; nor can it be assumed *a priori* that usage and practice which may be eminently adapted to the circumstances of the United Kingdom can be applied without any qualification to the circumstances of India. This would be to assume that the political development in India has reached the same stage as in this country; the facts are notoriously otherwise. The picture presented by India is that of a country with a population so far from homogeneous and so divided by racial and religious antagonisms that government by majority rule as it is understood in this country is admittedly impossible at the present time; and the proposal of the White Paper that even the Governor's Council of Ministers should be so constituted as to include as far as possible members of important minority communities appears to be firmly supported by a great mass of Indian political opinion.

Governor's power to dissent from Minister's advice.

72. The White Paper recognises, rightly as it seems to us, that in these circumstances the Governor, in whom the executive power of the Province is legally vested, may from time to time have to exercise on his own responsibility powers which elsewhere and under other conditions might be exercised on the advice of Ministers.[1] It is

[1] White Paper, Proposals 70–73.

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permissible to recall the religious and political conflicts which distracted our own country for so many generations before the settlement which followed the events of 1688. It is not until after that date that the beginnings of responsible government, as we now know it, are to be found; and for many years the Monarch, even if he sought the advice of Ministers, continued to act on his own judgment in every branch of the administration. Not until the two great parties in the State could trust each other not to abuse the political power which the hazard of the polls might place in the hands of one of them, would it have been possible effectively to secure peace and good government without the presence of some authority able and willing to exercise that power independently of both.

The Instrument of Instructions.

73. It would be possible to rely entirely upon prerogative instruments for the purpose of adapting English constitutional practice to the conditions which obtain to-day in India. Thus the Instrument of Instructions might direct the Governor to be guided generally by the advice which he receives from his Ministers, but reserve to him a very wide discretion to act upon his own responsibility when the circumstances seemed so to require; and for this plan many precedents are to be found in the history of Colonial Constitutions. Or the Instrument might specify certain particular matters with regard to which the Governor is to exercise his own discretion, whatever the advice of his Ministers might be; and precedents for this are also to be found. The White Paper, however, introduces a new method for which, so far as we are aware, no exact precedent is to be found, but which is not hastily to be rejected on that account. It proposes that the Constitution Act shall declare that for certain specified purposes the Governor is to have a "special responsibility,"[1] and we understand the intention to be that the Instrument of Instructions shall refer in terms to these special responsibilities and direct the Governor, where in his opinion one of them is involved, to take such action as he thinks that the circumstances may require, even if this means dissenting from the advice tendered to him by his Ministers; while in other matters he will be guided by that advice.

Relations between Governor and Ministers.

74. We have already pointed out that, in the present Government of India Act, there is a provision which requires the Governor to be "guided by" the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion. The White Paper, as we read it, does not propose that the Constitution Act itself shall contain any provisions on this subject. The Act will commit certain matters to the Governor's sole discretion, such, for instance, as his power of veto over legislation and the regulation of matters relating to the administration of excluded areas. It will also contain a declaration that certain special responsibilities are to rest upon the Governor. For the rest, it will provide that the Governor shall have a Council of Ministers to aid

[1] White Paper, Proposal 70.

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and advise him, but his relations with his Ministers are left to be determined wholly by the Instrument of Instructions. We agree that it is desirable that the Governor's special responsibilities, over and above the matters which are committed to his sole discretion, should be laid down in the Act itself rather than that they should be left to be enumerated thereafter in the Instrument of Instructions. In the first place, Indian opinion will thereby be assured that the discretionary powers of the Governor to dissent from his Ministers' advice is not intended to be unlimited; and, secondly, the right will thereby be secured to Parliament to consider and debate the scope of the Governor's powers during the passage of the Constitution Bill itself. On the other hand, we agree that it would be undesirable to seek to define the Governor's relations with his Ministers by imposing a statutory obligation upon him to be guided by their advice, since to do so would be to convert a constitutional convention into a rule of law and thus, perhaps, to bring it within the cognisance of the courts. We do not, however, think that the inherent legal power of the Governor, to which we have referred,[1] to act upon his own responsibility is set forth with sufficient clearness in the White Paper,[2] and we recommend that it should be more explicitly defined.

Constitutional implications of Governor's "special responsibilities."

75. We do not understand the declaration of a special responsibility with respect to a particular matter to mean or even to suggest that on every occasion when a question relating to that matter comes up for decision, the decision is to be that of the Governor to the exclusion of his Ministers. In no sense does it define a sphere from which the action of Ministers is excluded. In our view, it does no more than indicate a sphere of action in which it will be constitutionally proper for the Governor, after receiving ministerial advice, to signify his dissent from it and even to act in opposition to it, if in his own unfettered judgment he is of opinion that the circumstances of the case so require. Nor do we anticipate that the occasions on which a Governor will find it necessary so to dissent or to act in opposition to the advice given to him are in normal circumstances likely to be numerous; and certainly they will not be, as some appear to think, of daily occurrence. We leave for later consideration the list of the special responsibilities themselves and the manner in which they are defined; but, if we have rightly appreciated their place in the Constitution, it appears to us undesirable to seek to define them with meticulous accuracy, though we consider that their general scope and purpose should be set out with sufficient precision.

Parliament and the Instrument of Instructions.

76. The White Paper proposes a novel procedure in connection with the Instrument of Instructions, viz., that an opportunity shall be given to Parliament of expressing an opinion upon it before it is finally issued by the Crown.[3] There is, we think, ample justification for this proposal, which has been rightly extended not only to the original Instrument but also to any subsequent amendments of it;

[1] *Supra.*, para. 72.
[2] White Paper, Proposals 70-73.
[3] White Paper, Proposal 64.

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and we are satisfied that in no other way can Parliament so effectively exercise an influence upon Indian constitutional development. It is essential that the vital importance of the Instrument of Instructions in the evolution of the new Indian Constitution should be fully appreciated. Thus, Ministers would have no constitutional right under the Act to tender advice upon a matter declared by the Act to be within the Governor's own discretion; but the Governor could in any event, and doubtless often would, consult them before his own decision was made; and if at some future time it seemed that this power of consultation might with safety be made mandatory and not permissive, we can see nothing inconsistent with the Act in an amendment of the Instrument of Instructions for such a purpose. But so grave are the issues involved in the evolution of the Indian Constitution that it would be neither wise nor safe to deny Parliament a voice in the determination of its progressive stages. The initiative in proposing any change in the Instrument must necessarily rest with the Crown's advisers, that is to say, with the government of the day; but the consequences of any action taken may be so far reaching and so difficult to foresee that Parliament, if denied a prior right of intervention, may find itself compromised in the discharge of the responsibilities which it has assumed towards India, and yet powerless to do anything save to protest. For this reason we are clearly of opinion that, as the White Paper proposes, it is with Parliament that the final word should rest. We suggest as the appropriate procedure that the Crown should communicate to Parliament a draft of the proposed Instrument or of any subsequent amendments and that Parliament will if it sees fit present an Address praying that the Instrument should issue in the form of the draft or with such modifications as are agreed by both Houses, as the case may be.

Special questions connected with the Executive.

77. We have now considered the nature of the Provincial Executive in broad outline; but five questions of capital importance which arise in connection with the subject remain to be examined. These are: (i) The nature of the Governor's special responsibilities; (ii) the Governor's selection of Ministers; (iii) the field in which Ministers are to be entitled to advise the Governor; (iv) the arrangements whereby the Governor will secure that his information with regard to the current affairs of the Province is adequate to enable him to discharge his special responsibilities; (v) the special and additional powers, if any, which the Governor ought to possess.

(i) *Nature of the Governor's "Special Responsibilities"*

The Governor's "special responsibilities" defined.

78. It is proposed in the White Paper that the Governor shall have a special responsibility in respect of—

(*a*) the prevention of any grave menace to the peace or tranquillity of the Province, or any part thereof; (*b*) the safeguarding of the legitimate interests of minorities; (*c*) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests;

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(*d*) the prevention of commercial discrimination ; (*e*) the protection of the rights of any Indian State ; (*f*) the administration of areas declared, in accordance with provisions in that behalf, to be partially excluded areas ; (*g*) securing the execution of orders lawfully issued by the Governor-General.[1]

The Governors of the North West Frontier Province and of the proposed new Province of Sind are respectively declared to have in addition a special responsibility in respect of—

(*h*) any matter affecting the Governor's responsibilities as Agent of the Governor-General in the Tribal and the Trans-Border Areas ; and (*i*) the administration of the Sukkur Barrage.

Peace and tranquillity of the Province, Minorities, Public Services.

79. With regard to (*a*), the Joint Memorandum of the British-India Delegation urges a double limitation on the scope of this special responsibility ; firstly, that the special responsibility itself should be restricted to cases in which the menace arises from subversive movements or activities tending to crimes of violence ; and secondly, that any action taken by the Governor under it should be confined to the department of law and order. We cannot accept these suggestions. Terrorism, subversive movements, and crimes of violence, are no doubt among the graver menaces to the peace or tranquillity of a Province ; but they do not by any means exhaust the cases in which such a menace may occur, and we can see no logical reason for the distinction which the Joint Memorandum seeks to draw. Still less can we see any justification for restricting the Governor's action to the department of law and order, by which we suppose is meant the police department. There are many other branches of administration in which ill-advised measures may give rise to a menace to the peace or tranquillity of the Province ; and we can readily conceive circumstances in connection with land revenue or public health, to mention no others, which might well have this effect. With regard to (*b*), the Joint Memorandum suggests that the phrase "legitimate interests" should be more clearly defined, and that it should be made clear that the minorities referred to are the racial and religious minorities generally included by usage in that expression. We doubt if it would be possible to define "legitimate interests" any more precisely. The obvious intention is to secure some means by which minorities can be reasonably assured of fair treatment at the hands of majorities, and "legitimate interests" seems to us a very suitable and reasonable formula. Nor do we think that any good purpose would be served by attempting to give a legal definition of "minorities," the only effect of which would be to limit the protection which the Governor's special responsibility is intended to afford. No doubt it will be the five or six well recognised and more important minorities in whose interests the Governor's powers will usually be invoked ; but there are certainly other well-defined sections of the population who may from time to time require protection, and we can see no justification for defining the expression

[1] White Paper, Proposal 70.

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for the purpose of excluding them. We need hardly say that we have not in mind a minority in the political or parliamentary sense, and no reasonable person would, we think, ever so construe the word. Nevertheless to prevent misunderstanding, we recommend that the Instrument of Instructions should make this plain, and further that this special responsibility is not intended to enable the Governor to stand in the way of social or economic reform merely because it is resisted by a group of persons who might claim to be regarded as a minority. With regard to (*c*), the Joint Memorandum proposes that here also the expression "legitimate interests" should be clearly defined, and that the Governor's special responsibilities should be restricted to the rights and privileges guaranteed by the Constitution. We assume that the intention of the White Paper is to guarantee to public servants not only their legal rights but also equitable treatment, a thing not susceptible in our opinion of legal definition. The authors of the Joint Memorandum would no doubt say that Ministers can be trusted to act in these matters in a reasonable way, and we do not doubt that this is so; but we think that they should also assume that neither will Provincial Governors act unreasonably in discharging the special responsibilities which the Constitution Act will impose upon them. If Ministers in fact act reasonably, as no doubt they will, the occasions on which a Governor will find it necessary to dissent from the advice which they tender to him may never in practice arise.

Rights of States; Partially Excluded Areas.

80. We discuss elsewhere (*d*), *i.e.*, the prevention of commercial discrimination.[1] With regard to (*e*), the "rights" here referred to must necessarily mean rights enjoyed by a State in matters not covered by its Instrument of Accession,[2] which may be prejudiced by administrative or legislative action in a neighbouring Province. The duty, as we understand it, is laid on the Governor to secure that the balance is held evenly between Province and State, with due regard to the established rights of either party, and clearly in a matter of this kind he will be guided by the advice or directions of the Governor-General. With regard to (*f*), the responsibility for the government of partially excluded (as opposed to wholly excluded) areas will primarily rest upon Ministers; but we agree that, in view of the responsibility which Parliament has assumed towards the inhabitants of the backward and less civilised tracts in India, it is right to impose a special responsibility in this respect upon the Governor.

Execution of orders of Governor-General.

81. With regard to (*g*), it is clear that this must be a special responsibility of the Governor. The Governor-General exercises a wide range of powers in responsibility to the Secretary of State and through him to Parliament. The exercise of some of these powers may from time to time require the co-operation of Provincial administrations, and a Governor must be in a position to give effect to any directions

[1] *Infra*, paras. 342–360.
[2] *Infra*, para. 155.

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or orders of the Governor-General designed to secure this object, even if their execution may not be acceptable to his own Ministers. We refer elsewhere to the case where a difference of opinion has occurred between Federal and Provincial Ministers in the ministerial sphere, arising out of directions given by the former which the latter are unwilling to obey.[1]

Special circumstances of North-West Frontier Province and Sind.

82. With regard to (*h*), it is apparent that the close connection between the Governor's responsibilities within the administered districts of his Province and the responsibilities of the Governor-General exercised through the person of the Governor in his other capacity as Agent-General for the Tribal Tracts on the borders of the Province makes a provision of this kind necessary. With regard to (*i*), we agree that this special responsibility is necessary in the case of Sind, in view of the vital influence upon the future finances of the Province of the successful operation of the Sukkur irrigation scheme and of the large financial interest which the Central Government has in it.

The Berars.

83. But, in our opinion, the two proposals in the White Paper which have reference to special circumstances in particular Provinces do not exhaust the requirements of this kind. It has come to our notice that, under the system of joint administration of the Districts known as the Berars with the Central Provinces which has obtained for many years, and which, as we have already pointed out[2], will continue in another form under the new Constitution, there has been a tendency on the part of the inhabitants of the Berars, and of their representatives in the Legislature, to criticise the apportionment of expenditure between the two areas forming the joint Province as favouring unduly the Central Provinces area to the disadvantage of the Berars. We express no opinion as to the justification for such criticisms, but it is evident that, under a system of responsible government, the scope for grievances on this account may well be increased. We think, therefore, that the Governor of the joint Province should have imposed upon him a special responsibility and should thus be enabled to counteract any proposals of his Ministry which he regards as likely to give justifiable ground for complaint on this account. Without attempting to usurp the functions of the draftsman, we suggest that the purpose we have in view would be adequately expressed in defining the special responsibility in some such terms as :—

> "The expenditure in the Berars of a reasonable share of the revenues raised for the joint purposes of the Berars and the Central Provinces."

We think, moreover, that the Governor might appropriately be directed in his Instrument of Instructions to constitute some impartial body to advise him on the principles which should be followed in the distribution of revenues, if he is not satisfied that past practice

[1] *Infra*, para. 221.
[2] *Supra*, para. 61.

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affords an adequate guide for his Ministers and himself for the discharge of the special responsibility imposed upon him in respect of them. We also think that the special position of the Berars should be recognised by requiring the Governor, through his Instrument of Instructions, to interpret his special responsibility for "the protection of the rights of any Indian State" as involving *inter alia* an obligation upon him, in the administration of the Berars, to have due regard to the commercial and economic interests of the State of Hyderabad.

A special responsibility for safeguarding financial stability of Province not recommended.

84. We think it desirable to make some reference to the suggestion that among the special responsibilities of the Governor should be included the safeguarding of the financial stability and credit of the Province, following the analogy of the special responsibility of this kind which, as we shall explain later, we recommend should be imposed on the Governor-General in relation to the Federation.[1] A similar proposal was examined and rejected by the Statutory Commission[2] on the ground that a power of intervention over so wide a field would hinder the growth of responsibility. We agree with this view. We shall have certain recommendations to make below which will give the Governor adequate powers in relation to supply and taxation to ensure that the due discharge of his special responsibilities is not impeded by lack of financial resources.[3] But the addition of a special financial responsibility would increase unduly the range of his special powers. There is no real parallel with the situation at the Centre, where there is a paramount necessity to avoid action which might prejudice the credit of India as a whole in the money markets of the world, and where so considerable a proportion of the revenues are needed for the expenditure of the reserved departments.[4] The Statutory Commission point out[2] that the Central Government, through their powers of control over provincial borrowing, should be able to exercise a salutary influence over Provinces. We also attach importance to this method of checking improvidence on the part of a Province, and, as we explain below,[5] we approve, subject to one modification, the proposals in the White Paper for the regulation of provincial borrowing.

(ii) *The Governor's Selection of Ministers*

Qualifications proposed for Ministers.

85. The White Paper proposes that the Instrument of Instructions shall direct the Governor to select his Ministers in consultation with the person who in his judgment is likely to command the largest following in the Legislature, and to appoint those persons, including so far as possible members of important minority communities, who will best be in a position collectively to command the confidence of

[1] *Infra*, paras. 168 and 170.
[2] Report, Vol. II, para. 189.
[3] *Infra*, paras. 104, 107 and 315–320.
[4] *Infra*, para. 172.
[5] *Infra*, para. 266.

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the Legislature. It is also proposed that Ministers must be, or become within a stated period (by which we understand a period of six or twelve months to be intended), members of the Legislature.[1]

Ministerial responsibility and representation of communities.

86. The question how a direction to the Governor to include among his Ministers, so far as possible, members of important minority communities is to be reconciled with ministerial responsibility, in the accepted sense of that expression, to a Legislature which is itself based on a system of communal representation and in which the numbers of the representatives of the different communities are fixed by statute and unalterable, will be more conveniently discussed later when we examine the more general question of the relation of the Provincial Executive to the Provincial Legislature.[2] We accordingly confine ourselves here to a consideration of the proposal in the White Paper that every Minister shall be, or become within a stated period, a member of the Legislature.

Difficulties of proposal that Ministers should be elected Members of Legislature.

87. Indian opinion appears to attach great importance to this qualification as securing in the most effective manner control by the Legislature over the Executive. It is unknown to the law of the United Kingdom; but it has long been the rule in this country that a Minister must either find a seat within a reasonable time or resign his appointment, unless the Prime Minister should see fit to recommend him for a peerage; so that the qualification exists in practice, if not in law, though during the War there were instances of Ministers who had a seat in neither House. On the other hand we were impressed by the argument that at least in some Provinces the Governor might find it difficult to constitute an efficient Ministry from the members of a small and inexperienced Legislature; and it is no doubt true that in India, owing to the very small proportion which the educated classes bear to the total population, there is no certainty that in the smaller Provinces the Legislatures will always contain men fit or experienced enough to assume the heavy responsibilities which Provincial Autonomy under the new order must necessarily involve. It was, therefore, suggested to us that the Governor ought not to be thus restricted in his choice, and that he ought to be in a position, if the need should arise, to select a Minister or Ministers from persons otherwise qualified for appointment but to whom the doubtful pleasures of electioneering might make no appeal.

Suggested methods for meeting difficulty.

88. We have considered various suggestions to meet this difficulty: (1) that the Governor should be empowered, if he thought fit, to appoint a Minister from outside the Legislature, the Minister so appointed having precisely the same status as other Ministers and sharing their policy and political fortunes, with the right to take part in all proceedings of the Legislature, though not entitled to vote;

[1] White Paper, Proposal 66.
[2] *Infra*, paras. 112–115.

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(2) that in addition to the elected members, there should be one or two members nominated by the Governor, who would be eligible for appointment as Ministers, though not necessarily so appointed; (3) that the Governor should be empowered, if he desired to have an outside Minister, to nominate the person whom he selected as a member *ad hoc* of the Legislature; and (4) that the Ministers themselves should be empowered, if so requested by the Governor, to co-opt someone from outside and present him to the Governor for appointment. We can see no advantage, and many disadvantages, in the second and third of these suggestions, and the fourth is open to the grave objection that it would infringe the Governor's prerogative. The only plan, therefore, which, in our opinion, merits consideration is the first. We have, however, come to the conclusion that such advantages as might be anticipated from a provision in the Constitution Act enabling the Governor to appoint to his Ministry one or more persons who are not members of the Legislature would weigh little in the balance against the dislike and suspicion with which such a provision would undoubtedly be viewed almost universally in India—a dislike and suspicion so strong that we think it unlikely that any Governor would, in fact, find it possible to exercise such a power. We recommend, therefore, that the proposal in the White Paper to which we have alluded[1] should remain unchanged.

(iii) *The Sphere of Action of Ministers*

Law and order.

89. The White Paper, as we have already stated, proposes that Ministers shall advise the Governor in all matters other than the administration of Excluded Areas and matters left by law to the Governor's own discretion. With regard to the first of these two exceptions, we approve the conclusions, and are content to adopt the arguments, of the Statutory Commission; and with regard to the second, such matters must *ex hypothesi* be left to the Governor's sole decision, though he may, and no doubt often will, consult Ministers upon them. With regard to other matters which fall within the provincial sphere, the only question, but one of first rate importance, on which there is any substantial dispute, is whether the administration of the subjects known compendiously as "law and order" should be retained in the Governor's hands.

Arguments for and against transfer.

90. This question is one on which strong views are held on both sides. On the one hand, it is urged that the grant of responsible government to an autonomous Province would be a mockery, if the administration of law and order were withheld. On the other, it is objected that the maintenance of law and order is in India so vital a function of the Executive that it would be incurring too great a risk to transfer it to Indian Ministers, until they had proved their capacity in other and less dangerous fields; that the morale

[1] *Supra*, para. 86.

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of the Police would be imperilled by political pressure upon Ministers, which they might not have the strength or courage to resist; and that the impartiality of the Force in the event of communal disturbances might become suspect. It would be idle to deny the force of these arguments, especially when it is remembered that the public order and security of a Province depend not more on the executive action of the Police than on the efficient performance of his administrative, as distinguished from judicial, functions by the district magistrate, who would under the proposals in the White Paper equally be subject to the control of a Minister. Nevertheless, after an anxious consideration of all the circumstances, we do not see our way to differ from the general conclusion reached, not without hesitation, by the Statutory Commission.

Control of law and order an essential attribute of responsible government.

91. We find ourselves unable to conceive a government to which the quality of responsibility could be attributed, if it had no responsibility for public order. In no other sphere has the word "responsibility" so profound and significant a meaning; and nothing will afford Indians the opportunity of demonstrating more conclusively their fitness to govern themselves than their action in this sphere. From one point of view indeed the transfer of these functions to an Indian Minister may be in the interest of the police themselves, whom it will no longer be possible to attack, as they have been attacked in the past, as agents of oppression acting on behalf of an alien power; but we prefer to base our conclusion upon the broader grounds indicated above. Nevertheless, it must not be supposed that we are blind to the risks implicit in the course which we advocate; for these, in our opinion, cannot be regarded lightly or as the phantoms of a reactionary imagination. The qualities most essential in a police force, discipline, impartiality, and confidence in its officers, are precisely those which would be most quickly undermined by any suspicion of political influence or pressure exercised from above; and it would indeed be disastrous if in any Province the police force, to whose constancy and discipline in most difficult circumstances India owes a debt not easily to be repaid, were to be sacrificed to the exigencies of a party or to appease the political supporters of a Minister. If, therefore, the transfer is to be made, as we think it should, it is essential that the Force should be protected so far as possible against these risks, and in the following paragraphs we make recommendations designed to secure this protection.

The Governor's special responsibility.

92. First, there are the proposals in the White Paper already mentioned. The Governor is to have a special responsibility for "the prevention of any grave menace to the peace or tranquillity of the Province, or any part thereof". The effect of this, as of all other special responsibilities, is to enable the Governor, if he thinks that the due discharge of his special responsibility so requires, to reject any proposals of his Ministers, or himself to initiate action which his Ministers decline to take. Further, there flows from this special

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responsibility, not only the right to overrule his Ministers, but also special powers—legislative and financial—to enable him to carry into execution any course of action which requires legislative provision or the provision of supply. If, therefore, the Governor should be of opinion that the action or inaction of Ministers is jeopardising the peace or tranquillity of the Province, it will be his duty to take action to meet the situation. If the situation is one requiring immediate action, he can issue any executive order which he may consider necessary. If the situation is one which cannot be dealt with by an isolated executive order—if the Minister in charge of the Department appears unable to administer his charge on lines which the Governor regards as consistent with the due discharge of his special responsibility—the Governor can dismiss and replace the Minister, or, if necessary, the Ministers as a body, with or without resort to a dissolution of the Legislature. If he fails to find an alternative Government capable of administering law and order on lines consistent with the discharge of his special responsibility, he will be obliged to declare a breakdown of the constitution, and to assume to himself all such powers as he judges requisite to retrieve the situation. We are not contemplating such a course of events as probable; but, if it occurs, we point out that provision is made to meet it.

The Police Rules.

93. We turn now to our own further recommendations for the specific protection of the Police Force itself. Of course, the due discharge of his special responsibility for peace and tranquillity will, in itself, entitle the Governor to intervene immediately if, by reason of ill-timed measures of economy or the attempted exertion of political influence on the Police Force or from any other cause, the morale or the efficiency of that Force is endangered. Further, the Governor has another special responsibility: it is his duty to secure to the members of the Police, as of other Public Services, any rights provided for them by the Constitution Act and to safeguard their legitimate interests. These are important safeguards, but there is one element in police administration which requires to be specially protected. We refer to the body of Regulations known as the "Police Rules", promulgated from time to time under powers given by the various Police Acts. A large number of the Rules deal with matters of quite minor importance and are constantly amended, in practice, on the responsibility of the Inspector-General of Police himself. It would be unnecessary to require the Governor's consent to every amendment of this kind. But the subject-matter of some of the Rules is so vital to the well-being of the Police Force that they ought not, in our opinion, to be amended without the Governor's consent; and the same consideration applies *a fortiori* to the Acts themselves, which form the statutory basis of the Rules. Our aim is to ensure that the internal organisation and discipline of the Police continue to be regulated by the Inspector-General, and to protect both him and the Ministers themselves from political pressure in this vital field. We, therefore, recommend that the prior

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consent of the Governor, given in his discretion, should be required to any legislation which would amend or repeal the General Police Act in force in the Province or any other Police Acts (such as the Bombay City Police Act, the Calcutta Police Act, the Madras City Police Act, and Acts regulating Military Police in Provinces where such forces exist). We further recommend that any requirement in any of these Acts that Rules made under them shall be made or approved by the local Government is to be construed as involving the consent of the Governor, given in his discretion, to the making or amendment of any Rules which, in his opinion, relate to, or affect, the organisation or discipline of the Police. It will of course be open to the Governor-General in his discretion to give directions to the Provincial Governor as to the making, maintenance, abrogation or amendment of all such rules.

The Special Branch.

94. But there is another vital department of police administration to which we must draw attention. It has been represented to us very forcibly that, whatever may be the decision with regard to the transfer of law and order generally, special provision ought to be made with regard to that branch of the Police which is concerned with the suppression of terrorism. We do not here refer to those members of the Police who are occupied in combating terrorism as part of their regular functions in the prevention of crime and the maintenance of order, nor again to the Criminal Investigation Department which exists in every Province to assist the ordinary police in the detection of ordinary crime. We have in mind that organisation which is sometimes known as the Special Branch, a body of carefully selected officers whose duty is the collection and sifting of information on which executive police action against terrorism is taken. Their work necessarily involves the employment of confidential informants and agents and it is obvious that these sources of information would at once dry up if their identity became known, or were liable to become known, outside the particular circle of Police officers concerned. Though, at the moment, this problem is perhaps of immediate importance only in the Province of Bengal and, to a lesser extent, in the Provinces which border on Bengal, terrorism and revolutionary conspiracy have not been confined to those territories, nor consequently is the necessity for efficient counter-revolutionary measures limited to them. Bengal, however, as has been proved to us by the evidence we have received, has a particularly long and disquieting record of murder and outrage, of which Indians and Europeans have both been the victims. It has also shown, in a marked degree, a rise or fall in such terrorist crime according as the hands of the authorities have been weakened or strengthened, and as precautionary and special measures have been relaxed or intensified.

Secret intelligence reports.

95. For these reasons, it is, in our view, essential that the records of any such Intelligence Department should be protected from even the slightest danger of leakage. Experience in every country shows

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how strict this protection must be. It has been argued that an Indian Minister, who may have to defend subsequently before the Legislature an arrest or prosecution made or begun by his orders, must have the right to satisfy himself that the information on which he is invited to act is in all respects trustworthy, and that the names of the informants or agents from whom it has been obtained could not in the last resort be withheld from him. We think that those who argue thus are not acquainted with the general practice in matters of this kind. We are informed by those who have experience of such matters in this country that the practice is that in a Secret Service case the names are not disclosed even to the Minister most immediately concerned. We have no reason to suppose that Indian Ministers will not adopt the same convention; but the difficulty arises, not because Indian Ministers are likely to demand or disclose the names of informants or agents, but because the informants or agents themselves would not feel secure that their identity might not be revealed. So long as this doubt exists, the consequences are the same, whether it is ill-founded or not. We, therefore, recommend that the Instrument of Instructions of the Governors should specifically require them to give directions that no records relating to intelligence affecting terrorism should be disclosed to anyone other than such persons within the Provincial Police Force as the Inspector-General may direct, or such other public officers outside that Force as the Governor may direct. We further recommend that the Constitution Act should contain provisions giving legal sanction for directions to this effect in the Instrument of Instructions.

Special powers required for combating terrorism.

96. But, in addition, the circumstances set out above render it imperative to arm the Governor with powers which will ensure that the measures taken to deal with terrorism and other activities of revolutionary conspirators are not less efficient and unhesitating than they have been in the past. We are, indeed, particularly anxious not to absolve Indian Ministers, in Bengal or elsewhere, from the responsibility for combating terrorism, and we think that such executive duty should be clearly laid upon them. But the issues at stake are so important, and the consequences of inaction, or even of half-hearted action, for even a short period of time, may be so disastrous, that the Governor of any Province must, in our opinion, have a special power, over and above his special responsibility "for the prevention of any grave menace to peace and tranquillity," to take into his own hands the discharge of this duty, even from the outset of the new Constitution. This purpose would not be adequately served by placing the Special Branch of the provincial police alone in the personal charge of the Governor. That course has been urged upon us, but we are convinced that it falls short of what is required. Instead, we recommend that the Constitution Act should specifically empower the Governor, at his discretion, if he regards the peace and tranquillity of the Province as endangered by the activities, overt or secret, of persons committing or conspiring to commit crimes of violence intended to overthrow the government

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by law established, and if he considers that the situation cannot otherwise be effectively handled, to assume charge, to such extent as he may judge requisite, of any branch of the government which he thinks it necessary to employ to combat such activities, or if necessary to create new machinery for the purpose. If the Governor exercises this power, he should be further authorised, at his discretion, to appoint an official as a temporary member of the Legislature, to act as his mouthpiece in that body, and any official so appointed should have the same powers and rights, other than the right to vote, as an elected member. The powers which we have just described would be discretionary powers, and the Governor would, therefore, be subject to the superintendence and control of the Governor-General, and ultimately of the Secretary of State, in all matters connected with them. We should add that if conditions in Bengal at the time of the inauguration of Provincial Autonomy have not materially improved, it would, in our judgment, be essential that the Governor of that Province should exercise the powers we have just described forthwith and should be directed to do so in his Instrument of Instructions, which, in this as in other respects, would remain in force until amended with the consent of Parliament.[1]

Central Intelligence Bureau.

97. We have only to add that we have considered in this connection a proposal made to us that the Intelligence Departments —or at all events the Special Branch where such exists—of the provincial Police Forces should be placed under the control of the Governor-General, who should utilise them, through the agency of the Governor, as local offshoots of the Central Intelligence Bureau. We agree with the ideas underlying this proposal to this extent, that it is essential that the close touch which has hitherto obtained between the Intelligence Departments of the Provinces and the Central Intelligence Bureau should continue. But to place the provincial Intelligence Departments under the departmental control of the Central Intelligence Bureau would, we think, be undesirable, as tending to break up the organic unity of the provincial Police Force. We recommend, therefore, that the Central Bureau should, under the new Constitution, be assigned to one of the Governor-General's Reserved Departments as part of its normal activities, and that the change in the form of government, whether at the Centre or in the Provinces, should not involve any change in the relationship which at present exists between the Central Bureau and the Provincial Intelligence Departments. Should the Governor-General find that the information at his disposal, whether received through the channel of the Governors or from the provincial Intelligence Departments through the Central Intelligence Bureau, is inadequate, he will, in virtue of recommendations which we make later[2] possess complete authority to secure through the Governor the correction of any deficiencies, and indeed to point out to the

[1] *Supra*, para. 76.
[2] *Infra*, para. 222.

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Governor, and require him to set right, any shortcomings which he may have noticed in the organisation or activities of the Provincial Intelligence Branch.

(iv) *The Governor and the Provincial Administration*

Relations between Governor and Provincial Administration.

98. The question has been raised whether the Governor under a Provincial Constitution such as is now proposed will have at his disposal sufficient information as to the current affairs of the Province to enable him to take timely action in a case where the due discharge of any of his special responsibilities seems to call for his intervention. This is a vital issue, for the special powers of the Governor would be entirely nugatory if, by reason of his divorce from current administrative business, the circumstances which might require the exercise of those powers were brought too late to his notice.

Importance of the office of Governor.

99. The Governor's office is at the present time one of great prestige and authority. Of a large part of the Provincial Administration he is not only the titular but the actual head; and in the administration of the "transferred subjects" also, where he is even now guided by the advice of Ministers, he is able to exercise an influence, both legitimate and constitutional, to an extent for which it would probably be difficult to find analogies in the more politically developed States of Europe and America. He presides at meetings of his Ministers, and they are accustomed to look to him for assistance and support; and we see no reason why for many years to come a Council of Ministers, advising over the whole field, and not only over a part, of the provincial administration, should be anxious to deprive themselves of the assistance which a Governor of ripe experience will be able to give them, or regard themselves as representatives of an opposing interest. On the other hand, it has been pointed out to us that much of the information of the Governor with regard to current affairs is derived from his intercourse with the Secretaries to Government, almost always members of the Civil Service, who by a practice of long standing enjoy the right of regular access to him for the purpose of discussing cases which in their view merit his personal attention. Obviously the Governor as the head of the Provincial Executive must continue to have the unquestionable right to send for and to see any officer of his Government at any time, though no doubt under the new order such personal communication between a Governor and the Secretaries would not occur without the knowledge of the Ministers concerned. Beyond this, however, we recognise that, not only for the avoidance of error or misunderstanding, but also as a protection to the Governor in cases where his relations with Ministers may not be always harmonious, it is well to put certain specific powers in the Governor's hands.

Rules of Executive business.

100. The White Paper authorises the Governor, after consultation with his Ministers, to make, at his discretion, any rules which he regards as requisite to regulate the disposal of Government business

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and the procedure to be observed in its conduct, and for the transmission to himself of all such information as he may direct[1]. We understand that both the distribution and conduct of public business have in India long been regulated almost entirely by rules of this kind, and there is therefore nothing strange or novel in the proposal. The Governor's rules under the new Constitution will no doubt require to be framed on rather different lines, and, if they are modified in some directions, to be expanded in others; but we see no ground for supposing that the rule making power cannot be adapted to meet all the reasonable requirements of the case. It would, for example, be competent for the Governor to prescribe by rule that orders on certain specified matters are not to be passed unless the decision on them has been initialled by himself. This would ensure that all matters in that particular sphere were at least brought to his attention before action was taken upon them. We are not suggesting that the decision taken would on that account be the Governor's alone, without, or contrary to, the advice of his Ministers. Unless his special responsibilities were involved, his decision would be guided by their advice; but that advice would be given after discussion, and the Governor would be in a position, if he had views of his own on the matter, to invite Ministers to weigh and consider them before their advice is given. We give the above as an example only, for we do not conceive it our duty, even if we had the necessary special knowledge, to make recommendations on all the matters which the rule making power could possibly include. But we think there ought in any case to be a rule laying down with precision the relations between the Governor, his Ministers, and the Secretaries to Government. If it is to be the Council of Ministers who will in future aid and advise the Governor, it is plain that the Governor can no longer be advised directly and independently by the Secretaries to Government; but we should regard it as extremely unfortunate if the latter were deprived of access to the Governor or prevented from submitting to him such papers as in their opinion he ought to see. We recommend, therefore, that it shall be specifically laid down in the Constitution Act that the rules of business shall contain a provision laying upon Ministers the duty of bringing to the notice of the Governor any matter under consideration in their Departments which involves or is likely to involve any of his special responsibilities; and requiring Secretaries to Government to bring to the notice of the Minister and of the Governor any matters of the same kind.

The Governor's staff.

101. It is essential that the Governor should have at his disposal an adequate personal and secretarial staff of his own. This is recognised in the White Paper, where it is proposed (rightly, in our opinion) that the salary and allowances of such a staff are to be fixed by Order in Council, and, though included in the annual

[1] White Paper, Proposal 69.

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proposals for the appropriation of revenue, are not to be submitted to the vote of the Legislature[1]. We think also that there should be at the head of this staff a capable and experienced officer of high standing. Such an officer would be a man fully conversant with the current affairs of the Province and in close contact with the administration; but we do not for a moment contemplate as some of the Indian delegates seemed to think, that he should occupy in any sense a position analogous to that of a Deputy-Governor. There is no precise analogy between his position, as we conceive it, and that of any present-day civil servant in Whitehall; and we have no doubt that his duties will vary from time to time as constitutional practice and usage grow. In some respects he will occupy the position at present filled by the Governor's Private Secretary, but with duties of a wider and more responsible character. We think it right that he should in future be known by some other designation, and we suggest for consideration that of Secretary to the Governor.

Influence of Governor on working of responsible government.

102. It is clear that the successful working of responsible government in the Provinces will be very greatly influenced by the character and experience of the Provincial Governors. We concur with everything which has been said by the Statutory Commission on the part which the Governors have played in the working of the reforms of 1919,[2] and we do not think that the part which they will play in the future will be any less important or valuable. We take note here, though the matter is not altogether relevant to the subject which we have been discussing, of a suggestion pressed by some of the British India Delegation that in future Governors should always be appointed from the United Kingdom and indeed that there should be a statutory prohibition against the appointment of persons who are members of the Indian Civil Service. We cannot accept this suggestion. We hold strongly the view that His Majesty's selection of Governors ought not to be fettered in any way; and, that there may be no misunderstanding on the point, we desire to state our belief that, in the future no less than in the past, men in every way fitted for appointment as the Governor of a Province will be found among members of the Civil Service who have distinguished themselves in India.

(v) *Special Powers of Governor*

Governor's special powers.

103. It is plain that purely executive action may not always suffice for the due discharge of the Governor's special responsibilities; in some circumstances it may be essential that further powers should be at his disposal. This is recognised in the White Paper, in which it is proposed to give the Governor certain legislative and financial

[1] White Paper, Proposal 65.
[2] Report, Vol. I, para. 165.

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powers. The powers which it is proposed to entrust to the Governor in the event of the breakdown in the constitutional machinery may also be considered under this head.

Legislative powers.

104. As regards legislative powers, the White Paper proposes to empower the Governor at his discretion, to present, or cause to be presented, a Bill to the Legislature with a Message that it is essential, having regard to any of his special responsibilities, that the Bill should become law before a date specified in the Message, and to declare by Message in respect of any Bill already introduced that it should for similar reasons become law before a stated date in a form specified in the Message.[1] If before the date specified the Bill is not passed, or is not passed in the specified form, as the case may be, the Governor will be empowered at his discretion to enact it as a Governor's Act, either with or without any amendments made by the Legislature after receipt of his Message. Under the present Government of India Act, where a Provincial Legislature has refused leave to introduce, or has failed to pass in the form recommended by the Governor, any Bill relating to a reserved subject, the Governor may certify that the passage of the Bill is essential for the discharge of his responsibility for the subject and thereupon the Bill shall be deemed to have passed and shall, on signature by the Governor, become an Act of the Legislature. It will be seen, therefore, that one difference between the existing procedure and that which is now proposed is that in the former case a certified Bill is deemed to be an Act of the Legislature, whereas in the latter it is declared to be (what indeed it is) a Governor's Act. We agree that, in addition to the power of issuing emergency ordinances to which we refer later, the Governor should have this reserve power of legislation. We agree also with the proposed change in nomenclature, since we can see no possible advantage in describing an Act as the Act of the Legislature when the Legislature has declined to enact it. But we go further. We agree with the members of the British-India Delegation in thinking it undesirable that the Governor should be required to submit a proposed Governor's Act to the Legislature before enacting it. We do not, indeed, share the fear, which we understand the British-India Delegates to entertain, that the Governor might use this procedure for the purpose of seeking support in the Legislature against his Ministers. Our objection rather is that the proposed procedure will be a useless formality in the only circumstances in which a Governor's Act could reasonably be contemplated. If the obstacle to any legislation which the Governor thinks necessary to the discharge of his special responsibilities lies, not in the unwillingness of the Legislature to pass it, but in the unwillingness of his Ministers to sponsor it, his remedy lies, not in a Governor's Act, but in a change of Ministry. If, on the other hand, the obstacle lies in the unwillingness of the Legislature, there can clearly be no point in submitting the proposed legislation to it, and

[1] White Paper, Proposal 92.

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to do so might merely exacerbate political feeling. Since, however, there may be intermediate cases where an opportunity may usefully be given to the Legislature for revising a hasty or unconsidered decision previously made or threatened, we think that the Governor should have the power (which we presume he would, in any case, possess) to notify the Legislature by Message of his intention, at the expiration of, say, one month, to enact a Governor's Act, the terms of which would be set out in the Message. It would then be open to the Legislature, if it thought fit, to present an address to the Governor at any time before the expiration of the month, praying him only to enact the proposed Act with certain amendments which he could then consider upon their merits; or it might even think fit to revise its former decision and to forestall the Governor by itself enacting legislation in the sense desired by him.

Modification of White Paper proposal suggested.

105. We observe that the White Paper proposes that, whereas Temporary Ordinances, if extended beyond six months, are to be laid before Parliament,[1] there is no similar proposal in the case of Governor's Acts. We consider that all Governor's Acts should be laid before Parliament and that the Governor before legislating or notifying his intention to legislate should have the concurrence of the Governor-General.

Ordinances.

106. The next special power which it is proposed to give the Governor is the power (for use in emergencies) of issuing temporary ordinances, to be valid for not more than six months in the first instance, but renewable once for a similar period.[2] At the present time, this power is only exercisable, whether for a single Province or for the whole of British-India, by the Governor-General; but we cannot doubt that in an autonomous Province it should in future be vested in the Governor himself. It was urged by the British India Delegation that the power should continue to be vested in the Governor-General; and, although we are unable to accept this proposal in its entirety, we agree that all temporary ordinances if extended beyond six months should be laid before Parliament, and that the concurrence of the Governor-General should be obtained.

Appropriation of revenues.

107. The White Paper next proposes that the Governor shall be empowered to include in the annual appropriation of revenue authenticated by him any additional amounts which he regards as necessary for the discharge of his special responsibilities, provided that the total amount so authenticated under any head of expenditure does not exceed the amount which was proposed to be appropriated under that head when the financial proposals for the year were first laid before the Legislature; that is to say, the Governor will have power to restore any sums included by him for the above purposes in the original proposals for appropriation, if the Legislature has subsequently rejected or reduced them.[3] We have no comment to

[1] White Paper, Proposal 103.
[2] *Ibid.*
[3] White Paper, Proposal 99.

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make upon this proposal, for it is clearly essential that the Governor should possess powers of this kind, if he is to be in a position at all times to discharge the special responsibilities which it is intended to impose upon him; and we think that the limitation which is suggested on the exercise of the power is a reasonable one.

Ordinances made on Ministers' advice.

108. It is to be observed that the Governor will only be able to avail himself of the special powers, legislative and financial, which we have described above, when in his opinion one of his special responsibilities is involved and the due discharge of that responsibility requires the exercise of the power. In the case of a Governor's Act or the restoration of a rejected appropriation, we have no doubt that this is a proper restriction to impose. In the case, however, of the ordinance-making power, the matter does not seem at first sight to be so clear; for an ordinance assumes the existence of an emergency, and this might arise in connection with any branch of the administration, whether the Governor's special responsibilities were involved or not. But we notice that the White Paper also proposes that the Governor shall have power to make ordinances for the good government of the Province at any time when the Legislature is not in session, if his Ministers are satisfied that an emergency exists which renders such a course necessary.[1] Such an ordinance is to be laid before the Provincial Legislature and will cease to operate at the expiration of six weeks from the date of the re-assembly of the Legislature, unless in the meantime the Legislature has disapproved it by resolution in which case it will cease to operate forthwith. There are thus two kinds of ordinance contemplated, the first made on the Governor's own responsibility and in the discharge of his special responsibilities, the second on the advice of Ministers and therefore necessarily in a sphere in which the Governor will be guided by their advice. In these circumstances the whole field appears to be covered and we are satisfied that the Governor's power of making ordinances on his own responsibility, but with the concurrence of the Governor-General, is properly limited to those cases only in which his special responsibilities are involved.

Governor's powers in event of breakdown of Constitution.

109. Lastly, it is proposed to give the Governor power at his discretion, if at any time he is satisfied that a situation has arisen which for the time being renders it impossible for the government of the Province to be carried on in accordance with the provisions of the Constitution Act, to assume to himself by Proclamation all such powers vested in any Provincial authority as appear to him to be necessary for the purpose of securing that the Government of the Province shall be carried on effectively. This Proclamation will have the same effect as an Act of Parliament, and will cease to be in force at the expiration of six months unless previously approved by resolutions of both Houses of Parliament, though it may be at any time revoked by similar resolutions.[2] Events in

[1] White Paper, Proposal 104.
[2] White Paper, Proposal 105.

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more than one Province since the reforms of 1919 have shown that powers of this kind are unhappily not yet unnecessary, and it is too soon to predict that even under responsible government their existence will never be necessary. We do not read the White Paper as meaning that the Governor, in the event of a breakdown of the constitutional machinery, is bound to take over the whole government of the Province and administer it himself on his own undivided responsibility. We conceive that the intention is to provide also for the possibility of a partial breakdown and to enable the Governor to take over part only of the machinery of government, leaving the remainder to function according to the ordinary law. Thus the Governor might, if the breakdown were in the legislative machinery of the Province alone, still carry on the government with the aid of his Ministers, if they were willing to support him ; we are speaking of course of such a case as the refusal of the Legislature to function at all, and not merely of lesser conflicts or disputes between it and the Governor. If we are right in our interpretation, we approve the proposals, and we are of opinion that it would be unwise, if not impracticable, to specify in any detail the action which the Governor should be authorised to take. A constitutional breakdown implies no ordinary crisis and it is impossible to foresee what measures the circumstances might demand. It is right, therefore, that the Governor should be armed with a general discretionary power to adopt such remedies as the case may require.

Responsibility of Governor to Secretary of State and Parliament.

110. It is clear that where the Governor is exercising his special powers or is acting in his discretion, he must be constitutionally responsible to some authority, and that responsibility will be in the first instance to the Governor-General acting in his discretion, and through him to the Secretary of State and ultimately to Parliament. This is the effect of the White Paper proposal,[1] and its importance, particularly in the event, or the danger, of a complete or partial breakdown in the working of the Constitution in a Province, has already been indicated in the first Section of our Report,[2] where we speak of the interaction of the Governor-General's and the Governors' special powers and responsibilities. We shall have to consider another aspect of this subject in a later part of our Report.[3] It is unnecessary for us to comment on it further here.

(4) Relations between the Provincial Executive and Legislature

Vital importance of Executive in India.

111. In the preceding paragraphs we have approved the proposal of the White Paper to entrust certain wide discretionary powers to the Governor, and we have recommended that, in certain respects, those powers should be strengthened and extended. We should not wish to pass from this subject without some general review of

[1] White Paper, Proposal 72.
[2] *Supra*, para. 40.
[3] *Infra*, paras. 221–2. *See also supra*, para. 97.

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the broad considerations which have led us to these conclusions. The dominant consideration is the one which we have already emphasised: the vital importance in India of a strong Executive. It has seemed to us in the course of our discussions with the British India delegates that, in their anxiety to increase the prerogatives of the Legislature, they have been apt to overlook the functions of the Executive, an attitude not perhaps surprising in those to whom at the present time the Legislature offers the main field of political activity. But if the responsibility for government is henceforward to be borne by Indians themselves, they will do well to remember that to magnify the Legislature at the expense of the Executive is to diminish the authority of the latter and to weaken the sense of responsibility of both. The function of the Executive is to govern and to administer; that of the Legislature to vote supply, to criticize, to educate public opinion, and to legislate; and great mischief may result from attempts by the latter to invade the executive sphere. The belief that parliamentary government is incompatible with a strong Executive is no doubt responsible for the distrust with which parliamentary institutions have come to be regarded in many parts of the world. The United Kingdom affords a sufficient proof that a strong Executive may co-exist even with an omnipotent Parliament if the necessary conditions are present; and the strength of the Executive in this country may, we think, be attributed with not more justice to the support of a disciplined party than to the inveterate and cherished tradition of Parliament that the prerogatives of the Legislature are not to be jealously or factiously asserted in such a way as to prevent the King's Government from being carried on. "His Majesty's Opposition" is not an idle phrase, but embodies a constitutional doctrine of great significance.

Difficulties created by communal representation in Ministries.

112. It is a commonplace that this tradition is as yet unknown in India and that Indian Ministries have not hitherto been able to rely on the support of a disciplined party. The Statutory Commission, in surveying the work of the existing Provincial Constitution, observed that Governors, in choosing their Ministers, have had an exceptionally difficult task, and that it could seldom be predicted what following a Minister would have in the Legislature, quite apart from the fact that his acceptance of office was often followed, owing to personal rivalries, by the detachment of some of his previous adherents. It has been urged upon us by the members of the British-India Delegation that these difficulties will tend to disappear under responsible government. We hope that it will be so, and neither we nor the Statutory Commission would have recommended that the experiment should be made if we were not satisfied that under no other system can Indians come to appreciate the value of the tradition of which we have spoken. But it must be remembered that in two respects the difficulties of Provincial Ministries in the future may be greater than in the past. In the first place, they will not in future be able to rely upon the official bloc which, in the words of the

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Statutory Commission "has helped to decrease the instability of the balance of existing groups in the Legislature and has made the tenure of office of Ministers far less precarious". In the second place, each Ministry may, as we have already pointed out, be a composite one. The Legislatures will be based on a system of communal representation, and the Governor will be directed by his Instrument of Instructions to include in his Ministry, so far as possible, members of important minority communities. A Ministry thus formed must tend to be the representative, not, as in the United Kingdom, of a single majority party or even of a coalition of parties, but also of minorities as such. Moreover, the system of communal representation may also tend to render less effective the weapon to which, under most parliamentary constitutions, the executive resorts when confronted by an obstructive Legislature, the weapon of dissolution; for under such a system even a general election may well produce a Legislature with the same complexion as its predecessor.

A statutory permanence of tenure for Ministry inconsistent with parliamentary government.

113. It is unfortunately impossible to provide against these dangers by any paper enactment regulating the relations between the Ministry and the Legislature. The British India delegates laid great stress upon the collective responsibility of the Provincial Ministries, and in their Joint Memorandum they urged that the Instrument of Instructions should contain a definite direction to the Governor that the collective responsibility of Ministers is to be introduced forthwith. This seems to us to confuse cause and effect. The collective responsibility of Ministers to the Legislature is not a rule of law to be put into operation at discretion, but a constitutional convention which only usage and practice can define or enforce; and, since that convention is the outcome and not the cause of ministerial solidarity, it is as likely to be hindered as helped by artificial devices which take no account of the realities of the situation. It is noticeable, for example, that, in Constitutions like that of France where the principle of collective responsibility is laid down in the Constitution, the effect seems to have been merely to introduce the formality of a joint resignation as a preliminary to every reconstruction of a Ministry. Our attention has also been drawn to the possibility of providing that a Ministry, after receiving a vote of confidence from the Legislature on its appointment by the Governor, should remain in office for a fixed period unless previously dismissed by him. The objection to this proposal, of which there are obvious possible variants, is that the existence of a Ministry which had not, in fact, the confidence of the Legislature could, in practice, be made impossible. There is every reason why Ministries in India should refuse to treat a hostile vote, even on a demand for supply, as necessarily entailing resignation; it may even be desirable that a Ministry should only resign on a direct vote of no confidence; but under a system of parliamentary government there is no effective method of securing statutory permanence of tenure to a Ministry faced by a consistently hostile Legislature. All that the framers of a

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Constitution can do in this matter is to refrain from any paper provisions which might tend indirectly to prejudice the development of a sound relationship between Ministry and Legislature. We think that the wording of the Governor's Instrument of Instructions proposed in the White Paper in regard to the selection of his Ministers should be re-examined with a view to giving greater latitude to the Governor. It is our earnest hope that, in the future, parties may develop in the Provincial Legislatures which will cut across communal lines, and the proposed wording of the Instrument of Instructions as it now stands might, if literally obeyed, operate to prevent both the growth of such parties and the formation of homogeneous Ministries. We recognise that nothing ought to be done at the present time which would excite suspicion or distrust in the mind of the minorities, but in this, as in other matters, we think that the course of wisdom is to give the Governor the widest possible latitude.

Governor's reserve powers a guarantee for development of responsible government.

114. It follows from these considerations that the only way of strengthening the Provincial Executives in India is to confer adequate discretionary powers on the Governor. These powers are defined in the White Paper, we think rightly, as being the Governor's responsibilities, because it is on him that the corresponding special powers must, in the nature of things, be conferred ; but the responsibilities are defined and the powers conferred, not for the purpose of superseding Ministers or enabling them to escape responsibilities which properly belong to them, but primarily in order that the Executive as a whole may possess the authority which experience shows to be essential to the success of parliamentary government. To none of the Governor's special responsibilities do these considerations apply with more force than to that relating to the Public Services ; for the existence of an efficient and contented civil service, immune from political interference and free from political partialities, is the indispensable condition, not only for the effective exercise of the Governor's special powers, but also for the strength of the Executive as a whole. On this subject we shall have certain further proposals to make in a later part of our Report.[1] Nor is the case different with the Governor's extraordinary power, if the constitutional machinery should break down, to assume to himself (subject to the overriding authority of Parliament) any function of government that may appear to him necessary, even to the extent of suspending the Legislature and administering the Province without it. Like the power of dissolution, which it supplements, this power is designed to strengthen the Executive as a whole. We hope, and are willing to believe, that it will never become necessary to put this power into operation ; but its existence in the background, together with the whole body of the Governor's reserve powers, may well prove the most effective guarantee for the development of a genuine system of responsible government.

[1] *Infra*, pp. 173-192.

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115. We may be thought to have laid too great emphasis upon the difficulties likely to arise in the working of the new Constitution in an Indian Province; but we have endeavoured to describe the situation as it has presented itself to us, without prejudice or exaggeration; and if we have emphasised its difficulties, it is because we are anxious that Indians should not be misled by deceptive analogies with the constitutional practice of the United Kingdom. Responsible government postulates conditions which Indians themselves have still to create. The success of the experiment which we advocate can only be proved by its results, and the political education both of the Legislatures and of the electorate is likely to be a slow process. But we are none the less convinced that Indians must be given the opportunity of purchasing their own experience, and we are at one with the Statutory Commission in seeing no future for responsible government in India unless the difficulties to which we have thought it right to draw attention are directly faced and in the end surmounted.

Solution of the problem lies in Indian hands.

(5) The Provincial Legislature

Unicameral and Bicameral Legislatures

116. The White Paper proposes that in each Governor's Province there shall be a Provincial Legislature consisting, except in Bengal, the United Provinces, and Bihar, of the King, represented by the Governor, and a Legislative Assembly. In the three Provinces named, it is proposed that the Legislature shall consist of the King, represented by the Governor, and a Legislative Council as well as a Legislative Assembly. It is also proposed that after a period of ten years, a bicameral Legislature may abolish its Legislative Council, and that a unicameral Legislature may present an address to the Crown praying for the establishment of a Legislative Council.[1]

Provincial Legislatures.

117. We are of opinion that Legislative Councils should also be established in Bombay and Madras, where the conditions are substantially the same as in Bengal and the United Provinces. We see no reason for giving an exceptional power to the Provincial Legislatures to amend the Constitution in this one respect, and we think that the abolition or creation of a Legislative Council should, instead, be included among the questions on which, as we shall later propose in our Report,[2] a Provincial Legislature shall have a special right to present an address to the Governor for submission to His Majesty and to Parliament. Our recommendations for all five Councils are set out in an Appendix to this part of our Report.[3]

Second Chambers suggested for Bombay and Madras.

[1] White Paper, Proposal 74.
[2] *Infra*, paras. 380 and 381.
[3] *Infra*, p. 84, *see also* para. 122.

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The Composition of the Legislatures

The Communal Award and the Poona Pact.

118. The White Paper sets out in detail the proposed composition of each Provincial Legislature, specifying both the allocation of seats and the method of election to them.[1] In the case of the Legislative Assemblies, these are based upon the Communal Award issued by His Majesty's Government on August 4th, 1932, with such modifications as have been rendered necessary (1) by the later proposal to create a new Province of Orissa, and (2) by the so-called Poona Pact of September 25th, 1932. It will be recalled that owing to the failure of the various communities to reach any agreement on the subject, principally because of a radical divergence of opinion on the vital question of separate electorates and the distribution of communal seats, His Majesty's Government themselves reluctantly undertook the task of devising a scheme for the composition of the new Legislatures. When their Award was published, they announced their determination not to entertain any suggestions for its alteration or modification which were not supported by all parties affected, but that if any of the communities mutually agreed upon a practicable alternative scheme, they would be prepared to recommend to Parliament that that alternative should be substituted for the corresponding provisions in the Award. In the Award special arrangements were made to secure representation for the Depressed Classes. These were criticised by Mr. Gandhi as introducing an artificial division between two parts of the Hindu community, and he expressed his intention of "fasting unto death" as a protest against them. Thereupon negotiations were initiated between representatives of the caste Hindus and of the Depressed Classes, and an agreement resulted which was embodied in the Poona Pact. This agreement in the view of His Majesty's Government was within the terms of the announcement made by them, and therefore properly to be included as an integral part of the Communal Award.

Effect of the Poona Pact.

119. The substance of the Poona Pact is the reservation to the Depressed Classes of a number of seats out of the seats classified as general seats in the Award, which means in effect out of Hindu seats, since Hindus form the great bulk of the general electorates. These reserved seats will, however, be filled by an unusual form of double election. All members of the Depressed Classes who are registered on the general electoral roll of certain constituencies will elect a panel of four candidates belonging to their own body, and the four persons who receive the highest number of votes in this primary election will be the only candidates for election to the reserved seat; but the candidate finally elected to the reserved seat will be elected by the general electorate, that is to say, by caste Hindus and by members of the Depressed Classes alike. The number of seats reserved for the Depressed Classes under the Poona

[1] White Paper, Appendix III.

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Pact is practically double the number reserved under the Communal Award; though the latter gave the Depressed Classes electors a vote in the general constituencies as well as for the special seats reserved for themselves; but whereas under the Communal Award the Depressed Classes electors were to vote separately for the seats reserved for them as well as jointly with other Hindus in the general constituencies, under the Poona Pact there will now only be an election by the general electorate, although the candidates for election will have been previously selected by means of a primary election at which members of the Depressed Classes only will be entitled to vote. Since the Pact does not, and indeed could not, increase the total number of seats assigned by the Communal Award to the different Legislatures, it follows that any increase in the seats reserved for the Depressed Classes must involve a diminution in the seats which will be available for caste Hindus.

The White Paper proposals accepted.

120. The Communal Award was criticised by more than one witness who appeared before us on the ground that it operates inequitably in the case of Bengal, and even more inequitably with the modifications resulting from the Poona Pact. There was also criticism of the Award from other Provinces in which the Hindus are in a minority; and we understand that recently there has been a growing tendency in some influential sections of the Hindu community to attack the foundation of the Award. Nevertheless, it is clear to us that there is among almost all the communities in India (not excepting the Hindu) a very considerable degree of acquiescence in the Award in the absence of any solution agreed between the communities; and in fact we entertain no doubt that, if any attempt were now made to alter or modify it, the consequences would be disastrous. The arrangement which it embodies appears to us to be well thought out and balanced, and to disturb any part of it would be to run the risk of upsetting the whole. It accepts indeed the principle of separate electorates for the Muhammadan, Sikh, Indian Christian, Anglo-Indian, and European communities, but we recognize that this is an essential and inevitable condition of any new constitutional scheme. We may deplore the mutual distrust of which the insistence on this demand by the minorities is so ominous a symptom, but it is unhappily a factor in the situation which cannot be left out of account, nor do we think that we can usefully add anything to what we have already said on the subject. We accept therefore the proposals in the White Paper for the composition of the Legislative Assemblies. As regards the Poona Pact we are bound to say that we consider that the original proposals of His Majesty's Government constituted a more equitable settlement of the general communal question and one which was more advantageous to the Depressed Classes themselves in their present stage of development. They united the two sections of the Hindu community by making them vote together in the general constituencies, thereby compelling candidates to consider the well-being of both sections of their constituents when appealing for their support, while they secured

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to the Depressed Classes themselves sufficient spokesmen in the Legislature, elected wholly by depressed class votes, to ensure their case being heard and to influence voting, but not so numerous that the Depressed Classes would be unable to find representatives of adequate calibre. Under the pressure of Mr. Gandhi's fast these proposals were precipitately modified; but in view of the fact that His Majesty's Government felt satisfied that the agreement come to at Poona fell within the terms of their original announcement and accepted it as an authoritative modification of the Communal Award, we are clear that it cannot now be rejected. Nevertheless, as we have said, objections to the Pact in relation to Bengal have since been strongly urged by caste Hindus from that Province; and if, by agreement between the communities concerned, some reduction were made in the number of seats reserved to the Depressed Classes in Bengal, possibly with a compensatory increase in the number of their seats in other Provinces where a small addition in favour of the Depressed Classes would not be likely materially to affect the balance of communities in the Legislature, we are disposed to think that the working of the new Constitution in Bengal would be facilitated.

Special interests seats.

121. We have given careful consideration in this connection to the number of seats to be allotted to special interests and in particular to representations submitted to us in favour of a substantial increase in the number of seats to be allotted to labour in the new Provincial Legislatures. Any material alteration in the number of seats allotted to special interests would inevitably involve a reopening of the Communal Award, and we have indicated above the objections to this. But we are in any case of opinion that the representation proposed in the White Paper for landlords, commerce and industry, universities and labour, may be regarded as striking a just balance between the claims of the various interests, and as affording an adequate representation for them. We observe in particular that the representation of labour has been increased from 9 seats in the present Provincial Legislative Councils to a total of 38, the present marked difference between the representation of labour and of commerce and industry being thus very substantially reduced. Having regard to this, to the large number of seats set aside for the Depressed Classes (whose representatives will to some extent at any rate represent labour interests), and to the extension of the franchise, which will bring on the electoral roll large numbers of the poorer and of the labouring classes, we are of opinion that the position of labour, the importance of which we fully recognise, is adequately safeguarded under the proposals embodied in the White Paper.

Composition of Second Chambers.

122. The Communal Award did not extend to the Legislative Council of any Province. The composition of these Councils which is set out in the White Paper is however based upon the same principles as the Communal Award; but, since the Legislative

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Councils are much smaller bodies than the Legislative Assemblies and it would be impossible therefore to provide in them for the exact equivalent of all the interests represented in the Lower House, it is proposed to include a certain number of seats to be filled by nomination by the Governor at his discretion and accordingly available for the purpose of redressing any possible inequality or to secure some representation to women in the Upper Houses. We think that this is a reasonable arrangement, and we have included provision for it in the detailed recommendations which are set out in the Appendix above referred to. We think that the Legislative Councils should not be dissoluble, but that one-third of their members should retire at fixed intervals of three years.

The Provincial Franchise

123. The provincial electorate under the existing franchise numbers approximately 7,000,000 men and women, or about 3 per cent. of the population of British India. It will be recalled that the Southborough Committee in 1919, on whose recommendations the present franchise is based, were of opinion that the time was not ripe for any extension of the franchise to women, but Parliament required the Electoral Rules made under the Government of India Act to be so drawn as to enable the Provincial Councils to pass resolutions admitting women to the franchise on the same terms as men, and resolutions for that purpose have in fact been passed in every Province except the North-West Frontier Province. But, since the franchise is in the main a property qualification and few Indian women are property owners in their own right, the number of women thus admitted to the franchise was very small and does not at the present time amount to more than about 315,000.

The existing franchise.

124. The Statutory Commission were of opinion that the existing franchise was too limited and recommended that it should be extended so as to enfranchise about 10 per cent. of the total population, and they laid a special emphasis upon the need for increasing the ratio of women to men voters. In 1932, between the Second and Third Sessions of the Round Table Conference, a Franchise Committee, which was presided over by one of our own number, was appointed by His Majesty's Government for the purpose of examining the whole subject, with a view to an increase of the electorate to a figure not less than the 10 per cent. of the population suggested by the Statutory Commission nor more than the 25 per cent. suggested at the First Session of the Round Table Conference. We are greatly indebted to the admirable and exhaustive Report of the Franchise Committee, which reached its conclusions after prolonged and intensive discussions in India with the Provincial Governments and with Provincial Franchise Committees; and we are satisfied that their recommendations have met with general support from Indian opinion, expressed not only in India but

The proposals of the Statutory Commission and the Franchise Committee.

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also at the Third Session of the Round Table Conference, in the evidence of the witnesses who appeared before us, and in the discussions which we have had with the British-India delegates.

The proposals in the White Paper.

125. The proposals of His Majesty's Government for the Provincial Franchise are set out in Appendix V to the White Paper, and are essentially based, with certain modifications of minor importance only, save in the case of the women's franchise, on the Report of the Franchise Committee. We are informed that the proposals have the general support of the Government of India and of the Provincial Governments. The basis of the franchise proposed is essentially, as at present, a property qualification (that is to say, payment of land revenue or of rent in towns, tenancy, or assessment to income tax). To this are added an educational qualification and certain special qualifications designed to secure an adequate representation of women and to enfranchise approximately 10 per cent of the Depressed Classes (called in Appendix V Scheduled Castes); it is also proposed to enfranchise retired, pensioned and discharged officers, non-commissioned officers and men of His Majesty's Regular Forces, and to provide special electorates for the seats reserved for special interests, such as labour, landlords and commerce. The individual qualifications vary according to the circumstances of the different Provinces: but the general effect of the proposals is to enfranchise approximately the same classes and categories of the population in all Provinces alike.

Estimate of numbers of proposed electorate.

126. We were warned, and can readily believe, that pending the preparation of electoral rolls the figures furnished to us must of necessity be regarded as only approximate. It is, however, estimated that the proposals in the White Paper would, if adopted, create a male electorate of between 28,000,000 and 29,000,000, and a female electorate of over 6,000,000, as compared with the present figures of 7,000,000 and 315,000; that is to say, 14 per cent. of the total population of British India would be enfranchised as compared with the present 3 per cent.; and the proposals, therefore, go beyond the percentage suggested by the Statutory Commission and are nearly midway between the maximum and minimum percentages suggested by the First Round Table Conference.

General effect of proposals.

127. We are satisfied on the information before us that the proposals taken as a whole are calculated to produce an electorate representative of the general mass of the population and one which will not deprive any important section of the community of the means of giving expression to its opinions and desires. The proposals will in the case of most Provinces redress the balance between town and country, which is at the present time too heavily weighted in favour of urban areas; they will secure a representation for women, for the Depressed Classes, for industrial labour, and for special interests; and they will enfranchise the great bulk of the small landholders, of the small cultivators, of the urban ratepayers, as well as a substantial section of the poorer classes.

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128. The difficulties which must always attach to any great and sudden extension of the franchise, both in connection with the compilation of the electoral roll and in the actual conduct of elections, are mainly administrative in India, because literacy is rare and the number of persons available to act as efficient Returning Officers extremely limited. These are practical obstacles which ardent reformers are sometimes apt to forget; but we are informed that, while the strain of the first election will undoubtedly be considerable, the electorates proposed, subject to certain minor modifications and to one more important modification which we recommend below in the case of Bihar and Orissa, are accepted by the responsible authorities as administratively practicable. The existing system of election is the direct system, which has been in force since 1920, and appears on the whole to have worked well. The Franchise Committee, after an exhaustive investigation of possible alternatives, recommended its retention, and they have the support both of the authorities in India and of Indian opinion. The proposals in the White Paper are accordingly based upon direct election by territorial constituencies in the case of the various communities, special arrangements being made for election in the case of the constituencies which represent special interests. We are informed that His Majesty's Government are not yet in a position to submit their final proposals for the nature of the constituencies which are to return women, for the detailed allocation as between trade union and special labour constituencies of the seats allocated to labour, and for the qualifications to be prescribed in the case of certain of the constituencies representing special interests. These matters are still under investigation in India and proposals with regard to them must depend on the result of further expert examination. We would at this stage record, however, our acceptance of the proposal that the seats allocated to labour should be allocated in part to trade unions and in part to special labour constituencies. As regards the women's seats, we are provisionally, subject to consideration of special local difficulties, in favour of the reservation of seats in constituencies formed for the purpose and containing both men and women. We are inclined to think it desirable that those constituencies should be both urban and rural, and we should see no objection to their area being varied by rotation should this prove to be desirable and practicable.

The proposals administratively practicable.

129. We have carefully examined a suggestion to substitute for direct election in territorial constituencies an indirect system of election by means of local groups. At first sight an arrangement of this nature would appear to have the advantage of widening the basis of the franchise, of giving an equal vote at the primary stage to every adult, of facilitating voting by the primary elector, and of securing a more experienced and intelligent secondary elector; and having regard to these considerations, we felt it our duty, despite the fact that discussion and experiment in India had led the Indian Franchise Committee to reject it, again to consider its practicability. The

Suggestions for group system of election considered.

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effect of the evidence given before us by witnesses of great experience has however been to show that, superficially attractive as a system of group election may be, the objections to it in existing conditions in India are decisive. We have been especially impressed by the administrative difficulties involved in constituting electoral groups, given the existence of caste and the reality of the communal problem, and by the argument that faction runs so high in many Indian villages that group elections would inevitably become highly contested and that it would be necessary to provide for them all the machinery of an ordinary election. We were also informed, not only that conditions in the villages had changed so materially of late that the circumstances which some six or seven years ago made it justifiable to put forward a proposal for the use of the group system no longer existed, but that there was no real support for the introduction of such a system from any quarter in India. In the light of our further investigation of this question we are satisfied that in the case of the Provincial Legislatures the balance of advantage at the present moment clearly lies in retaining the system of direct election. We do not, however, desire to be understood as reporting against the introduction of some system of indirect election in the future. The considerations which we have advanced against its adoption at the present moment may lose much of their force as social conditions change, and as institutions of local self-government develop in the Provinces. The problem is essentially one which Indians must consider for themselves, and on which we feel sure that Parliament will be ready to listen with the utmost attention to any recommendations which may be made to it hereafter by Provincial Legislatures.

Importance of development of local self-governing institutions.

130. We have alluded above to the development of institutions of local self-government in the Provinces. This allusion may furnish an opportunity of saying that though this subject did not come directly within the scope of our enquiry we are fully conscious of its great importance. Indeed, the progress of self-government in the Provinces of India will depend on the growth not only of responsible Governments at the top, but also of local self-governing institutions from the bottom—from the village community or *panchayat* upwards. It is thus that the great mass of the Indian peasantry, constituting a vast majority of the people, whose welfare has been constantly in our minds during the whole course of our discussions, can be trained in those qualities of responsible citizenship which may hereafter entitle them to the full Provincial franchise. These are matters upon which Indians must form their own conclusions; but we venture to express the hope that they will, from the first, give full attention to them.

The White Paper proposals approved with certain modifications.

131. We regard the franchise proposals in the White Paper as generally satisfactory, subject to the modifications which we indicate below. In the case of the general franchise, we think that only one modification of substance is necessary. In Bihar and Orissa it is proposed that the qualification in rural areas shall be based upon payment of the chaukidari tax at the minimum rate of six annas

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per annum; but, since the White Paper was laid before Parliament, the Provincial Government after further investigation have reported that administrative considerations make it impossible to deal with so large an electorate as this franchise would create. We recommend that, in view of this undoubted difficulty, the rural franchise in Bihar and Orissa should be raised from six annas to nine annas; and we also recommend that, in view of the dislocation caused by the recent earthquake, the general rural franchise in the Province should as a temporary measure be fixed at twelve annas for the purpose of the first election under the new Constitution.[1] We recognise that these recommendations, if adopted, will produce in Bihar and Orissa a percentage of enfranchisement much smaller than in any other Province, but we think that they are justified by the special circumstances of the case. We also recommend, as part of the arrangements which have been made with His Exalted Highness the Nizam in connection with the Berars, that in the case of Berar constituencies the educational qualification should include the passing of a corresponding examination in Hyderabad, and that the military service qualification should cover retired, pensioned or discharged officers, non-commissioned officers or soldiers of His Exalted Highness's regular forces.

Women's franchise proposals compared with Franchise Committee's recommendations

132. The present ratio of women to men electors for the Provincial Legislatures is approximately 1 : 20. The recommendations of the Franchise Committee would increase the ratio to 1 : 4·5, by extending the franchise to all women (1) who possess a property qualification in their own right; (2) who are the wives or widows of men with the property qualification for the present Provincial Legislatures (slightly different qualifications are proposed for Bihar and Orissa and for the Central Provinces); and (3) who have an educational qualification of literacy (this last qualification to be registered only on application by the potential voter). The proposals in the White Paper are identical with those of the Franchise Committee, save that women qualified in respect of property held by a husband are required to make application to be placed on the electoral roll, and that the educational standard has in most cases been substantially raised. We are informed that, on the latest estimates available, these proposals would produce a women's electorate of some 6,000,000 as against a male electorate of between 28,000,000 and 29,000,000, a ratio approximately equivalent to that recommended by the Franchise Committee. But of these 6,000,000 only some 2,000,000, that is to say, women qualified to vote in respect of the ownership of property in their own right, would automatically be placed upon the roll; for the remainder, who would be qualified in respect either of property held by a husband or of education, an application to the Returning Officer would be required. We have received very strong representations from representatives of women's organisations and

[1] Corresponding modifications will be necessary for Sambalpur and Santhal Parganas, for which a special franchise is proposed in the White Paper.

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from representative women both in this country and in India that the effect of this proposal would be to prejudice very seriously the position of women under the new Constitution. On the other hand, we are informed that the authorities in India view with apprehension any proposals which would substantially increase the administrative difficulties likely in any event to be caused in polling the new and extended electorates, and they have urged also the importance of giving full weight in connection with the women's franchise to Indian social conditions.

Representations with regard to educational and military service qualifications in connection with women's franchise.

133. Apart from the difficulties involved in the retention of the "application" requirement, we have received strong representations in favour of the substitution of the literacy qualification (to be registered on application) recommended by the Franchise Committee for the qualification of an educational standard proposed in the White Paper. It has been urged before us that in many Provinces the educational standard proposed in the White Paper is so high that it will seriously prejudice the legitimate claims of women in general, and in particular the woman who has been educated at home. Representations have also been made to us in favour of the extension of the franchise to the wives of men with the military service qualification for the vote and the pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers of the regular forces.

Vital importance of women's franchise.

134. We have given anxious consideration to all these questions. We concur in everything which has been said by the Statutory Commission on the necessity for improving the status and extending the influence of the women of India, and it is in our opinion impossible to exaggerate the importance of securing in the new Constitution a substantial increase of enfranchised women. "The women's movement in India," the Commission observe, "holds the key of progress, and the results it may achieve are incalculably great. It is not too much to say that India cannot reach the position to which it aspires in the world until its women play their due part as educated citizens."[1] This is profoundly true and must be realised by every Indian who has the interests of his country at heart. We are only too well aware of the formidable obstacles which every reformer in this field will encounter, and we have reason to believe, for example, that there is even now a large body of opinion in India which would condone the dreadful practice of suttee. We are, therefore, all the more convinced of the necessity for strengthening the position of women under the new Constitution, and we are not satisfied in the light of the discussions which have taken place that the proposals in the White Paper are adequate to achieve this object. We are particularly impressed by the unfortunate consequences likely to follow from the "application" requirement, though we fully recognise that under existing conditions there are strong arguments which can be adduced in favour of it. We sympathise also with the contention that the standard of the

[1] Report, Vol. I, para. 71.

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educational qualification is too high, and we are wholly in agreement with those who desire to enfranchise the wives of men with the military service qualification for the vote, and the pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers of the Regular forces.

Modifications in White Paper proposals recommended.

135. In these circumstances, after a careful examination of the whole problem and in the light of further enquiries which have been made at our request by the Government of India and the local Governments, we recommend the following modifications in the White Paper proposals for the women's franchise; and we record our opinion that it should not be beyond the administrative capacity of the Provincial Governments to give effect to them, even though they may involve some temporary difficulties in the early days of the new Constitution:—(1) that the "application" requirement should be dispensed with in the case of women qualified in respect of a husband's property in Bengal, Bihar and Orissa, the Central Provinces, and in urban areas in the United Provinces; (2) that in Bombay, the Central Provinces, the United Provinces, the Punjab, and Assam a literacy qualification should be substituted as the educational qualification, (3) that in every Province, subject, however, to further consideration in the case of the North West Frontier Province, the wives of men with the military service qualification for the vote, and pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers of the Regular forces should be enfranchised, registration in this case being on application only; and (4) that in cases in which registration will still be only on application steps should be taken to mitigate the deterrent effect of this requirement on the registration of votes by women, e.g. by allowing women to make application by letter (responsibility for satisfying the registering officer of their eligibility for enrolment resting with the applicant), by permitting application by the husband (subject to suitable penalties in the event of false statements, etc.) on behalf of a wife, and by the entry of a woman's name as "wife of A.B.C." in cases in which, for social or religious reasons, there is any objection to the entry of the actual name on the electoral roll.

Recommendations with regard to women's franchise.

136. Before leaving this subject we wish to place on record our view that it is important to attain at as early a date as possible, and if practicable before the second election under the new Constitution, the ratio of not less than approximately one woman to five men electors, save possibly in Bihar and Orissa, which was recommended by the Indian Franchise Committee. We understand that in most Provinces under the proposals embodied in the White Paper, with the modifications proposed by us above, the ratio of women to men eligible to exercise the franchise will be higher than 1 : 5; but the deterrent effect of the "application" requirement, so long as it is necessary to retain it, particularly in the case of women qualified in

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respect of a husband's property, is likely in practice to produce a much less favourable ratio of women to men on the electoral registers. In certain Provinces, moreover, the ratio even of women eligible to vote to men may apparently be less favourable than 1 : 5. The remedy for this situation is, in our opinion, the withdrawal of the "application" requirement, at any rate in the case of wives or widows qualified in respect of a husband's property, at as early a date as practicable, with a consequent increase in the number of women on the electoral roll. We are in favour also of the lowering of the educational standard for women to literacy in those Provinces in which a higher standard is now proposed before the second election under the new Constitution; this should result in the Provinces in question in a further increase in the number of women eligible to exercise the franchise.

The educational qualification for men.

137. The Franchise Committee recommended the adoption of the Upper Primary Standard as a general educational qualification for men. The White Paper substitutes a higher standard in certain Provinces. It has been represented to us that the adoption of a high educational qualification, and in particular of the matriculation standard, would have an unfortunate result on male education and would discriminate against the boy attending the vernacular middle school in favour of the boy matriculating in the secondary school. We think this objection has considerable force. It may be impossible at the present moment for some Provinces to adopt, as some other Provinces propose to do, so low a standard as the completion of the fourth class of the primary school, or even the leaving examination of a middle school, partly owing to lack of records and partly owing to the number of persons who would thus be enfranchised. But we think that it should be open to the Provincial Government to prescribe at least any middle school certificate as the qualification for the suffrage.

Election expenses and corrupt practices, etc.

138. We desire in conclusion to draw attention to the question of election expenses and corrupt practices. The White Paper proposes that, save as otherwise provided in the Constitution Act itself, the Provincial Legislatures should be empowered to make provision for matters connected with the conduct of elections, but that until they do so existing laws or rules, including laws or rules providing for the prohibition and punishment of corrupt practices or election offences, should remain in force. The Statutory Commission observed that they had no wish to over-emphasise, but that they could not disregard, the indications to them in more Provinces than one of the presence and effects of corruption; and they urge therefore that

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suitable limits should be defined and enforced for election outlay, the existing law being in their opinion inadequate.[1] We think that this is a matter which may properly engage the attention of His Majesty's Government, and it may be thought desirable that the Constitution Act itself should embody provisions with regard to it. We desire to add in this connection that it would, in our opinion, be unwise to abandon, as the White Paper proposes, the disqualification for candidature for a legislative body which under existing Rules follows (subject to a dispensing power) upon conviction for a criminal offence involving a sentence of imprisonment exceeding one year.

Future extension of franchise.

139. The question of a future extension of franchise is one which cannot be divorced from the question of other amendments of the Constitution Act. We do not therefore discuss it in this place and reserve our observations for a later part of our Report, in which the whole problem of what may conveniently be called Constituent Powers is considered.[2]

Powers of Provincial Legislatures

Powers of Provincial Legislatures.

140. We have referred elsewhere to the Lists in Appendix VI of the White Paper, which set out the subjects with respect to which the Provincial Legislatures will have the power of making laws for the peace and good government of the Province, an exclusive power in one case (List II) and in the other a power exercisable concurrently with the Federal Legislature (List III), and further discussion of them is unnecessary here. Certain restrictions on these legislative powers are however proposed. In the first place the Provincial Legislatures will not be competent to make any law affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of British India, the law of British nationality, the Army, Air Force, and Naval Discipline, Acts, or the Constitution Act itself, save in the last case in so far as the Constitution Act otherwise provides.[3] Few, if any, of these subjects are likely to come within the scope of the legislative powers of the Provincial Legislatures, as defined by Lists II and III, and the restriction is therefore more apparent than real, though we agree that it is a proper one. The Legislatures will also have no power to make certain laws of a

[1] Report, Vol. II, para. 110.
[2] *Infra*, paras. 374–381.
[3] White Paper, Proposals 119–120.

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discriminatory kind, a subject which it will be more convenient to discuss later.[1] Secondly, the consent of the Governor-General, given at his discretion, will be required to the introduction in a Provincial Legislature of legislation which (1) repeals, amends, or is repugnant to, any Act of Parliament extending to British India or any Governor General's Act or Ordinance, or (2) which affects any Department reserved to the control of the Governor-General, or (3) which affects the procedure regulating criminal proceedings against European British subjects. Thirdly, the consent of the Governor, given at his discretion, will be required to the introduction of legislation (1) which repeals, amends, or is repugnant to, a Governor's Act or Ordinance, or (2) which affects religion or religious rites and usages.

Modification of the White Paper proposals recommended.

141. We do not think that the consent of the Governor should any longer be required to the introduction of legislation which affects religion or religious rites and usages. We take this view, not because we think that in practice the necessity for such consent might prejudice attempts to promote valuable social reforms, which has been suggested as a reason for dispensing with it, but because in our judgment legislation of this kind is above all other such as ought to be introduced on the responsibility of Indian Ministers. We have given our reasons elsewhere for holding that matters of social reform which may touch, directly or indirectly, Indian religious beliefs can best be undertaken with prospect of success by Indian Ministers themselves; and, that being so, we think it undesirable that their responsibility in this most important field should be shared with a Governor. It has been represented to us that the removal of the safeguard of the Governor's previous sanction may operate to the disadvantage of small minorities such as the Indian Christians who would not be in a position to make effective their objections to legislation which they regarded as prejudicial. But we do not think that the recommendation we have just made is, in fact, open to this criticism. The Governor could always prevent the introduction or secure the withdrawal of any legislative proposal by his Ministers which he regarded as inconsistent with the discharge of his special responsibility for the protection of minorities, and he would, in addition, be free, as indicated in the next paragraph, to refuse his assent to any Bill which had been passed by the Legislature if, in his opinion, it were undesirable on any ground that it should become law. It would also be open to him to intimate to the Legislature by

[1] *Infra*, paras. 342 *et seq.*

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Message or otherwise the attitude which he felt bound to take to any proposal under discussion to the extent even of making it clear that he would be unable to accord his assent to the proposal if the Legislature were to pass it. It has further been objected that the mere introduction of legislation affecting religion or religious rites and usages might be dangerous at times of religious or communal disturbance, and might indeed itself produce such disturbance. We observe, however, a Proposal in the White Paper[1] whereby the Governor would be empowered, in any case in which he considers that a Bill introduced or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province, to direct that the Bill, clause or amendment shall not be further proceeded with. We understand that this proposal is, in fact, intended to meet precisely such a situation as that just indicated—namely a situation in which the mere discussion of a question in the Legislature might itself so disturb public opinion as to give rise to disorder. We entirely concur that the Governor should possess such a power, but we think that his Instrument of Instructions should make quite clear the purpose for which it is designed, namely, that it is not primarily intended as a safeguard against the passing into law of a measure which the Governor considered dangerous to peace and tranquillity. For this purpose the safeguard is the power of withholding assent.

Acts of Parliament extending to India.

142. We had also thought at first that a Provincial Legislature ought not to be empowered (as they are not empowered at present) to pass a law which repeals or is repugnant to an Act of Parliament extending to British India, even though the prior consent of the Governor-General to its introduction in the Legislature might be required. We understand, however, that the great bulk of the existing law of India is the work of Indian legislative bodies and that there are, in fact, very few Acts of Parliament (apart from those relating to subjects on which it is proposed that the Legislatures shall have no power to legislate at all) which form part of the Indian statute book, and fewer still dealing with matters which will fall within the Provincial sphere. In these circumstances we think that the proposal should stand ; but the Governor's Instrument of Instructions should direct him to reserve Bills which appear to him to fall within this category.

Governor's assent to Bills.

143. The proposals with regard to the Governor's assent to Bills are in standard constitutional form.[2] They provide that the Governor may at his discretion either assent to a Bill, or refuse his assent, or may reserve the Bill for the consideration of the Governor-General, who may in his turn either assent or withhold his assent or reserve the Bill for the signification of His Majesty's pleasure ; we regard this discretionary power as a real one to be used whenever necessary. We note a proposal whereby the Governor would be empowered to return a Bill to the Legislature for reconsideration in whole or in part, together with such amendment, if any, as he may

[1] White Paper, Proposal 94.
[2] White Paper, Proposal 88.

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recommend. A provision of this kind (which has Dominion as well as Indian precedent in its favour) may, we think, prove extremely useful for the purpose of avoiding or mitigating a conflict between the Governor, or perhaps the Governor and his Ministers, and the Legislature, and will afford opportunities for compromise which would not otherwise be available.

Excluded Areas.

144. It is proposed that the powers of a Provincial Legislature shall not extend to any part of the Province which is declared to be an "Excluded Area" or a "Partially Excluded Area." In relation to the former, the Governor will himself direct and control the administration; in the case of the latter he is declared to have a special responsibility. In neither case will any Act of the Provincial Legislature apply to the Area, unless by direction of the Governor given at his discretion, with any exceptions or modifications which he may think fit. The Governor will also be empowered at his discretion to make regulations having the force of law for the peace and good government of any Excluded or Partially Excluded Area, but subject in this case to the prior consent of the Governor-General. We have already expressed our approval of the principle of Excluded Areas, and we accept the above proposals as both necessary and reasonable,[1] so far as the Excluded Areas proper are concerned. We think, however, that a distinction might well be drawn in this respect between Excluded Areas and Partially Excluded Areas, and that the application of Acts to, or the framing of Regulations for, Partially Excluded Areas is an executive act which might appropriately be performed by the Governor on the advice of his Ministers, the decisions taken in each case being, of course, subject to the Governor's special responsibility for Partially Excluded Areas, that is to say, being subject to his right to differ from the proposals of his Ministers if he thinks fit.

Procedure in the Legislatures

Ordinary procedure.

145. We approve the proposals in the White Paper that the power to summon and appoint places for the meeting of the Provincial Legislature, and the power of prorogation and dissolution, shall be vested in the Governor at his discretion. It is rightly proposed that the Provincial Legislature itself shall have ample power to regulate its own procedure and business; but we note with approval that the Governor is to be empowered at his discretion, after consultation with the presiding officer of the Legislature, to make rules regulating procedure and the conduct of business in relation to matters arising out of, or affecting, any of his special responsibilities, and that any rules made by him for this purpose will prevail over any rule made by the Legislature itself which may conflict or be inconsistent with them.[2]

Financial procedure.

146. The proposals with regard to financial procedure seem to us generally to be well considered. They are based upon the principle, which must always be the foundation of any sound system of public

[1] White Paper, Proposal 108.
[2] White Paper, Proposal 102.

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finance, that no proposal for the imposition of taxation or for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon those revenues, can be made without the recommendation of the Governor ; that is to say, it can only be made on the responsibility of the Executive.[1] We understand that, apart from this, legislative procedure in matters of finance differs in India from that which exists in the United Kingdom. There is, for example, no annual Appropriation Act in India, the proposals for the appropriation of revenue which require a vote of the Legislature being submitted to the Legislature in the form only of Demands for Grants, and a resolution of the Legislature approving a Demand is sufficient legal warrant for the appropriation. No substantial alteration in this system is suggested in the White Paper, and, though we have given some consideration to the matter, we are satisfied that no good reason has been shown for modifying in the new Constitution Act a system with which Indians are familiar and which appears to have worked sufficiently well in practice. We assume, of course, that, as at present, the Governments in India will, within limits, continue to possess powers of " virement " or reappropriation.

Annual proposals for appropriation of revenue.

147. The proposals for the annual appropriation of revenue will, according to the White Paper, be grouped in three categories[2] : (1) those which will not be submitted to the vote of the Legislature, though (with one exception) they will be open to discussion ; (2) those which will be so submitted ; and (3) proposals, if any, which the Governor may regard as necessary for the fulfilment of any of his special responsibilities. The importance of those which fall into the first category makes it desirable that we should set them out in full, and they are as follows :—

(i) Interest, Sinking Fund Charges and other expenditure relating to the raising, service, and management of loans ; expenditure fixed by or under the Constitution Act ; expenditure required to satisfy a decree of any Court or an arbitral award ;

(ii) The salary and allowances of the Governor (these will not be open to discussion) ; of Ministers ; and of the Governor's personal or secretarial staff ;

(iii) The salaries and pensions, including pensions payable to their dependants, of Judges of the High Court or Chief Court or Judicial Commissioners ; and expenditure certified by the Governor, after consultation with his Ministers, as required for the expenses of those Courts ;

(iv) Expenditure debitable to Provincial revenues required for the discharge of the duties imposed by the Constitution Act on the Secretary of State ;

(v) The salaries and pensions payable to, or to the dependents of, certain members of the Public Services and certain other sums payable to such persons.

[1] White Paper, Proposal 95.
[2] White Paper, Proposals 95–100.

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Non-votable heads of expenditure.

148. It will be observed that most of these Heads of Expenditure are identical with, or analogous to, payments which would in the United Kingdom be described as Consolidated Fund charges and as such would not be voted annually by Parliament. The two principal exceptions are the salaries of Ministers and the salaries and pensions payable to certain members of the Public Services or to their dependants. We think the inclusion of Ministers' salaries is justified. The convention in this country whereby a motion for a nominal reduction in the salary of a Minister has become a convenient method of criticizing a Department or ventilating grievances appears not to have established itself in India. On the contrary, Legislatures have been known to mis-use their powers in such a way as to deprive Ministers of the whole of their salaries, and have thus rendered it impossible for the Governor to have, not only the Ministry of his choice, but any Ministry at all, a notable example of the way in which the exercise of its powers by a Legislature may by constitutional usage be made to serve a valuable purpose in one country and yet prove wholly destructive in another. We therefore approve the proposal in the White Paper, and we are of opinion that ample, and no less convenient, opportunities for criticizing the Executive will still remain. The non-votable character of salaries and pensions payable to members of the Public Services raises questions of a different kind, which we propose to consider later.[1] The separate specification of the proposals regarded by the Governor as necessary for the fulfilment of his special responsibilities calls for no comment. In one respect, however, we think the list is defective. The administration of Excluded Areas is a matter which will be the exclusive responsibility of the Governor and, following the analogy of the Governor-General's reserved departments, we think that the expenditure required for these areas, whether derived from Provincial or Central revenues, should not be subject to the vote of the Provincial Legislature.

System of Demands for Grants.

149. All proposals for appropriation, other than those relating to the heads of expenditure enumerated above, will be submitted to the Legislature in the form of Demands for Grants, and the Legislature will have the right to assent to, or reduce, or to refuse assent to, any Demand including those which the Governor has proposed as necessary for the fulfilment of his special responsibilities. Except in the latter case (the Governor being empowered to restore any such Grants, if he thinks it desirable to do so), the decision of the Legislature is final ; and it is this power in the matter of supply which will give the Legislature its real control over the Executive. We have already discussed the difficulties which may arise if that power is factiously or irresponsibly exercised, and it is not necessary to repeat what we then said. It has been objected that the Heads of Expenditure which will not be subject to the vote of, but only open to discussion by, the Legislature are so extensive as materially

[1] *Infra*, paras. 274 *et seq.*

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to diminish the field of responsible government in the Province. We are satisfied that there is little, if any, substance in this objection. Most of the Heads of Expenditure, as we have pointed out, would not, even in the United Kingdom, be the subject of an annual vote by Parliament; and the inclusion of those which do not fall within that category is for reasons which we have given elsewhere clearly justified as a matter of reasonable precaution, if responsible government itself is to be a reality in the future.

Powers of Legislative Councils and conflicts between the two Chambers.

150. It is proposed that, in those Provinces where the Legislature is bicameral, Money Bills shall be initiated in, and Demands for Grants submitted to, the Legislative Assembly alone.[1] We think that this is right, and that, both in respect of financial powers and generally, the Legislative Council should not be regarded in any sense as a body having equal powers with the Legislative Assembly, but rather a body with powers of revision and delay, for the purpose of exercising a check upon hasty and ill-considered legislation. Nevertheless, the possibility of a conflict between the two Chambers cannot be disregarded. The method proposed by the White Paper for resolving such a conflict is to give the Governor the power, after a lapse of three months to summon the two Chambers to meet in a Joint Session for the purpose of reaching a decision on any legislation which has been passed by one Chamber but rejected by the other, the Bill being taken to have been duly passed by both Chambers if approved by a majority of the members voting at the Joint Session. We do not think that this is a satisfactory solution. The period of three months is too short, and would make the powers of the Legislative Council derisory; it ought in our opinion to be one of twelve months at least. It may be urged that the sessions of the Provincial Legislatures will be comparatively short and that it is never likely in practice that the period of delay will be only three months; but we regard the difference as one of principle. The case of a Bill on which, in the Governor's opinion, a decision cannot, consistently with the fulfilment of his special responsibilities or with the necessary financing of the Provincial Administration, be deferred is on a different footing; and we agree that in this case the Governor must himself be empowered to summon forthwith a Joint Session. It seems to us also that, in view of the relative powers of the two Chambers, a Bill introduced in the Legislative Council but rejected by the Legislative Assembly should lapse, and that the machinery of a Joint Session should be confined to the converse case, and should be put in motion only if the Legislative Assembly so desires. There should be no possibility of further amendment in the Joint Session, save for amendments relevant to the points of difference which have arisen between the two Chambers, and the decision of the Presiding Officer, who will presumably be the President of the Upper Chamber, on the admissibility of any amendment should be final and conclusive.

[1] White Paper, Proposal 91.

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APPENDIX (I)

Composition of Provincial Legislative Councils

		Bengal.	*Bihar.*	*Bombay.*	*Madras.*	*United Provinces.*
Nominated by the Governor in his discretion :—						
Not less than		6	3	3	8	6
Not more than		8	4	4	10	8
General	Directly elected.	10	9	20	35	34
Muhammadan ..	Directly elected.	17	4	5	7	17
European	Directly elected.	3	1	1	1	1
Indian Christians ..	Directly elected.	—	—	—	3	—
Elected by the method of the single transferable vote by members of the Provincial Lower House		27	12	—	—	—
Total—						
Not less than		63	29	29	54	58
Not more than		65	30	30	56	60

The members directly elected will be elected from communal constituencies.

The franchise will be based on high property qualifications, or a qualification based on service in certain distinguished public offices, as is proposed in Appendix V, Part II, of the White Paper.

The qualifications above indicated will also apply to candidates, but special provisions may be necessary in the case of women and the Depressed Classes.

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SECTION III

THE FEDERATION

Federation and the Crown

Federal Union of States and Provinces.

151. We pass next to the proposal in the White Paper to create a new polity in which both the British India Provinces and the Indian States will be federally united. We have already given our reasons for approving this proposal in principle and have pointed out that it involves two distinct operations, the one a necessary consequence of the grant of Provincial Autonomy to British India, the other the establishment of a new relationship between British India and the Indian States. It only remains for us to consider the method by which each of these two operations is to be carried out.

Existing distribution of authority in British India.

152. The dominion and authority of the Crown extends over the whole of British India and is exercised subject to the conditions prescribed by the existing Government of India Act. It is derived from many sources, in part statutory and in part prerogative, the former having their origin in Acts of Parliament, and the latter in rights based upon conquest, cession or usage, some of which have been directly acquired, while others are enjoyed by the Crown as successor to the rights of the East India Company. The Secretary of State is the Crown's responsible agent for the exercise of all authority vested in the Crown in relation to the affairs of India, and for the exercise also of certain authority which he derives directly from powers formerly vested in the Court of Directors and the Court of Proprietors of the East India Company, whether with or without the sanction of the body once known as the Board of Control. The superintendence, direction and control of the civil and military Government of India is declared by the Government of India Act to be vested in the Governor-General in Council, and the government or administration of the Governors' and Chief Commissioners' Provinces respectively in the local governments; but powers of superintendence, direction and control over " all acts, operations and concerns which relate to the government or revenues of India " are, subject to substantial relaxation in the transferred provincial field, expressly reserved to the Secretary of State; and whether the Governor-General in Council exercises (though no doubt under the general control of the Secretary of State) original powers of his own, or is only the agent and mouthpiece of the Secretary of State, remains perhaps an open question. It is one which has been the subject of dispute in the past between Secretaries of State and the Governor-General; but the spheres of their respective jurisdictions are now well recognised, and the Secretary of State, though maintaining his powers of control, does not in practice exercise any powers of direct administration, a result to which the increasing authority of the Indian Legislature has no doubt materially contributed.

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Legal basis of new Federal Constitution.

153. It is clear that, in any new Constitution in which autonomous Provinces are to be federally united under the Crown, not only can the Provinces no longer derive their powers and authority from devolution by the Central Government, but the Central Government cannot continue to be an agent of the Secretary of State. Both must derive their powers and authority from a direct grant by the Crown. We apprehend, therefore, that the legal basis of a reconstituted Government of India must be, first, the resumption into the hands of the Crown of all rights, authority and jurisdiction in and over the territories of British India, whether they are at present vested in the Secretary of State, the Governor-General in Council, or in the Provincial Governments and Administrations; and second, their redistribution in such manner as the Act may prescribe between the Central Government on the one hand and the Provinces on the other. A Federation of which the British Indian Provinces are the constituent units will thereby be brought into existence.

Accession of States to Federation a voluntary act.

154. The rights, authority and jurisdiction which will thus be conferred by the Crown on the new Central Government will not extend to any Indian State.[1] It follows that the accession of an Indian State to the Federation cannot take place otherwise than by the voluntary act of its Ruler. The Constitution Act cannot itself make any Indian State a member of the Federation; it will only prescribe a method whereby the State may accede and the legal consequences which will flow from the accession. There can be no question of compulsion so far as the States are concerned. Their Rulers can enter or stand aside from the Federation as they think fit. They have announced their willingness to consider federation with the Provinces of British India on certain terms; but, whereas the powers of the new Central Government in relation to the Provinces will cover a wide field and will be identical in the case of each Province, the Princes have intimated that they are not prepared to agree to the exercise by a Federal Government for the purpose of the Federation of an identical range of powers in relation to themselves.

Rulers' Instruments of Accession.

155. It is proposed that the Ruler of a State shall signify to the Crown his willingness to accede to the Federation by executing an Instrument of Accession[2]; and this Instrument (whatever form it may take) will, we assume, enable the powers and jurisdiction of the Ruler, in respect of those matters which he has agreed to recognise as Federal subjects, to be exercised by the Federal authorities brought into existence by the Constitution Act; that is to say, the Governor-General, the Federal Legislature, and the Federal Court, but strictly within the limits defined by the Instrument of Accession. Outside

[1] The relations between the Crown as Paramount Power and the States are the subject of treaties and engagements of various kinds. For details *see* Aitchison's "Treaties, Engagements and Sanads, 1929," published by the Government of India.

[2] White Paper, Proposals 2–3.

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these limits the autonomy of the States and their relations with the Crown will not be affected in any way by the Constitution Act. The list of exclusively federal subjects is set out in List I of Appendix VI to the White Paper, to which we have already drawn attention, and we understand the hope of His Majesty's Government to be that Rulers who accede will in general be willing to accept items 1 to 48 of List I as federal subjects. We have indicated our view that the Lists in Appendix VI require some modification, a matter with which we deal hereafter; and, therefore, though we speak of items 1 to 48, we do not wish to be understood as necessarily implying that we accept all these items as appropriately falling within the federal sphere, so far as regards the Indian States, or that we think that the definition of some of them is not susceptible of improvement. Subject to this, it is convenient to consider the questions which arise in connection with the Instrument of Accession on the basis of the White Paper proposal, with the explanations which have been given to us on behalf of His Majesty's Government.

Instruments should, so far as possible, follow a standard form.

156. It would, we think, be very desirable that the Instruments of Accession should in all cases be in the same form, though we recognise that the list of subjects accepted by the Ruler as Federal may not be identical in the case of every State. Questions may arise hereafter whether the Federal Government or the Federal Legislature were competent in relation to a particular State to do certain things or to make certain laws, and the Federal Court may be called upon to pronounce upon them; and it would in our opinion be very unfortunate if the Court found itself compelled in any case to base its decision upon some expression or phraseology peculiar to the Instrument under review and not found in other Instruments. Next, we think that the lists of subjects accepted as Federal by Rulers willing to accede to the Federation ought to differ from one another as little as possible, and that a Ruler who desires in his own case to except, or to reserve, subjects which appear in what we may perhaps describe as the standard list of Federal subjects in relation to the States, ought to be invited to justify the exception or reservation before his accession is accepted by the Crown. We do not doubt that there are States which will be able to make out a good case for the exception or reservation of certain subjects, some by reason of existing treaty rights, others because they have long enjoyed special privileges (as for example in connection with postal arrangements, and even currency or coinage) in matters which will henceforward be the concern of the Federation; but in our judgment it is important that deviations from the standard list should be regarded in all cases as exceptional and not be admitted as of course. We do not need to say that the accession of all States to the Federation will be welcome; but there can be no obligation on the Crown to accept an accession, where the exceptions or reservations sought to be made by the Ruler are such as to make the accession illusory or merely colourable.

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Accession of sufficient number of States a condition precedent to Federation.

157. We regard the States as an essential element in an All-India Federation; but a Federation which comprised the Provinces and only an insignificant number of the States would scarcely be deserving of the name. This is recognised in the White Paper, where it is proposed that the Federation shall be brought into existence by the issue of a Proclamation by His Majesty, but that no such Proclamation shall be issued until the Rulers of States representing not less than half the aggregate population of the States, and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber, have signified to His Majesty their desire to accede to the Federation.[1] We accept the principle of this proposal. We observe also that it is proposed that both Houses of Parliament should first present an Address to His Majesty praying that the Proclamation may be issued. We approve this proposal, because Parliament has a right to satisfy itself not only that the prescribed number of States have in fact signified their desire to accede, but also that the financial, economic and political conditions necessary for the successful establishment of the Federation upon a sound and stable basis, have been fulfilled. This is a matter which we discuss more fully in a subsequent part of our Report, and it is unnecessary to do more than allude to it here.[2] We note also in passing that the establishment of Autonomy in the Provinces is likely to precede the establishment of the Federation; but in our judgment it is desirable, if not essential, that the same Act should lay down a Constitution for both, in order to make clear the full intention of Parliament.

Differentiation of functions of Governor-General and Viceroy.

158. We have spoken above of the rights, authority and jurisdiction of the Crown in and over the territories of British India. But the Crown also possesses rights, authority and jurisdiction elsewhere in India, including those rights which are comprehended under the name of paramountcy. All these are at present exercised on behalf of the Crown, under the general control of the Secretary of State, by the Governor-General in Council; and it will be necessary that they should also be resumed in their entirety into the hands of the Crown. But clearly they cannot under the new Constitution be exercised on behalf of the Crown by any federal authority, save in so far as they fall within the federal sphere, and only then when they affect a State which has acceded to the Federation. The White Paper proposes that (subject to the exception which we have mentioned) they should in future be exercised by the representative of the Crown in his capacity as Viceroy; and that, in order to put the distinction beyond doubt, the office of Governor-General should be severed from that of Viceroy.[3] We agree with what we conceive to be the principle underlying this proposal, but we are not clear that the method employed to give effect to it is entirely appropriate. We agree that there must

[1] White Paper, Proposal 4.
[2] *Infra*, para. 273.
[3] White Paper, Introd., para. 10.

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be a legal differentiation of functions in the future; and it may well be that His Majesty will be pleased to constitute two separate offices for this purpose. But we assume that the two offices will continue to be held by the same person, and, this being so, we think that the title of Viceroy should attach to him in his double capacity. This suggestion involves no departure from the underlying principle of the White Paper that, outside the federal sphere, the States' relations will be exclusively with the Crown and that the right to tender advice to the Crown in this regard will lie with His Majesty's Government.

The Area of Federal Jurisdiction

Area of Federation.

159. The area of federal jurisdiction will extend in the first instance to the whole of British India, which comprises at the present time the Governors' Provinces and the Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands, and Aden.[1] We give below our reasons for holding that Aden should henceforth cease to be part of British India. As regards the States which have acceded to the Federation, the federal jurisdiction will extend to them only in respect of those matters which the Ruler of the State has agreed in his Instrument of Accession to accept as federal.

Aden.

160. The Settlement of Aden, which comprises the town of Aden itself and certain immediately adjacent districts, is at present administered by the Government of India as a Chief Commissioner's Province. Responsibility for the hinterland of Aden, which is commonly known as the Aden Protectorate and which is not British territory, has since 1917 rested with His Majesty's Government, who have also since the same date been responsible for the military and political affairs of the Settlement. Under arrangements reached in 1926, an annual contribution, subject to a maximum of £150,000, but which amounts at the moment only to some £120,000, is made from Indian revenues to military and political expenditure on the Settlement and the Protectorate. The population of the Settlement is predominantly Arab, the Indian population, which is however of great commercial importance, numbering only about one seventh of the whole.

Effect of constitutional proposals.

161. Proposals for Indian constitutional reform inevitably necessitated consideration of the future position of Aden, and in particular of the question whether the Settlement could satisfactorily be included in the new arrangements, or whether it would not be preferable to transfer responsibility for its civil administration to His Majesty's Government, in whom military and political responsibility for the Settlement and complete responsibility for the affairs of the hinterland already vest. We have received strong representations against any alteration in the status of Aden from important

[1] White Paper, Proposals 5, 56–60.

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and influential Indian interests. On the other hand we have received representations in favour of transfer from the Arab population who appear to view with some apprehension the possibility that Aden may permanently remain a part of British India.

Its separation from British India recommended.

162. We recognise the natural reluctance of Indian opinion to sever a connection of almost a century's standing with an area the development of which is largely due to Indian enterprise and where much Indian capital is engaged. But great importance must also be attached to the interests and the feelings of the Arab majority of the population of the Settlement. We are impressed, apart from this, by the geographical remoteness of Aden from India; by the difficulties of merging it satisfactorily in a new Indian Federation; by the impracticability of a complete divorce between the civil administration of the Settlement on the one hand and political and military control of the Settlement and Protectorate on the other; and by the anomaly of including in such new constitutional arrangements as may be approved for India an area predominantly Arab in population, already to some extent under Imperial control, and in practice inseparable from the Aden Protectorate for which India has ceased to be in any way responsible. The constitutionally anomalous position which would arise in regard to Defence, if the present arrangements were allowed to continue under the new Constitution, would be particularly marked. We appreciate, moreover, the force in the argument that it is desirable on general grounds, given the importance of Aden from a strategic standpoint to the Empire in the East as a whole, and not merely to any individual unit, that its control should vest in the Home Government. After full consideration we are of opinion that the administration of the Settlement of Aden should be transferred from the Government of India to His Majesty's Government not later than the date of the establishment of Federation. In reaching this conclusion we have not ignored the apprehensions expressed by Indian interests connected with Aden as to the possible prejudicial effect of a transfer upon their position. We have, however, ascertained that His Majesty's Government are prepared in the event of transfer, not merely to relieve India of her annual financial contribution, but to preserve a right of appeal in judicial cases to the Bombay High Court; to maintain (in the absence of any radical change in present economic circumstances) the existing policy of making Aden a free port; to do their utmost to keep the administration at its present standard; and to impose no additional taxation unless in their opinion such a course is absolutely necessary. They are further prepared to agree that a proportion of Indian Service personnel shall be retained for some years after the date of transfer; that no racial discrimination shall be permitted; and that British-India subjects shall be allowed to enter the Protectorate under precisely the same conditions as any other British subjects. These assurances ought, in our view, adequately to meet the apprehensions to which we have referred above.

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SECTION IV
THE FEDERAL CENTRE

Nature of the Federal Government.

163. We come now to the proposals in the White Paper which relate to the Federal Government and Legislature.[1] We have already given our reasons for accepting, in principle, the proposal of the White Paper that the Federal Government should be in some measure responsible to the Federal Legislature, but that this responsibility should not extend to all federal subjects. This being accepted, much that we have said in connection with the Provinces applies equally to the Centre, but there are special problems connected with the latter for which there neither is nor can be any provincial counterpart. The Federal Government will be the main point of contact between the Provinces and the Indian States which accede to the Federation; it will be the connecting link between all the constituent units as such; and there must exist at the Centre a residuary and ultimate responsibility for the peace and tranquillity of the whole of India. The authority and functions of the Governor-General as the representative of the Crown assume in all these spheres a particular importance, especially in relation to defence and external affairs; and in connection with the latter subjects certain problems associated with a dyarchical system have to be examined. We propose to consider, first, the Federal Executive and the Federal Legislature and the relations between the two; and, secondly, the relations between the Federation and its constituent units, that is, the Provinces and those Indian States which have become members of the Federation.

(1) The Federal Executive

The present Executive in India

164. The present executive authority in India, both in civil and in military matters, is the Governor-General in Council. The members of the Governor-General's Executive Council, of whom not less than three must be persons who have been for at least ten years in the service of the Crown in India, are appointed by the Crown, and their appointments are in practice for a term of five years, though there is no statutory limit. The Commander-in-Chief is ordinarily, though not necessarily, a member of the Council, and in that case has rank and precedence next after the Governor-General himself. The present Council consists of six members (of whom three are Indians), in addition to the Governor-General and the Commander-in-Chief. The Governor-General presides at meetings of his Council, and the decision of the majority of those present prevails, though the Governor-General has a casting vote in the event of an equality of votes, and may, if any measure is proposed which in his judgment affects the safety, tranquillity or interests of British India, or any part thereof, over-rule the Council. The three members of the Council who are required to have been in the service of the Crown in India are almost invariably selected from the Indian Civil Service; the post of Law

[1] White Paper Proposals 6–55.

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Member has for some years past been filled by an Indian lawyer, and that of Finance Member by a person with financial experience from the United Kingdom. An official is not qualified for election as a member of either Chamber of the Central Legislature, and if any non-official member of either Chamber accepts office under the Crown in India his seat is vacated; but every member of the Governor-General's Council becomes an ex-officio member of one of the Chambers and has the right of attending and addressing the other, though he cannot be a member of both. The Executive Government is not responsible to the Indian Legislature, but only to the Secretary of State and thus to Parliament; and the Governor-General in Council, if satisfied that any Demand for supply which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, can act as if it had been assented to, notwithstanding the refusal of the Demand or any reduction in its amount by the Legislative Assembly. The Governor-General himself has also power in case of emergency to authorise such expenditure as may in his opinion be necessary for the safety or tranquillity of British India, or any part thereof. These provisions secure the complete independence of the Executive, though the Legislature can and does exercise an influence upon policy in a marked and increasing degree.

Executive power and authority of Federation to be vested in Governor-General.

165. The White Paper proposes that, as in the case of the Governor in a Province, the executive power and authority of the Federation shall vest in the Governor-General as the representative of the King.[1] This power and authority will be derived from the Constitution Act itself, but the Governor-General will also exercise such prerogative powers of the Crown (not being powers inconsistent with the Act) as His Majesty may be pleased to delegate to him. The former is to include the supreme command of the military, naval and air forces in India, but it is proposed that power should be reserved to His Majesty to appoint a Commander-in-Chief to exercise in relation to those forces such powers and functions as may be assigned to him. In relation to a State which is a member of the Federation the executive authority will only extend to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession. It is then proposed that there shall be a Council of Ministers,[2] chosen and summoned by the Governor-General and holding office during his pleasure, to aid and advise him in the exercise of the powers conferred on him by the Constitution Act other than his powers relating to (1) defence, external affairs[3] and ecclesiastical affairs, (2) the administration of British Baluchistan,

[1] White Paper, Proposal 6.

[2] White Paper, Proposal 13.

[3] This term does not, of course, include relations with the Indian States in matters in which they have not agreed to federate; such matters will be dealt with personally by the Viceroy as representative of the Crown. It follows from this that any State matter which a Ruler has not accepted as Federal in the case of his State will not be subject to discussion in the Federal, or a Provincial, Legislature, unless the Governor-General, or the Governor, considers that British India interests are affected.

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and (3) matters left by the Act to the Governor-General's discretion.[1] In respect of certain specified matters the Governor-General, like the Governor of a Province, is declared to have a "special responsibility"; and his Instrument of Instructions will direct him to be guided by the advice of his Ministers in the sphere in which they have the constitutional right to tender it, unless in his opinion one of his special responsibilities is involved, in which case he will be at liberty to act in such manner as he judges requisite for the fulfilment of that special responsibility, even though this may be contrary to the advice which his Ministers have tendered.[2] It is hardly necessary to add that Ministers will not be concerned with the appointment of the Governor-General himself.

Introduction of responsible government.

166. It will be seen that the White Paper proposals are the same *mutatis mutandis* for the Federal, as they are for the Provincial, Executive. It is not therefore necessary for us to repeat what we have already said on the subject, and especially on the importance which will attach to the Governor-General's Instrument of Instructions. The Instrument will direct him to appoint as his Ministers those persons who will best be in a position collectively to command the confidence of the Legislature;[3] and this direction, taken in conjunction with the proposals which we have set out, is, as we have said elsewhere, the correct constitutional method of bringing into existence a system of responsible government. We observe that Ministers are to advise the Governor-General in the exercise of the powers conferred on him by the Constitution Act (other than powers relating to the subjects which we have mentioned above); and we assume therefore that they will not be entitled to advise him in the exercise of any prerogative powers of the Crown which may be delegated to him, presumably in the Letters Patent constituting the office. We are of opinion that this is a proper distinction to draw; and that Ministers should not, for example, have the right to advise on the exercise of such a prerogative of His Majesty as the grant of honours, if His Majesty should be pleased to delegate a limited power for that purpose. There is no interference here with the principle of responsible government, for it is not proposed that His Majesty should be empowered to delegate any powers which are inconsistent with the Act.

Special questions in connection with the Federal Executive.

167. We pass to a consideration of some special questions which arise in connection with the Federal Executive, and they may conveniently be discussed under the following heads:—

(i) The nature of the Governor-General's special responsibilities;

(ii) the Reserved Departments;

(iii) the Governor-General and the Federal Administration;

(iv) the Governor-General's Special Powers.

[1] White Paper, Proposals 5, 11 and 13.
[2] White Paper, Proposal 21.
[3] White Paper, Proposal 14.

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(i) *Nature of the Governor-General's Special Responsibilities*

The Governor-General's "special responsibilities."

168. The White Paper defines the matters in respect of which the Governor-General is declared to have a special responsibility in the following terms:—(*a*) the prevention of any grave menace to the peace or tranquillity of India, or any part thereof; (*b*) the safeguarding of the financial stability and credit of the Federation; (*c*) the safeguarding of the legitimate interests of minorities; (*d*) the securing to the members of Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests; (*e*) the prevention of commercial discrimination; (*f*) the protection of the rights of any Indian State; (*g*) any matter which affects the administration of any department under the direction and control of the Governor-General.

Responsibility for peace and tranquillity of India.

169. All that we have said on (*a*) in relation to the Governor of a Province applies with equal, if not greater, force in the case of the Governor-General, and we have little to add to it. The Governor-General, as the authority in whom the exclusive responsibility for the defence of India is vested, must necessarily be free to act, according to his own judgment, where the peace or tranquillity of India, or any part of India, is threatened, even if he finds himself thereby compelled to dissent from the advice tendered to him by his Ministers within their own sphere.

Responsibility for safeguarding financial stability and credit of the Federation.

170. Federal Ministers will under the White Paper proposals become responsible for finance; but (to quote the Second Report of the Federal Structure Committee of 13th January, 1931) it is recognised to be "a fundamental condition of the success of the new Constitution that no room should be left for doubts as to the ability of India to maintain her financial stability and credit, both at home and abroad," and that it is therefore necessary "to reserve to the Governor-General in regard to budgetary arrangements and borrowing such essential powers as would enable him to intervene if methods were being pursued which would in his opinion seriously prejudice the credit of India in the money markets of the world". To this we might add that the grave responsibilities which attach to the Governor-General in the matter of defence afford a further and no less cogent reason. In our opinion, though the expression "budgetary arrangements and borrowing" indicates generally the sphere in which it is desirable that the Governor-General should have power, if necessary, to act, it would be unwise to attempt to define this special responsibility in more precise terms than are proposed in the White Paper. Any further directions for the guidance of the Governor-General would find a more appropriate place in his Instrument of Instructions, as indeed the Joint Memorandum of the British-India Delegation suggests. The White Paper also proposes, rightly in our opinion, that the Governor-General should be empowered in his discretion, but after consultation with his Ministers, to appoint a Financial

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Adviser to assist him in the discharge of this special responsibility.[1] The British-India Delegation concur, provided it is made clear that the Financial Adviser is not intended to interfere in the day to day administration of financial business; and they suggest indeed that it would be an advantage if he were designated the Adviser to the Ministry as a whole as well as to the Governor-General. We think that he must be regarded technically as the Governor-General's adviser, but his advice ought to be available to Ministers and we hope that they will freely consult him. We have no doubt that the Governor-General will always endeavour to secure the appointment of a person acceptable to his Ministers; for since we may assume that he will be a person selected not only by reason of his financial qualifications but also for his tact and commonsense, the value of his services would in our judgment be no less diminished if he held himself aloof from Ministers than if he sought to interfere in matters outside his proper functions. We think that such an adviser, if the right selection is made, may prove of the greatest assistance both to the Governor-General and to Ministers, and that the more successful he is in the performance of the duties attaching to his office, the less likelihood will there be of the necessity arising for the exercise by the Governor-General of his special power in the financial field.

Responsibility for protecting the rights of Indian States.

171. We have nothing to add to what we have already said with regard to the special responsibilities specified under (*c*), (*d*) and (*e*). As regards (*f*), "the protection of the rights of any Indian State," we have already expressed the view that this special responsibility only applies where there is a conflict between rights arising under the Constitution Act and those enjoyed by a State outside the Federal sphere. It may be necessary for the Governor-General to deal with such a conflict not only in his capacity as the executive head of the Federation but also in his capacity as the representative of the Crown in its relations with the States; but his special responsibility must necessarily arise in the first capacity only, his action in the second capacity being untouched in any way by the Constitution Act. The responsibility specified in (*g*) calls for no comment, since it is plain that the Governor-General must be free to exercise his own judgment in any matter which affects the administration of any of the reserved departments, even though it arises primarily within the ministerial sphere.

(ii) *The Reserved Departments*

The Reserved Departments and the Governor-General's Counsellors.

172. The White Paper proposes that the Governor-General shall himself direct and control the administration of the Departments of Defence, External Affairs and Ecclesiastical Affairs;[2] these

[1] White Paper, Proposal 17.

[2] White Paper, Proposal 11. It is also proposed that the Governor-General shall himself direct and control the administration of British Baluchistan (White Paper, Proposal 5); but there will not be a Reserved Department of British Baluchistan, which will be a Chief Commissioner's Province and will be in no different position from other Chief Commissioners' Provinces, except that Ministers will not advise the Governor-General in relation to its administration.

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matters will therefore remain outside the ministerial sphere, and the Governor-General's responsibility with respect to them will be to the Secretary of State and thus ultimately to Parliament. The Governor-General could not, it is plain, undertake in person so great an administrative burden, and it is therefore proposed that he should be assisted by not more than three Counsellors who will be appointed by him and whose salaries and conditions of service will be prescribed by Order in Council.[1] Since also it is necessary that the Governor-General should have a spokesman in the Legislature on matters connected with the Reserved Departments, each Counsellor will be ex-officio an additional member of both Chambers of the Legislature for all purposes, though without the right to vote; and we think that there should be no restriction on his right to take part in any of the debates in the Legislature if he desires to do so.

Defence

The Statutory Commission on the Army in India.

173. The Department of Defence is a cardinal Department, for it is responsible for the defence of India in all its aspects, whether concerned with internal security or with protection from foreign invasion. The sober and impressive chapter on the Army in India which forms part of the Statutory Commission's survey makes it unnecessary for us to discuss in any detail the difficulties and complexities of this vital subject in its relation to India, and we do not desire either to add to or qualify their presentation of the problem.[2] Their investigation led them indeed to a conclusion which differs, in its constitutional aspect, from our own, but on the facts of the matter we find ourselves in complete agreement with them.

The Commission's recommendation.

174. The Commission, convinced that dyarchy in the Central Government was wholly inadmissible, inquired whether any other plan was feasible which would provide adequately for the needs of Indian defence and offer at the same time an earlier prospect for further constitutional advance; and they suggested as the only possible answer that the protection of the Indian frontiers should not, at any rate for a long time to come, be regarded as a function of an Indian Government in relation with an Indian Legislature, but as a responsibility to be assumed by the Imperial Government.[3] This plan has not, we think, found advocates even among those who would be prepared to assent generally to the recommendations of the Commission; and it seems to us to avoid the difficulties of one kind of dyarchy by creating what is in substance, if not in form, another. We are unwilling, for reasons which we have already given, that the problem of defence should for ever bar the way to any form of responsibility at the Centre, and if this be granted, some form of dyarchy, with all its admitted disadvantages, is, as we have already

[1] White Paper, Proposal 12.
[2] Report, Vol. I, paras. 111–126.
[3] Report, Vol. II, paras. 195–215.

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pointed out, inevitable ; but the form adopted must be such that in the sphere of defence the Governor-General's responsibility will remain undivided and unimpaired and that the Department of Defence will be under his exclusive direction and control. It should be remembered also that it is through this agency that the obligation will be discharged which the Crown has assumed for the protection, whether externally or internally, of the States. Responsible British-India opinion does not deny the necessity for the reservation, though the Joint Memorandum of the British-India Delegation seeks to add certain qualifications, to which we shall refer later ; and we proceed therefore to a consideration of some of the more important questions which it involves.

Relations between Department of Defence and other Departments.

175. No Department of Government can be completely self-contained, and a Department of Defence is no exception to the rule. Its administration does not indeed normally impinge upon the work of other Departments, save in time of war or other grave emergency ; but its policy and plans may be greatly influenced by theirs, and by the knowledge that it is able to rely upon their co-operation at moments of crisis. It is vital, therefore, that where defence policy is concerned the Department should be able to secure that its views prevail in the event of a difference of opinion. The special responsibility which it is proposed that the Governor-General shall have in respect of any matter affecting the administration of the Departments under his direct control will enable him in the last resort to secure that action is not taken in the ministerial sphere which might conflict with defence policy ; and he will also be able to avail himself of the power which the Federal Government will possess to give directions as to the manner in which the executive authority in the Provinces is to be exercised in relation to any matter affecting the administration of a Federal subject, since defence is none the less a Federal subject because reserved. Thus the maintenance of communications, especially on mobilisation, is a vital military necessity, and the Governor-General must have power in case of need to issue directions to the Railway Authority, or to require the Minister in charge of communications to take such action as the Governor-General may deem advisable. In the provincial sphere questions may arise with regard to the control of lands, buildings or equipment maintained or required by the Department, or with regard to such matters as facilities for manœuvres or the efficiency and well-being of defence personnel stationed in provincial areas, or, in times of emergency, with regard to the guarding of railways and bridges, and the like. In frontier areas, and especially in the North West Frontier Province, special measures may have to be taken in certain circumstances to control the movement of persons and goods. In all matters of this kind where there is a difference of opinion with other authorities, the final responsibility for a decision, if defence policy is concerned, must rest with the Governor-General, his views must prevail, and he must have adequate means of giving effect to them.

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Co-operation essential.

176. It may be assumed that, in practice, the willing co-operation of the other Departments of Government will render unnecessary any recourse to these special powers; and we should view with dismay the prospects of any new Constitution, if the relations between the ministerial and the reserved Departments were conducted in an atmosphere of jealousy or antagonism. But though the influence of the Governor-General will no doubt always be exerted to secure co-ordination and harmony, it may well be that some permanent co-ordinating machinery will be desirable. The British-India Joint Memorandum suggests a statutory Committee of Indian Defence constituted on the lines of the Committee of Imperial Defence; but we are not sure that its authors fully appreciate the position and functions of the latter, since it is not a statutory body and its value is perhaps increased by the elasticity of its constitution. We are disposed to think that a body with statutory powers and duties might embarrass the Governor-General and even be tempted to encroach upon his functions. An advisory body, similar to the Committee of Imperial Defence, constituted at the Governor-General's discretion, would not be open to that criticism and might, we think, have many advantages. It has been urged upon us that, in order to build up an informed opinion upon defence questions, a statutory Committee of the Legislature should be established. We understand that, outside the formal opportunities of discussing defence questions on such occasions as the Army Budget, opportunities are already given to members of the Legislature to inform themselves upon Army questions; and, provided that the extent and methods of consultation are clearly understood to rest in the discretion of the Governor-General, we see no objection to the formation of any Committee or Committees that the Federal Government and Legislature may consider useful. We feel, however, that this is essentially a question to be settled by them and not by the Constitution Act.

Suggestions of British-Indian Delegation.

177. The Joint Memorandum observes that, since the Governor-General in Council exercises superintendence, direction and control over the military as well as the civil government in India, the reservation of the Department of Defence to the Governor-General will have the effect of depriving Ministers of the influence over Army policy which at the present time Indian Members of the Governor-General's Council are able to exert. It urges therefore (1) that the Governor-General's Counsellor in charge of the Department of Defence should always be a non-official Indian, and preferably an elected member of the Legislature or a representative of one of the States; (2) that the control now exercised by the Finance Member and the Finance Department should be continued; and (3) that all questions relating to army policy and the annual army budget should be considered by the entire Ministry, including both Ministers and Counsellors; though it is admitted that in cases of difference the decision of the Governor-General must prevail. As to the first point, we do not think that the Governor-General's choice ought to be fettered

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in any way, and he must be free to select the man best fitted in his opinion for the post. As to the second, we understand that the Military Finance and the Military Accounts Departments are at the present time subordinate to the Finance Department of the Government of India, and not to the Army Department. It seems to us a necessary corollary of the reservation of Defence that both of them should be brought under the Department of Defence, since the responsibility for the expenditure which they supervise can only be that of the Governor-General. But the transfer would not preclude an arrangement whereby the Federal Department of Finance is kept in close touch with the work of both these branches and we do not doubt that some such arrangement ought to be made. As to the third point, we observe a proposal in the White Paper that the Governor-General's Instrument of Instructions should direct him to consult the Federal Ministers before the army budget is laid before the Legislature ;[1] and so long as nothing is done to blur the responsibility of the Governor-General it seems to us not only desirable in principle, but inevitable in practice, that the Federal Ministry, and in particular, the Finance Minister, should be brought into consultation before the proposals for Defence expenditure are finally settled.

Employment of Indian troops outside India.

178. In illustration of the principle that the Governor-General should invite the collaboration of the Federal Ministry to the widest extent compatible with the preservation of his own responsibility, we would refer to the question of lending Indian personnel of the Defence forces for service outside India. There have been many occasions on which the Government of India have found themselves able to spare contingents for operations overseas in which considerations of Indian Defence have not been involved ; and we may presume that such occasions will recur. There appears to be some misconception in India on this point, which it would be desirable to remove. It is not the case that, because a Government can in particular circumstances afford a temporary reduction of this kind in its standing forces, the size of those forces is thereby proved to be excessive ; or conversely, that if it is not excessive troops cannot be spared for service elsewhere. These standing forces are in the nature of an insurance against perils which may not always be insistent but which nevertheless must be provided for. There is thus no ground for assuming a *prima facie* objection to the loan of contingents on particular occasions. If on such occasions the Governor-General is asked whether he can lend a contingent, he must decide, first, whether the occasion involves the defence of India in the widest sense, and secondly, whether he can spare the troops having regard to all the circumstances at the time. Both these decisions would fall within the exclusive sphere of his responsibility. If he decided that troops could be spared, the only remaining constitutional issue would be narrowed down to one of broad principle, namely, that Indian leaders as represented in the Federal Ministry should be consulted before their fellow-countrymen were exposed to the risks of operations in

[1] White Paper, Introd., para. 23.

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a cause that was not their own. In view, however, of the complexities that may arise, we do not feel able to recommend that the ultimate authority of the Governor-General should be limited in this matter. Our proposal is that, when the question arises of lending Indian personnel of the Defence Forces for service outside India on occasions which in the Governor-General's decision do not involve the Defence of India in the broadest sense, he should not agree to lend such personnel without consultation with the Federal Ministry. We have little doubt that in practice he will give the greatest weight to the advice of the Federal Ministry before reaching his final decision. The financial aspect has also to be considered. Although in the circumstances we are discussing the defence of India would not be involved, it might on occasions be in India's general interests to make a contribution towards the cost of external operations. A proposal in the White Paper[1] reproduces the provision of s. 20 (1) of the Government of India Act that "the revenues of India shall be applied for the purposes of the government of India alone"; and a contribution in the general interests of India would come within the scope of that provision. Under the new Constitution, however, the recognition of interests of this nature would fall within the province of the Federal Ministry and Legislature, since *ex hypothesi* they would not be defence interests. If, therefore, the question should arise of offering a contribution from India's revenues in the circumstances we are discussing (and the interests in question did not fall under the other reserved department of external affairs) we are of opinion that it would need to be ratified by the Federal Legislature.

Indianization.

179. We pass to the vexed question of Indianization. The Governor-General's Instrument of Instructions will, we understand, formally recognise the fact that the defence of India must to an increasing extent be the concern of the Indian people, and not of the United Kingdom alone.[2] With this general proposition we are in entire agreement, and we have every sympathy with what the Statutory Commission rightly call the natural and legitimate aspirations of India. But Indianization is a problem which admits of no facile solution, and least of all one based upon the automatic application of a time-table; and if we should seem to emphasize its difficulties, it is because we are anxious that Indian political leaders should be realists in this matter, and not because it is either our desire or our intention to derogate from or to evade the pledges which have been given by successive Governments in this country.

The practical difficulties.

180. It is sometimes said that so long as the officer ranks of the Indian Army are not fully Indianized complete self-government must be indefinitely deferred. We do not regard that view as self-evident; and indeed the problem of Indianization does not appear to us to be essentially related to the constitutional issues with which we are

[1] White Paper, Proposal 150.
[2] White Paper, Introd., para. 23.

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concerned. Since however it has been brought before us, we think it wise to repeat the conclusions of the Statutory Commission that "the issues involved are too vital, and the practical difficulties too great, to justify a precipitate embarkation on a wholesale process of substituting Indian for British personnel in the Indian Army."[1] A further difficulty arises from the difference (in a military sense) between the martial and the other races of India. We are well aware that this difference is alleged to have no existence in fact or at least to have been exaggerated for political purposes; but no unprejudiced person can deny that it is there, and that it is beyond the power of Parliament to alter it. There are some things which even an Act of Parliament cannot do. It is subdued to what it works in, and spiritual values are beyond its scope; and something more than a section in a statute is required to eliminate racial differences or to breathe life into the elements which go to the making of a national army. Parliament can provide the conditions in which the creation of a homogeneous Indian nation may become possible; but the act of creation must be the work of Indian hands.

Further development of Indianization necessary, but a time-limit impracticable

181. We think it right to mention these things because of the suggestion put forward in the British-India Joint Memorandum that there should be a definite programme of Indianization with reference to a time limit of 20 or 25 years, and that one of the primary duties of an Indian Army Counsellor should be the provision and training of Indian officers for the programme of Indianization. It is in our judgment impossible to include in the Constitution Act or in any other statute a provision for the complete Indianization of the Army within a specified period of time. The scheme introduced in 1931 provides for the Indianization of the equivalent of one Cavalry Brigade and one Infantry Division complete with all arms and ancillary services; and we are assured that it has been initiated by the military authorities in India with the fullest sense of their responsibility in the matter and that further developments will depend upon the success of the experiment. If the experiment succeeds, the process will be extended and developed, and Indians can rely on all the sympathy and assistance which we are able to give them for the purpose of creating an army of their own. We endorse the measured words of the Statutory Commission: "Neither British politician or Indian politician can wisely decide such matters without special knowledge and expert advice. We are only concerned here to convey a double warning—a warning on the one hand that Britain cannot indefinitely treat the present military organization of India as sacrosanct and unalterable, but must make an active endeavour to search for such adjustments as might be possible; and a warning on the other hand that Indian statesmen can help to modify the existing arrangement in the direction of self-government only if they too will co-operate by facing the hard

[1] Report, Vol. II, para. 196.

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facts and by remembering that those who set them out for further consideration are not gloating over obstacles, but are offering the help of friends to Indian aspirations."[1]

Rights of defence personnel, etc.

182. It will be more convenient to consider certain questions which have been raised in connection with the rights of defence personnel in that part of our Report[2] in which we deal with the rights of the Services generally. The question of the future recruitment for the Indian Medical Service, which has an important military bearing, is discussed in the same place, and it is unnecessary therefore to do more than mention it here.

The Commander in Chief.

183. The White Paper proposals have been thought to contemplate the possible abolition of the office of Commander in Chief in India. We do not so read them and we are assured that no such intention is in the mind of His Majesty's Government. Although the executive authority of the Federation vested in the Governor-General as the King's representative includes the superintendence, direction and control of the military government in the sense in which these words are used in section 33 (1) of the Government of India Act, the command of the Forces in India will be exercised by a Commander-in-Chief to be appointed by His Majesty.

External Affairs

External affairs.

184. The Department of External Affairs is in our opinion rightly reserved to the Governor-General, if only because of the intimate connection between foreign policy and defence. At the present time the Foreign Department, of which the Governor-General himself holds the portfolio, is only concerned with the relations between the Government of India on the one hand and foreign countries or the frontier tracts of India on the other, and not with the relations between the Government of India and the Dominions; and we are informed that the expression "external affairs" is not intended to include the latter, a decision with which we concur. It was urged before us that the making of commercial or trade agreements with foreign countries was essentially a matter for which the future Minister for Commerce should be responsible rather than the Governor-General. In the United Kingdom, however, all agreements with foreign countries are made through the Foreign Office. Any other arrangement would lead to grave inconvenience; but when a trade or commercial agreement is negotiated, the Foreign Office consult and co-operate with the Board of Trade, whose officials necessarily take part in any discussions which precede the agreement. We assume that similar arrangements will be adopted in India, and that the Department of External Affairs will maintain a close contact with the Department of Trade or Commerce; but we are clear that agreements of any kind with a foreign country must be made by the Governor-General, even if on the merits of a trade or commercial issue he is guided by the advice of the appropriate Minister.

[1] Report, Vol. I, para. 126.
[2] *Infra*, para. 295.

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Ecclesiastical Affairs

Ecclesiastical affairs.

185. The origin of the Ecclesiastical Department is to be found in the obligation imposed by the Charters of the East India Company to provide chaplains on their ships and at their stations; and since 1858, when the rights and obligations of the East India Company finally passed to the Crown, the Government of India have rightly regarded it as their duty to provide for the spiritual needs of British troops stationed in India and, so far as circumstances admit, of the European members of the Civil Services. The Secretary of State in Council has, under his general powers, established and maintained for this purpose a cadre of official chaplains appointed by himself, and has authorised grants-in-aid out of Indian revenues for the maintenance of churches and of a certain number of non-official chaplains, the present annual expenditure of the Department being approximately 40 lakhs. Since the Indian Church Act, 1927, and the Indian Church Measure of the same year, by virtue of which the Church in India became an autonomous body, Indian Bishops are no longer appointed by the Crown.

Limit for future ecclesiastical expenditure suggested.

186. Under the proposals in the White Paper the powers of the Secretary of State will pass to the Federal Government, but will be exercised under the personal direction of the Governor-General, subject (as in the case of the other Reserved Departments) to the general control of the Secretary of State. It is clear that any sudden or unreasonable curtailment of Government assistance might gravely embarrass the new autonomous Indian Church, but obviously the latter must in course of time come to depend less and less upon Government assistance, whether in the form of the provision of official chaplains or of grants in aid for the maintenance of non-official chaplains or churches; and we understand that the policy of the Government of India has for some time been gradually to reduce ecclesiastical expenditure with the ultimate intention of restricting it to provision for the spiritual needs of British troops and, within reasonable limits, of the civil official population. The expenditure of the Department will not therefore rise above the present figure and may fall below it as time goes on. We approve the arrangement proposed, but we think that in the circumstances the Constitution Act should specify a maximum figure above which the annual appropriation for ecclesiastical expenditure cannot go. It appears that the whole of the expenditure in respect of official chaplains is now classified as civil expenditure, although a large proportion of the maintained churches and the services of over 90 per cent. of the official chaplains at present employed minister primarily to the spiritual needs of the Army; and it is a matter for consideration whether ecclesiastical expenditure for Army purposes should not be under the control of the Department of Defence. We understand that this question is now under examination by the Government of India.

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(iii) *The Governor-General and the Federal Administration*

Ministers and Counsellors.

187. We do not think it necessary to repeat the observations which we have already made on this subject in connection with the Provinces; for they are equally applicable to the relations between the Governor-General and the Federal Administration. But the existence of the Reserved Departments and the Governor-General's Counsellors introduces an additional factor. The Federal Government will be a dyarchical, and not a unitary, government, the Governor-General's Ministers having the constitutional right to tender advice to him on the administration of a part only of the affairs of the Federation, while the administration of the other part remains the exclusive responsibility of the Governor-General himself. In these circumstances it is clear that the Governor-General's Counsellors, who will be responsible to the Governor-General alone and will share none of the responsibility of the Federal Ministers to the Federal Legislature, cannot be members of the Council of Ministers. It has indeed been suggested that, for the purpose of securing a greater unity in the Government, the Counsellors ought to form part of the Ministry, entering and leaving office with them, whatever the political complexion of the Ministry may be. An artificial arrangement of this kind, completely divorced from the realities of the situation, is in our opinion quite inadmissible. The Counsellors could not by a simulated resignation diminish their responsibility to the Governor-General, nor would the Government become any more unitary than it was before. It is no doubt true that legal fictions which mask a change of substance by preserving the outward form have often proved a valuable aid to constitutional development; but a fiction whereby the form but not the substance is altered can serve no useful purpose. We hope nevertheless that the Counsellors, even if they cannot share the responsibility of Ministers, will be freely admitted to their deliberations—and indeed that there will be free resort by both parties to mutual consultation. It would indeed be difficult, if not impossible, to conduct the administration of the Department of Defence in complete aloofness from other Departments of government; and the maintenance of close and friendly relations with Departments under the control of Ministers can only increase its efficiency. We understand the intention of His Majesty's Government to be that the principle of joint deliberation shall be recognised and encouraged by the Governor-General's Instrument of Instructions. We warmly approve the principle, and we think that it will prove a valuable addition to the machinery of government, without derogating in any way from the personal responsibility of the Governor-General for the administration of the Reserved Departments.

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188. We recognise the difficulty which necessarily attaches to a dyarchical system, and that, for its successful working, tact and sympathy of no common order will be required on both sides. The White Paper states that the proposals which it contains "proceed on the basic assumption that every endeavour will be made by those responsible for working the Constitution to approach the administrative problems which will present themselves in the spirit of partners in a common enterprise."[1] If this assumption proves, as we hope, to be well-founded, many difficulties will disappear. Some at least of them appear to arise from a misunderstanding of the White Paper. Thus we were informed that, though the normal number of the Governor-General's Counsellors would probably be two, it was thought advisable to take power to appoint a third in case of need; but, according to the Joint Memorandum of the British-India Delegation, fears have been expressed in India that, if a third Counsellor is appointed and "is placed in charge of the special responsibilities of the Governor-General," he may develop into what is described as "a super-Minister, whose activities must necessarily take the form of interference with the work of the responsible Ministers." It is impossible to forecast with any accuracy the volume of work involved in the Governor-General's administrative responsibilities, and it may well be that the appointment of a third Counsellor will be found necessary; but, if we may respectfully say so, the notion that there is a danger of his becoming a "super-Minister" seems to us altogether fantastic. To speak of a Counsellor being "placed in charge of the special responsibilities of the Governor-General" is wholly to misapprehend the conception of the special responsibilities embodied in the White Paper, which do not set apart a governmental or departmental sphere of action from which Ministers are excluded, or even one in which the Governor-General has concurrent powers with his Ministers. We do not, as we have said elsewhere, anticipate that the occasions on which the Governor-General or a Governor will find himself compelled, in the discharge of his special responsibilities, to dissent from ministerial advice tendered to him are likely to be numerous; and the Governor-General and his Counsellors, even if the latter had the power, will not have such ample leisure at their disposal as to be tempted to utilise it for the purpose of interfering with the day-to-day administrative business of Ministers.

Misapprehensions as to position and functions of Counsellors.

189. The Governor-General will require an adequate staff with an officer of high standing at its head. Whether one of the Counsellors will fill this position it is unnecessary for us to consider, for the question is administrative rather than constitutional; but it is of exceptional importance that the Governor-General should be well served and we do not doubt that this matter has engaged, and will continue to engage, the earnest attention of His Majesty's Government.

The Governor-General's staff.

[1] White Paper, Introd., para. 26.

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(iv) *The Governor-General's Special Powers*

Special powers.

190. The special powers, legislative and financial, of the Governor-General as described in the White Paper do not differ *mutatis mutandis* from those which it is proposed to give to the Governor of a Province. It is therefore sufficient to refer to what we have already said upon the subject in an earlier part of this Report, and we have nothing to add to it here.

(2) Relations between the Federal Executive and Legislature

The difficulties of Dyarchy at the Centre;

191. We have considered in an earlier part of our Report the problem of the relations between the Executive and the Legislature of a Province, and those remarks apply *mutatis mutandis* to the relations between the Federal Executive and Legislature. It is only necessary here to refer briefly to two special complications which are introduced into the federal problem: the existence of the Governor-General's Reserved Departments and the question of the representation of the States in the Ministry. On the first point, we have already spoken frankly of the difficulties presented by a system of dyarchy. We can only repeat that, faced by a choice in which every conceivable alternative involves some division of responsibility and some danger of friction, we recommend the alternative which draws the line of division at defence and external affairs as corresponding most nearly with the realities of the situation; that, of these, the crucial question, so far as the Legislature is concerned, is defence; and that on this question we regard an All-India Federation as the best means of ensuring that the Central Legislature, while discharging its legitimate function of discussion and criticism, will not (in the phrase of the Statutory Commission) seek "to magnify its functions in the reserved field".

and of composite nature of Executive.

192. On the second point, it will be observed that, under the White Paper proposals, the Governor-General is to be directed by his Instrument of Instructions to include, "so far as possible," in his Ministry, not only members of important minority communities, but also representatives of the States which accede to the Federation. It may be thought that this proposal runs the risk of adding to the possible dangers of communal representation in the Ministry, to which we have referred in speaking of the Provinces, the further dangers of territorial representation. We can scarcely doubt that State representation will always be regarded by the States themselves as an essential element in every Administration, and this fact may be thought likely to retard the growth of political parties, in the true sense, even more at the Centre than in the Provinces; for the Federal Legislature, though intended to be representative of India as a whole, will itself be largely based, in any case, on communal representation. In these circumstances, we do not overlook the possibility that, in place of an Executive which propounds, and

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a Legislature which deliberates upon, a national policy, there may be found two bodies each tending to become, in a classic phrase, "a congress of ambassadors from different and hostile interests, which interests each must maintain as an advocate and agent against other agents and advocates." This, however, is a common feature of all Federations. Few, if any, have in practice found it possible to constitute an Executive into which an element of territorial representation does not in some sense enter, and in the Swiss Constitution the principle of such representation is explicitly laid down; so that to advance this as an argument against the White Paper proposals would be, in effect, to reject an All-India Federation even as an ultimate ideal. Moreover, the limitation of the functions of the Federal Executive to matters of essentially All-India interest is calculated to minimise the dangers of both communal and territorial representation. Tariffs and excise duties, currency and transport, are national, not communal questions; and it is not unreasonable to assume that any clash of interest with regard to them will tend in future to have an economic rather than a communal origin. There will, therefore, be centripetal as well as centrifugal forces; and it seems to us indeed conceivable that, until the advent of a new and hitherto unknown alignment of parties, a central Executive such as we have described may even come to function, as we believe that the Executive of the Swiss Confederation functions, as a kind of business committee of the Legislature.

(3) The Federal Legislature

Composition of, and election to, the Legislature

Difficulty of the subject.

193. There is no part of the subject of our enquiry which has seemed to us to present greater difficulties than the question of the method of election to a Central Legislature for India. It is one on which there has always been a marked difference of opinion; and we recall that the Joint Select Committee which considered the Government of India Bill in 1919 did not accept the recommendations of the Southborough Committee which had been embodied in the Bill, and that there is a similar divergence between the recommendations of the Statutory Commission and the proposals in the White Paper. It should be recognized that to attempt to provide a legislative body which shall be representative of a population of nearly 350 millions is without precedent. We are met at the outset by the difficulty of applying the representative system on a basis of direct representation to a unit of such magnitude. On the one hand, if the constituencies were of a reasonable size the resultant Chamber would be unmanageably large; if, on the other hand, the Chamber were of a reasonable size the constituencies on which it was based would necessarily be enormous. In these circumstances our task has been an anxious one, and we have only arrived at our conclusions after a careful and prolonged examination of the matter in all its aspects.

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Composition of Council of State and Federal House of Assembly proposed in White Paper.

194. The White Paper proposes that the Federal Legislature shall consist of the King, represented by the Governor-General, and two Chambers, to be styled the Council of State and the House of Assembly. The Council of State would consist of not more than 260 members, of whom 150 would be representatives of British India, not more than 100 would be appointed by the Rulers of States who accede to the Federation, and not more than 10 would be nominated by the Governor-General in his discretion. The Governor-General's Counsellors, who would be *ex-officio* members of both Chambers for all purposes except the right of voting, are not included in the above figures ; and it is proposed that the members to be nominated by the Governor-General should not be officials. The House of Assembly would consist of not more than 375 members, of whom 250 would be representatives of British India, and not more than 125 would be appointed by the Rulers of States who have acceded to the Federation.[1]

Method of election to Council of State proposed in the White Paper.

195. The representatives of British India in the Council of State would, to the number of 136 be elected by the members of the Provincial Legislatures, by the method of the single transferable vote. Indian Christian, Anglo-Indian and European members of the Provincial Legislatures would not be entitled to vote for these representatives, but 10 non-provincial communal seats would be reserved for them (7 for Europeans, 2 for Indian Christians and one for Anglo-Indians), these seats being filled by three electoral colleges, consisting respectively of the European, Indian Christian and Anglo-Indian members of the Provincial Legislatures, and voting for the European and Indian Christian seats being by the method of the single transferable vote. Coorg, Ajmer, Delhi and Baluchistan would each have one representative. Members of the Coorg Legislature would elect to the Coorg seat, but special provision is to be made in the case of the other three.[2]

Method of election to the House of Assembly proposed in the White Paper.

196. The representatives of British India in the House of Assembly would be elected by direct election in provincial constituencies, except in the case of three of the seats reserved for Commerce and Industry, and one of the Labour seats, where the constituencies will be non-provincial. Election to the seats allotted to the Muhammadan, Sikh, Indian Christian, Anglo-Indian and European constituencies would be by voters voting in separate communcal electorates ; and all qualified voters who are not voters in one of these constituencies would be entitled to vote in a general constituency. Election to the seats reserved for the Depressed Classes out of the general seats would be in accordance with the arrangements embodied in the Poona Pact, which we have described elsewhere. Election to the woman's seat in each of the Provinces to which such a seat is allocated would be by members of the Provincial Legislature voting by the method

[1] White Paper, Proposals 22–37,
[2] White Paper, Appendix I.

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of single transferable vote; the special seats assigned to Commerce and Industry would be filled by election by Chambers of Commerce and other similar associations; and the special seats assigned to Landowners would be filled by election in special landholders' constituencies.[1]

The precedent of other Federations.

197. The proposals in the White Paper thus follow other Federal Constitutions in adopting direct election for the Lower House. We are then confronted with the question whether, in spite of precedents, such a system is appropriate in the case of so vast a country as India, and whether circumstances do not require the substitution of some method of indirect election, and, if so, what that method ought to be.

Direct or indirect election.

198. Direct election has the support of Indian opinion and is strongly advocated by the British-India Delegation in their Joint Memorandum. It has been the system in India for the last twelve years, and has worked on the whole reasonably well, though, it should be remembered, with a much more limited franchise than that now proposed. The Southborough Committee which visited India in 1919 for the purpose of settling the composition of, and the method of election to, the Legislatures set up by the Government of India Bill of that year, did, it is true, recommend the indirect system; but the Joint Select Committee which examined the Bill were of a contrary view, and Parliament accepted the opinion of the Committee. It may also be argued that, with the increase in the size of the Legislatures now proposed, it will be possible to effect so appreciable a reduction in the size of the existing constituencies as to diminish the objections based on that feature of the present system. But even the reduction in the size of constituencies which would follow from the White Paper proposals will still leave them unwieldy and unmanageable, unless the number of seats is increased beyond all reasonable limits. Where a single constituency may be more than twice as large in area as the whole of Wales, a candidate for election could not in any event commend or even present his views to the whole body of electors, even if the means of communication were not, as in India, difficult and often non-existent, and quite apart from obstacles presented by differences in language and a widespread illiteracy; nor could a member after election hope to guide or inform opinion in his constituency. These difficulties would be serious enough with the comparatively limited franchise proposed in the White Paper; but future extensions of that franchise would be inevitable, and it is obvious that with every increase in the electorate these difficulties are enhanced. Indeed, any considerable extension of the franchise under a system of direct election would cause an inevitable breakdown. We do not believe that constituencies both of large size and containing an electorate of between 200,000 and 300,000 people can be made the basis of a healthy parliamentary system. We think that Parliament and Indian opinion should face

[1] White Paper, Appendix II.

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these facts and should recognise that direct election, apart from its immediate merits or demerits at the present time, cannot provide a sound basis for Indian constitutional development in the future. We cannot believe that it would be wise to commit India at the outset of her constitutional development to a line which must prove to be a blind alley.

Essentials of representative government.

199. A close and intimate contact between a representative and his constituency is of the essence of representative government, so that the former may be conscious of a genuine responsibility to those whom he represents, and the latter that they are able to influence his actions and in case of need call him to account. The relationship has been described in a passage familiar to all: "It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents; their wishes ought to have great weight with him, their opinion high respect, and their business his unremitted attention"; but we confess that we can recognize no likeness to this description in any relations which could exist between a member of the Central Legislature in India and the vast constituencies which he would represent under a system of direct election.

Indirect election recommended.

200. We realise the strength of Indian opinion in this matter, and we are far from denying that the present system has produced legislators of high quality; but we are now recommending to Parliament the establishment of self-government in India and we regard it as fundamental that the system of election to the Central Legislature should be such as to make the responsibility of a member to those who elect him a real and effective responsibility. We do not think that this can be secured under a system of direct election proposed in the White Paper, and, though we are conscious that we are reversing the decision made by Parliament in 1919, we have come to the conclusion, notwithstanding the theoretical objections which can be urged against it, that there is no alternative to the adoption of some form of indirect election.

Election to Federal House of Assembly by Provincial Assemblies.

201. We have examined many systems of indirect election. Systems based upon electoral groups at first sight have many attractions, but we have felt bound to reject them as being impracticable at the present time, for reasons similar to those which we have already given in that part of our Report which deals with the Provincial franchise.[1] We have also considered election by municipal and other local bodies, but the general tenor of the evidence before us indicates that Indian opinion is strongly opposed to this system, largely owing to its association with the procedure under the Morley-Minto Constitution, which does not seem to have worked well; and we cannot recommend it in present circumstances. We have come to the conclusion that the Provincial Assemblies form the only possible electoral colleges, and we recommend accordingly that the Federal House of Assembly should be, in the main, elected by members of

[1] *Supra*, para. 129.

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those bodies. We should have been glad if it had been possible to provide for election by the method of single transferable vote, since this would have avoided the necessity of reproducing at the Centre the system of a communal distribution of seats. We however found ourselves unable to recommend this; firstly, because the special interests such as commerce, industry, landlords and labour, would not obtain adequate representation; and secondly, because, though the single transferable vote would in all probability make it possible for the communities to obtain substantially the same representation as under the White Paper proposal, the minority communities would regard it with suspicion, and we think it essential that nothing should be done which would afford opportunities for re-opening the communal question. We accordingly recommend that the Hindu, Muhammadan, and Sikh seats should be filled by the representatives of those communities in the Provincial Assemblies voting separately for a prescribed number of communal seats; and that within the Hindu group special arrangements should be made for the Depressed Classes. With regard to the Indian Christians, Europeans and Anglo-Indians their representation in the Provincial Assemblies is so small that this plan would not be suitable, and we think, therefore, that it will be necessary that they should vote in an electoral college formed by their representatives in all the Provincial Assemblies.

Indirect election to be regarded as being open to future review.

202. We feel strongly, however, that it is not possible for Parliament to lay down to-day the exact method of constituting the Central Legislature for any long period of time. The question has been repeatedly examined, both before the passage of the present Government of India Act, and subsequently by the Statutory Commission, and the Round Table Conferences and the Indian Franchise Committee in connection with the present proposals for reform. Throughout this whole period opinions have been deeply divided and no clear-cut solution has emerged, as indeed was to be expected when an attempt is being made to create a Federation on a scale and of a character hitherto without precedent. We have chosen the system of indirect election by the Provincial Legislatures, not because we do not feel the force of the arguments which can be brought against it, but because we think that it is the arrangement which will give the most practical system at the outset of the Federation. Moreover, while it will be possible in future to pass from the indirect to the direct system of election should experience show that step to be advisable, the maintenance, and still more the extension, of the system of direct election to-day would be to commit India to a system which logically leads to adult suffrage, before any way has been discovered of overcoming the insuperable objections to the gigantic constituencies, containing hundreds of thousands of voters, which are inevitable with adult franchise in India under the ordinary system of direct election. We feel that the ultimate solution may well be found in some

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variant, either of the system whereby groups of primary voters elect secondary electors who vote directly for members of the federal assembly, or of the system whereby those already elected to local bodies, such as village panchayats, are the voters who vote directly for members of that assembly. Systems of this kind apparently work with considerable success in many countries where conditions are not dissimilar to those in India. But the discovery of the best method of adapting those ideas to India's needs, and of removing the obstacles which now stand in the way of their adoption, is clearly one which should be made by Indians themselves in the light of their experience of the practical working of representative institutions under the new Constitution. We consider, therefore, that our proposals should be regarded as being open to future review and that further consideration should be given to the question of the method of composing the Central Legislature in the light of practical working of the Constitution. We do not propose that there should be any formal examination of the problem by a Statutory Commission after any specific date, for we think that experience has shown that there are strong objections to automatic provisions of this kind. But we consider that Parliament should recognise that, after sufficient time has elapsed to enable clear judgments to be formed of the way in which the Constitution works and of the new political forces it has brought into being, it may be necessary to make amendments in the method of composing the Central Legislature, and we hope that, if Indian opinion thinks modification is required, the Federal Legislature will lay its own proposals before Parliament in the form recommended elsewhere[1] in this Report.

The Council of State.

203. The White Paper proposes that the members of the Council of State should be elected by the members of the Provincial Legislatures, including members of the Provincial Upper Chambers where the Legislature is bicameral. The method of election proposed is that of the single transferable vote, a communal distribution of seats being thereby avoided; but special arrangements are contemplated for Europeans, Anglo-Indians and Indian Christians, which would not otherwise be in a position to secure adequate representation. No provision is made for representation in the Council of State of special interests. We accept these proposals in principle, but if, as we recommend, the Provincial Assemblies are to elect to the Federal House of Assembly, it will clearly be necessary to find different electoral colleges for the Council of State. It seems to us that the only alternative electoral college is the Provincial Legislative Council in those Provinces where a Legislative Council exists; and in the unicameral Provinces we recommend that an *ad hoc* electoral college should be constituted of persons elected by an electorate broadly corresponding to the electorate for the Legislative Councils in bicameral Provinces, the communal distribution of seats in this electoral college corresponding to that in the Provincial Assemblies.

[1] *Infra*, paras. 380 and 381.

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204. The White Paper proposes that each Council of State shall continue for seven years and each Federal House of Assembly for five years, power being reserved to the Governor-General in his discretion to dissolve both Houses, either separately or simultaneously. We prefer a Council of State constituted on a more permanent basis, and accordingly recommend that it should not be subject to dissolution, that its members should be elected for a period of nine years, and that one-third should retire and be replaced at the end of every third year. Special arrangements would in that event be required for the first nine-year period following on its first constitution.

Council of State should be constituted on more permanent basis.

205. The numbers proposed in the White Paper for the two Federal Houses have been the subject of criticism, and we see many advantages in Houses of a smaller size, especially in view of the proposals to which we refer hereafter for Joint Sessions of both Houses. We are however convinced, after a careful examination of the whole question, that the balance of convenience is against any reduction of the numbers proposed in the White Paper. If the size of the Council of State were materially reduced and if, as we have recommended, one-third of its membership is replaced every three years, the number of members whom Provincial electoral colleges would be called upon to choose at any given election would be too small for the method of the single transferable vote to produce an equitable result from the point of view of minorities ; and we should greatly regret the introduction of a communal basis for the Federal Upper House. There is another consideration affecting the Federal House of Assembly. It would be difficult, if the size of this House were reduced, to make any proportionate reduction in the number of seats assigned to special interests, since this would in several instances deprive them of seats which they have in the existing Legislative Assembly. These special interest seats, apart from those assigned to European commerce and industry, would in practice be almost entirely occupied by members of the Hindu community. We think it important that the Muhammadan community should have secured to it, as the White Paper proposes, one-third of all the British-India seats ; but if the number of the special interest seats is to remain undisturbed, the application to a substantially smaller House of the undertaking given to the Muhammadans would result in a disproportionate number of the ordinary (non-special) seats being allocated to the Muhammadans. In addition to these considerations in regard to British-India representation, it must also be borne in mind that the size of the Houses will regulate the number of seats available for the representation of the Princes, and, unless this representation is generally acceptable to the Princes as a whole, they may be unwilling to federate and the first condition precedent to the establishment of the Federation would not be fulfilled. Certain of the larger States have, it is true, expressed a preference for substantially smaller Houses, but we are satisfied that the general body of States would be unwilling to accept any arrangement which assigned to the States less than 100 seats in the Federal

Size of the two Federall Houses.

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Upper House. There is general agreement that the States should have a 40 per cent. representation in this House, which implies a House of about 250 members, as the White Paper proposes. For reasons which we discuss in connection with the relative powers of the two Houses, we think it important also that their proportionate strength should be as in the White Paper. It follows therefore that since the Upper House is to have a strength of about 250, the Lower House cannot be reduced below the White Paper figure. The combined effect of the considerations mentioned in this and the preceding paragraph has led us to the conclusion, notwithstanding all the arguments which can be urged on the other side, that the size of the two Houses should stand as in the White Paper.

Proposal for unicameral Legislature rejected.

206. We have carefully considered a suggestion that the Federal Legislature should consist of one Chamber only. We recognise that there is much to be said for this proposal also, but, on the whole, we do not feel able to reject the view which was taken by the Statutory Commission and which has been also consistently taken by, we think, the great bulk of both British and Indian opinion during the whole course of the Round Table Conferences, that the Federal Legislature should be bi-cameral. Certainly, a reversal of this view would be distasteful to nearly all, if not to all, the Indian States.

Details of scheme set out in Appendix.

207. We have set out in the Appendix (II) to this Section of our Report[1] a description of the scheme of indirect election which we recommend for the Council of State and for the Federal House of Assembly, so far as the British-India representatives are concerned. The details of the scheme are necessarily complex, and we think that they can be better appreciated if dealt with in this manner. It may well be that, on further examination, parts of the scheme will be found to require readjustment or revision in matters of detail, and we do not desire that our recommendations should be taken as precluding a further expert examination of it.

Representation of the States.

208. The representatives of the States will be appointed by the Rulers of the States concerned. A difficult question arises, however, with regard to the allocation among over 600 States, Estates and Jagirs, which constitute the non-British portion of India, of the 100 and 125 seats available for the States as a whole in the Council of State and Federal House of Assembly respectively. The White Paper does not deal with this matter, which we are informed has been under discussion between the Governor-General and the Princes for some time past, and we have been furnished with details of a scheme which the Governor-General has propounded as a basis for discussion. This scheme is set out in the Appendix (III) to this Section of our Report.[2] It proceeds on the principle that the allocation of seats among the States should, in the case of the Council of State, take account of the relative rank and importance of the State as indicated by the dynastic salute and other factors, and, in the case

[1] *Infra*, p. 127.
[2] *Infra*, p. 131.

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of the House of Assembly, should be based in the main on population. We have been given to understand that, while susceptible of minor adjustment in a few particulars, the scheme has met with a large measure of support among the States. So far as we are able to judge, a scheme on these lines would be a reasonable one, and would be appropriate to the new constitutional arrangements which we contemplate. We observe that it makes provision for the pooling within groups of States of the representation allotted to them individually, with the object of securing a form of representation more suited to their common interests, and for giving legal effect to any arrangements so made. We see many advantages in a plan of this kind, if it should prove practicable. It would also, we suggest, contribute to the selection of better qualified States' representatives in the Federal Legislature if adjacent States, at any rate those not entitled under the scheme proposed to continuous individual representation, were grouped together regionally for the selection of joint representatives in the Federal Legislature who would retain their seats throughout its full term.

Temporary weightage in compensation for non-acceding States.

209. The scheme makes provision for the representation of the whole of the States of India. It may well be, however, that not all the States will accede, at any rate in the early years of the Federation; nor could States under a minority administration in any event accede until the Ruler had taken over the government of the State. The White Paper proposes that any vacancies arising from non-accession should for the time being remain unfilled. The States have urged that this arrangement would operate to the prejudice of those States which have in fact acceded in relation to the British-India portion of the Legislature, and we are of opinion that there is substance in the objection. We do not think that it would be reasonable to allocate to the States which accede the whole representation of those who are holding back; but we recommend that the representatives of the States which have acceded should be empowered to elect additional representatives in both Houses up to half the number of States' seats (including those States whose Rulers are minors) which remain unfilled. We think, however, that this arrangement should cease to operate when, as a result of accessions, 90 per cent. of the seats allocated to the States are filled, and in any event at the expiration of 20 years from the establishment of the Federation.

Tenure of States' representatives.

210. A suggestion was brought to our notice that provision should be made in the Constitution Act for the vacation of his seat by a member of the Legislature appointed by the Ruler of a State if called upon to do so by notice in writing from the Ruler. We could not accept this suggestion. We conceive that a State representative, although he is nominated and not elected, holds his seat on precisely the same tenure as an elected representative from British India, and no distinction should be made between the two.

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Powers of the Federal Legislature

Powers of Federal Legislature.

211. The observations which we have made in connection with the powers of the Provincial Legislatures apply generally *mutatis mutandis* to the Federal Legislature, and we are of opinion that the same general restrictions on the legislative power should apply in both cases. We note that, in addition to the legislative proposals which in a Province require the Governor's previous sanction, and will, in the Federal Legislature, require the sanction of the Governor-General, legislative proposals affecting any Reserved Department, the coinage and currency of the Federation, or the powers and duties of the Reserve Bank in relation to the management of currency and exchange, will also require the Governor-General's previous sanction.[1] We have no comment to make on the first of these, which is a necessary corollary on the reservation to the Governor-General of the control over certain Departments; and we deal with the second and third elsewhere in connection with the Reserve Bank.

The Governor-General's assent, etc., to Bills.

212. It is proposed (and we concur) that the Governor-General's powers with regard to assent to, reservation of, or withholding assent from, any Bills presented to him should be the same as in the case of the Governor of a Province, except that the Governor-General reserves a Bill for the signification of His Majesty's pleasure, whereas a Governor reserves it for the consideration of the Governor-General.[2]

British Baluchistan.

213. It is proposed that the powers of the Federal Legislature shall not extend to the Chief Commissioner's Province of British Baluchistan. The legislation required is to be obtained either by Regulations made by the Governor-General at his discretion or by the application by him to the Province, with or without modification, of any enactment of the Federal Legislature, an arrangement which we are satisfied is the most appropriate which could be devised for an area of this character.[3]

Procedure in the Federal Legislature

Procedure in the Federal Legislature.

214. On this subject also it is unnecessary to repeat what we have already said in connection with the Provincial Legislatures. We draw attention, however, to three heads of expenditure which it is proposed should not be submitted to the vote of the Legislature, and which necessarily have no counterpart in the Provinces.[4] These are (1) expenditure for a Reserved Department; (2) expenditure for the discharge of the functions of the Crown in and arising out of its relations with the Rulers of Indian States; and (3) expenditure for the discharge of the duties imposed by the Constitution Act

[1] White Paper, Proposal 119.
[2] White Paper, Proposal 39.
[3] White Paper, Proposal 58.
[4] White Paper, Proposal 49.

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on the Secretary of State. The inclusion of the first necessarily follows from the reservation of administration and control to the Governor-General. The second would include the expenses of the Political Department and other matters connected with the rights and obligations of Paramount Power. We understand the third to refer to such matters as expenditure in connection with the Secretary of State's establishment in London, liabilities incurred by him on contracts or engagements to which he is or will become a party under the provisions of the Constitution Act, and payments of compensation to members of the Public Services under his powers in that behalf. We have no comments to make on any of these proposals.

Relations between the two Houses.

215. We have pointed out that the Provincial Upper Houses are not intended to be bodies having equal powers with the Legislative Assemblies. In the case of the Federal Legislature, the proposals in the White Paper contemplate two Houses with nearly co-equal powers. The principal difference is in the sphere of finance. It is proposed that Money Bills should only be introduced in the Lower House, the Upper House having power to amend or reject them; and that in relation to Demands for Grants the power of the Upper House should be limited to requiring, but only at the instance of the Government, that any Demand which has been reduced or rejected by the Lower House should be brought before a Joint Session.[1] We entirely endorse the principle that, so far as possible, the two Houses should have equal powers; but we are not satisfied that the proposals to which we have just referred sufficiently secure this. We think that the Upper House should have wider powers in relation to finance, and that it should be able, not only to secure that a rejected grant is reconsidered at a Joint Session of the two Houses, but also to refuse its assent to any Bill, clause or grant which has been accepted by the Lower House. We think, therefore, that all Demands should be considered first by the Lower House and subsequently by the Upper, and that the powers of each House in relation to any Demand should be identical, any difference of opinion being resolved at a Joint Session to be held forthwith.

Joint Sessions.

216. We approve the plan of resolving the differences between the Houses by the decision of a majority of the two Houses sitting and voting together. But the principle of equality of powers requires that an effective voice in the final decision should be secured to the Upper House, and it is for that reason that we have accepted the numerical proportion between the two Houses proposed in the White Paper, that is to say, a proportion of approximately 2 : 3. The principle also makes appropriate a departure from the scheme of Joint Sessions which we have recommended in the case of the Provinces. There is no necessity for so long a period to elapse before the Joint Session is held as in the Provinces, where the functions of

[1] White Paper. Proposals 38, 41, and 48.

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the Upper House are only those of revision and delay. We do not think that the White Paper proposals are in all respects satisfactory. In particular, we think that there would be an advantage in extending the period after which a Joint Session may be held from three months to six, and in providing that it should not be held during the session of the Legislature in the course of which the difference of opinion arose between the Houses. It should be for the Federal Government to decide whether a Bill is to lapse or be referred to a Joint Session; and in the former case the Government should inform the Legislature of their decision before the end of the current session. The above should be the ordinary procedure; but in the case of Bills affecting the Reserved Departments, or Bills which in the opinion of the Governor-General involve his special responsibilities, or would affect the financing of the Federal Government's requirements, the Governor-General must have power in his discretion to summon a Joint Session and obtain a decision forthwith. Amendments to any Bill which is brought before a Joint Session should be subject to the rules which we have recommended in the case of the Provinces.

States' representatives and British-India legislation.

217. The question was much discussed before us whether any special provision ought to be included in the Constitution Act prohibiting States' representatives from voting on matters of exclusively British-India concern. The British-India Delegation in their Joint Memorandum urge that this should be done, and their suggestions are briefly as follows:—(1) that in a division on a matter concerning solely a British-India subject, the States' representatives should not be entitled to vote; (2) that the question whether a matter relates solely to a British-India subject or not should be left to the decision of the Speaker of the House, which should be final; but (3) that if a substantive vote of no confidence is proposed on a matter relating solely to a British-India subject, the States' representatives should be entitled to vote, since the decision might vitally affect the position of a Ministry formed on a basis of collective responsibility; (4) that if the Ministry is defeated on a subject of exclusively British-India interest, it should not necessarily resign. We do not think that these suggestions would in any way meet the case. Circumstances may make any vote of a Legislature, even on a matter intrinsically unimportant, an unmistakable vote of no confidence; the distinction between formal votes of no confidence and other votes is an artificial and conventional one, and it would be impossible to base any statutory enactment upon it. On the other hand, the States have made it clear that they have no desire to interfere in matters of exclusively British-India concern, nor could we suppose that it would be in their interests to do so; but they are anxious, for reasons which we appreciate, that their representatives should not be prevented by any rigid statutory provisions from exercising their own judgment, from supporting a Ministry with whose general policy they are fully in agreement, or from withholding their support from a Ministry whose policy they disapprove. In

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these circumstances we think that the true solution is that there should be no statutory prohibition, but that the matter should be regulated by the common sense of both sides and by the growth of constitutional practice and usage. We have, however, one suggestion to make which we think may be worth consideration. Under the Standing Orders of the House of Commons all Bills which relate exclusively to Scotland and have been committed to a Standing Committee are referred to a Committee consisting of all the members representing the Scottish constituencies, together with not less than ten nor more than fifteen other members. We think that a provision on these lines might very possibly be found useful, and that the Constitution Act might require that any Bill on a subject included in List III should, if extending only to British India, be referred to a Committee consisting either of all the British India representatives or a specified number of them, to whom two or three States' representatives could, if it should be thought desirable, be added.

(4) The Relations between the Federation and the Federal Units

Administrative nexus between the Federation and its constituent units.

218. The transformation of British India from a unitary into a Federal State necessitates a complete readjustment of the relations between the Federal and Provincial Governments. The Provincial Governments are at the present time subordinate to the Central Government and under a statutory obligation to obey its orders and directions, though the Central Government, and indeed, the Secretary of State himself, is bound by statutory rules not to interfere with the Provincial administration save for certain limited purposes in matters which under the devolution rules now fall within the transferred Provincial sphere. But now that the respective spheres of the Centre and of the Provinces will in future be strictly delimited and the jurisdiction of each (except in the concurrent field which we have described elsewhere) will exclude the jurisdiction of the other, a nexus of a new kind must be established between the Federation and its constituent units. We are impressed by the possible dangers of a too strict interpretation of the principle of Provincial Autonomy. The Statutory Commission in their recommendations for Provincial Autonomy were, we think, not unaffected by the desire to give the largest possible ambit to autonomy in the Provincial sphere, owing to their inability at that time to recommend responsibility at the Centre. The larger measure of Indian self-government which has obtained in the Provinces during the past twelve years has also, we think, tended to develop, and perhaps over-develop, a desire for complete freedom of control from the Centre. We have discussed elsewhere in our Report both the legislative and the financial nexus which the White Paper proposes to create; and we confine our observations here to the administrative relations between the Federal Government, as such, on the one hand and the Provincial Governments and the Rulers or Governments of the Indian States on the other.

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Duty of Provincial Government to give effect to Federal laws.

219. The Federal Legislature will have power to enact legislation on Federal subjects which will have the force of law in every Province and, subject to such reservations as may be contained in the Ruler's Instrument of Accession, in every Indian State which is a member of the Federation. The administration and execution of these laws may be vested in the Federation itself and in Federal officers, subject, in the case of the States, to the terms of the Ruler's Instrument of Accession; or the Legislature may devolve upon the Provincial Governments or their officers the duty of executing and administering the law on behalf of the Federal Government. The White Paper proposes that it shall be the duty of a Provincial Government so to exercise its executive power and authority, in so far as it is necessary and applicable for the purpose, as to secure that due effect is given within the Province to every Act of the Federal Legislature which applies to that Province.[1] This, as we read it, is a statement of the constitutional duty of every Province in relation to Federal laws, which has no sanction behind it other than the moral obligation which must always rest upon the constituent units of a Federation to give effect to the laws of the political organism of which they form a part. But, in addition to this general statement of a moral obligation, the White Paper proposes to empower the Federal Government to give directions to a Provincial Government for the purpose of securing that due effect is given in the Province to any such law, and that the manner in which the Provincial Government's executive power and authority is exercised in relation to the administration of the law is in harmony with the policy of the Federal Government. In the case of the States, it is proposed that the Ruler should accept the same general moral obligation, which, as we have said, will rest upon the Provincial Governments, to secure that due effect is given within the territory of his State to every Federal Act which applies to that territory. But we think that the White Paper rightly proposes that any general instructions to the Government of a State for the purpose of ensuring that the Federal obligations of the State are duly fulfilled shall come directly from the Governor-General himself.

Distinction between legislation in the exclusive and concurrent fields.

220. We are of opinion that the proposals in the White Paper on this subject require modification in two directions. In the first place, the White Paper draws no distinction between the execution of Federal Acts with respect to subjects on which the Federal Legislature is alone competent to legislate (List I) and the execution of Federal Acts in the concurrent field (List III). It is evident that in its exclusive field the Federal Government ought to have power to give directions—detailed and specific if need be—to a Provincial Government, as proposed in the White Paper. The same principle should apply to matters in which action or inaction by a Provincial Government within its own exclusive sphere affects the administration of an exclusively Federal subject—that is to say, it should

[1] White Paper, Proposal 125.

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be open to the Federal Government to give directions to a Provincial Government which is so carrying on the administration of a Provincial Subject as to affect prejudicially the efficiency of a Federal Subject. But it is much more doubtful whether it should have such power in the concurrent field. The objects of legislation in this field will be predominantly matters of Provincial concern, and the agency by which such legislation will be administered will be almost exclusively a Provincial agency. The Federal Legislature will be generally used as an instrument of legislation in this field merely from considerations of practical convenience and, if this procedure were to carry with it automatically an extension of the scope of Federal administration, the Provinces might feel that they were exposed to dangerous encroachment. On the other hand, the considerations of practical convenience which would prompt the use of the Federal Legislature in this field will often be the need for securing uniformity in matters of social legislation, and uniformity of legislation will be useless if there is no means of enforcing reasonable uniformity of administration. We think the solution is to be found in drawing a distinction between subjects in the Concurrent List which on the one hand relate, broadly speaking, to matters of social and economic legislation, and those which on the other hand relate mainly to matters of law and order, and personal rights and status. The latter form the larger class, and the enforcement of legislation on these subjects would, for the most part, be in the hands of the Courts or of the Provincial authorities responsible for public prosecutions. There can clearly be no question of Federal directions being issued to the Courts, nor could such directions properly be issued to prosecuting authorities in the Provinces. In these matters, therefore, we think that the Federal Government should have in law, as they could have in practice, no powers of administrative control. The other class of concurrent subjects consists mainly of the regulation of mines, factories, employers' liability and workmen's compensation, trade unions, welfare of labour, industrial disputes, infectious diseases, electricity, and cinematograph films. In respect of this class, we think that the Federal Government should, where necessary, have the power to issue directions for the enforcement of the law, but only to the extent provided by the Federal Act in question. In view of the manner in which we propose to constitute the Federal Legislature, it is improbable that a body so representative of Provincial opinion will sanction any unreasonable encroachment upon the Provincial field of action ; but, as a further safeguard against such encroachment, we think that any clause in a statute conferring such powers should require the previous sanction of the Governor-General.

Enforcement of Federal Government's directions.

221. In the second place it is necessary to provide for a situation, though we may be permitted to hope that it will never in practice arise, in which a Provincial Government has declined to carry out the directions which it has received from the Federal Government. Under the White Paper proposals these directions would be issued

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in the name of the Governor-General as the executive head of the Federation, in whose name all executive acts will run; but, where (as will commonly be the case) the directions relate to matters within the Ministerial sphere, the Governor-General will be acting upon the advice of his Ministers. Among the special responsibilities of the Governor of a Province is one for "securing the execution of orders lawfully issued by the Governor-General"; and, since the directions of which we have spoken would be lawful orders of the Governor-General, it would become the duty of the Governor to secure their execution in opposition to the policy, and (it must necessarily follow) to the advice, of his Ministers. We do not think that the Governor of a Province ought to be placed in a position in which in effect he is compelled to over-rule his own Ministers at the instance of Federal Ministers; and, where a conflict of this kind arises between the Federal Government and the Government of a Province, any directions by the Governor-General which require the Governor to dissent from, or to over-rule, the Provincial Ministry ought to be given in the Governor-General's discretion. The Governor-General would thus become the arbiter between the Federal and the Provincial Governments, and we think that disputes between the two are far more likely to be settled amicably by the Governor-General's discretionary intervention. It cannot be assumed that the fault in cases of this kind will always lie with the Province; the Federal Government may have been tactless or unwise; and the Governor-General should not be under any constitutional obligation to take action against his better judgment, if the effect would only be to accentuate or embitter the dispute.

Governor-General's ultimate responsibility for peace of whole of India.

222. The White Paper proposes to empower the Governor-General in his discretion to issue instructions to the Governor of a Province as to the manner in which the executive power and authority in the Province is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or any part thereof.[1] It has been suggested that, in view of the special responsibility of the Governor to which we have referred above, this proposal is superfluous. We do not think that it is. The Governor of a Province is to have a special responsibility for the prevention of any grave menace to the peace or tranquillity of his own Province, and we think that, but for the proposal to which we have referred, his special responsibility for securing the execution of orders lawfully issued by the Governor-General would necessarily be read as referring to the execution of orders issued by the Governor-General within the sphere of the Governor's statutory functions. But, to take one example which occurs to us, a conspiracy in one Province to disturb the peace and tranquillity of another might well be outside the Governor's special responsibility for the prevention of any grave menace to the peace or tranquillity of his own Province; and, since we have no doubt that an ultimate and residuary responsibility for the peace and tranquillity of the whole of India must vest in the Governor-General, it

[1] White Paper, Proposal 126.

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is plain that the latter's power to give directions to a Governor should be wide enough to cover this case, and that it should be obligatory on a Governor to give effect to those directions, even though it is the peace of a neighbouring Province and not his own which is endangered.

Inter-provincial relations.

223. We do not observe any proposals in the White Paper dealing with disputes or differences between one Province and another, other than disputes involving legal issues, for the determination of which the Federal Court is the obvious and necessary forum. Yet it cannot be supposed that inter-provincial disputes will never arise, and we have considered whether it would not be desirable to provide some constitutional machinery for disposing of them. At the present time the Governor-General in Council has the power to decide questions arising between two Provinces in cases where the Provinces concerned fail to arrive at an agreement, in relation to both transferred and reserved subjects; but plainly it would be impossible to vest such a power in the Governor-General or Federal Ministry after the establishment of Provincial Autonomy, though we do not doubt that the good offices of both will always be available for the purpose. But after careful consideration we have come to the conclusion that it would be unwise to include in the new Constitution any permanent machinery for the settlement of disputes of the sort which we have in mind, and in our opinion the more prudent course would be to leave the Provinces free to develop such supplementary machinery as the future course of events may show to be desirable. There will be necessarily many subjects on which inter-Provincial consultation will be necessary, as indeed has proved to be the case even at the present time; and we consider that every effort should be made to develop a system of inter-provincial conferences, at which administrative problems common to adjacent areas as well as points of difference may be discussed and adjusted. Suggestions for a formal Inter-Provincial Council have been made to us, and we draw attention in later paragraphs of our Report[1] to a number of matters on which it is, in our view, important that the Provinces should co-ordinate their policy, in addition to the financial problem which we discuss hereafter.[2] It is obvious that, if departments or institutions of co-ordination and research are to be maintained at the Centre in such matters as agriculture, forestry, irrigation, education, and public health, and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work, the joint interest of the Provincial Governments in them must be expressed in some regular and recognised machinery of inter-governmental consultation. Moreover, we think that it will be of vital importance to establish some such machinery at the very outset of the working of the new Constitution, since it is precisely at that moment that institutions of this kind may be in most danger of falling between two stools through failing to enlist

[1] *Infra*, paras. 227, 305–309.
[2] *Infra*, para. 261.

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the active interest either of the Federal or the Provincial Governments, both of whom will have many other more immediate preoccupations. There is, however, much to be said for the view that though some such machinery may be established at the outset, it cannot be expected to take its final form at that time, and that Indian opinion will be better able to form a considered judgment as to the final form which it should take after some experience in the working of the new Constitution. For this reason, we doubt whether it would be desirable to fix the Constitution of an Inter-Provincial Council by statutory provisions in the Constitution Act, but we feel strongly the desirability of taking definite action on the lines we have suggested as soon as the Provincial Autonomy provisions of the Constitution come into operation. We think further that, although the Constitution Act should not itself prescribe the machinery for this purpose, it should empower His Majesty's Government to give sanction by Order in Council to such co-ordinating machinery as it may have been found desirable to establish, in order that at the appropriate time means may thus be available for placing these matters upon a more formal basis.

Water rights.

224. There is, however, one subject with respect to which we are of opinion that specific provision ought to be made. The Government of India has always possessed what may be called a common law right to use and control in the public interest the water supplies of the country, and a similar right has been asserted by the legislation of more than one Province as regards the water supplies of the Province. "Water supplies" is now a Provincial subject for legislation and administration, but the Central Legislature may also legislate upon it "with regard to matters of inter-provincial concern or affecting the relations of a Province with any other territory". Its administration in a Province is reserved to the Governor in Council, and is therefore under the ultimate control of the Secretary of State, with whom the final decision rests when claims or disputes arise between one Provincial Government and another, or between a Province and a State. This control of the Secretary of State obviously could not continue under the new Constitution, but it seems to us impossible to dispense altogether with a central authority of some kind.

A Provincial subject under the White Paper.

225. The White Paper proposes to give to the Provinces exclusive legislative power in relation to "water supplies, irrigation and canals, drainage and embankments, water storage and water power," and reserves no powers of any kind to the Federal Government or Legislature.[1] The effect of this is to give each Province complete powers over water supplies within the Province without any regard whatever to the interests of neighbouring Provinces. The Federal Court would indeed have jurisdiction to decide any dispute between two Provinces in connection with water supplies, if legal rights or interests were concerned; but the experience of most countries has

[1] White Paper, Appendix VI, List II.

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shown that rules of law based upon the analogy of private proprietary interests in water do not afford a satisfactory basis for settling disputes between Provinces or States where the interests of the public at large in the proper use of water supplies are involved. It is unnecessary to emphasise the importance from the public point of view of the distribution of water in India, upon which not only the prosperity, but the economic existence, of large tracts depends.

Modification of White Paper proposals suggested.

226. We do not think that it would be desirable, or indeed feasible, to make the control of water supplies a wholly Federal subject; but, for the reasons which we have given, it seems to us that complete provincialization might on occasion involve most unfortunate consequences. We suggest, therefore, that where a dispute arises between two units of the Federation with respect to an alleged use by one unit of its executive or legislative powers in relation to water supplies in a manner detrimental to the interests of the other, the aggrieved unit should be entitled to appeal to the Governor-General acting in his discretion, and that the Governor-General should be empowered to adjudicate on the application. We think, however, that the Governor-General, unless he thinks fit summarily to reject the application, should be required to appoint an Advisory Tribunal for the purpose of investigating and reporting upon the complaint. The Tribunal would be appointed *ad hoc*, and would be an expert body whose functions would be to furnish the Governor-General with such technical information as he might require for the purposes of his decision and to make recommendations to him. Such recommendations, though they would naturally carry great weight with the Governor-General, would not necessarily be binding on him, and he would be free to decide the dispute in such manner as he thought fit. We think also that provision should be made for excluding the jurisdiction of the Federal Court in the case of any dispute which could be referred to the Governor-General in the manner which we have suggested. We should not propose that the powers of the Governor-General should extend to a case where one unit is desirous of securing the right to make use of water supplies in the territory of another unit, but only to the case of one unit using water to the detriment of another. With this limitation we believe that the plan would be a workable one, and that it could not reasonably be regarded as inconsistent with the conception of Provincial Autonomy or with the principle that outside the federal sphere the States' relations will be exclusively with the Crown.

Central research.

227. We have found occasion in later paragraphs to draw attention to the importance of the co-ordination of research in connection with the special subjects of Forestry and Irrigation. It is a matter very relevant to any consideration of the future relations between the Federal and Provincial Governments. Whatever criticisms may have been levelled in the past against an excessive centralisation of government in India, they can have little application to the facilities thereby created for the pooling of ideas and of

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methods so as to enable the whole of India to benefit from the administrative experience of every part. It would be deplorable if the establishment of Provincial Autonomy were to lead the Provinces to suppose that each could regard itself as self-sufficient, or to tempt the Centre to disinterest itself in the efforts which it has made in the past to collect and co-ordinate information for general use. If our recommendations are adopted, the existing central research institutions will remain under the exclusive control of the Federal Government, but they can only flourish if assured that the interest and support of the Provincial and States' Governments are still assured to them. The Statutory Commission made special reference to the Council of Agricultural Research, which was established as a result of the recommendations of the Royal Commission on Agriculture in India, and we agree with them in thinking that similar institutions might with advantage be established in other fields, such as Public Health and Education.

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APPENDIX (II)

Scheme for Election of British India Representatives to Council of State and House of Assembly.

Council of State

1. The British India representatives will number 150, elected in the manner described below, together with 6 members nominated by the Governor-General in his discretion.

2. The members, other than those nominated, will be elected in three separate Divisions, A, B and C.

Members in Division A will retire after three years from the date when the House is first constituted, and thereafter every nine years.

Those in Division B after six years from that date and thereafter every nine years.

Those in Division C after nine years from that date and thereafter every nine years.

The members to be elected for each of the three Divisions will be allocated as follows :—

	A	*B*	*C*	*Total.*
Madras	0	10	10	20
Bombay	8	0	8	16
Bengal	10	0	10	20
United Provinces	10	10	0	20
Punjab	8	8	0	16
Bihar	0	8	8	16
Central Provinces (with Berar)	0	8	0	8
Assam	0	5	0	5
North-West Frontier Province	0	0	5	5
Sind	5	0	0	5
Orissa	5	0	0	5
Coorg	0	0	1	1
Ajmer	0	0	1	1
Delhi	0	0	1	1
Baluchistan	0	0	1	1
Indian Christians	1	0	1	2
Anglo-Indians	0	0	1	1
Europeans	3	1	3	7
Total ..	50	50	50	150

3. The Indian Christian, Anglo-Indian and European members will be chosen by three Electoral Colleges of their own for the whole of British India, composed respectively of the Indian Christian, Anglo-Indian and European members of the Provincial Legislatures (including members from the Upper Houses of bicameral Provinces). The method of voting by the European Electoral College, when more than one seat is to be filled, will be the single transferable vote.

4. In the Provinces of Madras, Bombay, United Provinces and Bihar the Muhammadan members of the Provincial Upper House voting alone will elect one member for each of the two Divisions of the Federal Upper House in which the Province is represented. The remainder of the seats allocated to the Governors' Provinces, apart from these 8 seats, will be filled in the following manner :—

(*a*) In the bicameral Governors' Provinces the members will be elected by all the members of the Provincial Upper House (except Indian Christian, Anglo-Indian and European members) by means of the single transferable vote.

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(*b*) In the unicameral Governors' Provinces, where Upper Houses do not exist, the members will be elected by a specially constituted Electoral College by means of the single transferable vote. The composition of these Electoral Colleges will be as follows :—

Province.	*General.*	*Sikh.*	*Muhammadan.*	*Total.*
Punjab	16	11	30	57
Central Provinces (with Berar) ..	31	—	5	36
Assam	21	—	12	33
North-West Frontier Province ..	5	1	19	25
Sind	10	—	18	28
Orissa	27	—	3	30

Members of the Electoral Colleges will be chosen by direct election from territorial communal constituencies. The franchise will be similar to that employed in other Provinces for direct election to the Provincial Upper House. The question of special provision for the Depressed Classes among the General seats requires consideration especially in relation to the Central Provinces.

5. Special provisions will be necessary for the selection of the representative from Chief Commissioners' Provinces, except in the case of Coorg where the representative will be elected by members of the Coorg Legislature.

6. When the Federal Council of State is constituted for the first time, on that occasion, and on that occasion only, members of all three Divisions will have to be elected at the same time. There will, therefore, in the case of six Provinces be candidates for two different Divisions simultaneously. The election will take place first for the Division which will be re-elected later than the other one. Those candidates who are not successful in the election for that Division will form the candidates for the immediately following election for the other Division.[1]

7. Casual vacancies among the elected members of the Council of State will, so long as communal representation is retained as a feature of the Constitution, be filled by election by those members of the Provincial Upper House (or Electoral College) who are members of the community to which the vacating member belongs, as proposed in the White Paper.[2]

8. It will be observed that, although one-third of the Council of State will be renewed at a time, the representatives of any given Province will be renewed half at a time in the larger Governors' Provinces, and the whole at a time in other Provinces. The object of this arrangement is to avoid reducing the number of seats to be filled at any Provincial election to an extent which would be likely to have the effect of producing inequitable results from the system of proportional representation.

9. The object of the provision of eight seats to be filled by Muhammadan electors only is to secure that the Muhammadan community should be in a position to secure one-third of all the British India seats if every Muhammadan elector in using first and succeeding preferences gave priority to all candidates of his own community.

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[1] It will probably be found possible to avoid a double reference to the voters. After the election to one Division is completed, the election to the other Division could presumably take place on the basis of the original voting papers, the names of the candidates already successful for the other Division being eliminated and the preferences on the voting papers being renumbered accordingly.

[2] White Paper, Proposal 28.

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We agree with the proposal in the White Paper[1] that the Muhammadan community should be placed in a position in which they could achieve this result, and it is unlikely that they would be able to do so without the allocation to them of these few specifically communal seats. This special provision is analogous to that which the Secretary of State for India has proposed for the same purpose in modification of Appendix I of the White Paper[2].

10. In the Governors' Provinces a candidate will be qualified for election to the Council of State if he (or she) is qualified for election to the Provincial Upper Chamber (or Electoral College, as the case may be).

Special provisions will be required for the qualifications of other candidates.

Federal House of Assembly

11. The British India representatives in the Assembly will number 250, elected in the manner described below.

12. The allocation of seats between Provinces and between the various special interests and communities will be in accordance with the numbers set out in the Table in Appendix II of the White Paper.

13. The method of election to the special interest seats, that is to say, to the special seats assigned for commerce and industry, landholders and labour, will be as proposed in Appendix II to the White Paper.

14. In the Governors' Provinces, election to the seats in the Assembly allocated as General or Muhammadan will be by the members of the Provincial Lower House who hold respectively General or Muhammadan seats in that House. Members who hold special interest seats in the Provincial Lower House will not participate. In the Punjab those members who hold Sikh seats in the Provincial Legislature will elect to the six Sikh seats from the Punjab in the Assembly. Subject to the following provision relating to the Depressed Classes, the method of voting within each of the above groups of electors will be the single transferable vote.

15. In the case of General seats, it would be a simplification if there were no seats reserved for the Depressed Classes, reliance being placed on the proportional representation system to secure a due share of the General seats for the members of the Depressed Classes. Unless, however, the adoption of such a course were agreed between the caste Hindus and Depressed Classes, we regard it as desirable to avoid disturbing, so far as possible, the arrangements in the White Paper for Depressed Classes representation in the Federal Lower House which are based on the Poona Pact. Accordingly, out of the General seats there will be reserved for the Depressed Classes the number of seats indicated in Appendix II to the White Paper.

16. The following seems to be a possible method for combining procedure for reservation of seats with the use of the single transferable vote. After the voting papers have been received, and before the single transferable vote procedure is applied, those Depressed Class candidates, up to a number equal to that of the reserved seats, who receive the highest number of first preferences would be declared to be elected. The single transferable vote procedure would then be applied for the election to the remaining general seats. It is necessary to provide, in accordance with the Poona Pact, that the only candidates qualified to be elected to the reserved seats should be those elected by a primary to a number equal to four times the number of reserved seats. In order to constitute a primary of adequate size, we think that it might consist, not only of those members of the Provincial Lower House

[1] White Paper, Introd., para. 18.
[2] Evidence. Answer to Question 7811.

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who hold the seats reserved therein for Depressed Classes, but also of those who were successful candidates at the primary Depressed Class elections for the Provincial Lower House, though they did not secure seats at the final election for that House.

17. The seats allocated to Indian Christians, Anglo-Indians, Women and Europeans will be filled by election by four Electoral Colleges of their own composed of all those who hold respectively Indian Christian, Anglo-Indian, Women's and European seats in the Provincial Lower Houses. Those who hold special interest seats in those Houses will not participate. The Electoral Colleges, composed of members from all the Provinces, will elect separately the member from each Province to which is allocated an Indian Christian,[1] Anglo-Indian or European seat. In the case of the Electoral College composed of the women members of the Provincial Lower Houses, three seats will be reserved for Muhammadan women and one seat for an Indian Christian woman.

18. Special provisions will be necessary for the selection of the representatives from Chief Commissioners' Provinces, except in the case of Coorg, where the representative will be elected by members of the Coorg Legislature.

19. In Governors' Provinces (and Coorg) a candidate will be qualified for election to a seat in the Federal Assembly (other than a special interest seat) if he is qualified for election to the Provincial Lower House for a General, Muhammadan or Sikh seat, as the case may be. Qualifications for a candidate for those General seats which are reserved for the Depressed Classes will be as described above.

Special provisions will be required for the qualifications of candidates in Chief Commissioners' Provinces other than Coorg.

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[1] In Madras there are two Indian Christian seats. Voting for these will be by means of the single transferable vote.

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APPENDIX (III)

SCHEME OF DISTRIBUTION OF STATES' SEATS IN THE FEDERAL LEGISLATURE AS PROPOUNDED BY THE GOVERNOR-GENERAL AS A BASIS OF DISCUSSION.

1. In *Annexure A* below, list I includes (*a*) the seats allotted to certain States individually which are not included in the regional lists II–IX which follow; (*b*) the total number of seats allotted to the States with continuous or alternating representation included in each of the regional lists II–IX; and (*c*) the total number of seats allotted in list X to the joint representation of groups of minor non-salute States which are not included in the regional lists. *Annexure B* gives the States accorded individual representation in order of salute and population with the representation allotted to each.

2. There are 104 States' seats in the Council of State. Four seats have been added to the 100 seats referred to in the body of the Report, in place of the States' share (40 per cent.) of the 10 seats which the White Paper proposed should be filled by nomination by the Governor-General. The nominated seats in the Council of State will accordingly be reduced to six from British India.

3. The 104 seats available in the Council of State have been divided into three categories: (*a*) those to be filled continuously by one State, (*b*) those to be filled in alternation by two or more States, as shown in groups in lists II–IX, and (*c*) those to be filled by the representatives of the groups of minor States given in list X; the three categories having been determined with a view to enabling as many States as possible to enjoy individual representation with due regard to their relative importance, and, where a seat is shared between two or more, to their proximity.

4. The 125 seats available in the House of Assembly have been distributed roughly on a population basis, but in such a way as to reduce slightly the number of seats available to the most populous States so as to secure separate representation for as many States as possible. So far as possible the groups for alternating representation of States in a single seat proposed for the Council of State have been retained for the Assembly. But it is intended that in the latter Chamber the States grouped together shall nominate joint representatives instead of having the option of occupying in turn the seat allotted to them.

5. It is proposed that group representation shall be subject to the following provisions. If not less than half the number of Rulers combined in a particular group accede to Federation, they shall be entitled to fill the seat allotted to the group. To meet cases of difficulty when less than 50 per cent. of the members of a group accede to Federation, the Governor-General should be empowered to determine disputes and to vary the composition of groups when necessity arises. The members of an alternating group shall be entitled, each in turn, to appoint a representative for a period of one calendar year. But if States so prefer they may pool their allotted quota of seats with those of other States so as to be represented by joint nominees, thus possibly, where entitled under the scheme only to a seat in rotation, securing instead continuous joint representation. To enable such arrangements to be made voluntarily between States the Governor-General shall be empowered to vary the distribution of groups as scheduled to the Constitution Act where necessity arises, subject to his being satisfied that the arrangements proposed would not adversely affect the rights and interests of other States which do not desire to participate therein.

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ANNEXURE A

LIST I

Name of State	*No. of Seats in the Upper House*	*Population*	*No. of Seats in the Lower House*
(*a*) Hyderabad	5	14,436,148	14
Mysore	3	6,557,302	7
Kashmir	3	3,646,243	4
Gwalior	3	3,523,070	4
Baroda	3	2,443,007	3
Kalat	2	342,101	1
Travancore	2	5,095,973	5
Cochin	2	1,205,016	1
Rampur	1	465,225	1
Benares	1	391,272	1
Sikkim	1	109,808	—
(*b*) *Rajputana Agency* (List II)	19	11,218,390	17
Central India Agency (List III) ..	17	6,368,035	14
Western India and Gujarat States Agencies and certain States from Rajputana and Deccan States Agencies (List IV)	13	4,584,878	12
Deccan States and Kolhapur Agency (List V)	5	2,322,314	5
Punjab States Agency and Tehri-Garhwal (List VI)	11	5,048,984	11
Bengal and Assam States (List VII) ..	2	1,418,942	3
Madras States Group (Pudukkottai, Banganapalle and Sandur) (List VIII)	1	453,495	1
Eastern States Agency—Bihar and Orissa States (14 *States*) *and Central Provinces States* (9 *States*) (List IX)	3 2	4,100,480 2,193,661	9 5
(*c*) *Non-salute States, not provided for above* (List X)	5	2,809,456	7
	104		125

LIST II

Rajputana

Upper House		*Lower House*		
Name of State	*No. of Seats*	*Name of State*	*Population*	*No. of Seats*
Udaipur	2	Udaipur	1,566,910	2
Jaipur	2	Jaipur	2,631,775	3
Jodhpur	2	Jodhpur	2,125,982	2
Bikaner	2	Bikaner	936,218	1
Alwar	1	Alwar	749,751	1
Kotah	1	Kotah	685,804	1
Bharatpur	1	Bharatpur ..	486,954	1
Tonk	1	Tonk	317,360	1

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LIST II—*continued*

Upper House		*Lower House*		
Name of State	*No. of Seats*	*Name of State*	*Population*	*No. of Seats*
Dholpur	1	*Group I*		
Karauli	1	Dholpur	254,986	1
		Karauli	140,525	
			395,511	
Bundi	1	*Group II*		
Sirohi	1	Bundi	216,722	1
		Sirohi	216,528	
			433,250	
(15- and 13-gun States and 9-gun State of Shahpura in groups of 2 and 3—alternate representation.)		*Group III*		
		Dungarpur ..	227,544	1
Group I		Banswara ..	260,670	
Dungarpur	1		488,214	
Banswara				
		Group IV		
Group II		Partabgarh ..	76,539	1
Partabgarh	1	Jhalawar ..	107,890	
Jhalawar		Shahpura ..	54,233	
Shahpura			238,662	
Group III		*Group V*		
Jaisalmer	1	Jaisalmer ..	76,255	1
Kishengarh		Kishengarh ..	85,744	
	19		161,999	17

LIST III

Central India

Upper House		*Lower House*		
Name of State	*No. of Seats*	*Name of State*	*Population*	*No. of Seats*
Indore	2	Indore	1,318,217	2
Bhopal	2	Bhopal	729,955	1
Rewa	2	Rewa	1,587,445	2
Datia	1			
Orchha	1	*Group I*		
Dhar	1	Datia	158,834	1
		Orchha	314,661	
			473,495	
(15- and 13-gun States in groups of 2—alternate representation.)		*Group II*		
		Dhar	243,430	1
Group I		Dewas (Senior) ..	83,321	
Dewas (Senior)	1	Dewas (Junior) ..	70,513	
Dewas (Junior)			397,264	

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LIST III—*continued*

Upper House		*Lower House*		
Name of State	*No. of Seats*	*Name of State*	*Population*	*No. of Seats*
Group II		*Group III*		
Jaora	1	Jaora	100,166	1
Ratlam		Ratlam	107,321	
			207,487	
(11-gun States in group of 2—alternate representation.)		*Group IV*		
Panna	1	Panna	212,130	1
Ajaigarh		Ajaigarh	85,895	
			298,025	
(11-gun States in group of 3—alternate representation.)		*Group V*		
Charkhari	1	Charkhari ..	120,351	1
Chhatarpur		Chhatarpur ..	161,267	
Baoni		Baoni	19,132	
			300,750	
(11- and 9-gun States in group of 5—alternate representation.)		*Group VI*		
Bijawar	1	Bijawar	115,852	1
Samthar		Samthar	33,307	
Maihar		Maihar	68,991	
Nagod		Nagod	74,589	
Baraundha		Baraundha ..	16,071	
			308,810	
(11-gun States in group of 2—alternate representation.)		*Group VII*		
Barwani	1	Barwani	141,110	1
Ali Rajpur		Ali Rajpur ..	101,963	
			243,073	
(11-gun States in group of 3—alternate representation.)		*Group VIII*		
Jhabua	1	Jhabua	145,522	1
Sailana		Sailana	35,223	
Sitamau		Sitamau	28,422	
			209,167	
(11-gun States and 9-gun State of Khilchipur in group of 3—alternate representation.)		*Group IX*		
Rajgarh	1	Rajgarh ..	134,891	1
Narsingarh		Narsingarh ..	113,873	
Khilchipur		Khilchipur ..	45,583	
	17		294,347	14

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LIST IV

Western India and Gujarat States; States of Palanpur, and Danta from the Rajputana Agency; and Janjira from the Deccan States Agency

Upper House

Name of State	*No. of Seats*
Cutch	1
Idar	1
Nawanagar	1
Bhavnagar	1
Junagadh	1
(13- and 11-gun States in groups of 2—alternate representation).	
Group I	
Rajpipla	1
Palanpur	
Group II	
Dhrangadhra	1
Gondal	
Group III	
Porbandar	1
Morvi	
(11- and 9-gun States in groups of 3—alternate representation).	
Group I	
Radhanpur	1
Wankaner	
Palitana	
Group II	
Cambay	1
Janjira	
Dharampur	
(9-gun States in groups of 3 and 4—alternate representation.)	
Group I	
Baria	1
Chhota Udepur	
Sant	
Lunawada	
Group II	
Balasinor	1
Bansda	
Sachin	
Jawhar	
Group III	
Dhrol	1
Limbdi	
Wadhwan	
Rajkot	
Danta	
	13

Lower House

Name of State	*Population*	*No. of Seats*
Cutch	514,307	1
Idar	262,660	1
Nawanagar ..	409,192	1
Bhavnagar ..	500,274	1
Junagadh ..	545,152	1
Group I		
Rajpipla	206,114	1
Palanpur ..	264,179	
	470,293	
Group II		
Dhrangadhra ..	88,961	1
Gondal	205,846	
	294,807	
Group III		
Porbandar ..	115,673	1
Morvi	113,023	
	228,696	
Group IV		
Radhanpur ..	70,530	1
Wankaner ..	44,259	
Palitana	62,150	
	176,939	
Group V		
Cambay	87,761	1
Janjira	110,366	
Dharampur ..	112,051	
	310,178	
Group VI		
Baria	159,429	1
Chhota Udepur ..	144,640	
Sant	83,538	
Lunawada ..	95,162	
	482,769	
Group VII		
Balasinor ..	52,525	1
Bansda	48,807	
Sachin	22,107	
Jawhar	57,280	
Dhrol	27,639	
Limbdi	40,088	
Wadhwan ..	42,602	
Rajkot	75,540	
Danta	23,023	
	389,611	12

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LIST V

Deccan States and Kolhapur

Upper House

Name of State	*No. of Seats*
Kolhapur	2
(9-gun States in a group of 4—alternate representation).	
Sangli	1
Sawantwadi	
Mudhol	
Bhor	
(Non-salute States in groups of 5—alternate representation).	
Group I	
Jamkhandi	1
Miraj (Senior)	
Miraj (Junior)	
Kurundwad (Senior) ..	
Kurundwad (Junior) ..	
Group II	
Akalkot	1
Phaltan	
Jath	
Aundh	
Ramdurg	
	5

Lower House

Name of State	*Population*	*No. of Seats*
Kolhapur	957,137	1
Group I		
Sangli	258,512	1
Bhor	141,546	
	400,058	
Group II		
Sawantwadi ..	230,589	1
Mudhol	62,860	
	293,449	
Group III		
Jamkhandi ..	114,282	1
Miraj (Senior) ..	93,957	
Miraj (Junior) ..	40,686	
Kurundwad (Senior)	44,251	
Kurundwad (Junior)	39,563	
	332,739	
Group IV		
Akalkot ..	92,636	1
Phaltan	43,285	
Jath	91,102	
Aundh	76,507	
Ramdurg ..	35,401	
	338,931	5

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LIST VI

Punjab States and Tehri-Garhwal

Patiala			2
Bahawalpur			2
Khairpur			1
Kapurthala			1
Jind			1
Nabha			1
(11-gun States and 9-gun State of Loharu in groups of 3—alternate representation.)			
	Group I		
Mandi			1
Bilaspur			
Suket			
	Group II		
Tehri-Garhwal			1
Sirmur			
Chamba			
	Group III		
Faridkot			1
Malerkotla			
Loharu			
			11

Patiala		1,625,520	2
Bahawalpur		984,612	1
Khairpur		227,183	1
Kapurthala		316,757	1
Jind		324,676	1
Nabha		287,574	1
Tehri-Garhwal		349,573	1
	Group I		
Mandi		207,465	1
Bilaspur		100,994	
Suket		58,408	
		366,867	
	Group II		
Sirmur		148,568	1
Chamba		146,870	
		295,438	
	Group III		
Faridkot		164,364	1
Malerkotla		83,072	
Loharu		23,338	
		270,774	11

LIST VII

Bengal and Assam States

Cooch Behar			1
(Alternate representation.)			
Tripura			1
Manipur			
			2

Cooch Behar		590,886	1
Tripura		382,450	1
Manipur		445,606	1
			3

LIST VIII

Madras States

Upper House		
Name of State		*No. of Seats*
(Group representation.)		
Pudukkottai		1
Banganapalle		
Sandur		

Lower House			
Name of State		*Population*	*No. of Seats*
Pudukkottai		400,694	1
Banganapalle		39,218	
Sandur		13,583	
		453,495	

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LIST IX

Eastern States Agency

(a) *Bihar and Orissa States*			
(9-gun States in a group of 4—alternate representation).			
Mayurbhanj			1
Patna			
Kalahandi			
Sonepur			
(Non-salute States in groups of 5—alternate representation.)			
Group I			
Keonjhar			1
Dhenkanal			
Nayagarh			
Talcher			
Nilgiri			
Group II			
Gangpur			1
Bamra			
Seraikela			
Baud			
Bonai			
			3
(b) *Central Provinces*			
(Non-salute States in a group of 4—alternate representation.)			
Bastar			1
Surguja			
Raigarh			
Nandgaon			
(Non-salute States in a group of 5—alternate representation.)			
Khairagarh			1
Jashpur			
Kanker			
Sarangarh			
Korea			
			2

(a) *Bihar and Orissa States*			
Mayurbhanj ..	889,603		1
Patna	566,924		1
Kalahandi ..	513,716		1
Sonepur	237,920		1
Keonjhar ..	460,609		1
Gangpur	356,674		1
Dhenkanal ..	284,326		
Nayagarh ..	142,406		
Seraikela	143,525		
Baud	135,248		3
Talcher	69,702		
Bonai	80,186		
Nilgiri	68,594		
Bamra	151,047		
	1,892 317		
			9
(b) *Central Provinces*			
Bastar	524,721		1
Surguja	501,939		1
Raigarh	277,569		
Khairagarh ..	157,400		
Jashpur	193,698		
Kanker	136,101		3
Sarangarh ..	128,967		
Korea	90,886		
Nandgaon ..	182,380		
	1,167,001		5

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LIST X

Non-Salute States

Upper House	
Name of State	*No. of Seats*
States in Western Kathiawar and Eastern Kathiawar Agencies ..	1
States in Sabar Kantha, Gujarat States and Deccan States Agencies	1
Bihar and Orissa and Central Provinces States (Eastern States Agency)	1
Central India States and Lawa (Rajputana) ..	1
Simla Hill States and Kalsia, Pataudi and Dujana ..	1
	5

Lower House		
Name of State	*Population*	*No. of Seats*
States in Western Kathiawar Agency	421,435	1
States in Eastern Kathiawar and Old Banas Kantha Agencies ..	467,093	1
States in Old Mahi Kantha, Gujarat States and Deccan States Agencies	377,413	1
Bihar and Orissa and Central Provinces States (Eastern States Agency) ..	822,200	2
Central India States and Lawa (Rajputana) ..	283,525	1
Simla Hill States and Kalsia, Pataudi and Dujana	437,787	1
		7

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ANNEXURE B

Note.—The left-hand figures are those of the population in thousands.

State		Upper House	Lower House
Salute—21 guns			
Hyderabad ..	14,436	5	14
Mysore ..	6,557	3	7
Kashmir ..	3,646	3	4
Gwalior ..	3,523	3	4
Baroda ..	2,443	3	3
Salute—19 guns			
Travancore ..	5,096	2	5
Udaipur ..	1,567	2	2
Indore ..	1,318	2	2
Kolhapur ..	957	2	1
Bhopal ..	730	2	1
Kalat ..	342	2	1
Salute—17 guns			
Jaipur ..	2,632	2	3
Jodhpur ..	2,126	2	2
Patiala ..	1,626	2	2
Rewa	1,587	2	2
Cochin ..	1,205	2	1
Bahawalpur ..	985	2	1
Bikaner ..	936	2	1
Kotah ..	686	1	1
Cutch ..	514	1	1
Bharatpur ..	487	1	1
Tonk	317	1	1
Bundi ..	217	1	1/2
Karauli ..	141	1	1/2
Salute—15 guns			
Alwar ..	750	1	1
Rampur ..	465	1	1
Orchha ..	315	1	1/2
Idar	263	1	1
Dholpur ..	255	1	1/2
Dhar	243	1	1/3
Dungarpur ..	228	1/2	1/2
Khairpur ..	227	1	1
Banswara ..	225	1/2	1/2
Sirohi ..	217	1	1/2
Datia	159	1	1/2
Sikkim ..	110	1	—
Kishengarh ..	86	1/2	1/2
Dewas (Senior)	83	1/2	1/3
Partabgarh ..	77	1/3	1/3
Jaisalmer ..	76	1/2	1/2
Dewas (Junior)	70	1/2	1/3

State		Upper House	Lower House
Salute—13 guns			
Cooch Behar ..	591	1	1
Junagadh ..	545	1	1
Bhavnagar ..	500	1	1
Nawanagar ..	409	1	1
Benares ..	391	1	1
Tripura ..	382	1/2	1
Jind	325	1	1
Kapurthala ..	317	1	1
Nabha ..	287	1	1
Palanpur ..	264	1/2	1/2
Rajpipla ..	206	1/2	1/2
Porbandar ..	116	1/2	1/2
Jhalawar ..	108	1/3	1/3
Ratlam ..	107	1/2	1/2
Jaora	100	1/2	1/2
Dhrangadhra ..	89	1/2	1/2
Salute—11 guns			
Manipur ..	446	1/2	1
Pudukkottai ..	401	group	1/3
Tehri-Garhwal	350	1/3	1
Panna ..	212	1/2	1/2
Mandi	207	1/3	1/3
Gondal ..	206	1/2	1/2
Faridkot ..	164	1/3	1/3
Chhatarpur ..	161	1/3	1/3
Sirmur ..	149	1/3	1/2
Chamba ..	147	1/3	1/2
Jhabua ..	146	1/3	1/3
Barwani ..	141	1/2	1/2
Rajgarh ..	132	1/3	1/3
Charkhari ..	120	1/3	1/3
Bijawar ..	116	1/5	1/5
Narsingarh ..	114	1/3	1/3
Morvi ..	113	1/2	1/2
Janjira ..	110	1/3	1/3
Alirajpur ..	102	1/2	1/2
Bilaspur ..	101	1/3	1/3
Cambay ..	88	1/3	1/3
Ajaigarh ..	86	1/2	1/2
Malerkotla ..	83	1/3	1/3
Radhanpur ..	71	1/3	1/3
Suket ..	58	1/3	1/3
Wankaner ..	44	1/3	1/3
Sailana ..	35	1/3	1/3
Samthar ..	33	1/5	1/5
Sitamau ..	28	1/3	1/3
Baoni ..	19	1/3	1/3

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State	Upper House	Lower House
Salute—9 guns		
Mayurbhanj ..	890	1/4 1
Patna ..	567	1/4 1
Kalahandi ..	514	1/4 1
Sangli ..	259	1/4 1/2
Sonepur ..	238	1/4 1
Sawantwadi ..	231	1/4 1/2
Baria	159	1/4 1/4
Chhota Udepur	145	1/4 1/4
Bhor	142	1/4 1/2
Dharampur ..	112	1/3 1/3
Lunawada ..	95	1/4 1/4
Sant	84	1/4 1/4
Rajkot ..	76	1/5 1/9
Nagod ..	75	1/5 1/5
Maihar ..	69	1/5 1/5
Mudhol ..	63	1/4 1/2
Palitana ..	62	1/3 1/3
Jawhar ..	57	1/4 1/9
Shahpura ..	54	1/3 1/3
Balasinor ..	53	1/4 1/9
Bansda ..	49	1/4 1/9
Khilchipur ..	46	1/3 1/3
Wadhwan ..	43	1/5 1/9
Limbdi ..	40	1/5 1/9
Banganapalle	39	group 1/3
Dhrol ..	28	1/5 1/9
Loharu ..	23	1/3 1/3
Danta ..	23	1/5 1/9
Sachin ..	22	1/4 1/9
Baraundha ..	16	1/5 1/5

State	Upper House	Lower House
Non-salute		
Bastar ..	525	1/4 1
Surguja ..	502	1/4 1
Keonjhar ..	461	1/5 1
Gangpur ..	357	1/5 1
Dhenkanal ..	284	1/5 3/8
Raigarh ..	278	1/4 3/7
Jashpur ..	194	1/5 3/7
Nandgaon ..	182	1/4 3/7
Khairagarh ..	157	1/5 3/7
Bamra ..	151	1/5 3/8
Seraikela ..	144	1/5 3/8
Nayagarh ..	142	1/5 3/8
Kanker ..	136	1/5 3/7
Baud ..	135	1/5 3/8
Sarangarh ..	129	1/5 3/7
Jamkhandi ..	114	1/5 1/5
Miraj (Senior)	94	1/5 1/5
Akalkot ..	93	1/5 1/5
Jath ..	91	1/5 1/5
Korea ..	91	1/5 3/7
Bonai ..	80	1/5 3/8
Aundh ..	76	1/5 1/5
Talcher ..	70	1/5 3/8
Nilgiri ..	69	1/5 3/8
Kurundwad (Senior).	44	1/5 1/5
Phaltan ..	43	1/5 1/5
Miraj (Junior)	41	1/5 1/5
Kurundwad (Junior).	40	1/5 1/5
Ramdurg ..	35	1/5 1/5
Sandur ..	14	group 1/3

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SECTION V

SPECIAL SUBJECTS

(1) The Distribution of Legislative Powers

Importance of the subject.

228. In an earlier part of this Report we have discussed briefly and in general terms our conception of a statutory distribution of legislative powers between the Centre and the Provinces as an essential feature of Provincial Autonomy and as being itself the means of defining its ambit. But the precise method by which this general purpose is to be effected is a matter of such paramount importance to the working of the Constitution which we envisage as to demand more detailed examination.

The plan of a statutory delimitation of legislative powers.

229. We have already explained[1] that the general plan of the White Paper, which we endorse, is to enumerate in two lists the subjects in relation to which the Federation and the Provinces respectively will have an exclusive legislative jurisdiction; and to enumerate in a third list the subjects in relation to which the Federal and each Provincial Legislature will possess concurrent legislative powers—the powers of a Provincial Legislature in relation to the subjects in this list extending, of course, only to the territory of the Province. The result of the statutory allocation of exclusive powers will be to change fundamentally the existing legislative relations between the Centre and the Provinces. At present the Central Legislature has the legal power to legislate on any subject, even though it be classified by rules under the Government of India Act as a Provincial subject, and a Provincial Legislature can similarly legislate for its own territory on any subject, even though it be classified as a Central subject; for the Act of each Indian Legislature, Central or Provincial, requires the assent of the Governor-General, and, that assent having been given, section 84 (3) of the Government of India Act provides that "the validity of any Act of the Indian Legislature or any local Legislature shall not be open to question in any legal proceedings on the ground that the Act affects a Provincial subject or a Central subject as the case may be." If our recommendations are adopted, an enactment regulating a matter included in the exclusively Provincial List will hereafter be valid only if it is passed by a Provincial Legislature, and an enactment regulating a matter included in the exclusively Federal List will be valid only if it is passed by the Federal Legislature: and to the extent to which either Legislature invades the province of the other, its enactment will be *ultra vires* and void. It follows that it will be for the Courts to determine whether or not in a given enactment the Legislature has transgressed the boundaries set for it by the exclusive List, federal or provincial, as the case may be. The questions which may arise

[1] *Supra*, para. 50.

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as to the validity of legislation in the concurrent field are more complicated, and we shall discuss them later; but here, also, disputes as to the validity of legislation will in the last resort rest with the Courts.

Any other plan inconsistent with Provincial Autonomy.

230. We do not disguise the fact that these proposals will open the door to litigation of a kind which has hitherto been almost unknown in India; nor have we forgotten that the Statutory Commission expressed the hope that the provisions of the existing Act which we have mentioned above would be preserved.[1] As we shall explain, our recommendations will have the effect of preserving, in the limited sphere of the concurrent field, the main feature of the existing system; but we feel no doubt that the White Paper correctly insists upon a statutory allocation of exclusive jurisdictions to the Centre and the Provinces respectively as the only possible foundation for the Provincial Autonomy which we contemplate. We are fully sensible of the immense practical advantages of the present system, and of the uncertainties and litigation which have followed elsewhere from a statutory delimitation of competing jurisdictions; but we are satisfied that a relationship between Centre and Provinces, in which each depends in the last resort for the scope of its legislative jurisdiction on the decision of the Central Executive as represented by the Governor-General, would form no tolerable basis for an enduring Constitution and would be inconsistent with the whole conception of autonomous Provinces.

The revised Lists.

231. The Lists, as they appear in Appendix VI to the White Paper, are described as illustrative and do not purport to be either complete or final. Since their publication, however, they have been subjected to a careful scrutiny by the Government of India and the Provincial Governments, whose criticisms have in their turn been examined by the framers of the original Lists; and the results of this scrutiny and examination have been placed at our disposal. In the light of this further information we are satisfied (though the final form must be a matter for the draftsman) that the revised Lists which we append to this chapter represent a workable and appropriate allocation of legislative powers.

Two Lists or one as the method of defining exclusive jurisdictions.

232. We confine our attention for the moment to Lists I and II, which define respectively the exclusive jurisdiction of the Centre and of the Provinces. We believe that the attempt which these Lists represent to allocate by enumeration with any approach to completeness the functions of legislation, including taxation, to rival Legislatures is without precedent. In other Constitutions the method adopted has usually been to specify exhaustively the subjects allocated to one Legislature and to assign to the other the whole of the unspecified residue. But, as we have said elsewhere, the method adopted in the White Paper has one definite constitutional advantage,

[1] Report, Vol. II, para. 154.

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apart from its virtues as a compromise between two sharply opposing schools of thought in India. We are ourselves convinced that the laborious and careful enumeration of both sets of subjects has secured that in fact no material and unforeseen accretion of power, either to Centre or Provinces, would result from the elimination of one List or the other; and we are satisfied that the process has reduced the residue to proportions so negligible that the apprehensions which have been felt on one side or the other are without foundation. Recognising the strength of Indian feeling on this matter we are unwilling to disturb the compromise embodied in the White Paper, the effect of which is to empower the Governor-General acting in his discretion to allocate to the Centre or Province as he may think fit the right to legislate on any matter which is not covered by the enumeration in the Lists. We are conscious of the objections to this proposal. It is inconsistent with our desire to see a statutory delimitation of legislative jurisdictions; and the power vested in the Governor-General necessarily empowers him not merely to allocate an unenumerated subject, but also, in so doing, to determine conclusively that a given legislative project is not, in fact, covered by the enumeration as it stands,—a question which might well be open to argument, though we assume that in practice the Governor-General would seek an advisory opinion from the Federal Court. On the other hand, it must not be forgotten that an enumeration of the powers of the Centre and the allocation of the unspecified residue to the Provinces would involve not only the reservation to the Federal Legislature of a generally defined overriding power, but also the consequence that the Provinces would acquire the right to assume to themselves any unspecified sources of taxation which might hereafter be devised; and if this position were accepted it might well be necessary to deal separately and by a different method with the power to impose taxation. We recommend, however, as some mitigation of the uncertainty arising from the inevitable risks of overlapping between the entries in the Lists, that the Act should provide that the jurisdiction of the Federal Legislature shall, notwithstanding anything in Lists II and III, extend to the matters enumerated in List I; and that the jurisdiction of the Federal Legislature under List III shall, notwithstanding anything in List II, extend to the matters enumerated in List III. The effect of this will be that, in case of conflict between entries in List I and entries in List II, the former will prevail, and, in case of conflict between entries in List III and entries in List II, the former will prevail so far as the Federal Legislature is concerned.

The Concurrent List.

233. We turn now to the problems presented by the Concurrent List. We have already explained our reasons for accepting the principle of a Concurrent List, but the precise definition of the powers to be conferred upon the Centre in relation to the matters contained in it presents a difficult problem. In the first place, it appears to us that,

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while it is necessary for the Centre to possess in respect of the subjects included in the List a power of co-ordinating or unifying regulation, the subjects themselves are essentially provincial in character and will be administered by the Provinces and mainly in accordance with provincial policy; that is to say, they have a closer affinity to those included in List II than to the exclusively federal subjects. At the same time, it is axiomatic that, if the concurrent legislative power of the Centre is to be effective in such circumstances, the normal rule must be that, in case of conflict between a central and a provincial Act in the concurrent field, the former must prevail. But an unqualified provision to that effect would enable an active Centre to oust provincial jurisdiction entirely from the concurrent field, and would thus defeat one of the main purposes of the latter. We have already expressed our approval of the device adopted in the White Paper for the purpose of meeting this difficulty, under which the Governor-General, acting in his discretion, is made the arbiter between conflicting claims of Centre and Provinces. This in effect preserves, in the limited sphere of the concurrent field, the existing legislative relation between Centre and Provinces which excited the admiration of the Statutory Commission; and we think that it would be a mistake to attempt to limit the powers of the Central Legislature in this field by any statutory definition of the purpose for which, or the conditions subject to which, they are to be used.

Relations between Centre and Provinces in the concurrent field.

234. There are obvious attractions to those who wish to see the freedom and initiative of the Provinces as unfettered as possible in an attempt to ensure by provisions in the Constitution Act that the powers of the Centre in the concurrent field are to be capable of use only where an All-India necessity is established, and where the enactment in question can appropriately be, and in fact is, applied to every Province. We are clearly of opinion that such a restriction, apart from the prospect of litigation which it opens up, would tend to defeat the objects we have had in view in revising the List of concurrent subjects. For similar reasons we should strongly deprecate any provision requiring the prior assent of the Provinces, or of a majority of them, as a condition precedent to the exercise by the Centre of its powers in this field, or the condition suggested in the White Paper that the Centre is to be debarred from so using its powers in respect of a concurrent subject as to impose financial obligation on the Provinces. We recognise that, in practice, it will be impossible for the Centre to utilise its powers in the concurrent field without satisfying itself in advance that the Governments to whose territories a projected measure will apply are, in fact, satisfied with its provisions and are prepared, in cases where it will throw extra burdens upon provincial resources, to recommend to their own Legislatures the provision of the necessary supply; but we consider that the practical relationships which are to develop between Centre

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and Provinces in this limited field must be left to work themselves out by constitutional usage and the influence of public opinion, and that no useful purpose would be served by attempting to prescribe them by means of rigid legal sanctions and prohibitions. Nevertheless, we regard it as essential to satisfactory relations between Centre and Provinces in this field that the Federal Government, before initiating legislation of the kind which we are discussing, should ascertain provincial opinion by calling into conference with themselves representatives of the Governments concerned. At the same time we recommend that, although no statutory limitation should be imposed upon the exercise by the Centre of its legislative powers in the concurrent field, the Governor-General should be given guidance in his Instrument of Instructions as to the manner in which he is to exercise the discretion which the White Paper proposes to vest in him in relation to matters arising in the concurrent field.

Proposal that Acts should not be open to challenge after a specific period.

235. We observe with interest a proposal in the White Paper that, in order to minimize uncertainties of law and opportunities for litigation, provision should be made for limiting the period within which the validity of an Act may be called in question on the ground that it was not within the competence of the Legislature which enacted it.[1] We know of no precedent for a provision of this kind, though there are enactments in this country which make certain forms of subordinate or delegated legislation unchallengeable in the Courts after a specified period. We are not disposed to reject it on that account; but, if it is adopted, we think that the period of limitation should be adequate and not less than five years.

The legislative relations between the Federal Legislature and the States.

236. Our observations have been hitherto directed solely to the legislative relations between the Federation and the Provinces. The relations between the Federation and the States in this sphere will not, and cannot, be the same. The effect of the proposals in the White Paper is that, while every Act of the Federal Legislature regulating any subject which has been accepted by a State as a federal subject will apply *proprio vigore* in that State as they will apply in a Province, a duty identical with that imposed upon Provincial Governments being imposed upon the Ruler to secure that due effect is given in his territories to its provisions, yet this jurisdiction of the Federal Legislature in the States will not be exclusive. It will be competent for the States to exercise their existing powers of legislation in relation to such a subject, with the proviso that, in case of conflict between a State law and a Federal law on a subject accepted by the State as federal, the latter will prevail. We understand that the States, who are free agents in this respect, are likely in the first instance to take their stand upon the Federal List proper and to accept the jurisdiction of the Federal

[1] White Paper, Proposal 118.

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Legislature in nothing which is outside the boundaries of that List; but we hope that in course of time they may be willing to extend their accessions at least to certain of the items, such as bankruptcy and insolvency, in the Concurrent List.

Formal changes in the revised Lists.

237. We desire to draw attention to certain points in connection with the revised Lists of Subjects. We may observe in the first place that certain of the entries in List I as it appears in the White Paper are so framed as to provide for variation of treatment in relation to the States. The revised List is, however, framed in terms which are appropriate to India as a whole, and makes no attempt to meet the case of States which might not be prepared to accept the whole subject without variation. This we are satisfied is the more convenient course, the natural medium for recording any variation from the general content of a federal subject, whether in respect of the acceding States in general or of an individual State, being each Ruler's Instrument of Accession. Another general principle which has been observed in revising the Lists, and which has involved a number of minor modifications, is the desirability of defining every entry in terms appropriate to a legislative power and of omitting all entries which are in essence descriptive of executive power. Such expressions as "control" and "regulation" have therefore been avoided; and we assume that the draftsman of the Constitution Bill will find it necessary to define in some appropriate manner, elsewhere in the Bill, the scope of the executive or administrative authority of the Federal and of the Provincial Governments respectively. In any case we recommend, in consonance with what we have said in earlier paragraphs, that the Act should contain an express provision declaring the administration of subjects in List I to be (subject to the right of the Federal Legislature to devolve any administrative powers for the purpose upon the Provincial Governments) a federal, and the administration of subjects in Lists II and III a provincial, function.

Alterations suggested in the entries relating to the defence of India.

238. The revised Lists also contain a number of changes of substance. Apart from a considerable revision of the language of the first five entries of List I, as they appear in the White Paper, which collectively define the ambit of the reserved subject of Defence, the first entry, "the common defence of India in time of an emergency declared by the Governor-General" has been omitted entirely. The intention of this item was, we understand, to give the Federal Legislature (and, in consequence, the Governor-General for the purposes of his personal legislative power) extensive powers on the lines of the English Defence of the Realm Act. We fully agree that it is essential that such a power should be vested in the Federal authorities, but we are of opinion that it should not be left to be deduced from a schedule of legislative powers, but should be the subject of an express provision in the body of the Act. We are informed that it was only by a

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majority of one that five Judges of the High Court of Australia decided that the power to legislate for "defence" in the Commonwealth Constitution Act justified legislation on the lines of the Defence of the Realm Act; and the provision which we recommend in order to place this vital matter beyond doubt should make it clear that the emergency power in question is not limited to "defence" in the sense of repelling external aggression, but that it covers internal disturbance also, and that, where an emergency has been declared by the Governor-General, the Federal Legislature may make on any subject laws which will override any laws which conflict with them, the Governor-General's personal legislative power being of course co-extensive in this respect with the power of the Federal Legislature. As an additional safeguard we would require that every proposal for legislation in the exercise of this power should be subject to the previous consent of the Governor-General. We recognise that the inclusion of internal disturbance (which should be defined in terms which will ensure that for this purpose it must be comparable in gravity to the repelling of external aggression) among the circumstances which, in an emergency, will enable the Governor-General to confer upon himself, or upon the Federal Legislature, as the case may be, the power to invade the exclusively provincial sphere and to override provincial legislation within that sphere, may be criticized as a derogation from the general plan of Provincial Autonomy which we advocate; but in the absence of such a power we could not regard the Governor-General as adequately armed to discharge the ultimate responsibility which rests upon him for the peace and tranquillity of the whole of India.

The Railway Police.

239. We think it right to take this opportunity of drawing attention to the control of Railway Police as settled by the distribution of subjects. Railway Police in India is at present classified as a provincial subject, but the Central Government retains, under the existing Devolution Rules, the power to determine conditions as regards limits of jurisdiction and contributions by the Railways to the cost of maintenance. We are informed that for many years past the question of the allocation of the cost of the Railway Police between the Provincial Governments on the one hand and the Railways on the other has been a subject of controversy, and we have considered the best means of avoiding, or at all events mitigating, such controversies under the new Constitution. One course, which has the obvious attractions of theoretical simplicity, would be to make the policing of the Railways, along with the general control of Railways, an exclusively federal subject, thereby making the Federal Government solely responsible for the control of the administration, and for the financing of the whole of the Railway Police. We are satisfied, however, that such an arrangement, which would reverse a practice of many years standing, would gravely prejudice the efficiency, not merely of the Railway Police, but of the Provincial Police as well. It is essential that the

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regular Police Force of a Province should act in close co-operation with the separately organised Railway Police and that both should be subordinate to the same Inspector-General. This result could not be secured if the control of the two bodies were in separate hands. We feel no doubt, therefore, that the right solution is to classify Railway Police as an exclusively Provincial subject, that the Railway Police Force of each Province should be financed in the main from Provincial revenues, but that there should be as at present a contribution from the Federal Government to the Provinces, which would, in fact, consist of the appropriate contribution from the Railways, and the amount of which would necessarily have to be determined by the Federal Government. But, although the administration of the Railway Police Force itself would thus remain an exclusive responsibility of the Provinces, it is clear that inefficiency or inadequacy of strength in the Railway Police would at once affect the administration of the Federal subject of Railways, and we are satisfied that the recommendations which we have made elsewhere[1] would secure to the Federal Government adequate means of ensuring that the effective administration of the Federal subject of Railways did not suffer through inadequacy or inefficiency on the part of the Railway Police. The Federal Government would be entitled, if it felt called upon to do so, to direct any or all of the Provincial Governments so to order its Railway Police as to bring them up to the requisite standard of efficiency, and there would be an ultimate right residing in the Governor-General, at his discretion, in case directions from his Government to any or all of the Provincial Governments on the subject of the administration, the efficiency, or the strength, of the Railway Police were not complied with, to give the necessary orders to the Governor, which the latter, in virtue of his special responsibility to secure the execution of orders lawfully issued by the Governor-General, would be in a position to get executed both administratively and so far as supply was concerned. The position is different in the States, where for the most part jurisdiction over railway lands has been ceded to the Crown and is exercised either through Police specially appointed for that purpose or through the agency of Provincial Railway Police. In cases where railway jurisdiction has been retained and is exercised by the State, the proposals in the White Paper[2] defining the administrative relations between the Federal Government and the States provide the Governor-General with an appropriate corresponding power to secure the same result as that to be secured under our proposal in the Provinces.

240. It is proposed in the White Paper that such subjects as Health Insurance and Invalid and Old Age Pensions should be subjects of Provincial Legislation. We see serious objection to this, and consider that they should be included in the Concurrent List.

Certain Social Services should be included in Concurrent List.

[1] *Supra*, paras. 219–221.
[2] White Paper, Proposal, 129.

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While it is necessary that the more industrialized Provinces should be able to legislate on these subjects in the interests of the urban workers and should not have to wait for the concurrence of those which are predominantly rural, it is undesirable to exclude the possibility of All-India legislation which may well become necessary in order that there should be uniformity of treatment of the workers as between Province and Province and that industry in one Province should not be burdened with obligations not imposed in another. Mr. N. M. Joshi, in the Memorandum submitted by him, argued that social insurance should also be included in the list of Federal subjects, but here, again, we consider it would be better that it should be in the Concurrent List.

Other alterations in the Lists.

241. It would extend this chapter to an unreasonable length if we were to set out in detail all the changes which a revision of the three Lists has involved. We are the less willing to do so, because we recognise that the revised Lists themselves will require further expert scrutiny before they are finally submitted to Parliament as part of the legislative proposals of His Majesty's Government. We think, however, that if the revised Lists are compared with the Lists in the White Paper, such changes as have been made, in addition to those already mentioned will, for the most part, be found to speak for themselves.

Existing laws.

242. We assume that there will be a provision in the Constitution Act continuing in force (until amended hereafter) the whole body of existing Indian law. But it will clearly be necessary before the Act comes into force to redistribute all powers conferred by that law so as to make them conform to the distribution of powers effected by the Constitution Act.

THE REVISED LISTS

(The unbracketed figures represent the entries in the Lists set out in the White Paper; the figures in brackets represent the order in which the revised entries should be shown.)

List I (Federal)

Item		
1		Omitted for reasons given above.
2	(1)	His Majesty's naval, military and air forces in India and any other armed force raised in India (other than military and armed police maintained by Provincial Governments and armed forces maintained by the Rulers of Indian States), including the employment of those forces for the protection of the Provinces against internal disturbance and for the execution and maintenance of the laws of the Federation and the Provinces.
3	(2)	His Majesty's naval, military and air force works.

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Item		
4	(3)	Local self-government in cantonment areas and the regulation therein of house accommodation.
5		Omitted—has been combined with item 2.
6	(46)	The Benares Hindu University and the Aligarh Muslim University.
7	(47)	Ecclesiastical affairs, including European cemeteries.
8	(4)	External affairs, including international agreements, but with regard to future agreements relating to subjects within the exclusive jurisdiction of a unit, only so far as they have been made with the previous concurrence of that unit.
9	(5)	Emigration from and immigration into India and inter-provincial migration, including in relation thereto regulation of foreigners in India.
10	(6)	Pilgrimages beyond India.
11A	(7)	Extradition.
11B	(8)	Fugitive offenders.
12	(9)	(i) Construction of railways other than minor railways. (ii) Regulation of federal railways and regulation of other railways in respect of— (*a*) maximum and minimum rates and fares ; (*b*) terminals ; (*c*) safety ; (*d*) routeing and interchangeability of traffic ; (*e*) responsibility as carriers. (Definitions (to be inserted in the Act) : " Railways " includes tramways. " Light and feeder railway " means a railway not in physical connection with or of the same gauge as an adjacent railway extending beyond a single unit. " Minor railways " means light and feeder railways wholly within a unit. " Federal railways " includes all railways other than minor railways and railways owned by a State and managed by or on behalf of the Ruler of that State.)
13	(10)	Air navigation and aircraft, including the regulation of aerodromes.
14	(11)	Inland waterways passing through two or more units, including shipping and navigation thereon as regards mechanically propelled vessels, but not including water supplies, irrigation, canals, drainage, embankments, water storage or water power.
15	(12)	Maritime shipping and navigation, including carriage of goods by sea.
16	(13)	Regulation of fisheries beyond territorial waters.
17		Omitted—has been combined with item 14.

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Item		
18	(14)	Lighthouses (including their approaches), beacons, light-ships and buoys.
19	(15)	Port quarantine and marine hospitals.
20	(16)	Declaration and delimitation of major ports and constitution and powers of Port Authorities in such posts.
21	(17)	Postal, telegraphic, telephone, wireless (including broadcasting) and other like services and control of wireless.
22	(18)	Currency, coinage and legal tender.
23	(19)	Public debt of the Federation.
24	(20)	Post Office Savings Bank.
25	(21)	[Incorporation and regulation of] Corporations for the purposes of the subjects in this list; Corporations having objects not confined to one unit; Banking, Insurance, Financial and Trading Corporations not being Co-operative Societies.
26	(22)	Development of industries in cases where such development is declared by or under federal law to be expedient in the public interest.
27	(23)	Cultivation and manufacture of opium; sale of opium for export.
28A	(24)	Possession, storage and transport of petroleum.
28B	(25)	Explosives.
29	(26)	Arms and ammunition.
30	(27)	Copyright, inventions, designs, trade marks and merchandise marks.
31		Transferred to List III.
32	(29)	Cheques, bills of exchange, promissory notes and other like instruments.
33		Omitted—see "Regulation of mechanically propelled vehicles" in List III.
34	(32)	Import and export of commodities across the customs frontiers as defined by the Federal Legislature; duties of customs.
35	(48)	Salt.
36	(49)	Duties of excise on the manufacture and production of tobacco and other articles except— (i) potable alcoholic liquors; (ii) toilet and medicinal preparations containing alcohol, Indian hemp, opium or other drugs or narcotics; (iii) opium, Indian hemp, and other drugs and narcotics.

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Item		
37	(50)	Taxes on the capital and the income (other than the agricultural capital and income) of companies.
38	(33)	Geological Survey of India.
39	(34)	Botanical Survey of India.
40	(36)	Meteorology.
41A	(37)	Census.
41B	(38)	Statistics for the purposes of subjects in this List.
42	(39)	Federal Agencies and Institutes for Research and for professional and technical training or promotion of special studies.
43	(40)	The Imperial Library, Indian Museum, Imperial War Museum, Victoria Memorial and any similar institution controlled and financed by the Federal Government.
44	(41)	Pensions payable by the Federal Government or out of federal revenues.
45	(42)	Federal Services and Federal Public Service Commission.
46	(43)	Lands and buildings in possession of the Federal Government so far as they are not affected by Provincial legislation or are exempted by Federal legislation from the operation of Provincial legislation.
47	(44)	Offences against laws on subjects in this List.
48		Omitted as unlikely to be required by the terms of the Act.
49	(51)	Taxes on other incomes (other than agricultural income), but subject to the power of the Provinces to impose surcharges.
50	(52)	Duties in respect of succession to property other than land.
51	(53)	Taxes on mineral rights and on personal capital other than land.
52	(54)	Terminal taxes on railway, tramway or air-borne goods and passengers and taxes on railway or tramway fares and freights.
53	(30)	Fixation of rates of stamp duty in respect of bills of exchange, bills of lading, cheques, letters of credit, promissory notes, policies of insurance, proxies and receipts.
54		Omitted as covered by the substantive provisions proposed with regard to legislation on residual subjects.
55	(55)	Naturalisation.

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Item		
56	(56)	Conduct of elections to the Federal Legislature, including election offences and disputed elections.
57	(31)	Standards of weight.
58	(57)	Chief Commissioners' Provinces.
59	(58)	Survey of India.
60	(59)	Archæology, including ancient and historical monuments.
61	(35)	Zoological Survey.
62		Re-drafted and transferred to List III.
63	(60)	Jurisdiction, powers and authority of all Courts, except the Federal Court and the Supreme Court, with respect to the subjects in this List.
64		Omitted.

New items

(*a*)	(28)	Insurance other than State insurance.
(*b*)	(61)	The extension of the powers and jurisdiction of officers and men of the Provincial Police Forces to areas outside the Province.
(*c*)	(45)	Imposition of fees, taxes, cesses and duties in connection with the subjects in this List, but not including fees to be paid in Courts.

List II (Provincial).

Item		
1	(1)	Local self-government, including matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlements and other local authorities in the Province established for the purpose of local self-government and village administration.
2	(2)	Hospitals and dispensaries, charities and charitable institutions in and for the Province.
3	(3)	Public health and sanitation.
4	(16)	Pilgrimages other than pilgrimages beyond India.
5	(5)	Education.
6	(6)	Public works, lands and buildings vested in or in the possession of the Crown for the purposes of the Province.
7	(7)	Compulsory acquisition of land.
8	(9)	Roads, bridges, ferries, tunnels, ropeways, causeways, and other means of communication not specified in List I.
9	(8)	Minor railways.
10		Included in item 9.

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Item		
11	(11)	Water supplies, irrigation and canals, drainage and embankments, water storage and water power.
12	(22)	Land revenue, including— (*a*) assessment and collection of revenue ; (*b*) maintenance of land records, survey for revenue purposes and records of rights ; (*c*) alienation of land revenue.
13	(23)	Land tenures, including transfer and devolution of agricultural land ; easements.
14	(24)	Relations of landlords and tenants and collection of rents.
15	(25)	Courts of Wards and encumbered estates.
16	(26)	Land improvement and agricultural loans.
17	(27)	Colonization.
18	(28)	Pensions payable by the Provincial Government or out of Provincial revenues.
19		Included in item 13.
20	(29)	Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, agricultural education, protection against destructive pests and prevention of plant diseases.
21	(30)	Veterinary department, veterinary training, improvement of stock and prevention of animal diseases.
22	(13)	Fisheries.
23	(34)	Co-operative societies.
24	(35)	[Incorporation and regulation of] Corporations other than those mentioned in List I.
24A	(36)	Trading, literary, scientific, religious and other societies and associations not being corporations.
25	(17)	Forests.
26	(18)	Production, manufacture, possession, transport, purchase and sale of liquors, opium and other drugs and narcotics not covered by item 19 of List III.
27	(19)	Duties of excise on the manufacture and production of— (i) potable alcoholic liquors ; (ii) toilet and medicinal preparations containing alcohol, Indian hemp, opium or other drugs and narcotics ; (iii) opium, narcotics, hemp, and other drugs.
28	(39)	Administration of justice, including the constitution and organisation of all Courts and fees to be paid therein, except the Federal Court and the Supreme Court.

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Item		
29	(40)	Procedure in Rent and Revenue Courts.
30	(41)	Jurisdiction, powers and authority of all Courts, except the Federal Court and the Supreme Court, with respect to subjects in this List.
31		Transferred to List III.
32	(42)	Fixing of rates of stamp duty in respect of instruments other than those mentioned in item 53 of List I.
33		Transferred to List III.
34	(37)	Registration of births and deaths.
35	(38)	Religious and charitable endowments.
36	(43)	Mines and the development of mineral resources in the Province.
37	(44)	Control of the production, supply and distribution of commodities.
38	(45)	Development of industries, except in so far as they are covered by item No. 26 in List I.
39		Transferred to List III.
40		Transferred to List III.
41		Transferred to List III.
42	(46)	Gas.
43	(47)	Smoke nuisances.
44	(48)	Adulteration of foodstuffs and other articles.
45	(49)	Weights and measures except standards of weight.
46	(50)	Trade and commerce within the Province.
47		Transferred to List III.
48	(12)	Ports except in so far as they are covered by item 20 of List I.
49	(10)	Inland waterways being wholly within a Province, including shipping and navigation thereon.
50	(52)	Police (including railway and village police).
51	(53)	Betting and gambling except State lotteries.
53	(55)	Protection of wild birds and wild animals.
54	(20)	Vehicles other than mechanically propelled vehicles.
55	(21)	Dramatic performances and cinemas except sanction of cinematograph films for exhibition.
56	(56)	Coroners.
57	(57)	Criminal tribes.
58		Transferred to List III.

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Item		
59	(58)	Prisons, reformatories, Borstal institutions and other institutions of a like nature.
60	(59)	Prisoners.
61	(60)	Pounds and the prevention of cattle trespass.
62	(61)	Treasure trove.
63	(62)	Libraries, museums and other similar institutions, controlled and financed by the Provincial Government.
64	(63)	Conduct of elections to the Provincial Legislature, including election offences and disputed elections.
65	(64)	Public Services in the Province and the Provincial Public Service Commission.
66	(65)	Surcharges within such limits as may be prescribed by Order in Council on federal rates of income tax and supertax, to be assessed on the incomes of persons (not companies) resident in the Province.
67	(66)	Imposition of fees, taxes, cesses, or duties in connection with the subjects in this List and of taxation in any of the forms specified in the annexure hereto.
68A	(31)	Relief of the poor.
68B	(32)	Unemployment.
70	(51)	Money-lenders.
71	(4)	Burials and burial grounds other than European cemeteries.
72	(67)	Offences against laws on subjects in this List.
73		Omitted.
74		Omitted.
75	(68)	Statistics for the purpose of the subjects in this List.
76	(70)	Generally any matter of a merely local or private nature in the Province.
77		Omitted.
New items		
(*a*)	(14)	Innkeepers.
(*b*)	(15)	Markets and fairs.
(*c*)	(69)	Public debt of the Province.

ANNEXURE

Item		
1 to 5		Omitted—already covered by the entries in List II—*see* item 67.
6	(1)	Capitation taxes.
7	(2)	Duties in respect of succession to land.

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Item		
8	(3)	Taxes on lands and buildings, animals, boats, hearths, and windows; sumptuary taxes and taxes on luxuries.
9	(4)	Taxes on trades, professions, callings and employments.
10	(5)	Taxes on consumption; cesses on the entry of goods into a local area; taxes on sale of commodities and on turn-over; taxes on advertisements.
11	(6)	Taxes on agricultural incomes.
12		Omitted—*see* item 32 of List II.
13	(7)	Taxes on entertainments, amusements, betting and gambling.

List III (Concurrent)

1	(1)	Jurisdiction, powers and authority of all Courts, except the Federal Court and the Supreme Court, with respect to the subjects in this List.
2	(2)	Civil Procedure, including the law of Limitation and all matters now covered by the Code of Civil Procedure.
3	(3)	Evidence and oaths.
4	(4)	Marriage and divorce.
5	(5)	Age of majority and custody and guardianship of infants.
6	(6)	Adoption.
7	(7)	Registration of deeds and documents.
8A	(8)	The law relating to :—
		(*a*) Wills, intestacy and succession save as regards agricultural land.
		(*b*) Transfer of property (other than agricultural land).
		(*c*) Trusts and trustees.
		(*d*) Contracts, including partnership.
		(*e*) Powers of Attorney.
		(*f*) Carriers.
		(*g*) Arbitration.
8B	(9)	Bankruptcy and insolvency.
9	(13)	Crimes other than offences against laws on subjects in List I or List II.
10	(14)	Criminal Procedure, including all matters now covered by the Indian Code of Criminal Procedure.

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Item		
11	(17)	Newspapers, books and printing presses.
12	(18)	Lunacy and lunatic asylums.
13	(19)	Regulation of the working of mines, but not including mineral development.
14	(20)	Factories.
15	(21)	Employers' liability and workmen's compensation.
16	(22)	Trade Unions.
17	(23)	Welfare of labour, including, in connection therewith, provident funds.
18	(24)	Industrial and labour disputes.
19	(27)	Poisons and dangerous drugs.
20	(32)	The recovery in a Province of public demands (including arrears of land revenue and sums recoverable as such) arising outside that Province.
21	(31)	Legal, medical and other professions.
22		Transferred to List I.
23		Omitted.
New items		
(*a*)	(28)	The prevention of the extension from one Province to another of infectious and contagious diseases or pests affecting men, animals or plants.
(*b*)	(12)	Administrators-General and official trustees.
(*c*)	(26)	Electricity.
(*d*)	(25)	Boilers.
(*e*)	(16)	European vagrancy.
(*f*)	(29)	The sanctioning of cinematograph films for exhibition.
(*g*)	(15)	Inter-provincial removal of prisoners with the consent of the Province.
(*h*)	(30)	Mechanically propelled vehicles.
(*i*)	(33)	The recognition of laws, public Acts, records and judicial proceedings.
(*j*)	(10)	Law of non-judicial stamps, but not including the fixation of rates of duty.
(*k*)	(11)	Actionable wrongs not relating to subjects in List I or List II.
(*l*)	(34)	Imposition of fees, taxes, cesses and duties in connection with the subjects in this List, but not including fees to be paid in Courts.
(*m*)	(35)	Statistics for the purposes of the subjects in this List.
(*n*)	(18*a*)	Prevention of cruelty to animals.
(*o*)	(24*a*)	Health insurance and invalid and old-age pensions.

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(2) Federal Finance

Two-fold division of subject.

243. This subject falls naturally into two parts: first, the allocation of the sources of revenue between the Federation and the Units; and second, the additional expenditure involved by the proposed constitutional changes. We have had the advantage of a comprehensive and objective review of the facts and figures relating to both parts of the subject by Sir Malcolm Hailey, which has been printed among the Records of the Committee. We reproduce here from this document the figures of estimated revenue and expenditure of the Central and Provincial Governments for 1933–34, in order that it may be possible to view in proper perspective the various questions dealt with below.

Budget Estimates of Revenue and Expenditure of Central and Provincial Governments in 1933–34

Central Revenue

	Rs. = £ Crores.	millions.
Customs (net)	50·27	37·70
Income taxes (net) ..	17·21	12·91
Salt (net)	7·60	5·70
Other taxes (net) ..	0·60	0·45
Net tax revenue	75·68	56·76
Opium (net)	0·63	0·47
Railways (net) ..	Nil	Nil
Currency and Mint (net)	1·11	0·83
Payments from States	0·74	0·56
Total	78·16	58·62

Provincial Revenues

Land Revenue ..	35·29	26·47
Excise	14·85	11·14
Stamps	12·40	9·30
Registration	1·14	0·85
Scheduled Taxes ..	0·43	0·32
Total tax revenue	64·11	48·08
Forests (net)	0·69	0·52
Irrigation (net) ..	0·49	0·37
Miscellaneous	11·32	8·49
N.W.F.P. subvention..	1·00	0·75
Total	77·61	58·21

Central Expenditure

	Rs. = £ Crores.	millions.
Post and Telegraphs (net)	0·61	0·46
Debt :		
Interest (net) ..	8·97	6·73
Reduction of Debt ..	6·89	5·17
Civil Administration (net)	8·76	6·57
Pensions (net) ..	3·02	2·26
Civil Works (net) ..	1·72	1·29
Defence Services (net)	46·20	34·65
Subvention to N.W.F.P.	1·00	0·75
Miscellaneous (net) ..	0·74	0·55
Total	77·91	58·43

Provincial Expenditure

Land Revenue and General Administration	14·86	11·14
Police	12·38	9·28
Jails and Justice ..	7·66	5·75
Debt	4·21	3·16
Pensions	5·08	3·81
Education	11·80	8·85
Medical and Public Health	5·23	3·92
Agriculture and Industries	2·89	2·17
Civil Works	8·33	6·25
Miscellaneous	7·34	5·51
Total	79·78	59·84

Allocation of Sources of Revenue between the Federation and the Federal Units

The allocation of resources a problem common to all Federations.

244. In any Federation the problem of the allocation of resources is necessarily one of difficulty, since two different authorities (the Government of the Federation and the Government of the Unit), each with independent powers, are raising money from the same body of taxpayers. The constitutional problem is simplified if it is possible to allocate separate fields of taxation to the two authorities,

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but the revenues derived from such a division, even where it is practicable, may not fit the economic and financial requirements of each party; neither do these requirements necessarily continue to bear a constant relation to each other, and yet it is difficult to devise a variable allocation of resources. So far as we are aware, no entirely satisfactory solution of this problem has yet been found in any federal system.

The existing system in British India.

245. So far as British India is concerned the problem is not a new one. Though the separation of the resources of the Government of India and the Provincial Governments under the existing Constitution is in legal form merely an act of statutory devolution, which can be varied by the Government of India and Parliament at any time, nevertheless from the practical financial point of view there is already in existence in British India a federal system of finance. This system is fully described in the Report of the Statutory Commission. Determined to avoid the inconveniences which had already been experienced from a system of "doles" from the Centre to the Provinces or from a system of heads of revenue shared between the two parties, the authors of the present Constitution adopted an almost completely rigid separation of the sources of revenue assigned respectively to the Centre and to the Provinces. From the point of view of expenditure, the essentials of the position are (and no change in this respect is to be expected) that the Provinces have an almost inexhaustible field for the development of social services, while the demands upon the Centre, except in time of war or acute frontier trouble, are more constant in character. The Provinces have rarely had means adequate for a full development of their social needs, while the Centre, with taxation at a normal level, has no greater margin than is requisite in view of the vital necessity for maintaining unimpaired both the efficiency of the defence services and the credit of the Government of India, which rests fundamentally upon the credit of India as a whole, Centre and Provinces together. But the resources of the Centre comprise those which should prove most capable of expansion in a period of normal progress.

Its results.

246. Both Centre and Provinces have, however, been severely affected by the world economic depression; and the financial position of both has been severely strained. Rates of taxation have had to be increased in all directions, and every department of government has had to submit to retrenchment; but the way in which the strain has been borne is a tribute to the essential soundness of the present financial system. Past experience of the existing system leads to two conclusions on which there is general agreement: (*a*) that there are a few Provinces where the available sources of revenue are never likely to be sufficient to meet any reasonable standard of expenditure; and (*b*) that the existing division of heads of revenue between Centre and Provinces leaves the Centre with an undue share of those heads which respond most readily to an improvement in

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economic conditions. This has led to a very strong claim by the Provinces for a substantial share in the taxes on income. This claim, as might be expected, has been pressed most vigorously by the more industrialised Provinces like Bombay and Bengal.

Effect of entry of the States into Federation.

247. The provincial claim to income tax has been given added impetus by the attitude of the States in the matter of direct taxation. The entry of the States into the Federation removes, indeed, one very serious problem. The incidence of the sea customs duties is upon the consumers in the Indian States and the consumers in British India alike; but the States have no say under the present system in the fixing of the tariff. With the continued rise for many years past in the level of the import duties, the States have pressed more and more for the allocation to them of a share in the proceeds of these duties. There is of course another side to the picture in the increased cost of the defence services, which is for the benefit of the States as well as for British India; but, nevertheless, the question was becoming one of formidable difficulty, and was recognised as such in the report of the Indian States Committee of 1928–29, presided over by Sir Harcourt Butler. With their entry into the Federation the States will take part in the determination of the Indian tariff, and their claim to a separate share in the proceeds disappears. But if their entry removes this major problem, it introduces another, though less formidable, complication. It is obviously desirable that, so far as possible, all the Federal Units should contribute to the resources of the Federation on a similar basis. Broadly speaking, no difficulty arises in the sphere of indirect taxation which constitutes some four-fifths of the central revenues; the difficulty arises over direct taxation, that is to say, taxes on income. If the Federation retains the whole of taxes on income, as the Centre does at present, it would be natural to require that the subjects of the federating States should also pay income tax and that the proceeds (or part thereof) should be made available for the federal fisc. The States have made it plain that they are not prepared to adopt any plan of this kind.

Plan suggested for allocation of taxes on income.

248. It will be seen therefore, from two different lines of approach, that the most difficult question that arises in the problem of allocation is that of the treatment of taxes on income. In earlier discussions at the Round Table Conference a plan was evolved by which, in the main, all the taxes on income were to be assigned to the Provinces, the resulting deficit in the Federal Budget being made up for the time being by contributions from the Provinces, which it was hoped could be gradually reduced over a prescribed period of years and would finally disappear, as new Federal resources were developed. The position which would be likely to result from a plan of this kind was examined in India in 1932 by the Federal Finance Committee presided over by one of our own number. The Committee declared itself unable to assume the abolition of such provincial contributions within any period that could be foreseen;

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and this conclusion, and the objections felt to the reintroduction of provincial contributions, experience of which had not been too fortunate under the existing Constitution, led to the abandonment by His Majesty's Government of this scheme.

Difficulty of determining equitable basis for division of taxes on income between Federation and Provinces.

249. There is little doubt that, from the economic point of view, it is desirable that the Provinces should, if it is practicable, share in the proceeds of taxes on income. There has been considerable discussion, since the abandonment of the plan just described, as to the amount of this share. If the problem is considered merely as one of striking a theoretically correct balance between the States and British India, on the assumption that the States will not be subject to the federal income tax, there are many factors to be taken into account. Some of the federal expenditure will be for British-India purposes only, such as subsidies to deficit British-India Provinces; there has also been controversy on the question whether the service of part of the pre-Federation debt should not fall on British India alone; and further, part of the proceeds of taxes on income is derived from subjects of Indian States, e.g., holders of Indian Government securities and shareholders in British-India companies. The States also make a contribution in kind to defence of which there is no counterpart in the Provinces of British India. It seems to us both unnecessary and undesirable to attempt any accurate balancing of these factors or to determine on a basis of this kind what share of the income tax could equitably be retained by the Federation. It will be wiser to base the division upon the financial and economic needs of the Federation and the Units. Nor is it likely that any disequilibrium between British India and the States that might result from such a method of treatment would be of a serious character. The difficulty is rather that the Federal Centre is unlikely, at least for some time to come, to be able to spare much, if anything, by way of fresh resources for the Provinces, apart from the pressing needs of deficit areas to which we refer below. But it is equally undesirable to leave the Provinces with no indication of the share which they may ultimately expect when the strain of present economic difficulties becomes less severe. It is also necessary that any transfer should be gradual, if dislocation of both federal and provincial budgets is to be avoided.

The White Paper proposal.

250. The solution of this problem proposed in the White Paper may be briefly described as follows[1]: Taxes on income derived from federal sources, *i.e.*, federal areas or emoluments of federal officers, will be permanently assigned to the Federation. Of the yield of the rest of the normal taxes on income (except the corporation tax referred to later) a specified percentage (to be fixed by Order in Council at the last possible moment) is to be assigned to the Provinces. This percentage is to be not less than 50 per cent. nor more than 75 per cent. Out of the sum so assigned to the Provinces the Federal Government will be entitled to retain an amount which will remain

[1] White Paper, Proposals 139, 141.

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constant for three years and will thereafter be reduced gradually to zero over a further period of seven years, power being reserved to the Governor-General to suspend these reductions, if circumstances made it necessary to do so. The Federal Government and Legislature would, in addition, be empowered to impose a surcharge on taxes on income, the proceeds of which would be devoted solely to federal purposes. We understand it to be implicit in this proposal that the power should only be exercisable in times of serious financial stress; and when such surcharges are in operation the States would make contributions to the federal fisc, assessed on a predetermined basis, so as to make them a fair counterpart of the yield of the surcharges from British India. The conditions under which the States are ready to accept this proposal were explained in a statement made to us on behalf of the Indian States Delegates[1]; and we agree that conditions of the kind mentioned are not unreasonable.

Criticisms of the proposal.

251. Some obvious criticisms can be made on this plan for dealing with the taxes on income. If a specified percentage of the yield of taxes on income is to be assigned to the Provinces, any alteration in the rate of tax will affect both parties (Federation and Provinces), though there may be only one which desires either an increase or a diminution in the yield. It may be suggested that the yield of a given basic rate should be assigned either to the Federation or the Provinces, the remainder going to the other. We are, however, informed that a plan of this kind would not fit well into the Indian income tax system, which differs considerably from the British. It is also said that the anomaly is more apparent than real, since, at least for many years to come, both Federation and Provinces will need as much money as can be obtained from taxes on income, and the fixing of the rate is likely to depend more on taxable capacity than on the precise budgetary position at any given moment of either.

Modifications suggested.

252. We agree that the percentage which is ultimately to be attained should be fixed as late as possible by Order in Council; but we see little or no prospect of the possibility of fixing a higher percentage than 50 per cent., and there is an obvious difficulty in prescribing in advance, as the White Paper does, a time-table for the process of transfer, even though power is reserved to the Governor-General to suspend the process (or, as we assume, its initiation). The facts discussed below indicate that for some time to come the Centre is unlikely to be able to do much more than find the funds necessary for the deficit Provinces; and that an early distribution of any substantial part of the taxes on income is improbable. We think that it would be preferable to leave the actual periods indicated above, which the White Paper proposes should be 3 and 7 years, to be determined by Order in Council in the light of circumstances at the time rather than to fix them by Statute (the Governor-General's power to suspend being of course retained).

[1] Minutes of Evidence, Q.8023.

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Suggestion of British India Delegation.

253. The Joint Memorandum of the British-India Delegation recognises the difficulty of predetermining the various factors in this problem, and recommends an enquiry after three years. The Delegation do not state by what authority they consider that any decision consequent upon it should be taken, but perhaps intend that the decision should rest with the Federal Government. This does not seem fair to the Provinces.

Objections of Bengal and Bombay.

254. A further objection has been taken by some witnesses that it is not fair to Provinces such as Bengal and Bombay that the transfer of the provincial share of taxes on income should be delayed; and that, so long as the Federation cannot spare the money, there should be some equitable form of contribution to the Federation from all the Provinces alike. But any plan of this kind must inevitably lead in effect to a return to a system of provincial contributions which has been explored and abandoned. We do not recommend such a course.

Scheme of White Paper generally recommended.

255. It must be admitted that the White Paper proposals for dealing with taxes on income present many difficulties, but the problem does not admit of any facile solution, and, except for the suggestion made above, we do not ourselves feel able to propose an improved scheme. We should add that the actual method of distribution between the Provinces of any share in the taxes on income is a technical problem of some complexity, and we do not think that it is part of our duty to suggest a detailed scheme. The report of the Federal Finance Committee suggests a useful line of approach, on the assumption that an automatic basis of distribution can be fixed. The validity of this assumption will largely depend upon the amount of income tax which can be allocated to the Provinces at any given time.

Corporation Tax.

256. There are two further questions connected with taxes on income on which some comment is desirable. The White Paper proposes to treat specially the taxes on the income or capital of companies.[1] We understand this to refer to taxes of the nature of the existing Corporation Tax, which is a supertax on the profits of companies. It is proposed that the Federation should retain the yield of this tax and that after ten years the tax should be extended to the States, a right being reserved to any State which prefers that companies subject to the law of the State should not be directly taxed to pay itself to the federal fisc an equivalent lump sum contribution. We appreciate the desire of the States for this measure of elasticity and feel bound to accept it, though we must observe that the details of the arrangement with the States seem likely to be complex and that the adoption of the alternative procedure is economically undesirable.

[1] White Paper, Proposal 142.

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Provincial surcharges.

257. The White Paper also proposes that a Provincial Legislature should be empowered to impose a surcharge not exceeding 12½ per cent. on the taxes levied on the personal income of persons resident in the Province, and to retain the proceeds for its own purposes.[1] There is, we understand, a considerable difference of opinion in India on this suggestion. It might lead to differential rates of tax on the inhabitants of different Provinces, and although a limit would be set to the possible differences, this is in itself undesirable. The rates of taxes on income are likely also to be sufficiently high to make it difficult to increase the rate by way of surcharge, and to give the Provinces such a power might well nullify the emergency power of imposing a surcharge which we think it essential that the Federation should possess. On the other hand, the proposal would undoubtedly give an elasticity to provincial revenues, which would be very desirable until the transfer of their share of the income tax is completed. But after balancing the considerations on either side, we are on the whole not in favour of it.

Taxes on agricultural incomes.

258. The White Paper proposes that the Provinces should have exclusive power to impose taxes on agricultural incomes, which are not at present subject to income tax. We approve this proposal.

The deficit Provinces.

259. We come now to the question of deficit Provinces. The problem of Sind differs from that of the others, since it is not expected that this Province will permanently remain a deficit area. Other Provinces, notably Orissa and Assam, are, so far as can be foreseen, areas in which there is no likelihood that revenue and expenditure can be made to balance under the general scheme of allocation of resources, present or proposed; and in these cases it is intended that there shall be a fixed subvention from the federal revenues.[2] Although it will no doubt be necessary to make it constitutionally possible after a period of years to vary the amount, we understand that the intention is, so far as possible, to make it a permanent and stable contribution and thus to avoid the danger that the Province, instead of developing its resources, may be tempted to rely on expectations of extended federal assistance; and we agree. It is proposed that the Provinces to be assisted and the amounts of the subvention should be determined after further expert enquiry at as late a date as possible. The case of the North West Frontier Province stands on a different footing. This Province is at present in receipt of a contribution of a crore of rupees (·75)[3] annually from the Centre, the need for which arises mainly from special expenditure in the Province due to strategic considerations, though not strictly to be classified as defence expenditure. In this case it

[1] White Paper, Intro., para. 57; Appendix VI, List II (66).

[2] White Paper, Proposal 144.

[3] The figure in brackets here and elsewhere in this section denotes the equivalent figure in millions sterling at 1*s*. 6*d*. the rupee.

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seems essential that there should be power to review the amount from time to time, though here also too frequent changes would be open to the objection to which we have referred above.

Excise and export duties.

260. The White Paper proposals introduce two new features into the plan for the division of resources apart from the arrangements discussed above. Subject to the approval of the Governor-General in his discretion, power is given to the Federation to allot to the Federal Units (and not merely to the Provinces) a share of the yield of salt duties and of excise duties, other than those specifically assigned to the Provinces, and also of export duties.[1] We understand that the main purpose of this provision in relation to salt duties and excises is to make the financial scheme more elastic in the interest of future developments; and it is very probable that a power to assign a share to the Units may facilitate the introduction of a new tax. With this desire to avoid too great a rigidity in the plan of allocation we agree. The particular instance of export duties requires special mention, since it is proposed in the case of the jute export duty that it should be obligatory to assign at least one-half of the proceeds to the producing units. We understand that this proposal is made largely in the interests of Bengal, which has undoubtedly suffered severely under the existing plan of allocation; and the circumstances are so special as, in our opinion, to justify special treatment. A claim has also been made by Assam to a share in the proceeds of the excise duty on petroleum. It is certain that Assam urgently needs an assured increase in its revenue, but the question in what form this need is to be met, whether by fixed subvention or by assignment of revenues, is a matter of fiscal administration on which we do not feel called upon to express an opinion.

Terminal and other taxes.

261. Another feature in the scheme is a category of taxes (of which Stamp Duties are the only ones at present imposed, though there may be a limited scope in the near future for Railway terminal taxes) in which the power to impose the tax is vested solely in the Federation, though the proceeds would be distributed to the Provinces, subject to the right of the Federation to impose a surcharge for federal purposes.[2] We can well understand that in cases where uniformity in the rate of tax, or central administration, is essential, machinery of this kind may be desirable, even though no part of the proceeds is retained for the Centre.

Interest of the Provinces in the Federal budget.

262. The fact that the Federal Units either will, or may, share in the yield from certain federal taxes implies that the Federal Budget cannot be the concern of the Federal Government and Legislature alone. This may result in some blurring of responsibility, and from the point of view of constitutional principle is open to objection; but we see no escape from it. In order to bring about mutual consultation

[1] White Paper, Proposal 137.
[2] White Paper, Proposal 138.

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between Federation and Units in matters of this kind the White Paper proposes that Federal legislation upon them should require the prior assent of the Governor-General, to be given only after consultation with both the Federal Ministry and the Governments of the Units.[1] We are doubtful whether a statutory obligation to consult the Units may not give rise to difficulties, and we see some advantage in directing the Governor-General in his Instrument of Instructions to ascertain the views of the Units by the method which appears to him best suited to the circumstances of the particular case. On the other hand, a suggestion has been made for an entirely different solution of the problem, and that all central receipts which are to go in aid of provincial revenues should be paid into a special Provincial Fund to be administered for the benefit of the Provinces by the Governor-General, on the advice of a statutory Inter-Provincial Council representing the Provincial Governments. We have already given our reasons for thinking that it is undesirable to include in the Constitution Act statutory provisions in regard to an Inter-Provincial Council. Clearly, if it should prove impossible, at any rate in the early years of the Federation, to devise an automatic basis for the distribution of income tax to the Provinces, some form of consultation between the Governor-General and the Provincial Governments as to the methods of distribution will have to be devised; but in that event the point can, if necessary, be met by the Order in Council procedure which we have already suggested.

Financial adjustments between the Federation and the States.

263. The entry of the States into Federation, apart from the major questions referred to above, involves some complicated financial adjustments, mainly in respect of tributes and ceded territories; but these, though of importance to individual States, do not fundamentally affect the Federal finance scheme as a whole. They have been exhaustively examined in the Report of the Indian States Enquiry Committee, 1932,[2] which was also presided over by one of our members. We do not think it necessary to review the intricate adjustments there discussed, and it is sufficient to say that we endorse the main principles on which the Report is based, and in particular the gradual abolition over a period of years (corresponding to the period during which it is proposed to defer the full assignment to the Provinces of a share of the taxes on income) of any contribution paid by a State to the Crown which is in excess of the value of the immunities which it enjoys.

Land customs duties imposed by Indian States.

264. It will be convenient to refer here to the power which the States already possess to impose customs duties on their land frontiers. It is greatly to be desired that States adhering to the Federation should, like the Provinces, accept the principle of internal freedom for trade in India and that the Federal Government alone

[1] White Paper, Proposal 140.
[2] Cmd. 4103.

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should have the power to impose tariffs and other restrictions on trade. Many States, however, derive substantial revenues from customs duties levied at their frontiers on goods entering the State from other parts of India. These duties are usually referred to as internal customs duties, but in many of the smaller States are often more akin to octroi and terminal taxes than to customs. In some of the larger States the right to impose them is specifically limited by treaty. We recognise that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed Federation, and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The change must, of course, be left to the discretion of the States concerned as alternative sources of revenue become available. We have no reason for thinking that the States contemplate any enlargement of the general scope of their tariffs and we do not believe that it would be in their interest to enlarge it. But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation ; and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion[1] would have to be brought to bear upon the States.

States' maritime customs.

265. Of the problems discussed in the Indian States Enquiry Committee's Report, the most difficult and serious is that of the maritime States in relation to sea customs. The present position, which varies between one State and another, is fully explained in the Report ; and we understand that at the moment questions of importance are at issue between the Government of India and some of these States on this subject. We think it most desirable that these difficulties should have been resolved before the Federation comes into being. The general principle which we should like to see applied in the case of the maritime States which have a right to levy sea customs is that they should be allowed to retain only so much of the customs duties which they collect as is properly attributable to dutiable goods consumed in their own State ; but we recognise that treaty rights may not make it possible in all cases to attain this ideal. But if insistence upon treaty or other rights in any particular case makes such an arrangement (perhaps with certain adjustments or modifications) impossible, then it seems to us that the question will have to be seriously considered whether the State could properly be admitted to the Federal system. It is unnecessary to emphasize the importance of securing that there is a genuine uniformity in the rates of customs duties levied respectively at State ports and at the ports of British India.

[1] White Paper, Proposal 129.

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Borrowing powers.

266. Before leaving this part of the subject of federal finance, reference should be made to the arrangements proposed for the regulation and co-ordination of federal and provincial borrowing.[1] The proposals in the White Paper on the subject seem to us acceptable, subject to one additional provision. A Provincial Government will be empowered to borrow directly from the Federal Government, or itself to raise a loan, though the latter will require the sanction of the Federal Government if the Province is already in debt to the Centre. We think that this is right; but it puts great power in the hands of the Federal Ministry, who might, by refusing the application of a Province or by insisting upon unreasonable conditions, assume the right of controlling the general policy of a Province in a manner which we do not think was contemplated. In these circumstances, it seems to us that the ultimate decision whether consent has been unreasonably withheld in any instance should rest with the Governor-General in his discretion.

The additional expenditure involved by the proposed constitutional changes

Additional cost of Federation.

267. We have been furnished with an estimate of the new overhead charges which would result from the adoption of the Constitution proposed in the White Paper; that is to say, the additional expenditure required by reason (*inter alia*) of an increase in the size of the Legislatures and electorates, or the establishment of the Federal Court. These would amount to $\frac{3}{4}$ crore (·56) per annum, attributable to the establishment of Provincial Autonomy, and another $\frac{3}{4}$ crore (·56) per annum, attributable to the establishment of the Federation. We understand that these would be the only fresh burdens imposed upon the taxpayers of India as a direct result of the constitutional changes. The amount, under present financial conditions, is by no means negligible, but is not of very serious dimensions. There are, however, apart from the new overhead charges, certain other factors affecting the financial position which it is necessary to pass in review. The most important of these is the separation of Burma; and although this will not in itself involve a financial loss to the taxpayers of India and of Burma considered as a whole, the revenues of India will suffer a loss estimated to be possibly as much as 3 crores (2·2) per annum, less the yield of any revenue duties on imports from Burma which may be introduced from the date of separation.

Subventions to deficit Provinces: Sind.

268. The next most considerable adjustment is that due to the separation of Sind. It is estimated that there will be an initial deficit in Sind of about $\frac{3}{4}$ crore (·56) per annum, but that this will gradually diminish and be ultimately extinguished over a period of some fifteen years, by the end of which time it is believed that the agricultural developments connected with the Sukkur Barrage scheme

[1] White Paper, Proposals 148, 149.

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will be complete. If Sind were not constituted a separate Province this deficit would fall to be met from Bombay revenues, except for a small sum of about 10 lakhs (·07), the estimated cost of new overhead charges (this sum is included in the total estimate of new overhead charges mentioned above). It is proposed that a subvention should be given from federal revenues to Sind, of a prescribed but gradually diminishing amount. Here again, except for the 10 lakhs already mentioned, there is no additional burden imposed upon the taxpayers of India as a whole, but the relief given to Bombay, which is by no means unneeded, will impose some additional strain on federal revenues.

Orissa.

269. Similar considerations arise in the case of Orissa. This will undoubtedly be a deficit area and will require a subvention of something like 30 lakhs (·22) per annum; but of this only about 15 lakhs (·11) per annum, which is the estimate for new overhead charges, involves any additional burden on federal revenues and has already been included in the total figure for new overhead charges referred to above. The balance would in effect have had to be provided by subvention from the Centre even if a new Province of Orissa were not constituted. The existing Province of Bihar and Orissa is faced with serious financial difficulties, aggravated by the recent earthquake, and the separation of Orissa only means that the new Province will receive the subvention which would otherwise have come to it indirectly through the Government of Bihar and Orissa. It will be an advantage to the Government of Bihar to be free of the administration of a deficit area which is distinct from the rest of the Province, with which communication is difficult, and whose problems are different from those which confront Bihar.

Other deficit Provinces.

270. The subventions to other deficit Provinces also react on federal finance, but these would have been necessary before long under the existing Constitution, since it is clearly impossible to allow the continued accumulation of deficits by a Province, if over a number of years it is beyond its power within the resources assigned to it to balance its expenditure and revenue. The subvention to the North-West Frontier Province has already been granted, and the claim of Assam to an increase in its revenues has for some time been recognised as one which the Central Government must meet in some form.

Cost of adjustments with the States.

271. The factors above mentioned come into play on the inauguration of Provincial Autonomy. The only fresh factor, apart from the new overhead charges of $\frac{3}{4}$ crore (·56) per annum, which is introduced by Federation itself is the proposed financial adjustment with the States to which we have already referred and which it is suggested shall be extended over a period of years. This will ultimately involve a net loss to federal revenues of something less than 1 crore (·75) per annum.

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General conclusions.

272. The general conclusion therefore is that, though no formidable new financial burden would be thrown on the taxpayers of India as a whole as a direct result of the constitutional change proposed, the necessity for giving greater elasticity to provincial resources, the subventions to the deficit Provinces, and also the separation of Burma, will impose a further strain on the finances at the Centre. India is still suffering from the effects of the general financial depression, and the low level of agricultural prices has been and still is a very formidable problem. But the state of Indian finance reflects great credit on those responsible for its administration, and the storm is being weathered more successfully than in most other countries. Economic recovery would no doubt, as in the past, produce speedily a very marked improvement in the situation; but at the moment special emergency taxation and special economies are still in force, and little more can be done than make both ends meet, though a beginning has been made in the present year towards easing provincial difficulties by a central grant to the jute-producing Provinces.

The financial situation in relation to constitutional changes

273. It has been argued in some quarters that constitutional change should be postponed until the financial horizon is clearer, but the additional difficulties attributable to the change (and such as they are they relate mainly to Provincial Autonomy and not to Federation) are but a small part of a financial problem which has in any event to be faced, and is, we hope and believe, in process of solution. No doubt before the new Constitution actually comes into operation His Majesty's Government will review the financial position and inform Parliament how the matter stands. It is suggested in the White Paper that at the last possible date there should be a financial enquiry.[1] This seems to us a suitable procedure, but we do not conceive, nor do we understand that it is intended, that any expert body could be charged with the duty of deciding whether the position was such that the new Constitution could be inaugurated without thereby aggravating the financial difficulties to a dangerous extent. On this point, as we have said, Parliament must at the appropriate time receive a direct assurance from His Majesty's Government.

[1] White Paper, Introd., para. 60.

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(3) The Indian Public Services

The Public Services under responsible government.

274. The problem of the Public Services in India and their future under a system of responsible government is one to which we have given prolonged and anxious consideration. The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministries advice based on long administrative experience, secure in their positions during good behaviour, but required to carry out the policy upon which the Government and the Legislature eventually decide. The grant of responsible government to a British Possession has indeed always been accompanied by conditions designed to protect the interests of those who have served the community under the old order and who may not desire to serve under the new; but if, as we believe, the men who are now giving service to India will still be willing to put their abilities and experience at her disposal and to co-operate with those who may be called on to guide her destinies hereafter, it is equally necessary that fair and just conditions should be secured to them. This does not imply any doubt or suspicion as to the treatment which they are likely to receive under the new Constitution; but, since in India the whole machinery of government depends so greatly upon the efficiency and contentment of the Public Services as a whole, especially during a period of transition, it is a matter in which no room should be left for doubt. It is not because he expects his house to be burned down that a prudent man insures against fire. He adopts an ordinary business precaution, and his action in doing so is not to be construed as a reflection either upon his neighbours' integrity or his own.

The British element in the Services.

275. The United Kingdom no less than India owes an incalculable debt to those who have given of their best in the Indian Public Services, and the obligation must be honoured to the full. But the question has another and scarcely less important aspect; for we are convinced that India for a long time to come will not be able to dispense with a strong British element in the Services, and the conditions of service must be such as to attract and hold the best type of man, whether British or Indian. Parliament may, therefore, rightly require, in the interests of India as well as of this country, not only that the Services are given all reasonable security, but that none is deterred from entering them by apprehensions as to his future prospects and career. It is, indeed, the interests of India that must be considered above all. The difficulties of the new Constitution will be aggravated in every respect if the administrative machinery is not thoroughly sound. One of the strongest supports of the new Governments and their new Ministers that we can recommend, and that the Constitution can provide for, will be impartial, efficient and upright Services in every grade and department. It has been

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impressed on us from various responsible sources, mainly Indian, that the success of the transfer of local self-governing bodies to non-official hands has been jeopardized by the lack of the strong and adequate staff, both inspecting and administrative, required by the new heads of such bodies, when they took over their duties from experienced officials. Whether or not these criticisms are justified, they indicate the obvious danger, in the larger sphere of provincial government, which would follow from any deterioration in the Services.

Present Organisation and Recruitment

The Indian Civil Services.

276. The Civil Services in India are classified in three main divisions: (1) the All-India Services; (2) the Provincial Services; and (3) the Central Services. The All-India Services, though they work no less than the Provincial Services under the Provincial Governments, are all appointed by the Secretary of State, and he is the final authority for the maintenance of their rights. Each All-India Service is a single Service and its members are liable to serve anywhere in India; but, unless transferred to service under the Central Government, the whole of their career lies ordinarily in the Province to which they are assigned on their first appointment.

The All-India Services.

277. The All-India Services consist of the Indian Civil Service; the Police; the Forest Service; the Service of Engineers; the Medical Service (Civil); the Educational Service; the Agricultural Service; and the Veterinary Service. Recruitment however by the Secretary of State to the Buildings and Roads Branch of the Service of Engineers, to the Educational Service, the Agricultural Service and the Veterinary Service, ceased in 1924 on the recommendation of the Lee Commission. The composition and total strength of these Services on 1st January, 1933, were as follows:—

1.	2.	3.	4.
	Europeans.	*Indians.*	*Total.*
Civil Service	819	478	1,297
Police	505	152	665[1]
Forest Service	203	96	299
Service of Engineers ..	304	292	596
Medical Service (Civil) ..	200	98	298
Educational Service ..	96	79	175
Agricultural Service ..	46	30	76
Veterinary Service ..	20	2	22
	2,193	1,227	3,428

The Provincial Services.

278. The Provincial Services (in the sense in which the expression is ordinarily used, which excludes not only the members of All-India Services working in the Province, but also the numerous Subordinate

[1] Including 8 officers who had not been classified in either category.

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Services) are, and always have been, almost entirely Indian in composition, and cover the whole field of provincial civil administration in the middle grades. Appointments to these Services are made by the Provincial Governments who, broadly speaking, control their conditions of service, and show an increasing tendency to restrict their recruitment to candidates from the Province. In many branches of the administration members of All-India and Provincial Services work side by side, though the higher posts are usually filled by the former.

The Central Services.

279. The Central Services are concerned with matters under the direct control of the Central Government. Apart from the Central Secretariat, the more important of these Services are the Railway Services, the Indian Posts and Telegraph Service, and the Imperial Customs Service. To some of these the Secretary of State makes appointments, but in the great majority of cases their members are appointed and controlled by the Government of India; and, if these Services are taken as a whole, Indians out-number Europeans even in the higher grades, while, with the exception of the railways, the middle and lower grades may be said to be wholly Indian. The Anglo-Indian community has always furnished a large number of recruits to the Central Services, especially the Railways, the Posts and Telegraphs, and the Imperial Customs Service.

Rights of present members of the Public Services

Rights of present members of the Services.

280. In considering the rights and safeguards proposed in the White Paper for personnel already in the Services at the date when the Constitution Act comes into force, it will be convenient first of all to take the rights and safeguards applicable to all personnel; secondly, those applicable to officers appointed by the Secretary of State; and thirdly, those applicable to officers appointed by other authorities.

Rights and Safeguards applicable to all personnel: the special responsibility of the Governor-General and Governors.

281. It will be recalled that a special responsibility is imposed on the Governor-General and on each of the Provincial Governors for "the securing to members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests." Some of the British-India Delegates objected to a special responsibility expressed in such wide terms, and hold that it should extend only to the rights given by the Constitution Act itself. It has been explained to us that the purpose of the wider definition is to secure to the Services equitable and reasonable treatment in essential matters not covered specifically by statute. For example, it has long been the settled policy of Government that suitable medical attendance should be available to members of the Services and their families, though there is nothing to that effect in the existing Act or in the rules made under it. We agree that, in the circumstances, something more than "rights"

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is required, and we must leave it to the draftsman to decide whether "legitimate interests" is sufficient to cover the whole field which we think ought to be covered.

Dismissal and reduction.

282. Protection against dismissal by any authority subordinate to the authority by whom he was appointed is secured to every member of the Public Service by the present Government of India Act, and a statutory rule provides that he shall not be dismissed or reduced without being given formal notice of any charge made against him and an opportunity of defending himself. Provisions on the same lines should obviously find a place in the new Constitution.[1]

Indemnity for past acts.

283. The White Paper proposes that there shall be a full indemnity against civil and criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of duty.[2] In view of threats which have been made in certain quarters, especially against the Police, we think that it is justifiable to give this measure of protection to men who have done no more than their duty in very difficult and trying circumstances. But we think that the certificate by the Governor-General or Governor, as the case may be, ought to be made conclusive on the question of good faith.

Other rights.

284. In addition, the White Paper proposes that there should be secured to every person in the Public Services at the commencement of the Constitution Act all service rights possessed by him at that date.[3] The principal existing service rights of officers appointed by the Secretary of State and of persons appointed by authority other than the Secretary of State are set out in Parts 1 and 2 respectively of Appendix VII of the White Paper.

Special right to compensation for loss of any existing right.

285. In addition to these rights and safeguards common to all members of the Public Services, officers appointed by the Secretary of State are also to have a special right to such compensation for the loss of any existing right as the Secretary of State may consider just and equitable. It may be observed that some of the existing service rights of officers appointed by the Secretary of State set out in Part 1 of Appendix VII are conferred by the present Government of India Act and could only be modified or abolished by an amending Act; others are embodied in statutory rules made by the Secretary of State in Council. As things stand at present the latter could no doubt be taken away or modified at any time by the same authority; but the whole body of service rights, from whatever source derived, may properly be regarded as forming a single code, which the members of the All-India Services now serving may equitably claim should not be varied (at least without

[1] White Paper, Proposal 181.
[2] White Paper, Proposal 180.
[3] White Paper, Proposals 182 and 191.

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a right of compensation) to their disadvantage; and we concur with the White Paper proposal, which we are glad to observe had the approval of the Services Sub-Committee of the First Round Table Conference.

Rights to equitable compensation.

286. Further, in addition to the provision for compensation for the loss of service rights, it is proposed that the Secretary of State should be empowered to award compensation to any officer appointed by him in any other case in which he considers it to be just and equitable that compensation should be awarded.[1] This is no doubt a very wide and general power; but it is impossible to foresee and provide in a statute against all the contingencies that may arise in the administration of a great Service and we do not, therefore, dissent from the proposal. The Secretary of State assisted by his Advisers[2] may be trusted to preserve a reasonable balance between the interests of the Services on the one hand and those of Indian revenues on the other.

Further safeguards not necessary.

287. We have examined with particular care in this connection the suggestions made to us both orally and in writing by the various Service Associations, but have come to the conclusion that no further special measures of protection are required for members of the Secretary of State's Services. We see no advantage, for example, in the insertion of a special provision requiring the concurrence of the Governor to the personnel of the Committees of Enquiry into the conduct of officers. Nor do we consider that a case has been made out for resuming to the Secretary of State the detailed regulation for his own Services of travelling and compensatory allowances, which are, and have long been, regulated by the authorities in India. In the discharge of his special responsibility for securing the legitimate interests of the Services as a whole, the Governor would be bound to satisfy himself that a Committee of Enquiry into an officer's conduct was so constituted as to ensure a fair hearing; and similarly that travelling allowances are on an adequate scale.

Summary of more important conditions of service.

288. We may point out that among the conditions of service which will be secured to all serving officers appointed by the Secretary of State, if our recommendations are accepted, are the following:—

(1) a right of complaint to the Governor or Governor-General against any order from an official superior affecting his conditions of service;

(2) a right to the concurrence of the Governor or Governor-General to any order of posting or to any order affecting emoluments or pensions, and any order of formal censure;

[1] White Paper, Proposal 182.
[2] *Infra*, para. 386.

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(3) a right of appeal to the Secretary of State against orders passed by an authority in India—

(*a*) of censure or punishment,

(*b*) affecting disadvantageously his conditions of service, and

(*c*) terminating his employment before the age of superannuation;

(4) regulation of his conditions of service (including the posts to be held) by the Secretary of State, who will be assisted in his task by a body of Advisers, of whom at least one-half will have held office for at least ten years under the Crown in India;

(5) the exemption of all sums payable to him or to his dependants from the vote of either Chamber of the Legislatures.

For contingencies not susceptible of statutory definition, the special responsibility of the Governor-General and Governors, and the control which the Secretary of State and his Advisers will exercise over the conditions of service of officers appointed by the Secretary of State, will in our opinion afford a sufficient, and indeed the only possible, protection. There is a point in every system of administration where some authority must have discretion to deal with such contingencies, and must be left to deal with them in an equitable manner.

Conditions of service of officers appointed by the Secretary of State.

289. It is proposed that, after the commencement of the Act, the Secretary of State, who will continue[1] to make appointments to the Indian Civil Service, the Indian Police and the Ecclesiastical Department, shall regulate the conditions of service of all persons so appointed, and it is intended that the conditions of service thus laid down shall in substance be the same as at present. The power to regulate the conditions of service of officers not appointed by the Secretary of State, on the other hand, has since 1926 been delegated to the Government of India in the case of the Central Services and to Provincial Governments in the case of Provincial Services, and the White Paper contains no provision as to the conditions of service to be applied to officers of these Services appointed after the commencement of the Constitution Act.

Status of the Public Services.

290. While we consider that the White Paper provides adequately for the special protection of members of the Secretary of State's Services, we are not fully satisfied that the status of other members of the Public Services, and of those Services as a whole, has been made sufficiently clear either in the White Paper or in any of the investigations and discussions which have led up to its preparation. We have already discussed[2] the measures necessary to safeguard the morale and efficiency of the Police Service, including its subordinate ranks. We shall make, later,[3] certain special proposals in regard to judicial appointments. In addition, however, to these special recommendations, we think it our duty to make certain general observations on the future of the Public Services as a whole.

[1] *Infra*, paras 296 ff.
[2] *Supra*, paras. 92–96.
[3] *Infra*, paras. 337–341.

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All-India, Central, and Provincial Services are all Crown Services.

291. It is natural that the process by which during recent years Provincial Service officers have been gradually substituted for All-India officers in the transferred departments and greater powers of control have been delegated to the Provincial Governments should have tended to create a false distinction between the status of the All-India Services and that of the Provincial Services. The tendency has almost inevitably been to regard the Provincial Services as having ceased to be Crown Services, and as having become Services of the Provincial Governments. This tendency has been emphasised by the argument, frequently advanced and accepted in the past both by Indians and Englishmen, that provincial self-government necessarily entails control by the Provincial Government over the appointment of its servants. This argument has, no doubt, great logical force, but it runs the risk of distorting one of the accepted principles of the British Constitution, namely, that civil servants are the servants of the Crown, and that the Legislature should have no control over their appointment or promotion and only a very general control over their conditions of service. Indeed, even the British Cabinet has come to exercise only a very limited control over the Services, control being left very largely to the Prime Minister as, so to speak, the personal adviser of the Crown in regard to all service matters. The same principle applies, of course, equally to the Services recruited by the Secretary of State for India, though this fact has been sometimes obscured by inaccurate references to the control of Parliament over the All-India Services. But, whatever misunderstandings may have arisen in the past as to the real status of the Provincial Services, there ought to be no doubt as to their status under the new Constitution. We have already pointed out that, under that Constitution, all the powers of the Provincial Governments, including the power to recruit public servants and to regulate their conditions of service, will be derived no longer by devolution from the Government of India, but directly by delegation from the Crown, *i.e.*, directly from the same source as that from which the Secretary of State derives his powers of recruitment. The Provincial Services, no less than the Central Services and the Secretary of State's Services will, therefore, be essentially Crown Services, and the efficiency and morale of those Services will largely depend in the future on the development in India of the same conventions as have grown up in England.

Governor-General and Governors should be, under the Crown, recognised as heads of Central and Provincial Services respectively.

292. But, if such conventions are to develop in India as in England, they must develop from the same starting-point, from a recognition that the Governor, as the personal representative of the Crown and the head of the Executive Government, has a special relation to all the Crown Services. He will, indeed, be generally bound to act in that relation on the advice of his Ministers, subject to his special responsibility for the rights and legitimate interests of the Services, but his Ministers will be no less bound to remember that advice on matters affecting the organisation of the permanent

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executive services is a very different thing from advice on matters of legislative policy, and that the difference may well affect both the circumstances and the form in which such advice is tendered. We think therefore that the Constitution should contain in its wording a definite recognition of the Governor-General and the Governors respectively as, under the Crown, the heads of the Central (as distinct from the All-India) and Provincial Services. Appointments to these Services would accordingly run in the name of the Governor-General and Governor respectively, and it would therefore follow[1] that no public servant appointed by the Governor-General or Governor will be subject to dismissal, save by order of the Governor-General or Governor.

Status and rights of Central and Provincial Services not to be inferior to those All-India Services.

293. But, further than this, it will in our view be essential that the Central and Provincial Legislatures respectively should give general legal sanction to the status and rights of the Central and Provincial Services. The special responsibility of the Governor-General and Governors would, of course, in any case extend to securing the legitimate interests as well as the rights of members of these Services; but it is on all grounds desirable that the Executive Government as a whole should be authorised and required by law to give these Services the necessary security. The principal existing rights of members of these Services are set out in List II of Appendix VII of the White Paper. We think that the Legislatures, in passing Provincial Civil Service Acts authorising and requiring the Executive Government to give these Services the necessary security, would be well advised to consider whether, to meet the new conditions, List II of Appendix VII of the White Paper should be enlarged by appropriate additions from List I of the same Appendix, wherein are set out the principal existing rights of officers appointed by the Secretary of State. In our view the status and rights of the Central and Provincial Services should not be in substance inferior to the status and rights of persons appointed by the Secretary of State in regard to the two main points covered by List I. These two points are, firstly, protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion; and, secondly, protection against such arbitrary alterations in the organisation of the Services themselves as might damage the professional prospects of their members generally. On the first point, these Provincial Civil Service Acts could not, indeed, determine in detail the rates of pay, allowances and pensions, and the conditions of retirement, of all civil servants, nor the procedure to be followed in considering their promotion on the one hand, or, on the other, their dismissal, removal, reduction or formal censure. Such Acts could, however, confer general powers and duties for these purposes on the Government, and in regard to promotions, they could provide

[1] *Supra*, para. 282.

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definitely that canvassing for promotion or appointments shall disqualify the candidate, and that orders of posting or promotion in the higher grades shall require the personal concurrence of the Governor. On the second point, it is admittedly more difficult to give security to the Services as a whole in respect of their general organisation; yet the morale of any Service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognised cadre of higher-paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance. A Legislature does nothing derogatory to its own rights and powers if it confers by law upon the Executive the duty of fixing such cadres and of reporting to the Legislature if any post in these cadres is at any time held in abeyance.

Votability of salaries, etc., of Central and Provincial Services.

294. There is, however, one existing right of officers appointed by the Secretary of State, the application of which, as it stands, to civil servants in general would be impossible, namely, the right to non-votability of salaries and pensions. There is, indeed, again nothing derogatory to the rights and powers of the Legislature in the adoption of a special procedure, similar to the Consolidated Fund Charges procedure of the British Parliament, under which certain salaries are authorised by permanent statute instead of being voted annually on estimates of supply, and this is in fact generally recognised to be a desirable procedure in certain circumstances. But, as we point out below,[1] in a slightly different connection, this procedure could not in practice be applied to the salaries of all public servants. We think, however, that it might well be applied by the Provincial Legislatures to certain classes of officers, and in particular to the higher grades of all the Services. We make this proposal without prejudice to the proposals in the White Paper which provide that certain heads of expenditure shall not be submitted to the vote of the Provincial Legislatures at all.

Defence Services.

295. Although this chapter is mainly concerned with the Civil Services, we think it right to mention the position of members of the Defence Services as a whole, including not only the officers, non-commissioned officers and men of the Defence Forces in India, but also the corresponding grades of civil officials whose work lies within the sphere of Defence and who are paid from Defence estimates. They are clearly entitled to the same kind of rights and protection as they now enjoy as regards their service conditions, although the protection need not necessarily be provided in precisely the same form as that proposed for members of the Civil Services, since Defence personnel will not be affected by the constitutional changes in precisely the same way as the Civil Services are likely to be affected. Nevertheless, their rights should not be left in doubt. Their pay and pensions would be

[1] *Infra*, para. 316.

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included under the head of expenditure required for the reserved Department of Defence, and as such would not be submitted to the vote of the Legislature. There should be no room for misunderstanding on this point.

Future Recruitment to the Public Services

Future recruitment for Indian Civil Service and Indian Police.

296. We have found the problem of the future recruitment of the two principal administrative services in India, the Indian Civil Service and the Indian Police, among the most difficult of those with which we have had to deal. The appointing authority must necessarily control the main conditions of service, and if control remains with the Secretary of State, there will to that extent be a derogation from the powers over the officers who are working under it which an autonomous Provincial Government might expect that the Crown should delegate to it. Such a derogation is inevitable in the case of officers recruited by the Secretary of State before the establishment of the new Constitution; but it was urged before us, and has been again emphasised by the British-India Delegation in their Joint Memorandum, that future recruitment by the Secretary of State of officers who serve a Provincial Government is incompatible with Provincial Autonomy, and that the All-India Services ought henceforth to be organised on a provincial basis and recruited and controlled exclusively by the Provincial Governments.

Continuance of recruitment by Secretary of State recommended.

297. We appreciate the force of this line of argument; though we have already pointed out the dangerous conclusions which might be drawn from it. But the loyalty with which officers of the All-India Services have served the Local Governments under whom they work, notwithstanding that these Services are under the control of the Government of India and the Secretary of State, has a long tradition behind it: nor has any Local Government felt difficulty in regard to maintaining discipline and securing full obedience of the Services on account of that control. Moreover, the evidence given before us confirmed the earlier conclusions of the Lee Commission and of the Statutory Commission that, with negligible exceptions, the officers of these Services have maintained excellent relations with the Indian Ministers under whom they have been working. Subject to certain qualifications to which we refer hereafter, we are of opinion that recruitment by the Secretary of State for the All-India Services, where it still continues, should come to an end except in the case of the Indian Civil Service and the Indian Police; the functions performed by members of these two Services are so essential to the general administration of the country, and the need therefore for maintaining a supply of recruits, European and Indian, of the highest quality is so vital to the stability of the new Constitution itself, that we could not view without grave apprehension an abrupt change in the system of recruitment for these two Services simultaneously with the introduction of fundamental changes in the system of

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government. It is of the first importance that in the early days of the new order, and indeed until the course of events in the future can be more clearly foreseen, the new Constitution should not be exposed to risk and hazard by a radical change in the system which has for so many generations produced men of the right calibre. All the information which we have had satisfies us that in the present circumstances only the existing system of recruitment is likely to attract the type of officer required, and we have come to the conclusion, as proposed in the White Paper,[1] that recruitment by the Secretary of State both to the Indian Civil Service and the Indian Police must continue for the present, and that the control of their conditions of service must remain in his hands. We have considered, but have felt obliged to reject, the possible alternative of recruitment by the Governor-General in his discretion. The change in that case might be no doubt represented as one of form rather than of substance, since the Governor-General would be acting under the directions of the Secretary of State; but for that very reason we are reluctant to make a merely formal change which might at this juncture have an unfortunate effect upon potential recruits. We believe, however, that there is much to be said for the recruitment in India of the prescribed proportions of Indians for the Indian Civil Service as well as for the Indian Police, and recommend this as a subject for consideration by His Majesty's Government.

Position should be reviewed in light of experience.

298. We recognise that the recommendation which we have felt it our duty to make is one which may not be welcome in some circles of Indian opinion. We desire therefore to make it clear that it is not intended to be a permanent and final solution of this difficult question. Our aim, as we have already said, is to ensure that the new constitutional machinery shall not be exposed during a critical period to the risks implicit in a change of system. We observe in the White Paper a proposal that at the expiration of five years from the commencement of the Constitution Act an enquiry should be held into the question of future recruitment for these two Services, the decision on the results of the enquiry (with which it is intended that the Governments in India shall be associated) resting with His Majesty's Government, subject to the approval of both Houses of Parliament.[2] We endorse the principle that the whole matter should be the subject of a further enquiry at a later date; but past experience leads us to doubt the wisdom of fixing a definite and unalterable date for the holding of an enquiry of this kind. We agree that no useful purpose would be served by an enquiry before the expiration of five years; but we think it must be left to the Government of the day, in the light of the then existing circumstances, to determine whether after

[1] White Paper, Proposal 183.
[2] White Paper, Proposal 189.

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that period the time has arrived for such an enquiry. It may be said that this is to postpone the final determination of the question to an indefinite future, but this is by no means our intention. We hope that the situation will have become so far clarified in five years' time from the date when the new Provincial Governments first take office that an enquiry may then be found of advantage, though it is unlikely that a revision of the question of recruitment by the Secretary of State of officers employed under the Federal Government will be appropriate until a later date. Where so much is difficult and perplexing it would be wrong to tie in advance the hands of those on whom the responsibility will rest for coming to a decision. Nor must it be assumed that such an enquiry will be merely a formal prelude to a change of system. It will furnish the information on which an ultimate decision can be based, but we do not desire to anticipate or prejudice the final conclusion. It seems to us that the enquiry would be most conveniently made by a small body of administrative experts. The Constitution Act should, in our view, make provision for enabling the present arrangements for recruitment and control of the Indian Civil Service and Indian Police to be varied without an amending Act; probably procedure by Order in Council, the draft of which had been approved by both Houses of Parliament, would be most convenient.

The Indian Medical Service (Civil).

299. Under existing arrangements there is no direct recruitment for the Indian Medical Service (Civil). Vacancies are filled from among officers appointed to the Indian Medical Service who have had a period of military duty. We note the view expressed in the Report of the Services Sub-Committee of the first Round Table Conference that there should in future be no Civil Branch of the Indian Medical Service, and that the Civil Medical Service should be recruited through the Public Services Commissions. The Sub-Committee however added that the Governments and Public Services Commissions in India should bear in mind the requirements of the Army and of British officials in India, and should take steps to recruit an adequate number of European doctors to their respective Medical Services and to offer such salaries as would attract a good type of recruit. We are however convinced on the information supplied to us that the continuance of the Civil Branch of the Indian Medical Service will provide the only satisfactory method of meeting the requirements of the War Reserve and of European members of the Civil Services, and that it will be necessary for the Secretary of State to retain the power which he at present possesses (although medical matters have since 1920 been under the control of Ministers) to require the Provinces to employ a specified number of Indian Medical Service officers. In making these recommendations we have not been unmindful of the natural desire of the Provinces to develop Medical Services entirely under their own control. But the requirements of the Army and of the Civil Services have an overriding claim.

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The Superior Railway Services.

300. The present position is that recruitment of European personnel to the Superior Railway Services is divided between the Secretary of State in Council and the High Commissioner for India. The former makes all first appointments of persons of non-Asiatic domicile to the Indian Railway Service of Engineers, Transportation (Traffic) and Commercial Departments and Transportation (Power) and Mechanical Engineering Departments; and the latter various specialist appointments such as Bridge, Signal and Electrical Engineers, Works Managers and Medical Officers; and also Engineers to fill temporary posts.

Future recruitment.

301. Under the ratios recommended by the Lee Commission in 1924, 25 per cent. only of the total direct appointments to the Superior Railway Services is British, but the full effect of the corresponding ratio of Indian appointments will not be apparent for some years, as the great majority of the higher posts will continue to be filled by officers appointed to the Service before 1924. We recommend that the existing ratio of British recruitment should be continued for the present and should include a due proportion of Royal Engineer officers. We think however that the new Railway Authority should in the future appoint British recruits. The Railway Authority will by its constitution be a strong and independent body, interested solely in the efficiency of the Railways, and able to secure for its personnel satisfactory conditions of service; moreover the policy of the Board in relation to recruitment will be subject to the directions of the Governor-General whenever in the opinion of the latter the interests of defence or his special responsibilities are involved.

The Ecclesiastical and Political Departments.

302. We approve the proposal in the White Paper that the Secretary of State should continue to make appointments to the Ecclesiastical Department.[1] Recruitment to the Political Department is indirect, vacancies being filled by transfers from the Indian Army and the Civil Service (mainly the Indian Civil Service) and, to a small extent, by the promotion of subordinate political officers. The Governor-General approves transfers from the Indian Civil Service and the Indian Army; transfer from other All-India Services and promotions from the subordinate Services are approved by the Secretary of State on the recommendation of the Governor-General.

Political Department posts.

303. The Statutory Commission made no specific recommendations for the future organisation and recruitment of the Political Department, of which at present the Governor-General himself holds the portfolio. Its total strength on 1st October, 1933, was 108 posts. These include, on the External side, the secretariat, district and judicial appointments in the North-West Frontier Province and Baluchistan, as well as the political agencies in tribal territory; political agencies on the Persian Gulf and a proportion of consular appointments in Persia; the civil administration of Aden and such

[1] White Paper, Proposal 183.

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appointments as those at the Legations in Afghanistan and Nepal and the Consulate-General at Kashgar. On the Internal side they include the appointments to political agencies and residencies through which the relations of the Crown with the Indian States are conducted; and the civil administration of the Chief Commissioner's Provinces of Coorg and Ajmer Merwara, and of the assigned tract of Bangalore and other British cantonment areas in the Indian States.

Future recruitment.

304. The White Paper contemplates that, after the commencement of the Constitution Act, when the Governor-General assumes responsibility in his other capacity for conducting the relations of the Crown with the Indian States in matters not accepted as federal by their Rulers in their Instruments of Accession, it may for political reasons be found desirable to make the duties of political officers in the Indian States interchangeable with those of political officers employed by the Governor-General in the Reserved Department of External Affairs. We accept the view that there is no immediate need to divide, and to recruit separately, the personnel of the two Departments. Responsibility for recruitment to both will remain with the Secretary of State. For the time being there may be practical convenience in filling appointments on the internal side by seconding officers from the Department of External Affairs, more especially as the number of posts in either Department is comparatively small and the variety of functions assigned to them makes it desirable that the field of recruitment should be a wide one. Officers of the Indian Army and members of the Indian Civil Service appointed to the Department by the Governor-General, and other officers appointed by the Secretary of State, would enjoy the same measure of protection as we recommend should be accorded to officers appointed to the Services by the Secretary of State.

The Forest Service.

305. Since 1924 the Forests in Bombay and Burma have been administered by a responsible Minister, and under Provincial Autonomy this will in future be the case in all Provinces. We emphasise the necessity for co-ordinated research in all forestry matters, and we regard it as essential that the Central Institute at Dehra Dun for Forest Research should be maintained. But it is not only in research that co-ordination of effort between the different Provinces is, and must continue to be, important. Each Province should know what the other Provinces are doing in such administrative matters as the preparation and carrying out of working plans. At present this co-ordination is secured through the Inspector-General of Forests with the Government of India. We think that in future co-ordination will best be secured by the creation of a Board of Forestry on which, in addition to forestry experts, representatives of the Provincial Governments would serve; and we think that the Provinces should be empowered to combine for the purpose of setting up such a Board and contributing to its expenses.

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306. We consider that appointments of the European and Indian officers required for the higher administrative posts in the Forest Service should in future be made in India. But in the case of a small and very technical service such as the Forest Service, we do not think that the best results could be obtained by separate Provincial recruitment; and we recommend therefore that the Provinces should from time to time, with the assistance of the Board of Forestry, prepare a joint statement of their collective requirements in the matter of personnel, entrusting the Federal Public Service Commission with the duty of recruitment on their behalf. The actual appointment of recruits should, however, be made by the Provincial Government under whom they are intended to serve. We regard it as essential to the success of recruitment that a common training centre should be maintained, and we earnestly hope that the present College at Dehra Dun will be made available for that purpose. We hope also that Provincial Governments will continue the very useful practice of lending any officers required by the Federal Government for such purposes as the staffing of the Central Institute for Research and of the Training College and for forestry administration in the Andamans. We think also that the Provinces should be willing to fill higher administrative posts from the Forest Service of another Province, if a suitable candidate from their own Province is not available. In all these matters the Board of Forestry should be able to maintain effective touch between the various Provincial Governments. Future recruitment.

307. Irrigation under Provincial Autonomy will also come under the control of a responsible Minister. We emphasize in this case also the paramount need for research and co-ordination. The Royal Commission on Agriculture in India did not recommend the establishment of a central research station for reasons which we accept; but they expressed a strong opinion that Provinces should devote more attention to the various problems that confront Irrigation Engineers. Unlike the Forests, there is no longer any officer with the Government of India who can give advice on Irrigation matters, although his place is to some extent taken by the present Central Board of Irrigation, which we consider should be developed on lines similar to those on which we have recommended the formation of a Board of Forestry. An efficient organisation for the dissemination of information is also essential and we recommend that the existing Central Bureau of Information should be retained and developed on the lines suggested in the Royal Commission's Report. The Irrigation Service.

308. The higher administrative posts in the Irrigation Service are at present filled by members of the Indian Service of Engineers. Since 1924, on the recommendation of the Lee Commission, recruitment of irrigation engineers has been in the proportion of 40 Europeans and 40 Indians for every 100 appointments, the remainder being filled by officers promoted from the Provincial Services, of whom the great majority are Indians. In all cases, appointments are made by the Secretary of State. Present organisation.

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Future recruitment.

309. The continued recruitment of an adequate number of highly qualified engineers, European as well as Indian, is clearly essential to the efficiency of the irrigation system, especially in the North-West of India, on which the prosperity and indeed the very existence of millions of the population depends. It might well be argued that the Irrigation Service is for this comparable in importance within its own sphere to the Indian Civil Service and the Police Service, and that its future recruitment and control should be in the same hands. But after a close examination of the question, our conclusion is that the Irrigation Service ought to become a Provincial Service; and we are not convinced that even in the Punjab, which is perhaps the crucial case, the situation necessitates a different policy without at least first allowing the Province to prove that it can successfully recruit its own Service. We are informed that there are at present 67 Europeans and 69 Indians in the Irrigation Branch of the Indian Service of Engineers in the Punjab and that, if the recruitment of Europeans now ceased, the number of Europeans would normally drop to 42 in 1939 and to 21 in 1949; that is to say, there would be for some years, unless some incalculable factor intervened, such as greatly increased retirements on proportionate pension, a sufficient number of fully trained officers both European and Indian to fill the most essential posts, those of the three Chief Engineers and fifteen Superintending Engineers. The question of irrigation is scarcely of less importance in Sind, but we think the Governor's special responsibility for the Sukkur Barrage is there a sufficient safeguard. We think that the Provinces should seek the assistance of the Federal Public Service Commission and the Central Board of Irrigation in matters affecting recruitment.

Question of future resumption of recruitment by the Secretary of State.

310. Nevertheless we are of opinion that a power to resume recruitment should be reserved to the Secretary of State, if a Provincial Government unfortunately proved unable to secure a sufficient number of satisfactory recruits and it appeared that the economic position of the Province and the welfare of its inhabitants was thereby prejudiced; and provision should accordingly be made for that purpose in the Constitution Act.

English personnel in Forest and Irrigation Services.

311. Our recommendation that the Forest and Irrigation Services should in future be recruited in India does not, of course, imply that the Governments in India should abandon the recruitment of necessary personnel from England. The High Commissioner for India in London already recruits specialist and expert officers of various kinds in England, as the agent of the competent authorities in India, and the Governments in India will doubtless continue this practice, or may, for certain purposes, make use of the Civil Service Commission.

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312. Under the White Paper proposals the Governments in India will have a free hand in regard to the recruitment for all other Services.[1] We hope that the establishment of Public Service Commissions will assist them in this most responsible task; and we endorse the observations both of the Royal Commission in 1924 and of the Statutory Commission upon the vital necessity for excluding political or personal influences. We desire to emphasize also the assistance which the federal Public Service Commission will be able to give to the Provincial Commissions in the establishment and maintenance, so far as the differing requirements and resources of the Provinces may admit, of common standards of qualifications and remuneration. Recruitment for other Services.

Public Service Commissions

313. The Public Service Commissions at present existing in India are the Central Public Service Commission, established under the Government of India Act, and the Madras Service Commission, established under an Act of the Madras Legislature in 1929. The legislation necessary for setting up a Public Service Commission in the Punjab has been passed, but the establishment of the Commission awaits an improvement in the finances of the Province. The White Paper proposes the continuance of the Central Public Service Commission as a federal organ, and the setting up in each Province of a Provincial Public Service Commission.[2] Public Service Commissions.

314. The functions proposed for all these Commissions are advisory in character and similar to those at present performed by the Central and Madras Commissions.[3] We regard it as essential that each Provincial Government should be able to avail itself of the advice of a Public Service Commission. We recognise that it is not practicable to establish one Public Service Commission for all India, but we should view with some apprehension the setting up of some ten Provincial Public Service Commissions in addition to the Federal Public Service Commission. We hope therefore that advantage will freely be taken of the proposed provision, which we cordially endorse, whereby the same Provincial Commission would be enabled to serve two or more Provinces jointly, or alternatively that it should be open to a Province to make use of the services of the Federal Public Service Commission, subject to agreement with the federal authorities. Without accepting the proposals in the White Paper for the composition and working of these Commissions in every detail, we regard them as generally satisfactory. Their functions.

[1] White Paper, Proposal 190.
[2] White Paper, Proposal 195.
[3] White Paper, Proposals 199–201.

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Payment of Emoluments and Pensions

Funds for the payment of Service emoluments.

315. Before leaving this chapter of our Report, we propose to deal with one matter of general interest to all classes of officers by whatever authority appointed, that is to say, the availability of cash for the payment of Service emoluments, and more particularly for the payment of pensions of officers appointed by the Secretary of State.

Certain suggestions rejected.

316. It appeared from the evidence tendered by the various Service Associations that there is apprehension among the Services on this point, and we have very carefully considered whether it requires any special provision in the Constitution Act. We are clear, in the first place, that it would be undesirable to place officers appointed by the Secretary of State in a privileged position in respect of the provision of cash for current pay, though it is to be remembered that their emoluments will not be subject to the vote of the Legislatures. Regular and punctual payment of emoluments is a legitimate interest of all persons in the Public Services, and no one class of officers can be admitted to have a prior claim in this respect. On the more general question, we have examined suggestions which have been made for a system of prior charges or for building up a reserve fund. We are informed that the percentage of the total annual revenues of a Province which would be required for the payment of all Service emoluments may be taken as approximately 40 per cent.; and we are satisfied that, in respect of payments which constitute so large a proportion of the total annual liabilities of a Province, the suggestions are quite impracticable.

No special provision required.

317. In so far as the apprehension may be that a temporary deficiency might occur in the cash required to meet such current obligations as the issue of monthly pay, not through any failure in the annual revenues, but through excessive commitments in other directions, the good sense of the Government, and the advice of a strong Finance Department, must in our opinion be relied on as the real safeguard. Nor must it be forgotten that, although a Governor will not have a special responsibility for safeguarding the financial stability and credit of the Province, it will most certainly be his duty to see that he has information furnished to him which would enable him to secure such financial provision as may be required for the discharge of his other special responsibilities, including of course his special responsibility for safeguarding the legitimate interests of the Services. If need arose for the Governor to take special steps for the purpose, in virtue of his special responsibilities, it would, of course, be open to him to adopt whatever means were most appropriate in the circumstances, and, if necessary, to meet the situation by borrowing. The powers available to him personally in this respect would be identical with those available to the Provincial Government. If he should seek assistance from the Federal

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Government in the form of a loan, his application would be governed by the provision relating to provincial borrowing which we have already advocated.[1] The Governor-General will, of course, be responsible for securing the interest of officers serving at the Centre.

Claims for pensions by officers appointed by the Secretary of State.

318. We have said that no distinction can, or ought to be, drawn between the claim of the various classes of officers serving in a Province for the due payment of their emoluments, but to this general statement of principle we think that there should be one qualification. If difficulties should unfortunately arise in regard to a claim to pension by an officer appointed by the Secretary of State who has served from time to time in different Provinces, we think that it would be unreasonable that he should have to make his claim against a number of authorities in respect of different portions of his pension. We therefore approve the proposal in the White Paper that the claims of all officers appointed by the Secretary of State for their pensions should be against the Federal Government direct, the necessary adjustments being made subsequently between the Federal Government and the Province or Provinces concerned[2]; and, if that recommendation is adopted, we think that officers appointed by the Secretary of State need have no anxiety regarding the regular and punctual payment of their own pensions and those of their dependants. Pensions of retired officers, if appointed before the commencement of the Constitution Act, and the pensions of their dependants, will be exempt from Indian taxation if the pensioner is residing permanently outside India. The pensions of officers appointed by the Secretary of State or by the Crown after that date and the pensions of their dependants will also be exempt from Indian taxation if the pensioner is residing permanently outside India. Existing rights of suit against the Secretary of State will be preserved.[3]

Binding nature of obligation in respect of pensions.

319. We should not, however, wish to leave this subject without making a general statement in regard to the pensions of these officers. These pensions, like the pensions of all retired members of the Public Services of India, are a charge upon the revenues of India, and there can be no more binding obligation resting upon the Government of India than to meet this charge in full and ungrudgingly. But, though we do not doubt that it will be so met, the obligation rests not only upon the Government of India to meet it, but also upon His Majesty's Government to see that it is so met. His Majesty's Government have, in fact, pledged the revenues of India for this purpose, and it is their duty to see that that pledge is made effective. The Governor-General must, therefore, be armed with full powers to meet the liabilities thus secured upon the revenues of India, and our approval of the proposals of the White Paper is based on the understanding that the Constitution Act will in fact arm him with such powers.

[1] *Supra*, para. 266.
[2] White Paper, Proposal 186.
[3] *Infra*, para. 387.

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Family Pension Funds.

320. One category of pension payment stands in so special a position as to demand separate consideration. We refer to the pensions payable to families of officers, civil and military, the cost of which is met not from the revenues of India but from credits accumulating in the balances of the Government of India from subscriptions paid by the officers themselves. The Government of India are trustees of these credits and the fullest possible consideration should be given to the views of the subscribers and beneficiaries as to the future administration of the trust. A Note by the Secretary of State for India[1] which is printed in the Committee's Records contains full particulars of these credits and the steps already taken to ascertain the views of subscribers. The Note also contains in outline proposals for the consideration of subscribers and pensioners. The matters to be decided are technical and complicated; and we hope therefore in consulting subscribers that every effort will be made to put the issues before them in the clearest possible way. We are glad to observe from paragraph 8 of the Note that the Secretary of State hopes that, unless the present financial situation unexpectedly deteriorates, it will be possible to convert existing rupee credits in India into sterling funds held in this country within quite a short period after the Constitution Act is passed and the wishes of subscribers and pensioners are known. We recommend that this should be done and that action should be taken generally on the lines indicated in the Note.

The Anglo-Indian Community

Anglo-Indians and the Services.

321. We observe with satisfaction that the White Paper gives effect to a suggestion made with general agreement at the Third Round Table Conference for safeguarding Government grants-in-aid for the education of the Anglo-Indian and domiciled European community. We have inquired whether any additional provision in the Constitution Act is desirable in order to secure to a very small community, which has established a strong claim to consideration by its history and its record of public service, the maintenance of the special position in some of the Public Services, which it has won by its own efforts. We recall that the Services Sub-Committee of the First Round Table Conference recommended that special consideration should be given to the claims of this community for employment in the Services; and we have noted with satisfaction the resolution of the Home Department of the Government of India, dated July 4th, announcing new rules for the determination and improvement of the representation of minorities in the Public Services. In accordance with this resolution the claims of Anglo-Indians and domiciled Europeans who at present obtain rather more than 9 per cent. of the Indian vacancies in the gazetted railway posts, for which recruitment is made on an All-India basis, will be considered when and if their share falls below 9 per cent., while 8 per cent. of the railway subordinate posts filled by direct recruitment will be reserved for Anglo-Indians and domiciled Europeans. We are of opinion that a reference should be included in the Instruments of Instructions of the Governor-General and Governors to the fact that the legitimate interests of minorities include their due representation in the Public Services. It would, of course, be incumbent

[1] Vol. II, Session 1933-4, Records, p. 309.

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on the Governor-General and Governors, in the discharge of their special responsibility for the legitimate interests of minorities, to see that no change was made in the percentages prescribed in the above mentioned resolution without their approval.

(4) The Judicature

The Federal Court

The Federal Court.

322. A Federal Court is an essential element in a Federal Constitution. It is at once the interpreter and guardian of the Constitution and a tribunal for the determination of disputes between the constituent units of the Federation. The establishment of a Federal Court is part of the White Paper scheme, and we approve generally the proposals with regard to it.[1] We have, however, certain comments to make upon them, which we set out below.

The Judges of the Federal Court.

323. The Court should, we think, consist of a Chief Justice and not more than six or eight Judges, the maximum number being specified in the Constitution Act, but we do not suppose that for some time to come it will be necessary to appoint more than three or four. The retiring age for Federal Judges should be 65 and not 62. We observe that the Judges are to hold office during good behaviour, and not, as is at present the case with Judges of the Indian High Courts, at pleasure. We think that this is right, but we assume that it is not intended that the Legislature should have power to present an Address praying for the removal of a Federal Judge; and in our opinion a Judge should not be removed for misbehaviour, except on a report by the Judicial Committee of the Privy Council, to whom His Majesty should be empowered to refer the matter for consideration. We concur generally with the qualifications proposed for the Judges, but we doubt whether in principle any distinction ought to be drawn in the Constitution Act between judges, advocates and pleaders of State Courts and those of the High Courts, though this does not of course mean that any obligation would be imposed upon the Crown to appoint a Judge who had not all the necessary professional qualifications. We assume that the White Paper proposals mean throughout by " State Court " the Court of highest jurisdiction in the State.

Original jurisdiction of Federal Court.

324. It is proposed that the Federal Court shall have an original jurisdiction in—

(i) any matter involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder, where the parties to the dispute are (*a*) the Federation and either a Province or a State, or (*b*) two Provinces or two States, or a Province and a State;

(ii) any matter involving the interpretation of, or arising under, any agreement entered into after the commencement of the Constitution Act between the Federation and a Federal Unit or between Federal Units, unless the agreement otherwise provides.

[1] White Paper, Proposals 151–162.

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This jurisdiction is to be an exclusive one, and in our opinion rightly so, since it would be altogether inappropriate if proceedings could be taken by one Unit of the Federation against another in the Courts of either of them. For that reason we think that, where the parties are Units of the Federation or the Federation itself, the jurisdiction ought to include not only the interpretation of the Constitution Act, but also the interpretation of federal laws, by which we mean any laws enacted by the Federal Legislature.

Appellate jurisdiction of Federal Court.

325. It is also proposed that the Federal Court shall have an exclusive appellate jurisdiction from any decision given by the High Court or any State Court, so far as it involves the interpretation of the Constitution Act or of any rights or obligations arising thereunder; but that no appeal shall lie except with the leave of the Federal Court or of the High Court of the Province or State, or unless in a civil case the value of the subject matter in dispute exceeds a specified sum. In this case also we think that the jurisdiction ought to be extended to include the interpretation of federal laws. It is essential that there should be some authoritative tribunal in India which can secure a uniform interpretation of federal laws throughout the whole of the Federation. We had at first thought on a constitutional issue appeal should lie without leave; but we appreciate that, in a country where litigation is so much in favour, this might result in an excessive number of unnecessary appeals. We therefore approve the proposal in the White Paper, though we think that the Federal Court ought to have a summary power of disposing of appeals or applications for leave to appeal in any case where they appear to be frivolous or vexatious or brought only for the purposes of delay. It was urged before us that to permit a litigant in a State Court to apply to the Federal Court for leave to appeal, if the State Court had already refused leave, would be to derogate from the sovereignty of the Ruler of the State, and that the refusal of a State Court to grant leave to appeal, at any rate in a case concerning the interpretation of Federal laws, should be treated as final. We should much regret the inclusion of a provision of this kind. The appellate jurisdiction of the Federal Court, so far as regards an Indian State, arises from the voluntary act of the Ruler himself, viz., his accession to the Federation; the jurisdiction is in no sense imposed on him *ab extra*. This being so, and since it is proposed that all appeals to the Federal Court should be in the form of a Special Case to be stated by the Court appealed from, we think the position of the States would be appropriately safeguarded if it were provided that the granting of leave to appeal by the Federal Court were in the form of Letters of Request, directed to the Ruler of the State to be transmitted by him to the Court concerned.

Appeals to Privy Council.

326. The appeal to the Privy Council is preserved, and it is proposed that an appeal shall lie without leave in any matter involving the interpretation of the Constitution Act, but in any other case only by

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leave of the Federal Court (without prejudice to the grant of special leave by His Majesty), unless the value of the subject matter in dispute exceeds a specified sum. We have no comment to make on this proposal, except that we assume that the jurisdiction of the Privy Council will extend to appeals involving rights and obligations arising under the Constitution Act, as well as the interpretation of the Act itself. Effect will be given to the decisions of the Federal Court, as is the case with decisions of the Privy Council, by the Courts from which the appeal has been brought; and all Courts within the Federation will be bound to recognise decisions of the Federal Court as binding upon themselves. We may perhaps point out that the jurisdiction of the Privy Council in relation to the States will be based upon the voluntary act of the Rulers themselves, *i.e.*, their Instruments of Accession.

Advisory jurisdiction of Federal Court.

327. It is proposed that the Federal Court shall have a jurisdiction similar to that possessed by the Privy Council under Section 4 of the Judicial Committee Act, 1833, which provides that His Majesty may refer to the Committee for hearing or consideration any matters whatsoever as His Majesty may think fit, and that the Committee shall thereupon hear and consider the same, and shall advise His Majesty thereon. The expression used in the White Paper is " any justiciable matter which the Governor-General considers of such a nature and such public importance that it is expedient to obtain the opinion of the Court upon it." Exception was taken to the word " justiciable," and we think perhaps that " any matter of law " would be preferable. We concur generally in the proposal, and we are of opinion that this advisory jurisdiction may often prove of great utility. We agree that it need not be limited to the federal sphere and that the right of referring any matter to the Court for an advisory opinion should be in the Governor-General's discretion.

Appointment and salaries of Federal Judges.

328. It is common ground that the Federal Judges should be appointed by the Crown; and we think that their salaries should be specified in the Constitution Act or determined by His Majesty in Council and not subject to variation without the assent of Parliament.

The Supreme Court

Proposal for future establishment of a Supreme Court.

329. The White Paper proposes that the Federal Legislature should be empowered to establish a separate Supreme Court to hear appeals from the provincial High Courts (1) in civil cases and (2) in criminal cases where a death sentence had been passed, provided of course that an appeal did not lie to the Federal Court. The Court would in effect take the place of the Privy Council, though an appeal would still lie to the latter by leave of the Supreme Court or by special leave of His Majesty. We have given very careful consideration to this proposal, but we do not feel able to recommend its adoption. A Supreme Court of this kind would be independent of, and in no

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sense subordinate to, the Federal Court; but it would be impossible to avoid a certain overlapping of jurisdictions, owing to the difficulty of determining in particular cases whether or not a constitutional issue was raised by a case under appeal. This might involve the two Courts in undignified and very undesirable disputes, and we are satisfied that the existence of two such Courts of co-ordinate jurisdiction would be to the advantage neither of the Courts themselves nor of the Federation. There is much to be said for the establishment of a Court of Appeal for the whole of British India, but in our opinion this would be most conveniently effected by an extension of the jurisdiction of the Federal Court, and we think that the Legislature should be empowered to confer this extended jurisdiction upon it. It has been objected that not only would so great an increase in the personnel of the Court be required as to make it difficult to find a sufficient number of Judges with the necessary qualifications, but also that the essential functions of the Federal Court as guardian and interpreter of the Constitution would tend to become obscured. We fully agree that the quality of the Federal Judges is a matter of the highest importance and that nothing ought to be done which might diminish or impair the position of the Court in its constitutional aspect, but we think that the fears expressed are unfounded. In the first place, it is clear that there would have to be a strict limitation on the right of appeal, so as to secure that only cases of real importance came before the Court; and, if this were done, we see no reason why a comparatively small number of additional Judges should not suffice. Secondly, we assume that the Court would sit in two Chambers, the first dealing with federal cases, and the second with British India appeals. The two Chambers would remain distinct, though we would emphasise the unity of the Court by enabling the Judges who ordinarily sit in the Federal Chamber to sit from time to time in the other Chamber, as the Chief Justice might direct, or Rules of Court provide; but beyond this we do not think that the two Chambers should be interchangeable.

A Court of Criminal Appeal not recommended.

330. The Supreme Court under the White Paper proposals would, however, as we have said, have jurisdiction to hear certain criminal appeals from British India. We are satisfied that these would be so numerous that, if the Federal Court were given the extended jurisdiction which we have suggested, an increase in the number of Judges would be required in excess of anything which we should be willing to contemplate. The question then arises whether the Federal Legislature should be empowered, if and when they thought fit, to set up a separate Court of Criminal Appeal for British India, subordinate to the Federal Court. After careful consideration we have come to the conclusion that a Court of Criminal Appeal is not required in India. Nearly every case involving a death sentence is tried in a District Court, from which an appeal lies to the High Court, and, apart from this, no death sentence can be carried out until it has been confirmed by the High Court. Only three of the High Courts

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(excluding Rangoon) exercise an original criminal jurisdiction, and though there is no further appeal from these Courts, every prisoner under sentence of death can appeal for remission or commutation of sentence to the Provincial Government, or, if he wishes, can ask for special leave to appeal to the Privy Council. In these circumstances, the rights of a condemned man seem to be very fully safeguarded, and we think that no good purpose would be served by adding yet another Court to which appeals can be brought. We should add that at present under the Criminal Procedure Code, a condemned prisoner can apply for commutation of his sentence not only to the Provincial Government but also to the Governor-General in Council. We think that under the new Constitution the determination of applications for commutation or remission of sentence under Section 401 of the Code should rest with the authority primarily responsible for the preservation of law and order, namely, the Provincial Government, and that the Federal Government, that is to say the Governor-General acting on the advice of his Ministers, as the successor of the Governor-General in Council, should no longer possess this statutory power of commuting or remitting sentences. At the same time, we are reluctant to diminish the opportunities for appeal which are at present enjoyed under the Indian Law, and we recommend that the power now exercisable in this respect by the Governor-General in Council should henceforth vest in the Governor-General acting in his discretion, to whom in addition there will, we assume, be delegated as at present the prerogative power of pardon.

The High Courts

The High Court Judges.

331. The constitution of the Provincial High Courts, which enjoy a deservedly high reputation throughout British India, is hardly directly affected by the White Paper proposals[1]; but we note the following points. It has been represented to us that the retiring age of Judges should not be raised to sixty-two, but should continue to be sixty; and we concur. We have suggested that in the case of the Federal Court the age should be sixty-five, because it might otherwise be difficult to secure the services of High Court Judges who have shown themselves qualified for promotion to the Federal Court; but the evidence satisfies us that in India a Judge has in general done his best work by the time he has reached the age of sixty. We note also that the present statutory requirement that not less than one-third of the Judges of every High Court must have been called to the English, Scottish, or Irish Bar, and that not less than one-third must be members of the Indian Civil Service, is to be abrogated. We are informed that the rigidity of this rule has sometimes caused difficulty in the selection of Judges, and we do not therefore dissent from the proposed amendment of the law; but we are clear (and we are informed that this is the general opinion of

[1] White Paper, Proposals 168–175.

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their colleagues) that the Indian Civil Service Judges are an important and valuable element in the judiciary, and that their presence adds greatly to the strength of the High Courts. It has been suggested that their earlier experience tends to make them favour the Executive against the subject, but the argument does not impress us; we are satisfied that they bring to the Bench a knowledge of Indian country life and conditions which barristers and pleaders from the towns may not always possess, and we do not doubt that the Crown will continue to appoint them. The Indian Civil Service Judges are not at the present time eligible for permanent appointment as Chief Justice of a High Court, though we understand that this rule does not apply in the case of Chief Courts. We see no reason for this invidious distinction, and we think that His Majesty's freedom of choice should not be thus fettered. We need hardly add that our acceptance of the proposal to abrogate the statutory proportion so far as barristers are concerned implies no doubt as to the necessity of continuing, in the interests of the maintenance of British legal traditions, to recruit a reasonable proportion of barristers or advocates from the United Kingdom as Judges of the High Courts. As regards the tenure of High Court Judges, we think that it should be the same as that which we have recommended for Judges of the Federal Court.[1]

Administrative machinery of High Courts.

332. The administrative machinery of the High Courts is at the present time (save in the case of the Calcutta High Court) subject to the control of the Provincial Governments and Legislatures, and there is evidence that the latter have from time to time tended to assert their powers in a way which might under the new Constitution affect the efficiency of the Courts. The White Paper proposes that in future any expenditure certified by the Governor, after consultation with his Ministers, to be required for the expenses of the High Court shall not be submitted to the vote of the Legislative Assembly, though it will be open to discussion by them[2]. We think that in the circumstances this is a reasonable arrangement and will avoid the difficulties to which we have referred.

Administrative control of High Courts should remain with Provincial Government.

333. It follows from this recommendation that we are not at one with the Statutory Commission in thinking[3] that the administrative control of the High Courts should be placed in the hands of the Central Government and that the expenditure required for them, and the receipts from court fees, should be included in the Central Government's Budget. We agree entirely with the Commission that the arrangement whereby, in consequence of the historical connection for certain purposes between the Calcutta High Court and the Government of India, decisions as to the strength of that Court and its establishment and as to its financial requirements for buildings or other purposes rest with the Central Government, though the extra expenditure involved by such decisions falls upon the

[1] *Supra*, para. 323.
[2] White Paper, Proposal 98 (iii).
[3] Report, Vol. II, paras. 341–349.

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Bengal Government, is an anomaly which ought to be terminated; but, in our view, it should be terminated not by placing financial responsibility for the Calcutta High Court (and incidentally for all other High Courts) upon the shoulders of the Federal Government, but by bringing the Calcutta Court into the same relationship with the Bengal Government as that obtaining between all other High Courts and their respective Provincial Governments. We agree, moreover, most fully with the Commission's view as to the importance of securing for the High Courts a position of independence and the largest possible measure of freedom from pressure exerted for political ends. This object should, we think, be fully secured by the recommendation which we made in the last paragraph. But, subject to the fulfilment of this requirement, the High Court is, in our view, essentially a provincial institution: indeed, as subsequent paragraphs show, we seek to secure for each High Court an administrative connection with the Subordinate Judiciary of the Province which we regard as of the highest importance, and which we think could not be maintained—or only in an atmosphere of mistrust and suspicion which would gravely detract from its advantages—if the Court were an outside body, regarded (as it would probably be) as an appanage of the Federal Government. Apart from these reasons, which we regard as conclusive, in favour of maintaining the present relationship between the High Courts and the Provincial Governments (subject only to the modification required to bring the Calcutta High Court into the same position as that of the others), we are satisfied that the financial adjustments which would be involved in any attempt to centralise the administration and financing of the High Courts would be of a far more complicated nature than the Commission appear to have supposed.

Federal and Provincial Legislation in relation to the High Courts.

334. We observe that the Federal Legislature is to have an exclusive power to make laws touching the jurisdiction, powers and authority of all Courts in British India (except the Federal Court and the Supreme Court) with respect to the subjects on which it is exclusively competent to legislate, and that the Provincial Legislatures will similarly have power to make laws touching the jurisdiction, powers and authority of all Courts within the Province with respect to subjects on which those Legislatures are exclusively competent to legislate. It has been suggested that this would enable either the Federal or a Provincial Legislature, if they so desired, to deprive the High Courts of much of their jurisdiction, and to transfer it to Courts of an inferior status, to the grave prejudice of the rights of His Majesty's subjects in India. In theory this is no doubt possible; but it is, in our view, a necessary consequence of the distribution of legislative powers which we recommend that both the Federal and Provincial Legislatures should have a law-making power for the purposes which we have mentioned, and, whatever use they may make of it, we are satisfied that they will never willingly enact legislation which would prejudice or affect the status of the High

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Courts. Our information is indeed that, so great is the confidence felt in the impartiality and ability of the High Courts, a converse policy is much more likely, if the past is any guide, to be adopted. But, in order that the position of the High Courts may be fully safeguarded, we recommend that the Governor-General and Governors should be directed in their Instruments of Instruction to reserve for the signification of His Majesty's pleasure any Bill which in their opinion would so derogate from the powers of the High Court as to endanger the position which those Courts are under the Constitution Act clearly designed to fill. We think that it is also of great importance that the powers of the High Courts referred to in the Committee's Records[1] should be defined and confirmed by the Constitution Act, even where at present they rest on the authority of the Provincial Government. We should add that in later paragraphs[2] we make recommendations which are designed to confirm and strengthen the arrangements existing in many Provinces whereby the High Courts are given a large measure of control over the personnel of the Subordinate Judiciary; but we also think that provisions, settling definitely the nature of the administrative superintendence to be exercised by the High Courts over the Subordinate Courts in a Province, should find a place in the new Constitution.

Future constitutional position of HighCourts.

335. We think it desirable to explain the general effect of our recommendations upon the High Courts. Their constitution will, as at present, be laid down in the Constitution Act and the appointments to them will remain with the Crown: the Constitution Act will, moreover, itself regulate more precisely than at present the nature and extent of the superintendence to be exercised by a High Court over the Subordinate Courts of the Province—the nature and extent, in fact, of what may be described as their administrative jurisdiction. No change will be made in their relations with the Provinces in regard to the administrative questions affecting their establishment and buildings, except that the Calcutta High Court will henceforth have relations in these respects with the Bengal Government direct and not, as at present, with the Central Government (which, even as matters stand, naturally consults the Bengal Government upon any proposals laid before it by the Court): but the supply required by the High Court will be determined by the Governor after consultation with his Ministers, and will not be subject to the vote of the Provincial Legislature. As regards the juridical jurisdiction of the High Courts, in so far as this depends—as it mainly does depend—upon provisions of Indian enactments, it will henceforth be determined by enactments of that Legislature which is competent to regulate the subject in respect of which questions of the High Court's jurisdiction arise: that is to say, it will be for the Federal Legislature alone to determine the jurisdiction of the High Court in respect of any matter upon which that Legislature has exclusive power to legislate,

[1] Records [1932–33], pp. 34–35, paras. 12–13.
[2] *Infra*, paras. 339–340.

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for the Provincial Legislature to determine the jurisdiction of its High Court in respect of any exclusively provincial subject, and for both to determine (subject to the principles governing legislation in the concurrent field) in respect of any matter on which both Legislatures are competent to legislate. It will thus be seen that the High Courts, under our proposals, will be institutions which will not accurately be described as either federalised or provincialised.

Protection of Judiciary from criticism in Legislatures.

336. In concluding this portion of our Report we desire to call attention to the importance of safeguarding the Judiciary from criticism in the Legislatures of their conduct in the discharge of their duties. The rule and practice of Parliament protect the Judiciary from such criticism in this country and we recommend that adequate provision should be made to safeguard Judges in India also.

The Subordinate Judiciary

Necessity for securing independence of subordinate judiciary.

337. This subject is not mentioned in the White Paper, but there are aspects of it which seem to us of such importance that we think it right to state our opinion upon them. The Federal and High Court Judges will be appointed by the Crown and their independence is secure; but appointments to the Subordinate Judiciary must necessarily be made by authorities in India who will also exercise a certain measure of control over the Judges after appointment, especially in the matter of promotion and posting. We have been greatly impressed by the mischiefs which have resulted elsewhere from a system under which promotion from grade to grade in a judicial hierarchy is in the hands of a Minister exposed to pressure from members of a popularly elected Legislature. Nothing is more likely to sap the independence of a magistrate than the knowledge that his career depends upon the favour of a Minister; and recent examples (not in India) have shown very clearly the pressure which may be exerted upon a magistracy thus situated by men who are known, or believed, to have the means of bringing influence to bear upon a Minister. It is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges. We have given anxious consideration to this matter and our recommendations are as follows.

Candidates seeking to exercise political influence should be disqualified.

338. A strict rule ought in our opinion to be adopted and enforced, though it would be clearly out of place in the Constitution Act itself, that recommendations from, or attempts to exercise influence by, members of the Legislature in the appointment or promotion of any member of the Subordinate Judiciary are sufficient in themselves to disqualify a candidate, whatever his personal merits may be. We would admit no exception to this rule, which has for many years

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past been accepted without question in the Civil Service of the United Kingdom. We do not for a moment suggest that Indian Ministers will be willing to adopt any lower standards; but this is a matter in which the right principle ought to be laid down at the very outset of the new constitutional order; and the observations which we have thought it our duty to make may perhaps serve in the future to strengthen the hands of Ministers who find themselves exposed to improper pressure from those whose standards may not be as high as their own.

(*a*) *The Civil Judiciary*

Subordinate Judges and Munsiffs.

339. In the case of Subordinate Judges and Munsiffs, the Provincial Government—that is to say, the Governor advised by the appropriate Minister—after consultation with the Public Service Commission and with the High Court should make rules defining the standard of qualifications for candidates seeking to enter the Judicial service. Candidates should be selected for appointment by the Public Service Commission, in consultation with the High Court, subject to any general regulations made by the Provincial Government as to the observance of communal proportions. The Minister would be informed by the Commission of the candidate or the candidates selected by them, and the appointment would be made by the Governor on the Minister's recommendation. The Public Service Commission would of course act in an advisory capacity only, but we cannot conceive that any Minister would reject their advice or recommend an appointment without it. We think it of first importance that promotions from grade to grade or from the rank of Munsiff to that of Subordinate Judge, and also the leave and postings of Munsiffs and Subordinate Judges, should be in the hands of the High Court, subject to the usual rights of appeal of the officer affected.

District Judges.

340. In the case of District Judges or additional District Judges, first appointment should, if the candidate is a member of the Indian Civil Service, be made by the Governor on the recommendation of the Minister, after consultation with the High Court. A recommendation by the Minister for the appointment of a member of the subordinate judicial service should only be made with the approval of the Public Service Commission and of the High Court. A recommendation for a direct appointment from the Bar should be made from among persons nominated by the High Court, subject to any general regulations in force regarding communal proportions. A District Judge should only be promoted (except in the case of automatic time scale promotions) on a recommendation by the Minister after consultation with the High Court; and the same rule should apply to postings. In all the cases covered by this paragraph we think that the Governor should have a discretion to reject a recommendation if he does not concur with it.

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(*b*) *The Criminal Magistracy*

Deputy magistrates and tehsildars.

341. In the case of deputy magistrates, sub-deputy magistrates and tehsildars, the High Court have little knowledge of their judicial work, and none at all of the work which a large number of them perform in their executive or administrative capacities. Candidates for a first appointment to these posts should be selected by the Public Service Commission, and the appointment should be made from the candidates so selected by the Governor on the recommendation of the Minister. In the case of subsequent promotions or postings, the Minister should ask for the recommendations of the district magistrate, in consultation, where necessary, with the Sessions Judge of the district in which the subordinate magistrate works; and we think that, if these recommendations are disregarded, some machinery should be devised for bringing the matter to the notice of the Governor.

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(5) Commercial and other Forms of Discrimination

Definition of problem.

342. The importance attached in this country to this part of the Indian constitutional problem has been much misunderstood in India. We believe that our first duty is to define it in such a way as to remove this misunderstanding. In our view the problem is divisible into two entirely separate issues. The only one of these issues dealt with in the White Paper is the question of administrative and legislative discrimination against British commercial interests and British trade in India. With this issue we deal in detail in later paragraphs.[1]

The Fiscal Convention.

343. The other issue, which we now proceed to consider, is that of discrimination against British imports. As is well known, the fiscal relations between the United Kingdom and India have now been regulated for some thirteen years by the recommendations of the Joint Committee on the Bill of 1919—commonly known as the Fiscal Convention. It is a commonplace that the exact scope and effects of this Convention have afforded much ground for discussion, and that the Convention has not—as indeed could hardly have been expected—succeeded in placing beyond controversy the rights and duties of the two parties to it. But, with the passing of a new Constitution Act on the lines of the recommendations which we make in this Report, the Convention, in its present form at all events, will necessarily lapse; and, unless the Constitution Act otherwise provides, the Federal Legislature will enjoy complete fiscal freedom, with little in the nature of settled tradition to guide its relationship in fiscal matters with this country. The difficulties which would be likely to arise from this uncertainty would, moreover, find a fruitful source of increase in that atmosphere of misunderstanding to which we have alluded. It is suggested in India that, in seeking to clarify the fiscal relations between India and themselves, His Majesty's Government are seeking to impose unreasonable fetters upon the future Indian Legislature for the purpose of securing exceptional advantages for British, at the expense of Indian, trade. The suggestion is without foundation, but can be countered only by clear proposals which will show how false it is. On the other hand, statements of a very disturbing character have been made from time to time by influential persons in India which have aroused suspicions and doubts in the United Kingdom. In these circumstances, appropriate provisions in the Constitution Act may serve the double purpose of facilitating the transition from the old to the new conditions, and of reassuring sensitive opinion in both countries. Certainly, such provisions would in no way imply a belief that there is real ground for the apprehensions entertained on either side.

[1] *Infra*, paras. 347–365.

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The Fiscal Convention and the new Constitution.

344. But in making our recommendations to this end, we wish to make it clear at the outset that we contemplate no measure which would interfere with the position attained by India as an integral part of the British Empire through the Fiscal Convention. Fears have, indeed, been expressed lest the exercise by the Indian Legislature of the powers contemplated in the Convention might result in the imposition of penal tariffs on British goods or in the application to them of penally restrictive regulations with the object not, of fostering Indian trade, but of injuring and excluding British trade. The answer to these fears is that the Convention could never, in fact, have been applied in aid of such a policy; and we have been assured by the Indian Delegates that there will be no desire in India to utilise any powers they may enjoy under the new Constitution for a purpose so destructive of the conception of partnership upon which all our recommendations are based. But, if this be so, it would be clearly of great advantage to allay the fears of which we have spoken by a declaration through and under the Constitution Act of the principles governing the relations between the two countries. The machinery of the Governor-General's special responsibilities, supplemented by his Instrument of Instructions, offers India and the United Kingdom the opportunity of making such a declaration of principles, while at the same time ensuring the necessary flexibility in their interpretation and application.

Governor-General should have a special responsibility to prevent penal discrimination against British imports.

345. We therefore recommend that to the special responsibilities of the Governor-General enumerated in the White Paper there should be added a further special responsibility defined in some such terms as follows:—"The prevention of measures, legislative or administrative, which would subject British goods, imported into India from the United Kingdom, to discriminatory or penal treatment"[1]. But, as it is important that the scope which we intend to be attached to the special responsibility so defined should be explained more exactly than could conveniently be expressed in statutory language, we further recommend that the Governor-General's Instrument of Instructions should give him full and clear guidance. It should be made clear that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian Legislature to develop their own fiscal and economic policy; that they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions; and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if in his opinion the intention of the policy contemplated is to subject trade between the United Kingdom and India to restrictions conceived, not in the economic interests of India but with the object of injuring the interests of the United Kingdom. It should further be made clear that the "discriminatory or penal

[1] See also *infra*, para. 471.

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treatment" covered by this special responsibility includes both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products; and that the Governor-General's special responsibility could also be used to prevent the imposition of prohibitory tariffs or restrictions, if he were satisfied that such measures were proposed with the intention already described. In all these respects, the words would cover measures which, though not discriminatory or penal in form, would be so in fact.

Principles of future trade relations between India and United Kingdom.

346. But although the Instrument of Instructions affords the means of defining more fully than would be possible in the Act itself the scope and purpose of the special responsibility which the Act should confer, even this document cannot conveniently be utilised as the means of explaining the broad principles upon which in our view the future trade relations between India and the United Kingdom should be based. We wish therefore to express our own conception of these principles. We think that the United Kingdom and India must approach their trade problems in a spirit of reciprocity, which views the trade between the two countries as a whole. Both countries have a wide range of needs and interests; in some of these each country is complementary to the other, while in some each has inevitably to look rather to a third country for satisfactory arrangements of mutual advantage. The reciprocity which, as partners, they have a right to expect from each other consists in a deliberate effort to expand the whole range of their trade with each other to the fullest possible extent compatible with the interests of their own people. The conception of reciprocity does not preclude either partner from entering into special agreements with third countries for the exchange of particular commodities, where such agreements offer it advantages which it cannot obtain from the other; but the conception does imply that, when either partner is considering to what extent it can offer special advantages of this kind to a third country without injustice to the other partner, it will have regard to the general range of benefits secured to it by the partnership, and not merely to the usefulness of the partnership in relation to the particular commodity under consideration at the moment.

Discrimination against British trade in India.

347. We turn now to the other issue presented by this Chapter of our Report, namely, the prevention of discrimination against British trade in India. The Second Round Table Conference in 1931 adopted a resolution to the effect that there should be no discrimination between the rights of the British mercantile community, firms and companies, trading in India and the rights of Indian-born subjects. Witnesses who appeared before us spoke in the same sense and the British-India Delegation, in their Joint Memorandum, state that on the question of principle there has

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always been a substantial measure of agreement in India. On the other hand, we have been assured no less strongly by those who represent British commercial interests that they ask for no exceptional or preferential treatment for British trade as against Indian trade. Their policy is, in fact, one of a fair field and no favour. The question, therefore, resolves itself into a consideration of the best method of giving practical effect to the avowed policy and intentions of all concerned. It may, indeed, be asked why, in view of the assurances of which we have spoken, it is necessary to deal with this matter at all in the Constitution Act; and to this our answer must be that, here again, utterances have been made which could not fail to give rise to suspicions and doubts, and that statutory provision by way of re-assurance is an evident necessity.

Administrative discrimination.

348. Discrimination may be of two kinds, administrative or legislative. We are satisfied that, with regard to administrative discrimination, a statutory prohibition would be not only impracticable but useless, for it would be impossible to regulate by any statute the exercise of its discretion by the Executive. We agree, however, with the proposal in the White Paper[1] that the Governor-General and Governors in their respective spheres should have imposed upon them a special responsibility for the prevention of discrimination, thus enabling them, if action is proposed by their Ministers which would have a discriminatory effect, to intervene and, if necessary, either to decline to accept their advice or (as the case may require) to exercise the special powers which flow from the possession of a special responsibility. But, if our subsequent recommendations on the subject of legislative discrimination are accepted, we think it should be made clear in the Constitution Act that this special responsibility extends to the prevention of administrative discrimination in any of the matters in respect of which provision against legislative discrimination is made under the Act.

Legislative discrimination.

349. We have said that it is in our view impossible to attempt any precise definition, with a view to its prohibition, of administrative discrimination. Legislative discrimination, however, stands upon a different footing, and it is in our judgment possible to enact provisions against it. We do not forget that to the Statutory Commission the technical objections to any attempt to define discriminatory legislation in a constitutional instrument seemed decisive[2]; but we observe that the Federal Structure Committee in their Fourth Report, which was adopted by the Second Round Table Conference, saw "no reason to doubt that an experienced parliamentary draftsman would be able to devise an adequate and workable formula, which it would not be beyond the competence of a court of law to interpret and make effective." The opinion of a body which contained so many distinguished lawyers must carry great weight, and we concur with

[1] White Paper, Proposals 18 and 70.
[2] Report, Vol. II, para. 156.

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them in thinking that the attempt should be made. We do not think that the White Paper proposals on the subject are very clear or precise, and in the paragraphs which follow we shall indicate the statutory provisions which, as it seems to us, ought to find a place in the Constitution Act.

General considerations.

350. We think it right to make by way of preface some general observations. Firstly, we express our entire agreement with the statement of the British-India Delegation in their Joint Memorandum "that a friendly settlement by negotiation is by far the most appropriate and satisfactory method of dealing with this complicated matter," and we shall have certain suggestions to make later on this aspect of it. Secondly, we are of opinion that these arrangements can only be extended to include the relations between India and other parts of His Majesty's Dominions by mutual agreement. Lastly, we think that, so far as possible, any statutory enactment should be based upon the principle of reciprocity.

Laws imposing certain conditions and restrictions should not apply to British subjects domiciled in the United Kingdom.

351. Subject to what we say hereafter on the question of reciprocity, we are of opinion (1) that no law[1] restricting the right of entry into British India should apply to British subjects domiciled in the United Kingdom; but there should be a saving for the right of the authorities in India to exercise any statutory powers which they may possess to exclude or remove undesirable persons, whether domiciled in the United Kingdom or elsewhere; and (2) that no law relating to taxation, travel and residence, the holding of property, the holding of public office, or the carrying on of any trade, business, or profession in British India, should apply to British subjects domiciled in the United Kingdom, in so far as it imposes conditions or restrictions based upon domicile, residence or duration of residence, language, race, religion, or place of birth.

Companies incorporated in the United Kingdom and in India.

352. As regards companies, we are of opinion (1) that a company incorporated now or hereafter in the United Kingdom, should, when trading in India, be deemed to have complied with the provisions of any Indian law relating to the place of incorporation of companies trading in India, or to the domicile, residence or duration of residence, language, race, religion, descent or place of birth, of the directors, shareholders, or of the agents and servants of such companies; and (2) that British subjects domiciled in the United Kingdom who are directors, shareholders, servants or agents of a company incorporated now or hereafter in India should be deemed to have complied with any conditions imposed by Indian law upon companies so incorporated, relating to the domicile, residence or duration of residence, language, race, religion, descent or place of birth, of directors, shareholders, agents or servants.

[1] "Law" throughout these paragraphs is intended to include any regulations, bye-laws, etc., by whomsoever made, having the force of law.

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Provisions should be on basis of reciprocity.

353. There should however be reciprocity between India and the United Kingdom; and accordingly if a United Kingdom law imposes in the United Kingdom upon Indian subjects of His Majesty domiciled in India or upon companies incorporated in India conditions, restrictions or requirements in respect of any of the above matters from which in India British subjects domiciled in the United Kingdom and companies incorporated in the United Kingdom would otherwise be exempt, the exemption enjoyed by the latter would *pro tanto* cease to have effect.

Shipping.

354. We think that separate provision should be made for the case of ships and shipping; and it should be enacted that ships registered in the United Kingdom are not to be subjected by law in British India to any discrimination whatsoever, as regards the ship, officers or crew, or her passengers or cargo, to which ships registered in British India would not be subjected in the United Kingdom.

Exceptions.

355. We are satisfied that there would have to be certain exceptions. Thus, the statutory provisions which we have suggested ought not to affect any laws in force at the commencement of the Constitution Act, or laws which exempt from taxation persons not domiciled or resident in India.

Bounties and subsidies.

356. A further exception seems necessary in connection with the Indian Acts, Federal or Provincial, which authorise the payment to companies or firms of grants, subsidies or bounties out of public funds for the purpose of encouraging trade or industry in India. A Committee, known as the External Capital Committee, in 1925 recommended that certain conditions should be attached to grants of this kind and their recommendations were adopted, and have since that date been acted upon, by the Government of India. These seem to us to have been conceived in a very reasonable spirit, and we do not think that any objection could be taken to them. But we think that a distinction may properly be drawn between companies already engaged, at the date of the Act which authorizes the grant, in that branch of trade or industry which it is sought to encourage, and companies which engage in it subsequently; and we therefore recommend that in the case of the latter it may be made a condition of eligibility for the grant that the company should be incorporated by or under Indian law, that a proportion of the directors (which should, we think, not exceed one half of the total number) shall be Indians, and that the company shall give such reasonable facilities for the training of Indians as the Act may prescribe. In the case of the former, the reciprocal provisions which we have suggested would continue to apply, and the company should be equally eligible to participate in the grant with Indian companies.

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Bills discriminatory in fact though not in form.

357. But it will still be the duty of the Governor-General and of the Governors to exercise their discretion in giving or withholding their assent to Bills. And we think that the Instrument of Instructions should make it plain, as we have already indicated in connection with the Governor-General's special responsibility in relation to tariffs, that it is the duty of the Governor-General and of the Governors, in exercising their discretion in the matter of assent to Bills, not to feel themselves bound by the terms of the statutory prohibitions in relation to discrimination, but to withhold their assent from any measure which, though not in form discriminatory, would in their judgment have a discriminatory effect. We have made, we hope, sufficiently plain the scope and the nature of the discrimination which we regard it as necessary to prohibit, and we have expressed our belief that statutory prohibitions should be capable of being so framed as generally to secure what we have in view. We are conscious, however, of the difficulty of framing completely watertight prohibitions and of the scope which ingenuity might find for complying with the letter of the law in a matter of this kind while violating its spirit. It is, in our view, an essential concomitant of the stage of responsible government which our proposals are designed to secure that the discretion of the Governor-General and of the Governors in the granting or withholding of assent to all Bills of their Legislature should be free and unfettered; and, in this difficult matter of discrimination in particular, we should not regard this condition as fulfilled if the Governor-General and Governors regarded the exercise of their discretion as restricted by the terms of the statutory prohibitions. We further recommend that the Instrument of Instructions of the Governor-General and the Governor should require him, if in any case he feels doubt whether a particular Bill does or does not offend against the intentions of the Constitution Act in the matter of discrimination, to reserve the Bill for the signification of His Majesty's pleasure. We need hardly add that the effect of our recommendations for the statutory prohibition of certain specified forms of discrimination would lay open to challenge in the Courts as being *ultra vires* any legislative enactment which is inconsistent with these prohibitions, even if the Governor-General or the Governor has assented to it.

Practice of professions.

358. Our attention has been called to the question of the qualifications required for the practice of the different professions in India, and the suggestion has been made that persons holding United Kingdom qualifications ought to be secured a statutory right to practise in India by virtue of those qualifications. The case of medical practitioners has features of its own and we deal with it separately in the paragraphs which follow: but with regard to professional qualifications in general we are unable to accept the suggestion. Except in certain cases in which a qualification has been specially recognised by or under some Indian law as giving a title to practise, persons holding United Kingdom qualifications at present follow their

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professions in India without restraint, but have always been subject to such restrictions as the present Indian Legislatures might have imposed. We think that the Indian Legislatures of the future should equally be free to prescribe the conditions under which the practice of professions generally is to be carried on. But it seems to us that the vested interests of those who are practising a profession in India at the commencement of the new Constitution Act may properly be safeguarded; and we think that they should have a right to continue to practise notwithstanding any future Act which may be passed by any Indian Legislature requiring Indian qualifications as a condition of practice. We may however be permitted to express the hope that, when the different professions in India become, as we hope they will, organised and controlled by their own governing bodies, arrangements will be freely made with the corresponding bodies in the United Kingdom for the mutual recognition in both countries of the qualifications prescribed by each, or at least that mutual facilities will be given for their acquisition.

Burma.

359. On the assumption that Burma will be separated from British India we think that British subjects domiciled in India ought to be accorded in Burma the same treatment which would be given in India to British subjects domiciled in the United Kingdom, save as regards the right of entry into Burma, on which, in view of the special circumstances, we shall have recommendations to make in due course. These matters would fall to be dealt with in the separate legislation which will be required to establish the new constitutional machinery in Burma; but it will also be necessary to consider to what extent corresponding treatment should be accorded in India to British subjects domiciled in Burma, provision for which would find a place in the Indian Constitution Act; and our recommendations on this matter also will be found in that Section of our Report which deals with Burma.[1]

Opportunity should be given for conventional arrangements in the future.

360. We have expressed our concurrence with the statement in the British-India Joint Memorandum that "a friendly settlement by negotiation is by far the most appropriate and satisfactory method" of dealing with the question of discrimination. At the first Round Table Conference the Report of the Minorities Sub-Committee was adopted which contained a paragraph to the effect that there should be no discrimination between the rights of the British mercantile community trading in India and the rights of Indian born subjects, and that "an appropriate Convention based on reciprocity should be entered into for the purpose of regulating these rights." It was suggested by some that a Convention for this purpose should be negotiated forthwith, and it was argued that in that event statutory provision in the new Constitution would be rendered unnecessary. We have no doubt however that such a Convention, designed to regulate rights under a new constitutional order, could not with propriety be made except with the new Indian Government, and that the proposal made in January, 1931, was for that reason

[1] *Infra*, paras. 471-476.

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impracticable. Nevertheless, since we hold strongly that the conventional is preferable to the statutory method, and that agreement and goodwill form the most satisfactory basis for commercial relations between India and this country, we think that there should be nothing in the Constitution which might close the door against a Convention. We recommend accordingly that His Majesty, if satisfied that a Convention has been made between His Majesty's Government in the United Kingdom and the new Government of India covering the matters with which we have already dealt in this chapter of our Report, and that the necessary legislation for implementing it has been passed by Parliament and by the Indian Legislature, should be empowered to declare by Order in Council that the statutory provisions in the Constitution Act shall not apply so long as the Convention continues in force between the two countries. It may be said that the practical result will be exactly the same, and this no doubt is true; but the merit of the proposal, as we see it, is that it would enable the Indian Government and Legislature, if they so desire, to substitute a voluntary agreement for a statutory enactment, and would therefore give to the arrangements for the reciprocal protection of British subjects in India and the United Kingdom respectively the conventional basis which in our judgment it is most desirable that they should have.

Medical Qualifications

Provisions of Medical Act, 1886.

361. The question of the mutual recognition of medical practitioners in the United Kingdom and British India has unhappily become a matter of political controversy in India during the last few years; and, in view of its importance to both countries, it seems desirable that we should describe shortly the present position. The Medical Act, 1886, empowers His Majesty by Order in Council to apply the Act to any British possession "which in the opinion of His Majesty affords to the registered medical practitioners of the United Kingdom such privileges of practising in the said British possession . . . as to His Majesty may seem just". The Act has been applied to British India, in view of the recognition there accorded to practitioners registered in the United Kingdom; and this entitles any person who holds an Indian medical diploma recognised for the time being by the General Medical Council as "furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of medicine, surgery and midwifery" to be registered on application in the United Kingdom medical register. The Act also provides that, where the General Medical Council have refused to recognise a medical diploma for this purpose, the Privy Council, on application being made to them, may, if they think fit, after considering the application and after communication with the General Medical Council, order the latter to recognise the diploma, and the Council are thereupon under a statutory obligation to do so. It will thus be seen that, though the Act is based upon the principle

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of reciprocity, the General Medical Council is not compelled to give an automatic recognition to each and every diploma conferred in the other countries to which the Act applies, but is entitled, subject to an appeal to the Privy Council, to satisfy itself that any particular diploma is such as to furnish a sufficient guarantee of the possession of the requisite medical knowledge and skill. We understand that, in countries where there is some central authority corresponding to the General Medical Council, the Council is accustomed to consult that body for the purpose of satisfying itself that a particular diploma about which perhaps a question has been raised affords the guarantee required; but where such body does not exist, the Council must of course make its own inquiries. We should point out that the General Medical Council in the United Kingdom does not itself confer medical degrees. It keeps the medical register; that is to say, a register of medical practitioners who have passed a qualifying examination in medicine, surgery, and midwifery, held by Universities in the United Kingdom and certain other bodies, in which a standard of proficiency satisfactory to the Council has been attained; and the Council, though they do not themselves examine, are thus able in effect to secure that the qualifying examinations and the standard of proficiency are adequate.

Withdrawal of recognition of Indian medical diplomas.

362. Until very recently there was no central body in India corresponding to the General Medical Council, and therefore no authority with power to secure and maintain a common standard for the medical qualifications evidenced by the diplomas recognized by the various provincial Medical Councils in India. It appears that there was in consequence a considerable variation in the standards adopted by these bodies, and the Council some four years ago took the drastic step of refusing any longer to accord recognition to Indian medical diplomas, as the Indian Legislature had refused to provide the money for a system of inspection which would have been acceptable to the General Medical Council pending the establishment of a system of inspection by an All-India Medical Council. It is perhaps not surprising that the action of the Council caused resentment and protest. It was believed by many that political, or at least ulterior, motives lay behind it; but no one who is aware of the integrity and independence of the Council, and its complete dissociation from every kind of political influence, can doubt that it was inspired solely by a desire to promote the interests of medical education and to secure the highest standard of proficiency in those who claimed to be admitted to the United Kingdom register. On the merits of the dispute we are not of course competent to pronounce, nor are we able to say whether the Council might have achieved their purpose in some way less likely to wound Indian susceptibility; but of the purity of its intentions we cannot entertain any doubt, and it is to be regretted that none of those affected thought fit to avail himself of the right of appeal to the Privy Council and to obtain a decision from a body whose impartiality could not be questioned.

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Indian Medical Council Act, 1933.

363. The controversy has had, at any rate, one satisfactory result; for the Indian Legislature have now passed an Act known as the Indian Medical Council Act, 1933, which sets up a Medical Council for the whole of British India with substantially the same functions as those of the General Medical Council in the United Kingdom. This Act sets out in the First Schedule the medical qualifications granted by medical institutions in British India, which are to be recognised for the purposes of the Act, and gives the Council power to secure by inspection and, in the last resort, by the withdrawal of recognition an adequate standard of proficiency. In the Second Schedule are set out the medical qualifications granted by medical institutions outside British India which are to be recognized for the purposes of the Act, and in this list are included the registrable qualifications granted by licensing bodies in the United Kingdom which admit to the United Kingdom medical register. These are to continue unaltered for a period of four years, but the Council are empowered to enter into negotiations with the authority in any country outside British India entrusted with the maintenance of a register of medical practitioners for the settlement of a scheme for the reciprocal recognition of medical qualifications. The Governor-General is to be informed of the decisions of the Council to recognise or refuse to recognise the medical qualifications proposed by the authority abroad for recognition in British India; and he is to frame a new Schedule (to become effective four years after the commencement of the Act) which will comprise the medical qualifications thereafter to be recognised. Provision is also made enabling the Governor-General in Council after the expiration of four years to amend the Schedule and to add further qualifications, or to recognise only qualifications granted before or after a specified date. It will thus be seen that the Governor-General in Council would, on the representations of the Indian Medical Council, be free to withdraw at any time after the expiration of four years the recognition in British India secured to medical practitioners on the United Kingdom medical register, though there is a saving for all medical qualifications granted previously.

The Act a basis for satisfactory arrangements in the future.

364. We appreciate and sympathise with the efforts of the Indian medical profession to put its house in order, and we hope that co-operation between the two Councils (for we are convinced that good will is not lacking on either side) will go far to ensure an amicable and agreed solution of the present difficulty. We are of opinion that the Indian Medical Council Act, with only slight modifications, can be made the basis of a permanent and satisfactory arrangement. The references in the Act to the Governor-General in Council will in any event require modification under the new Constitution, and at first sight it would appear that it would be sufficient to substitute a reference to the Governor-General, *i.e.*, the Governor-General advised by his Ministers, since this is a matter falling within the ministerial sphere. But we confess that we should find difficulty

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in agreeing that the Governor-General is an appropriate authority for determining whether any particular qualification should be recognised; for this is not a matter of policy, but one which involves technical and professional considerations. We think that the true solution is to be found in an adaptation of the provisions in the United Kingdom Act which we have mentioned above, whereby any refusal by the General Medical Council to recognise a medical diploma granted abroad may be made the subject of an appeal to the Privy Council; and we suggest that if after the expiration of four years the Indian Medical Council proposes to withhold recognition of any of the United Kingdom qualifications set out in the Second Schedule to the Indian Act, an appeal should lie to the Privy Council, whose decision should be final. The Act of 1886 requires the Privy Council, before giving its decision on a refusal to recognise a diploma granted abroad, to communicate with the General Medical Council, and there should be a corresponding provision that in the converse case there should be communication with the Indian Medical Council; but we are disposed to think that the law should be amended so as to provide that in either case both Councils should be communicated with before the decision of the Privy Council is given. We hope that before the four years have expired, as a result of joint action between the two Councils, the General Medical Council will have seen its way to restore its recognition of Indian diplomas, and that discussions may proceed between them free from political influence or bias and with the sole object of promoting the interests of medical education in both countries.

The Indian Medical Service.

365. There is one aspect of this question which seems to us to present special features. It is not necessary to emphasise the importance of the Indian Medical Service from the military point of view; and in our opinion the members of the Service ought, by virtue of the commissions which they hold, to be deemed to possess all necessary statutory qualifications entitling them to practise. The same principle should apply to members of the Royal Army Medical Corps and of the Royal Air Force Medical Service.

Fundamental Rights

A declaration of fundamental rights impracticable.

366. The question of so-called fundamental rights, which was much discussed at the three Round Table Conferences, was brought to our notice by the British-India Delegation, many members of which were anxious that the new Constitution should contain a declaration of rights of different kinds, for reassuring minorities, for asserting the equality of all persons before the law, and for other like purposes; and we have examined more than one list of such rights which have been compiled. The Statutory Commission observe with reference to this subject:—"We are aware that such provisions have been inserted in many Constitutions, notably in those of the European States formed after the war. Experience however has not shown them to be of any great practical value. Abstract declarations are useless, unless there exist the will

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and the means to make them effective."[1] With these observations we entirely agree: and a cynic might indeed find plausible arguments, in the history during the last ten years of more than one country, for asserting that the most effective method of ensuring the destruction of a fundamental right is to include a declaration of its existence in a constitutional instrument. But there are also strong practical arguments against the proposal, which may be put in the form of a dilemma: for either the declaration of rights is of so abstract a nature that it has no legal effect of any kind, or its legal effect will be to impose an embarrassing restriction on the powers of the Legislature and to create a grave risk that a large number of laws may be declared invalid by the Courts because inconsistent with one or other of the rights so declared. An examination of the lists to which we have referred shows very clearly indeed that this risk would be far from negligible. There is this further objection, that the States have made it abundantly clear that no declaration of fundamental rights is to apply in State territories; and it would be altogether anomalous if such a declaration had legal force in part only of the area of the Federation. There are however one or two legal principles which might, we think, be appropriately embodied in the Constitution, and we direct attention to them in the paragraphs which follow. There are others, not strictly of a legal kind, to which perhaps His Majesty will think fit to make reference in any Proclamation which He may be pleased to issue in connection with the establishment of the new order in India.

Eligibility for holding public office, etc.

367. Among the proposals in the White Paper is one which would put it beyond the power of any Legislature in British India to make laws (with certain exceptions) subjecting any British subject to any disability or discrimination in respect of a variety of specified matters, if based upon religion, descent, caste, colour or place of birth.[2] This proposal seems to us too wide and we understand that His Majesty's Government have, after consultation with the Government of India, arrived at the same conclusion. We agree that some declaration of the general rights of British subjects in India is required, but we think that it would be preferable to base it upon the existing section of the Government of India Act. We think that this declaration should provide that no British subject, Indian or otherwise, domiciled in India, shall be disabled from holding public office or from practising any trade, profession or calling by reason only of his religion, descent, caste, colour or place of birth; and it should be extended, as regards the holding of office under the Federal Government, to subjects of Indian States.

Punjab Land Alienation Act.

368. The proposal in the White Paper, however, contains a proviso which would, in one respect, still further limit the effect of this narrower declaration of rights, namely, that "no law will be deemed to be discriminatory for this purpose on the ground only that it prohibits either absolutely or with exceptions the

[1] Report, Vol. II, para. 36.
[2] White Paper, Proposal 122.

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sale or mortgage of agricultural land in any area or to any person not belonging to some class recognised as being a class of persons engaged in, or connected with, agriculture in that area, or which recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some privilege, law or custom having the form of law." This proviso is intended to cover legislation such as the Punjab Land Alienation Act, which is designed to protect the cultivator against the money lender. This is no doubt a desirable object. Inasmuch, however, as the full effect of the proviso cannot be foreseen and may have the result that the legitimate interests of minorities may be impaired while they are denied the right of appeal to the Courts for redress, we think that, in cases where the legitimate interests of minorities may be adversely affected and access to the courts is barred by this proviso in the Constitution, the Governor should consider whether his special responsibility for the protection of minorities necessitates action on his part.

Expropriation of private property.

369. We think that some general provision should be inserted in the Constitution Act safeguarding private property against expropriation, in order to quiet doubts which have been aroused in recent years by certain Indian utterances. It is obviously difficult to frame any general provision with this object without unduly restricting the powers of the Legislature in relation particularly to taxation ; in fact, much the same difficulties would be presented as those which we have discussed above in relation to fundamental rights. We do not attempt to define with precision the scope of the provision we have in mind, the drafting of which will require careful consideration for the reasons we have indicated ; but we think that it should secure that legislation expropriating, or authorising the expropriation of, the property of particular individuals should be lawful only if confined to expropriation for public purposes and if compensation is determined, either in the first instance or on appeal, by some independent authority. General legislation, on the other hand, the effect of which would be to transfer to public ownership some particular class of property, or to extinguish or modify the rights of individuals in it, ought, we think, to require the previous sanction of the Governor-General or Governor (as the case may be) to its introduction ; and in that event he should be directed by his Instrument of Instructions to take into account as a relevant factor the nature of the provisions proposed for compensating those whose interests will be adversely affected by the legislation.

Special case of grants of land or of tenure of land free of land revenue.

370. But there is a form of private property—perhaps more accurately described as " vested interest "—common in India, which we think requires more specific protection. We refer to grants of land or of tenure of land free of land revenue, or subject to partial remissions of land revenue, held under various names (of which Taluk, Inam, Watan, Jagir and Muafi are examples) throughout British India by various individuals or classes of individuals. Some of these

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grants date from Moghul or Sikh times and have been confirmed by the British Government: others have been granted by the British Government for services rendered. Many of the older grants are enjoyed by religious bodies and are held in the names of the managers for the time being. The terms of these grants differ: older grants are mostly perpetual, modern grants are mostly for three, or even two, generations. But, whatever their terms, a grant of this kind is always held in virtue of a specific undertaking given by, or on the authority of, the British Government that, subject in some cases to the due observance by the grantee of specified conditions, the rights of himself and his successors will be respected either for all time or, as the case may be, for the duration of the grant. A well-known instance of such rights is to be found in those enjoyed by the present Talukdars of Oudh, who owe their origin to the grant to their predecessors of sanads by Lord Canning, the then Governor-General, conferring proprietary rights upon all those who engaged to pay the *jumma* which might then, or might from time to time subsequently, be fixed, subject to loyalty and good behaviour; and the rights thus conferred were declared to be permanent, hereditary, and transferable.

Prior consent of Governor-General or Governor should be required to legislation affecting such grants.

371. It is not unnatural that the holders of privileges such as we have described should be apprehensive lest the grant of responsible government, and the consequent handing over to the control of Ministers and Legislatures of all matters connected with land revenue administration, should result in a failure to observe the promises which have been extended by Governments in the past to themselves or their predecessors in interest. Some of the claims to protection which have been urged upon us in this connection would be satisfied by little less than a statutory declaration which would have the effect of maintaining unaltered and unalterable for all time, however strong the justification for its modification might prove to be in the light of changed circumstances, every promise or undertaking of the kind made by the British Government in the past. We could not contemplate so far-reaching a limitation upon the natural consequences of the change to responsible government. We recommend, however, that the Constitution Act should contain an appropriate provision requiring the prior consent of the Governor-General or the Governor, as the case may be, to any proposal, legislative or executive, which would alter or prejudice the rights of the possessor of any privilege of the kind to which we have referred.

The Permanent Settlement.

372. We have considered whether similar provision should be made to protect the rights of Zamindars and others who are the successors in interest of those in whose favour the Permanent Settlement of Bengal, Bihar and Orissa and parts of the United Provinces and Madras was made at the end of the 18th century. Briefly, the effect of this Settlement was to give a proprietary right in land to the class described as Zamindars, on the understanding that they

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collected and paid to Government the revenue assessed on that land, which was fixed at rates declared at the time to be intended to stand unaltered in perpetuity. It is apparent that the position of Zamindars under the Permanent Settlement is very different from that of the individual holders of grants or privileges of the kind we have just described; for, while the privileges of the latter might, but for a protection such as we suggest, be swept away by a stroke of the pen with little or no injury to any but the holder of the vested interest himself, the alteration of the character of the land revenue settlement in Bengal, for instance, would involve directly or indirectly the interests of vast numbers of the population, in addition to those of the comparatively small number of Zamindars proper, and might indeed produce an economic revolution of a most far-reaching character. Consequently, no Ministry or Legislature in Bengal could, in fact, embark upon, or at all events carry to a conclusion, legislative proposals which would have such results, unless they had behind them an overwhelming volume of public support. We do not dispute the fact that the declarations as to the permanence of the Settlement, contained in the Regulations under which it was enacted, could not have been departed from by the British Government so long as that Government was in effective control of land revenue. But we could not regard this fact as involving the conclusion that it must be placed beyond the legal competence of an Indian Ministry responsible to an Indian Legislature, which is to be charged *inter alia* with the duty of regulating the land revenue system of the Province, to alter the enactments embodying the Permanent Settlement, which enactments, despite the promises of permanence which they contain, are legally subject (like any other Indian enactment) to repeal or alteration. Nevertheless, we feel that the Permanent Settlement is not a matter for which, as the result of the introduction of Provincial Autonomy, His Majesty's Government can properly disclaim all responsibility. We recommend therefore that the Governor should be instructed to reserve for the signification of His Majesty's pleasure any Bill passed by the Legislature which would alter the character of the Permanent Settlement.

The English language.

373. In concluding this chapter of our Report, we take the opportunity of mentioning a topic which can conveniently be dealt with here, though it has no very direct connection with the question of discrimination or of fundamental rights. It has been urged on us that provision should be made requiring the English language to be the official language of the Federation, or, more particularly, that English should receive legal status as the official language of the Constitution and of the superior Courts, and as one of the official languages of the Provincial Governments. In our judgment, no useful purpose would be served by a general declaration in the sense just indicated, and any such declaration would at once give rise to questions of great difficulty and complexity in relation to education. Our recommendations set out in this chapter include

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language amongst the grounds upon which, in certain cases, discrimination is to be inadmissible, and these recommendations will accordingly prevent any individual who falls within the scope of the protection of these provisions from being discriminated against on the ground that his mother tongue is English. Apart from this, we recommend that the Letters Patent issued to the High Courts should prescribe English as the language of these Courts, and we think that the Constitution Act might well provide, as do the Statutory Rules made under the existing Government of India Act at the present moment, that the business of all the Legislatures is to be conducted in English, subject to appropriate provision ensuring the right of any member unacquainted with English to address the Legislature in the vernacular. At the present moment the language of the Subordinate Courts is laid down by each Provincial Government under provisions in the Codes of Civil and Criminal Procedure. We see no reason to suppose that the Provincial Governments will cease to exercise this power under the new Constitution or that they will exercise it in an unreasonable manner.

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(6) Constituent Powers

Meaning of Constituent Powers.

374. The White Paper proposes (and we entirely concur) that, whatever the powers of the Indian Legislatures may be in relation to Acts of Parliament in general, they shall not extend to the enactment of any law affecting the provisions of the Constitution Act, except in so far as that Act itself empowers them to do so.[1] By "constituent powers," therefore, we mean powers conferred by the Constitution Act upon some authority other than Parliament to vary specified provisions of the Act, whether or not such variation is required by the Act to be subject to the approval of Parliament.

Grant of Constituent Powers to Indian Legislatures not yet practicable.

375. We are satisfied that, though there are various matters in the Constitution Act which after an interval of time, might in principle be left quite appropriately to modification by the Central or Provincial Legislatures, as the case may be, as subsequent experience may show to be desirable, it is not practical politics here and now to attempt to confer such powers upon them. It would be necessary, not merely to decide what matters could thus be dealt with, but also to devise arrangements to ensure that the various interests affected by any proposed modification were given full opportunity to express their views, and that changes which they regarded as prejudicial to themselves could not be forced upon them by an inconsiderate majority. With a Constitution necessarily so framed as to preserve so far as may be a nice balance between the conflicting interests of Federation, States and Provinces, of minority and majority, and, indeed, of minority and minority, and with so much that is unpredictable in the effects of the inter-play of these forces, it is plain that it would be a matter of extreme difficulty to devise arrangements likely to be acceptable to all those who might be affected ; and it would probably be found that the balance could only be preserved, and existing statutory rights only guaranteed, by a number of restrictions and conditions upon the exercise of the constituent powers which would make them in practice unworkable. But, whether or not this can reasonably be regarded as a defect in the Constitution Act, we do not think that the question is one of immediate importance, since we should have felt bound in any event to recommend that the main provisions of the Act should remain unaltered for an appreciable period, in order to ensure that the Constitution is not subjected at the outset to the disturbances which might follow upon hasty attempts to modify its details.

Constitutional amendment otherwise than by Act of Parliament.

376. At the same time we are satisfied that there are various matters which must be capable, from the beginning, of modification and adjustment by some means less cumbrous and dilatory than amending legislation in Parliament. To meet this need, we recommend that the requisite powers for ensuring elasticity, where it is

[1] White Paper, Proposal 110.

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necessary, should be placed by the Act in the hands of His Majesty's Government, but subject, nevertheless, to the control of Parliament. We may add that we could not, in any case, regard some of the provisions to which we think that this procedure should apply as appropriately entrusted to any authority in India for amendment or modification. The White Paper proposes that the regulation of certain matters should be prescribed in detail by His Majesty in Council after the Constitution Act is passed, and that any subsequent variations should be effected in the same manner. Orders in Council are commonly made upon the advice of Ministers without the intervention of Parliament, but there is also a well-established procedure, for which precedents are to be found in many Acts of Parliament, whereby both Houses of Parliament are enabled to consider and to approve the drafts of any proposed Orders before they are finally submitted to His Majesty; and in certain cases we think that this procedure would be appropriate for the Orders in Council now under consideration.

Administrative matters.

377. The matters which, under the White Paper,[1] it is proposed to prescribe by Order in Council fall into two categories. The first class comprises :—

(*a*) the payments (other than salary proper, which is to be fixed by the Act itself) to be made to the Governor-General and Governors on their own account and that of their personal staffs ;

(*b*) the salaries and conditions of service of the Governor-General's Counsellors ;

(*c*) the salaries, pensions, leave and other allowances of the Judges of the Federal Court and of the High Courts.

We see no reason why, except in the case of (*c*),[2] Parliament should desire to concern itself directly with these matters, the settlement of which is in the nature of an executive function.

Matters which should be under control of Parliament.

378. But there are other matters to be prescribed[3] which are of an essentially different nature :—

(*a*) the percentage of income tax which is to be assigned to the Provinces and the basis on which that assignment is to be made ;

(*b*) the sum to be retained at the outset by the Federation out of the proceeds of taxes on income which would otherwise be assigned to the Provinces ;

(*c*) the basis on which the States are to contribute to federal revenues during the operation of federal surcharge on income tax ;

[1] White Paper, Proposals 10, 12, 152, 171.
[2] *Supra*, para. 328.
[3] White Paper, Proposals 37, 87, 106, 139, 141, 144.

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(*d*) the subventions to be made from federal revenues to certain deficit Provinces;

(*e*) the qualifications of electors to the Provincial and Federal Legislatures; the delimitation of constituencies; the method of election of representatives of communal and other interests; the filling of casual vacancies and other ancillary matters; and

(*f*) the specification of the areas to be treated as Excluded and Partially Excluded, respectively.

Some of these matters can scarcely be determined until after the Constitution Act is on the statute book; and to set out the others in the Act itself would add greatly to its length and complexity. We agree, therefore, that the method of procedure by Order in Council, with a power to modify subsequently by the same method, is both necessary and appropriate. We think that the same method should be applied to the revision or adjustment of provincial boundaries.

Procedure suggested.

379. In the determination of all matters in this second category, we think it essential that Parliament should have a voice; and we recommend that a provision should be included in the Constitution Act requiring every Order in Council relating to them to be laid in draft before both Houses of Parliament for approval by affirmative Resolution. A procedure of this kind would, we think, enable Parliament to retain effective control over these subsidiary matters.

Resolutions for constitutional amendment by Indian Legislatures.

380. We have given reasons for our conviction that a specific grant of constituent powers to authorities in India is not at the moment a practicable proposition. We think, however, that a plan whereby the new Legislatures can be associated with the modification hereafter of the provisions of the Act, or of any Order in Council, relating to the composition and the size of the Legislatures or the qualifications of electors, is very desirable. It is, of course, competent for any Legislature in India to pass a Resolution advocating a constitutional change, with a request that its Resolution should be forwarded to His Majesty's Government for consideration, and for this no provision in the Constitution Act would be required. But in our view it ought hereafter to be possible, under specified conditions, for a responsible Government in India, with the approval of its Legislature, to be assured that any such Resolution is actually taken into consideration by His Majesty's Government and their decision upon it formally recorded. We recommend, therefore, that, where an Indian Legislature has passed a Resolution of this kind and has presented an Address to the Governor-General or Governor, as the case may be, praying that His Majesty may be pleased to communicate it to Parliament, the Resolution shall be laid before both Houses of Parliament not later than six months after its receipt, with a statement of the action which His Majesty's Government propose to take upon it.

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Resolutions should be subject to certain conditions.

381. But we think that this procedure should be subject to the following conditions :—

(*a*) that the Resolution should be confined in scope to matters concerning the size and composition of, and the franchise for, the Legislatures ;

(*b*) that the Federal Legislature should have no power to propose an alteration in the size or composition of either Chamber which would involve a variation of the proportions of the seats allotted to the States and the Provinces respectively, or of the relative size of the two Houses ;

(*c*) that the procedure should not come into force until the expiry of ten years—in the case of a Provincial Legislature from the inauguration of Provincial Autonomy, and in the case of the Federal Legislature from the inauguration of the Federation ; except that any Provincial Legislature should have power to propose the removal of the " application " requirement and the lowering of the educational standard to literacy in the case of women voters[1] at any time after the first election in the Province under the new Constitution ;

(*d*) that, as a guide to His Majesty's Government and Parliament in this matter, the Governor-General or Governor, as the case may be, should be required, in forwarding a Resolution, to state his own views on the question of its effect upon the interests of any minority or minorities ; and, finally,

(*e*) that the Resolution should have been proposed on the motion and on the responsibility of the Federal or Provincial Ministers, as the case may be.

[1] *Supra*, para. 136.

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(7) The Secretary of State and the Council of India

382. The Secretary of State in Council is by statute a body corporate, and the powers exercisable by the corporation thus brought into existence are singular and indeed in some respects anomalous, because inconsistent with the doctrine of ministerial responsibility. The Council itself consists of the Secretary of State and not less than eight nor more than twelve members, of whom at least one-half must have served or resided in India for at least ten years. The members other than the Secretary of State hold office for a term of five years, but, like His Majesty's Judges and the Comptroller and Auditor-General, may be removed from office on an Address presented to the Crown by both Houses of Parliament. The Secretary of State in Council.

383. The Secretary of State in Council has power to dispose of real or personal estate vested in the Crown, to raise money by way of mortgage, and to make, vary and discharge contracts; and at the present time in any suit, whether in India or elsewhere, to which the Government of India or any Local Government or any official employed by them is a party, the proceedings must be in the name of the Secretary of State in Council. The Secretary of State in Council is also the only authority for raising loans in this country for the purpose of the Government of India. The Council of India, under the direction of the Secretary of State, is required to "conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India." At meetings of the Council, questions are decided by a majority vote, but the Secretary of State may, if he thinks fit, over-rule the Council, except in certain matters for the decision of which a majority of the Council present and voting is required. These matters are: (1) grants or appropriations of any part of the revenues of India; (2) the sale or disposal of real or personal estate and the raising of money thereon by mortgage or otherwise; (3) the making of contracts, including instruments of contract of civil offices in India; (4) the application to the Government of India and the Local Governments of authority to perform on behalf and in the name of the Secretary of State in Council any of the obligations of the last two heads; (5) the passing of any order affecting the salaries of members of the Governor-General's Council; and (6) the making of rules regulating various matters connected with the Indian Public Services. Powers of the Council of India.

384. The Bill which became the Act of 1858, under which the Crown and Parliament first assumed complete responsibility for the government of India, originally provided that the decision of the Secretary of State should be final in all matters which had given rise to a difference of opinion in the Council of India; but the House of Commons insisted upon limiting the authority of the Secretary of Powers in relation to finance.

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State over the expenditure of Indian revenues, firstly, by requiring the concurrence of the Council of India to grants or appropriations of any part of those revenues, and secondly, by requiring the consent of both Houses of Parliament to the defraying from Indian revenues of the cost of any military operation beyond the external frontiers of India. The purpose of these amendments appears to have been the anxiety of Parliament not to leave to a Minister the unfettered disposal of the whole of the revenues of India and of the large patronage which would thereby be placed in his hands, and to afford safeguards against the expenditure of Indian revenues on purposes other than those arising strictly out of the necessities of Indian government. The result has been that His Majesty's Government have never had, and have not now, the power to compel contributions from Indian revenues for imperial purposes, if a majority of the Council of India refuse to sanction the proposal; and there is reason to believe that the powers of the Council in this respect have, on more than one occasion in the past, enabled a Secretary of State successfully to resist pressure from his colleagues in the Government to authorize expenditure from Indian revenues which appeared to him prejudicial to the interests of the Indian taxpayer.

Con-tinuance of Council of India not necessary under responsible govern-ment.

385. We cannot doubt that under a system of responsible government in India the Secretary of State in Council could not continue on the present basis. It will no longer be necessary, with the transfer of responsibility for finance to Indian Ministers, that there should continue to be a body in the United Kingdom with a statutory control over the decisions of the Secretary of State in financial matters; nor ought the authority of the Secretary of State to extend to estimates submitted to an Indian Legislature on the advice of Indian Ministers. But in our opinion it is still desirable that the Secretary of State should have a small body of Advisers to whom he may turn for advice on financial and service matters and on matters which concern the Political Department.

An advisory body proposed.

386. We concur, therefore, in the proposal in the White Paper that the Secretary of State should be empowered to appoint not less than three nor more than six persons for the purpose of advising him, of whom two at least must have held office for at least ten years under the Crown in India.[1] The Secretary of State will be free to seek their advice, either individually or collectively, on any matter as he may think fit, but will not be bound to do so save in one respect only. It is proposed that, so long as he remains the authority charged with the control of any members of the Public Services in India, he must lay before his Advisers, and obtain the concurrence of a majority of them to, the draft of any rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service,

[1] White Paper, Proposal 176.

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and any order which he proposes to make upon an appeal to him from any member of the Service, which he controls. These proposals in effect preserve to the Services the safeguards which they at present enjoy through the Council of India, and we have only three suggestions to make with regard to them. We think in the first place that the service of the Advisers who are required to have held office for at least ten years under the Crown in India should not have terminated more than two years before their appointment; secondly, it seems to us reasonable in the circumstances that at least half of the Advisers should have the Service qualification; and, thirdly, in order to secure that, in matters where the concurrence of the majority of his Advisers will be required, the Secretary of State shall be an effective participant in their deliberations, it seems desirable to us that the Secretary of State shall, in case of equality of votes, have a second or casting vote.

Property, suits, etc.

387. The disappearance of the Secretary of State in Council as a statutory corporation will necessitate provisions in the Constitution Act transferring to the appropriate authority, the Federal Government, Provincial Government, or the Railway Authority, as the case may be, the rights, liabilities and obligations incurred by the Secretary of State in Council by contract or otherwise before the establishment of the new Constitution, any existing rights of suit and arbitration in this country being preserved against the Secretary of State as the successor to the Secretary of State in Council in respect of these liabilities. It seems to us that provision will also have to be made for giving a juristic personality to the Federal and Provincial Governments for the purpose of enabling them in future to sue and be sued in their own names.

India Office staff.

388. The Statutory Commission expressed the opinion that, if material reductions in the India Office staff should result from their recommendations, the question should be considered whether special compensation ought not to be granted to civil servants employed in the India Office for whom equivalent employment cannot be provided elsewhere, since the ordinary rules regulating the compensation of retrenched civil servants did not seem appropriate in the case of officers whose careers might be terminated as a result of changes in high policy.[1] We are informed that the Secretary of State is unable at the present time to make any forecast of the volume of business which the India Office will have to transact under the new order, but that the possibility of retrenchment sooner or later is very real and involves an extraordinary risk, which no one on the India Office staff could have foreseen at the date of his entry into the Civil Service and which it is not right to ask him to assume now without any prospect of compensation, if he should be affected. In these circumstances we are of opinion that the power of the Secretary of State to grant compensation from Indian revenues to members of the

[1] Report, Vol. II, para. 360.

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Indian Public Services should extend to any members of the India Office staff who may be retrenched in consequence of the constitutional changes; and we intend that the expression "India Office Staff" in this connection should be interpreted as including members of the Audit Office and the former members of the India Office now serving in the Office of the High Commissioner for India.

Expenses of India Office.

389. We understand that at the present time the expenses of the India Office establishment are a charge on the revenues of India, but that an annual grant in aid of £150,000 is made by the Treasury. This is a matter which ought, we think, to be considered in connection with future changes. It seems to us that it would correspond more nearly with the constitutional position now to be established if the expenses of the India Office were included in the Civil Service Estimates of the United Kingdom, but that Indian revenues should contribute a grant in aid, in view of the functions which the Secretary of State and his Department will continue to perform on behalf of the Governments in India.

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(8) The Reserve Bank

Indian Reserve Bank Act, 1934.

390. We have in an earlier passage[1] referred to the necessity of leaving no room for doubt as to the ability of India to maintain her financial stability and credit at home and abroad. This is naturally of great importance in the sphere of currency and exchange, which, besides their pervading influence on the whole economic structure of the country, may have far-reaching effect upon government finances. At present currency and exchange are the direct concern of the Government of India, but for some time it has been felt to be desirable that they should be entrusted to a central bank, which would also control the credit mechanism of the country. The economic justification for such a change becomes reinforced when constitutional changes are being made in the form of government at the Centre. We agree with the view which, we understand, has been taken throughout by His Majesty's Government that a Reserve Bank on a sure foundation and free from political influence should already have been established and in successful operation before the constitutional changes at the Centre take place. The Indian Legislature has recently passed a Reserve Bank of India Act, and we are assured that this measure should provide the Bank with a sound constitution. We understand that it is expected that, in the absence of unforeseen developments, it will be possible for the Bank to be constituted and to start its operations during the course of next year. Reliance on the Bank to play its due part in safeguarding India's financial stability and credit clearly demands that at all events its essential features should be protected against amendments of the law which would destroy their effect for the purpose in view.

Certain amendments of Act should require prior sanction of Governor-General.

391. The White Paper proposals require the prior consent of the Governor-General at his discretion to the introduction of legislation affecting that portion of the Reserve Bank Act which regulates the powers and duties of the Bank in relation to the management of currency and exchange[2]; that is to say, they do not cover the constitution of the Bank itself. We feel however that so narrow a definition leaves open the possibility of amendment to other portions of the Act which might prejudice or even destroy some of the features of the system which we would regard as essential to its proper functioning. It seems clear that the Act must be considered as a whole and we recommend that any amendment of the Reserve Bank Act, or any legislation affecting the constitution and functions of the Bank, or of the coinage and currency of the Federation, should require the prior sanction of the Governor-General in his discretion. Certain of the functions vested by the Reserve Bank Act in the Governor-General in Council (of which an important example is the appointment of the Governor, Deputy Governor and four nominated Directors of the Bank) will in future require to be vested in the Governor-General in his discretion, and appropriate provision in the Constitution Act will be needed to secure this.

[1] *Supra*, para, 170.
[2] White Paper, Proposal 119.

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(9) Future Administration of Indian Railways.

Railway Policy and a Statutory Railway Authority.

392. It is stated in the White Paper[1] that His Majesty's Government consider it essential that, while the Federal Government and Legislature will necessarily exercise a general control over railway policy, the actual control of the administration of the State Railways in India (including those worked by Companies) should be placed by the Constitution Act in the hands of a Statutory Railway Authority, so composed and with such powers as to ensure that it is in a position to perform its functions upon business principles without being subject to political interference.

Report of Committee in June, 1933.

393. Questions of principle and detail arising out of the proposal were considered by a very representative Committee which sat in London in June, 1933. The Report of the Committee (described as "Sketch Proposals for the Future Administration of Indian Railways") has been made available to us and was published in our Records on 27th July, 1933; and for convenience of reference we reproduce it as an Appendix (IV). We consider that the scheme outlined by the Committee provides a suitable basis for the administration of the Indian Railways, subject, however, to two conditions, to which we attach importance, viz., that not less than three of the seven members of the proposed Authority should be appointed by the Governor-General in his discretion, and that the Authority should not be constituted on a communal basis. One point of importance does not seem to have been made sufficiently clear by the Report of the Committee. The powers which the Governor-General will possess of taking action in virtue of his special responsibilities (including, of course, that relating to any matter which affects the Reserved Departments) must extend to the giving of directions to the Railway Authority. Also his right, in the event of a breakdown of the Constitution, to assume to himself the powers vested in any Federal Authority must extend to the powers vested in the Railway Authority. We have considered the question whether the statutory basis for the new Railway Authority should be provided by the Constitution Act or by Indian legislation. There would be obvious advantages in having in being at the earliest possible date a statutory Railway Authority conforming as closely as possible, both in composition and powers, with the body which will function after the establishment of the Federation, and we see no objection to the necessary steps being taken to this end in India. But even so we are clearly of opinion that the Constitution Act must lay down the governing principles upon which this important piece of administrative machinery should be based, and consequently that the provisions of the first (and any subsequent) Indian enactment on this matter should conform with those principles.

[1] White Paper, Introd., para. 74.

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394. In our view it will be necessary to regulate under the Constitution Act the following matters :— Certain matters should be regulated by Constitution Act.

(*a*) The extent of the control of the Federal Government and the Indian Legislature over the Railway Authority (paras. 1 and 2).[1] It will also be necessary under this head to make it clear that the Governor-General's special responsibilities extend to the operations of the Railway Authority.

(*b*) The principles which should guide the Authority (para. 5).

(*c*) The method of appointing members (para. 2, subject to our observations above).

(*d*) The conditions for the separation of railway finances from general finances (paras. 5–7).

(*e*) The continuance in full force of the contracts at present existing with the Indian railway companies and the security of the payments periodically due to them in respect of guaranteed interest, share of earnings and surplus profits, as well as their right in accordance with their contracts to have access to the Secretary of State in regard to disputed points and, if they so desire, to proceed to arbitration (para. 4).

(*f*) Machinery for arbitration proceedings on disputed issues in the railway field (para. 12). It is a matter for consideration whether a tribunal of a permanent character rather than a tribunal *ad hoc*, as suggested by the Committee, would not be more suitable for this purpose.

(*g*) Requirement of prior consent of the Governor-General at his discretion to legislation affecting the constitution or powers of the Railway Authority.

395. We attach special importance to the arbitration procedure mentioned above as a means of settling disputes on administrative issues between the Railway Authority and the Administrations of railways owned and worked by an Indian State. The Constitution Act should contain adequate provision to ensure reasonable facilities for the State's railway traffic and to protect its system against unfair or uneconomic competition or discrimination in the Federal Legislature. We consider that States owning and working a considerable railway system should be able to look to the arbitration machinery which we recommend for adequate protection in such matters. On the other hand, if any State is allowed to reserve, as a condition of accession, the right to construct railways in its territory notwithstanding Item (9) of the revised exclusive Federal List, its right to do so should be subject to appeal by the Railway Authority to the same tribunal. Disputes between Railway Authority and Indian States Railways.

[1] References are to paragraphs of the Sketch Proposals (Appendix (IV) p. 232.)

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APPENDIX (IV)

SKETCH PROPOSALS FOR THE FUTURE ADMINISTRATION OF INDIAN RAILWAYS, FORMULATED BY A COMMITTEE APPOINTED BY THE SECRETARY OF STATE IN JUNE, 1933. The following composed the Committee :—

Sir Campbell Rhodes, C.B.E., Mr. N. N. Anklesaria, Mr. Muhammad Padshah, Mr. Muhammad Yamin Khan, C.I.E., Sir Muhammad Yakub, Diwan Bahadur Ramaswami Mudaliar, Mr. C. C. S. Ranga Iyer, Dr. Zia ud-din Ahmad, C.I.E., Sir Ernest Bell, C.I.E., Sir Henry Burt, K.C.I.E., C.B.E,. Sir Hubert Carr, Brigadier General F. D. Hammond, C.B.E., D.S.O., Sir Akbar Hydari, Mr. N. M. Joshi, Sir Louis Kershaw, K.C.S.I., C.I.E., Sir Reginald Mant, K.C.S.I., K.C.I.E., Sir Manubhai Mehta, C.S.I., Sir James Milne, C.S.I., Mr. R. Mowbray, Sir Alan Parsons, C.I.E., Sir Phiroze Sethna, O.B.E., Sir Thomas Smith.

1. Subject to the control of policy by the Federal Government and the Legislature, a Railway Authority will be established and will be entrusted with the administration of railways in India (as described in paragraph 4) and will exercise its powers through an executive constituted as described in paragraph 3.

2. The Railway Authority will consist of seven members. The Committee is divided on the question whether (*a*) three will be appointed by the Governor-General in his discretion and four by the Governor-General on the advice of the Federal Government or (*b*) all will be appointed by the Governor-General on the advice of the Federal Government. Those members of the Committee who are members of the Central Legislature, with the exception of Mr. Anklesaria, support the latter alternative. All the Hindu and Muslim members of the Central Legislature on the Committee agree that out of the seven seats on the Railway Authority two should be reserved for the Muslim community and one for the European community. Sir Phiroze Sethna, Mr. Anklesaria, Sir Manubhai Mehta and the European members of the Committee, while they would welcome an authority representative of all interests and all communities so far as is compatible with efficiency, do not consider that any special provision should be made in the statute for the establishment of the Railway Authority on a communal basis. The seven members so appointed must be possessed of special knowledge[1] of commerce, industry, agriculture or finance, or have had extensive administrative experience. The President[2] of the Authority, who shall have the right of access to the Governor-General, will be appointed from the members by the Governor-General in his discretion.

The Federal Minister responsible for Transport and Communications may at any time convene a special meeting of the Railway Authority for the purpose of discussing matters of policy or questions of public interest. At such meetings the Federal Minister will preside. The Federal Minister may by order require or authorise the Railway Authority to give effect to decisions of the Federal Government and the Legislature on matters of policy, and it shall be obligatory on the Railway Authority to give effect to such decisions.

[1] Mr. Joshi would add " knowledge of public affairs."

Mr. Joshi considers that two seats on the Railway Authority should be specially reserved for representatives of Labour and the travelling public.

Mr. Joshi and Dr. Ahmad consider that if the Authority is to consist of a whole-time Chairman and part-time members, the number should be increased.

Mr. Joshi and Mr. Anklesaria consider that special representation should be given to agriculturalists on the Railway Authority.

[2] Mr. Joshi and Mr. Ranga Iyer consider that the appointment of President should be made on the advice of the Federal Government.

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No Minister or member of the Federal Legislature or any other Legislature in India will be eligible to hold office as a member of the Authority till one[1] year has elapsed since he surrendered his office or seat, nor will any person be appointed as a member of the Authority who has been a servant of the Crown in India, a railway official in India, or has personally held railway contracts, or has been concerned in the management of companies holding such contracts, within one year of his relinquishment of office or of the termination of the contract as the case may be. The Federal Minister responsible for Transport and Communications may, if he sees fit, attend the ordinary meetings of the Authority or be represented thereat, but in neither case will there be the right to vote. The members of the Authority will hold office for five years, but will be eligible for re-appointment for a further term of the same length or for a shorter term. (In the case of the first appointments, three will be for three years only, but these members will be eligible for re-appointment for a further term of three or five years.)

Any member of the Authority may be removed from office by the Governor-General in his discretion if, in his opinion, after consultation with the Federal Government, there is sufficient cause for such action.

Members shall be appointed to the Railway Authority who are prepared to give their services to such an extent as may be required for the proper performance of their duties as laid down in the Statute.[2] Their emoluments shall be such as to secure suitable men who will be prepared to devote sufficient time for the proper discharge of their duties and responsibilities, and will be fixed by the Governor-General in his discretion after consultation[3] with the Federal Government, the emoluments of the members of the first Railway Authority being fixed in the Statute.

3. At the head of the railway executive there will be a Chief Commissioner, who must possess expert knowledge of railway working, and will be appointed by the Railway Authority subject to the confirmation of the Governor-General.[4] A Financial Commissioner will be appointed by the Governor-General on the advice of the Federal Government. He must possess extensive financial experience and have served for not less than 10 years under the Crown or have shown outstanding capacity in the conduct of the financial affairs of commercial or railway undertakings. The Railway Authority, on the recommendation of the Chief Commissioner, may appoint additional Commissioners who must be chosen for their knowledge of railway working. Except in matters relating to Finance the Chief Commissioner shall have power to overrule his colleagues. The Chief Commissioner will carry out the duties from time to time delegated to him by the Railway Authority and may delegate such powers to his subordinate officers as may be approved by the Railway Authority.

4. The Railway Authority will be responsible for the proper maintenance and efficient operation of the railways vested in the Crown for the purposes of administration (including those worked by Companies), all of which will remain vested in the Crown for the purposes of the Federal Government. The Railway Authority will also exercise the control over other railways in British India at present exercised by or on behalf of Government. Provision will be made for safeguarding the existing rights of Companies working

[1] Mr. Joshi and Mr. Yamin Khan hold the view that in regard to the membership of a Legislature the year's disqualification should not apply but that any member of a Legislature appointed to the Railway Authority will *ipso facto* vacate his seat.

[2] Mr. Ranga Iyer, Mr. Padshah, Mr. Joshi, Dr. Ahmad and Mr. Yamin Khan are of opinion that the members should be "whole time," while the other members of the Committee consider that the Committee's recommendation does not exclude the appointment of whole-time members, should experience prove this to be necessary.

[3] Mr. Joshi and Mr. Ranga Iyer hold that "in his discretion after consultation with" should read "on the advice of."

[4] Mr. Joshi would add "and the Federal Government."

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under contracts with the Secretary of State in Council, and it will be the duty of the Railway Authority to refer to the Secretary of State any matters in dispute with the Companies which, under the terms of those contracts, are subject to the decision of the Secretary of State in Council or which may be referred to arbitration. It will be obligatory on the Railway Authority and the Federal Government to give effect to the decision of the Secretary of State or the award of an arbitrator.

5. In exercising the control vested in it, the Railway Authority will be guided by business principles, due regard being paid to the interests of agriculture, industry and the general public and to Defence requirements. After meeting from receipts the necessary working expenses (including provision for maintenance, renewals, depreciation, bonus and interest on Provident Funds, interest on capital and other fixed charges, payments to Companies and Indian States under contracts or agreements) the surplus will be disposed of in such manner as may be determined from time to time by the Federal Government under a scheme of apportionment running for a period of not less than five years. In the event of a dispute as to the adequacy or otherwise of the allowance to be made in respect of renewals and depreciations the Auditor-General shall be the deciding authority. Pending any new scheme of apportionment the disposal of any surplus will be governed by the arrangements in force at the time the Authority is established.

6. The Railway depreciation, reserve and other funds should be utilised solely for railway purposes, and be treated as far as possible as the property of the Railway Authority. The investment of such funds and the realisation of such investments by the Railway Authority shall be subject to such conditions as the Federal Government may prescribe. A Committee might be convened in India to advise what those conditions should be.

7. Revenue estimates will be submitted annually to the Federal Government, which will in turn submit them to the Federal Legislature, but these estimates will not be subject to vote. If the revenue estimates disclose the need for a contribution from general revenues, a vote of the Legislature will, of course, be required. The programme of capital expenditure will be submitted to the Federal Government for approval by the Federal Legislature. The Federal Government may, however, empower the Railway Authority to incur capital expenditure subject to conditions to be prescribed.

8. The Railway Authority will be empowered, subject to the powers of the Governor-General in the exercise of his special responsibilities, and subject to the safeguarding of the rights of all officers in the service at the time of the establishment of the Railway Authority, to regulate by rules or by general or special order the classification of posts in the railway services on State-worked lines in British India, and the methods of recruitment, qualifications for appointment to the service, conditions of service, pay and allowances, Provident Fund benefits, gratuities, discipline and conduct of those services; to make such delegations as it thinks fit, in regard to appointments and promotions, to authorities subordinate to it; and to create such new appointments in the State Railway Services in British India as it may deem necessary or to make to authorities subordinate to it such delegations as it thinks fit in regard to the creation of new appointments. In its recruitment to the railway services the Railway Authority shall be required to give effect to any instructions that may be laid down to secure the representation of the various communities in India. In regard to the framing of rules to regulate the recruitment of the Superior Railway Services the Public Service Commission[1] shall be consulted. Any powers in regard to matters dealt

[1] Mr. Joshi and Mr. Padshah consider that the Public Service Commission should be consulted in regard to the recruitment of both the Superior and Subordinate Services to the extent practicable.

Sir Muhammad Yakub considers that the Public Service Commission should be utilised in making appointments as far as practicable.

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with in this paragraph at present exercised by the Government of India over Company-managed railways shall in future be exercised by the Railway Authority.

9. The Railway Authority will at all times furnish the Federal Government with such information as that Government may desire, and will publish an Annual Report and Annual Accounts. The Accounts of the State-owned lines in British India will be certified by or on behalf of the Auditor-General.

10. Should any question arise involving a conflict of interest between the various authorities in British India responsible for railways, waterways and roads as competitive means of transport, a Commission will be appointed by the Governor-General to ascertain the views of all the interests concerned and to report, with recommendations, to the Federal Government, whose decision shall be final. The Commission shall consist of one independent expert of the highest standing and experience in transport matters, with whom will be associated, at the discretion of the Governor-General, two or more assessors.

11. The Federal Government shall lay down regulations for safety on all the Indian railways and one of the Departments of the Federal Government, other than that responsible for Transport and Communications, shall be responsible for the enforcement of such regulations, subject, in the case of the Indian States, to the provisions of their respective Instruments of Accession.

In regard to the railways referred to in paragraph 4,[1] maxima and minima rates and fares shall be fixed by the Railway Authority subject to the control of the Federal Government. Any individual or organisation having a complaint against a railway administration under the control of the Railway Authority in respect of any of the matters which may, at present, be referred by the Railway Department to the Railway Rates Advisory Committee, may have the matter referred, under such conditions as the Federal Government may prescribe, to an Advisory Committee to be appointed by the Federal Government. Before the Federal Government passes any order on a recommendation of the Advisory Committee it shall consult the Railway Authority.

12.[2] Provision should be made for the reference, at the request of either the Railway Authority or the Administration of a railway owned by an Indian State, of disputes in certain matters such as the construction of new lines, the routing and interchange of traffic and the fixation of rates, to arbitration by a tribunal consisting of one nominee of each party and a chairman approved by both parties. The decision of the committee should be final and binding on both parties. Should the parties be unable to agree on the nomination of a chairman, he shall be nominated by the Governor-General in his discretion.

The arrangements should be such as not to prejudice the position of the Federal Court as the interpreter of the Constitution and Constitutional documents.

[1] Mr. Mudaliar and Mr. Joshi hold that the restriction under this clause to railways in British India conflicts with the provisions contained in the White Paper on the subject.

Mr. Ranga Iyer considers that the present powers exercised by the Government of India over all railways in Indian States should be exercised by the Railway Authority under the Federal Government.

It was represented on behalf of the Indian States that separate arrangements would be required for railways owned by Indian States, and accordingly no provision has been made for such railways in the scheme except to some extent under safety (paragraph 11, sub-paragraph 1) and again under arbitration (paragraph 12).

[2] Mr. Mudaliar and Mr. Joshi dissent from the proposals in this clause as antagonistic to the proposals in the White Paper.

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(10) Audit and Auditor-General

The existing audit system.

396. At present, Audit in India, both Central and Provincial, is carried out by a staff under the Auditor-General. He is appointed by the Secretary of State in Council, who also frames rules defining his powers and duties. In India, Accounts and Audit are carried out by a combined staff, so that the Auditor-General has functions in relation to Accounts as well as to Audit. An experiment was tried in recent years in one Province of separating Accounts from Audit but was abandoned on the ground of expense. There is at present no constitutional provision requiring the report of the Auditor-General to be laid before the Legislature in India, though in fact this is done. Audit of the Accounts of the Secretary of State is carried out by the Auditor of Indian Home Accounts who, in accordance with Section 27 (1), Government of India Act, is appointed by the Crown by warrant countersigned by the Chancellor of the Exchequer. His report is by statute presented to Parliament. It has also been found convenient to use the services of the Home Auditor to audit expenditure by the High Commissioner.

The position and functions of the Auditor-General and the Home Auditor have been fully described by the Statutory Commission.[1]

Future arrangements.

397. When under the future Constitution the revenues of India are vested in the Federal and Provincial Governments, and no longer in the Secretary of State in Council as at present, it will clearly be necessary to provide that the Auditor-General in India shall report to those Governments and to the Legislatures in India, instead of to the Secretary of State in Council. It is desirable both, on grounds of economy and for other reasons, that the present centralised system of Audit and Accounts should be maintained, and it is to be hoped that the Provinces will realise the advantages of such a course. Nevertheless it would be difficult to withhold from an autonomous Province the power of taking over its own Audit and Accounts if it desires to do so, and we think that the Constitution must allow a Province to take this step, subject to the following conditions. Long notice should be given of the change; a Provincial Chief Auditor should be appointed whose position would be no less independent of the Executive than that of the Auditor-General; a general form of accounts framed on the common basis for all the Provinces should continue to be available for such purposes as the consideration by the Federal Government of applications for loans from Provincial Governments or proposals for the assignment of revenues to Units of the kind mentioned in our earlier section on Federal Finance.[2]

[1] Report, Vol. I, para. 432.
[2] *Supra*, paras. 243–266.

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Audit of Home Accounts.

398. As regards payments made by the Secretary of State in this country out of Indian revenues, these will in future be mainly on behalf of the Central Government, especially in relation to Defence. Constitutionally, they will not in general differ from those made by the High Commissioner, except that they will more often relate to Reserved Departments than will be the case with expenditure by the High Commissioner. It appears desirable that the Audit of these payments should be made by a Home Auditor on behalf of the Auditor-General in India and that the report should go through the latter to the Indian Legislature.

Recommendations.

399. The White Paper contains no proposals relating to the Auditor-General or the Home Auditor, although it recognises that the necessary provision would have to be made.[1] Our recommendations on this subject are as follows :—

Auditor-General in India

(i) The Auditor-General in India should be appointed by the Crown, and his tenure should be similar to that of a High Court Judge, that is, during good behaviour, subject to an age limit, and he should be removable only by His Majesty in Council. He should not be eligible for further office under the Crown in India. His salary and general conditions of service should be prescribed by Order in Council, and his salary should not be votable.

(ii) His duties and powers should be prescribed in the first instance by Order in Council, but the Federal Legislature should have power to amend and supplement these provisions, subject to the prior assent of the Governor-General in his discretion to the introduction of the legislation.

(iii) The cadre of the Audit and Accounts Department should be fixed by the Federal Government. Salaries should be votable, except in cases where individual salaries are already non-votable under other provisions of the Act.

(iv) Central Audit and Accounts should apply as at present to the Provinces for a period of at least five years; but Provinces should be empowered to take over their own Accounts, or Audit as well as Accounts, on giving three years' notice, the earliest date for such notice being two years after the establishment of Provincial Autonomy. The Constitution Act should provide that if a Province elects to take over its own Audit, the Chief Auditor of the Province shall be appointed by the Crown with tenure and conditions of service prescribed in the same way as those of the Auditor-General.

(v) The Report of the Auditor-General on the Federal Accounts should be submitted to the Governor-General, who

[1] White Paper, Introd., para. 76.

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would be required to lay it before the Federal Legislature. His report on the Provincial Accounts (or the Report of the Provincial Chief Auditor if the Province had taken over Audit) should be submitted to the Governor who would be required to lay it before the Provincial Legislature.

(vi) Whether a Province has taken over Accounts or Audit or not, it is essential that there should be established a uniform general form of Accounts for the Federation and for all British-India Provinces. Apart from this requirement, a Province which had taken over Accounts or Audit should have the same powers, *mutatis mutandis*, as the Federal Government, in relation to the duties and functions of the Auditor-General and his staff.

Auditor of Indian Home Accounts

(i) Expenditure from Indian Revenues, Federal or Provincial, incurred in the United Kingdom, whether the disbursements are made in the High Commissioner's Office or in the Office of the Secretary of State, should be audited on behalf of the Auditor-General in India by an Auditor of Indian Home Accounts. His report should be sent to the Auditor-General for incorporation in the Auditor-General's own report for presentation to the Indian Legislatures. In the event of a Province having its own Chief Auditor, the Home Auditor would report to him in relation to expenditure relating to that Province.

(ii) The Auditor of Indian Home Accounts should be under the general superintendence of the Auditor-General and subject to the general provisions mentioned above with regard to powers and duties. The Home Auditor should be appointed by the Governor-General in his discretion. His salary, which should be non-votable, and his conditions of service, except that his tenure of office and the procedure for removing him would be the same as in the case of the Auditor-General (though the age limit might differ), would be determined by the Governor-General.

(iii) As regards the staff of the Home Auditor, cadre and salaries should be fixed by the Governor-General in his discretion. Salaries should be votable, unless in any individual case non-votable under any other provisions of the Act. The Home Auditor himself should appoint and remove members of his staff. Rights of existing members of the staff of the Home Auditor, including non-votability of salaries, should be protected.

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(11) Advocates-General

Functions of Advocates-General.

400. In the course of our enquiry we have been impressed by the desirability of making available to each Provincial Government the services of a Law Officer of independence and standing, who would occupy substantially the same position as that of the Advocate-General at present attached to the Governments of each of the three Presidencies of Bengal, Madras and Bombay. Section 114 of the Government of India Act enables His Majesty to appoint by warrant an Advocate-General for each of those Presidencies, but defines his functions no more explicitly than by providing that each Advocate-General may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England. We are informed however that, in practice, the functions of the Advocate-General may be briefly described as being to advise the Provincial Government on any legal problem which may be referred to him, to represent the Crown in original civil causes in the High Court to which the Crown is a party, and also in any criminal appeals in the High Court which are regarded as of special importance; while instances of his power to take such proceedings as may be taken by the Attorney-General here are his power to enter a *nolle prosequi*, or to grant a fiat for review of verdict in criminal cases tried by the High Court in its original jurisdiction, and to protect public rights in such matters as public charities and public nuisances.

Advocates-General should be appointed in all Provinces.

401. We think that it will prove under the new Constitution no less necessary that an office of this kind, with a statutory basis, should be at the disposal of all Provincial Governments than it has proved in the past in the three Presidencies, where its existence is due to the fact that in the three Presidencies the High Courts, with which the Advocate-General himself has an historical connection, have themselves a history differing from that of the High Courts elsewhere. It is no part of our intention to suggest that the office of Advocate-General should, like that of the Law Officers here, have a political side to it; indeed, our main object is to secure for the Provincial Governments legal advice from an officer, not merely well qualified to tender such advice but entirely free from the trammels of political or party associations, whose salary would not be votable and who would retain his appointment for a recognised period of years irrespective of the political fortunes of the Government or Governments with which he may be associated during his tenure of office. We think, in particular, that the existence of such an office would prove a valuable aid to a Ministry in deciding the difficult questions which are not infrequently raised by those prosecutions which require the authority of the Government for their initiation, though we recognise that the responsibility for decisions in these matters must of necessity rest in the last resort on the Government itself. We recommend, therefore, in order to secure the objects which we have in view, that the Constitution Act should require each Provincial Governor to select at his discretion and appoint an

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Advocate-General holding office during his pleasure, and should contain an appropriate definition of the functions of the office in the sense in which we have described them above.

Other legal officers.

402. We understand that the Governments of the Provinces to which the office of Advocate-General is not at present attached have to rely for their legal advice either upon an officer, selected usually from the cadre of District Judges, who fills the post of Legal Remembrancer, or upon the member of the legal profession appointed in each District to act as Government Pleader and Public Prosecutor. Our proposal for the creation of the office of Advocate-General in every Province will not of course affect the necessity for retaining the existing appointments of Government Pleader and Public Prosecutor; nor do we contemplate that an Advocate-General would be in administrative control of these functionaries. And, although our recommendations are based on the assumption that the Provincial Government will seek the opinion of the Advocate-General on any legal question of importance on which advice is needed, there will still arise in day to day administration numerous matters of less importance which raise legal questions, for dealing with which the services of a Legal Remembrancer will, we have no doubt, continue to be required; indeed we understand that such an officer is found necessary in the three Provinces which at present have an Advocate-General.

The Federal Advocate-General.

403. The historical association with the Government of India of the High Court of Judicature at Calcutta (which, if our recommendations are accepted, will now be terminated, thus placing the High Court in the same relations with the Provincial Government as in the case of all other High Courts) accounts for the fact that the Advocate-General of Bengal acts as a Law Officer, not only to the Bengal Government, but also to the Government of India. We think that there can be no justification for continuing this anomalous arrangement, which became still more anomalous when Calcutta, the permanent home of the Advocate-General, ceased to be the headquarters of the Government of India. But it will be in our opinion of the first importance that the Federal Government should have at its disposal the services of an Advocate-General of its own, and this need will be the more marked with the establishment of the Federal Court, before which the Federal Government will require to be represented by an Advocate of standing and repute. Here also we think it essential that the Advocate-General should hold his office on a settled tenure and should have no political associations with the Federal Ministry; and provision for his appointment (which would in this case also be made by the Governor-General acting in his discretion) and functions should be on the same lines as we have indicated in the case of the Provincial Advocates-General.

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(12) The High Commissioner for India

The High Commissioner.

404. There has been a High Commissioner for India in London since 1920. Orders in Council framed under Section 29A of the Government of India Act make provision for his appointment and duties, and various agency functions on behalf of the Government of India and Provincial Governments which were formerly discharged by the India Office have been transferred to him. Under the new Constitution it will be no less essential, and constitutionally even more appropriate, that there should be a High Commissioner, though the White Paper does not make any reference to this subject.

Appointment should be made by Governor-General in his discretion.

405. As the High Commissioner will no doubt continue to serve Provincial Governments as well as the Federal Government, and as in any case he will be acting under the orders of the Governor-General in matters arising out of the Reserved Departments, it seems to us inappropriate that the appointment should be made by the Governor-General acting solely on the advice of Federal Ministers. We recommend accordingly that the appointment of High Commissioner should be made by the Governor-General in his discretion after consultation with his Ministers. It may be that some of the States which accede to the Federation would also find it useful to employ the agency of the High Commissioner for some purposes, and we consider that it should be open to them to do so.

Duties of High Commissioner.

406. It will no doubt be necessary for the Constitution Act to make appropriate provisions on various matters connected with the High Commissioner, such as the making of contracts and the safeguarding of existing rights of members of his staff who were originally transferred; and it may well be that examination will show that it is the High Commissioner who will be the appropriate authority to assume the liability to be sued in this country in respect of obligations of a Government in India and that provision to that effect should be made in the Constitution Act.

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(13) Transitory Provisions

Transitory provisions necessary, if Provincial Autonomy precedes Federation.

407. We have expressed the opinion[1] that, while it is desirable, if not essential, that the same Constitution Act should make provision both for the establishment of autonomy in the Provinces and also for the establishment of the Federation, the establishment of Provincial Autonomy is likely to precede in time the inauguration of Federation, although we consider that this interval should not be longer than is necessitated by administrative considerations. It is clear therefore that the Constitution Act should contain provisions of a transitory nature which will, on the inauguration of Provincial Autonomy, settle the Constitution and powers of the Central Government and Legislature which are for the time being to co-exist with the autonomous Provinces, until such time as they can be replaced by the Federal Government and Legislature for which provision will be made in the Constitution Act.

Proposals in White Paper.

408. This matter is dealt with very briefly in the White Paper.[2] The scheme there contemplated is that the Constitution Act will contain provisions enabling temporary modifications to be made in the provisions relating to the Federation, so as to enable the present Indian Legislature to continue in existence, to suspend the operation of the provisions relating to the Council of Ministers to be appointed by the Governor-General, and to provide during the interim period for the administration of all Departments of the Central Government by the Governor-General, with the assistance of Counsellors responsible to himself, as though they were Reserved Departments. Examination of these proposals has led us to regard them as not in all respects appropriate: for instance, one effect (which we understand was not in fact in the mind of His Majesty's Government when the proposal was framed) of treating all Departments of the Central Government as for the time being Reserved Departments within the meaning of the White Paper would be to remove from the purview of the Legislature all supply required for Central purposes and to make it non-votable. We fully accept, so far as it goes, the general intention stated in the White Paper as underlying these proposals, viz., that the Central Government, though necessarily deprived of much of its present range of authority in the Provinces, should for the time being be placed in substantially the same position as that occupied by the Governor-General in Council under the existing Act. But we are of opinion that the actual method proposed in the White Paper for securing this result is not the best available, and, indeed, that the purpose to be achieved is not fully stated.

Objects to be secured.

409. We do not attempt to set out in detail the method which should be adopted to secure the object in view, since we recognise that the problem is largely one of the technicalities of draftsmanship. We think it right however to indicate the general purposes which, by whatever method, ought in our opinion to be attained as the

[1] *Supra*, para. 157.
[2] White Paper, Proposal 202.

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result of these transitory provisions. It is clear, in the first place, that it will be necessary to keep in being the existing Central Legislature, composed as at present and elected upon the existing franchise, and with the existing number of nominated members, official and non-official; and, in the second place, there should in our opinion be no necessity during the transitory period to alter the composition of, or the method of appointment to, the existing Central Executive. But, granted these two premises, it is equally clear that the establishment of Provincial Autonomy will necessitate consequential changes in the powers of both the Central Legislature and Executive, which will differ but little from the changes which will result from the establishment of Federation.

Modifications in White Paper proposals recommended.

410. Provincial Autonomy as envisaged by our recommendations necessitates, no less than Federation, a statutory distribution of legislative powers between the Central and Provincial Legislatures, and a distribution which will be identical with that contemplated under Federation. Similarly, Provincial Autonomy will involve, so far as the Provinces are concerned, the same statutory distribution of financial powers and resources as that contemplated under Federation. And, in order to determine questions arising between Centre and Provinces out of their legislative and financial relationships, a Court with the same powers in this sphere as it is proposed to confer on the Federal Court will be no less necessary during the interim period than under Federation. So far as the Executive is concerned, Provincial Autonomy involves the same limitations upon the powers of the Central Executive in relation to the Provinces as will be involved for the purposes of Federation, and, in that connection, it will be no less necessary under Provincial Autonomy than under Federation to differentiate between the functions of the Governor-General in Council (at the moment a corporate body, exercising corporately with very narrow exceptions all the functions of the Central Executive) and those of the Governor-General. In other words, it will be as necessary under Provincial Autonomy as under Federation to give the Governor-General personally that control over the Governors in the exercise of their special responsibilities and of matters left by law to their discretion which is involved in our proposals relating to Provincial Autonomy, and to make it clear that the power which under Federation will vest in the Governor-General acting in his discretion to give mandatory directions through the Governors to Provincial Governments, with which we have already dealt[1], must be vested during the transitory period also in the Governor-General acting in his discretion. We consider further that the recommendation which we have made[2] with regard to the settlement of disputes between Province and Province, or between the Centre and a Province, with regard to water rights should also be brought into force during the transitory period; and that from the date of the

[1] *Supra*, paras. 221–22.
[2] *Supra*, para. 224.

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inauguration of Provincial Autonomy the Governor-General should become solely responsible for the control of the relations between the Crown and the States.

Details should be left to draftsman.

411. Such, in our view, are the purposes which any transitory provisions should be designed to secure, and, as we have already indicated, we think that it should be left to the ingenuity of the draftsman to suggest to His Majesty's Government the best and most appropriate method of carrying them into effect.

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SECTION VI

BURMA

(1) Introductory

412. The White Paper, as we have said elsewhere, does not deal specifically with Burma, because at the date when it was issued opinion upon the constitutional problem appeared to be still indefinite. The Secretary of State has, however, submitted to us Proposals for a scheme of constitutional reform in Burma, which are set out in a document very similar to the White Paper. This document has been printed among the Records of the Committee,[1] and it will be convenient to refer to it hereafter as "the Burma White Paper"; but the Secretary of State has made it plain that its recommendations are not to be taken as representing the final and considered policy of His Majesty's Government, but only as a first sketch of the main lines of a possible Constitution, if Burma is separated from India. Since this document was submitted to us, we have had the advantage of full discussions with the Burma Delegates, who also furnished us before and after their departure from this country with a number of memoranda on the Proposals, to which we have given our close attention and which have been of great value to us. These memoranda are also printed among the Committee's Records. The "Burma White Paper."

413. We propose in this section of our Report to give first a short account of Burma and of the reasons which have led us to the conclusion[2] that it should not form part of the Indian Federation; secondly, to consider the very important question of the trade relations between India and Burma after separation; and thirdly, to set out our recommendations as to the future government of the country in the form of a commentary upon the Burma White Paper. Subjects to be discussed.

The Province of Burma

414. Burma is the largest of the Provinces which at the present time constitute British India. It extends from the high mountainous area in latitude 28° N., where the unadministered tribal tracts of Assam and Burma march with Tibet and China, to the mouth of the Irrawaddy, latitude 16° N., and to Victoria Point, latitude 9·58° N., on the narrow Malay Peninsula, which divides the Gulf of Siam from the Bay of Bengal. Its total area is some 234,000 square miles; Madras, the next largest Province, has an area of about 136,000 square miles. The population of Burma is, however, only 14,500,000, which is less than the population of any other existing Indian Province, except Assam and the North-West Frontier Province, with areas of 55,000 and 14,000 square miles respectively. Area of Province.

[1] Reproduced for convenience as the Second Appendix to this volume (pp. 381–408).

[2] *Infra*, paras. 422 and 434.

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Physical features.

415. The Province falls into three main geographical divisions; on the west Arakan, lying between the Bay of Bengal and the range of hills known as the Arakan Yomas, which mark the western side of the Irrawaddy basin; in the centre the Irrawaddy basin, which is in many ways the heart of Burma and the true home of the Burmese people; and on the south-east the long narrow strip comprising the old province of Tenasserim, which runs down the west side of the Malay Peninsula to Victoria Point, with Moulmein as its capital. These two sub-Provinces, Arakan and Tenasserim, constituted the nucleus of British territorial dominion in Burma and were administered as distant appanages of Bengal. The physical characteristics of these three divisions present striking contrasts, and it is a far cry from the City of Rangoon, planned and laid out on modern lines, with a population of 400,000 and a port handling a volume of exports and imports only surpassed in India by Calcutta and Bombay, to the sparsely inhabited mountain tracts where the most primitive forms of cultivation afford a precarious living to isolated tribal communities. Political consciousness ranges correspondingly from that of the European-educated barrister, with nationalist ambitions as eager as any to be found in the Provinces in India, to the entirely negative attitude of the Wa head-hunter or the tribesman of the Chin Hills, whose sole political emotion is probably an inherited antipathy for, and suspicion of, his cousin in the plains.

Its isolation.

416. The steep and densely wooded mountains on the north and north-west of Burma, where it marches with Assam, Manipur, and Bengal, cut off access from India, while on the east, where its neighbours are the Chinese province of Yunnan in the north and French Indo-China and Siam in the south, intercourse with adjacent countries is only possible by means of a few difficult caravan routes. Between continental India and Burma intercourse is and must be wholly by sea; and Rangoon is 700 miles by sea, a forty-eight hours' voyage, from Calcutta, and 1,000 from Madras. In these circumstances it is not surprising that the influence which Burma can exert on Indian political tendencies and the interest which India generally feels in Burma's affairs are of the slightest. Conditions in the two countries are in many respects markedly different; Buddhism being the prevailing religion in Burma, the difficulties created in India by caste and the potential clash of religious forces are hardly existent in Burma; but against this must be set the factor of another form of communalism based on racial cleavages. Another notable point of difference is that the women of Burma are regarded, socially and politically, as on an equality with men, to an extent as yet rarely found in any part of India. The Burmese language is spoken by the great majority of the inhabitants, though there are numerous local dialects. Of the total population some 10,000,000 are Burmans, 1,250,000 Karens, and 1,000,000 Shans inhabiting for the most part the frontier tracts; and of the non-indigenous races the most numerous are Indians, who number approximately 1,000,000.

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Summary of British connection with Burma.

417. Trading relations between the United Kingdom and Burma began in the latter part of the seventeenth century, but it was not until 1824 that, in retaliation for the invasion of Manipur and Assam by Burmese forces from Arakan, British troops from India were landed in Burma and seized Rangoon and the Tenasserim Coast, which by the Treaty of Yandabo in 1826 were, with Arakan, ceded to Great Britain. In 1852, following a series of outrages on British subjects by the Burmese Governor of Rangoon, for which no redress could be obtained from the Burmese King, the second Burmese War ended with the annexation of the province of Pegu; and ten years later the coastal districts of Arakan and Tenasserim, with Rangoon and Pegu, were formed into a Chief Commissioner's Province known as Lower Burma or British Burma. The friendly relations which had been established in 1867 with King Mindon Min came to an end with the accession in 1878 of King Thibaw, who maintained himself on the throne by the ruthless massacre of all who opposed him, oppressed British traders, and finally entered into negotiations for alliances with European powers. In 1885 the Government of India presented the King with an ultimatum, which was rejected; a British force entered Mandalay without resistance; the King was deposed, and on 1st January, 1886, Upper Burma was by Proclamation annexed to the British Crown. Many years were occupied in restoring order, but gradually a regular system of administration was established; and in 1897 Upper and Lower Burma were constituted as a single Lieutenant-Governorship, with a Provincial Government and a Legislative Council, which originally comprised nine nominated members (including four officials), and was gradually expanded until in 1920 it contained thirty members, two elected by the European Chamber of Commerce and the Rangoon Trades Association, and twenty-eight (including twelve officials) nominated by the Lieutenant-Governor.

Attitude of the political parties to separation

Burma and the 1919 reforms.

418. The Declaration of 1917, which held out prospects of advance to Burma no less than to other Provinces, encouraged the growth of a vigorous Home Rule movement, and also, as an immediate objective, a strong demand that Burma should enjoy as fully as the rest of India the advance towards responsible government made possible by the reforms of 1919. A series of deputations of Burman political leaders between 1918–1920 pressed for the application to Burma without restriction or diminution of the dyarchical system of government granted to the Provinces of India by the Act of 1919. In 1921 the Secretary of State decided to recommend to Parliament the extension to Burma of the reforms inaugurated by the Act, and the recommendation was endorsed by the Standing Joint Committee of Parliament on Indian Affairs on 25th May, 1921.

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Burma constituted a Governor's Province.

419. Particular questions, such as the franchise suitable to conditions in Burma, the composition of the Legislative Council, and the subjects to be transferred to the administration of Ministers, were remitted to a Burma Reforms Committee presided over by Sir A. F. Whyte. The proceedings of the Committee were hampered by a boycott organised by the General Council of Burmese Associations and the societies affiliated to it, who demanded complete Home Rule and refused to have anything to do with dyarchy, a refusal persisted in until the autumn of 1932; but despite the boycott the Committee was able to carry through its task, and following on its Report Burma was constituted a Governor's Province in January, 1923, with a reformed Legislative Council, and a dyarchical system corresponding to that in other Provinces. There was, however, one notable difference; for in Burma, unlike all other Provinces except Bombay, the departments transferred to Ministers included from the outset the Forest Department, which in Burma is of peculiar importance, not only because of the considerable revenue derived from the forests, but also because no less than three-fifths of the total area of the Province consists of forest land.

Co-operators and "anti-separationists."

420. The active political leaders in Burma who accepted as a first instalment the measure of self-government afforded by provincial dyarchy, did not on that account abandon their conviction that both on racial and on economic grounds it would be better for Burma to pursue her own distinct line of development at the first possible opportunity, and foresaw that such an opportunity would be likely to occur after the ten-year period prescribed in the Act of 1919. Accordingly they took their seats in the Legislative Council, and when the time came, stated their opinions freely to the Indian Statutory Commission, who reported that they had little doubt that the resolution passed unanimously by the Legislative Council during their visit to Burma in favour of separation from India was the verdict of the country as a whole. On the other hand, the party which in 1922 had boycotted the Whyte Committee and had refused to enter the Legislative Council or co-operate in a dyarchical form of government, stood aloof and tendered no evidence before the Commission. Their unhelpful tactics have tended to obscure the fact that they too seek, and have steadfastly sought, as their ultimate objective, Burma's independence of India and the development of the country on separate lines. The difference between them and what we may call the co-operating parties has, we think, been mainly one of tactics. Whereas the latter are and have been prepared to accept what is granted to the rest of India as a stepping stone to something better, the non-co-operators persist in rejecting every offer made and in standing out on every occasion for the impossible, in the belief that thereby they increase the prospect of extracting from the British Government and Parliament a more liberal constitutional scheme for Burma. They took the opportunity afforded

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by the election campaign in 1932 (which was to give the electorate a means of expressing through their elected members their views on the question of separation) to excite a wave of feeling not so much against the idea of separation as against the Constitution for a separated Burma outlined by His Majesty's Government at the close of the Burma Round Table Conference, on the ground that it, too, was, as it undoubtedly and inevitably is, dyarchical in nature. Having decided to reject the Constitution held out as a concomitant of separation, they found it difficult to distinguish this policy from opposition to separation in the abstract; and, describing themselves for the purposes of the election as "anti-separationists," they were driven to advocating the only possible alternative, that is, inclusion in the Federation.

Both parties desire separation.

421. We have satisfied ourselves by discussion with the Delegates from Burma representing the anti-separationist parties that they have no real desire to see Burma included in an Indian Federation; and indeed they frankly admit that on their own terms they would unhesitatingly prefer separation. The policy they have adopted contemplates only the inclusion of Burma in the Indian Federation on the basis of special financial and fiscal conditions (which in our judgment would be inconsistent with the fundamentals of a federal system), and on the understanding that at her chosen moment Burma would be at liberty to secede. We have no hesitation in describing this policy as wholly impracticable, and we can affirm that the Delegates from India who have been associated with us have just as little hesitation in ruling it out as incompatible with the conception of Federation. Its adoption by the Burman anti-separationist leaders is to be explained, we believe, by the mistaken idea that if Burma, as a unit of the Indian Federation, were to take part in such further advances towards full responsible self-government as may be made by the Federation, she would on leaving it at the moment of her choice start off on her own separate course so much further forward in the direction of her ultimate constitutional goal. Criticism in detail of this conception of future possibilities would involve us in dangerous fields of speculation; and we think it sufficient to record our opinion that, even if Burma could be permitted to enter the Indian Federation and to leave it at will, it is certain that Parliament would still regard it as its function to regulate her constitutional status and her relations with other possessions of the Crown. The inference which we draw from our examination of the course pursued by the Burman anti-separationists is that, in fact, they desire the separation of their country from India, but are distrustful of the consequences which may follow if the step is taken now; and we see no reason to dissent from the conclusion at which the Statutory Commission arrived that "so far as there is public opinion in the country it is strongly in favour of separation"; nor do we believe that a recommendation in this sense would seriously offend Burman sentiment in any quarter.

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Separation justified on practical grounds.

422. The question is not, however, one to be decided solely on considerations of sentiment. The Statutory Commission adduced many other most cogent grounds for the separation of the two countries—the absence of common political interests with continental India, the constant and increasing divergence of economic interests, the financial inequities (as they appear in Burman eyes) which association with India inevitably entails, and the fact that the indigenous peoples of Burma belong to the Mongolian group of races and are distinct from the Indian races in origins, in languages, and by temperament and traditions. They were also of opinion that separation should take place at once. "We base our recommendation," they observed, "that separation should be effected forthwith on the practical ground that no advantage seems likely to accrue from postponement of a decision to a future date. The constitutional difficulties of securing Burman participation in the Central Government of India are not prospective but actual. They will grow with every advance in the Indian Constitution and will prejudicially affect not Burma only but India itself."[1] By the emergence into the field of practical politics of the proposal for an Indian Federation these arguments are greatly reinforced. Federation would not come into being simultaneously with Provincial Autonomy; but already there are projects directly or indirectly ancillary to Federation which are rapidly taking shape, and the more deeply Burma became involved in these as a result of her present position as a Province of British India, the more difficult would be her disentanglement from them hereafter. We are, therefore, clearly of opinion that the separation of Burma, if it is to be effected at all, should not be postponed.

Commercial Relations between India and Burma

Economic effects of separation.

423. We should have no hesitation at all in endorsing the conclusion arrived at by the Statutory Commission, if it were not that grave doubts as to the material benefits likely to accrue to Burma as a result of separation have been expressed by persons well qualified to hold authoritative opinions on the complex problems involved. It may be an invidious task to balance national aspirations and sentiment against estimates of profit and loss; but we feel that it would be a sorry concession to Burman sentiment if we were to recommend separation without weighing carefully the possibility of a serious diminution, whether immediate or prospective, of material prosperity. We have alluded to the increasing divergence of economic interests to which the Statutory Commission drew attention; and further evidence of this divergence has been provided by events since the date of their Report. It is said that if Burma were separated from India she would be free to develop her own fiscal policy on lines which are impossible for her while she is tied to India, and

[1] Report, Vol. II., para. 224.

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that only by separation can she secure the freedom to do so. The matter is, however, not quite so simple. Separation would undoubtedly enable Burma to evolve a fiscal policy more suited to her peculiar needs than the high tariff policy of the Government of India; but it takes time to develop a policy, and still more to gather its fruits, and separation must have consequences of immediate effect, both financial and economic.

Tariffs and separation.

424. An apportionment of assets and liabilities between the two Governments would have to be made, as well as of revenues and charges which are now classified as central. The Statutory Commission examined the probable results of such an apportionment, and a more detailed but still incomplete investigation of this aspect of the question was made after the first Round Table Conference, the results of which are embodied in the Report known as the Howard-Nixon Report. The joint investigators were not able to agree as to the basis of adjustment to be adopted in respect of certain charges, and the statistics on which they worked have been substantially affected by the general economic depression, to which Burma, depending almost entirely on the export of natural products, has been exposed as severely perhaps as any country in the world. But we are satisfied, after examining the more recent statistics furnished to us by the Government of Burma, that Burma is at any rate not likely to be any worse off in respect of net revenue as a result of separation, and indeed, if economic conditions improve, may gain considerably. But as regards the immediate effects on trade the position is not so clear. A very considerable trade between Burma and India, averaging in value in normal times some 40 crores (or £30 million) a year, has grown up in the 48 years since the whole of Burma became part of the Indian Empire and it has grown up on a tariff-free basis, the Province of Burma being within India's tariff wall. These conditions would be wholly altered by the fact of separation. Burma would cease to be an economic, no less than a political part of British India, and, if nothing is done to prevent it, the tariff of each country would apply against the other.

Effect of tariffs on India-Burma trade.

425. We conceive that one essential provision in any Constitution that may be devised for Burma in the event of separation will be that existing Indian laws shall continue to have effect in Burma after separation unless and until amended or repealed by the Burma Legislature. Some such general provision would in any event be necessary in order to provide the basis on which the administration may be carried on without interruption; but if it extended to the Indian Tariff Acts and the Schedules attached to them the result would be that Burma would have to levy the customs duties prescribed by these Schedules on all goods imported into Burma, including goods imported from India, which hitherto have been free from duty; and similarly with India in the case of goods imported from Burma. Of Burma's total exports, averaging in

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normal times about 56 crores (£42 millions) per annum, about 48 per cent. (or £20 millions) goes to India, representing about 14 per cent. of India's total imports. Of Burma's total imports, averaging in normal times about 28 crores (or £21 millions) per annum, about 42 per cent. (or £9 millions) are from India, representing 5½ per cent. of India's total exports. Thus the India-Burma trade constitutes nearly half of Burma's export and import trade and an appreciable portion of that of India ; and it is clear that the heavy duties of the Indian protective tariff might have a serious effect upon it.

Suggestions for a Trade Convention.

426. We recall that the Burma Sub-Committee of the First Indian Round Table Conference, while advocating the principle of separation, expressed the hope that it might be found possible to conclude a Trade Convention between India and Burma, and stressed the importance of causing as little disturbance as possible of the close trade connections which at present exist between the two countries. Detailed suggestions for such a Convention were submitted to us by the Burma Chamber of Commerce, and we have had the advantage of studying memoranda on the subject furnished by the Delegates who represented that Chamber and the Burma-Indian Chamber of Commerce and who also gave oral evidence before us. Briefly, the suggestion is this: that until such time as the two new Governments are able themselves to conclude a Trade Agreement, the existing fiscal relations between India and Burma should be maintained by special statutory provision in the two Constitution Acts. This suggestion, if adopted, would leave Burma bound for the time being to impose on imports from other sources than India the duties scheduled to the existing Indian Tariff Acts. But one of the principal considerations urged in favour of the separation of Burma from the rest of India is that the heavy duties imposed by India on certain classes of manufactured goods for the protection of Indian industries are detrimental to the interests of Burma, which demand the cheap importation of such commodities as manufactured iron and steel. The Chamber of Commerce would meet this difficulty by giving liberty to both countries to alter their tariffs (which would at the outset be identical) in relation to third countries, subject to arrangements designed to prevent the import of goods on which the tariff might have been lowered into either India or Burma, as the case might be, in order to re-export to the other, with a proviso that neither country shall without the consent of the other vary existing tariff rates in respect of an agreed list of goods or commodities, that is to say, goods or commodities in respect of which either India or Burma enjoys, by virtue of the existing freedom of trade between them, a preference so valuable that any reduction of it would seriously affect the trade in that article between the two countries.

The suggestions criticized.

427. These proposals are at first sight attractive, but they rest on a hypothesis which we believe is not likely to be substantiated in fact. The Memorandum of the Chamber of Commerce strongly

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deprecates the assumption that the Government of Burma will need any additional revenue which might result from taxing the India-Burma trade. It assumes on the contrary that as the result of the financial settlement with India, Burma will gain to an annual extent sufficient, even in the present depressed conditions, to give her a small surplus with which to meet new expenditure. We are informed that the Government of Burma do not share this view, and anticipate that, even allowing for a favourable settlement, the future Government of Burma will need to raise some revenue from trade with India. But however that may be, it is obvious that whatever gain the settlement may bring to Burma, it will involve an approximately equal loss to Indian revenues; and the Government of India, we understand, have no doubt at all that they will have to look to taxes on the trade with Burma to make good some of this loss. It may be assumed therefore, that after separation it will not be possible, on the Indian side at any rate, to maintain even for a short period an India–Burma trade free of customs duties; and when one invasion of the free trade system has been made, compensating adjustments will probably be required all round.

Moderate tariffs not necessarily injurious to trade between the two countries.

428. A departure from complete freedom of trade need not in all cases seriously prejudice trade between India and Burma, which depends not so much on the absence of duties as on the margin of protection afforded against competing goods from other sources; and it may well be that in respect of several classes of goods exchanged by Burma and India the imposition of a light import duty would not materially affect the flow of trade. This, however, could only be ascertained by expert examination of the trade item by item; and we are of opinion that the first step to be taken is that Burma and India should agree on a list of goods on which duties could safely be imposed within limits sufficiently low to secure the India-Burma trade against dislocation. It would also be necessary to deal with the question of substituting equivalent import duties for the excise duties at present imposed in India on Burma products, and vice versa. To secure its object, such an agreement would have to be operative from the moment of separation, and it must therefore have been concluded before the new Governments are established, i.e., between the existing Governments. But an agreement by the existing Governments can only be made binding on the Governments to be established by the new Constitution Acts, by statutory provision in both Acts.

Burma may desire to reduce existing high tariffs on certain goods.

429. Though the primary purpose of any agreement imposed upon the new Governments of India and Burma by the Constitution Acts would be the regulation of India-Burma trade with the minimum disturbance of its existing conditions, this cannot be achieved in isolation. The imposition of duties on goods previously exchanged between India and Burma on a no-duty basis may affect the questions of the duties properly leviable by either country on competing

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goods from other sources. Moreover, Burma may desire to reduce the high protective duties at present imposed by the Indian tariff on certain manufactured goods imported from outside. This is recognised by the Burma Chamber of Commerce, and their representative in his supplementary memorandum,[1] makes specific suggestions for dealing with the case, and also with the question of re-export from the country of the lower tariff to the other country. The agreement should, therefore, contain as its secondary purpose provisions enabling either country to vary its tariffs on goods from outside sources, but within prescribed limits, so as not to defeat the primary purpose for which it is made.

Period during which a Trade Convention should continue in force.

430. An agreement of this kind embodied in the Constitution Act, even though mutually advantageous to the two countries, must necessarily constitute to some extent an encroachment upon the fiscal liberty which Burma after separation is to enjoy, and which India already enjoys. The encroachment would be less, if the agreement provided full opportunity to both parties to vary details by mutual consent during its currency; but it is in any event desirable that the agreement itself should continue for the shortest period which is compatible with the securing to those concerned in the India-Burma trade of a reasonable measure of certainty as to the immediate future. One possible course would be to impose the agreement for an undefined period subject to denunciation by either country at reasonable notice, say twelve months. If the agreement proved to be congenial to the needs of both, such an arrangement might promise the greatest prospect of stability; but there is a risk that national *amour propre* might lead one or both of the new Governments to denounce it as soon as it had the power to do so, with the result that the agreement might last for little more than the period of notice. Another course, advocated by the Burma Chamber of Commerce, would be to enact that the agreement should continue until replaced by another concluded between the two new Governments. This, however, would give one Government, if it found that it enjoyed an advantage at the expense of the other, the option of retaining that advantage indefinitely; nor do we think that it would be fair to impose upon the future Government of Burma in the period immediately following separation the heavy burden of negotiating an intricate Trade Agreement. In our opinion, the legislative provisions for both India and Burma should state the minimum period which must elapse before either party to the agreement can give notice to terminate it, and also the length of the period of notice, which might conveniently perhaps be twelve months. We do not ourselves make any more precise recommendation as to what the first period should be than that it should be not less than one year, for we think it would be far best that the actual period should, like the content of the Agreement, be fixed by mutual accommodation between India and Burma in

[1] Records [1933–4] B.2 p. 49.

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the course of the negotiations. If, however, they should fail to reach agreement on this point we think that His Majesty's Government, who would no doubt be apprised of the differing views held, should insert a specific period in their legislative proposals which will be laid before Parliament. We think also that the agreement should contain provisions for the mutual adjustment of details from time to time during its currency, where both parties desired such adjustments to be made.

Statutory provisions recommended.

431. We recommend, therefore, that the Act should contain provision for an Order in Council empowering the Governor-General of India and the Governor of Burma respectively in their discretion (i) to apply for a prescribed period to the exchange of goods and commodities between India and Burma a scale of customs duties which shall have been mutually agreed between the existing Governments of India and Burma, or determined by His Majesty's Government in default of agreement, the scale not to be susceptible of variation during the prescribed period except by mutual consent; and (ii) to apply to specified classes of goods and commodities imported into either country from outside sources such variations of the duties imposed by the Indian Tariff Schedules at the date of separation as may have been mutually agreed by the existing Governments of India and Burma before separation, or determined by His Majesty's Government in default of agreement, or as may be mutually agreed thereafter by the two Governments during the prescribed period.

Relief from double income-tax.

432. There is a cognate matter which it is important should be settled before separation comes into effect, namely, the means of affording relief to persons, firms and companies who might otherwise be exposed by the act of separation to a double liability to income-tax. We regard it as important that such relief should be afforded, and we understand that the question of the means best adapted to achieve the purpose is now under examination. Pending the result of this examination we make no specific recommendation as to the statutory provision required, but we think that this matter should be dealt with on similar lines to those which we have recommended in the case of the Trade Agreement.

Immigration of Indian labour.

433. The negotiations for a Trade Agreement might also be extended to the regulation of the immigration of Indian labour into Burma for the first few years after separation. We allude elsewhere[1] in our Report to the necessity of withholding from Indian-British subjects the unrestricted right of entry into Burma after the separation, in order that the Government and Legislature of Burma may be free to regulate the influx of cheap labour in competition with the indigenous sources of supply. The problem is already acute, as the Royal Commission on Labour in India have recorded, and we

[1] *Infra*, para. 473.

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endorse the opinion expressed by that Commission that the best way of solving the problem is by mutual agreement between the two Governments concerned. But the period immediately after separation is evidently not the most suitable opportunity for negotiating an agreement on a matter which is peculiarly capable of provoking lively animosities, and we are of opinion that, whether or not in direct connection with an agreement to regulate trade relations, at any rate at the same time, an agreement to control the influx of Indian labour into Burma should be concluded between the existing Governments. Such an agreement, which might conceivably run for the same period, and be determinable on the same notice, as the Trade Agreement (though this is a point on which we wish to make no definite recommendation), would also need to be made statutorily binding on both Governments for the period of its validity.

Conclusions.

434. The difficulty of regulating the economic relations of India and Burma in the period immediately following separation has presented itself to us as the most serious obstacle to a recommendation in favour of separation, which on all other grounds seems plainly to be indicated. We were much impressed by the views of the Delegates representing commercial interests, both European and Indian, on the disturbance of India-Burma trade which might result from separation. We believe, however, that an agreement such as we have suggested would enable both countries to tide over the critical period, and in these circumstances we regard ourselves as justified in recommending that the separation of Burma from India should be effected simultaneously with the introduction of the constitutional changes which we have recommended in the case of the other Provinces of India.

(2) The Burma White Paper

The Government of Burma a unitary government.

435. Before considering in detail the proposals in the Burma White Paper, we have certain preliminary observations to make. It is in the first place evident that a new Constitution for Burma, whatever may be its precise form, must differ in many respects from that which we have recommended in the case of the Governors' Provinces in India. The Government of Burma will be a unitary government, and therefore no question of any distribution of executive or legislative powers will arise, since the Government will unite in itself all the powers which in a Federated India will be divided between the Federal and Provincial Governments.

The Karenni States.

436. Next, we desire to draw attention to some of the legal consequences of separation. On the Indo-Siamese frontier of Burma lies the territory known as the Karenni States, whose independence

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was guaranteed by a treaty with the former Burmese Kingdom in 1875. These States are not a part of British India, but are nevertheless part of "India" as defined by the Interpretation Act, 1889, because they are under the suzerainty of the Crown exercised through the Governor-General. They are under the direct control of the Government of Burma, jurisdiction in them being exercised by the Governor on behalf of the Governor-General by virtue of powers delegated under the Foreign Jurisdiction Act; but their constitutional position seems to differ in no respect from that of Indian States in which the Crown exercises jurisdiction by treaty, usage or otherwise. The jurisdiction therefore which is at present exercised by the Crown through the Governor-General of India, and through the Governor of Burma by virtue of the powers delegated to him, will have to be resumed into the hands of the Crown, and thereafter exercised directly through the Governor of Burma, without the intervention of the Governor-General of India. The Burma White Paper rightly proposes that the first of these objects shall be secured by the Constitution Act itself; for the second a new Foreign Jurisdiction Order in Council will clearly be required.

Application of Acts of Parliament extending to His Majesty's Possessions outside British India.

437. We assume that provision will be made for the continued application to Burma after the separation from India of all Acts of the Imperial Parliament which extend at the present time to Burma as a part of British India. But there are a number of other Acts of Parliament which apply to His Majesty's overseas possessions exclusive of British India; and when Burma ceases to be a part of British India, it would seem that those Acts would, in the absence of provision to the contrary, apply to Burma as they apply elsewhere. Thus, all Acts which are declared to extend to "colonies" would at once become part of the law of Burma, since "colony" is defined in the Interpretation Act, 1889, as "any part of His Majesty's dominions exclusive of the British Islands and of British India." Our attention has been drawn in this connection to the Colonial Laws Validity Act, 1865, some of the provisions of which appear to be quite inconsistent with any Constitution which we could contemplate for Burma. We think that special provisions will be required in the Constitution Act to deal with this point; and we agree also with the Secretary of State that no room should be left for any suggestion that the new status of Burma will be assimilated to that of a Crown Colony. Apart from this, it will obviously be necessary to make provision for the continued application to Burma of existing British Indian laws, until repealed or amended by the Burma Legislature or other competent authority; but there will have to be some machinery for adapting those laws to meet the new constitutional situation, as, for example, by substituting the Governor of Burma for the Governor-General in Council, where the latter expression occurs in an existing Act.

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Agreements at present binding upon Burma as a part of British India.

438. It is proposed that the Constitution Act should declare that all rights and obligations under international Treaties, Conventions or Agreements which before the commencement of the Act were binding upon Burma as part of British India shall continue to be binding upon her.[1] A similar provision is to be found in section 148(1) of the South Africa Act, 1909, the Act which constituted the Union of South Africa. In that case however the States or Provinces by or on whose behalf the Treaties, Conventions or Agreements had been made became part of a new and larger organism, which necessarily assumed responsibility for all the existing obligations of its constituent members; but we are not clear that the case of a State which becomes autonomous by separation from a larger State is precisely analogous, at any rate so far as rights as distinguished from obligations are concerned, and we are disposed to think that the matter may require some further examination.

His Majesty's title in relation to Burma.

439. We should mention here that the Delegates from Burma, both in a Joint Memorandum signed by several of them and orally before us, expressed the hope that His Majesty might be pleased to adopt the title of King-Emperor of Burma. It would not be proper for us to express any opinion on this suggestion until His Majesty's pleasure had been taken; but we may perhaps be permitted to make the following observations. His Majesty's full style and title is "George V by the Grace of God of Great Britain, Ireland, and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India"; and Section 1 of the Government of India Act therefore correctly describes the territories for the time being vested in His Majesty in India as governed "by and in the name of His Majesty the King, Emperor of India." From this it is clear that, though it is not incorrect to speak of His Majesty in relation to His Indian Empire as "The King-Emperor," the expression "King-Emperor of India" is not legally a part of His Majesty's style and title. Hence a reference to Burma in the Royal Title could, subject to His Majesty's consent, only be introduced by legislation, which, since the Statute of Westminster became law, would require the concurrence of the Dominion Governments. The Delegates also desired that the Governor should in future be known as the Governor-General of Burma; but this too is a matter on which we think that His Majesty's pleasure would have to be taken.

The Executive

The Executive Government.

440. The proposals in the Burma White Paper with regard to the Executive follow generally those in the India White Paper with regard to the Executive Government of the Federation and of the Provinces; that is to say, executive power and authority is to be vested in the Governor as the representative of the King, aided and

[1] Burma White Paper, Proposal 5.

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advised by a Council of Ministers.[1] To avoid repeating at length what we have already said in earlier parts of our Report, we think it desirable to make clear at this point our intention that the modifications which we have recommended in the proposals in the Indian White Paper should *mutatis mutandis* be applied to the corresponding proposals in the Burma White Paper; but there are certain divergencies between the India and Burma White Papers to which we should draw attention, as well as other points which arise only in the case of Burma.

Law and Order.

441. The Council of Ministers will have a constitutional right to tender advice to the Governor in the exercise of the powers conferred upon him by the Constitution Act, other than powers connected with certain Departments which will be reserved for the Governor's own direction and control and matters left by the Constitution Act to the Governor's own discretion; but the Governor will be declared to have a special responsibility in respect of certain matters, and where they are involved will be free to act according to his own judgment. The matters which it is proposed shall be reserved to the Governor's own direction and control are Defence, External Affairs, Ecclesiastical Affairs, the affairs of certain Excluded Areas, and monetary policy, currency and coinage. With these we deal later, but we point out that they do not include law and order, which will, therefore, fall within the ministerial sphere, as it will in the Indian Provinces, if our recommendations are accepted. In general the same considerations apply in Burma, if separated, as apply in the other Provinces of British India. But there are certain special circumstances which we think it right to mention. On the one hand terrorism of the Bengal type is practically unknown among the Burman people, and communal strife arising from strong religious antagonisms is rare and unimportant. To this extent the problem is less difficult than in other Provinces. On the other hand Burma exhibits racial rivalries which on occasion have developed into violent riots between one community and another, and serious crime—especially crimes of violence—appears to be more rife in Burma than in India; in proportion to population the annual record of dacoities, murders and cattle thefts is very high. This, no doubt, is due, in part, to the fact that barely 50 years have elapsed since, with the conquest of Upper Burma, British authority was established throughout the Province and British ideas of law and order began to be instilled into the whole countryside. To this fact and perhaps also in some degree to the Burman temperament may, we think, be attributed the organised resistance to authority, amounting to armed rebellion and guerilla warfare, which has at times, even within the past few years, affected a large number of districts and which, owing to the difficult nature of the country and the lack of good communications, has

[1] Burma White Paper, Proposals 6–20.

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proved very troublesome to put down. Nevertheless we are of opinion that the responsibility for law and order ought in future to rest on Ministers in Burma no less than in India, and for substantially the same reasons. At the same time, bearing in mind the special features of the problem that we have described, we think it essential that the Governor of Burma should have powers additional to the powers flowing from his special responsibility for the prevention of any grave menace to the peace and tranquillity of Burma as proposed in the Burma White Paper. He should be given the same statutory powers against attempts to overthrow by violence the Government established by law as we have recommended should be vested in the Governors of Indian Provinces.[1] Further, conditions in Burma manifestly necessitate the maintenance of an efficient and highly disciplined police force; and we are of opinion that the recommendations which we made in an earlier passage[2] for the protection of the police forces in the Indian Provinces, by safeguarding the statutes and rules which govern their internal organisation and discipline, should be adopted in Burma also.

The Burma Police.

442. The police in Burma consist of:—(1) two civil police forces, the District Police and the Rangoon Police, which are organised on much the same lines as the police forces in the Indian Provinces and whose main duty is that of detecting and preventing crime; and (2) ten battalions of the Burma Military Police. Six battalions of the latter are frontier battalions, stationed almost wholly in the excluded tribal areas contiguous to the frontiers, and may be described as a watch and ward gendarmerie. Of the other four battalions, one is a reserve battalion which provides drafts mainly for the frontier battalions and is also responsible for the protection of the railways in times of internal disorder, and three are "garrison" battalions, two with headquarters in Rangoon and one in Mandalay. These, though organised on a battalion footing, serve in the districts in small detachments as patrolling parties and as a backing to the District Police, and also supply Treasury guards and prisoners' escorts. These services require a well-armed and highly disciplined personnel, and are entrusted in other Provinces to the so-called armed reserves of the civil police, which do not exist under that name in Burma.

Future organization of Burma Military Police.

443. We are informed that it is in contemplation to place the six frontier battalions and the reserve battalion of the Military Police directly under the Governor as part of the defence organisation, though it is not intended that they shall form part of the regular Defence Force or lose their primary police character. If, as we understand, these battalions are at the present time stationed in the Excluded Areas in proximity to the frontiers, it would clearly be

[1] *Supra*, para. 96.
[2] *Supra*, para. 93.

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impossible to transfer them with the ordinary civil police to the control of a Minister, and the proposed arrangement seems to us a reasonable and convenient one. We are informed also that in times of grave internal disorder the reserve battalion, and to a limited extent the frontier battalions also, have been called upon to act as additional police outside the Excluded Areas, before recourse is had to military aid; and if in future they become part of the defence organisation under the control of the Governor, it would be possible for the latter, in the exercise of his special responsibility for the prevention of grave menace to the peace or tranquillity of Burma, to deal effectively with a threatened outbreak without the use of troops, or alternatively to place additional forces at the disposal of the Minister for the same purpose.

Garrison battalions of Military Police.

444. It is intended, we understand, that the three garrison battalions should pass under the control of the Minister responsible for law and order as part of the police force of the Districts, and they would thus correspond to the armed reserves of the civil police in the other Provinces. The frontier and reserve battalions would, however, be available as a reserve striking force in the event of serious disturbance wherever it might occur, or to provide reliefs for men on continuous duty in the districts. These proposals seem to us to be well conceived. The Governor's responsibility for the preservation in the last resource of law and order in Burma may well be heavier than in many of the Indian Provinces, but his position will be stronger in that he will have under his own control the Department of Defence and the resources which it can afford in the way of additional military police as well as of troops. We have only one suggestion to make. In view of the reservation to the Governor of the Department of Defence, we are disposed to think that the designation of the three garrison battalions which will henceforth be under the control of the Minister as Military Police may tend to confusion. We suggest, therefore, that some other designation should be adopted, and perhaps "the Burma Constabulary" might be regarded as appropriate.

The Governor's special responsibilities.

445. The Governor is to have a special responsibility[1] in respect of (*a*) the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof; (*b*) the safeguarding of the financial stability and credit of Burma; (*c*) the safeguarding of the legitimate interests of minorities; (*d*) the securing to the members of the public services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests; (*e*) the prevention of commercial discrimination; (*f*) the administration of certain Partially Excluded Areas; and (*g*) any matter which affects the administration of any department of government under the direction and control of the Governor. It will be seen that these special responsibilities are substantially the same as those proposed in the case of the Governor-General and Governors of Provinces. We have

[1] Burma White Paper, Proposal 17.

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already recorded our views in relation to the first of them, and, subject to the governing factor that in the unitary government of Burma the special responsibilities and special and discretionary powers of the Governor-General and of the Provincial Governors in India respectively will be combined in the hands of the Governor, we are of opinion that the recommendations which we have made elsewhere[1] in regard to these matters, and in regard to arrangements for apprising the Governor of any question affecting them in India should apply, with some necessary adjustments of form, in the case of Burma. The suggestion in the Joint Memorandum submitted by certain of the Burman Delegates that any dispute on the question whether in a particular case the Governor's special responsibilities are involved should be referred to the Privy Council for decision completely misapprehends the principle underlying the Proposals; and nothing would be more likely to check a healthy constitutional development than to make the relations between the Governor and his Ministers a matter of law rather than of constitutional usage and practice.

There are certain aspects of commercial discrimination in the case of Burma which are of sufficient importance to demand separate treatment, and we also leave for subsequent consideration the question of the Excluded Areas.

The Reserved Departments

Defence.

446. The subject of Defence has not the same importance in Burma as it has in India, for there is no North-West Frontier problem; but, as the Statutory Commission observe, Burma has on her own borders a less definite but potential danger which, if it actually emerged in concrete shape, she could not deal with single-handed[2]. So long as this is so, it is clear that the Department of Defence must remain under the exclusive control and administration of the Governor; and the more so, since the main pre-occupation of those responsible for the defence of Burma must always lie in the vast Excluded Areas of the Province, which are also to remain under the Governor's control. It is proposed[3], and we think rightly, that the Governor should also have the title of Commander-in-Chief. The executive military power will be vested in him, as the head of the Executive Government, and the size of a Burma Defence Force would not in any event justify the separate appointment of a Commander-in-Chief for Burma, though we assume that there would continue to be a General Officer in command of the regular military forces. We have already mentioned the proposals which are in contemplation with regard to the transfer of certain battalions of the Burma Military Police to the defence organisation. The personnel of these battalions at the present time is, we understand, for the most part Indian, being drawn from men who have served their time with Indian regiments;

[1] *Supra*, paras. 78-80, 92-101 (so far as applicable), 170 and 171.
[2] Report, Vol. II, para. 220.
[3] Burma White Paper, Proposal 6.

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and whether as time goes on it will be found possible to replace these with Burma personnel is not a matter on which we are competent to express any opinion. We may refer to what we have said on this subject in connection with Indian army problems[1]; but we desire also to point out that the policing and protection of the Excluded Areas, which lie along the frontiers of Burma and which form so large a proportion of the total area of the country, involve military considerations of a special kind. We refer hereafter to the powers which the Burma Legislature will possess in connection with legislation for the enforcement of army discipline.

Other Reserved Departments.

447. External affairs and ecclesiastical affairs need no comment, except, in regard to the latter, to state beyond the possibility of misunderstanding that they have no concern with the Buddhist religion or any other religion of the population at large. The affairs of the Excluded Areas raise, however, various questions which it will be more convenient to discuss separately.[2]

Monetary policy, currency, and coinage.

448. The reservation to the Governor of matters relating to monetary policy, currency and coinage, differentiates the Burma White Paper proposals from those of India in a very important respect. In India it is proposed that the Federal Ministers shall be responsible generally for finance, the Governor-General having only a special responsibility for the safeguarding of the financial stability and credit of the Federation, with a Financial Adviser to assist him in the discharge of this responsibility. But it has always been made clear by His Majesty's Government that the establishment of a Reserve Bank, free from political influence, to which the management of currency and exchange could be entrusted, was a condition precedent to the transfer to Ministers of responsibility for the finance of the Federation. A Reserve Bank of India has now been authorised by Act of the Indian Legislature and measures are therefore in train for the fulfilment of the condition precedent. But there is no separate Reserve Bank in Burma, nor, so far as we are aware, is it in contemplation to establish one; and we agree therefore, that the control of monetary policy, currency and coinage is properly reserved to the Governor.

The Governor's Counsellors and the Financial Adviser.

449. It is proposed to[3] empower the Governor to appoint at his discretion not more than three Counsellors to assist him in the administration of the Reserved Departments. He will also be empowered at his discretion, but after consultation with his Ministers, to appoint a Financial Adviser to assist him and also to advise Ministers on matters regarding which they may seek advice. The duties of the Financial Adviser will necessarily cover a wider field than those of the Financial Adviser to the Governor-General of India, not only because of the reservation to the Governor of matters relating to monetary policy, currency and coinage, but also because the Government of Burma will be a unitary Government,

[1] *Supra*, paras. 179 and 180.
[2] *Infra*, paras. 458–463.
[3] Burma White Paper, Proposal 11.

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uniting in itself the financial powers which in India will be shared between the Federal and the Provincial Governments. In these circumstances, we do not think that we can endorse the proposal in the Burma White Paper that one of the Counsellors may, in the discretion of the Governor, be appointed Financial Adviser. We assume that the proposal is based upon grounds of economy; but it seems to us that any saving in expense which might be effected by a combination of the two offices would be more than counterbalanced by the disadvantages which in our opinion would result. We think that Ministers would be unlikely to avail themselves freely of the services of a Financial Adviser who was also in administrative charge of a Reserved Department. It is also very important that the Financial Adviser should be in a position in which he could take an impartial and independent view of the whole financial situation, in relation to both the Transferred and the Reserved Departments, and if he were at the same time one of the Governor's Counsellors he could scarcely avoid finding himself from time to time in a position in which his interest in one capacity conflicted with his duty in the other.

The Legislature

The two Houses.

450. It is proposed[1] that the Legislature shall consist of the King represented by the Governor and two Houses, to be styled the Senate and the House of Representatives. The Senate is to consist of not more than 36 members, of whom 18 would be elected by the House of Representatives, and 18, who may not be officials, would be nominated by the Governor in his discretion. The House of Representatives is to consist of 133 members, of whom 119 would be elected to represent general constituencies, and 14 to represent special constituencies. The Governor's Counsellors are to be *ex-officio* members of both Houses for all purposes, except the right to vote. The Senate is not to sit for any fixed term, but one-quarter of its members are to retire every two years. The House of Representatives is to continue for five years unless sooner dissolved.

Composition of the Houses and franchise.

451. There are no detailed proposals with regard either to the composition of the Houses or to the franchise in the Burma White Paper; but the Secretary of State has since submitted a Memorandum, which is printed among the Records of the Committee, which contains valuable suggestions with regard to both these subjects.[2] In our opinion suitable provisions can be embodied in the future Constitution Act on the basis of these suggestions; but though we give them our general approval, there are nevertheless certain points in which we think that they require modification; and to these we draw attention in the paragraphs which follow.

[1] Burma White Paper, Proposals 21, 23, 24, 25–29.
[2] Records [1933–34], A1, p. 10.

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452. We understand that, in the case of those members of the Senate who are to be elected by the House of Representatives, the intention is to adopt the method of the single transferable vote. So far as this is designed to avoid the necessity of communal representation, it has our cordial approval; but we do not think that it will effect its object, viz., to secure adequate representation to substantial minorities, if the proposal in the Burma White Paper is retained, whereby one-quarter of the Senate retires at the expiration of every period of two years. It has been pointed out in memoranda submitted to us by the Burma Chamber of Commerce and others that at the first election, when the full number of 18 seats are to be filled and the requisite quota of votes will be eight, the European, Indian and Karen communities at any rate could count on securing the election of their candidates; but that at the ensuing periodic elections, with only nine vacant seats to fill, no minority candidate could be elected unless all the minority representatives in the Lower House pooled their votes, because the necessary quota would be too large. Alternative proposals have been made to meet this difficulty, but none seem to overcome it entirely; and after full consideration we have come to the conclusion that the system of rotational retirement is unsuitable, and that the better plan would be to provide that the life of the Senate shall be for a fixed period of seven years, unless it is sooner dissolved.[1] But even so the problem of casual vacancies, which always causes difficulty under proportional representation systems, has to be faced, if the minorities are not to be placed in an increasingly unfavourable position as the seven years draw to a close. We have considered more than one plan for meeting this difficulty, none of which is wholly satisfactory; and we think that the best course will be to provide that, where a casual vacancy occurs in a seat held by the representative of a minority community, only candidates of the same community as the vacating member shall be eligible. We recognise that this to some extent introduces a communal element into the Senate, which we regret; but we do not see how in the circumstances it is to be avoided. An alternative suggestion was that casual vacancies should be filled by the Governor's nomination; but we have felt bound to reject this for reasons which it is unnecessary to elaborate.

Objections to system of rotational retirements for Senate.

453. The proposals for the composition of the House of Representatives are fully set out in the Secretary of State's Memorandum, to which we have referred. They provide for 119 general constituencies and 14 special constituencies. Of the general constituencies, 94 would be non-communal, 12 Karen, 8 Indian, 2 Anglo-Indian, and 3 European. The special constituencies are the University of Rangoon, the Burmese Chamber of Commerce, the Burma-Indian Chamber of Commerce, the Burma Chamber of Commerce (European), the Chinese Chamber of Commerce, the Rangoon Trades

Composition of House of Representatives.

[1] The power of dissolution rests, of course, with the Governor in his discretion: see *supra*, para. 145.

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Association (European), and Labour (two Indian and two Burman). Out of the non-communal constituencies, three seats would be reserved for women. It will be observed that these proposals are based upon communal representation with separate electorates. We had hoped that it would have been possible to abandon the principle of communal representation in the case of Burma, however necessary it may be for British-India; but we have reluctantly come to the conclusion that, for the present at any rate, this is an impracticable ideal. It is true that, as we have already observed, there is very little religious cleavage in Burma, since toleration is a marked characteristic of the Buddhist creed. There are however racial cleavages; among the indigenous races there is a clear-cut division between Burman and Karen; and the division between the indigenous and non-indigenous (mainly European and Indian) communities is as marked as is the division between the non-indigenous communities themselves. We are not to be understood as suggesting that the different communities live otherwise than in amity with one another, although the feeling between Burman and Indian, especially as competitors in the labour market, from time to time becomes acute; but each community has its own culture and outlook on life, and these do not always blend. It is also to be observed that the minorities have their own representation at the present time in the Burma Legislature, and we are clear that none of them would be prepared to abandon it; indeed, the Burman Delegates themselves with few exceptions, recognised, even if reluctantly, that the claim was one which must be met. We therefore accept the proposals in principle, but we are glad to observe a suggestion in the Secretary of State's Memorandum that it should be permissible for persons who are not members of the communities concerned to stand as candidates for communal constituencies. We endorse this suggestion, and we hope that it may help in the course of time to break down the barrier which at present exists.

Women's seats.

454. It will be observed that three of the ninety-four non-communal seats are, under the proposals in the Memorandum, to be reserved for women. The representative of the women of Burma informed us, however, that Burman women did not desire this reservation, and we are satisfied that this is so. In these circumstances the question arises whether these three seats should be eliminated altogether or assigned elsewhere, possibly as an addition to the representation of special interests. We are of opinion on the information before us that the special interests are already adequately represented, and that the total number of the House of Representatives should therefore be 130 instead of 133.

Franchise for House of Representatives.

455. We agree generally with the proposals in the Memorandum[1] for the franchise for the Lower House, which will result in a substantial increase in the electorate. The present electorate of Burma consists of 1,956,000 men and 124,000 women; and the

[1] Records [1933–4] A1 p. 10.

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proposals in the Memorandum will increase this number to 2,300,000 men and 700,000 women, or 23·26 per cent. of the total population, as against 16·9 per cent. The increase in the number of women voters is considerable ; the proportion to the adult female population is increased from 4 per cent. to about 21 per cent., and the proportion of women to men voters from 1 : 14·3 to 1 : 3·5. In British India our recommendations would increase the number of voters from 3 per cent. of the total population of British India to 14 per cent., and the proportion of women to men voters from 1 : 20 to between 1 : 4·5 and 1 : 5 ; if all women eligible to vote apply to be put on the register. The proportionate increase in the Burmese electorate is thus rather less than that in the case of India, both in the case of men and women. The reason for this is that the number of voters on the register in Burma is already considerably higher in proportion to population than in India, and that the standard of living is considerably higher in Burma than in India, which means that a property qualification results in a larger proportion of the population being placed on the roll. We are informed that, despite this large extension of the franchise, the Government of Burma regard the proposals as administratively practicable, and, that being so, we accept them. The representative of the women of Burma urged that a wifehood franchise should be included, as in India ; and, having regard to the exceptional position which women hold in Burma, we should have been glad to give favourable consideration to this suggestion. We are informed however that the inclusion of a wifehood franchise would increase the total electorate by over 40 per cent. and we hesitate to recommend so near an approach to adult franchise at present.

Powers of Legislature.

456. The proposals of the Burma White Paper with regard to the powers of the Legislature follow the same lines as those in the case of India and need no further comment except on two points. As in the case of the Indian Legislatures the Burma Legislature will have no power to make any law affecting the Army, Air Force, and Naval Discipline, Acts ; but it is likely that for some time to come Indian forces will be serving in Burma the members of which are subject to the corresponding Indian Acts, and it is clear that it should also be beyond the competence of the Burma Legislature to repeal or amend any of the latter Acts. There will also, as in British India, be certain restrictions on the power of the Burma Legislature to pass discriminatory legislation affecting persons domiciled in the United Kingdom ; but questions will also arise as to their power to pass such legislation affecting persons domiciled in British India. This, however, is a matter which will be more conveniently discussed later when the subject of discrimination in general is being considered.[1]

Relations between the two Houses.

457. Since the functions of the Government in Burma after separation will extend to all matters which in India will fall within the Federal as well as within the Provincial sphere, it would seem at first sight that the Senate in Burma should correspond, whether

[1] *Infra* para. 473.

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in size or in the extent of its powers, rather to the Federal Council of State than to any of the Provincial Legislative Councils. If the House of Representatives has 130 members, the Senate, on the Indian analogy, should have a membership of nearly 100. The proposals in the Burma White Paper, however, contemplate, as we have said, a Senate of 36 members only; and we understand that this accords generally with the views expressed at the Burma Round Table Conference. We do not think that any larger body would be appropriate to the circumstances of Burma; but, that being so, it must follow that the Senate must be regarded as a body having revisory and delaying powers like the Upper House in an Indian Province, rather than one possessing substantially equal powers with the Lower House, like the Council of State. Conflicts between the two Houses should be resolved in the manner which we have recommended in the case of the Indian Provinces[1], with this modification, that it should be permissible for a Bill passed by the Senate, but rejected by the House of Representatives, also to be referred for decision to a Joint Session.

(3) Special Subjects

(a) *Excluded and Partially Excluded Areas*

Distinction between Excluded and Partially Excluded Areas.

458. The Burma White Paper proposes[2] that Excluded Areas should be reserved to the exclusive administration and control of the Governor, but that Partially Excluded Areas should pass under the control of Ministers, though the Governor will be declared to have a special responsibility in respect of the administration of these areas. The Excluded Areas are to be those areas which have been under the existing law notified as " backward tracts " ; the Partially Excluded Areas are to be those which are at the present time not removed from the jurisdiction of the Burma Legislature, but which have been excluded from the operation of the Burma Rural Self-Government Act and do not return members to the Legislative Council. The area comprised in the first category extends to 90,200 square miles, with a population of approximately 1,900,000; the second to 23,000 square miles, with a population of approximately 370,000; and when it is remembered that the total area of Burma is 234,000 square miles, it will be seen that the Excluded and Partially Excluded Areas together comprise very nearly one-half of the area of the whole Province, though they are only inhabited by about one-seventh of the population. Various questions arise with regard to these areas, which it is necessary to consider in some detail.

Arbitrary nature of present classification.

459. In the first place, the distinction which is at present drawn between the Excluded and Partially Excluded Areas appears to be to some extent an arbitrary one, and we find it difficult to understand why some of the Partially Excluded Areas have never been notified as backward tracts; though perhaps the reason may be, in some

[1] *Supra*, para. 150.
[2] Burma White Paper, Proposal 10.

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cases at any rate, that they are of so primitive a character that they have remained practically unadministered and it was therefore a matter of indifference whether they were classified in one category or the other. The Secretary of State's Memorandum,[1] which we understand reflects the views of the Government of Burma, suggests that, where an area has never been formally declared a backward tract and does not consist exclusively of hill districts, it is undesirable to withdraw it from the scope of Ministers and the Legislature, and that it should therefore continue to be regarded as a Partially Excluded Area only. We cannot accept this suggestion, nor do we agree that the omissions of the past should necessarily be perpetuated in the future. Such information as we have leads us to think that the Salween district should certainly become an Excluded Area. With regard to the others, our information is not precise enough to enable us to make detailed recommendations; but we are of opinion that the Government of Burma should be requested to examine the whole question *de novo* and to advise whether, notwithstanding the present legal position, any districts which it is proposed should form part of a Partially Excluded Area are of such a character that their notification as backward tracts would be justified, if the matter were at large.

Difference between Excluded Areas and rest of Burma one of kind and not of degree.

460. We have no doubt at all that the Excluded Areas should remain under the exclusive administration and control of the Governor. The Joint Memorandum of the Burman Delegates expresses the opinion that there should be no wholly Excluded Areas except those included in the Shan States Federation; but the arguments advanced in support of this opinion seem to us to misapprehend entirely the reasons which underlie the proposals in the Burma White Paper. We do not think that we can do better than quote a passage from the Secretary of State's Memorandum, with which we find ourselves in complete agreement.

> "It is important to remember that the word 'backward,' which is the technical term used to denote areas notified under Section 52A of the Government of India Act, 1919, may lead to a serious misunderstanding of the position. It suggests that the difference between these tracts and the ordinary districts is one of degree of development which will necessarily tend to disappear with time. This is far from the whole truth. The existing backward tracts are hill districts lying on the north, west and east of Burma, and resembling in their general characteristics the backward tracts along the eastern border of Assam. Their inhabitants, mainly Kachins, Chins and Shans, differ radically from those of the plains in race, religion, law, customs, and language, and most of these differences will be bridged, not by a simple process of development, but by the much slower and more difficult process of abandonment of their

[1] Records [1933–34], A1, p. 95.

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existing culture. It is the absence of common outlook and aspirations which is perhaps the main factor militating against the assimilation of the backward tracts in the hills in the political institutions of the plains. The history of the relations between the backward tracts and the plains is one of opposition and hostility, and the main reason for undertaking the administration of the tracts was the protection of the plains. Such feelings of antipathy die slowly in remote places; and the inhabitants of the backward tracts are still devoid of any real sense of community, political or otherwise, with the plains. Further, the inhabitants of the backward tracts are ignorant of conditions in the plains and those of the plains are equally ignorant of conditions in the tracts. It is true that, since the annexation of Upper Burma, civilising influences have been at work. The Kachins come down with confidence from their hills to market in the villages of the plains and mix more freely with the plainsmen, and in some areas they have come under the influence of missionaries. Kachins and Chins also are recruited to the Burma Rifles and Burma Military Police. But the fact remains that the plains and the backward tracts are different worlds with no adequate mutual knowledge and no adequate contact by which such knowledge may be readily diffused. The 'backward tracts' in Burma are admittedly not ripe for representative institutions and have not, it is believed, shown any desire for them. The time will not be ripe for such a change until conditions in the tracts have undergone a fundamental change and until their inhabitants have learned to feel that they are part of a larger political whole. Such a state of affairs is not likely to come to pass within any period that can at present be foreseen. Meanwhile, the Provincial Legislature, however capable of legislating for the plains which it knows and represents, is clearly not qualified to legislate for people it does not represent and for conditions of which it has no adequate knowledge. Added to this is the consideration that law in the backward tracts is mainly customary law supplemented by simple regulations issued under Section 71 of the Government of India Act—a very refractory substance for amalgamation with Acts of the Legislature."[1]

The Federated Shan States.

461. The Joint Memorandum of the Burman Delegates draws attention to certain financial arrangements in connection with the Federated Shan States, and recommends that the contribution from Burma revenues to those States should cease and that the States should be required to pay their share of the cost of defence and general administration. We think that the Delegates are under some misapprehension in this matter, for we are informed that no such contribution has been made for the last two years, and that there

[1] Records [1933–34], A1, p. 97.

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is no intention of renewing it. We understand the intention to be that after separation the Shan States should be credited with a share of receipts from customs dues proportionate to the consumption of dutiable articles in their area, and with a similar share of income tax and other taxes which are at the present time central sources of revenue, but which will, after separation, be levied in Burma for the purposes of the local Government. The Shan States will in their turn contribute a fixed sum representing the share fairly allocable to them of central expenditure which will in future be borne by Burma, and of the cost of general administration from which the States derive benefit equally with the rest of Burma. This appears to us a reasonable arrangement. We should perhaps explain that the Shan States, though British territory, are a quasi-autonomous area administered by the Shan Sawbwas or Chiefs under the general supervision of the Governor, and that since 1922 they have been formed into a species of Federation for certain common purposes. The finances of the Federation have always been kept distinct from the provincial finances of Burma, and we think it desirable that this arrangement should continue. Special provision for this purpose will, we think, be required in the Constitution Act; and we are of opinion (1) that the share of revenue which the Shan States are to receive, as indicated above, and the contribution which they are to make to Burma revenues, should be fixed from time to time by Order in Council; (2) that the States' share of revenue, when fixed, should be a non-votable head of expenditure appropriated for the purposes of the administration of the States; and (3) that the contribution of the States should not be paid directly to Burma revenues but allocated to the Governor for the same purposes. The Burman Joint Memorandum suggests that the financial settlement between the Shan States and Burma (i.e. the determination of the share of revenue and of the States' contribution) should be referred to an impartial tribunal and should not be left to be dealt with by the Governor. We understand that in fact a committee of three officers, one representing Burma, one the Shan States, with an independent chairman, has already been set up for the purpose of advising the Governor on this matter, and in these circumstances we do not think that any useful purpose would be served by the appointment of an extraneous tribunal.

Financial arrangements for Excluded Areas.

462. We understand the Burman Delegates also to suggest that the financial arrangements for other Excluded Areas should be the same as those for the Shan States, that their expenditure should be met out of their own revenue, and that they should have a budget separate from the general Burma budget. There does not seem to us to be any true analogy between the two cases. The Shan States are a compact area, and for all common purposes form a single organised administrative unit; this cannot be said of any of the other Excluded Areas. We think therefore that the Burma White Paper rightly proposes that the money required for the

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administration of those areas, apart from the Shan States, should come from Burma general revenues, and should be a non-votable head of expenditure. We may, however, draw attention to the fact that the forests in the Excluded Areas are at the present time, and will continue to be, under the administration of the Forest Department, which since 1923 has been one of the transferred departments; and the Excluded Areas make a substantial contribution through this channel to the general revenues of Burma. We think that the restrictions on the powers of the Legislature, both in regard to the application of enactments passed by it and in regard to questions and resolutions, which we have recommended elsewhere in regard to similar areas in British India, should apply in regard to the Excluded Areas and Partially Excluded Areas of Burma.

Karenni States and Namwan.

463. We have mentioned previously the Karenni States, an area of 4,000 square miles with a population of 64,000 which lies on the eastern border of Burma and is not British territory. There is also a small non-British enclave known as the Assigned Tract of Namwan, which is held on a perpetual lease from China in order to facilitate frontier transit questions. It is proposed that these two areas shall be treated on the same footing as Excluded Areas, and that the trifling sums required for administrative purposes in connection with them shall be treated as expenditure on an Excluded Area. In view of the smallness of the areas involved, this seems a convenient arrangement; but we assume that, since they are not British territory, it will still be necessary to legislate for them by means of Foreign Jurisdiction Act procedure.

(b) *The Public Services*

Proposals generally the same as for Indian Services.

464. The proposals in the Burma White Paper[1] on this subject are substantially the same *mutatis mutandis* as those in the case of India, and we consider that the recommendations which we have made in respect of the Public Services in India[2] should similarly apply *mutatis mutandis* in respect of Burma. In the following paragraphs, therefore, it is only necessary to draw attention to one or two special points. The services in Burma which will in future correspond to the Indian Civil Service and the Indian Police will necessarily have different designations; but present members of the Indian Civil Service who are serving in Burma have informed us of their desire to remain members of the Indian Civil Service, seconded for service under the Government of Burma and to retain all the rights and privileges of that service. If we correctly understand this request to mean that the officers in question desire that, though no longer subordinate in any degree to the Governor-General of India in Council, they should still be entitled to describe themselves as members of the Indian Civil Service, to which they were in fact recruited, we see no objection to acceding to their desire. As

[1] Burma White Paper, Proposals 84–99.
[2] *Supra*, paras. 274–312.

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regards the request to retain the rights and privileges of that Service, we note that the Burma White Paper proposes, rightly in our opinion, that officers serving in Burma who were appointed by the Secretary of State shall be protected in existing rights and that the Secretary of State shall be empowered to award such compensation as he may consider just and equitable for the loss of any of them. In the case of Central Service officers now serving in Burma, it is proposed that those who were recruited by the Government of India for service in Burma alone should be compulsorily transferred to the service of the Government of Burma, but that those who were recruited either by the Secretary of State or by the Government of India without special reference to service in Burma should only be liable to transfer to the Government of Burma with their consent and the consent of the authority who appointed them. This seems a reasonable distinction to draw, and we approve it.

Ratios of European and Burman recruitment.

465. There is a matter of importance to which it will be convenient to refer at this point, namely, the principles on which recruitment to the Services, which in Burma after separation will correspond to the All-India Services, should be based. The Statutory Commission[1] when recording in general terms its views as to the Government of a separated Burma, laid great stress on the importance of building up these Services in the tradition of the All-India Services which they will replace, and said: "The pace of Burmanisation must be decided on its merits." The ratios of European and Indian recruitment to the Indian Civil Service and Indian Police which were approved in 1924 on the recommendation of the Lee Commission were designed to produce an equality of Europeans and Indians (in which term Burmans are included for this purpose) for India as a whole, including Burma, by 1939 in the Indian Civil Service and by 1949 in the Indian Police. The basis of calculation was an All-India average, and it has always been recognised that whereas by the dates mentioned there will be more Indians than Europeans in those Services in some Provinces, in others there will be fewer. Burma falls in the latter category. From figures which have been laid before us showing the change in ratio in the Indian Civil Service in Burma during the last decade, it is clear that an equality of Europeans and Burmans is unlikely to be attained by 1939; nor, we are informed, is equality likely to be attained in the Indian Police in Burma by 1949. Any attempt to expedite the attainment of such equality by sacrificing the standard required of recruits would be destructive of the principle on which the Statutory Commission laid such emphasis, and might well be disastrous to Burma. We are of opinion that the proportion of Europeans and Burmans in the Services which in a separated Burma will take the place of the Indian Civil Service and the Indian Police will be a relevant consideration in deciding when the projected enquiry[2] into the question of future recruitment should take place

[1] Report, Vol. II, para. 225.
[2] Burma White Paper, Proposal 93; cf. *supra* para. 298.

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for Burma; and we wish to endorse the opinion held by the Statutory Commission in the passage cited that, in the meantime, the important thing in Burma's interest is to preserve the standard of recruitment without too close a consideration for the early attainment in Burma of what was no more than an average figure calculated for the whole of India without strict regard to differing conditions in differing Provinces.

Burma Frontier Service.

466. Burma has one Service which has no exact counterpart in India, viz., the Burma Frontier Service. This is now controlled and recruited by the Local Government, but it includes certain appointments the incumbents of which enjoy rights guaranteed by the Secretary of State. We approve the proposal in the Burma White Paper that this Service should be recruited and controlled by the Governor in his discretion, since most of the officers who belong to it would be serving in Excluded Areas under the control of the Governor.[1]

Medical and Superior Railway Services.

467. When the Burma White Paper was first published, the question of continued recruitment by the Secretary of State to the Medical and the Railway Services was still under examination. We understand, however, from the subsequent Memorandum submitted to us by the Secretary of State that as regards the Railway Services the intention now is that the proposed statutory Railway Board for Burma shall, in conjunction with the Public Service Commission, control recruitment.[2] We have already recommended that recruitment for the Railway Service in India should be in the hands of the new Railway Board, and we see no reason why the same principle should not be applied also in the case of Burma. As regards the question of recruitment to the Medical Service, we are informed that this matter is still under consideration, and we have not sufficient information before us to make any considered recommendation; but we are disposed to think that for the time being some recruitment by the Secretary of State of European medical officers must continue.

The Forest Service.

468. We desire to draw attention to what we have already said on the subject of the Forest Service in India and the need for the co-ordination of research.[3] Our recommendations with regard to the Forest Service in the Indian Provinces are not of course applicable as they stand to the Forest Service in Burma; but we hope nevertheless that arrangements may be made whereby the Central Institute for Research and the Training College at Dehra Dun will be available for entrants from Burma. We hope too that nothing will be done which might exclude the possibility of an interchange of officers between the Forest Services of Burma and India; and we refer in this connection to certain of the recommendations of the Burma Sub-Committee of the First Round Table Conference.

[1] Burma White Paper, Introd. para. 22.
[2] Records [1933–34], A2, p. 11.
[3] *Supra*, paras. 305–6.

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469. It is proposed that there should be a Public Service Commission for Burma.[1] This we regard as an essential provision, and we think that the Constitution Act should in this respect follow the Indian model[2]. The Public Service Commission.

470. This is a convenient point at which we may refer to questions connected with the domiciled community, including Anglo-Indians and Anglo-Burmans, in respect both to education and to their fitness for appointments in the various Services—the latter depending very greatly on the efficiency of the former. Owing to the fact that the progress of English education among the Burmese was far slower than in India, Anglo-Indians are still to be found in some of the higher posts in the Provincial and subordinate Services in Burma, in the teaching profession, in the higher clerical posts, as well as in the Central Services still under control by the Government of India. Over the whole Province the recent census shows that there are altogether 19,200 Anglo-Indians, of whom just over half are concentrated in Rangoon. Hitherto their chief competitors have been Indians imported from India, and not Burmese at all, and it is obvious that any rapid drop in the number of Anglo-Indians employed in the Land Records and Excise Departments, as well as in the present Central Services which will be transferred to the control of the Government of Burma, would inflict an unmerited blow on this community, for they would not merely lose these posts but also the means which have enabled them to pay for the education of their children. It is important therefore for this, among other reasons, that the standard of European education should be maintained. In India, few Indian parents wish to send their children to Christian schools for European and Anglo-Indian children; but for some years past Burmese parents have shown an increasing liking for schools of this kind, and the percentage of children of other races who have been admitted into these schools has increased considerably in the last ten years. The teachers in these schools have to be paid higher salaries, and they fulfil the natural wish of European and Anglo-Indian parents that their children should be brought up in a Christian school and taught by teachers whose mother-tongue is English. If, therefore, pupils of other races and creeds should, under the new Constitution, be further increased, the whole character of these institutions will be practically destroyed. It was represented to us that the Anglo-Indians felt that the tests imposed upon Anglo-Indian children in the matter of proficiency in Burmese tended to be too severe upon children whose mother-tongue was English, and that they were thereby prejudiced in the matter of becoming qualified for employment in the Public Services. These are matters upon which it is not possible for us to enter in any detail, but we consider that both the education and the employment of Anglo-Indians should engage the special attention of the Governor in order that this Anglo-Indians and Anglo-Burmans.

[1] Burma White Paper, Proposals 100–104.
[2] *Supra*, paras. 313–4.

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deserving class should not be subjected to any handicaps either in the quality of their education or their eligibility for posts in the Government service. It would further be necessary for regulations to be made laying down the percentage of appointments in Railways, Posts and Telegraphs, and the Customs' Service, which could fittingly be reserved for members of the Anglo-Indian community.

(c) *Commercial and other forms of discrimination*

Discrimination as between Burma and India.

471. In so far as this is a matter between the United Kingdom and Burma, the proposals in the Burma White Paper, supplemented by a subsequent Memorandum submitted to us by the Secretary of State,[1] are the same as those in the case of India, and we approve them subject to the general application to the case of Burma, *mutatis mutandis*, of the modifications which we have made in the corresponding proposals originally submitted to us in relation to India. In particular we recommend that there should be imposed on the Governor of Burma an additional special responsibility corresponding to that which we have recommended[2] should be imposed on the Governor-General of India for the prevention of discriminatory or penal treatment of imports from the United Kingdom. The Burma White Paper and the Secretary of State's Memorandum, however, deal also with the question of discrimination as between India and Burma after the separation of the two countries, and this raises certain problems of its own.

Penal discrimination against imports to and from Burma and India.

472. The general principle underlying the proposals submitted to us in this regard is that, inasmuch as the association between India and Burma in the last 50 years has been, broadly, of a similar nature to that which has been built up over a longer period between the United Kingdom and India, Indians should be afforded in Burma, generally, the same measure of protection in regard to their business avocations and commercial undertakings as we have recommended for United Kingdom subjects. We think that this is right. Pursuing this principle, we think that the additional responsibility which, as we have mentioned in the preceding paragraph, should be laid upon the Governor to protect imports into Burma from the United Kingdom from penal or discriminatory treatment, should extend to the protection of imports from India into Burma. And, in order that Burma should not be exposed, or feel that she is exposed, by this recommendation to unequal treatment in this respect, we think that, reciprocally, the special responsibility with which the Governor-General of India is to be charged under our recommendation should extend to the case of the products of Burma imported into India.

[1] Records [1933–34], A2, p. 1.
[2] *Supra*, para. 345.

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473. The Memorandum to which we have referred deals also with a particular problem affecting the right of entry of Indian subjects into Burma. It points out that there are in Burma over 1,000,000 persons either domiciled in India or originating from some Indian Province. Some are in the permanent service of the Government, but the greater number are labourers who only intend to stay in Burma for a few years and who by accepting smaller wages tend to oust the indigenous labourer and to lower his standard of living. Others are Indian money lenders who advance money on the security of agricultural land and crops, and whose operations, especially in times of depression, are such as to bring about an extensive transfer of ownership from an indigenous agricultural population to a non-indigenous and non-agricultural class. It is clear that in these circumstances it would be unreasonable to include in a new Constitution for Burma provisions which would in effect give to all persons domiciled in India an unrestricted right of entry into Burma ; and it is accordingly proposed that it should be competent for the Burma Legislature to enact legislation restricting or imposing conditions of entry into Burma in respect of all persons other than British subjects domiciled in the United Kingdom. We think that this is right; but we agree with the further proposal which is made by the Secretary of State that, with a view to preventing the imposition of vexatious or unreasonable restrictions or conditions for the entry of Indians of good standing into Burma, the introduction of any legislation regulating immigration into Burma should be subject to the Governor's prior consent. Nevertheless, we hope that these matters will ultimately come to be arranged between India and Burma on a conventional basis, and we refer to earlier observations which we have made on this aspect of the subject. We have also expressed the opinion elsewhere that it may be desirable that any temporary Trade Agreement made between the existing Governments of the two countries with a view to tiding over the difficult period immediately after separation, when the two new Governments will probably be too fully occupied with other matters to enter into a long and intricate negotiation, should also include provisions relating to emigration and immigration.

Position of Indians in Burma.

474. There are certain legal restrictions in force at present on the right of persons of non-Burman birth or domicile to compete for certain public appointments or to qualify for the exercise of certain professions ; and it is right that these should be retained. As regards the future, the power of the Burma Legislature to impose conditions or restrictions on entry into Burma should prove a sufficient safeguard. Subject to the above modifications, we are of opinion that the question of discrimination as between India and Burma should be dealt with on the same lines as that of discrimination between India and the United Kingdom. But the separation of Burma from India will create a special category of persons in Burma of United Kingdom domicile for whose protection in India provision will, we think, require to be made in the Constitution of India rather

Existing restrictions.

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than that of Burma. We refer to the case of companies established already in Burma with United Kingdom personnel and United Kingdom capital. Such companies have established themselves in Burma as a Province of British India and we think that it would evidently be inequitable if, after the separation of Burma, they are in a less favourable position in respect of their operations in British India than a company established at the same time and under the same conditions in, say, Bombay or Bengal.

Medical qualifications.

475. As regards professional qualifications, other than medical, we have nothing to add to what we have already said in the case of India. As regards medical qualifications, the position is different. A local Burma Act at present entitles any person holding a British or Indian medical qualification to be enrolled on the Medical Register in Burma, but also empowers the Burma Medical Council to refuse to register any practitioner who holds only a qualification conferred in a Dominion or foreign country which does not recognise Indian medical degrees. The recent action by the General Medical Council, to which we have referred elsewhere, in withdrawing their recognition of Indian medical diplomas, did not affect Burma specifically, since we understand that at that time there was no authority in Burma by which such diplomas were granted; but we are informed that diplomas are now granted by the University of Rangoon. The Indian Medical Act, 1933, which sets out the Indian diplomas which entitle their holders to be placed upon the Indian register does not include among them any diploma granted in Burma, but contains provisions enabling Rangoon diplomas to be included in the list, if the Indian Medical Council are satisfied after investigation that the standard of proficiency prescribed by the University of Rangoon is adequate. According to our information, however, the procedure prescribed by the Act will take some time, and it is uncertain when the Rangoon diploma will in fact be admitted to the list; and in these circumstances the position is one of some doubt and obscurity, especially as the Indian Act will obviously require some modification in its application to Burma after the separation of the two countries.

Suggestions for future.

476. We think that all persons at present practising medicine in Burma by virtue of a United Kingdom or Indian qualification ought in any event to have that right assured to them.[1] As regards the future, we hope that it will eventually be found possible by means of reciprocal arrangements between the General Medical Council and the Indian Medical Council on the one hand and the Burma authorities on the other to arrive at a solution satisfactory to all concerned. In the meantime we think that statutory provision should be made to secure to holders of United Kingdom and Indian medical qualifications which are recognised by the General Medical Council the right to be enrolled on the Medical Register in Burma. The precise form which the provision should take will require

[1] Cf. *supra*, para. 358.

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examination, but we think that reciprocal arrangements should be made by which the medical degrees granted by Rangoon University, if and when recognised by the Indian Medical Council and the General Medical Council, would receive a similar measure of protection in India and in the United Kingdom to that which we think suitable for United Kingdom and Indian qualifications in Burma.

(d) *The Railway Board*

Proposals for a Railway Board.

477. The Secretary of State has furnished us with a Memorandum containing proposals for the constitution of a Railway Board to manage the Burman railways after separation.[1] This follows in its main outlines the proposals which we have already discussed for a Railway Authority in India; but the problem is a very different one in Burma, where the railway system consists only of some 2,000 miles of railway, and where there are no such complications as arise in India from the existence of company-owned railways or railways belonging to Indian States. Accordingly, while the Indian Railway Board is more correctly described as a Railway Authority, the Railway Board in Burma is intended to be, in the words of the Memorandum, "a Board of Directors for the one railway system owned by the State." Agreeably with this conception, it is proposed that the chief executive officer of the railways shall be ex-officio President of the Board.

Modifications suggested.

478. We agree generally with the proposals in the Memorandum, subject to the following modifications. We do not think that the Financial Adviser should be a member of the Board, for the same reasons which in our view make it undesirable that he should also be one of the Governor's Counsellors, since his duty and interest might at times be in conflict. We think, nevertheless, that there should be a member of the Board with special financial experience. Secondly, it has been represented to us that the proposed ineligibility for membership of the Board of persons who have contractual relations with the railways would in the case of Burma unduly restrict the field from which suitable members might be selected. We are informed that the Government of Burma recognize the force of this contention, and suggest the inclusion of provisions similar to those which are to be found in the Rangoon Port Act, the effect of which is to make a *personal* interest in a contract a disqualification either for membership or for participation in a discussion of matters relating to such a contract. This suggestion merits, we think, favourable consideration. Thirdly, it seems to us that the Railway Board in Burma ought to be in a position to begin its operations contemporaneously with the establishment of the new Government, and that legislation for this purpose will therefore be necessary before

[1] Records [1933–34], A2, p. 7.

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the separation of the two countries. It would obviously be inappropriate for the present Legislature in India to enact such legislation, and we think therefore that it must be enacted in the Constitution Act itself, though it may well be found convenient to leave some of the detailed provisions to be prescribed by Order in Council.

(e) *Constituent powers; the Judiciary; Audit and Auditor-General; Advocate-General*

Constituent powers, etc.

479. The recommendations which we have made on these four subjects in the case of India[1] will, we think, be equally appropriate, *mutatis mutandis*, in the case of Burma. But as Burma after separation will be a unitary State and will not be within the jurisdiction of the Indian Federal Court, we think that an appeal should lie as of right to the Privy Council from the High Court in any case involving the interpretation of the Constitution Act. We take this opportunity to record our opinion that the recommendations which we have made elsewhere[2] for the prescription of English as the language of the High Courts in India and the use of English for the conduct of business in the Indian Legislatures should apply equally to the case of the High Court and the Legislature in Burma. As regards audit arrangements, it is evident that Burma will require after separation her own audit system. As regards Home Audit, however, it may well be found that the amount of Burma business transacted in London will not be sufficient to justify the appointment of a separate officer as Home Auditor, and in that event we think that some arrangement should be made whereby the Auditor for Indian Home Accounts should also act in an agency capacity for Burma. We think that liberty should be afforded in the Act for the new Burma Government to establish a High Commissioner of its own in London if it finds it necessary to do so; but we foresee the possibility that the amount of business requiring to be transacted in London on behalf of the Government of Burma may be so small as not to justify, at the outset, the expense of establishing such an office; and we think that it might be well to examine the possibility of the functions of such an official being undertaken by some other authority on an agency basis for the time being.

(f) *The Secretary of State and his Advisers*

The Secretary of State.

480. The establishment of responsible government in Burma necessarily implies, as in the case of India, the disappearance in relation to Burma of the corporation known as the Secretary of State in Council. It follows that there should be a transference of the rights, liabilities and obligations incurred by the Secretary of State in Council in respect of Burma to the appropriate authority to be established in Burma, corresponding to the transference to the Federal or Provincial Governments in India which in an earlier passage we have suggested should be provided for in the Indian

[1] *Supra*, paras. 322–341, 374–381, 396–399 and 400–403.
[2] *Supra*, para. 373.

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Constitution. The question has been raised whether the Secretary of State for India should become in future the Secretary of State for India and Burma. The Joint Memorandum of the Burman Delegates suggests that there should be a separate Secretary of State for Burma, or else that the Secretary of State for the Dominions should hold the office. We are disposed to think that the Secretary of State for India should in future hold two separate portfolios, one as Secretary of State for India and one as Secretary of State for Burma; and we are of opinion that, though the two offices would be legally distinct, it is most desirable on practical grounds that they should be held by the same person. There is, we are convinced, no real danger that the interests of Burma would be unfairly subordinated to those of India in the hands of a Secretary of State holding the double office.

The Secretary of State's Advisers.

481. The Secretary of State, as Secretary of State for Burma, ought, we think, to have a small body of Advisers, not more than two or three at the most, to advise him on questions concerning Burma; but our recommendation in the case of India that the Secretary of State should be bound in Service matters by the opinion of his Advisers or a majority of them would not be altogether appropriate in the case of so small a body; and it is for consideration whether, where Service matters are concerned, which are and will continue to be *ejusdem generis* in India and Burma, the India and Burma Advisers should not sit together and advise jointly.

(g) *Financial adjustment between India and Burma*

Financial adjustment as a consequence of separation.

482. It is clear that on the separation of the two countries there will have to be an equitable apportionment of assets and liabilities, including under the latter head the liability for loans and loan charges which are at present a liability either of the Secretary of State or of the Government of India. The Burma White Paper contains no definite proposals as to the manner in which this apportionment is to be effected; but we assume that it will be necessary to appoint some impartial tribunal which will in the first place lay down the principles of the apportionment, leaving the application of those principles to be worked out in detail at a later date. It will be necessary to include in the Constitution Act provisions giving the force of law in both countries to the award or awards issued from time to time by the tribunal. It is also very desirable that its work should be well advanced by the time the new Government in Burma is established, and we think that steps should be taken for its appointment at as early a date as is reasonably practicable.

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FIRST APPENDIX

Proposals for Indian Constitutional Reform.

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PROPOSALS FOR INDIAN CONSTITUTIONAL REFORM

INTRODUCTION

The White Paper of December, 1931

1. In December 1931 both Houses of Parliament adopted a motion expressing approval of the Indian policy of His Majesty's Government, as announced to the Indian Round Table Conference and set out in Command Paper 3972. That policy, stated in the broadest terms, involved the prosecution of further inquiries and discussions with the object of finding a suitable basis for the conversion of the present system of government in India into a responsibly governed Federation of States and Provinces, on the understanding that the responsible Government so established must, during a period of transition, be qualified by limitations in certain directions. These limitations, commonly described by the compendious term " safeguards," have been framed in the common interests of India and the United Kingdom.

2. Having pursued their further inquiries and discussions, including a third session of the Round Table Conference, His Majesty's Government are now in a position to indicate with greater precision and in fuller detail their proposals for an Indian Constitution; and it is their intention, as indicated by the Secretary of State for India to the House of Commons on the 27th June last, to invite both Houses of Parliament to set up a Joint Select Committee to consider these proposals in consultation with Indian representatives, and to report upon them. After this Report has been laid, it will be the duty of His Majesty's Government to introduce a Bill embodying their own final plans.

The form and purpose of the present document

3. It should be made plain at the outset that although the proposals are set out below in the interests of clarity in the form of short paragraphs or clauses, the language used in so describing them must not in general be taken as representing the language which would actually be used if they were presented in statutory form. Nor must it be assumed that the present proposals are in all respects so complete and final that a Bill would contain nothing which is not covered by this White Paper. At the same time it is hoped that the Proposals, read in the light of this Introduction, will make clear the principles which His Majesty's Government have followed.

4. One further explanation of the scope of this document should be given. It is unnecessary for the present purpose for His Majesty's Government, in anticipation of the discussions in Parliament, to marshal and elaborate here the general arguments in justification of their Proposals. It is not sought in this document to do more than to explain their exact nature and intended effect.

THE FEDERATION OF INDIA

The processes involved in its formation

5. The conception of a Federation of States and Provinces, and the processes involved in its formation, necessitate a complete reconstruction of the existing Indian Constitution; these proposals are accordingly based on the assumption that the existing Government of India Act (which is a consolidation of the series of statutes relating to the government of India, the earliest of which dates from the 18th century) will be repealed *in toto*, and will be replaced by the Act which will ultimately embody the decision of Parliament, and which is in the following pages referred to as " the Constitution Act." The problems presented by the legal and constitutional reconstruction are briefly as follows.

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6. Federation elsewhere has usually resulted from a pact entered into by a number of political units, each possessed of sovereignty or at least of autonomy, and each agreeing to surrender to the new central organism which their pact creates an identical range of powers and jurisdiction, to be exercised by it on their behalf to the same extent for each one of them individually and for the Federation as a whole. India, however, has little in common with historical precedents of this kind. In the first place, British India is a unitary State, the administrative control of which is by law centred in the Secretary of State —in some respects in a statutory corporation known as the Secretary of State in Council—in whom are vested powers of control over " all acts, operations and concerns which relate to the government or revenues of India " ; and such powers as appertain to the provincial Governments in India are derived through the Central Government by a species of delegation from this central authority and are exercised subject to his control. It follows that the Provinces have no original or independent powers or authority to surrender.

7. The States, on the other hand, though they are under the suzerainty of the King Emperor, form no part of His Majesty's dominions. Their contact with British India has hitherto been maintained by the conduct of relations with their Rulers through the Governor-General in Council. Moreover, since Parliament cannot legislate directly for their territories, the range of authority to be conferred upon the Federal Government and Legislature in relation to the States must be determined by agreement with their Rulers ; and the States have made it plain that they are not prepared to transfer to a Federal Government the same range of authority in their territories as it is expedient and possible to confer upon it in relation to the Provinces. The position will therefore necessarily be that in the Indian Federation the range of powers to be exercised by the Federal Government and Legislature will differ in relation to the two classes of units which compose it.

8. For the purpose of meeting these conditions, it is proposed to set up a Federal Legislature, consisting of elected representatives of British India and of representatives of Indian States to be appointed by their Rulers, and a Federal Executive consisting of the Governor-General representing the Crown, aided and advised by a Council of Ministers, who will be responsible (subject to the qualifications to be explained later) to the Legislature so composed, and to endow these authorities with powers and functions in relation to British India and with such powers and functions in relation to the States as the States-members of the Federation will formally accept as being of full force and effect within their territories. Full liberty will, of course, be reserved to the Crown to refuse to accept the accession of any State to the Federation if it is sought on terms incompatible with the scheme of Federation embodied in the Constitution Act.

9. On the repeal of the present Government of India Act all powers appertaining and incidental to the government of British India will vest in the Crown ; and the transition from the existing constitutional position, briefly indicated above, will be effected by making them exercisable on behalf of the Crown by the Governor-General, the Governors, and other appropriate authorities established by or under the Constitution Act. The powers vested in the Crown in relation to the States, and now exercisable through the Governor-General of India in Council, except in so far as they are requisite for Federal purposes and the Rulers have assented to their transfer to the appropriate Federal authority for those purposes, will be exercised by the Crown's representative in his capacity of Viceroy, and these powers will be outside the scope of the Federal Constitution.

10. The office of Governor-General of the Federation will be constituted by Letters Patent, and that document will set out the powers which the Governor-General will exercise as the King's representative ; that is to say, the powers expressly conferred on him by the Constitution Act and such other

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powers, not inconsistent with that Act, as His Majesty may be pleased to delegate to him. The Governor-General himself will receive a Commission under the Royal Sign Manual appointing him to his office; and he will exercise and perform the powers and duties attaching to his office in such manner as may be directed by the Instrument of Instructions which he will receive from the King. The same arrangements *mutatis mutandis* are contemplated in the case of the Governor of each Province.

It is intended that the Viceroy shall in future be recognised as holding a separate office which will also be constituted by Letters Patent, and the latter will serve as the means of conferring on the Governor-General, in the capacity of Viceroy, the powers of the Crown in relation to the States outside the Federal sphere. With these the Constitution Act will not, of course, be concerned.

11. So far as British India is concerned, the first step requisite in the transfer from a unitary to a federal polity is to define by Statute the jurisdiction and competence of the Federal and Provincial authorities respectively —or, in other words, to create Provinces with an autonomy of their own, and to assign to them a defined and exclusive share of the activities of government. It is accordingly proposed to declare that the executive power and authority in each of the Governors' Provinces is vested in the King and is exercisable by the Governor as the King's representative; to constitute a Council of Ministers to aid and advise the Governor, and a Legislature of elected representatives of the provincial populations to whom the Ministers will be responsible; and to define the competence of this Legislature (and of the Federal Legislature) in terms of subjects, some of which will be exclusively assigned to the Federal and Provincial Legislatures respectively, while over others both Federal and Provincial Legislatures will exercise a concurrent jurisdiction, with appropriate provisions for resolving conflicts of laws.

The Date and Conditions for the Inauguration of Federation

12. It will be apparent that the mere passing of the Constitution Act will not of itself suffice to bring the Federation into being. Apart from the preparatory processes required in British India, which cannot be completed until the Constitution Act is on the Statute Book, and which must inevitably occupy some time—the preparation of new and enlarged electoral rolls for the Provincial and Federal Legislatures, and the demarcation of constituencies are matters in point—the final discussions with the States with regard to their Instruments of Accession and the execution of the latter cannot be undertaken until the Act which will be the basis of the Princes' accession has been passed, for until that time arrives the States will not be in possession of complete knowledge of the character and powers of the Federation to which they are asked to accede. So far as the States are concerned, His Majesty's Government propose as the condition to be satisfied before the Federal Constitution is brought into operation that the Rulers of States representing not less than half the aggregate population of the Indian States and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber shall have executed Instruments of Accession.

Prerequisites of a financial character to the inauguration of responsible Federal Government are dealt with in paragraph 32.

It is the intention of His Majesty's Government that the Federation shall be brought into being by Royal Proclamation, but that the Proclamation shall not be issued until both Houses of Parliament have presented an Address to the Crown, with a prayer for its promulgation.

13. At the same time His Majesty's Government do not contemplate the introduction of the new autonomous constitutions in the Provinces under conditions which will leave Federation as a mere contingency in the future.

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It is probable that it will be found convenient, or even necessary, that the new Provincial Governments should be brought into being in advance of the changes in the Central Government and the entry of the States. But the coming into being of the autonomous Provinces will only be the first step towards the complete Federation for which the Constitution Act will provide; and His Majesty's Government have stated that if causes beyond their control should place obstacles in the way of this programme, they will take steps to review the whole position in consultation with Indian opinion.

Provision will accordingly be required in the Constitution Act for the period, however short it may be, by which Provincial autonomy may precede the complete establishment of the Federation. The nature of the transitory arrangements contemplated for this purpose is explained in paragraph 202 of the Proposals.

The Federal Executive

14. The executive power and authority of the Federation will be vested in the King and will be exercised by the Governor-General as his representative, aided and advised by a Council of Ministers* responsible to a Legislature containing representatives both of British India and of the States. But whereas in the Provinces the Council of Ministers will be entitled, as will be seen from a later paragraph, to tender advice to the Governor on all matters which fall within the scope of provincial administration, other than the use of powers described by the Constitution Act as being exercisable by the Governor at his discretion, the transfer of responsibility at the Centre will not be co-extensive with the range of the Federal Government's activities. Certain Departments, namely, those concerned with Defence, External Affairs and Ecclesiastical administration, are to be entrusted to the Governor-General personally, and these matters he will control in responsibility to His Majesty's Government and Parliament. For example, the rights and conditions of service of the personnel of the Defence forces will continue generally to be regulated as at present. In the exercise, moreover, of certain specific powers to be conferred by the Constitution on the Governor-General, and to be expressed as being exercisable at his discretion, the Governor-General will be entitled to act without seeking advice from his Ministers. On other matters, Ministers will tender advice to the Governor-General and the Governor-General will be guided by that advice, unless so to be guided would in his judgment be inconsistent with the fulfilment of any of the purposes for which he will be declared by the Constitution Act to be charged with a "special responsibility," in which case the Governor-General will act, notwithstanding the advice tendered to him, in such manner as he deems requisite for the discharge of those "special responsibilities."

15. For the purpose of assisting him in the administration of the Reserved Departments the Governor-General will be empowered to appoint at his discretion not more than three Counsellors whose salaries and conditions of service will be prescribed by His Majesty in Council. The Governor-General will not be restricted in any way in his choice of these Counsellors; the sole consideration will be to select the individual best suited, in the Governor-General's opinion, for the office, wherever he may be found. The Counsellors will be *ex officio* members of both Chambers of the Legislature, though without the right to vote; they are not therefore included in the numbers mentioned in the following paragraphs.

The Federal Legislature

16. The Federal Legislature will be bi-cameral, the two Chambers possessing identical powers, except that Money Bills and Votes of Supply will be initiated in the Lower Chamber, and that the range of the functions of the Upper

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* For the method of appointing to the Council of Ministers, *see* Proposals, paragraph 14.

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Chamber in relation to Supply will be less extensive than those of the Lower Chamber (see paragraph 48 of the Proposals). Equality of powers necessitates arrangements made for the solution of deadlocks; the arrangements proposed are set out in paragraph 41 of the Proposals.

17. The Lower Chamber, or House of Assembly, of the Federal Legislature will consist of a maximum of 375 members, of whom 125 will be appointed by the Rulers of States-members of the Federation. The remaining 250 members will be representatives of British India and their seats will be allocated to the Provinces and to the several communities and interests in each province in the manner indicated in Appendix II. The British Indian members will be directly elected.

18. The Upper Chamber, or Council of State, will consist of a maximum of 260 members, of whom 100 will be appointed by the Rulers of the States-members of the Federation. The British Indian members, 150 in number, will, for the most part, be elected by the members of each Provincial Legislature by the method of the single transferable vote. An exception will be made in the case of those minorities (Europeans, Anglo-Indians and Indian Christians) whose representatives in the Provincial Legislatures would be insufficiently numerous to provide the necessary quota to secure representation in the Upper Chamber. The arrangements proposed for these minorities, and the numbers of seats assigned to each Province, are indicated in Appendix I. Except for these three minorities, the specific allocation of seats on a communal basis would thus be avoided. It is, however, the intention of His Majesty's Government that Muslims should be able to secure one-third of the British India seats in the Upper House; and if it is considered that adoption of proportional representation in the manner proposed makes insufficient provision for this end, they are of opinion that modificaiton of the proposals should be made to meet the object in view.

In addition the Governor-General will be empowered to nominate not more than ten members (not officials), thus providing an opportunity of adding to the Chamber a small group of the elder-statesman type.

19. The allocation of the seats among the States-members of the Federation both for the Federal Assembly and Council of State, is at present under discussion with Rulers. His Majesty's Government are accordingly unable at the moment to put forward specific proposals. But their view is that the detailed allocation of seats which will eventually be provided for in the Constitution Act should be based, in the case of the Council of State, on the rank and importance of the State as indicated by the dynastic salute and other factors, and that in the case of the Lower Chamber it should be based *in the main* on population.

The franchise for the Federal Legislature

20. Since the British Indian seats in the Upper Chamber of the Federal Legislature will be filled by indirect election by the Provincial Legislatures, no question of franchise qualifications arises, though certain specific property or other qualifications will be required in members of the Upper House.

21. The franchise of the Lower Chamber of the Federal Legislature will, for practical purposes, be the existing franchise for the present Provincial Legislatures. In Bihar and Orissa the qualifications will be changed, but the character and numerical effect will be substantially as at present. In the Central Provinces, where the existing percentage of enfranchisement is unusually low, an alternative franchise of the same character but on a wider scale has been worked out by the Local Government. The existing franchise in all provinces is essentially based on property. In adopting it (with the modifications referred to above) as the franchise for the Lower Chamber

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of the Federal Legislature it is proposed to supplement the property qualification by an educational qualification common to men and women, and, where necessary, by a differential franchise such as to produce an electorate of approximately 2 per cent. of the population of the Scheduled Castes* (hitherto known as Depressed Classes) in every province, except in Bihar and Orissa, in which the general percentage of enfranchisement is lower than elsewhere, and in the North-West Frontier Province and Sind, where the numbers of the Scheduled Castes are negligible. The ratio of women to men electors for the Federal Assembly will for practical purposes remain unchanged under the present proposals, although the number of women electors will be substantially increased and special provision will be made by the reservation of seats to secure the presence of women in the Assembly. His Majesty's Government fully appreciate the importance of a large women's electorate for the Federal Assembly and their proposal to leave the ratio of electors at the point now suggested is made only after exhaustive discussion with the Indian authorities, and in view both of the administrative difficulties involved in any further increase and of the objections to a differential franchise based on education, by the adoption of which alone any substantial addition to the women's electorate could conveniently be made in present conditions. Provision will also be made for an electorate for the seats to be provided for Commerce, Labour and other special interests in the Federal Lower Chamber.

22. The details of the franchise proposed are set out in Appendix IV. It should be emphasised that pending preparation of a. electoral roll these qualifications are inevitably to some extent stated in general terms, and that modifications of detail may be found necessary on various points once the preparation of the roll is undertaken. Registration of claimants in respect of an educational qualification will, at any rate for the first two elections, be only on application by the potential voter.† The effect of acceptance of the Proposals in question would be to enfranchise as voters for the Federal Legislature between 2 and 3 per cent. of the total population of British India. The gross total electorate would, so far as can be judged, amount to between 7 and 8 millions.

Governor-General's relations with his Ministers.

23. Although the Reserved Departments will be administered by the Governor-General on his sole responsibility, it would be impossible in practice for the Governor-General to conduct the affairs of these Departments in isolation from the other activities of his Government, and undesirable that he should attempt to do so, even if it were in fact possible. A prudent Governor-General would therefore keep his Ministers and the advisers whom he has selected to assist him in the Reserved Departments in the closest contact; and, without blurring the line which will necessarily divide on the one hand his personal responsibility for the Reserved Departments, and, on the other hand, the responsibility of Ministers to the Legislature for the matters entrusted to their charge, he would so arrange the conduct of executive business that he himself, his Counsellors and his responsible Ministers, are given the fullest opportunity of mutual consultation and discussion of all matters—and there will necessarily be many such—which call for co-ordination of policy. His Majesty's Government intend to secure the embodiment of this principle in appropriate terms in the Governor-General's Instrument of Instructions. For example, they contemplate that the Instrument should contain a direction to the following effect: " without derogation

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* The Castes in each Province scheduled as requiring special electoral protection are enumerated in Appendix VIII.

† See Introductory Note to Appendices IV and V, paragraph 3.

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from your responsibilities you shall encourage joint deliberation between yourself, your Counsellors and your Ministers, and in particular you shall make it your endeavour to secure that the views of your Ministers in relation to Defence expenditure shall be ascertained and duly weighed before the appropriations for Defence are laid before the Legislature." The Instrument of Instructions will also formally recognise the fact that the defence of India must, to an increasing extent, be the concern of the Indian people and not of the British Government alone. At the same time it will make it clear, without ambiguity, that whatever consultation between the Governor-General and his responsible Ministers may take place upon matters arising in the Reserved Departments, the responsibility for the decisions taken is the Governor-General's and the Governor-General's alone.

24. A different problem presents itself in regard to the Governor-General's relations with his Ministers outside the ambit of the Reserved Departments, *i.e.*, in the Departments which will be entrusted to the charge of Ministers responsible for the conduct of their administration of them to the Legislature. In this sphere, Ministers, as already explained, will have a constitutional right to tender advice, and the Governor-General will, except to the extent and in the circumstances explained below, be guided by that advice. The problem is so to define the circumstances in which he will be entitled to act on his own exclusive responsibility. His Majesty's Government consider that the most satisfactory course will be :—

(*a*) the enactment of provisions in the Constitution Act laying down that the Governor-General has a " special responsibility," not for spheres of administration, but for certain clearly indicated general purposes, and that for securing these purposes he is to exercise the powers conferred upon him by the Constitution Act in accordance with directions contained in his Instrument of Instructions ; and

(*b*) the insertion in the Instrument of Instructions *inter alia* of a direction to the effect that the Governor-General is to be guided by his Ministers' advice unless so to be guided would, in his judgment, be inconsistent with a " special responsibility " imposed upon him by the Constitution Act, in which case he is to act, notwithstanding his Ministers' advice, in such manner as he judges requisite for the due fulfilment of his special responsibility.

It will be apparent from what has been said in this and the preceding paragraphs, that the Instrument of Instructions will assume a position of great importance as an ancillary to the Constitution Act, and His Majesty's Government propose that appropriate arrangements shall be made to secure to both Houses of Parliament opportunity to make to His Majesty representations for amendments or additions to, or omissions from, the Instructions.

25. It remains to indicate the matters or purposes in respect of which the Governor-General should be declared, in accordance with the proposals in the preceding paragraph, to have a special responsibility in relation to the operations of the Federal Government. It is proposed that they should be the following :—

(i) the prevention of grave menace to the peace or tranquillity of India or of any part thereof ;
(ii) the safeguarding of the financial stability and credit of the Federation ;
(iii) the safeguarding of the legitimate interests of minorities ;
(iv) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests ;
(v) the protection of the rights of any Indian State ;
(vi) the prevention of commercial discrimination ;
(vii) any matter which affects the administration of the Reserved Departments.

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26. Before describing in detail the scope and purpose of the items in this list, it is desirable to explain the precise effect which is contemplated as the result of imposing upon the Governor-General these " special responsibilities." In the first place, it should be made clear that unless and until the Governor-General feels called upon to differ from his Ministers in the discharge of a " special responsibility," the responsibility of Ministers for the matters committed to their charge remains complete. To take a concrete instance, it will clearly be the duty of Ministers rather than of the Governor-General himself, to ensure that the administration of their departments is so conducted that minorities are not subjected to unfair or prejudicial treatment. The intention of attributing to the Governor-General a special responsibility for the protection of minorities is to enable him, in any case where he regards the proposals of the Minister in charge of a department as likely to be unfair or prejudicial to a particular minority, in the last resort to inform the Minister concerned (or the Ministers as a body, if they generally support the proposals of their colleague), that he will be unable to accept the advice tendered to him. Nor is it contemplated that the Governor-General, having been vested with " special responsibilities " of the kind indicated, will find it necessary to be constantly overruling his Ministers' advice. The present proposals in general necessarily proceed on the basic assumption that every endeavour will be made by those responsible for working the Constitution to approach the administrative problems which will present themselves in the spirit of partners in a common enterprise. In the great bulk of cases, therefore, in day-to-day administration, where questions might arise affecting the Governor-General's " special responsibilities," mutual consultation should result in agreement, so that no question would arise of bringing the Governor-General's powers, in connection with his special responsibilities, into play.

27. Reverting now to the list of " special responsibilities " in paragraph 25, the necessity for the items numbered (i), (iii) and (iv) follows as a matter of course from previous statements of His Majesty's Government's policy. With regard to item (vii) it is apparent that if, for example, the Governor-General were to be free to follow his own judgment in relation to Defence policy only in regard to matters falling strictly within the ambit of the department of Defence, he might find that proposals made in another department in charge of a responsible Minister are in direct conflict with the line of policy he regards as essential for purposes connected with Defence, and consequently that the discharge of his responsibilities for Defence would be gravely impaired if he accepted the advice of the Minister responsible for the charge of the other department in question. If, therefore, such a situation is to be avoided, it is impossible to secure the object in view otherwise than by expressing the Governor-General's " special responsibility " in some such terms as those indicated in item (vii).

28. As regards item (v), it should be explained that this is not intended to give the Governor-General any special powers *vis-à-vis* the States in relation to matters arising in the Federal sphere proper ; the necessary powers having been transferred by the States in their Instruments of Accession, such matters will be regulated in accordance with the normal provisions of the Constitution Act. Nor is it intended that the inclusion of this item should be regarded as having any bearing on the direct relations between the Crown and the States. These will be matters for which the Constitution will make no provision and which will fall to be dealt with by the Viceroy, who will be the Governor-General in a capacity independent of the Federal organisation. It may be, however, that measures are proposed by the Federal Government, acting within its constitutional rights in relation to a Federal subject, or in relation to a subject not directly affecting the States at all, which, if pursued to a conclusion, would affect prejudicially rights of a State in relation to which that State had transferred no jurisdiction. Or, again, policies might be proposed or events arise in a Province which would tend to prejudice the rights of a neighbouring

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State. In such cases it is evident that it must be open to the Crown, through the Governor-General or the Governor, as the case may be, to ensure that the particular course of action is so modified as to maintain the integrity of rights enjoyed by the State by Treaty or otherwise.

29. Item (vi) is intended to enable the Governor-General to deal with proposals which he regards as likely to have discriminatory effects. As regards legislative discrimination, detailed proposals will be found in paragraphs 122–124 of the Proposals. Any legislative measure, Federal or Provincial, which was inconsistent with those proposals would be invalid, and could be challenged as such in the Courts; and the Governor-General or the Governor, as the case may be, would be entitled to act otherwise than in accordance with his Ministers' advice, if he considered that such advice involved discriminatory action in the administrative sphere. The Governor-General's powers would enable him to reserve any Bill on which he had doubts.

30. The second item in the list of special responsibilities deserves to be noticed at rather greater length since it involves the whole question of what have become known as "financial safeguards." Subject to the powers conferred upon the Governor-General by this responsibility, and subject to what is stated below as regards the Reserve Bank, it is intended that the Finance of the Federation should, like all other subjects except those included in the Reserved Departments, be entrusted to the Ministers. Unless occasion arises for the exercise of the Governor-General's special powers, it will therefore be for the Ministers, and the Ministers alone, to take decisions on all such matters as the means to be used for raising the necessary revenues, for allocating expenditure in the responsible field, and for the programme of external and internal borrowing.

The service of certain obligations, *e.g.*, the service of the Debt, the salary of the Governor-General, the salaries and pensions of Judges of the Federal Court, will be a "charge" on the revenues of the Federation; other expenditure will be appropriated annually, but certain Heads* of it, in particular the expenditure on the Reserved Departments, will not require a vote of the Legislature.

31. The object of the Governor-General's special responsibility for "the safeguarding of the financial stability and credit of the Federation" is to confer on him powers to step in, if the need should arise, in the event of the policy of his Ministers in respect, for example, of budgeting or borrowing being such as to be likely in the Governor-General's opinion to endanger seriously the provision of resources to meet the requirements of his Reserved Departments or any of the obligations of the Federation, whether directly, or indirectly by prejudicing India's credit in the money-markets of the world. The definition of this special responsibility is drawn in somewhat wide terms not in order to diminish the field of responsibility of the Ministers, but owing the difficulty of giving a detailed specification of financial operations or measures which might on occasion endanger stability and call for the use of the Governor-General's powers. In order that assistance may be available to him in the discharge of this special responsibility, the Governor-General will be empowered to appoint a Financial Adviser (without executive powers), whose services would also be available to the Ministers.

It will be seen that provision is made in paragraph 147 of the Proposals that the trustee status of existing India sterling loans will be maintained and will be extended to future sterling Federal loans.

32. The proposals relating to responsibility for the Finance of the Federation are based on the assumption that before the first Federal Ministry comes into being, a Reserve Bank, free from political influence, will have been set

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* See paragraph 49 of the Proposals for full list.

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up by Indian legislation, and be already successfully operating. The Bank would be entrusted with the management of currency and exchange. His Majesty's Government and the Government of India are taking every step in their power to facilitate and expedite the establishment of a Reserve Bank on sound principles. Some, however, of the conditions necessary for the successful establishment and operation of such a bank, depending as they do on world economic conditions, are not within their control. The Report of the Committee of the third Round Table Conference on Financial Safeguards mentions the following as conditions to be fulfilled—"that the Indian Budgetary position should be assured, that the existing short-term debt both in London and in India should be substantially reduced, that adequate reserves should have been accumulated, and that India's normal export surplus should have been restored."

If a situation should arise in which all other requirements for the inauguration of the Federation having been satisfied, it had so far proved impossible successfully to start the Reserve Bank, or if financial, economic or political conditions were such as to render it impracticable to start the new Federal and Provincial Governments on a stable basis, it would, inevitably, be necessary to reconsider the position and determine in the light of the then circumstances what course should be pursued. If, unfortunately, such reconsideration became necessary, His Majesty's Government are pledged to call into conference representatives of Indian opinion.

33. Apart from the Reserved Departments, and the specified "special responsibilities" of the Governor-General outside the sphere of those Departments, there is a third category of matters in which the Governor-General will not be under any constitutional obligation to seek, or, having sought, to be guided by, ministerial advice. For this purpose certain specified powers will be conferred by the Constitution on the Governor-General and will be expressed as being exercisable "at his discretion." In this category of "discretionary powers," the precise range of which it will be impossible exhaustively to foresee until the drafting of the Constitution Act has reached completion, His Majesty's Government anticipate that the following matters will be included :—

(*a*) The power to dissolve, prorogue, and summon the Legislature ;

(*b*) The power to assent to, or withhold assent from, Bills, or to reserve them for the signification of His Majesty's pleasure ;

(*c*) The grant of previous sanction to the introduction of certain classes of legislative measures ;

(*d*) The power to summon forthwith a joint Session of the Legislature in cases of emergency, where postponement till the expiration of the period to be prescribed by the Constitution Act might have serious consequences.

Governor-General's relations with the Legislature

34. It is also a necessary corollary of what has already been said that the special powers to be conferred on the Governor-General for the purpose of enabling him to discharge his responsibilities must be similarly exercisable in his discretion. To the foregoing must, therefore, be added—

(*e*) The power to take action, notwithstanding an adverse vote in the Legislature—to be dealt with more fully below ;

(*f*) The power to arrest the course of discussion of measures in the Legislature—also dealt with below ;

(*g*) The power to make rules of legislative business in so far as these are required to provide for the due exercise of his own powers and responsibilities.

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35. It is not, in fact, sufficient merely to regulate the Governor-General's relations with his responsible Ministers, *i.e.*, to regulate matters arising in discussion amongst the members of the executive Government. It follows from previous declarations by His Majesty's Government, upon which these Proposals are based, that the Governor-General must be given powers which will enable him effectively to discharge the responsibilities entrusted to him, whether for the Reserved Departments or the "special responsibilities" indicated above, if their discharge involves action, normally lying within the functions of the Legislature, to which the Legislature will not agree. The general scheme underlying the Proposals is that, wherever the Governor-General's responsibilities for the Reserved Departments, or his special responsibilities, are involved, he should be empowered not only to act without, or, as the case may be, contrary to, the advice of his Ministers, but also to take action notwithstanding an adverse vote of the Legislature, whether such a vote relates to the passage of legislation or to the appropriation of funds.

36. But it will clearly be of importance to the fostering of the sense of responsibility in Ministers and Legislature alike that room should not be left for doubt whether in any given case the responsibility for the decision is, or is not, that of the Ministers or of the Legislature as the case may be—in other words, it is of importance that the special powers of the Governor-General should be so framed as to make it plain that the responsibility for the results of their exercise lies upon him. The necessity for the use of the Governor-General's legislative power may arise through the refusal of Ministers to be parties to a Bill, or to provisions in a Bill, which the Governor-General regards as essential to the discharge of his responsibilities, or where the Legislature rejects or fails to pass a Bill for which Ministers have accepted responsibility and which the Governor-General regards as essential; or the Legislature may alter the Bill to a form which would fail to secure the object which the Ministers and the Governor-General have in view.

37. The essential point to be secured, in both contingencies, is, as already indicated, that when the Governor-General decides that the discharge of his responsibilities necessitates a course of action to which he is unable to obtain the consent either of his Ministers or of the Legislature—or perhaps of both—the resulting enactment should not purport to be an enactment of the Legislature (as is the case with Acts which the Governor-General "certifies" under the existing Government of India Act), and further that its presentation to the Legislature should be brought about by the personal intervention of the Governor-General, that his responsibility for it should be manifest, and that Ministers should be in no way compromised by his action either with their supporters in the Legislature or their constituencies in the country. On the other hand, it would be undesirable to carry this principle to the logical extreme of placing all measures for which the Governor-General has himself to assume responsibility on the footing of Ordinances, the enactment of which involves no reference to the Legislature at all. The Governor-General's powers in this regard should therefore be such as to enable him to test opinion in the Legislature; if he finds a majority there in support of his policy no question arises of using his special powers. If he finds only a minority in the Legislature in favour of his policy, he would at all events secure that measure of moral support, but he would carry out his policy on his own responsibility without compromising either the Ministers with their supporters in the Legislature, or the latter with their constituencies. It is accordingly proposed that measures enacted by the Governor-General without the consent of the Legislature should be described as "Governor-General's Acts," and that a special form of enacting words should be employed to distinguish them from Acts "enacted by the Governor-General by and with the consent of both Chambers of the Legislature."

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38. The corresponding powers proposed for the Governor-General in the matter of supply are based upon the same principles. The Budget will be framed by the Finance Minister in consultation with his colleagues and with the Governor-General. The decision as to the appropriations required for the Reserved Departments and for the discharge of the functions of the Crown in relation to the Indian States will, of course, be taken by the Governor-General on his own responsibility, though he will be enjoined by his Instrument of Instructions to consult his Ministers before reaching any decision on appropriations for the Department of Defence. Appropriations required for the non-reserved Departments will be the responsibility of Ministers. But the proposals for raising revenue and for the appropriation of those revenues will be subject to the common constitutional rule (see paragraph 45 of the Proposals) that, as laid before the Legislature, they carry a recommendation from the representative of the Crown. If the Governor-General regards his Ministers' proposals for appropriations as insufficient to enable him adequately to fulfil any of his " special responsibilities," he will be entitled to append to the Budget statement, when laid before the Legislature, additional proposals for appropriation under any head in respect of which he regards his Ministers' proposals as inadequate. These additional proposals (if any) of the Governor-General will be distinguished as such in the Budget Statement, and whether they relate to non-votable or to votable Heads of expenditure the Legislature will not be invited to vote upon them ; in other words, the appropriations which the Legislature will be invited to vote will be those proposed by the Ministry.

39. After the Legislature has discussed the Budget as a whole and has voted upon those proposals for appropriations which are submitted to the vote, the Governor-General will be called upon to authenticate by his own signature the appropriations. In authenticating those under the non-votable heads he will be entitled to include in his authentication the sums additional to those proposed by his Ministers under those Heads which he originally included in the budget statement, or if he thinks fit reduced sums. He will be similarly required to authenticate the Grants as voted by the Legislature, and in so doing he will be entitled, if he regards this as necessary for the fulfilment of any of his " special responsibilities," to include in his authentication any sums not in excess of those by which the Legislature may have reduced the Grants submitted to it. By this procedure the Ministry on the one hand, and the Legislature on the other, will be left free to exercise their respective responsibilities in the matter of supply—the Ministers, by accepting responsibility for proposals for appropriations so far as and no farther than they are prepared to hold themselves responsible to the Legislature, and the Legislature, by recording their agreement or disagreement with Ministers' proposals : at the same time, the Governor-General, if he is unable to accept the proposals of his Ministers, or the decision of the Legislature, as consistent with the discharge of any of his special responsibilities, will be enabled to bring the resulting appropriations into accord with his own estimates of the requirements, and, if necessary, through his special legislative powers to secure that the Annual Finance Act provides him with resources which will cover the appropriations which he finally authenticates.

The procedure of authentication by the Governor-General is proposed for a double purpose :—

(i) to secure that the audit authorities should be concerned only with a single document as authority for all appropriations of revenue, by whatever legal procedure such appropriations have been made ; and

(ii) to secure that the Governor-General does not make any appropriations under his special powers without the Legislature being made cognisant thereof.

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40. It will, in addition, be necessary to arm the Governor-General with a legislative power which is capable of immediate employment in emergencies, either when the Legislature is not in session or, if it is in session, to meet circumstances which necessitate immediate action. It is, therefore, proposed to vest in him a power analogous to the existing Ordinance-making power. Indeed, in addition to such a power to be placed at the disposal of the Governor-General in his discretion for the express purpose of discharging his responsibilities for a Reserved Department, or for carrying out a "special responsibility," His Majesty's Government are of opinion that a similar power must necessarily be placed at the disposal of the Governor-General acting with his Ministers, *i.e.*, at the disposal of the Federal Government, to meet cases of emergency when the Legislature is not in session, the Ordinances resulting therefrom being limited in duration to a specified period, unless previously revoked by the Legislature after its reassembly.

41. Finally, it is proposed that the Constitution should contain provision requiring the previous sanction of the Governor-General acting in his discretion to the introduction of any Bill affecting a Reserved Department, and certain other matters set out in Paragraph 119 of the Proposals.

42. It is perhaps desirable to summarise very briefly the effect of these Proposals. The intention is that the special powers of the Governor-General properly so described, namely, his power to obtain legislation and supply without the assent of the Legislature, will flow from the responsibilities specifically imposed upon him and be exercisable only for the purpose of enabling those responsibilities to be implemented. The responsibilities to be imposed on the Governor-General by the Constitution will be of two kinds—an exclusive responsibility for the administration of the Reserved Departments, and a "special responsibility" for certain defined purposes outside the range of the Reserved Departments. On the administration of the Reserved Departments, Ministers will have no constitutional right to tender advice; nor will they have any such right to tender advice on the exercise of any powers conferred upon the Governor-General for use in his discretion. On all other matters Ministers will be constitutionally entitled to tender advice, and unless that advice is felt by the Governor-General to be in conflict with one of his special responsibilities he will be guided by it. If, in discharge of his responsibility for a Reserved Department, or of a special responsibility, the Governor-General decides that a legislative measure or a vote of supply to which the Legislature has not assented is essential, his special powers will enable him to secure the enactment of the measure or the provision of the supply in question, but Ministers will not have any constitutional responsibility for his decision.*

43. It remains only to explain that in so far as the Governor-General or a Governor is not advised by Ministers, the general requirements of constitutional theory necessitate that he should be responsible to His Majesty's Government and Parliament for any action he may take, and that the Constitution should make this position clear. In the case of a Governor the chain of responsibility must necessarily include the Governor-General.

44. The proposals indicated above have no reference to situations where a complete breakdown of the constitutional machinery has occurred. It is the intention of His Majesty's Government that the Constitution should contain separate provision to meet such situations, should they unfortunately occur either in a Province or in the Federation as a whole, whereby the Governor-General or the Governor, as the case may be, will be given plenary authority to assume all powers that he deems necessary for the purpose of carrying on the King's Government.

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* See footnote to Proposals, paragraph 6.

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The Governors' Provinces

The Executive

45. The eleven provinces† named in the margin will become autonomous units, the government of each being administered by a Governor representing the King, aided and advised by a Council of Ministers responsible to the Legislature of the Province. The Council of Ministers will be entitled to tender advice to the Governor on all matters which fall within the provincial sphere, other than the use of powers described by the Constitution Act as exercisable by the Governor at his discretion. The Governor will be guided by the advice tendered to him by Ministers, unless so to be guided would be, in his judgment, inconsistent with the fulfilment of any of the purposes for the fulfilment of which he will be declared by the Constitution Act to be charged with a " special responsibility " ; in which case the Governor will be entitled, and enjoined, to act, notwithstanding the advice tendered to him, in such manner as he deems requisite for the discharge of his special responsibilities.

Madras,
Bombay,
Bengal,
The United Provinces,
The Punjab,
Bihar,
The Central Provinces,*
Assam,
The North-West Frontier Province,
Sind,
Orissa.

Governors' special powers and responsibilities

46. As indicated above, the scheme for the Governor-General's responsibilities and powers will be applicable in all respects to the Governor in relation to his Ministers and Legislature, with the following modifications: In the provinces there will be no category exactly corresponding to the Reserved Departments of the Governor-General, though analogous arrangements are intended in order to provide for the administration of frontier areas in certain Provinces which, from the primitive nature of their populations and their general characteristics, will have to be excluded from the normal operation of the Constitution. With this exception, the Governor's special powers will flow from, and be expressed as being required in order to enable him to discharge, his " special responsibilities " only.

47. As regards the " special responsibilities " of the Governors, these will be identical with those indicated in the case of the Governor-General, save that the first item on the list will necessarily be confined in scope to the Province, or any part thereof, and not extend, as in the case of the Governor General, to India as a whole, and that a special responsibility for the financial stability of the Province will not be imposed on Governors. On the other hand, in the case of the Governors, it will be necessary to add to the list of " special responsibilities " an item relating to the execution of orders passed by the Governor-General. As the Governor-General is to be charged with the general superintendence of the actions of Governors in discharge of their " special responsibilities," and if, as has already been proposed, he is himself to have imposed upon him a " special responsibility " for the prevention of grave menace to peace and tranquillity throughout the country, it follows that he must be in a position to ensure that his instructions to a Governor are acted upon ; and consequently that the Governor must be in a position to act otherwise than on his Ministers' advice, if such advice conflicts with the Governor-General's instructions.‡ Finally, it will be necessary to impose upon the Governor a " special responsibility " for the administration of certain excluded areas, if, as seems probable, the arrangements for the administration of excluded areas involve their classification into two categories, one of which

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* With Berar, subject to conditions which are under discussion with His Exalted Highness the Nizam's Government.

† It has not been possible to include in the Proposals any relating to Burma, as Burma has, as yet, made no choice between the alternatives of separation from India, with a Constitution as outlined in Command Paper 4004/1932, or inclusion as a Governor's Province in the Federation of India.

‡ See also paragraph 55 of Introduction.

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would be placed under the exclusive control of the Governor, while the other is made subject to Ministerial control, but with an over-riding power in the Governor obtained in the manner explained in earlier paragraphs through his " special responsibility."

The special responsibilities dealt with in this paragraph have been discussed and reported on by the Round Table Conference at its third session. Apprehension was expressed by some members at the first Round Table Conference that grave danger to the peace and tranquillity of a province might develop if the internal administration and discipline of the Police were not secured: but this matter was not discussed at the third Round Table Conference in relation to the special responsibilities of the Governor. His Majesty's Government propose to deal with it by inserting in the Instrument of Instructions of the Governor a direction that he should bear in mind the close connexion between his special responsibility for peace and tranquillity and the internal administration and discipline of the Police.

48. The division of legislative powers between Centre and Provinces would no longer make appropriate the concentration in the hands of the Governor-General of the power to legislate in emergency by Ordinance on provincial matters and this power will now be conferred on Governors also, for the double purpose indicated in paragraph 40.

The Provincial Legislature

49. The Provincial Legislatures will be enlarged to the extent indicated in Appendix III. The allocation of seats and method of election for the Provincial Legislative Assemblies (Lower Houses) is in accordance with the provisions contained in what is generally referred to as His Majesty's Government's Communal Award of the 4th August last (Cmd. 4147/1932). The only modifications made are the adaptation of the figures necessary in view of the subsequent decision to establish Orissa as a separate Province, and an alteration in respect of the representation of the Depressed Classes made in the circumstances explained below. This Award was given by His Majesty's Government in order to remove the obstacle to further progress in the framing of a Constitution which was presented by the failure of communities in India themselves to reach agreement on the subject of the method and quota of representation of communities in the Provincial Legislatures.

His Majesty's Government in the Award pledged themselves not to vary their recommendations to Parliament on this subject save with the mutual agreement of the communities affected, and themselves to take no part in any negotiations initiated by the communities with a view to revision of their decision. One such variation has been made, namely, in respect to the arrangements for the representation of the Depressed Classes which have been modified in accordance with an agreement, now known as the Poona Pact, reached on the 24th September last between representatives of the Depressed Classes and of the rest of the Hindu community.

His Majesty's Government stated in their Award that modification of the communal electoral arrangements might be made after 10 years with the assent of the communities affected, for the ascertainment of which suitable means would have to be devised.

The members of the Provincial Legislative Assemblies will be in all cases elected, and no official will be eligible for election. In three Provinces* the Legislature will be bi-cameral: in the remainder it will consist of a single Chamber. But provision is made in the Proposals (paragraph 74) whereby, subject to restriction, an Upper Chamber where it exists may be abolished, or created where it does not exist. The powers of provincial Upper Chambers will not be co-extensive with those of the Lower Chamber.

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* Bengal, the United Provinces and Bihar.

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The Provincial Franchise

50. Details of the franchise proposed in the case of the various Provincial Legislatures are given in Appendix V. Here, as in the case of the franchise for the Federal Legislature, it should be emphasised that pending the preparation of an electoral roll the qualifications proposed are inevitably to some extent stated in general terms and that modifications of detail may be found necessary on various points once the preparation of the roll is undertaken. The franchise in question is essentially based on property, supplemented by an educational qualification common to men and women alike; by a qualification for women in respect of property held by a husband; by provision directed to secure an electorate of approximately 10 per cent. of the population of the Scheduled Castes* (hitherto known as Depressed Classes) in each province, except in Bihar and Orissa where the general percentage of enfranchisement is in the neighbourhood of 9 per cent. only, and in the North West Frontier Province and Sind, where the numbers of the Scheduled Castes are negligible; and by provision of a special electorate for the seats proposed to be reserved for the representation of Commerce, Labour and other special interests. Registration of claimants in respect of an educational qualification or of a woman qualified in respect of her husband's property will, at any rate for the first two elections, be on application by the potential voter only.† The ratio of women to men electors will be approximately 1 to 7, as compared with approximately 1 to 21 at the present time.

51. A precise statement of the numerical effect of the electoral qualifications proposed cannot be given pending the preparation of a provisional electoral roll. So far as can be judged, however, these proposals, if accepted, would, in the typical case of Bengal, enfranchise some 7½ millions, or some 15 per cent. of a total population of 50 millions. In the case of Bombay the percentage to be enfranchised would probably be rather higher than in Bengal; in Madras and the United Provinces it would be approximately the same; in all other provinces it would be substantially lower, the lowest figure being reached in the case of Bihar and Orissa, with an electorate of some 3½ millions or rather over 9 per cent. of the total population. The general effect of acceptance of the proposals in question over all the Governors' Provinces would be an electorate in the neighbourhood of 14 per cent. of the total population, or some 27 per cent. of the adult population.

A separate franchise will be devised for the two new provinces of Sind and Orissa. In the case of Sind the franchise in question will probably be substantially identical in general character (subject to allowance for certain differences in local conditions) with that proposed for Bombay. The new province of Orissa will be formed by accretions from the Central Provinces and Madras, as well as from the present province of Bihar and Orissa, and while the franchise will probably generally resemble that proposed for Bihar and Orissa, modifications of greater or lesser importance may in consequence be necessary in this case.

Relations between the Federation and the Units

Powers of Federal and Provincial Legislatures

52. The conception of Federation and of that consequential change in provincial status commonly denoted by the expression "Provincial autonomy" will necessitate a complete departure from the existing system of concurrent jurisdictions—that is to say, there will be a statutory demarcation between the legislative competence of the Federal and Provincial Legislatures

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* The Castes in each Province scheduled as requiring special electoral protection are enumerated in Appendix VIII.

† See Introductory Note to Appendices IV and V, paragraph 3.

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respectively, and the assignment to each of an exclusive field of competence which the other will not be permitted, save to the extent indicated below, to invade.

53. Following the practice of other Federal constitutions, the respective legislative fields of the Centre and of the Provinces will be defined in terms of subjects which will be scheduled to the Constitution Act. But while it will be possible to assign to the Federation and to the Provinces respectively a number of matters over which they can appropriately be charged with exclusive legislative jurisdiction, examination has shown that this method cannot without inconvenience be so employed as to exhaust the entire field of potential governmental activity and that there are some matters in respect of which, while some measure of uniformity of law may be necessary, variation of detail to meet the local conditions of the Provinces is no less necessary. It will consequently be necessary to schedule certain subjects whereon both Federal and Provincial Legislatures will enjoy concurrent powers, the exact nature and effects of which will be seen from paras. 111, 112 and 114 of the Proposals.

Illustrative lists of the exclusively Federal, exclusively Provincial, and "concurrent" subjects, which do not purport to be complete or final, are appended. (Appendix VI.)

54. Certain matters will be placed outside the competence altogether of both Federal and Provincial Legislatures, namely, legislation affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of British India, the law of British nationality, the Army Act, the Air Force Act and the Naval Discipline Act and the Constitution Act itself. As regards the Army, Air Force and Naval Discipline Acts, the Indian Legislatures will be debarred from legislating in such a way as to interfere with the operation of these Acts in so far as they operate in India, while at the same time it is intended to preserve the existing powers* of the Central Legislature in India to extend the provisions of these Acts with or without modification to members of Forces raised in India. Apart from a complete exclusion of jurisdiction in regard to these matters it is proposed to place upon the competence of the new Legislatures a limitation, taking the form familiarised by the provisions of the existing Act, whereby the Governor-General's—in some cases the Governor's—previous sanction to the introduction of certain specified classes of measures will be required. The proposed classification for this purpose will be found set out in paragraphs 119 and 120 of the Proposals. It will, of course, be made clear (paragraph 121) that the grant by the Governor-General or by a Governor of his prior consent to the introduction of a measure under this Proposal is not to be taken as fettering his judgment, when the time comes, if the measure is passed, for his decision as to the grant or withholding of his assent or the reservation of the measure for the signification of His Majesty's pleasure.

One further specific limitation on the powers of the Legislature which has already been mentioned in paragraph 29 should be referred to again in the present context, namely, the provisions proposed which will render *ultra vires* certain forms of discriminatory legislation.

55. The administrative relations between the Federal Governments and the Units are dealt with in paragraphs 125–129 of the Proposals. Provision is made in para. 125 of the Proposals for securing not only that due effect is given within the Provinces to Acts of the Federal Legislature which apply to them, but also that the Provincial Governments shall give effect to directions

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* As provided in section 177 of the Army Act, section 177 of the Air Force Act and as regards the Naval Discipline Act, in section 66 of the Government of India Act.

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issued by the Federal Government in relation to any matter which affects the administration of a Federal subject in the executive sphere of the Province. The latter provision will cover all classes of Federal subjects, including those administered by the Reserved Departments. In the latter class of subjects, the directions will, of course, be issued by the Governor-General.

Allocation of Revenues between the Federation and the Units

56. It is intended that the division of resources between the Federation and the Units should be in accordance with the following scheme. The method of treatment of taxes on income, which is of special importance, is described separately below. The lists that follow are not intended to be exhaustive, but to indicate only the more important heads. (For fuller lists, see Legislative Schedules in Appendix VI.)

Sources of Revenue.	Powers of Legislation.	Allocation of Revenue.
Import Duties (except on salt) ..	Exclusively federal.	Exclusively federal.
Contributions from Railways and receipts from other Federal Commercial Undertakings		
Coinage profits and share in profits of Reserve Bank		
Export Duties*	Exclusively federal.	Federal, with power to assign a share (or the whole) to units.
Salt Duties		
Tobacco Excise		
Other Excise Duties except those on alcoholic liquors, drugs and narcotics		
Terminal taxes on goods and passengers	Exclusively federal.	Provincial, with power to the Federation to impose a federal surcharge,
Certain stamp duties		
Land Revenue..	Exclusively Provincial.	Exclusively Provincial.
Excise duties on Alcohol, Drugs and Narcotics		
Stamps (with certain exceptions) ..		
Forests and other Provincial commercial undertakings		
Miscellaneous sources of revenue at present enjoyed by the Provinces..		

Sources of taxation not specified in any schedule will be provincial, but the Governor-General will be empowered, after consultation with Federal and Provincial Ministers or their representatives, to declare in his discretion that any unspecified source of taxation should be federal.

57. Taxes on income will be dealt with as follows :—

Corporation tax† will be entirely federal. Federating States will contribute under this head after 10 years. All legislation regarding other taxes on income, except agricultural income, will be federal (subject to the right mentioned below of Provincial Legislatures to impose Provincial surcharges). Receipts from such taxation on officers in Federal service, and tax attributable to Chief Commissioners' Provinces or other Federal areas, will accrue to Federal Revenues. The remaining net proceeds, other than receipts from the federal surcharges mentioned below, will be divided between the Federation and the Governors' Provinces, x per cent. being assigned to the former, and the

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* In the case of export duty on jute, at least half the net proceeds must be assigned to the producing units.

† There is at present in force in British India a super-tax on profits of companies, which is usually referred to as Corporation tax.

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remainder to the latter. Before a final recommendation can be made as to the basis of distribution of the Provincial share between the Provinces (and the basis on which tax will be attributable to Chief Commissioners' Provinces), it will be necessary to complete further technical investigation which is now proceeding. It is intended that percentage x should be not less than 25 per cent. and not more than 50 per cent.

Federal legislation regulating taxes on income which affects Provincial Revenues as well as Federal Revenues is to be introduced by leave of the Governor-General given in his discretion after consulting the Federal Ministry and Provincial Ministries.

The Federal Legislature will also be empowered to impose surcharges on taxes on income, the proceeds of which will be retained by the Federation. Federating States will contribute to the Federal Revenues a proportionate amount.

If, however, at the time when the Constitution comes into force any portion of the special surcharges on taxes on income imposed in September 1931 is still in operation, these will be deemed to be Federal surcharges but without liability on federating States to make any equivalent contribution.

The Provincial Legislatures will be empowered to impose, by their own legislation, surcharges on taxes on personal income of residents in the Province, the net proceeds going to the Province. Collection would be carried out by Federal agency. It is intended that an upper limit for such surcharges should be imposed, fixed at 12½ per cent. of the rates of taxes on income in force at any time, exclusive of federal surcharges.

58. It is anticipated that in the early years of the Federation, before there has been time to develop new sources of taxation (in particular Federal excises), the above system of distribution is likely to leave the Federation with inadequate resources. It is accordingly intended to adopt a transitory provision by which the Federation can retain for itself a block amount out of the proceeds of income-tax distributable to the Provinces. This amount would be unchanged for three years, and would diminish annually over the next seven years, so as to be extinguished at the end of ten years. This amount would be fixed after the investigation mentioned below.

Power will be given to the Governor-General in his discretion, but after consultation with the Governments concerned, to suspend the programme of reduction if in his opinion its continuance for the time being would endanger the financial stability and credit of the Federation.

59. It is also anticipated that certain Provinces will be in deficit under the proposed scheme. The North-West Frontier Province will (as now) require a contribution from the Centre in view of its special position. The new provinces of Sind and Orissa will not be able to start as entirely self-supporting units. Some of the existing Provinces, notably Assam, are likely to need assistance at least for a time. It is intended that these Provinces should receive subventions from Federal Revenues. These subventions may be either permanent or terminable after a period of years.

60. It will be necessary at as late a stage as possible before the new Constitution actually comes into operation to review in the light of the then financial and economic conditions the probable financial position of both Federation and the Provinces. The Government of India and Provincial Governments will, of course, be closely associated with any enquiry for this purpose. It is only in the light of such review that it will be possible to settle such matters as the amounts and periods of the Provincial subventions, the percentage of taxes on income to be permanently allocated to the Centre, and the amount to be retained by the Federation temporarily out of the normal Provincial share of taxes on income. It is accordingly proposed that the determination of such matters should be by Orders in Council, the drafts of which would be laid before both Houses of Parliament for approval.

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His Majesty's Government attach the highest importance to securing to the Federation adequate resources, without which the Federal Government cannot ensure the due fulfilment of liabilities upon which must depend the credit of India as a whole.

A possibility which cannot be dismissed from consideration is that economic and financial conditions might on the eve of the inauguration of the new Constitution be such as to render it impracticable to supply the new Federal and Provincial Governments at the outset of their careers with the necessary resources to ensure their solvency. If, after the review contemplated above, the probability of such a situation should be disclosed, it would obviously be necessary to reconsider the position, and it might, *inter alia*, be necessary to revise the federal finance scheme contemplated in these proposals.

Attention may be drawn in this connection to the observations already made at the end of paragraph 32.

61. The introduction of any scheme of Federal Finance is complicated by the existence of " contributions " paid by certain Indian States to the Crown, and by " immunities " which many of the States enjoy in respect of certain heads of prospective Federal Revenue as, for example, sea customs, salt, posts and telegraphs. A full description of the very complex position will be found in the Report of the Indian States Enquiry Committee (Financial), Cmd. 4103/32. It is proposed that the Crown should transfer the " contributions," so long as these are received, to Federal Revenues. The intention is that these " contributions " should be abolished by a process of gradual reduction *pari passu* with the gradual reduction of the block amount retained by the Federation out of the share of Provincial Income Tax described in paragraph 58 above. Abolition cannot, however, be effected by a uniform process. The position of each State requires separate treatment depending on the existence of " immunities," since it is not intended to remit " contributions " save in so far as they are in excess of a still existing immunity. Provision for the treatment of " contributions " on these lines will be made in the States' Instruments of Accession. It is further proposed, as more fully explained in the Indian States Enquiry Committee Report, that as a counterpart to the remission of " contributions," credit should be given to certain States which ceded territory to the Crown under circumstances somewhat analogous to those in which other States agreed to pay " contributions," the basis of determining the amount of such credits being the net revenues of the territories at the time of cession. Provision for such credits will have to be made in the Constitution Act. It may be necessary to establish a Tribunal or other machinery for the purpose of determining the value of immunities (especially those subject to considerable fluctuations), where these have to be assessed from time to time for the purpose of setting them off against " contributions," or against any payments accruing from the Federation.

The Judicature

The Federal Court

62. In a Constitution created by the federation of a number of separate political units and providing for the distribution of powers between a Central Legislature and Executive on the one hand and the Legislatures and Executives of the federal units on the other, a Federal Court has always been recognised as an essential element. Such a Court is, in particular, needed to interpret authoritatively the Federal Constitution itself. The ultimate decision on questions concerning the respective spheres of the Federal, Provincial and State authorities is also most conveniently entrusted to a Tribunal independent of Federal, Provincial and State Governments, and such a Tribunal will, in any event, be required in order to prevent the mischief which might otherwise arise if the various High Courts and State Courts interpreted the Constitution in different senses, and thus made the law uncertain and ambiguous.

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63. It is proposed that the Federal Court should have both an original and an appellate jurisdiction. Its original jurisdiction will be to determine justiciable disputes between the Federation and any Federal unit or between any two or more Federal units, involving the interpretation of the Constitution Act or any rights or obligations arising thereunder. Its appellate jurisdiction will extend to the determination of appeals from any High Court or State Court on questions, between whomsoever they may arise, involving the interpretation of the Constitution Act or any rights or obligations arising thereunder. In order to guard against frivolous and vexatious appeals, it is proposed that, unless the value of the subject matter in dispute exceeds a specified sum, an appeal will only lie with the leave of the Federal Court or of the High Court or State Court concerned. It is proposed that an appeal shall lie without leave to the Judicial Committee of the Privy Council from a decision of the Federal Court in any matter involving the interpretation of the Constitution, and in any other case only by leave of the Federal Court, unless His Majesty in Council grants special leave to appeal. As a corollary no appeal will be allowed against any decision of a High Court direct to the King in Council in any case where under the Constitution an appeal lies to the Federal Court.

64. On the analogy of the jurisdiction conferred on the Judicial Committee of the Privy Council, by Section 4 of the Judicial Committee Act, 1833, the Governor-General will be empowered in his discretion to refer to the Federal Court any justiciable matter on which it is, in his opinion, expedient to obtain the opinion of the Court.

65. The Federal Court will consist of a Chief Justice and a specified number of Judges, who will be appointed by the Crown and will hold office during good behaviour. But power will be taken to increase this number if both Houses of the Legislature present an address to the Governor-General praying that His Majesty may be pleased to do so.

The Supreme Court

66. But though a Federal Court, with power and jurisdiction such as those indicated, is a necessary and integral part of the Constitution envisaged by these proposals, Indian opinion is far from unanimous as to the necessity—or at all events as to the immediate necessity—for a Supreme Court of Appeal. The jurisdiction of such a Court, were it established, would necessarily be limited to British India, and its functions would be, within the limits assigned to it, to act as a final Court of Appeal in India from the decisions of the Provincial High Courts on matters other than those—mainly constitutional—which will fall within the jurisdiction of the Federal Court. With such a Court in existence, there would be good reason for limiting the right of appeal from Indian High Courts to the Judicial Committee of the Privy Council and thereby mitigating some of the grounds for dissatisfaction which arise from the delays, expense and inconveniences necessarily involved in the prosecution of appeals before so distant a tribunal. On the other hand, there is strong support for the view that a Supreme Court for India would be an unnecessary and unjustifiable expense, and that it would be difficult to find, in addition to the Judges required for the Federal Court and the Provincial High Courts, a body of judicial talent of the calibre essential if it is to justify its existence: there is, moreover, difference of opinion as to whether such a Court, if established, should be separate from the Federal Court or should be constituted as a Division of that Court. In these circumstances His Majesty's Government are of opinion that the right course is to empower the Federal Legislature to set up such a Court if and when there is sufficient unanimity of view on these and other questions to enable legislation for this purpose to be promoted, but that the powers and jurisdiction of the Court should none the less be laid down by the Constitution Act on the lines indicated in paragraphs 163–167 of the Proposals.

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The Secretary of State's Advisers

67. His Majesty's Government do not regard a Council of the kind which has been associated with the Secretary of State for India since the Crown took over the affairs of the East India Company in 1858 as any longer necessary in, or appropriate to, the conditions of the new Constitution. They are satisfied, however, that the responsibilities of the Secretary of State will remain such as to make it imperative that he should have at his disposal a small body of carefully selected advisers to supplement the assistance which in common with other Ministers he will derive from the permanent staff of his Department.

68. "The Secretary of State in Council of India" as a statutory corporation which alone can be plaintiff or defendant in any litigation instituted by, or against, any Governmental authority in India, and in whose name alone can be executed any contract or assurance entered into by any Government in India, is a conception which is manifestly incompatible alike with Provincial self-government and with a responsible Federal Government: and the present power of veto possessed by the Council of India over all expenditure from the revenues of India is no less incompatible with the constitutional arrangements outlined in paragraphs 5 to 11 of this Introduction. The Proposals, therefore, contemplate the vesting in the Crown on behalf of the Federal Executive and the Provincial Executives respectively of all property now held in the name of the Crown which is required for their respective purposes, and these authorities will be endowed with the right to enter into all contracts and assurances necessary for the performance of their functions, with the right to sue and the liability to be sued in respect of any claims arising in their several spheres of authority. It will at the same time be necessary to preserve the existing rights of suit against the Secretary of State in this country in respect of any claims arising out of obligations undertaken by the Secretary of State in Council before, and subsisting at the date of, the inauguration of the Federation, and to place upon the Federal Government an obligation to implement any judgment or award arising therefrom, whether by the provision of funds or otherwise.

69. As regards the Secretary of State's Council, it is proposed to enable him to appoint not less than three nor more than six advisers (at least two of whom must have served the Crown in India for not less than 10 years) to hold office for five years. The Secretary of State will be free to consult these advisers, either individually or collectively, as he may think fit. But he will be required not only to consult them, but to obtain the concurrence of a majority of them on the draft of any Rules regulating the Public Services in India, and in the disposal of any appeal to him permitted by the Constitution from any member of those Services (*see* paragraph 179 of Proposals).

The Public Services

70. The main divisions of the Public Services in India are:—

(1) The All-India Services;
(2) The Provincial Services; and
(3) The Central Services, Classes I and II.

Officers of the All-India Services serve chiefly in the Provinces, but they are liable to serve anywhere in India, and a number of the higher posts under the Government of India are held by them. These All-India Services include the following:—

(i) The Indian Civil Service;
(ii) The Indian Police;
(iii) The Indian Forest Service; and
(iv) The Indian Service of Engineers.

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On the transfer of their fields of service to Ministerial control on the inauguration of the new Constitution, recruitment will cease for Nos. (iii) and (iv).

The Provincial Services cover the whole field of civil administration of the Provinces in the middle and lower grades. Members of these services are appointed by the Provincial Governments.

Some of the more important of the Central Services are :—

(1) The Railway Services ;

(2) The Indian Posts and Telegraph Traffic Service ;

(3) The Imperial Customs Service.

Persons appointed by the Secretary of State in Council are serving in all these Services.

71. All persons appointed by the Secretary of State in Council have certain important rights. They cannot, for example, be dismissed from the Service by any authority subordinate to the Secretary of State in Council ; their pay is protected from the vote of the Legislatures ; and they have an ultimate right of appeal to the Secretary of State in Council against all important disciplinary measures taken in India and also in respect of their principal conditions of service.

It is intended to safeguard these rights and to extend them to all persons appointed by the Secretary of State after the commencement of the Constitution Act with the exception of the right to retire under the regulations for premature retirement ; this right it is proposed to give only to officers appointed to the Indian Civil Service and Indian Police up to the time when a decision is taken on the results of the enquiry indicated in paragraph 72.

Certain members of the Provincial and Central Services though they may not have been appointed by the Secretary of State in Council have also rights for the preservation of which he is responsible. These, too, will be secured.

72. Provision is made for continued recruitment by the Secretary of State to the Indian Civil Service, the Indian Police, and the Ecclesiastical Department.

Provision is also made for securing that all persons appointed by the Secretary of State in Council or the Secretary of State are employed in India on work of the kind for which their recruitment has been considered essential.

At the expiry of five years from the commencement of the Constitution Act a statutory enquiry will be held into the question of future recruitment for the Indian Civil Service and Indian Police and the governments in India will be associated with the enquiry. The decision on the results of the enquiry will rest with His Majesty's Government and will be subject to the approval of both Houses of Parliament. Pending the decision on this enquiry, the present ratio of British to Indian recruitment will remain unaltered.

The question of continued recruitment by the Secretary of State to the superior Medical and Railway Services is under examination. His Majesty's Government hope to submit their recommendations on this matter later to the Joint Select Committee.

73. As regards Family Pension Funds to which serving officers now contribute, His Majesty's Government consider that it must be recognised that assets constitute in all cases a definite debt liability of the Government of India and are the property of the subscribers. In these circumstances they are examining a proposal for the adoption of a new financial procedure in relation to these funds, with a view to building up gradually separate sterling funds. If such a scheme should prove to be practicable, it will, of course, be necessary to consult members of the Services regarding it before any decision is reached. The adoption of any such scheme would probably necessitate

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certain statutory provisions not covered by the present Proposals. His Majesty's Government hope to be in a position to submit their recommendations on this subject later to the Joint Select Committee.

The Statutory Railway Board

74. There is one matter of importance which these Proposals do not cover, namely, the arrangements to be made for the administration of the Railways under the Federal Government. His Majesty's Government consider that it will be essential that, while the Federal Government and Legislature will necessarily exercise a general control over railway policy, the actual control of the administration of the State Railways in India (including those worked by Companies) should be placed by the Constitution Act in the hands of a Statutory Body, so composed and with such powers as will ensure that it is in a position to perform its duties upon business principles, and without being subject to political interference. With such a Statutory Body in existence, it would be necessary to preserve such existing rights as Indian Railway Companies possess under the terms of their contracts to have access to the Secretary of State in regard to disputed points and, if they desire, to proceed to arbitration. His Majesty's Government are in consultation with the Government of India on the questions of principle and detail which require settlement before a satisfactory scheme can be devised to carry out these purposes.

Fundamental Rights

75. The question of including in the Constitution Act a series of declarations, commonly described as a statement of "fundamental rights," which would be designed to secure either to the community in general, or to specified sections of it, rights or immunities to which importance is attached, has been much discussed during the proceedings of the Round Table Conference. His Majesty's Government see serious objections to giving statutory expression to any large range of declarations of this character, but they are satisfied that certain provisions of this kind, such, for instance, as the respect due to personal liberty and rights of property and the eligibility of all for public office, regardless of differences of caste, religion, etc., can appropriately, and should, find a place in the Constitution Act. His Majesty's Government think it probable that occasion may be found in connexion with the inauguration of the new Constitution for a pronouncement by the Sovereign, and, in that event, they think it may well be found expedient humbly to submit for His Majesty's consideration that such a pronouncement might advantageously give expression to some of the propositions suggested to them in this connexion which prove unsuitable for statutory enactment.

Conclusion

76. His Majesty's Government are fully aware that the actual drafting of the Constitution Bill, and the consequent repeal of the existing Government of India Act, will raise a number of other questions—some of importance—which these Proposals do not cover, for instance, provision will be required for an Auditor-General, for the establishment of the Secretary of State and for various other matters which the existing Act at present embraces, and which may, or may not, require perpetuation in the Act which takes its place.

15th March, 1933.

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THE PROPOSALS

1. The general principle underlying all these proposals is that all powers appertaining or incidental to the government of India and all rights, authority and jurisdiction possessed in that country—whether flowing from His Majesty's sovereignty over the territories of British India, or derived from treaty, grant, usage, sufferance or otherwise in relation to other territories—are vested in the Crown and are exercisable by and in the name of the King Emperor.

[See paragraph 9 of Introduction.]

PART I

THE FEDERATION

GENERAL

2. The Federation of India will be a union between the Governors' Provinces and those Indian States whose Rulers signify their desire to accede to the Federation by a formal Instrument of Accession. By this Instrument the Ruler will transfer to the Crown for the purposes of the Federation his powers and jurisdiction in respect of those matters which he is willing to recognise as federal matters; and the powers and jurisdiction so transferred will thereafter be exercised on behalf of the Federation and in accordance with the provisions of the Constitution Act by the Governor-General, the Federal Legislature, the Federal Court (with an appeal therefrom to His Majesty in Council) and such other Federal organs as the Constitution Act may create. But in the case of every State which accedes, the powers and jurisdiction of the Federation in relation to that State and the subjects of its Ruler will be strictly co-terminous with the powers and jurisdiction transferred to the Crown by the Ruler himself and defined in his Instrument of Accession.

3. Except to the extent to which the Ruler of a State has transferred powers and jurisdiction, whether by his Instrument of Accession or otherwise —and, in the case of a State which has not acceded to the Federation, in all respects—the relations of the State will be with the Crown represented by the Viceroy, and not with the Crown represented by the Governor-General as executive head of the Federal Government. Accordingly, all powers of the Crown in relation to the States which are at present exercised by the Governor-General in Council, other than those which fall within the Federal sphere will after Federation be exercised by the Viceroy as the Crown's representative.

4. The Federation will be brought into existence by the issue of a Proclamation by His Majesty declaring that on a date to be appointed in the Proclamation the existing nine "Governors' Provinces," with Sind and Orissa (which will be constituted as new and separate Governors' Provinces), are to be united in a Federation of India with such Indian States as have acceded or may accede to the Federation; but the Proclamation will not be issued until—

(*a*) His Majesty has received intimation that the Rulers of States representing not less than half the aggregate population of the Indian States and entitled to not less than half the seats to be allotted to the States in the Federal Upper Chamber, have signified their desire to accede to the Federation; and

(*b*) Both Houses of Parliament have presented an Address to His Majesty praying that such a Proclamation may be issued.

5. The authority of the Federation will, without prejudice to the extra-territorial powers of the Federal Legislature (see paragraph 111), extend to the Governors' Provinces, to the acceding States (subject to the limitations

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mentioned in paragraph 3), and to those areas in British India which are administered by Chief Commissioners—namely, the Provinces of Delhi, Ajmer-Merwara, Coorg, British Baluchistan and the Andaman and Nicobar Islands. These Provinces (with one exception) will be directly subject to the jurisdiction of the Federal Government and Legislature.

In the case of British Baluchistan special provision will be made whereby the Governor-General will himself direct and control the administration of this Province (see paragraphs 57–58). Expenditure required for British Baluchistan will not be subject to the vote of the Federal Legislature, but will be open to discussion in both Chambers.

The Settlement of Aden is at present a Chief Commissioner's Province. The future arrangements for the Settlement are, however, under consideration, and accordingly no proposals in respect of it are included in this document.

The Federal Executive

6. The executive authority of the Federation, including the supreme command of the Military, Naval and Air Forces in India, will be exercisable on the King's behalf by a Governor-General holding office during His Majesty's pleasure, but His Majesty may appoint a Commander-in-Chief to exercise in relation to those Forces such powers and functions as may be assigned to him.

All executive acts will run in the name of the Governor-General.*

7. The executive authority of the Federation will extend in relation to a State-member of the Federation only to such powers and jurisdiction falling within the Federal sphere as the Ruler has transferred to the King.

8. The Governor-General will exercise the powers conferred upon him by the Constitution Act as executive head of the Federation and such powers of His Majesty (not being powers inconsistent with the provisions of the Constitution Act) as His Majesty may be pleased by Letters Patent constituting the office of Governor-General to assign to him. In exercising all these powers the Governor-General will act in accordance with an Instrument of Instructions to be issued to him by the King.

9. The draft of the Governor-General's Instrument of Instructions (including the drafts of any amendments thereto) will be laid before both Houses of Parliament, and opportunity will be provided for each House of Parliament to make to His Majesty representations for an amendment of, or addition to, or omission from, the Instructions.

10. The Governor-General's salary will be fixed by the Constitution Act, and all other payments in respect of his personal allowances, or of salaries and allowances of his personal and secretarial staff, will be fixed by Order in Council; none of these payments will be subject to the vote of the Legislature.

The Working of the Federal Executive

11. The Governor-General will himself direct and control the administration of certain Departments of State—namely, Defence, External Affairs and Ecclesiastical Affairs.

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* It follows from this that, broadly speaking, where the words "Governor-General" are used without the added words "in his discretion," or "at his discretion," the Federal Government is meant, in the case of the Reserved Departments, however, the Governor-General being himself the responsible executive. A corresponding meaning attaches to the word "Governor" in the case of the Provincial executive.

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12. In the administration of these Reserved Departments, the Governor-General will be assisted by not more than three Counsellors, who will be appointed by the Governor-General, and whose salaries and conditions of service will be prescribed by Order in Council.

13. For the purpose of aiding and advising the Governor-General in the exercise of powers conferred upon him by the Constitution Act for the government of the Federation, other than powers connected with the matters mentioned in paragraph 11, and matters left by law to his discretion, there will be a Council of Ministers. The Ministers will be chosen and summoned by the Governor-General and sworn as Members of the Council and will hold office during his pleasure. The persons appointed Ministers must be, or become within a stated period, members of one or other Chamber of the Federal Legislature.

14. In his Instrument of Instructions the Governor-General will be enjoined *inter alia* to use his best endeavours to select his Ministers in the following manner, that is, in consultation with the person who, in his judgment, is likely to command the largest following in the Legislature, to appoint those persons (including so far as possible members of important minority communities and representatives of the States-members of the Federation) who will best be in a position collectively to command the confidence of the Legislature.

15. The number of Ministers and the amounts of their respective salaries will be regulated by Act of the Federal Legislature, but, until the Federal Legislature otherwise determines, their number and their salaries will be such as the Governor-General determines, subject to limits to be laid down in the Constitution Act.

The salary of a Minister will not be subject to variation during his term of office.

16. The Governor-General will, whenever he thinks fit, preside at meetings of his Council of Ministers. He will also be authorised, after consultation with his Ministers, to make in his discretion any rules which he regards as requisite to regulate the disposal of Government business and the procedure to be observed in its conduct, and for the transmission to himself and to his Counsellors in the Reserved Departments, and to the Financial Adviser, of all such information as he may direct.

17. The Governor-General will be empowered, in his discretion, but after consultation with his Ministers, to appoint a Financial Adviser to assist him in the discharge of his " special responsibility " for financial matters—see next paragraph—and also to advise Ministers on matters regarding which they may seek his advice. The Financial Adviser will be responsible to the Governor-General and will hold office during his pleasure; his salary will be fixed by the Governor-General and will not be subject to the vote of the Legislature.

18. Apart from his exclusive responsibility for the Reserved Departments (paragraph 11) the Governor-General in administering the government of the Federation will be declared to have a " special responsibility " in respect of—

(*a*) the prevention of any grave menace to the peace or tranquillity of India or any part thereof;
(*b*) the safeguarding of the financial stability and credit of the Federation;
(*c*) the safeguarding of the legitimate interests of minorities;
(*d*) the securing to the members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests;
(*e*) the prevention of commercial discrimination;

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(*f*) the protection of the rights of any Indian State ;

(*g*) any matter which affects the administration of any Department under the direction and control of the Governor-General.

It will be for the Governor-General to determine in his discretion whether any of the " special responsibilities " here described are involved by any given circumstances.

19. If in any case in which, in the opinion of the Governor-General, a special responsibility is imposed upon him it appears to him, after considering such advice as has been given him by his Ministers, that the due discharge of his responsibility so requires, he will have full discretion to act as he thinks fit, but in so acting he will be guided by any directions which may be contained in his Instrument of Instructions.

20. The Governor-General, in administering the Departments under his own direction and control, in taking action for the discharge of any special responsibility, and in exercising any discretion vested in him by the Constitution Act, will act in accordance with such directions, if any, not being directions inconsistent with anything in his Instructions, as may be given to him by a principal Secretary of State.

21. The Governor-General's Instrument of Instructions will accordingly contain *inter alia* provision on the following lines :—

" In matters arising in the Departments which you direct and control on your own responsibility, or in matters the determination of which is by law committed to your discretion, it is Our will and pleasure that you should act in exercise of the powers by law conferred upon you in such manner as you may judge right and expedient for the good government of the Federation, subject, however, to such directions as you may from time to time receive from one of Our principal Secretaries of State.

In matters arising out of the exercise of powers conferred upon you for the purposes of the government of the Federation other than those specified in the preceding paragraph it is Our will and pleasure that you should, in the exercise of the powers by law conferred upon you, be guided by the advice of your Ministers, unless so to be guided would, in your judgment, be inconsistent with the fulfilment of your special responsibility for any of the matters in respect of which a special responsibility is by law committed to you ; in which case it is Our will and pleasure that you should, notwithstanding your Ministers' advice, act in exercise of the powers by law conferred upon you in such manner as you judge requisite for the fulfilment of your special responsibilities, subject, however, to such directions as you may from time to time receive from one of Our principal Secretaries of State."*

The Federal Legislature

General

22. The Federal Legislature will consist of the King, represented by the Governor-General, and two Chambers, to be styled the Council of State and the House of Assembly, and will be summoned to meet for the first time not later than a date to be specified in the Proclamation establishing the Federation.

Every Act of the Federal Legislature will be expressed as having been enacted by the Governor-General, by and with the consent of both Chambers.

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* For other matters to be included in the Instrument of Instructions, *see* paragraph 14 of Proposals and paragraph 23 of Introduction.

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23. Power to summon, and appoint places for the meeting of, the Chambers, to prorogue them, and to dissolve them, either separately or simultaneously, will be vested in the Governor-General at his discretion, subject to the requirement that they shall meet at least once in every year and not more than twelve months shall intervene between the end of one session and the commencement of the next.

The Governor-General will also be empowered to summon the Chambers for the purpose of addressing them.

24. Each Council of State will continue for seven years and each Assembly for five years, unless sooner dissolved.

25. A member of the Council of Ministers will have the right to speak, but not to vote, in the Chamber of which he is not a Member.

A Counsellor will be *ex officio* an additional member of both Chambers for all purposes except the right of voting.

The Composition of the Chambers

26. The Council of State will consist, apart from the Governor-General's Counsellors, of not more than 260 members, of whom 150 will be elected from British India in the manner indicated in Appendix I,* not more than 100 will be appointed by the Rulers of States,† and not more than ten (who shall not be officials) will be nominated by the Governor-General in his discretion.

27. A member of the Council of State will be required to be at least 30 years of age (this age limit not, however, being applicable to the Ruler of a State) and a British subject or a Ruler or subject of an Indian State, and to possess certain prescribed property qualifications, or to have been at some previous date a member of the Indian Legislature or of the Federal Legislature, or to possess qualifications to be prescribed by the Government of the State or Province which he represents with a view to conferring qualification upon persons who have rendered distinguished public service.

28. Casual vacancies in the Council of State will be filled, in the case of a British Indian elected representative, by election (so long as communal representation is retained as a feature of the Constitution) by those members of the body by which he was elected who are members of the community to which the vacating member belongs, and in the case of an appointed or nominated member, by a fresh appointment or nomination.

29. The Assembly will consist, apart from the Governor-General's Counsellors, of not more than 375 members, of whom 250 will be elected to represent constituencies in British India in the manner indicated in Appendix II, and not more than 125 will be appointed by the Rulers of States.

30. A member of the Assembly will be required to be not less than 25 years of age and a British subject or a subject of an Indian State.

31. Casual vacancies in the Assembly will be filled, in the case of an elected member, by the same method as that prescribed in Appendix II for the election of the vacating member, and, in the case of an appointed member, by a fresh appointment by the person by whom the vacating member was appointed.

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* *See* paragraph 18 of Introduction.

† *See* paragraph 19 of Introduction.

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32. Only the Ruler of a State who has acceded to the Federation will be entitled to appoint, or take part in appointing, a member of either Chamber of the Federal Legislature, and any vacancies arising out of the operation of this restriction will for the time being remain unfilled.*

33. Every member of either Chamber will be required to make and subscribe an oath or affirmation in the following form before taking his seat :—

In the case of a representative of a State :—

" I, *A.B.*, having been appointed a member of this Council, / Assembly, do solemnly swear (*or* affirm) that, saving the faith and allegiance I owe to *C.D.*, I will be faithful and bear true allegiance in my capacity as Member of this Council / Assembly to His Majesty the King Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

In the case of a representative of British India :—

" I, *A.B.*, having been elected / nominated a member of this Council, / Assembly, do solemnly swear (*or* affirm) that I will be faithful and bear true allegiance to His Majesty the King Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

34. The following disqualifications will be prescribed for membership of either Chamber :—

(*a*) in the case of elected members or of members nominated by the Governor-General, the holding of any office of profit under the Crown other than that of Minister ;

(*b*) a declaration of unsoundness of mind by a competent Court;

(*c*) being an undischarged bankrupt;

(*d*) conviction of the offence of corrupt practices or other election offences ;

(*e*) in the case of a legal practitioner, suspension from practice by order of a competent Court ;

but provision will be made that the last two disqualifications may be removed by order of the Governor-General at his discretion ;

(*f*) having an undisclosed interest in any contract with the Federal Government : provided that the mere holding of shares in a company will not by itself involve this disqualification.

35. A person sitting or voting as a member of either Chamber when he is not qualified for or is disqualified from, membership will be made liable to a penalty of in respect of each day on which he so sits or votes, to be recovered in the High Court of the Province or State which the person in respect of whom the complaint is made represents by suit instituted with the consent of a Principal Law Officer of the Federation.

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* This paragraph has reference to the allotment to the States by paragraphs 26 and 29 of " not more than 100 " and " not more than 125 " seats in the Council of State and the House of Assembly respectively. The figures just quoted represent the total number of seats which will be available to the States when they have all acceded to the Federation, and the intention is that a seat allotted to an individual State will remain unfilled unless and until that State has entered the Federation. States under " minority administration " will necessarily be treated as non-acceding States for this and other purposes.

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36. Subject to the Rules and Standing Orders affecting the Chamber there will be freedom of speech in both Chambers of the Federal Legislature. No person will be liable to any proceedings in any Court by reason of his speech or vote in either Chamber, or by reason of anything contained in any official report of the proceedings in either Chamber.

37. The following matters connected with elections and electoral procedure, in so far as provision is not made by the Act, will be regulated by Order in Council :—

(*a*) The qualifications of electors ;

(*b*) The delimitation of constituencies ;

(*c*) The method of election of representatives of communal and other interests ;

(*d*) The filling of casual vacancies ; and

(*e*) Other matters ancillary to the above ;

with provision that Orders in Council framed for these purposes shall be laid in draft for a stated period before each House of Parliament.

For matters other than the above connected with the conduct of elections the Federal Legislature will be empowered to make provision by Act. But until the Federal Legislature otherwise determines, existing laws or rules, including the law or rules providing for the prohibition and punishment of corrupt practices or election offences and for determining the decision of disputed elections, will remain in force, subject, however, to such modifications or adaptations to be made by Order in Council as may be required in order to adapt their provisions to the requirements of the new Constitution.

Legislative Procedure

38. Bills (other than Money Bills, which will be initiated in the Assembly) will be introduced in either Chamber.

39. The Governor-General will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions, to assent in His Majesty's name to a Bill which has been passed by both Chambers, or to withhold his assent, or to reserve the Bill for the signification of the King's pleasure. But before taking any of these courses it will be open to the Governor-General to remit a Bill to the Chambers with a Message requesting its reconsideration in whole or in part, together with such amendments, if any, as he may recommend.

No Bill will become law until it has been agreed to by both Chambers either without amendment or with such amendments only as are agreed to by both Chambers, and has been assented to by the Governor-General, or, in the case of a reserved Bill, until His Majesty in Council has signified his assent.

40. Any Act assented to by the Governor-General will within twelve months be subject to disallowance by His Majesty in Council.

41. In the case of disagreement between the Chambers, the Governor-General will be empowered, in any case in which a Bill passed by one Chamber has not, within three months thereafter, been passed by the other, either without amendments or with agreed amendments, to summon the two Chambers to meet in a joint sitting for the purpose of reaching a decision on the Bill. The members present at a Joint Session will deliberate and vote together upon the Bill in the form in which it finally left the Chamber in which it was introduced and upon amendments, if any, made therein by one Chamber and not agreed to by the other. Any such amendments which are affirmed by a majority of the total number of members voting at the Joint

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Session will be deemed to have been carried, and if the Bill, with the amendments, if any, so carried, is affirmed by a majority of the members voting at the Joint Session, it shall be taken to have been duly passed by both Chambers.

In the case of a Money Bill, or in cases where, in the Governor-General's opinion, a decision on the Bill cannot consistently with the fulfilment of his responsibilities for a Reserved Department or of any of his " special responsibilities " be deferred, the Governor-General will be empowered in his discretion to summon a Joint Session forthwith.

42. In order to enable the Governor-General to fulfil the responsibilities imposed upon him personally for the administration of the Reserved Departments and his " special responsibilities," he will be empowered at his discretion—

(*a*) to present, or cause to be presented, a Bill to either Chamber, and to declare by Message to both Chambers that it is essential, having regard to his responsibilities for a Reserved Department or, as the case may be, to any of his " special responsibilities," that the Bill so presented should become law before a date specified in the Message; and

(*b*) to declare by Message in respect of any Bill already introduced in either Chamber that it should for similar reasons become law before a stated date in a form specified in the Message.

A Bill which is the subject of such a Message will then be considered or reconsidered by the Chambers, as the case may require, and if, before the date specified, it is not passed by the two Chambers, or is not passed by the two Chambers in the form specified, the Governor-General will be empowered at his discretion to enact it as a Governor-General's Act, either with or without any amendments made by either Chamber after receipt of his Message.

A Governor-General's Act so enacted will have the same force and effect as an Act of the Legislature, and will be subject to disallowance in the same manner, but the Governor-General's competence to legislate under this provision will not extend beyond the competence of the Federal Legislature as defined by the Constitution.

43. It will be made clear by means of the enacting words of a Governor-General's Act, which will be distinguished from the enacting words of an ordinary Act (see paragraph 22), that Acts of the former description are enacted on the Governor-General's own responsibility.

44. Provision will also be made empowering the Governor-General in his discretion, in any case in which he considers that a Bill introduced, or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his " special responsibility " for the prevention of any grave menace to the peace or tranquillity of India, to direct that the Bill, clause or amendment shall not be further proceeded with.

Procedure with regard to Financial Proposals

45. A recommendation of the Governor-General will be required for any proposal in either Chamber of the Federal Legislature for the imposition of taxation, for the appropriation of public revenues, or any proposal affecting the public debt, or affecting, or imposing any charge upon, public revenues.*

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* This paragraph represents the constitutional principle embodied in Standing Order 66 of the House of Commons, which finds a place in practically every Constitution Act throughout the British Empire :—

" This House will receive no petition for any sum relating to public service or proceed upon any motion for any grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by Parliament, unless recommended from the Crown."

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46. The Governor-General will cause a statement of the estimated revenue and expenditure of the Federation, together with a statement of all proposals for the appropriation of those revenues, to be laid, in respect of every financial year, before both Chambers of the Legislature.

The statement of proposals for appropriation will be so arranged as—

(*a*) to distinguish between those proposals which will, and those which will not (*see paragraph* 49) be submitted to the vote of the Legislature and amongst the latter to distinguish those which are in the nature of standing charges (for example, the items in the list in paragraph 49, marked †) ; and

(*b*) to specify separately those additional proposals (if any), whether under the votable or non-votable Heads, which the Governor-General regards as necessary for the discharge of any of his "special responsibilities."

47. The proposals for the appropriation of revenues, other than proposals relating to the Heads of Expenditure enumerated in paragraph 49, and proposals (if any) made by the Governor-General in discharge of his special responsibilities, will be submitted in the form of Demands for Grants to the vote of the Assembly. The Assembly will be empowered to assent or refuse assent to any Demand or to reduce the amount specified therein, whether by way of a general reduction of the total amount of the Demand or of the reduction or omission of any specific item or items included in it.

48. The Demands as laid before the Assembly will thereafter be laid before the Council of State which will be empowered to require, if a motion to that effect is moved on behalf of the Government and accepted, that any Demand which had been reduced or rejected by the Assembly shall be brought before a Joint Session of both Chambers for final determination.

49. Proposals for appropriations of revenues, if they relate to the Heads of Expenditure enumerated in this paragraph, will not be submitted to the vote of either Chamber of the Legislature, but will be open to discussion in both Chambers, except in the case of the salary and allowances of the Governor-General and of expenditure required for the discharge of the functions of the Crown in, and arising out of, its relations with the Rulers of Indian States.

The Heads of Expenditure referred to above are :—

(i) Interest, Sinking Fund Charges and other expenditure relating to the raising, service and management of loans ;† expenditure fixed by or under the Constitution Act ;† expenditure required to satisfy a decree of any Court or an arbitral award ;

(ii) The salary and allowances of the Governor-General ;† of Ministers ;† of the Governor-General's Counsellors ;† of the Financial Adviser ;† of Chief Commissioners ;† of the Governor-General's personal and secretarial staff and of the staff of the Financial Adviser ;

(iii) Expenditure required for the Reserved Departments ;* for the discharge of the functions of the Crown in and arising out of its relations with the Rulers of Indian States ; or for the discharge of the duties imposed by the Constitution Act on a principal Secretary of State ;

(iv) The salaries and pensions (including pensions payable to their dependants) of Judges of the Federal or Supreme Court or of Judicial Commissioners under the Federal Government ;† and expenditure certified by the Governor-General after consultation with his Ministers as required for the expenses of those Courts ;

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* See as regards Defence Expenditure paragraph 23 of Introduction.

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(v) Expenditure required for Excluded Areas and British Baluchistan ;

(vi) Salaries and pensions payable to, or to the dependants of certain members of the Public Services and certain other sums payable to such persons (see Appendix VII, Part III).

The Governor-General will be empowered to decide finally and conclusively, for all purposes, any question whether a particular item of expenditure does or does not fall under any of the Heads of Expenditure referred to in this paragraph.

*50. At the conclusion of the budget proceedings the Governor-General will authenticate by his signature all appropriations, whether voted or those relating to matters enumerated in paragraph 49 ; the appropriations so authenticated will be laid before both Chambers of the Legislature, but will not be open to discussion.

In the appropriations so authenticated the Governor-General will be empowered to include any additional amounts which he regards as necessary for the discharge of any of his special responsibilities, so, however, that the total amount authenticated under any Head is not in excess of the amount originally laid before the Legislature under that Head in the Statement of proposals for appropriation.

The authentication of the Governor-General will be sufficient authority for the due application of the sums involved.

51. The provisions of paragraphs 45 to 50 inclusive will apply with the necessary modifications to proposals for the appropriation of revenues to meet expenditure not included in the Annual Estimates which it may become necessary to incur during the course of the financial year.

Procedure in the Federal Legislature

52. The procedure and conduct of business in each Chamber of the Legislature will be regulated by rules to be made, subject to the provisions of the Constitution Act, by each Chamber ; but the Governor-General will be empowered at his discretion, after consultation with the President, or Speaker, as the case may be, to make rules—

(*a*) regulating the procedure of, and the conduct of business in, the Chamber in relation to matters arising out of, or affecting, the administration of the Reserved Departments or any other special responsibilities with which he is charged ; and

(*b*) prohibiting, save with the prior consent of the Governor-General given at his discretion, the discussion of or the asking of questions on—

(i) matters connected with any Indian State other than matters accepted by the Ruler of the State in his Instrument of Accession as being Federal subjects ; or

(ii) any action of the Governor-General taken in his discretion in his relationship with a Governor ; or

(iii) any matter affecting relations between His Majesty or the Governor-General and any foreign Prince or State.

In the event of conflict between a rule so made by the Governor-General and any rule made by the Chamber, the former will prevail and the latter will, to the extent of the inconsistency, be void.

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* See paragraph 39 of Introduction.

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Emergency Powers of the Governor-General in relation to Legislation

53. The Governor-General will be empowered at his discretion, if at any time he is satisfied that the requirements of the Reserved Departments, or any of the "special responsibilities" with which he is charged by the Constitution Act render it necessary, to make and promulgate such Ordinances as, in his opinion, the circumstances of the case require, containing such provisions as it would have been competent, under the provisions of the Constitution Act, for the Federal Legislature to enact.

An Ordinance promulgated under the proposals contained in this paragraph will continue in operation for such period, not exceeding six months, as may be specified therein; the Governor-General will, however, have power to renew any Ordinance for a second period not exceeding six months, but in that event it will be laid before both Houses of Parliament.

An Ordinance will have the same force and effect, whilst in operation, as an Act of the Federal Legislature; but every such Ordinance will be subject to the provisions of the Constitution Act relating to disallowance of Acts, and will be subject to withdrawal at any time by the Governor-General.

54. In addition to the powers to be conferred upon the Governor-General at his discretion in the preceding paragraph, the Governor-General will further be empowered, if his Ministers are satisfied, at a time when the Federal Legislature is not in session, that an emergency exists which renders such a course necessary, to make and promulgate any such Ordinances for the good government of British India, or any part thereof, as the circumstances of the case require, containing such provisions as, under the Constitution Act, it would have been competent for the Legislature to enact.

An Ordinance promulgated under the proposals contained in this paragraph will have, while in operation, the same force and effect as an Act of the Federal Legislature, but every such Ordinance—

(*a*) will be required to be laid before the Federal Legislature and will cease to operate at the expiry of six weeks from the date of the reassembly of the Legislature, unless both Chambers have in the meantime disapproved it by Resolution, in which case it will cease to operate forthwith; and

(*b*) will be subject to the provisions of the Constitution Act relating to disallowance as if it were an act of the Federal Legislature; it will also be subject to withdrawal at any time by the Governor-General.

Provisions in the Event of a Breakdown in the Constitution

55. The Governor-General will be empowered at his discretion, if at any time he is satisfied that a situation has arisen which renders it for the time being impossible for the government of the Federation to be carried on in accordance with the provisions of the Constitution Act, by Proclamation to assume to himself all such powers vested by law in any Federal authority as appear to him to be necessary for the purpose of securing that the government of the Federation shall be carried on effectively.

A Proclamation so issued will have the same force and effect as an Act of Parliament; will be communicated forthwith to a Secretary of State and laid before Parliament; will cease to operate at the expiry of six months unless, before the expiry of that period, it has been approved by Resolutions of both Houses of Parliament; and may at any time be revoked by Resolutions by both Houses of Parliament.

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Chief Commissioners' Provinces

56. Each of the Provinces known as British Baluchistan, Delhi, Ajmer Merwara, Coorg and the Andaman and Nicobar Islands will be administered, subject to the provisions of the Constitution Act, by a Chief Commissioner who will be appointed by the Governor-General in his discretion to hold office during his pleasure.

57. Special provision will be made for British Baluchistan, whereby the Governor-General will himself direct and control the administration of that Province, acting through the agency of the Chief Commissioner.

58. Legislation required for British Baluchistan will be obtained in the following manner :—

No Act of the Federal Legislature will apply to the Province unless the Governor-General in his discretion so directs, and in giving such a direction the Governor-General will be empowered to direct that the Act, in its application to the Province, or any part thereof, is to have effect subject to such exceptions or modifications as he thinks fit.

The Governor-General will also be empowered at his discretion to make Regulations for the peace and good government of British Baluchistan and will be competent by any Regulations so made to repeal or amend any Act of the Federal Legislature which is for the time being applicable to the Province. Any such Regulation, on promulgation by the Governor-General in the official Gazette will have the same force and effect in relation to British Baluchistan as an Act of the Federal Legislature, and will, like such Acts, be subject to disallowance by His Majesty in Council.

The provisions of the preceding sub-paragraph will apply also to the Andaman and Nicobar Islands.

59. In the Chief Commissioners' Provinces the Chief Commissioner will have all such executive power and authority as may be necessary for the administration of the Province, and in the exercise of this power and authority he will (save in the case of British Baluchistan) be directly subordinate to the Federal Government.

60. The composition of the Coorg Legislative Council, as existing immediately before the establishment of the Federation, will continue unchanged, and special provisions will be made with regard to its legislative powers.

Part II

THE GOVERNORS' PROVINCES

The Provincial Executive

61. A "Governor's Province" will be defined as meaning the Presidencies of Bengal, Madras and Bombay, and the Provinces known as the United Provinces, the Punjab, Bihar, the Central Provinces,* Assam, the North-West Frontier Province, Sind, and Orissa.†

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* As regards Berar, see paragraph 45 of the Introduction.

† The boundaries of the new Province of Orissa will be in accordance with the recommendations of the Orissa Committee of 1932 (following the Chairman's recommendation where this differs from that of the two members), except that the Vizagapatam Agency and the Parlakimedi and Jalantra Maliahs in the Ganjam Agency will remain in the Madras Presidency.

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62. In a Governor's Province the executive authority will be exercisable on the King's behalf by a Governor holding office during His Majesty's pleasure.

All executive acts will run in the name of the Governor.

63. The Governor will exercise the powers conferred upon him by the Constitution Act as executive head of the Provincial Government, and such powers of His Majesty (not being powers inconsistent with the provisions of the Act) as His Majesty may be pleased by Letters Patent constituting the office of Governor to assign to him. In exercising all these powers the Governor will act in accordance with an Instrument of Instructions to be issued to him by the King.

64. The draft of the Governor's Instrument of Instructions (including the drafts of any amendments thereto) will be laid before both Houses of Parliament, and opportunity will be provided for each House of Parliament to make to His Majesty any representation which that House may desire for any amendment or addition to, or omission from, the Instructions.

65. The Governor's salary will be fixed by the Constitution Act, and all other payments in respect of his personal allowances, or the salaries and allowances of his personal and secretarial staff, will be fixed by Order in Council; none of these payments will be subject to the vote of the Legislature.

Working of the Provincial Executive

66. For the purpose of aiding and advising the Governor in the exercise of powers conferred on him by the Constitution Act for the government of the Province, except as regards matters left by law to his discretion and the administration of Excluded Areas, there will be a Council of Ministers. The Ministers will be chosen and summoned by the Governor and sworn as Members of the Council, and will hold office during his pleasure. Persons appointed Ministers must be, or become within a stated period, members of the Provincial Legislature.

67. In his Instrument of Instructions the Governor will be enjoined *inter alia* to use his best endeavours to select his Ministers in the following manner, that is, in consultation with the person who, in his judgment, is likely to command the largest following in the Legislature, to appoint those persons (including so far as possible members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature.

68. The number of Ministers and the amounts of their respective salaries will be regulated by Act of the Provincial Legislature, but until the Provincial Legislature otherwise determines their number and salaries will be such as the Governor determines, subject to limits to be laid down in the Constitution Act.

The salary of a Minister will not be subject to variation during his term of office.

69. The Governor will whenever he thinks fit preside at meetings of his Council of Ministers. He will also be authorised, after consultation with his Ministers, to make at his discretion any rules which he regards as requisite to regulate the disposal of Government business, and the procedure to be observed in its conduct, and for the transmission to himself of all such information as he may direct.

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*70. In the administration of the government of a Province the Governor will be declared to have a special responsibility in respect of—

(*a*) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof;

(*b*) the safeguarding of the legitimate interests of minorities;

(*c*) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests;

(*d*) the prevention of commercial discrimination;

(*e*) the protection of the rights of any Indian State;

(*f*) the administration of areas declared, in accordance with provisions in that behalf, to be partially excluded areas;

(*g*) securing the execution of orders lawfully issued by the Governor-General;

and the Governors of the North-West Frontier Province and of Sind will in addition be respectively declared to have a special responsibility in respect of—

(*h*) any matter affecting the Governor's responsibilities as Agent to the Governor-General in the Tribal and other Trans-border Areas; and

(*i*) the administration of the Sukkur Barrage.

It will be for the Governor to determine in his discretion whether any of the "special responsibilities" here described are involved by any given circumstances.

71. If in any case in which, in the opinion of the Governor, a special responsibility is imposed upon him, it appears to him, after considering such advice as has been given to him by his Ministers, that the due discharge of his responsibility so requires, he will have full discretion to act as he thinks fit, but in so acting he will be guided by any directions which may be contained in his Instrument of Instructions.

72. The Governor, in taking action for the discharge of any special responsibility or in the exercise of any discretion vested in him by the Constitution Act, will act in accordance with such directions, if any, not being directions inconsistent with anything in his Instructions, as may be given to him by the Governor-General or by a principal Secretary of State.

73. The Governor's Instrument of Instructions will accordingly contain *inter alia* provision on the following lines:—

"In matters, the determination of which is by law committed to your discretion, and in matters relating to the administration of Excluded Areas, it is Our will and pleasure that you should act in exercise of the powers by law conferred upon you in such manner as you may judge right and expedient for the good government of the Province, subject, however, to such directions as you may from time to time receive from Our Governor-General or from one of Our principal Secretaries of State.

In matters arising out of the exercise of powers conferred upon you for the purposes of the government of the Province other than those specified in the preceding paragraph it is Our will and pleasure that you should in the exercise of the powers by law conferred upon you be guided by the advice of your Ministers, unless so to be guided would, in your judgment, be inconsistent with the fulfilment of your special responsibility for any of the matters in respect of which a special responsibility is by law committed to you; in which case it is Our will and pleasure that you should,

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* See also end of paragraph 47 of the Introduction.

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notwithstanding your Ministers' advice, act in exercise of the powers by law conferred upon you in such manner as you judge requisite for the fulfilment of your special responsibilities, subject, however, to such directions as you may from time to time receive from Our Governor-General or from one of Our principal Secretaries of State."

The Provincial Legislature

General

74. For every Governor's Province there will be a Provincial Legislature, consisting, except in the provinces of Bengal, the United Provinces and Bihar, of the King, represented by the Governor, and of one Chamber, to be known as the Legislative Assembly.

In the Provinces just named the Legislature will consist of His Majesty, represented by the Governor, and of two Chambers, to be known respectively as the Legislative Council and the Legislative Assembly.

But provision will be made enabling the Provincial Legislature at any time not less than ten years after the commencement of the Constitution Act—

(*a*) where the Legislature consists of two Chambers to provide by Act, which both Chambers separately have passed, and have confirmed by a subsequent Act passed not less than two years later, that it shall consist of one Chamber instead of two Chambers; and,

(*b*) where the Legislature consists of one Chamber, to present an Address to His Majesty praying that the Legislature may be reconstituted with two Chambers, and that the composition of, and method of election to, the Upper Chamber may be determined by Order in Council.

The Provincial Legislatures will be summoned to meet for the first time on dates to be specified by Proclamation.

Every Act of a Provincial Legislature will be expressed as having been enacted by the Governor, by and with the consent of the Legislative Assembly, or, where there are two Chambers, of both Chambers of the Legislature.

75. Power to summon and appoint places for the meeting of the Provincial Legislature, to prorogue it, and to dissolve it, will be vested in the Governor at his discretion, subject to the requirement that it shall meet at least once in every year, and that not more than twelve months shall intervene between the end of one session and the commencement of the next. Where the Legislature consists of two Chambers power to dissolve the Chambers will be exercisable in relation to either Chamber separately or to both simultaneously.

The Governor will also be empowered to summon the Legislature for the purpose of addressing it.

76. Each Legislative Assembly will continue for five years, and each Legislative Council, where such a Council exists, for seven years, unless sooner dissolved.

77. In the case of a Province having a Legislative Council a Member of the Council of Ministers will have the right to speak, but not to vote, in the Chamber of which he is not a member.

The Composition of the Provincial Legislature

78. The Legislative Assembly of each Governor's Province will consist of the number of members indicated against that Province in Appendix III, Part I, who will be elected in the manner indicated in the same Appendix.

79. A member of a Provincial Legislative Assembly will be required to be at least 25 years of age and a British subject or a subject of an Indian State.

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80. The Legislative Councils of Governors' Provinces will consist of the number of members indicated in Appendix III, Part II, who will be elected, or nominated by the Governor, as the case may be, in the manner indicated in the same Appendix.

81. A member of a Provincial Legislative Council will be required to be at least 30 years of age and a British subject or a subject of an Indian State.

82. Appropriate provision will be made for the filling of vacancies in a Provincial Legislature on the lines proposed for the Federal Legislature (*see paragraphs* 28 *and* 31).

83. Every member of a Provincial Legislature will be required to make and subscribe an oath or affirmation in the following form before taking his seat :—

"I, *A.B.*, having been $\frac{\text{elected}}{\text{nominated}}$ a member of this $\frac{\text{Council}}{\text{Assembly}}$ do solemnly swear (*or* affirm) that I will be faithful and bear true allegiance to His Majesty the King Emperor of India, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

84. The following disqualifications will be prescribed for membership of a Provincial Legislature :—

(*a*) the holding of any office of profit under the Crown other than that of Minister ;

(*b*) a declaration of unsoundness of mind by a competent Court ;

(*c*) being an undischarged bankrupt ;

(*d*) conviction of the offence of corrupt practices or other election offences;

(*e*) in the case of a legal practitioner, suspension from practice by order of a competent Court ;

but provision will be made that this and the last preceding disqualification may be removed by order of the Governor in his discretion ;

(*f*) having an undisclosed interest in any contract with the Provincial Government ; provided that the mere holding of shares in a company will not by itself involve this disqualification.

85. A person sitting or voting as a member of the Provincial Legislature, when he is not qualified for, or is disqualified from, membership, will be made liable to a penalty of in respect of each day on which he so sits or votes, to be recovered in the High Court of the Province by suit initiated with the consent of a principal Law Officer of the Provincial Government.

86. Subject to the rules and Standing Orders of the Legislature there will be freedom of speech in the Provincial Legislature. No person will be liable to any proceedings in any Court by reason of his speech or vote, or by reason of anything contained in any official Report of the proceedings.

87. In so far as provision is not made by the Act itself for the following matters connected with elections and electoral procedure, they will be prescribed by Order in Council under the Act :—

(*a*) the qualifications of electors ;

(*b*) the delimitation of constituencies ;

(*c*) the method of election of representatives of communal and other interests ;

(*d*) the filling of casual vacancies ; and

(*e*) other matters ancillary to the above ;

With provision that Orders in Council framed for these purposes shall be laid in draft for a stated period before each House of Parliament.

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For matters connected with the conduct of elections for the Provincial Legislature other than the above each Provincial Legislature will be empowered to make provision by Act. But until the Provincial Legislature otherwise determines, existing laws or rules, including the law or rules providing for the prohibition and punishment of corrupt practices or election offences and for determining the decision of disputed elections, will remain in force; subject, however, to such modifications or adaptations to be made by Order in Council as may be required in order to adapt their provisions to the requirements of the new Constitution.

Legislative Procedure

NOTE.—The following paragraphs relating to legislative procedure are, with the exception of paragraph 91, framed, for the sake of brevity, to apply to unicameral Provincial Legislatures. Suitable modification of these provisions, for the purpose of adapting them to Legislatures which are bicameral would, of course, be made. In particular, provision would be made that in a bicameral Legislature, Bills (other than Money Bills, which will be initiated in the Legislative Assembly) will be introduced in either Chamber.

88. The Governor will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions, to assent in His Majesty's name to a Bill which has been passed by the Provincial Legislature, or to withhold his assent, or to reserve the Bill for the consideration of the Governor-General. But before taking any of these courses it will be open to the Governor to remit a Bill to the Legislature, with a Message requesting its reconsideration in whole or in part, together with such amendments, if any, as he may recommend.

No Bill will become law unless it has been passed by the Legislative Assembly, with or without amendment, and has been assented to by the Governor, or in cases where the Constitution Act so provides, by the Governor-General; in the case of a Bill reserved for the consideration of the Governor-General, the Bill will not become law until the Governor-General (or, if the Governor-General reserves the Bill, His Majesty in Council) has signified his assent.

89. When a Bill is reserved by a Governor for the consideration of the Governor-General, the Governor-General will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions, to assent in His Majesty's name to the Bill, or to withhold his assent, or to reserve the Bill for the signification of the King's pleasure. He will also be empowered, if he thinks fit, before taking any of these courses, to return the Bill to the Governor with directions that it shall be remitted to the Legislature with a Message to the effect indicated in the preceding paragraph. The Legislature will then reconsider the Bill and if it is again passed with or without amendment it will be presented again to the Governor-General for his consideration.

If at the end of six months from the date on which a Bill is presented to the Governor-General, the Governor-General neither assents to it nor reserves it for the signification of the King's pleasure, nor returns it to the Governor, the Bill will lapse.

90. Any Act assented to by the Governor or by the Governor-General will within twelve months be subject to disallowance by His Majesty in Council.

91. In the case of a Province having a Legislative Council, the Governor will be empowered, in any case in which a Bill passed by one Chamber has not, within three months thereafter, been passed by the other, either without amendments or with agreed amendments, to summon the two Chambers to meet in a Joint Session for the purpose of reaching a decision on the Bill.

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The members present at a Joint Session will deliberate and vote together upon the Bill in the form in which it finally left the Chamber in which it was introduced and upon amendments, if any, made therein by one Chamber and not agreed to by the other. Any such amendments which are affirmed by a majority of the total number of the members voting at the Joint Session will be deemed to have been carried, and if the Bill, with the amendments, if any, so carried, is affirmed by a majority of the members voting at the Joint Session, it shall be taken to have been duly passed by both Chambers.

In the case of a Money Bill, or in cases where, in the Governor's opinion, a decision on the Bill cannot, consistently with the fulfilment of any of his "special responsibilities," be deferred, the Governor will be empowered at his discretion to summon a Joint Session forthwith.

92. In order to enable the Governor to discharge the "special responsibilities" imposed upon him, he will be empowered at his discretion—

(*a*) to present, or cause to be presented, a Bill to the Legislature, with a Message that it is essential, having regard to any of his "special responsibilities" that any Bill so presented should become law before a date specified in the Message; and

(*b*) to declare by Message in respect of any Bill already introduced in the Legislature that it should, for similar reasons, become law before a stated date in the form specified in the Message.

If, before the date specified, a Bill which is the subject of such a Message is not passed, or is not passed in the form specified, as the case may be, the Governor will be empowered at his discretion to enact it as a Governor's Act, either with or without any amendments made by the Legislature, after receipt of his Message.

A Governor's Act so enacted will have the same force and effect as an Act of the Provincial Legislature and will be subject to the same requirements in respect of the Governor-General's assent and to disallowance in the same manner as an Act of the Provincial Legislature, but the Governor's competence to legislate under this provision will not extend beyond the competence of the Provincial Legislature as defined by the Constitution.

93. It will be made clear by the enacting words of a Governor's Act, which will be distinguished from the enacting words of an ordinary Act (see paragraph 74), that Acts of the former description are enacted on the Governor's own responsibility.

94. Provision will also be made empowering the Governor, in any case in which he considers that a Bill introduced or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his "special responsibility" for the prevention of any grave menace to the peace or tranquillity of the Province, to direct that the Bill, clause or amendment shall not be further proceeded with.

Procedure with regard to Financial Proposals

95. A recommendation of the Governor will be required for any proposal in the Provincial Legislature for the imposition of taxation, for the appropriation of public revenues, or any proposal affecting the public debt of the Province or affecting or imposing any charge upon public revenues.*

96. The Governor will cause a statement of the estimated revenues and expenditure of the Province, together with a statement of proposals for the

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* Compare paragraph 45 and the footnote thereto.

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appropriation of those revenues, to be laid in respect of every financial year before the Provincial Legislature, and, where the Legislature consists of two Chambers, before both Chambers.

The statement of proposals for appropriation will be so arranged as—

(*a*) to distinguish between those proposals which will, and those which will not (*see paragraph* 98), be submitted to the vote of the Legislature and amongst the latter to distinguish those which are in the nature of standing charges (for example the items in the list in paragraph 98, marked †) ; and

(*b*) to specify separately those additional proposals (if any), whether under the votable or non-votable Heads, which the Governor regards as necessary for the fulfilment of any of his "special responsibilities."

97. The proposals for the appropriation of revenues, other than proposals relating to the Heads of Expenditure enumerated in paragraph 98 and proposals (if any) made by the Governor in discharge of his special responsibilties, will be submitted, in the form of Demands for Grants, to the vote of the Legislative Assembly. The Assembly will be empowered to assent, or refuse assent, to any Demand or to reduce the amount specified therein, whether by way of a general reduction of the total amount of the Demand or of the reduction or omission of any specific item or items included in it.

98. Proposals for appropriations of revenues, if they relate to the Heads of Expenditure enumerated in this paragraph, will not be submitted to the vote of the Legislative Assembly, but, except in the case of the Governor's salary and allowances, will be open to discussion in the Assembly.

The Heads of Expenditure referred to above are :—

(i) Interest, Sinking Fund Charges and other expenditure relating to the raising, service, and management of loans ; † expenditure fixed by or under the Constitution Act ; † expenditure required to satisfy a decree of any Court or an arbitral award ;

(ii) The salary and allowances of the Governor ; † of Ministers ; † and of the Governor's personal or secretarial staff ;

(iii) The salaries and pensions (including pensions payable to their dependants) of Judges of the High Court or Chief Court or Judicial Commissioners ; † and expenditure certified by the Governor, after consultation with his Ministers, as required for the expenses of those Courts ;

(iv) Expenditure debitable to Provincial revenues required for the discharge of the duties imposed by the Constitution Act on a principal Secretary of State ;

(v) The salaries and pensions payable to, or to the dependants of, certain members of the Public Services and certain other sums payable to such persons (see Appendix VII, Part III).

The Governor will be empowered to decide finally and conclusively for all purposes any question whether a particular item of expenditure does, or does not, fall under any of the Heads of Expenditure referred to in this paragraph.

*99. At the conclusion of the budget proceedings the Governor will authenticate by his signature all appropriations, whether voted or those relating to matters enumerated in paragraph 98 ; the appropriations so authenticated will be laid before the Legislature, but will not be open to discussion.

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* See paragraph 39 of Introduction.

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In the appropriations so authenticated the Governor will be empowered to include any additional amounts which he regards as necessary for the discharge of any of his special responsibilities, so, however, that the total amount authenticated under any Head is not in excess of the amount originally laid before the Legislature under that Head in the Statement of proposals for appropriation.

The authentication of the Governor will be sufficient authority for the due application of the sums involved.

100. The provisions of paragraphs 95 to 99 inclusive will apply with the necessary modifications to proposals for the appropriation of revenue to meet expenditure not included in the Annual Estimates which it may become necessary to incur during the course of the financial year.

101. Provision will be made that until the Provincial Legislature otherwise determines by a decision in support of which at least three-fourths of the members have voted, no proposal for the reduction in any Province (other than a reduction pro-rata with the general educational grant-in-aid) of an existing grant-in-aid on account of the education of the Anglo-Indian and domiciled European community will be deemed to have received the consent of the Legislature unless at least three-fourths of the members have voted in favour of the proposal.

Procedure in the Legislature

102. The procedure and conduct of business in the Provincial Legislature will be regulated by rules to be made, subject to the provisions of the Constitution Act, by the Legislature. But the Governor will be empowered at his discretion, after consultation with the President or Speaker, as the case may be, to make rules regulating the procedure of, and the conduct of business in, the Chamber or Chambers in relation to matters arising out of, or affecting, any " special responsibility " with which he is charged by the Constitution Act.

In the event of conflict between a rule so made by the Governor and any rule made by a Chamber of the Legislature, the former will prevail and the latter will, to the extent of the inconsistency, be void.

Emergency Powers of the Governor in relation to Legislation

103. The Governor will be empowered at his discretion, if at any time he is satisfied that the requirements of any of the " special responsibilities " with which he is charged by the Constitution Act render it necessary, to make and promulgate such Ordinances as, in his opinion, the circumstances of the case require, containing such provisions as it would have been competent, under the provisions of the Constitution Act, for the Provincial Legislature to enact.

An Ordinance promulgated under the proposals contained in this paragraph will continue in operation for such period, not exceeding six months, as may be specified therein ; the Governor will, however, have the power to renew any Ordinance for a second period not exceeding six months, but in that event it will be laid before both Houses of Parliament.

An Ordinance will have the same force and effect, whilst in operation, as an Act of the Provincial Legislature ; but every such Ordinance will be subject to the provisions of the Constitution Act relating to disallowance of Acts and will be subject to withdrawal at any time by the Governor.

104. In addition to the powers to be conferred upon the Governor at his discretion in the preceding paragraph, the Governor will further be empowered, if his Ministers are satisfied, at any time when the Legislature is not in session, that an emergency exists which renders such a course necessary, to

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make and promulgate any such Ordinances for the good government of the Province or any part thereof as the circumstances of the case require, containing such provisions as, under the Constitution Act, it would have been competent for the Legislature to enact.

An Ordinance promulgated under the proposals contained in this paragraph will have, while in operation, the same force and effect as an Act of the Provincial Legislature, but every such Ordinance—

(*a*) will be required to be laid before the Provincial Legislature and will cease to operate at the expiry of six weeks from the date of the reassembly of the Legislature unless in the meantime the Legislature (or both Chambers, where two Chambers exist) has disapproved it by Resolution, in which case it will cease to operate forthwith ; and

(*b*) will be subject to the provisions of the Constitution Act relating to disallowance as if it were an Act of the Provincial Legislature ; it will also be subject to withdrawal at any time by the Governor.

Provisions in the event of a Breakdown in the Constitution.

105. The Governor will be empowered at his discretion, if at any time he is satisfied that a situation has arisen which renders it for the time being impossible for the government of the Province to be carried on in accordance with the provisions of the Constitution Act, by Proclamation to assume to himself all such powers vested by law in any Provincial authority as appear to him to be necessary for the purpose of sec ing that the government of the Province shall be carried on effectively.

A Proclamation so issued will have the same force and effect as an Act of Parliament ; will be communicated forthwith to the Governor-General and to a Secretary of State and laid before Parliament ; will cease to operate at the expiry of six months unless before the expiry of that period it has been approved by Resolutions of both Houses of Parliament ; and may at any time be revoked by Resolutions of both Houses of Parliament.

Excluded Areas

106. His Majesty will be empowered to direct by Order in Council that any area within a Province is to be an " Excluded Area " or a " Partially Excluded Area," and by subsequent Orders in Council to revoke or vary any such Order.

107. In respect of Partially Excluded Areas the Governor will be declared to have a special responsibility (*see paragraph* 70).

The Governor will himself direct and control the administration of any area in a Province for the time being declared to be an Excluded Area.

108. Legislation required, whether for Excluded Areas or Partially Excluded Areas, will be obtained in the following manner :—

No Act of the Federal Legislature or of the Provincial Legislature will apply to such an area unless the Governor in his discretion so directs, and in giving such a direction the Governor will be empowered to direct that the Act, in its application to the area, or to any specified part thereof, is to have effect subject to such exceptions or modifications as he thinks fit.

The Governor will also be empowered at his discretion to make Regulations for the peace and good government of any area which is for the time being an Excluded Area or a Partially Excluded Area and will be competent by any Regulation so made to repeal or amend any Act of the Federal Legislature or of the Provincial Legislature which is, for the time being, applicable to the area in question.

Regulations made under this provision will be submitted forthwith to the Governor-General and will not have effect until he has assented to them ; but, when assented to by the Governor General, will have the same force and

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effect as an Act of the Legislature made applicable to the area by direction of the Governor, and will be subject to disallowance in the same manner as a Provincial Act, but will not be subject to repeal or amendment by any Act of the Provincial or of the Federal Legislature.

109. Rules made by the Governor in connexion with legislative procedure will contain a provision prohibiting the discussion in the Provincial Legislature of, or the asking of questions on, any matter arising out of the administration of an Excluded Area, and enabling the Governor, at his discretion, to disallow any resolution or question regarding the administration of a Partially Excluded Area.

PART III

RELATIONS BETWEEN THE FEDERATION AND THE FEDERAL UNITS

POWERS OF THE FEDERAL LEGISLATURE AND OF PROVINCIAL LEGISLATURES

110. It will be outside the competence of the Federal and of the Provincial Legislatures to make any law affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of British India, the law of British nationality, the Army Act, the Air Force Act, the Naval Discipline Act and the Constitution Act (except, in the case of the last mentioned Act, in so far as that Act itself provides otherwise).

111. The Federal Legislature will, to the exclusion of any Provincial Legislature, have power to make laws for the peace and good government of the Federation or any part thereof with respect to the matters set out in Appendix VI, List I.*

Laws so made will be operative throughout British India, but in the States which have acceded to the Federation only in so far as the Ruler of the State has by his Instrument of Accession accepted the subject with which the law is concerned as a Federal subject. Federal laws will be applicable to British subjects and servants of the Crown within any part of India and to all Indian subjects of His Majesty outside India. The Federal Legislature will also be empowered to make laws regulating the discipline of His Majesty's Indian Forces, in so far as they are not subject to the Army Act, the Air Force Act, or the Naval Discipline Act, which will be applicable to those Forces wherever they are serving.

112. A Provincial Legislature will, to the exclusion of the Federal Legislature, have power to make laws for the peace and good government of the Province or any part thereof with respect to the matters set out in Appendix VI, List II.

113. Nothing in paragraph 111 or 112 will operate to debar the Federal Legislature, in legislating for an exclusively federal subject, from devolving upon a Provincial Government or upon any Officer of that Government, the exercise on behalf of the Federal Government of any functions in relation to that subject.†

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* NOTE.—The lists contained in this Appendix are illustrative only, and do not purport to be either exhaustive or final in their allocations.

† NOTE.—Any cost which falls in virtue of this provision on any Provincial Government, and which that Government would not otherwise have incurred, will be borne by the Federal Government. In the event of disagreement as to the amount or incidence of any charges so involved the question will be referred for decision (which will be final) of an arbitrator to be appointed by the Chief Justice of the Federal Court.

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114. The Federal Legislature and the Provincial Legislatures will have concurrent powers to make laws with respect to the matters set out in Appendix VI, List III, but laws made by Provincial Legislatures under these powers will be confined in their operation to the territories of the Province. The intention of providing for this concurrent field is to secure, in respect of the subjects entered in the List referred to in this paragraph, the greatest measure of uniformity which may be found practicable, but at the same time to enable Provincial Legislatures to make laws to meet local conditions.

The Federal Legislature will not in respect of the subjects contained in List III be able to legislate in such a way as to impose financial obligations on the Provinces.

In the event of a conflict between a Federal law and a Provincial law in the concurrent field, the Federal law will prevail, unless the Provincial law was reserved for, and has received, the assent of the Governor-General. The Federal Legislature will have no power to repeal or amend a Provincial law to which the Governor-General has thus assented, save with the prior sanction of the Governor-General.

115. It is intended that the three lists of subjects indicated in Appendix VI shall be as exhaustive as is reasonably possible. But it has been found on examination that it is not possible to enumerate every subject of a local and private character with regard to which the legislative power can appropriately rest with the Provinces only. It is accordingly proposed to include in the Provincial List a general power to legislate on any matter of a merely local and private nature in the Province not specifically included in that List and not falling within List I or List III; but in order to provide for the possibility that a subject which is in its inception of a merely local or private character may subsequently become of all-India interest, it is proposed to make that power subject to a right of the Governor-General in his discretion to sanction general legislation by the Federal Legislature on the same subject-matter.

Provision will also be made enabling either the Federal Legislature or any Provincial Legislature to make a law with respect to a residual subject, if any, not falling within the scope of any of the three lists, by means of an Act to the introduction of which the previous sanction of the Governor-General, given at his discretion, has been obtained, and to which (in the case of a Provincial Act) the assent of the Governor-General has been declared.

116. The Federal Legislature will be empowered, at the request of two or more Provinces, to pass a law which will be operative in those Provinces and in any other Province which may subsequently adopt it on a subject which would otherwise fall within the legislative competence of a Province only. Such a Federal Act will be subject, as regards any Province to which it applies, to subsequent amendment or repeal by the Legislature of that Province.

117. If any provision of a law of a State is in conflict with an Act of the Federal Legislature regulating any subject which the Ruler of that State has by his Instrument of Accession accepted as a Federal subject, the Act of the Federal Legislature, whether passed before or after the making of the law of the State, will prevail.

118. In order to minimise uncertainty of law and opportunities for litigation as to the validity of Acts, provision will be made limiting the period within which an Act may be called into question on the ground that exclusive powers to pass such legislation were vested in a Legislature in India other than that which enacted it, and enabling a subordinate Court before which the validity of an Act is called in question on that ground within the time limit to refer the question to the High Court of the Province or State for its decision, and also enabling the High Court of a Province or State to require a subordinate Court to make such a reference.

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119. The consent of the Governor-General, given at his discretion, will be required to the introduction in the Federal Legislature of legislation which repeals or amends or is repugnant to any Act of Parliament extending to British India, or any Governor-General's or Governor's Act or Ordinance,* or which affects any Department reserved for the control of the Governor-General, or the coinage and currency of the Federation, or the powers and duties of the Federal Reserve Bank in relation to the management of currency and exchange, or religion or religious rites and usages, or the procedure regulating criminal proceedings against European British subjects.

120. The consent of the Governor-General given in his discretion will be required to the introduction in a Provincial Legislature of legislation on such matters enumerated in the preceding paragraph as are within the competence of a Provincial Legislature, other than legislation which repeals, amends or is repugnant to a Governor's Act or Ordinance† ; or which affects religion or religious rites and usages. The introduction in a Provincial Legislature of legislation on these latter subjects will require the consent of the Governor of the Province given in his discretion.

121. The giving of consent by the Governor-General or any Governor to the introduction of a Bill will be without prejudice to his power of withholding his assent to, or of reserving, the Bill when passed ; but an Act will not be invalid by reason only that prior consent to its introduction was not given, provided that it was duly assented to either by His Majesty, or by the Governor-General or Governor, as the case may be.

122. The Federal Legislature and the Provincial Legislatures will have no power to make laws subjecting in British India any British subject (including companies, partnerships or associations constituted by or under any Federal or Provincial law), in respect of taxation, the holding of property of any kind, the carrying on of any profession, trade, business or occupation, or the employment of any servants or agents, or in respect of residence or travel within the boundaries of the Federation, to any disability or discrimination based upon his religion, descent, caste, colour or place of birth ; but no law will be deemed to be discriminatory for this purpose on the ground only that it prohibits either absolutely or with exceptions the sale or mortgage of agricultural land in any area to any person not belonging to some class recognised as being a class of persons engaged in, or connected with, agriculture in that area, or which recognises the existence of some right, privilege or disability attaching to the members of a community by virtue of some privilege, law or custom having the force of law.

A Federal or Provincial law, however, which might otherwise be void on the ground of its discriminatory character will be valid if previously declared by the Governor-General or a Governor, as the case may be, in his discretion, to be necessary in the interests of the peace and tranquillity of India or any part thereof.‡

§**123.** The Federal Legislature and the Provincial Legislatures will have no power to make laws subjecting any British subject domiciled in the United Kingdom (including companies, &c., incorporated or constituted by or under the laws of the United Kingdom) to any disability or discrimination in the

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* A Governor-General's or Governor's Ordinance for the purpose of this paragraph means an Ordinance as described in paragraphs 53 and 103.

† This relates only to an Ordinance of the kind described in paragraph 103.

‡ Without a qualification of this kind, legislation such as, *e.g.*, the Indian Criminal Tribes Act, would be invalidated by the provisions of this paragraph.

§ A question which will require separate consideration arises with regard to the registration in India of medical practitioners registered in the United Kingdom. A Bill which has an important bearing on this question is at present under consideration in the Indian Legislature.

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exercise of certain specified rights, if an Indian subject of His Majesty, or a company, &c., constituted by or under a Federal or Provincial law, as the case may be, would not in the exercise in the United Kingdom of the corresponding right be subject in the United Kingdom to any disability or discrimination of the same or a similar character. The rights in question are the right to enter, travel and reside in any part of British India; to hold property of any kind; to carry on any trade or business in, or with the inhabitants of, British India; and to appoint and employ at discretion agents and servants for any of the above purposes.

Provision will be made on the same lines for equal treatment on a reciprocal basis of ships registered respectively in British India and the United Kingdom.

124. An Act of the Federal or of a Provincial Legislature, however, which, with a view to the encouragement of trade or industry, authorises the payment of grants, bounties or subsidies out of public funds will not be held to fall within the terms of the two preceding paragraphs by reason only of the fact that it is limited to persons or companies resident or incorporated in India, or that it imposes on companies not trading in India before the Act was passed, as a condition of eligibility for any such grant, bounty or subsidy, that the company shall be incorporated by or under the laws of British India, or conditions as to the composition of the Board of Directors or as to the facilities to be given for training Indian subjects of His Majesty.

Administrative Relations between the Federal Government and the Units

Relations with the Provinces

125. It will be the duty of a Provincial Government so to exercise its executive power and authority, in so far as it is necessary and applicable for the purpose, as to secure that due effect is given within the Province to every Act of the Federal Legislature which applies to that Province: and the authority of the Federal Government will extend to the giving of directions to a Provincial Government to that end.,

The authority of the Federal Government will also extend to the giving of directions to a Provincial Government as to the manner in which the latter's executive power and authority shall be exercised in relation to any matter which affects the administration of a Federal subject.

126. The Governor-General will be empowered in his discretion to issue instructions to the Governor of any Province as to the manner in which the executive power and authority in that Province is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or any part thereof.

Relations with the States-Members of the Federation

127. It will be the duty of the Ruler of a State to secure that due effect is given within the territory of his State to every Act of the Federal Legislature which applies to that territory.

128. The Governor-General will be empowered and, if the terms of any State's Instrument of Accession so provides, will be required to make agreements with the Ruler of any State for the carrying out in that State, through the agency of State authorities, of any Federal purpose. But it will be a condition of every such agreement that the Governor-General shall be entitled, by inspection or otherwise, to satisfy himself that an adequate standard of administration is maintained.

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129. The Governor-General will be empowered in his discretion to issue general instructions to the Government of any State-member of the Federation for the purpose of ensuring that the Federal obligations of that State are duly fulfilled.

Financial Powers and Relations*

Property, Contracts and Suits

130. All legal proceedings which may be at present instituted by or against the Secretary of State in Council will, subject to the reservations specified below, be instituted by or against the Federal Government or the Government of a Governor's Province as the case may be.

131. All property in India which immediately before the date of the establishment of the Federation was vested in His Majesty for the purposes of the government of India will continue to be vested in His Majesty, but for the respective purposes of the Federal Government and the Governments of Governors' Provinces, and will, subject to any special provisions which may be made in relation to Railways, be allocated between the Federal and Provincial Governments accordingly. Property vested in His Majesty for purposes of the government of India which are outside the Federal and Provincial spheres will not be affected by this allocation.

Appropriate provision will also be made with regard to property outside India vested in His Majesty for the purposes of the government of India.

132. Existing powers of the Secretary of State in Council in relation to property allocated under the preceding paragraph and in relation to the acquisition of property and the making of contracts for purposes of government which are not outside the Federal and Provincial spheres will be transferred to and become powers of the Governor-General of the Federation and Governors of the Provinces respectively. All contracts, etc., made under the powers so transferred will be expressed to be made by the Governor-General or the Governor, as the case may be, and may be executed and made in such manner and by such person as he may direct, but no personal liability will be incurred by any person making or executing such a contract.

133. The Secretary of State will be substituted for the Secretary of State in Council in any proceedings instituted before the commencement of the Act by or against the Secretary of State in Council.

134. Rights and liabilities arising under any Statute or contract in existence at the commencement of the Act, including existing immunities from Indian Income Tax in respect of interest on sterling loans issued or guaranteed by the Secretary of State in Council, will be maintained and any remedies which, but for the passing of the Act would have been enforceable by or against the Secretary of State in Council, will after the commencement of the Act be enforceable by or against the Secretary of State; and all obligations arising under any such statute or contract which imposed a liability on the revenues of India will remain a liability on all the revenues of India, whether Federal or Provincial.

135. Money required to meet any judgment or award given against the Secretary of State will, in the first instance, be a charge on the revenues of the Federation with the right of recovery by the Federal Government, where necessary and appropriate, from Provincial revenues. The Secretary of State will have power to secure the implementing of any judgment or award obtained against him.

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* See also paragraphs 45–51 and 95–100 for legislative procedure with regard to financial proposals.

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Allocation of Revenues

NOTE.—Legislative powers in relation to taxation and raising of revenue will be defined by the legislative schedules in Appendix VI (*see* in particular items 34–37 and 49–54 of List I, and 66 and 67, with Annexure, of List II).

136. Revenues derived from sources in respect of which the Legislature of a Governor's Province has exclusive, or concurrent, power to make laws will be allocated as provincial revenues.

Revenues derived from sources in respect of which the Federal Legislature has exclusive power to make laws will be allocated as federal revenues; but in the cases specified in the following paragraphs the Federation will be empowered or required to make assignments to Provinces or States from Federal revenues.

Salt. Federal Excises. Export Duties.

137. The Federal Legislature will be empowered to assign to Provinces and States in accordance with such schemes of distribution as it may determine the whole or any part of the net revenues derived from any one or more of the sources specified in the margin; in the case, however, of export duties on jute or jute products, an assignment to the producing units will be compulsory, and will amount to at least 50 per cent. of the net revenue from the duty.

Duties on property passing on death (other than land). Taxes on mineral rights and on personal captial (other than land).

Terminal taxes on railway, water, or air-borne goods and passengers, and taxes on railway tickets and goods freights.

Stamp duties which are the subject of legislation by the Indian Legislature at the date of federation.

138. The net revenues derived from the sources specified in the margin will be assigned to the Governors' Provinces. The Federal Legislature will in each case, lay down the basis of distribution among the Provinces, but will be empowered to impose and retain a surcharge on such taxes for federal purposes.

Taxes on income (other than agricultural income) except taxes on the income of companies.

139. A prescribed percentage, not being less than 50 per cent. nor more than 75 per cent., of the net revenues derived from the sources specified in the margin (exclusive of any surcharges imposed by the Provinces, and of revenues derived from taxes on the official emoluments of Federal officers or taxes on income attributable to Chief Commissioners' Provinces and other Federal areas) will be assigned on a prescribed basis to the Governors' Provinces.

Provision will be made enabling this arrangement, with such modifications as may be found necessary, to be extended to any State-member of the Federation which has agreed to accept federal legislation regarding the taxes on income referred to in the margin as applying to the State.

For each of the first three years after the commencement of the Constitution Act, however, the Federal Government will be entitled to retain in aid of federal revenues out of the moneys which would otherwise be assigned to the Provinces (the amount distributed to the Provinces being correspondingly reduced) a sum to be prescribed and for each of the next seven years a sum which is in any year less than that retained in the previous year by an amount

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equal to one-eighth of the sum originally prescribed. But the Governor-General will be empowered in his discretion to suspend these reductions in whole or in part, if after consulting the Federal and Provincial Ministers he is of opinion that their continuance for the time being would endanger the financial stability of the Federation.

140. Legislation concerning any of the forms of taxation mentioned in the three preceding paragraphs which directly affects any revenues assigned to the Provinces under those paragraphs will require the previous consent of the Governor-General given in his discretion after consultation with the Federal and Provincial Ministers.

141. The Federal Legislature will have power to impose surcharges for Federal purposes on taxes on income (other than agricultural income), no part of the proceeds of which will be assigned to Governors' Provinces (or other units). While such surcharges are in operation, each State-member of the Federation (unless it has agreed to accept Federal legislation regarding taxes on income as applying to the State) will contribute to Federal revenues a sum to be assessed on a prescribed basis. But States will not be required to contribute any counterpart to the special addition to taxes on income imposed in September, 1931, if and so long as those additions are still being imposed; though the latter will in other respects be deemed to be Federal surcharges.

142. The powers of the Federal Legislature in respect of the imposition of taxes on the income or capital of companies will extend, but not until the expiry of ten years from the commencement of the Constitution Act, to the imposition of taxes on companies in any State-member of the Federation. Any taxes so imposed will, if any State so elects, be collected directly from the State by the Federal Government and not from the company.

143. Any assignment or distribution of revenues from Federal sources to State-members of the Federation will be subject to such conditions as may be laid down by Act of the Federal Legislature for the purpose of effecting adjustments in respect of any special privilege or immunity of a financial character enjoyed by a State.

144. Provision will be made for subventions to certain Governors' Provinces out of Federal revenues of prescribed amounts and for prescribed periods.

145. "Prescribed" in the above paragraphs means prescribed by His Majesty by Order in Council, and the draft of the Orders will be laid before both Houses of Parliament for approval.

Borrowing Powers

146. The Federal Government will have power to borrow for any of the purposes of the Federation upon the security of Federal revenues within such limits as may from time to time be fixed by Federal law. [9 & 10 Will. III, c. 44, Sections 75 and 86, which necessitates the existing East India Loans Acts procedure in relation to Indian sterling borrowing, will cease to have effect.]

147. The trustee status of existing India sterling loans will be maintained and will be extended to future sterling Federal loans.

148. The Federal Government will be empowered to grant loans to or to guarantee a loan by any Governor's Province or State-member of the Federation on such terms and under such conditions as it may prescribe.

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149. The Government of a Governor's Province will have power to borrow for any Provincial purpose on the security of provincial revenues, within such limits as may from time to time be fixed by provincial law, but the consent of the Federal Government will be required if either (*a*) there is still outstanding any part of a loan made or guaranteed by the Federal Government or by the Governor-General in Council before the commencement of the Constitution Act; or (*b*) the loan is to be raised outside India.

General

150. Provision will be made securing that Federal and Provincial Revenues shall be applied for the purposes of the government of India alone.

Part IV

THE JUDICATURE

The Federal Court

151. The Federal Court will consist of a Chief Justice and not less than Judges, together with such further Judges not exceeding as His Majesty may from time to time, after considering any Address from the Federal Legislature submitted to him by the Governor-General, think fit to appoint.

The Chief Justice and Judges of the Federal Court will be appointed by His Majesty and will hold office during good behaviour. The tenure of office of any Judge will cease on his attaining the age of 62 years; and any Judge may resign his office to the Governor-General.

152. The salaries, pensions, leave and other allowances of Judges of the Federal Court will be fixed by Order in Council. But neither the salary of a Judge nor his rights in respect of leave of absence or pension will be liable to be varied to his disadvantage during his tenure of office.

153. A person will not be qualified for appointment as a Judge of the Federal Court unless he—

(*a*) has been for at least five years a Judge of a Chartered High Court; or

(*b*) has been for at least five years a Judge of a State Court in India and was, at the date of his appointment as such, qualified for appointment as a Judge of a Chartered High Court; or

(*c*) has been for at least five years a Judge of any Court, other than a Chartered High Court, and was, at the date of his appointment as such, qualified for appointment as a Judge of a Chartered High Court; or

(*d*) is a barrister of England or Northern Ireland, or a member of the Faculty of Advocates in Scotland, of at least fifteen years' standing; or

(*e*) has been for at least fifteen years an Advocate or Pleader of any High Court or of two or more High Courts in succession.

154. The Federal Court will sit at Delhi and at such other place or places, if any, as the Chief Justice, with the approval of the Governor-General, from time to time appoints.

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155. The Federal Court will have an exclusive original jurisdiction in—

(i) any matter involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder, where the parties to the dispute are—

(*a*) the Federation and either a Province or a State; or

(*b*) two Provinces or two States, or a Province and a State;

(ii) any matter involving the interpretation of, or arising under, any agreement entered into after the commencement of the Constitution Act between the Federation and a Province or a State, or between two Provinces, or a Province and a State, unless the agreement otherwise provides.

A matter brought before the Federal Court under the provisions of this paragraph will be heard in the first instance by one Judge or such number of Judges as may be prescribed by rules of Court, and an Appeal will lie to a Full Bench of the Court constituted of such number, not being less than , of Judges as may be determined in the same manner.

156. The Federal Court will have an exclusive appellate jurisdiction from any decision given by any High Court or any State Court, so far as it involves the interpretation of the Constitution Act or of any rights or obligations arising thereunder. No appeal will lie under this provision, except with the leave of the Federal Court or of the High Court of the Province or State or unless in a civil case the value of the subject-matter in dispute exceeds Rs.

157. An appeal to the Federal Court will be by way of Special Case on facts stated by the Court from which the appeal is brought. The Federal Court may on application for leave to appeal require a Special Case to be stated, and may return a Special Case so stated for a further statement of facts.

158. An appeal will lie without leave to the King in Council from a decision of the Federal Court in any matter involving the interpretation of the Constitution Act, but, subject always to the grant of special leave by His Majesty, in any other case only by leave of the Federal Court, unless the value of the subject-matter in dispute exceeds Rs.

159. There will be no appeal, whether by special leave or otherwise, direct to the King in Council against any decision of a High Court in cases where, under the Constitution Act, an appeal lies to the Federal Court, either as of right or by leave of the Court.

160. The process of the Federal Court will run throughout the Federation, and within those territories all authorities, civil and judicial, will be bound in any place within their respective jurisdictions to recognise and enforce the process and judgments of the Federal Court; and all other Courts within the Federation will be bound to recognise decisions of the Federal Court as binding upon themselves.

161. The Governor-General will be empowered, in his discretion, to refer to the Federal Court, for hearing and consideration, any justiciable matter which he considers of such a nature and such public importance that it is expedient to obtain the opinion of the Court upon it.

162. Provision will be made conferring on the Federal Court powers, similar to those enjoyed by High Courts, enabling the Court to grant remedies, and the Court will be empowered, with the approval of the Governor-General to make rules of Court regulating the practice and procedure of the Court, including the fees to be charged in respect of proceedings in the Court.

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The Supreme Court

163. Provision will be made enabling the Federal Legislature to establish a Supreme Court of Appeal for British India with a jurisdiction not exceeding that indicated in the following paragraphs and to confer on it powers to grant remedies, to regulate procedure and to prescribe fees similar to those enjoyed by a High Court:

But the introduction of any Bill promoted for this purpose will require the previous sanction of the Governor-General given at his discretion.

164. The President and Judges of the Supreme Court will be appointed by His Majesty and will hold office during good behaviour. The tenure of office of any Judge will cease on his attaining the age of 62 years; and any Judge may resign his office to the Governor-General.

The provisions relating to the qualifications for appointment of Judges will be the same as in the case of the Federal Court, and, as in the case of that Court, the salaries, pensions, leave and other allowances of the Judges will be regulated by Order in Council.

165. The Supreme Court will be a Court of Appeal from the High Courts in British India, whether established by Letters Patent or otherwise.

166. Appeals to the Supreme Court in civil cases will be subject to the provisions now applicable to appeals to His Majesty in Council, including appeals by special leave, but power will be reserved to the Federal Legislature to limit the right of appeal, so far as it depends on the value of the subject matter in dispute, to cases in which the value exceeds a specified amount not being less than Rs. 10,000 (the existing limit in the case of appeals to the King in Council).

Appeals in criminal cases will lie only where a sentence of death has been passed or where an acquittal on a criminal charge has been reversed by a High Court, and also where leave to appeal has been given by the Supreme Court on consideration of a certificate by a High Court that the case is a fit one for a further appeal.

167. On the establishment of the Supreme Court, a direct appeal from a High Court to His Majesty in Council in either a civil or a criminal case will be barred. An appeal from the Supreme Court to His Majesty in Council will be allowed in civil cases only by leave of the Supreme Court or by special leave. In criminal cases no appeal will be allowed to His Majesty in Council, whether by special leave or otherwise.

The Provincial High Courts

168. The existing High Courts established by Letters Patent, usually known as the Chartered High Courts, will be maintained.

169. The Judges of High Courts will continue to be appointed by His Majesty and will hold office during good behaviour. The tenure of office of any Judge will cease on his attaining the age of 62 years, and any Judge may resign his office to the Governor-General.

170. The qualifications for appointment as a Chief Justice or Judge will remain as at present, but the existing provision, which requires that one-third of the Judges of a Court must be barristers or members of the Faculty of Advocates in Scotland and that one-third must be members of the Indian Civil Service will be abrogated.

Any person qualified to be a Judge will be eligible for appointment as Chief Justice.

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171. The salaries, pensions, leave and other allowances of Judges of the High Courts will be regulated by Order in Council. But neither the salary of a Judge nor his rights in respect of leave of absence or pension will be liable to be varied to his disadvantage during his tenure of office.

172. The power to appoint temporary additional Judges and to fill temporary vacancies in the High Courts will be vested in the Governor-General in his discretion.

173. Subject to any provision which may be made by the Federal Legislature or by any Provincial Legislature within their respective spheres, as determined by the provisions of paragraphs 111, 112 and 114, the High Courts will have the jurisdiction, powers and authority vested in them at the time of the commencement of the Constitution Act.

174. His Majesty will be empowered to establish additional Chartered High Courts as required, and the Governor-General will, as at present, have power to transfer areas from the jurisdiction of one High Court to that of another, and to authorise a High Court to exercise jurisdiction in parts of British India not included within the local limits of its jurisdiction, and in respect of British subjects in parts of India outside British India.

175. The Federal Legislature will have power to regulate the powers of superintendence exercised by High Courts over subordinate Courts in the Province.

Part V

THE SECRETARY OF STATE'S ADVISERS

176. After the commencement of the Constitution Act the Council of India as at present constituted will cease to exist. But the Secretary of State will be empowered to appoint not less than three, nor more than six, persons (of whom two at least must have held office for at least 10 years under the Crown in India) for the purpose of advising him.

177. Any person so appointed will hold office for a term of five years, will not be eligible for re-appointment, and will not be capable, while holding his appointment, of sitting or voting in Parliament.

178. The salary of the Secretary of State's advisers will be £ a year, to be defrayed from monies provided by Parliament.

179. The Secretary of State will determine the matters upon which he will consult his advisers, and will be at liberty to seek their advice, either individually or collectively, on any matter. But so long as a Secretary of State remains the authority charged by the Constitution Act with the control of any members of the Public Services in India (see paragraph 187) he will be required to lay before his advisers, and to obtain the concurrence of the majority of them to, any draft of rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service, and any order which he proposes to make upon an appeal admissible to him under the Constitution Act from any such member.

Part VI

THE PUBLIC SERVICES

General

180. Every person employed under the Crown in India will be given a full indemnity against civil and criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of his duty.

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181. Every person employed in a civil capacity under the Crown in India will hold office during His Majesty's pleasure, but he will not be liable to dismissal by any authority subordinate to the authority by whom he was appointed; or to dismissal or reduction without being given formal notice of any charge made against him and an opportunity of defending himself, unless he has been convicted in a criminal Court or has absconded.

PERSONS APPOINTED BY THE SECRETARY OF STATE IN COUNCIL BEFORE THE COMMENCEMENT OF THE CONSTITUTION ACT, AND PERSONS TO BE APPOINTED BY THE SECRETARY OF STATE THEREAFTER.

182. Every person appointed by the Secretary of State in Council before the commencement of the Constitution Act will continue to enjoy all service rights possessed by him at that date or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable. The Secretary of State will also be empowered to award compensation in any other case in which he considers it to be just and equitable that compensation should be awarded.

A summary of the principal existing service rights of persons appointed by the Secretary of State in Council is set out in Appendix VII, Part I.* These rights will be in part embodied in the Constitution Act and in part provided for by rules made by the Secretary of State.

†**183.** The Secretary of State will after the commencement of the Act make appointments to the Indian Civil Service, the Indian Police and the Ecclesiastical Department.‡ The conditions of service of all persons so appointed, including conditions as to pay and allowances, pensions, and discipline and conduct, will be regulated by rules made by the Secretary of State. It is intended that these rules shall in substance be the same as those now applicable in the case of persons appointed by the Secretary of State in Council before the commencement of the Act.

184. Every person appointed by the Secretary of State will continue to enjoy all service rights existing as at the date of his appointment, or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable. The Secretary of State will also be empowered to award compensation to any such person in any other case in which he considers it to be just and equitable that compensation should be awarded.

185. The Secretary of State will be required to make rules regulating the number and character of civil posts to be held by persons appointed by the Crown, by the Secretary of State in Council or by the Secretary of State, and prohibiting the filling of any post declared to be a reserved post otherwise than by the appointment of one of those persons, or the keeping vacant of any reserved post for a period longer than three months without the previous sanction of the Secretary of State or save under conditions prescribed by him.

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* The rights referred to in items 14, 15 and 16 of this Appendix will be extended to persons appointed by the Secretary of State in Council before the commencement of the Constitution Act and to persons appointed by the Secretary of State thereafter serving under the Federal Government, the Governor-General being substituted for the Governor.

† Under existing conditions the personnel required for External Affairs and for conducting relations with the States belong to a common department—the Indian Foreign and Political Department. After the commencement of the Constitution Act, the latter will be under the Viceroy and their recruitment will be controlled by His Majesty's Government. The personnel of the Department of External Affairs will be under the Governor-General, who will himself direct and control that Department. The method of recruitment to it has not yet been determined by His Majesty's Government. For some time at any rate it may, for practical reasons, be found desirable to make the two Departments interchangeable.

‡ See also end of paragraph 72 of Introduction.

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186. Conditions in regard to pensions and analogous rights will be regulated in accordance with the Rules in force at the date of the Constitution Act and the Secretary of State will have no power to make any amending rules varying any of these conditions so as to affect adversely the pension, &c., of any person appointed before the variation is made. An award of pension less than the maximum pension admissible will require the consent of the Secretary of State.

Claims in respect of pensions will be against the Federal Government only; it will be for the Federal Government to make any necessary adjustments with the Provinces. The pensions of all persons appointed before the commencement of the Constitution Act will be exempt from Indian taxation if the pensioner is residing permanently outside India. The pensions of persons appointed by the Secretary of State or by the Crown after that date will also be exempt from Indian taxation if the pensioner is residing permanently outside India.

187. The existing rule-making powers of the Secretary of State in Council will continue to be exercised by the Secretary of State in respect of persons appointed by the Secretary of State in Council or to be appointed by the Secretary of State until His Majesty by Order in Council made on an Address of both Houses of Parliament designates another authority for the purpose. Any rule made by the Secretary of State will require the approval of the Secretary of State's Advisory Council, unless and until both Houses of Parliament by resolution otherwise determine.

188. Provision will be made whereby any person appointed by the Crown who is or has been serving in India in a civil capacity and any person who, though not appointed by the Secretary of State in Council before the commencement of the Constitution Act or by the Secretary of State after its commencement, holds or has held a post borne on the cadre of the Indian Civil Service may be given such of the rights and conditions of service and employment of persons appointed by the Secretary of State in Council or by the Secretary of State, as the Secretary of State may decide to be applicable to his case.

189. A statement of the vacancies in, and the recruitment made to, the Services and Departments to which the Secretary of State will appoint after the commencement of the Constitution Act will be laid annually before both Houses of Parliament.

At the expiration of five years from the commencement of the Constitution Act, a statutory enquiry will be held into the question of future recruitment for those Services, except the Foreign Department and the Ecclesiastical Department. The decision on the results of this enquiry, with which the Governments in India concerned will be associated will rest with His Majesty's Government, and be subject to the approval of both Houses of Parliament.

Persons appointed or to be appointed otherwise than by the Secretary of State in Council or the Secretary of State.

190. The Federal and Provincial Governments respectively will appoint, and subject to the following paragraphs, determine the conditions of service of all persons in the Federal and Provincial Services other than persons appointed by the Crown, by the Secretary of State in Council, or by the Secretary of State.

191. Every person in those Services at the commencement of the Constitution Act will continue to enjoy all service rights existing as at that date. A Summary of the principal existing rights is set out in Appendix VII, Part II.

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192. No person appointed by an authority other than the Secretary of State in Council who was serving in India in a civil capacity before the commencement of the Constitution Act will have his conditions of service in respect of pay, allowances, pension or any other matter, adversely affected, save by an authority in India competent to pass such an order on the 8th March, 1926, or with the sanction of such authority as the Secretary of State may direct.

193. No rule or order of the Federal or a Provincial Government affecting emoluments, pensions, provident funds, or gratuities, and no order upon a memorial will be made or passed to the disadvantage of an officer appointed to a Central Service Class I, or to a Provincial Service, before the commencement of the Act, without the personal concurrence of the Governor-General or the Governor, as the case may be. No post in a Central Service Class I, or any Provincial Service shall be brought under reduction, if such reduction would adversely affect any person who, at the commencement of the Constitution Act, was a member of those Services, without the sanction of the Governor-General or the Governor, as the case may be, or, in the case of any person appointed by the Crown or by the Secretary of State in Council, of the Secretary of State.

194. Every person, whether appointed before or after the commencement of the Constitution Act, who is serving in a civil capacity in a whole-time permanent appointment, will be entitled to one appeal against any order of censure or punishment, or against any order affecting adversely any condition of service, pay, allowances, or pension, or any contract of service, other than an order made by the Federal Government in the case of officers serving under the control of that Government or an order made by a Provincial Government in the case of officers serving under the control of Provincial Governments.

Public Service Commissions

195. There will be a Federal Public Service Commission and a Provincial Public Service Commission for each Province; but by agreement the same Provincial Commission will be enabled to serve two or more Provinces jointly.

196. The members of the Federal Public Service Commission will be appointed by the Secretary of State, who will also determine their number, tenure of office, and conditions of service, including pay, allowances, and pensions, if any. The Chairman at the expiration of his term of office will be ineligible for further office under the Crown in India; the other members will be eligible for appointment as Chairman of the Federal Commission or as Chairman of a Provincial Commission, and their eligibility for other appointments under the Crown in India will be subject to regulations made by the Secretary of State.

197. The members of a Provincial Public Service Commission will be appointed by the Governor, who will also determine at his discretion their number, tenure of office, and conditions of service, including pay, allowances, and pensions, if any. The Chairman at the expiration of his term of office will be ineligible for further office under the Crown in India, save as Chairman or member of the Federal Public Service Commission. The other members will be eligible for appointment as Chairman or members of the Federal Commission or of any Provincial Commission, and their eligibility for other appointments under the Crown in India will be subject to regulations made by the Governor.

198. The emoluments of the members of all Public Service Commissions will not be subject to the vote of the Legislatures.

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199. The Federal and Provincial Public Service Commissions will conduct all competitive examinations for appointments to Federal and Provincial Services respectively. The Governments will be required to consult them on all matters relating to methods of recruitment, on appointments by selection, on promotions, and on transfers from one service to another, and the Commissions will advise as to the suitability of candidates for such appointments, promotions or transfers.

200. The Federal and Provincial Governments will also be required, subject to such exceptions (if any) as may be specified in regulations to be made by the Secretary of State or a Governor, as the case may be, to consult the Public Service Commissions in connection with all disciplinary orders (other than an order for suspension) affecting persons in the Public Services in cases which are submitted to the Governments for orders in the exercise of their original or appellate powers ; in connection with any claim by an officer that a Government should bear the costs of his defence in legal proceedings against him in respect of acts done in his official capacity ; and in connection with any other class of case specified by regulations made from time to time by the Secretary of State or a Governor, as the case may be. But no regulations made by a Governor will be able to confer powers on a Provincial Commission in relation to any person appointed by the Secretary of State without the assent of the Secretary of State, or, in relation to any other person who is not a member of one of the Provincial Services, of the Governor-General.

201. The Federal and Provincial Governments will be empowered to refer to the appropriate Commission for advice any case, petition, or memorial, if they think fit to do so ; and the Secretary of State will be empowered to refer to the Federal Commission any matter relating to persons appointed by him on which he may desire to have the opinion of the Commission.

PART VII

TRANSITORY PROVISIONS

202. *The Constitution Act, though treating the Federation as a whole, will contain provisions enabling the Provincial Constitutions, for which it provides, to be brought into being, if necessary, before the Constitution as a whole comes into being. Transitory provisions, also to be included in the Constitution Act, will enable in that event temporary modifications to be made in the provisions of the Constitution Act for the purpose of continuing the existence of the present Indian Legislature, of removing the limit to the number of Counsellors whom the Governor-General may appoint, of placing the administration of all Departments of the Central Government under the Governor-General's exclusive control, and of suspending the operation of the provisions relating to the Council of Ministers. Broadly stated the effect of these transitory provisions will be that the Executive of the Central Government, though necessarily deprived of much of its present range of authority in the Provinces, would for the time being be placed in substantially the same position as that occupied by the Governor-General in Council under the existing Act.

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* This paragraph should be read in relation to paragraphs 12 and 13 of the Introduction.

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APPENDIX I

Composition of and Method of Election to the British India Side of the Federal Council of State

(*See paragraph* 18 *of the Introduction and paragraph* 26 *of the Proposals*)

The British India seats in the Council of State will be filled in the following manner: 136 seats will be filled by election by means of the single transferable vote by the members of the Provincial Legislatures, the number of seats elected by each being as follows:—

Madras, Bombay, Bengal, United Provinces, Punjab and Bihar	18 each
Central Provinces (with Berar)*	8
Assam, North-West Frontier Province, Sind and Orissa ..	5 each

In Provinces where there is an Upper Chamber, its members will participate jointly with the members of the Provincial Assembly for the purpose of election to the Council of State.

Indian Christian, Anglo-Indian and European members of the Provincial Legislatures will not be entitled to vote in the elections for the above-mentioned seats in the Council of State. Ten non-Provincial communal seats will be reserved in the Council of State, 7 for Europeans, 2 for Indian Christians, 1 for Anglo-Indians, these seats being filled by election by three electoral colleges, consisting respectively of the European, Indian Christian and Anglo-Indian members of the above-mentioned Provincial Legislatures, voting for the European and Indian Christian seats being by the method of the single transferable vote.

One seat each will be provided in the Council of State for Coorg, Ajmer Delhi, and Baluchistan. Members of the Coorg Legislature will elect to the Coorg seat. Special provision will be made for election in the other three of these Chief Commissioners' Provinces. (It may be necessary to resort to nomination in the case of Baluchistan.)

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* *See* paragraph 45 of Introduction.

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APPENDIX II

Federal Assembly: British India Side

(See paragraph 17 of the Introduction and paragraph 29 of the Proposals)

The British India side of the Federal Assembly will be composed as shown in the annexed table. The constituencies will all be provincial, except for the four seats shown in the table as non-provincial.

Election to the seats allotted to the Sikh, Muslim, Indian Christian, Anglo-Indian and European constituencies will be by voters voting in separate communal electorates. All qualified voters who are not voters in one of these constituencies will be entitled to vote in a general constituency.

Seats will be " reserved " for the Depressed Classes out of the general seats to the extent indicated in the table. Election to these seats will be by joint electorates in plural-member constituencies, subject to the following procedure: All members of the Depressed Classes registered in the general electoral roll of a constituency will form an electoral college, which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats by the method of the single vote, and the four persons getting the highest number of votes in such primary election will be the only candidates for election by the general electorate qualified for the reserved seat.

Election to the woman's seat in each of the provinces to which one is allocated will be by the members of the Provincial Legislature voting by means of the single transferable vote.

The special seats allotted to Commerce and Industry will be filled by election by Chambers of Commerce and other similar associations.

The special seats allotted to Landholders will be filled by election in special landholders' constituencies.

The special seats allotted to Labour will be filled from non-communal constituencies; the electoral arrangements have still to be determined.

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APPENDIX II—(*continued*)

Composition of Federal Assembly (British India side).

Province (and Population in Millions).	Total.	General.	Number of General Seats Reserved for Depressed Classes.	Sikh.	Muslim.	Indian Christian.	Anglo-Indian.	European.	Women, Special.	Commerce and Industry, Special.‡	Landholders, Special.	Labour, Special.
Madras (45·6)	37	19	4	0	8	2	1	1	2	2	1	1
Bombay (18·0) ..	30	13	2	0	6	1	1	1	2	3	1	2
Bengal (50·1)	37	10	3	0	17	1	1	1	1	3	1	2
U.P. (48·4)	37	19	3	0	12	1	1	1	1	0	1	1
Punjab (23·6)	30	6	1	6	14	1	0	1	1	0	1	0
Bihar (32·4)	30	16	2	0	9	1	0	1	1	0	1	1
C.P. (with Berar)§ (15·5)	15	9	2	0	3	0	0	0	1	0	1	1
Assam (8·6)	10	4	1	0	3	1	0	1	0	0	0	1
N.W.F.P. (2·4) ..	5	1	0	0	4	0	0	0	0	0	0	0
Sind (3·9)	5	1	0	0	3	0	0	1	0	0	0	0
Orissa (6·7)	5	4	1	0	1	0	0	0	0	0	0	0
Delhi (0·6)	2	1	0	0	1	0	0	0	0	0	0	0
Ajmer (0·6)	1*	1	0	0	0	0	0	0	0	0	0	0
Coorg (0·2)	1*	1	0	0	0	0	0	0	0	0	0	0
Baluchistan‖ (0·5) ..	1*	0	0	0	1	0	0	0	0	0	0	0
Non-Provincial	4	0	0	0	0	0	0	0	0	3†	0	1
Total (257·1) ..	250	105	19	6	82	8	4	8	9	11	7	10

* Non-communal seats.

† These three seats are to be filled by (1) Associated Chambers of Commerce, (2) Federated Chambers of Commerce, (3) Northern India Commercial Bodies.

‡ The composition of the bodies through which election to these seats will be conducted will not be statutorily fixed. It is accordingly not possible to state with certainty how many Europeans and Indians, respectively, will be returned. It is, however, expected that initially the numbers will be approximately six Europeans and five Indians.

§ See paragraph 45 of Introduction.

‖ It may be necessary to resort to nomination in the case of Baluchistan.

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APPENDIX III

PART I

Provincial Legislative Assemblies

(See paragraph 49 of Introduction and paragraph 78 of the Proposals.)

1. Seats in the Legislative Assemblies in the Governors' Provinces will be allocated as shown in the annexed table.

2. Election to the seats allotted to Muhammadan, European and Sikh constituencies will be by voters voting in separate communal electorates covering between them the whole area of the Province (apart from any portions which may in special cases be excluded from the electoral area as " backward ").

3. All qualified electors, who are not voters either in a Muhammadan, Sikh, Indian Christian (see paragraph 5 below), Anglo-Indian (see paragraph 6 below) or European constituency, will be entitled to vote in a general constituency.

4. Seats will be reserved for the Depressed Classes out of the general seats to the extent indicated in the table. Election to these seats will be by joint electorates, in plural member constituencies, subject to the following procedure: All members of the Depressed Classes registered in the general electoral roll of a constituency will form an electoral college which will elect a panel of four candidates belonging to the Depressed Classes for each of such reserved seats by the method of the single vote, and the four persons getting the highest number of votes in such primary election shall be the only candidates for election by the general electorate who are qualified for the reserved seats.

5. Election to the seats allotted to Indian Christians will be by voters voting in separate communal electorates. It seems almost certain that practical difficulties will, except possibly in Madras, prevent the formation of Indian Christian constituencies covering the whole area of the Province, and that accordingly special Indian Christian constituencies will have to be formed only in one or two selected areas in the Province. Indian Christian voters in these areas will not vote in a general constituency. Indian Christian voters outside these areas will vote in a general constituency. Special arrangements may be needed in Bihar, where a considerable proportion of the Indian Christian community belong to the aboriginal tribes.

6. Election to the seats allotted to Anglo-Indians will be by voters voting in separate communal electorates. It is intended, subject to investigation of any practical difficulties that may arise, that the Anglo-Indian constituencies shall cover the whole area of each Province, a postal ballot being employed.

7. The method of filling the seats assigned for representatives from backward areas is still under investigation, and the number of seats so assigned should be regarded as provisional.

8. The precise electoral machinery to be employed in the constituencies for the special women's seats is still under consideration.

9. The seats allotted to " Labour " will be filled from non-communal constituencies. The electoral arrangements have still to be determined, but it is likely that in most Provinces the Labour constituencies will be partly trade union and partly special constituencies.

10. The special seats allotted to Commerce and Industry, Mining and Planting will be filled by election through Chambers of Commerce and various Associations. The details of the electoral arrangements for these seats must await further investigation.

11. The special seats allotted to Landholders will be filled by election by special Landholders' constituencies.

12. The method to be employed for election to the University seats is still under consideration.

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PART II

Provincial Legislative Councils.

(*See paragraph* 49 *of Introduction and paragraph* 80 *of the Proposals.*)

The Legislative Councils (Upper Chambers) in the Provinces of Bengal, United Provinces and Bihar, will be constituted as follows :—

Bengal.—Total seats—65.

10 nominated by the Governor in his discretion.*
27 elected by method of the single transferable vote by the members of the Bengal Legislative Assembly.
17 directly elected from constituencies for which only Muslim voters will be qualified.
1 directly elected from constituencies for which only European voters will be qualified.
10 directly elected from general constituencies for which all qualified voters other than Muslims and Europeans will be entitled to vote.

The United Provinces.—Total seats—60.

9 nominated by the Governor in his discretion.*
17 directly elected from constituencies for which only Muslim voters will be qualified.
34 directly elected from general constituencies for which all qualified voters other than Muslims will be entitled to vote.

Bihar.—Total seats—30.

5 nominated by the Governor in his discretion.*
12 elected by method of single transferable vote by the members of the Bihar Legislative Assembly.
4 directly elected from constituencies for which only Muslim voters will be qualified.
9 directly elected from general constituencies for which all qualified voters other than Muslims will be entitled to vote.

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* Serving officials will not be eligible for nomination.

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Composition of Provincial Legislative Assemblies (Lower Houses)

Province. (Population in Millions shown in brackets.)	General.	Number of General Seats Reserved for Depressed Classes.	Representatives from Backward Areas.	Sikh.	Muhammadan.	Indian Christian.	Anglo-Indian.	European.	Commerce and Industry, Mining and Planting, Special (*a*).	Landholders, Special.	University, Special.	Labour, Special.	Total.
Madras (45·6)	152 (including 6 women)	30	1	0	29 (including 1 woman)	9 (including 1 woman)	2	3	6	6	1	6	215
Bombay (18·0) ..	119 (*b*) (including 5 women)	15	1	0	30 (including 1 woman)	3	2	3	7	2	1	7	175
Bengal (50·1)	80 (including 2 women)	30	0	0	119 (including 2 women)	2	4 (including 1 woman)	11	19	5	2	8	250
United Provinces (48·4)	144 (including 4 women)	20	0	0	66 (including 2 women)	2	1	2	3	6	1	3	228
Punjab (23·6)	43 (including 1 woman)	8	0	32 (including 1 woman)	86 (including 2 women)	2	1	1	1	5(*c*)	1	3	175
Bihar (32·4)	89 (including 3 women)	15	7	0	40 (including 1 woman)	1	1	2	4	4	1	3	152
Central Provinces (with Berar(*e*)) (15·5)	87 (including 3 women)	20	1	0	14	0	1	1	2	3	1	2	112
Assam (8·6)	48 (including 1 woman) (*d*)	7	9	0	34	1	0	1	11	0	0	4	108
North-West Frontier Province (2·4)	9	0	0	3	36	0	0	0	0	2	0	0	50
Sind (3·9)	19 (including 1 woman)	0	0	0	34 (including 1 woman)	0	0	2	2	2	0	1	60
Orissa (6·7)	49 (including 2 women)	7	2	0	4	1	0	0	1	2	0	1	60

(*a*) The composition of the bodies through which election to these seats will be conducted, though in most cases either predominantly European or predominantly Indian, will not be statutorily fixed. It is, accordingly, not possible in each Province to state with certainty how many Europeans and Indians respectively will be returned. It is, however, expected that, initially, the numbers will be approximately as follows:—Madras, 4 Europeans, 2 Indians; Bombay, 4 Europeans, 3 Indians; Bengal, 14 Europeans, 5 Indians; United Provinces, 2 Europeans, 1 Indian; Punjab, 1 Indian; Bihar, 2 Europeans, 2 Indians; Central Provinces (including Berar), 1 European, 1 Indian; Assam, 8 Europeans, 3 Indians; Sind, 1 European, 1 Indian; Orissa, 1 Indian.

(*b*) Seven of these seats will be reserved for Mahrattas.

(*c*) One of these seats is a Tumandar's seat. The four Landholders' seats will be filled from special constituencies with joint electorates. It is probable, from the distribution of the electorate, that the members returned will be 1 Hindu, 1 Sikh and 2 Muhammadans.

(*d*) This woman's seat will be filled from a non-communal constituency at Shillong.

(*e*) *See* paragraph 45 of Introduction.

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APPENDICES IV AND V

FRANCHISE

Introductory Note

1. The qualifications proposed for the Franchise for the Provincial Legislatures and for the seats allotted to the provinces of British India in the Federal House of Assembly are set out in the Schedules which follow. It should be emphasised that the qualifications in question are necessarily subject to modification in details on the preparation of an electoral roll. They are essentially based on existing franchise qualifications for legislative or municipal bodies.

2. *General Qualifications.*—Apart from the qualification of race, community, or religion, in the case of certain seats, voters in respect of any of the qualifications shown in these Schedules must be British subjects, must have attained the age of 21 years, and, save in the case of certain special constituencies, must reside in the constituency in which they claim to vote.

3. For the first two elections under the new constitution, and thereafter unless and until a local Government modifies this requirement in respect of the area under its control, claimants in respect of an educational qualification, or of property held by a husband, will be required to make application to be entered on the electoral roll to the returning officer. The proportion of women to men in the electorate will depend upon the number of women who are actually registered under the qualifications in question. There are practical difficulties in placing on returning officers the whole responsibility for registration of those qualifications. But His Majesty's Government are very anxious to secure that the proportion of women electors should be adequate and further consideration of the above arrangements may be necessary.

4. *The Scheduled Castes (Depressed Classes).*—It is the intention of His Majesty's Government to make provision for the inclusion on the Electoral rolls for the Provincial Legislative Assemblies of approximately 10 per cent. of the population of the Depressed Classes (whom it is proposed in future to designate Scheduled Castes) in all Provinces save Bihar and Orissa (where the percentage will be in the neighbourhood of 7 per cent.) and the North-West Frontier Province and Sind, where the numbers of the Scheduled Castes are negligible. In the case of the Federal House of Assembly, the approximate general percentage aimed at is 2 per cent. (save in the case of Bihar and Orissa and of the North-West Frontier Province and Sind). Certain provinces are satisfied that it will be possible to attain these percentages under the operation of the general franchise qualifications. In certain other provinces it appears open to question whether this will be the case, and, if on the preparation of the Electoral Roll a marked deficiency is found to exist, special steps to make it up will be called for. The differential franchise contemplated in such circumstances by certain provinces is provisionally included in the Schedules which follow. The Scheduled Castes are enumerated by Provinces in Appendix VIII.

5. *The Educational Qualification.*—Owing to the marked differences in the educational system in different provinces, and the absence of records which could be used to support a claim to an educational qualification in certain cases, it has proved impossible to lay down any common educational standard for the provincial legislatures which would apply to the whole of India, and in certain provinces it has been found necessary to fix a standard identical with that laid down for the Federal House of Assembly. His Majesty's Government, in accepting in these circumstances a high educational standard as an electoral qualification for certain provincial legislatures, do so with the reservation that it shall be open to the Local Governments concerned to lower it once the administrative difficulties involved are overcome.

6. *Sind and Orissa.*—While it has been decided that Sind and Orissa shall be established as separate provinces, the framing of a detailed scheme for the franchise for the Provincial Legislative Assembly in those provinces has not yet been completed.

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While the franchises in question will probably closely resemble (allowance being made for the special conditions of the new provinces) those laid down in the Schedules which follow for Bombay and Bihar and Orissa, respectively, it has been thought preferable at the present stage to make no specific provision for either Sind or Orissa in the Schedules.

7. *Special Constituencies.*—In the interest of presenting as complete a picture as possible of the franchise qualifications proposed, the Schedules which follow set out in detail the *existing* qualifications for the various Special Constituencies (representing Landholders, Commerce, Industry, Mining, Planting, Universities) in each province in the case of the Provincial and Federal Legislatures alike. The qualifications in question should, however, be regarded as provisional, pending the closer investigation of the existing electorates for these seats which is contemplated at the stage of the general delimitation of constituencies. Pending further investigation at the same stage no specific proposals are included in the Schedules in respect of the seats now for the first time assigned to Labour in the Provincial and Federal Legislatures and to Backward areas in certain provincial legislatures, or of certain other constituencies to be brought into being consequent on the Communal decision. Nor has any separate provision been made for the special seats reserved for women. Election to those seats in the Provincial Legislatures will be on the basis of the general franchise qualifications; while election in the case of the Federal Lower House will be by members of Provincial Legislatures.

APPENDIX IV

Franchise for the British-Indian seats in the House of Assembly

I.—Madras.
II.—Bombay.*
III.—Bengal.
IV.—United Provinces.
V.—Punjab.
VI.—Bihar and Orissa.*
VII.—Central Provinces with Berar.†
VIII.—Assam.
IX.—North-West Frontier Province.
X.—Delhi.
XI.—Ajmer-Merwara.
XII.—Coorg.
XIII.—British Baluchistan.
XIV.—Non-Provincial Special Constituencies.

I.—MADRAS

1.—*Qualifications‡ for Electors for Constituencies other than special constituencies.*

(*a*) Payment of not less than Rs. 3 per annum taxation in a municipality in respect of property, company, or profession tax.

(*b*) Holding of land of annual rental value of Rs. 10.

(*c*) *In urban constituencies*—

(i) payment of property tax, company tax, or profession tax (subject to a minimum of Rs. 3, save in the case of Madras City),

(ii) in Madras city only, occupation of a house of rental value of Rs. 60.

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* See paragraph 6 of the Introductory Note to Appendices IV and V.

† See Introduction, paragraph 45.

‡ Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

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(*d*) Assessment to income tax.

(*e*) Having passed the examination for Matriculation or for the Secondary School Leaving Certificate or an examination accepted as its equivalent by the Local Government.

(*f*) Being a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's Regular Forces.

(*g*) The differential qualifications to be prescribed in order to produce an electorate of approximately 2 per cent. of the population of the scheduled castes are under consideration.

2. *Franchise for Special Constituencies.*

(*a*) *Landholders.**—Registration on the electoral roll of any Landholders' constituency in the Madras Provincial Legislative Council.

(*b*) *Indian Commerce** (South India Chamber of Commerce).—Every Indian, and one duly authorised representative of every Indian partnership, if he or the partnership, as the case may be, has been assessed to income tax in the previous year on an income of not less than Rs. 10,000 derived from business within the meaning of the Indian Income Tax Act, 1922.

(*c*) *Madras Chamber of Commerce.*—Being a member of the Chamber with a place of residence in India.†

(*d*) *Labour.*—The question of the method of election and the franchise are under consideration.

II.—Bombay

1.—*Qualifications‡ of Electors in Constituencies other than special constituencies.*

(*a*) *In rural areas*—

(i) The ownership or occupation of land assessed at Rs. 32 land revenue (Rs. 16 in the Upper Sind Frontier, the Panch Mahals, and the Ratnagiri districts).

(ii) Occupation as owner or tenant in any municipal district, cantonment, or notified area in the constituency, of a building or part of a building separately occupied of an annual rental value of not less than Rs. 36 in Sind, or in any other constituency where tax is based on the annual rental value of houses or buildings of an annual rental value of not less than Rs. 24 in the Panch Mahals and Ratnagiri districts and Rs. 36 elsewhere, or, where no such tax is leviable, of a capital value of not less than Rs. 1,000 in the Panch Mahals and Ratnagiri Districts and Rs. 1,500 elsewhere.

(iii) Being the alienee of the right of Government to the payment of rent or land revenue, or a Khot or sharer in a Khoti village or a sharer in a bhagdari or narvadari village responsible for the payment of land revenue, subject in all cases to the minima set out in (i) and (ii) above.

(*b*) *In Bombay City and other urban areas.*—Occupation as owner or tenant of a building of the annual rental value of not less than Rs. 120 in Bombay, Rs. 60 in Karachi; and in any other urban constituency where any tax is based on the annual rental value of houses or buildings of an annual rental value of not less than Rs. 36 or, where no tax so based is levied, a capital value of not less than Rs. 1,500.

(*c*) Assessment to income tax.

(*d*) Having passed the examination for matriculation or for the school-leaving certificate or an examination accepted as the equivalent thereof by the Local Government.

(*e*) Being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's Regular Forces.

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* See paragraph 7 of the Introductory Note to Appendices IV and V. The qualifications shown are the existing qualifications, but, pending closer investigation in connection with the general delimitation of constituencies, they should be regarded as provisional.

† Provisional.

‡ Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

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2. *Franchise for Special Constituencies.*

(*a*) *Landholders**—

(i) Being a First- or Second-Class Jagirdar in Sind, or a Zamindar, who, in each of the three revenue years preceding the publication of the electoral roll, has paid not less than Rs. 1,000 land revenue on land in Sind.

(ii) For the Deccan and Gujerat Sardars and Inamdars constituency, entry on the list for the time being in force under Bombay Government, Political Department, Resolutions 2363 of the 23rd July, 1867, and 6265 of the 1st April, 1909, *or* being the sole alienee of the right of Government to land revenue in respect of an entire village in the presidency of Bombay, excluding Sind and Aden, *or* being the sole holder on talukdari tenure of such a village.

(*b*) *Indian Commerce.**—Members of the Indian Merchants' Chamber and Bureau of the Bombay Millowners' Association, and of the Ahmedabad Millowners' Association, are qualified as electors respectively for the constituency comprising the Association of which they are members.

(*c*) *European Commerce.*†—Being a member of the Bombay Chamber of Commerce having a residence in India.

(*d*) *Labour.*—The question of the method of election and franchise is under consideration.

III.—Bengal

1. *Qualifications‡ of Electors in Constituencies other than Special Constituencies.*

(*a*) Payment of not less than Rs. 1·8 per annum in Municipal or cantonment taxes (Rs. 3 in the Howrah Municipality).

(*b*) Payment of Re. 1 per annum or over as road or public works cess or Rs. 2 Chaukidari tax (under the Village Chaukidari Act, 1870), or Union rate (under the Bengal Village Self-Government Act, 1919).

(*c*) *In Calcutta*—

(i) Ownership and occupancy of land or building assessed at Rs. 150 per annum.

(ii) Ownership or occupancy of land or building assessed at Rs. 300 per annum.

(iii) Payment of Rs. 24 per annum or over as corporation tax.

(*d*) Assessment to Income tax (or, in Calcutta only, being a member of a firm assessed to income tax whose share of the firm's income on which income tax was so assessed is certified to have been not less than the minimum on which tax is leviable).

(*e*) Having passed the examination for Matriculation or for the School-leaving Certificate or an examination accepted by the Local Government as the equivalent thereof.

(*f*) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's Regular Forces.

2. *Franchise for Special Constituencies.*

(*a*) *Landholders**—

(i) In the Burdwan and Presidency Divisions proprietorship of property assessed to land revenue of not less than Rs. 6,000, or road and public works cesses of not less than Rs. 1,500.

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* See paragraph 7 of the Introductory Note to Appendices IV and V. The qualifications shown are the existing qualifications, but, pending closer investigation in connection with the general delimitation of constituencies, should be regarded as provisional.

† This constituency is at present a Council of State constituency, but will be transferred to the Lower House of the new Federal Legislature.

‡ Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

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(ii) In the Dacca, Rajshahi, and Chittagong Divisions proprietorship in own right, or tenure direct from such a proprietor, of property assessed to land revenue of not less than Rs. 4,000, or road and public works cesses of not less than Rs. 1,000.

(*b*) *Commerce*—

(i)* Membership of Bengal National Chamber of Commerce, the Marwari Association or the Bengal Mahajan Sabha.

(ii) Bengal Chamber of Commerce.*† Having a place of residence in India, and being a Chamber member of the Bengal Chamber of Commerce, or a person entitled to exercise the rights and privileges of Chamber membership on behalf of and in the name of any firm, company or other corporation.

(iii) Jute Mills Association Constituency. The question of the method of election to and the franchise for the new seat to be created is under consideration.

(*c*) *Labour.*—The question of the method of election and of the franchise is under consideration.

IV.—United Provinces

1. *Qualifications‡ of Electors in Constituencies other than Special Constituencies.*

(*a*) Ownership or tenancy of a building of rental value of not less than Rs. 36 per annum.

(*b*) Payment of Municipal tax on an income of not less than Rs. 200 per annum.

(*c*) Ownership of land paying or assessed to not less than Rs. 25 per annum land revenue.

(*d*) Payment of rent of not less than Rs. 25 per annum as a permanent tenure holder or a fixed rate tenant as defined in the Agra Tenancy Act, 1901, or an under-proprietor or occupancy tenant as defined in the Oudh Rent Act, 1886.

(*e*) In the hill pattis of Kumaon ownership of a fee-simple estate or assessment to payment of land revenue or cesses of any amount, or being a Khaikar.

(*f*) Being a tenant (other than a sub-tenant), as defined in the Agra Tenancy Act, 1901, or the Oudh Rent Act, 1886, paying rent of not less than Rs. 50 per annum or its equivalent in kind, or over.

(*g*) Assessment to income tax.

(*h*) Having passed the Matriculation or School-leaving Certificate examination, or an examination accepted by the Local Government as the equivalent thereof.

(*i*) Being a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's Regular Forces.

2. *Franchise for Special Constituencies.*

(*a*) *Landholders.*—Land revenue of not less than Rs. 5,000 per annum.*

(*b*) *Labour.*—The question of the method of election and the franchise is under consideration.

V.—Punjab

1. *Qualifications‡ of Electors in Constituencies other than Special Constituencies.*

(*a*) Ownership of immovable property, not being land assessed to land revenue, of a value of not less than Rs. 4,000 or an annual rental value of not less than Rs. 96, or tenancy of such property of an annual rental value of not less than Rs. 96.

(*b*) Payment of direct municipal or cantonment taxes of Rs. 50 or over.

(*c*) Ownership or tenancy with right of occupancy as defined in Chapter II, Punjab Tenancy Act, 1887, of land paying land revenue of Rs. 25 or over.

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* See paragraph 7 of the Introductory Note to Appendices IV and V. The qualification shown is the existing qualification, but, pending closer examination in connection with the general delimitation of constituencies, it should be regarded as provisional.

† This is at present a Council of State constituency, but will be transferred to the Lower House of the new Federal Legislature.

‡ Other than those referred to in paragraph 2 of the Introductory Note Appendices IV and V.

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(*d*) Tenancy of Crown land on a lease of not less than 3 years rented at Rs. 25 per annum or over.

(*e*) Being the assignee of land revenue amounting to not less than Rs. 50 per annum.

(*f*) Being a village officer or headman (Zaildar, inamdar, sufedposh or lambardar) in the constituency.

(*g*) Assessment to income tax.

(*h*) Having passed the examination for Matriculation or for the School-leaving certificate or an examination accepted by the Local Government as the equivalent thereof.

(*i*) Being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's Regular Forces.

(*j*) *Scheduled Castes.*—The differential qualifications to be prescribed in order to produce an electorate of approximately 2 per cent. of the population of the Scheduled Castes are under consideration.

2. *Franchise for Special Constituencies.*

*Landholders**—

(i) Ownership of land assessed to land revenue of not less than Rs. 1,000 per annum.

(ii) Being the assignee of land revenue of not less than Rs. 1,000 per annum.

VI.—Bihar and Orissa

1. *Qualifications† of Electors for Constituencies other than Special Constituencies.*

(*a*) *In all Rural Areas* of the province except the districts of Sambalpur and the Santal Parganas and the Khondmals sub-division of Angul, payment of Chaukidari tax at the rate (save in the case of the Scheduled Castes (see (*h*) below)) of not less than Rs. 2·8 annually.

(*b*) In Sambalpur and the Santal Parganas—

(i) holding of an estate or estates or portion or portions thereof for which a separate account has been opened, paying an aggregate amount of not less than Rs. 12 per annum local cess, *or*

(ii) tenure of land assessed for purposes of local cess to an aggregate amount of not less than Rs. 100 per annum, *or*

(iii) holding of land as a raiyat liable to an annual aggregate rent or local cess amounting respectively to Rs. 24 and to As. 12 in constituencies in the Santal Parganas, and to Rs. 48 and Rs. 1.8.0 respectively in Sambalpur, *or*

(iv) assessment to not less than Rs. 1.8.0 under § 118 C of the Bengal Local Self-Government Act, 1885, or § 47 of the Bihar and Orissa Village Administration Act, 1922.

(*c*) *Khondmals Sub-division.*—The basis and method of enfranchisement is still under investigation.

(*d*) *Urban Areas.*—Save in the Jamshedpur urban area, for which a special franchise is under consideration, payment of municipal or cantonment rates or taxes to an aggregate amount of not less than Rs. 3.

(*e*) Assessment to income tax.

(*f*) Having passed the examination for matriculation, or for the school-leaving certificate, or an examination accepted by the Local Government as the equivalent thereof.

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* See paragraph 7 of the Introductory Note to Appendices IV and V. The qualification shown is the existing qualification, but, pending closer examination in connection with the general delimitation of constituencies, it should be regarded as provisional.

† Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

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(*g*) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's Regular Forces.

(*h*) *Scheduled Castes.*—Payment of Chaukidari tax of not less than Rs. 1.4.0 in rural areas.*

2. *Franchise for Special Constituencies.*

(*a*) *Landholders.*†—Assessment to land revenue or local cess to an aggregate annual amount of not less than Rs. 10,000 or Rs. 2,500 respectively.

(*b*) *Labour.*—The question of the electorate and of the franchise is under consideration.

VII.—Central Provinces with Berar‡

1. *Qualifications§ of Electors for Constituencies other than Special Constituencies.*

(*a*) *For classes other than the Scheduled Castes.*

(i) *Rural Areas.*—Payment of a rent or revenue of Rs. 20 or over.

(ii) *Urban Areas.*—Occupation of a house of rental value of Rs. 30 or payment of an equivalent Haisiyat.

(*b*) *For the Scheduled Castes.*

(i) In rural areas, payment of a rent or revenue of Rs. 10 or over.

(ii) In urban areas, occupation of a house of a rental value of Rs. 18.

(*c*) Assessment to income tax.

(*d*) Having passed the examination for matriculation or for the school-leaving certificate or an examination accepted by the Local Government as the equivalent thereof.

(*e*) Being a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's Regular Forces.

2. *Franchise for Special Constituencies.*

(*a*) *Landholders*†—

(i) Holder of a hereditary title recognised by Government, who holds agricultural land in proprietary right; *or*

(ii) Being the owner of an estate as defined in § 2 (3) of the Central Provinces Land Revenue Act, 1917; *or*

(iii) Being the holder in proprietary right of land, the land-revenue or Kamiljama of which is not less than Rs. 5,000.

(*b*) *Labour.*—The question of the method of election and of the franchise is under consideration.

VIII.—Assam

1. *Qualifications§ of Electors in Constituencies other than Special Constituencies.*

(*a*) Assessment to an aggregate of not less than Rs. 3 municipal or cantonment rates or taxes (Rs. 2 in the case of the Nowgong, and Rs. 1.8.0 in the case of the Sylhet Municipality).

(*b*) Assessment to not less than Re. 1 per annum as union or chaukidari tax.

(*c*) Ownership of land assessed to or assessable at land revenue of not less than Rs. 15 per annum.

(*d*) Liability to local rate of not less than Re. 1 per annum.

(*e*) Assessment to Income Tax.

(*f*) Having passed the examination for Matriculation or for the school leaving certificate, or an examination accepted by the Local Government as the equivalent thereof.

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* Provisional.

† See paragraph 7 of the Introductory Note to Appendices IV and V. The qualification shown is the existing qualification, but, pending closer examination in connection with the general delimitation of constituencies, it should be regarded as provisional.

‡ See Introduction, paragraph 45.

§ Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

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(*g*) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's Regular Forces.

(*h*) *Scheduled Castes.*—Necessity for any special franchise to bring the scheduled caste electorate up to 2 per cent. of population is under investigation.

2. *Franchise for Special Constituencies*

Labour.—The question of the method of election and of the franchise is under consideration.

IX.—North-West Frontier Province

Qualifications of Electors—*

(*a*) Ownership of immovable property, not being land assessed to land revenue, but including any building on such land, value Rs. 600 or over.

(*b*) Tenancy of immovable property of annual rental value of not less than Rs. 48.

(*c*) Payment of rate, cess, or tax to a District Board of not less than Rs. 4 per annum.

(*d*) Assessment to any direct municipal or cantonment tax of not less than Rs. 50.

(*e*) Income of Rs. 40 per mensem or over.

(*f*) Ownership, or occupancy as occupancy tenant or tenant or lessee under a written lease for a period of not less than three years, of land assessed to land revenue of Rs. 10 per annum or over.

(*g*) Being an assignee of land revenue of not less than Rs. 20 per annum.

(*h*) Assessment to income-tax.

(*i*) Having passed the examination for matriculation or the school leaving certificate, or any examination accepted by the Local Government as the equivalent thereof.

(*j*) Being a zaildar, inamdar, village headman or chief headman in the constituency.

(*k*) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

X.—Delhi

XI.—Ajmer-Merwara

XII.—Coorg

XIII.—British Baluchistan

The electoral arrangements in respect of the seats allotted to these four provinces in the Federal House of Assembly are still under consideration.†

XIV.—Franchise for Non-Provincial Special Constituencies in the Federal Legislature

(a) *Commerce—*

1. Associated Chambers of Commerce of India.
2. Federation of Indian Chambers of Commerce.
3. Northern India Commercial Bodies.

(b) *Labour—*

1. All India Trades Union Federation.

The method of election to all the seats specified above is under consideration.

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* Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

† It may be found necessary to resort to nomination in the case of British Baluchistan.

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APPENDIX V

PART I

*Franchise for the Provincial Legislative Assemblies**

I.—Madras.
II.—Bombay.
III.—Bengal.
IV.—United Provinces.
V.—Punjab.
VI.—Bihar and Orissa.
VII.—Central Provinces with Berar.†
VIII.—Assam.
IX.—North-West Frontier Province.
X.—Coorg.

I.—MADRAS

1. *Qualifications‡ of Electors in Constituencies other than Special Constituencies*

(*a*) Payment of tax under the Madras Motor Vehicles Taxation Act for the whole official year immediately before the electoral roll is prepared or revised; or

(*b*) Being a registered landholder, inamdar, ryotwari pattadar, or occupancy ryot under the Madras Estates Land Act; or

(*c*) Assessment to ground-rent payable to Government; or

(*d*) Payment of property tax for the two half-years immediately prior to the preparation or revision of the roll under the Madras City Municipality Act or the Madras District Municipalities Act or the Madras Local Boards Act; or

(*e*) Payment of profession tax for the two half-years immediately prior to the preparation or revision of the roll under the Madras City Municipality Act or the Madras District Municipalities Act; or

(*f*) Being during the whole of the previous *fasli* a kanamdar or kuzhikanamdar or the holder of a kudiyiruppu or a verampatamdar having fixity of tenure, each of these terms bearing the meaning defined in the Malabar Tenancy Act, 1929; or

(*g*) Being for the whole of the *fasli* immediately preceding the preparation or revision of the electoral roll a mortgagee with possession, lessee or tenant of immovable property (other than a house property) of an annual value of Rs. 100 in Madras City or a municipality and Rs. 50 elsewhere in the Presidency; or

(*h*) Being a guardian of a minor possessing one of the above property qualifications; or

(*i*) Occupying during the whole of the previous year as sole tenant house property on which property tax or house tax has been duly paid for the year; or

(*j*) Being a registered joint landholder, inamdar, pattadar, or occupancy ryot entitled to an additional vote on an application signed by a majority of the registered joint-holders, votes being allowed to joint holders on the following scale :—

for landholders and holders of whole inam villages of Rs. 1,000 and above annual rental—one vote for every complete Rs. 500 of annual rental, and for joint holders of minor inams, ryotwari pattas and estate pattas of Rs. 100 and over—one vote for every complete Rs. 50 of assessment, rent or kist.

The additional votes will be given only to persons included among the registered joint holders, and the registration should have been made not later than the *fasli* previous to the one in which the rolls are under preparation or revision.

(*k*) Assessment to income tax;

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* See paragraph 6 of the Introductory Note to Appendices IV and V.

† See Introduction, paragraph 45.

‡ Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

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(*l*) Literacy (*i.e.*, ability to read and write in any language) certified by village officers in certificates to be countersigned by the Tahsildars, or alternatively, the holding of the Elementary School Certificate issued by the headmaster of a school recognised by the Government;

(*m*) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council. One elector only to be enfranchised under a husband's property qualification, in addition to the husband himself, but a woman who is once placed on the roll in respect of a husband's property to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

(*n*) Being a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

(*o*) *Scheduled Castes.*—If on the preparation of the electoral roll the electorate of the Scheduled Castes does not amount to approximately 10 per cent. of their population, special qualifications will be prescribed in order to make up the deficiency.

2. *Franchise for Special Constituencies*

(*a*) *Landholders.**—Being a zamindar, janmi, or malikanadar who—

(i) Possesses an annual income of not less than Rs. 3,000 derived from an estate within the Presidency of Madras.

(ii) Is registered as the janmi of land situated within the Presidency of Madras, and assessed at not less than Rs. 1,500.

(iii) Receives from Government a malikana allowance of not less than Rs. 3,000 per annum.

(*b*) *University.*†—Being a member of the Senate or an Honorary Fellow, or a graduate of over seven years' standing of the University of Madras.

(*c*) *Planters.*†—Being a member of one of the associations affiliated to the United Planters' Association of Southern India.

(*d*) *Madras Chamber of Commerce and Industry.**—Being a member of the Madras Chamber of Commerce or of a Chamber affiliated to it.

(*e*) *Other Commerce Constituencies.**—Members of the Madras Trades Association, the Southern India Chamber of Commerce and the Nattukottai Nagarathars' Association are qualified respectively as electors for the constituency comprising the Chamber or Association of which they are members.

(*f*) *Labour.*—The question of the franchise for these constituencies is under consideration.

II.—Bombay

1. *Qualifications* of Electors in Constituencies other than Special Constituencies.*

(*a*) Payment of land revenue of Rs. 8 and over.

(*b*) Payment of house rent of Rs. 60 in Bombay City, Rs. 30 in Karachi, and Rs. 18 in other urban areas.

(*c*) Assessment to income tax.

(*d*) Being a Hari in Sind.

(*e*) Having passed the examination for matriculation or the school-leaving certificate, or an examination accepted by the Local Government as the equivalent thereof.

(*f*) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council. One elector only to be enfranchised under a husband's property qualification in addition to the husband himself, but a woman who is once placed on the roll in respect of a husband's property qualification, to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

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† See paragraph 7 of Introductory Note to Appendices IV and V The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional.

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(*g*) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier, of His Majesty's regular forces.

(*h*) *Scheduled Castes.*—In the case of the scheduled castes, literacy and being a village servant are proposed as differential qualifications. If on the preparation of the electoral roll the electorate of the scheduled castes does not come up to 10 per per cent. of their population, a reduced property qualification sufficient to make up the deficiency will be prescribed for them in addition.

2. *Franchise for Special Constituencies.*

(*a*) *Landholders**—

(i) *For the Deccan Sardars and Inamdars Constituency.*—Being a person entered in the list for the time being in force under Bombay Government Political Department, Resolution No. 2363, dated 23rd July, 1867, *or* being the sole alienee of the right of Government to the payment of rent or land revenue in respect of an entire village situate within the constituency.

(ii) *For the Gujarat Sardars and Inamdars Constituency.*—Being a person entered in the list for the time being in force under Bombay Political Department, Resolution No. 6265, dated 21st September, 1909, or being the sole alienee of the right of Government to rent or land revenue in respect of an entire village situate within the constituency, *or* being the sole holder on Talukdari tenure of such a village.

(iii) *For the (Sindi) Jagirdars and Zamindars Constituency.*—Being a jagirdar of the first or second class in Sind, *or* having in each of the three revenue years preceding the publication of the electoral roll, paid not less than Rs. 1,000 land revenue on land in Sind.

(*b*) *University of Bombay.**—Being a member of the Senate, or an Honorary Fellow, or a graduate of seven years' standing, of the University of Bombay.

(*c*) *Commerce and Industry.**—Being entered on the list of members for the time being in force of the association forming such constituency, *or* being entitled to exercise the rights and privileges of membership on behalf of and in the name of any firm or company or corporation entered in such list of members.

(*d*) *Labour.*—The question of the franchise for these constituencies is under consideration.

III.—Bengal

1. *Qualifications† of Electors in Constituencies other than Special Constituencies.*

(*a*) Payment of not less than 6 annas chaukidari tax or 6 annas Union Board rate, or 8 annas cess or 8 annas Municipal tax or fee.

(*b*) Having passed the examination for Matriculation or the School-leaving certificate or an examination accepted by the Local Government as the equivalent thereof.

(*c*) Assessment to income tax.

(*d*) Being the wife of a person possessing the property qualification at present entitling to a vote for the Provincial Legislative Council. One elector only, in addition to the husband himself, to be enfranchised under the husband's property qualification, but a woman once placed on the roll in respect of that qualification to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

(*e*) Being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

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* See paragraph 7 of Introductory Note to Appendices IV and V. The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional.

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2. *Franchise for Special Constituencies.*

(*a*) *Landholders**—

(i) In the Burdwan Landholders' and the Presidency Landholders' constituency area, payment of land revenue of not less than Rs. 4,500, or road and public work cesses of not less than Rs. 1,125, in respect of estates held in own right.

(ii) In the Dacca Landholders', Rajshahi Landholders' and Chittagong Landholders' constituency area, payment of land revenue of not less than Rs. 3,000, or road and public work cesses of not less than Rs. 750, in respect of estates held as, or direct from, a proprietor.

(*b*) *Calcutta University.**—Being a member of the Senate or an Honorary Fellow, or a graduate of not less than seven years' standing, of the University.

(*c*) *Dacca University**—

(i) Being resident in Bengal and a member of the Court or a registered graduate.

(ii) Being a resident in the Dacca or Chittagong Divisions, who would be qualified to be registered as a graduate of the University if he had not, before the 1st April, 1920, been registered as a graduate of any other Indian University

(*d*) *Commerce and Industry**—

(i) Chamber members of the Bengal Chamber of Commerce and permanent members of the Indian Jute Mills Association, of the Indian Tea Association, and the Indian Mining Association, with a place of residence in India, are qualified respectively as electors for the constituency comprising the Chamber or Association of which they are such members.

(ii) Members of the Calcutta Trades Association, life and ordinary members or the Bengal National Chamber of Commerce and the Bengal Mahajan Sabha, life, ordinary and Mofussil members of the Marwari Association. Calcutta, with a place of residence in India, are qualified respectively as electors for the constituency comprising the Association, Chamber, of Sabha of which they are such members.

(*e*) *Labour.*—The question of the franchise for these constituencies is under consideration.

IV.—United Provinces

1. *Qualifications† of Electors in Constituencies other than Special Constituencies.*

(*a*) Payment of land revenue of not less than Rs. 5.

(*b*) Payment of rent of not less than Rs. 10 in rural areas.

(*c*) Payment of rent of not less than Rs. 24 in urban areas.

(*d*) Assessment to income tax.

(*e*) Having passed the Upper Primary Examination, or an examination accepted by the Local Government as the equivalent thereof.

(*f*) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council. One elector only to be enfranchised under a husband's property qualification in addition to the husband himself; but a woman once placed on the roll in respect of a husband's property qualification to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

(*g*) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

2. *Franchise for Special Constituencies.*

(*a*) *Landholders**—

(i) *Taluqdars Constituency.*—Ordinary membership of British Indian Association of Oudh.

(ii) *Agra Landholders' Constituencies.*—Ownership of land in the Constituency assessed to land revenue of not less than Rs. 5,000.

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(*b*) *Commerce and Industry.**—Persons being ordinary full members of the Upper India Chamber of Commerce or of the United Provinces Chamber of Commerce with a place of business within the United Provinces, *or* being entitled to exercise the rights and privileges of such membership on behalf of and in the name of any firm, company, or other corporation, are qualified as electors for the constituencies comprising their respective Chambers.

(*c*) *Allahabad University**—

(i) Residence in India and Membership of the Court of the Executive Council or Academic Council of the University.

(ii) Residence in the United Provinces, and being a graduate of not less than seven years' standing, a Doctor or a Master.

(*d*) *Labour.*—The question of the franchise for these constituencies is under consideration.

V.—PUNJAB

1. *Qualifications† of Electors in Constituencies other than Special Constituencies.*

(*a*) Payment of land revenue of Rs. 5 and upwards.

(*b*) Tenancy of 6 acres irrigated or 12 acres unirrigated land.

(*c*) Being a zaildar, inamdar, sufedposh, or lambardar in the constituency.

(*d*) Payment of house rent of Rs. 5 or over in towns.

(*e*) Assessment to municipal or cantonment tax of not less than Rs. 50.

(*f*) Payment of Haisiyat tax at its minimum rate of Rs. 2; or in districts in which no such tax exists, of any other direct tax imposed under the Punjab District Board Tax, and not below Rs. 2.

(*g*) Assessment to income tax.

(*h*) Having passed the primary educational standard or a standard accepted by the Local Government as the equivalent thereof.

(*i*) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council. One elector only to be enfranchised under a husband's property qualification in addition to the husband himself, but a woman who is once placed on the roll in respect of her husband's property qualification to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

(*j*) Being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

(*k*) *Scheduled Castes.*—If, on the preparation of the electoral roll, the electorate of the scheduled castes does not come up to 10 per cent. of their population, the local government propose to meet the deficiency by the following differential franchise:—

(i) Mere literacy.

(ii) Ownership of immovable property not being land assessed to land revenue, or of *malba* of a house of the value of not less than Rs. 50.

2. *Franchise for Special Constituencies.*

(*a*) *Landholders**—

(i) *Baloch Tumandars Constituency.*—Being a Tumandar recognised by the Government or a person performing the duties of a Tumandar with the sanction of the Government.

(ii) *Other Landholders' Constituencies*—

Ownership of land assessed to land revenue of not less than Rs. 500 per annum; *or*

Being the assignee of land revenue of not less than Rs. 500 per annum.

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* Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

† See paragraph 7 of Introductory Note to Appendices IV and V. The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional.

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(*b*) *University.**—Being a Fellow or Honorary Fellow or graduate of not less than seven years' standing of the Punjab University, resident in the Punjab.

(*c*) *Commerce.*‡*—Being a member of the Punjab Chamber of Commerce or of the Punjab Trades Association having a place of business, or working for gain, in the Punjab.

(*d*) *Labour.*—The question of the franchise for these constituencies is under consideration.

VI.—Bihar and Orissa

1. *Qualifications** *of Electors in Constituencies other than Special Constituencies.*

(*a*) Save in the districts referred to in (*b*), (*c*) and (*d*) below :—

(i) In *rural areas* payment of Chaukidari tax at the minimum rate of 6 annas per annum, and

(ii) In *urban areas* of a corresponding rate of municipal tax (Rs. 1/8/0).

(*b*) In the districts of Sambalpur and Santal Parganas, where chaukidari tax is not levied, the following qualifications :—

(i) *Sambalpur.*—Annual payment of not less than 1 rupee as rent or 9 pies as local cess.

(ii) *Santal Parganas.*—Status of resident jamabandi raiyat, paying annually not less than Rs. 2 as rent or 1 anna as local cess.

(*c*) *Khondmals Sub-division.*—Under consideration.

(*d*) *Jamshedpur City.*—A special franchise for this area is under investigation.

(*e*) Assessment to income tax.

(*f*) Having passed the examination for Matriculation or the school-leaving certificate or an examination accepted by the Local Government as the equivalent thereof.

(*g*) Being the wife of a person possessing the property qualifications entitling to a vote for the future Federal House of Assembly. One elector only to be enfranchised under the husband's property qualification in addition to the husband himself, but a woman who is once placed on the roll in respect of her husband's property qualification, to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

(*h*) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

2. *Franchise for Special Constituencies.*

(*a*) *Landholders.**—Liability to payment of not less than Rs. 4,000 land-revenue or Rs. 1,000 local cess in the Patna Division, Tirhut Division, and Bhagalpur Division Landholders' Constituencies, or of Rs. 6,000 land-revenue or Rs. 500 local cess in the Orissa Division and Chota Nagpur Division Landholders' Constituencies.

(*b*) *Patna University.*†—Being a member of the Senate or of the Syndicate or a registered graduate of the University, with a place of residence in Bihar and Orissa.

(*c*) *Planting.**—Membership of the Bihar Planters' Association, Limited, entitled to vote as such, and for the time being resident in India.

(*d*) *Mining.**—Membership of the Indian Mining Association and of the Indian Mining Federation entitles to a vote for the Association or the Federation Constituency respectively, provided that a person who is a member of both bodies shall be qualified as an elector for such one only as he may elect.

(*e*) *Labour.*—The question of the franchise for these constituencies is under consideration.

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* See paragraph 7 of Introductory Note to Appendices IV and V. The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional.

† Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

‡ The previously existing Industry constituency was not retained in the Communal Decision, and the franchise for it is accordingly omitted.

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VII.—Central Provinces with Berar*

1. *Qualifications† of Electors in Constituencies other than Special Constituencies.*

(*a*) *Rural Areas.*—Payment of Rs. 2 rent or revenue.

(*b*) *Urban Areas.*—Occupation of a house with a rental of Rs. 6 or the possession of an equivalent Haisiyat.

(*c*) Assessment to income tax.

(*d*) Being a Watandar Patel or a Watandar Patwari holding office, or a registered Deshmukh or Deshpande, or a Lambardar.

(*e*) Having passed the Matriculation examination, or an examination accepted by the Local Government as the equivalent thereof.

(*f*) Being the wife of a male voter with a rural property qualification of payment of Rs. 35 rent or revenue or over, or occupying a house of rental value of Rs. 36 or over in an urban area. One elector only to be enfranchised under a husband's property qualification in addition to the husband himself, but a woman who is once placed on the roll in respect of her husband's property qualification to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

(*g*) Being a retired, pensioned, or discharged officer, non-commissioned officer, or soldier of His Majesty's regular forces.

(*h*) Being a village servant (applicable in the case of the Scheduled castes only).

2. *Franchise for Special Constituencies.*

(*a*) *Landholders.**—Holding of agricultural land in the constituency in proprietary right and being:—

(i) Holder of a hereditary title recognised by Government; or

(ii) In the Central Provinces, owner of an estate as defined in § 2 (3) of the Central Provinces Land Revenue Act, 1917; or

(iii) In the Central Provinces, holder in proprietary right of land of which the land revenue or kamiljama is not less than Rs. 3,000 per annum.

(iv) In Berar,* a Jagirdar, Palampatadar, Izaradar, Inamdar, or a registered Deshmukh or Deshpande, holding in other than tenancy right land assessed or assessable to land revenue of not less than Rs. 500.

(v) In Berar,* a holder of land in other than tenancy right assessed or assessable to land revenue of not less than Rs. 1,000.

(*b*) *Nagpur University.*‡—Being a registered graduate of the University resident in the Central Provinces or Berar.*

(*c*) *Commerce and Industry.*‡§

(i) Ownership of a factory situated in the Central Provinces or Berar* and subject to the provisions of the Indian Factories Act, 1911, or in which not less than 200 persons are ordinarily employed, or a person appointed by the owner of such a factory to vote on his behalf.

(ii) A person appointed to vote by any company having a place of business in the Central Provinces or Berar,* and having a paid-up capital of not less than Rs. 25,000.

(*d*) *Labour.*—The question of the franchise for these constituences is under consideration.

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* See Introduction, paragraph 45.

† Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

‡ See paragraph 7 of Introductory Note to Appendices IV and V. The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional.

§ The existing Mining seat has not been retained in the Communal Decision; the franchise for it is accordingly omitted.

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VIII.—Assam

1. *Qualifications* of Electors in Constituencies other than Special Constituencies.*

(*a*) Payment of municipal or cantonment rates or taxes to an aggregate amount of not less than Rs. 2, or in the case of Sylhet municipality, of not less than Rs. 1/8/0;

(*b*) Tax of not less than 1 rupee in a small town under Chapter XII of the Assam Municipal Act I of 1923;

(*c*) In the case of constituencies in the districts of Sylhet, Cachar and Goalpara, chaukidari tax of not less than 8 annas under the Village Chaukidari Act, 1873;

(*d*) In the case of any constituency other than those referred to in (*c*)—

(i) payment of land revenue, on periodic or annual lease, of not less than Rs. 7/8/0; or

(ii) payment of local rate of not less than 8 annas; or

(iii) in the districts of Lakhimpur, Sibsagar, Darrang, Nowgong, Kamrup, and in the plains mouzas of the Garo Hills and of the Mikir Hills, payment of rent to a landlord of not less than Rs. 7/8/0;

(*e*) Assessment to income tax;

(*f*) Successful completion of the educational course immediately below the old Upper Primary stage, or its equivalent;

(*g*) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council. One elector only to be enfranchised under a husband's property qualification in addition to the husband himself, but a woman who is once placed on the roll in respect of her husband's property qualification to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

(*h*) Being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

2. *Franchise for Special Constituences.*

(*a*) *Planting.*†—Being the superintendent or manager of or an Engineer or medical officer employed on, a tea estate in the Assam or the Surma Valley, as the case may be.

(*b*) *Commerce and Industry*†—

(i) Being the owner of a factory, other than a tea factory, situated in Assam and subject to the provisions of the Indian Factories Act, 1911, or a person appointed by the owner of such a factory to vote on his behalf, *or*

(ii) Being a person appointed to vote by any company other than a company principally engaged in the tea industry, having a place of business in Assam and a paid-up capital of not less than Rs. 25,000.

(*c*) *Labour.*—The question of the franchise for these constituencies is under consideration.

IX.—North-West Frontier Province

1. *Qualifications* of Electors in Constituencies other than Special Constituencies.*

(*a*) Payment of land revenue of Rs. 5 and upwards;

(*b*) Tenancy of 6 acres irrigated or 12 acres unirrigated;

(*c*) Payment of house rent of Rs. 4 and upwards in towns;

(*d*) Being a zaildar, inamdar, sufedposh, or lambardar in the constituency;

(*e*) Assessment to municipal or cantonment tax on not less than Rs. 50.

(*f*) Payment of Haisiyat tax or district board tax of not less than Rs. 2.

(*g*) Assessment to income tax.

(*h*) In urban areas the passing of the Middle School Examination; in rural areas of the Upper Primary Standard; or of an examination accepted by the Local Government as the equivalent of either.

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* Other than those referred to in paragraph 2 of the Introductory Note to Appendices IV and V.

† See paragraph 7 of Introductory Note to Appendices IV and V. The qualifications shown are the existing qualifications, but, pending closer investigation at the stage of the general delimitation of constituencies, they should be regarded as provisional.

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(*i*) Being the wife of a person possessing the property qualifications at present entitling to a vote for the Provincial Legislative Council. One elector only to be enfranchised under a husband's property qualification in addition to the husband himself, but a woman who is once placed on the roll in respect of her husband's property qualification to continue on the roll during widowhood or until remarriage, when she will cease to be qualified in respect of her late husband.

(*j*) Being a retired, pensioned, or discharged officer, non-commissioned officer or soldier of His Majesty's regular Forces.

2. *Franchise for Special Constituencies.*

*Landholders.** Being—

(i) Owner of land assessed to land revenue of not less than Rs. 250 per annum.

(ii) Assignee of land revenue of not less than Rs. 250 per annum.

(iii) The recipient of a muajib, inam, barat or pension sanctioned by orders passed in settlement operations amounting to not less than Rs. 250 per annum.

X.—COORG

The question of the franchise for the Provincial Legislature is under consideration.

APPENDIX V

PART II

Franchise for the Upper House of the Provincial Legislature in Bengal, the United Provinces and Bihar

1. In so far as the seats in the Upper House in the three Provinces in question are to be filled by Proportional Representation (as in Bengal and Bihar) or by nomination (as in all three Provinces) no question of franchise arises.

2. The franchise for the seats to be filled by direct election is under examination, and detailed proposals cannot yet be made. It is, however, intended that the franchise shall be based on high property qualifications somewhat lower than those for the existing Council of State, combined with a qualification based on service in certain distinguished public offices, such as High Court Judge, Minister, Member of an Executive Council, Vice-Chancellor of a University, &c.

APPENDIX VI

See Proposals, paragraphs 111, 112 *and* 114

LIST I (*Exclusively Federal*)

1. The common defence of India in time of an emergency declared by the Governor-General.

2. The raising, maintaining, disciplining and regulating of His Majesty's naval, military and air forces in India and any other armed force raised in India, other than military and armed police maintained by local governments, and armed forces maintained by the Rulers of Indian States.

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3. Naval, Military and Air Works.
4. The administration of cantonment areas by organs of local self-government, and the regulation therein of residential accommodation.
5. The employment of the armed forces of His Majesty for the defence of the Provinces against internal disturbance and for the execution and maintenance of the laws of the Federation and the Provinces.
6.—(*a*) Chiefs' Colleges and Educational Institutions for the benefit of past and present members of His Majesty's Forces or of the children of such members.
(*b*) The Benares Hindu University and the Aligarh Muslim University.
7. Ecclesiastical affairs, including European cemeteries.
8. External Affairs, including International Obligations subject to previous concurrence of the Units as regards non-Federal subjects.
9. Emigration from and Immigration into India and Inter-Provincial Migration, including regulation of Foreigners in India.
10. Pilgrimages beyond India.
11. Extradition and Fugitive Offenders.
12.—(*a*) Construction of Railways in British India and, with the consent of the State, in a State, but excluding light and feeder railways and extra-municipal tramways being wholly within a Province, but not being in physical connection with federal railways.
(*b*) Regulation of railways in British India and Federal railways in States.
(*c*) Regulation of other railways in respect of—
(i) Fares.
(ii) Rates.
(iii) Terminals.
(iv) Interchangeability of traffic.
(v) Safety.
13. Air Navigation and Aircraft, including the regulation of Aerodromes.
14. Inland Waterways, passing through two or more units.
15. Maritime Shipping and Navigation, including carriage of goods by sea.
16. Regulation of fisheries in Indian waters beyond territorial waters.
17. Shipping and Navigation on Inland Waterways as regards mechanically-propelled vessels.
18. Lighthouses (including their approaches), beacons, lightships and buoys.
19. Port Quarantine.
20. Ports declared to be Major Ports by or under Federal legislation.
21. Establishment and maintenance of postal, telegraphic, telephone, wireless and other like services, and control of wireless apparatus.
22. Currency, Coinage and Legal Tender.
23. Public Debt of the Federation.
24. Post Office Savings Bank.
25. The incorporation and regulation of Banking, Insurance, Trading, Financial and other Companies and Corporations.
26. Development of Industries in cases where such development is declared by or under a federal law to be expedient in the public interest.
27. Control of cultivation and manufacture of opium and sale of opium for export.
28. Control of petroleum and explosives.
29. Traffic in arms and ammunition and, in British India, Control of arms and ammunition.
30. Copyright, Inventions, Designs, Trademarks and Merchandise Marks.
31. Bankruptcy and Insolvency.
32. Negotiable instruments.
33. Control of motor vehicles as regards licences valid throughout the Federation.
34. The regulation of the import and export of commodities across the customs frontiers of the Federation, including the imposition and administration of duties thereon.
35. Salt.

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36. The imposition and regulation of duties of excise, but not including duties of excise on alcoholic liquors, drugs or narcotics (other than tobacco).
37. Imposition and administration of taxes on the income or capital of corporations.
38. Geological Survey of India.
39. Botanical Survey of India.
40. Meteorology.
41. Census; Statistics for the purposes of the Federation.
42. Central Agencies and Institutes for research.
43. The Imperial Library, Indian Museum, Imperial War Museum, Victoria Memorial, and any other similar Institution controlled and financed by the Federal Government.
44. Pensions payable out of Federal revenues.
45. Federal Services and Federal Public Service Commission.
46. Immovable property in possession of the Federal Government.
47. The imposition by legislation of punishment by fine, penalty or imprisonment for enforcing any law made by the Federal Legislature.
48. Matters in respect of which the Act makes provision until the Federal Legislature otherwise provides.
49. Imposition and administration of taxes on income other than agricultural income or the income of corporations, but subject to the power of the Provinces to impose surcharges.
50. The imposition and administration of duties on property passing on death other than land.
51. The imposition and administration of taxes on mineral rights and on personal capital other than land.
52. The imposition and administration of terminal taxes on railway, water or air-borne goods and passengers and taxes on railway tickets and goods freights.
53. Stamp duties which are the subject of legislation by the Indian Legislature at the date of federation.
54. The imposition and administration of taxes not otherwise specified in this List or List II, subject to the consent of the Governor-General given in his discretion after consulting Federal and Provincial Ministers or their representatives.
55. Naturalisation and status of aliens.
56. Conduct of elections to the Federal Legislature, including election offences and disputed elections.
57. Standards of weight.
58. All matters arising in Chief Commissioners' Provinces (other than British Baluchistan) not having a legislature.
59. Survey of India.
60. Archæology.
61.. Zoological Survey.
62. The recognition throughout British India of the laws, the public Acts and records and judicial proceedings of the Provinces.
63. Jurisdiction, powers and authority of all courts in British India, except the Federal Court and the Supreme Court with respect to the subjects in this list.
64. Matters ancillary and incidental to the subjects specified above.

LIST II (*Exclusively Provincial*)

1. Local self-Government, including matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlements and other local authorities in the Province established for the purpose of local self-government and village administration, but not including matters covered by item No. 4 in List I.
2. Establishment, maintenance and management of hospitals, asylums, charities and eleemosynary institutions in and for the Province (other than marine hospitals).
3. Public health and sanitation.

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4. Pilgrimages other than pilgrimages beyond India.
5. Education other than the Universities and institutions covered by item No. 63 in List I.
6. Public works and buildings in connection with the administration of the Province.
7. Compulsory acquisition of land.
8. Roads, bridges, ferries, tunnels, ropeways, causeways and other means of communication.
9. Construction (query—regulation) and maintenance of light and feeder railways and extra-municipal tramways not being in physical connection with federal railways.
10. Tramways within municipal areas.
11. Water supplies, irrigation and canals, drainage and embankments, water storage and water power.
12. Land Revenue, including—
    (*a*) assessment and collection of revenue ;
    (*b*) maintenance of land records, survey for revenue purposes and records of rights.
13. Land tenures, title to land and easements.
14. Relations of landlords and tenants and collection of rents.
15. Courts of Wards and incumbered and attached estates.
16. Land improvement and agricultural loans.
17. Colonisation, management and disposal of lands and buildings vested in the Crown for the purposes of the Province.
18. Alienation of land revenue and pensions payable out of Provincial revenues (query—frontier remissions).
19. Pre-emption.
20. Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, agricultural education, protection against destructive pests and prevention of plant diseases.
21. Civil veterinary department, veterinary training, improvement of stock and prevention of animal diseases.
22. Fisheries.
23. Co-operative Societies.
24. Trading, literary, scientific, religious and other Societies and Associations not being incorporated Companies.
25. Forests.
26. Control of production, manufacture, possession, transport, purchase and sale of alcoholic liquors, drugs and narcotics.
27. Imposition and regulation of duties of excise on alcoholic liquors, drugs and narcotics other than tobacco.
28. Administration of justice, including the constitution and organisation of all Courts within the Province, except the Federal Court, the Supreme Court and a High Court, and the maintenance of all Courts within the Province, except the Federal Court and the Supreme Court.
29. Jurisdiction of and procedure in Rent and Revenue Courts.
30. Jurisdiction, powers and authority of all Courts within the Province, except the Federal Court and the Supreme Court, with respect to subjects in this list.
31. Administrators-General and Official Trustees.
32. Stamp duties not covered by item No. 53 in List I.
33. Registration of deeds and documents other than the compulsory registration of documents affecting immovable property.
34. Registration of births and deaths.
35. Religious and charitable endowments.
36. Mines and the development of mineral resources in the Province, but not including the regulation of the working of mines.
37. Control of the production, supply and distribution of commodities.

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38. Development of industries, except in so far as they are covered by Item No. 26 in List I.
39. Factories, except the regulation of the working of factories.
40. Electricity.
41. Boilers.
42. Gas.
43. Smoke nuisances.
44. Adulteration of foodstuffs and other articles.
45. Weights and measures, except standards of weight.
46. Trade and Commerce within the Province, except in so far as it is covered by any other subject in these lists.
47 Actionable wrongs arising in the Province.
48. Ports other than Ports declared to be Major Ports by or under a federal law.
49. Inland waterways being wholly within a Province, including shipping and navigation thereon, except as regards mechanically-propelled vessels.
50. Police (including railway and village police), except as regards matters covered by the Code of Criminal Procedure.
51. Betting and gambling.
52. Prevention of cruelty to animals.
53. Protection of wild birds and wild animals.
54. Regulation of motor vehicles, except as regards licences valid throughout the Federation.
55. Regulation of dramatic performances and cinemas.
56. Coroners.
57. Criminal tribes.
58. European vagrancy.
59. Prisons, Reformatories, Borstal Institutions and other institutions of a like nature.
60. Prisoners.
61. Pounds and the prevention of cattle trespass.
62. Treasure trove.
63. Libraries (except the Imperial Library), Museums (except the Indian Museum, the Imperial War Museum and the Victoria Memorial) and other similar institutions controlled and financed by the Provincial Government.
64. Conduct of elections to the Provincial Legislature, including election offences and disputed elections.
65. Public Services in a Province and Provincial Public Service Commission.
66. The authorisation of surcharges, within such limits as may be prescribed by Order in Council, upon income tax assessed by the Federal Government upon the income of persons resident in the Province.
67. The raising of provincial revenue—
    (i) from sources and by forms of taxation specified in the Annexure appended to this list and not otherwise provided for by these lists; and
    (ii) by any otherwise unspecified forms of taxation, subject to the consent of the Governor-General given in his discretion after consulting the Federal Ministry and Provincial Ministries or their representatives.
68. Relief of the poor.
69. Health insurance and invalid and old-age pensions.
70. Money-lenders and money-lending.
71. Burials and burial grounds other than European cemeteries.
72. Imposition by legislation of punishment by fine, penalty or imprisonment for enforcing any law made by the Provincial Legislature.
73. Matters with respect to which the Act makes provision until the Provincial Legislature otherwise provides.
74. The administration and execution of federal laws on the subjects specified in List III, except No. 22.
75. Statistics for provincial purposes.

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76. Generally, any matter of a merely local or private nature in the Province not specifically included in this list and not falling within List I or List III, subject to the right of the Governor-General in his discretion to sanction general legislation on that subject.

77. Matters ancillary and incidental to the subjects specified in this list.

ANNEXURE (*see item* 67)

(*Compare Appendix IV of Report of Federal Finance Committee.—Cmd.* 4069)

1. Revenue from the public domain, including lands, buildings, mines, forests, fisheries, and any other real property belonging to the Province.

2. Revenue from public enterprises such as irrigation, electric power and water supply, markets, slaughter houses, drainage, tolls and ferries, and other undertakings of the Province.

3. Profits from banking and investments, loans and advances and state lotteries.

4. Fines and penalties arising in respect of subjects administered by the Government of the Province.

5. Fees levied in the course of discharging the functions exercised by the Government of the Province and local authorities, such as court fees, including all fees for judicial or quasi-judicial processes, local rates and dues, fees for the registration of vehicles, licences to possess fire-arms and to drive automobiles, licensing of common carriers, fees for the registration of births, deaths and marriages, and of documents.

6. Capitation taxes other than taxes on immigrants.

7. Taxes on land, including death or succession duties in respect of succession to land.

8. Taxes on personal property and circumstance, such as taxes on houses, animals, hearths, windows, vehicles; chaukidari taxes; sumptuary taxes; and taxes on trades, professions and callings.

9. Taxes on employment, such as taxes on menials and domestic servants.

10. Excises on alcoholic liquors, narcotics (other than tobacco) and drugs, and taxes on consumption not otherwise provided for, such as cesses on the entry of goods into a local area, taxes on the sale of commodities and on turnover, and taxes on advertisements.

11. Taxes on agricultural incomes.

12. Stamp duties other than those provided for in List I.

13. Taxes on entertainments and amusements, betting, gambling and private lotteries.

14. Any other receipts accruing in respect of subjects administered by the Province.

LIST III (*Concurrent*)

1. Jurisdiction powers and authority of all Courts (except the Federal Court, the Supreme Court and Rent and Revenue Courts) with respect to the subjects in this List.
2. Civil Procedure, including the Law of Limitation and all matters now covered by the Indian Code of Civil Procedure.
3. Evidence and Oaths.
4. Marriage and Divorce.
5. Age of majority and custody and guardianship of infants.
6. Adoption.
7. Compulsory registration of documents affecting immovable property.
8. The law relating to—
   (*a*) Wills, intestacy and succession, including all matters now covered by the Indian Succession Act.
   (*b*) Transfer of property, trusts and trustees, contracts, including partnership, and all matters now covered by the Indian Specific Relief Act.

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(*c*) Powers of attorney.
(*d*) Relations between husband and wife.
(*e*) Carriers.
(*f*) Innkeepers.
(*g*) Arbitration.
(*h*) Insurance.

9. Criminal Law, including all matters now covered by the Indian Penal Code, but excluding the imposition of punishment by fine, penalty or imprisonment for enforcing a law on a subject which is within the exclusive competence of the Federal legislature or a Provincial legislature.

10. Criminal Procedure, including all matters now covered by the Indian Code of Criminal Procedure.

11. Control of newspapers, books and printing presses.

12. Lunacy, but not including Lunatic Asylums.

13. Regulation of the working of Mines, but not including mineral development.

14. Regulation of the working of factories.

15. Employers' liability and Workmen's compensation.

16. Trade Unions.

17. Welfare of labour, including provident funds and industrial insurance.

18. Labour disputes.

19. Poisons and dangerous drugs.

20. The recovery in a Province of public demands (including arrears of land revenue and sums recoverable as such) arising in another Province.

21. Regulation of medical and other professional qualifications.

22. Ancient and historical monuments, including administration thereof.

23. Matters ancillary and incidental to the subjects specified in this list.

NOTE.—The word " now " in Nos. 2, 8, 9 and 10 is intended to refer to the date on which the list takes effect.

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APPENDIX VII

(See Proposals, paragraphs 182 and 191)

PART I

List of principal existing rights of officers appointed by the Secretary of State in Council

NOTE.—In the case of Sections the reference is to the Government of India Act, and in the case of Rules, to Rules made under that Act.

1. Protection from dismissal by any authority subordinate to the appointing authority (Section 96 B (1)).

2. Right to be heard in defence before an order of dismissal, removal or reduction is passed (Classification Rule 55).

3. Guarantee to persons appointed before the commencement of the Government of India Act, 1919, of existing and accruing rights or compensation in lieu thereof (Section 96 B (2)).

4. Regulation of conditions of service, pay and allowances, and discipline and conduct, by the Secretary of State in Council (Section 96 B (2)).

5. Power of the Secretary of State in Council to deal with any case in such manner as may appear to him to be just and equitable notwithstanding any rules made under Section 96 B (Section 96 B (5)).

6. Non-votability of salaries, pensions and payments on appeal (Sections 67 A (3) (iii) and (iv) and 72 D (3) (iv) and (v)).

7. The requirement that rules under part VII–A of the Act shall only be made with the concurrence of the majority of votes of the Council of India (Section 96 E).

8. Regulation of the right to pensions and scale and conditions of pensions in accordance with the rules in force at the time of the passing of the Government of India Act, 1919 (Section 96 B (3)).

9.—(i) Reservation of certain posts to members of the Indian Civil Service (Section 98).

(ii) Appointment of persons who are not members of the Indian Civil Service to offices reserved for members of that service only to be made subject to rules made by the Governor-General in Council with the approval of the Secretary of State in Council (Section 99), or in cases not covered by these rules to be provisional until approved by the Secretary of State in Council (Section 100).

10. Determination of strength (including number and character of posts) of All-India Services by the Secretary of State in Council, subject to temporary additions by the Governor-General in Council or local Government (Classification Rules 24 and 10).

11. Provision that posts borne on the cadre of All-India Services shall not be left unfilled for more than three months without the sanction of the Secretary of State in Council (Classification Rule 25).

12. Appointment of anyone who is not a member of an All-India Service to posts borne on the cadre of such a Service only to be made with the sanction of the Secretary of State in Council, save as provided by any law or by rule or orders made by the Secretary of State in Council (Classification Rule 27).

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13. Sanction of the Secretary of State in Council to the modification of the cadre of a Central Service, Class I, which would adversely affect any officer appointed by the Secretary of State in Council, to any increase in the number of posts in a Provincial Service which would adversely affect any person who was a member of a corresponding All-India Service on 9th March, 1926, or to the creation of any Specialist Post which would adversely affect any member of an All-India Service, the Indian Ecclesiastical Establishment, and the Indian Political Department.

(Provisos to Classification Rules 32, 40 and 42.)

14. Personal concurrence of the Governor required to any order affecting emoluments, or pension, any order of formal censure, or any order on a memorial to the disadvantage of an officer of an All-India Service (Devolution Rule 10).

15. Personal concurrence of the Governor required to an order of posting of an officer of an All-India Service (Devolution Rule 10).

16. Right of complaint to the Governor against any order of an official superior in a Governor's Province and direction to the Governor to examine the complaint and to take such action on it as may appear to him just and equitable (Section 96 B (1)).

17. Right of appeal to the Secretary of State in Council, (i) from any order passed by any authority in India, of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal, or (ii) from any order altering or interpreting to his disadvantage any rule or contract regulating conditions of service, pay, allowances or pension made by the Secretary of State in Council, and (iii) from any order terminating employment otherwise than on reaching the age of superannuation (Classification Rules 56, 57 and 58).

18. Right of certain officers to retire under the regulations for premature retirement.

PART II

List of principal existing rights of persons appointed by authority other than the Secretary of State in Council

NOTE.—In the case of Sections the reference is to the Government of India Act, and in the case of Rules to Rules made under that Act.

1. Protection from dismissal by any authority subordinate to the appointing authority (Section 96 B (1)).

2. Right to be heard in defence before an order of dismissal, removal or reduction is passed, subject to certain exceptions (Classification Rule 55).

3. Regulation of the strength and conditions of service of the Central Services, class I and class II, by the Governor-General in Council and of Provincial Services by local Government subject, in the case of the latter, to the provision that no reduction which adversely affects a person who was a member of the Service on the 9th March, 1926, should be made without the previous sanction of the Governor-General in Council (Classification Rules 32, 33, 36, 37, 40 and 41).

4. Personal concurrence of the Governor required to any order affecting emoluments or pension, an order of formal censure, or an order on a memorial to the disadvantage of an officer of a Provincial Service (Devolution Rule 10).

5. Right of appeal from any order of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal, and any order altering or interpreting to his disadvantage a rule or contract regulating conditions of service, pay, allowances or pension, and in the case of subordinate services the right of one appeal against an order imposing a penalty (Classification Rules 56, 57, 58 and 54).

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PART III

NON-VOTABLE SALARIES, &c. (CIVIL)

(*See Proposals, paragraphs* 49, *item* (vi), *and* 98, *item* (v).)

The salaries and pensions of the following classes of persons are non-votable :—

(*a*) persons appointed by or with the approval of His Majesty or by the Secretary of State in Council before the commencement of the Constitution Act or by a Secretary of State thereafter;

(*b*) persons appointed before the first day of April, 1924, by the Governor-General in Council or by a Local Government to Services and posts classified as superior;

(*c*) holders in a substantive capacity of posts borne on the cadre of the Indian Civil Service;

(*d*) members of any Public Service Commission.

The following sums payable to such persons fall also under item (vi) of paragraph 49, and item (v) of paragraph 98, namely :—

Sums payable to, or to the dependants of, a person who is, or has been, in the service of the Crown in India under any Order made by the Secretary of State in Council, by a Secretary of State, by the Governor-General in Council, or by the Governor-General or by a Governor upon an appeal preferred to him in pursuance of Rules made under the Constitution Act.

For the purposes of the proposals in this Appendix the expression " salaries and pensions " will be defined as including remuneration, allowances, gratuities, contributions, whether by way of interest or otherwise, out of the revenues of the Federation to any Provident Fund or Family Pension Fund, and any other payments or emoluments payable to, or on account of, a person in respect of his office.

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APPENDIX VIII

(See paragraphs 21 and 50 of Introduction, and paragraph 4 of Introductory Note to Appendices IV and V)

SCHEDULED CASTES

I.—MADRAS

Race, Tribe or Caste

1. Adi-Andhra.
2. Adi-Dravida.
3. Adi-Karnataka.
4. Ajila.
5. Aranadan (also *P. T.).
6. Arunthuthiyar.
7. Baira.
8. Bakuda.
9. Bandi.
10. Bariki.
11. Battada.
12. Bavuri.
13. Beilara.
14. Byagari.
15. Chachati.
16. Chakkiliyan.
17. Chalavadi.
18. Chamar.
19. Chandala.
20. Cheruman.
21. Dandasi.
22. Devendrakulathan.
23. Dombo (also *P. T.).
24. Ghasi.
25. Godagali.
26. Godari.
27. Godda.
28. Gosangi.
29. Haddi.
30. Hasla.
31. Holeya.
32. Jaggali.
33. Jambuvulu.
34. Kadan (also *P.T.).
35. Kalladi.
36. Kanakkan.
37. Karimpalan (also *P. T.).
38. Kattunayakan (also *P. T.).
39. Kodalo.
40. Koosa.
41. Koraga.
42. Kudiya (also *P. T.).
43. Kudubi (also *P. T.).
44. Kudumban.
45. Kuravan.
46. Kurichchan (also *P. T.).
47. Kuruman (also *P. T.).
48. Madari.
49. Madiga.
50. Maila.
51. Mala.
52. Mala Dasu.
53. Malasar (also *P. T.).
54. Matangi.
55. Mavilan (also *P. T.).
56. Moger.
57. Muchi.
58. Mundala.
59. Nalakeyava.
60. Nayadi.
61. Paga dai.
62. Paidi.
63. Painda.
64. Paky.
65. Pallan.
66. Pambada.
67. Pamidi.
68. Panchama.
69. Paniyan.
70. Panniandi.
71. Pano (also *P. T.).
72. Paraiyan.
73. Paravan.
74. Pulayan.
75. Puthirai Vannan.
76. Raneyar.
77. Relli.
78. Samagara.
79. Samban.
80. Sapari.
81. Semman.
82. Thoti.
83. Tiruvalluvar.
84. Valluvan.
85. Valmiki.
86. Vettuvan.

* P. T. = Primitive Tribe.

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II.—Bombay

1. Asodi.
2. Bakads.
3. Bhambi.
4. Bhangis.
5. Chakrawadya-Dasar.
6. Chambhar or Mochigar.
7. Chelwadi.
8. Chena-Dasaru.
9. Chuhar (Chuhra).
10. Dakleru.
11. Dhed.
12. Dhegu-Megu.
13. Dhors or Tanners.
14. Garoda.
15. Halleers.
16. Halsar (Haslars) Halsavars.
17. Holiya.
18. Khalpas.
19. Koli Dhor.
20. Kolghas or Kolchas.
21. Kotegar (North Kanara only).
22. Lingaders.
23. Mahar or Mhar.
24. Mang and Madig.
25. Mang Garudi.
26. Meghwal or Menghwar.
27. Mini-Madig.
28. Mukris.
29. Nadias.
30. Samagars.
31. Shindawa or Shenwas.
32. Shingdav.
33. Sochi or (Mochi except Gujerat where they are touchables).
34. Timalis.
35. Turis or Drummers.
36. Vitholia.
37. Wankars.

III.—Bengal.§

Agariya.
Bagdi.
Bahelia.
Baiti.
Bauri.
Bediya.
Beldar.
Berua.
Bhatiya.
Bhuimali.
Bhuiya.
Bhumij.
Bind.
Binjhia.
Chamar.
Dhenuar.
Dhoba.
Doai.
Dom.
Dosadh.
Garo.
Ghasi.
Gonrhi.
Hadi.
Hajang.
Halalkhor.
Hari.
Ho.
Jalia Kaibartta.
Jhalo Malo or Malo.
Kadar.
Khaira.
Kalwar.
Kan.
Kandh.
Kandra.
Kaora.
Kapali.
Kapuria.
Karenga.
Kastha.
Kaur.
Khandait.
Khatik.
Kichak.
Koch.
Konai.
Konwar.
Kora.
Kotal.
Lalbegi.
Lodha.
Lohar.
Mahar.
Mahli.
Mal.
Mallah.
Maipahariya.
Mech.
Mehtor.
Muchi.
Munda.
Musahar.
Nagar.
Nagesia.
Naiya.
Namasudra.
Nath.
Nuniya.
Oraon.
Paliya.
Pan.
Pasi.
Patni.
Pod.
Pundari.
Rabha.
Rajbanshi.
Raju.
Rajwar.
Santal.
Shagirdpesha.
Sukli.
Sunri.
Tiyar.
Turi.

§ Provisional.

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IV.—United Provinces

Luniya group—
Beldar.
Kharot.

Chamar group—
Chamar.
Dabgar.
Gharami.

Bhangi group—
Balmiki.
Hari.
Hela.
Ravrat.
Dhanuk.
Turaiha.
Lalbegi.

Kolarian group—
Agariya.
Bhuiya.
Chero.
Ghasiya.
Khairaha.
Kharwar (excluding Benbansi).

Kolarian group (contd.)—
Kol.
Korwa.
Majhwar.
Pankha.
Parahiya.
Patari.

Bayar group—
Banmanus.
Dhangar.

Dom group—
Balahar.
Bansphor.
Basor.
Dharkar.
Dom.
Domar.
Pasi.

Hill Dom group—
Hill Dom or Shilpkar.
Saun.

Vagrant Tribes:
Habura group—
Habura.
Bengali.
Beriya.
Bhantu.
Kanjar.
Karwal.
Sansiya.

Nat group—
Nat.
Badi.
Bajaniya.
Bajgi.
Gual.
Kalabaz.

Badhik group—
Badhik.
Barwar.
Bawariya.
Boriya.
Saharya.
Sanaurhiya.
Kapariya.

V.—Punjab

Ad Dharmis.
Bawaria.
Chamar.
Chuhra.
Dagi and Koli.
Dumna.
Od.
Sansi.
Sarera.
Marija (Marecha).
Bangali.
Barar.
Bazigar.
Bhanjra.
Chanal.
Dhanak.
Gagra.
Gandhila.
Khatik.
Kori.
Nat.
Pasi.
Perna.
Sapela.
Sirkiband.
Meghs.
Ramdasis.

VI.—Bihar and Orissa

*Bauri.
*Bhogta.
*Bhuiya.
*Bhumij.
Chamar.
Chaupal.
Dhobi.
Dosadh.
Dom.
*Ghasi.
Ghusuria.
Godra.
Gokha.
Halalkhor.
Hari.
Irika.
Kandra.
Kanjar.
Kela.
Kurariar.
Lalbegi.
Mahuria.
Mangan.
Mochi.
Mushahar.
Nat.
*Pan.
Pasi.
*Rajwar.
Siyal.
*Turi.

* Scheduled castes in those localities which are not treated as " backward tracts " for the purpose of special representation of the aboriginals.

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VII.—Central Provinces with Berar.*

(1) Throughout the Central Provinces and Berar :—

Mehra or Mahar (except in the Harda tahsil and Sohagpur tahsil of Hoshangabad district), Basor or Burud, Mehtar or Bhangi, Dom, Chamar, Satnami, Mochi, Ganda, Mang.

(2) Throughout the Jubbulpore and Nerbudda divisions :—

Kori (except in the Harda and Sohagpur tahsils of Hoshangabad district), Mala, Balahi.

(3) Throughout the Nagpur and Berar divisons :—

Balahi, Madgi, Pradhan (except in Balaghat district), Ghasia, Katia, Panka, Khatik, Kaikari (except in Balaghat district), Dohor.

(4) Throughout the Chhattisgarh division :—

Ghasia, Katia, Panka, Dewar.

(5) Additional castes scheduled in the districts specified after their name :—

Panka (Saugor, Damoh, Chhindwara).
Katia (Saugor, Hoshangabad (only in Hoshangabad and Seoni-Malwa tahsils), Nimar, Betul, Chhindwara).
Khatik (Saugor, Hoshangabad (only in Hoshangabad tahsil), Chhindwara).
Dhobi (Saugor, Damoh, Hoshangabad (only in Hoshangabad and Seoni-Malwa tahsils), Bhandara, Raipur, Bilaspur, Buldana).
Khangar (Saugor, Damoh, Bhandara, Buldana, Hoshangabad (only in Hoshangabad and Seoni-Malwa tahsils)).
Chadar (Saugor, Damoh, Bhandara).
Dhanuk (Saugor).
Kumhar (Saugor, Damoh, Hoshangabad (only in Hoshangabad and Seoni-Malwa tahsil), Bhandara and Buldana).
Dahayat (Damoh).
Nagarchi (Mandla, Seoni, Chhindwara, Nagpur, Bhandara, Balaghat, Raipur).
Ojha (Mandla, Hoshangabad (only in Hoshangabad tahsil), Bhandara, Balaghat).
Pardhi (Narsinghpur).
Rujjhar (Hoshangabad (only in Sohagpur tahsil))
Pradhan (Nimar, Chhindwara, Raipur).
Holiya (Bhandara, Balaghat).
Kori (Bhandara, Balaghat, Raipur, Amraoti, Buldana).
Audhelia (Bilaspur).
Chauhan (Drug).
Koli (Chanda, Bhandara).
Jangam (Bhandara).
Bedar (Amraoti, Akola, Buldana).
Bahna (Amraoti).
Dhimar (Bhandara, Buldana).
Mala (Balaghat).

* See Introduction, paragraph 45.

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VIII.—Assam

1. *Assam Valley*—

Namasudra.	Hira.
Kaibarta.	Sweeper.
Bania (Brittial-Bania).	

2. *Surma Valley*—

Mali (indigenous).	Sutradhar.
Dhupi (Dhobi).	Muchi.
Dugla or Dholi.	Patni.
Jhalo and Malo.	Namasudra.
Yogi (Jugi or Nath).	Kaibarta (Jaliya).
Mahara.	Sweeper.

3. The inclusion of the Suts (Borias) and Naths (Jogis or Katonis) of the Assam Valley in the scheduled castes is under investigation.

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SECOND APPENDIX

Scheme of Constitutional Reform in Burma if separated from India, presented by the Secretary of State for India to the Joint Committee of Parliament on Indian Constitutional Reform.

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Scheme of Constitutional Reform in Burma if separated from India, presented by the Secretary of State for India to the Joint Committee of Parliament on Indian Constitutional Reform.

INTRODUCTION.

The object of this Introduction is to explain in the broadest outline the changes in the government of Burma which would be brought about by the adoption of the proposals which follow.

1. The principle underlying these proposals is that, in the event of Burma being separated from India, a unitary form of government would be set up there, under a Constitution composed, broadly speaking, on the same constitutional principles as have been embodied in the proposals made in regard to India. No attempt is made in this introduction to explain proposals common to both cases, as such proposals have been fully explained in the introduction to the Indian White Paper. The essential difference between the two cases is that the Constitution for Burma would not be complicated by the special considerations arising from the concept of an Indian Federation, and that the Government of Burma would accordingly combine in its own hands functions which, in the case of the proposals in the Indian White Paper, have necessarily been distributed between the Federation and the Provinces. Differing circumstances have made it necessary to depart from the Indian model in the case of a few matters, but the close correspondence of the two sets of proposals is shown by the number of proposals in this paper which are set out in plain type, a device which indicates that they are in substance identical with, although they necessarily differ in some respects in form from, corresponding provisions in the Indian proposals. References to the corresponding proposals in the Indian White Paper are indicated in the margin.

2. It has in the past been suggested* that in view of the differences of race, history, culture and political development between India and Burma, the linking of Burma to India in the last century for reasons of administrative convenience should not of necessity tie Burma to the same path of political progress as India; and the view has been advanced that the Empire affords examples, such as are to be found in Ceylon and elsewhere, of other types of constitutional arrangement which might be more suited to the genius of the Burman people. But since the Government of India Act of 1919 Burma has been steadily carried forward by the tide of Indian reform, so that she now stands at the same point of political development as the other Provinces of British India. It does not therefore seem possible, even if it were politically expedient, to contemplate either a different line of advance for Burma from that mapped out for India or a different rate of progress. This position was recognised by the Government of Burma in a Despatch of the 13th August, 1930,† in which they wrote :—

> ". . . It is of great importance that it should be made clear beyond all possibility of doubt or question that the separation of Burma will not involve for Burma any departure from the statement contained in the preamble to the Government of India Act, 1919, that the objective of British policy is the progressive realisation of responsible government in British India as an integral part of the Empire. As the Commission‡ say, that statement constitutes a pledge given by the British nation to British India. When the pledge was first announced in August, 1917, Burma

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* Paragraph 198, Montagu-Chelmsford Report.
† Page 244, Cmd. 3712 of 1930.
‡ Simon Commission.

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was a part of British India. The pledge, therefore, was given to Burma as well as to India, and even if Burma is separated from India the pledge still stands for Burma unimpaired and in all its force. The Government of Burma could not possibly agree to separation on any other terms, and they trust that His Majesty's Government will see fit to set at rest any doubts that may still exist on the subject. They attach importance to the point, for the allegation is frequently made in that section of the public press of Burma which is opposed to the recommendation of the Statutory Commission that the British Government will seize the opportunity of separation to reduce Burma to the status of a Crown Colony."

3. The Burma Sub-Committee of the first Indian Round Table Conference included in its Report,* as its first recommendation, a request to His Majesty's Government—

> " to make a public announcement that the principle of separation is accepted, and that the prospects of constitutional advance towards responsible government held out to Burma as part of British India will not be prejudiced by separation."

The Indian Round Table Conference did not agree unanimously to the adoption of, and action on, this recommendation without further full consideration, but it was generally admitted that such further consideration was a matter between His Majesty's Government and the Burmans themselves, and that Indians would abide by the issue.

4. The next step was taken by the Secretary of State for India in answer to a question in the House of Commons on 20th January, 1931, when he made the following statement :—

> " As my Right Hon. Friend the Prime Minister stated yesterday in the final plenary session of the Round Table Conference, the Government have decided to proceed with the separat ..n of Burma. They wish it to be understood that the prospects of constitutional advance held out to Burma as part of British India will not be prejudiced by this decision, and that the constitutional objective after separation will remain the progressive realisation of responsible government in Burma as an integral part of the Empire. In pursuance of this decision they intend to take such steps towards the framing, in consultation with public opinion in Burma, of a new Constitution as may be found most convenient and expeditious, their object being that the new Constitutions for India and Burma shall come into force as near as may be simultaneously."

5. In pursuance of this announcement the Burma Round Table Conference was convened " for the purpose of seeking the greatest possible measure of agreement regarding the future Constitution of Burma and the relations of Burma with India," the primary task of the Conference being " to discuss the lines of a Constitution for a separated Burma."

The Conference sat from the 27th November, 1931, to the 12th January, 1932, and its Report disclosed a considerable measure of agreement between the delegates from Burma and those from Parliament upon the type and details of a Constitution for a separated Burma. In the course of the Conference a statement was made on behalf of His Majesty's Government to the effect that the assurance given in the Prime Minister's statement on 19th January at the end of the first Indian Conference, and reiterated on 1st December, 1931, at the close of the second Conference, defining His Majesty's Government's policy towards India and her advance through the new Constitution with its reservations and safeguards for a transitional period to full responsibility for her own government, applied in principle equally to Burma. The sketch of a Constitution for Burma outlined in some detail in the Prime Minister's statement at the end of the Burma Conference, and drawn up in

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* Page 50 of Cmd. 3772 of 1931.

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the light of the Conference discussions, took therefore for its basic principle responsible government subject to certain " safeguards " in the field of administration which is now " provincial," and subject to certain " reservations " as well as " safeguards " in the field now administered by the Central Government of India.

6. In his statement on 12th January, 1932, the Prime Minister said, on behalf of His Majesty's Government, that if and when they were satisfied that the desire of the people of Burma was that the government of their country should be separated from that of India, they would take steps, subject to the approval of Parliament, to give effect to this desire.

In order to ascertain the desire of the people of Burma, advantage was to be taken of a general election to the Burma Legislative Council, which was due to be held in the following autumn. At this election the question of separation was inevitably the main issue before the electorate. But prior to the election a mass meeting of members of the various General Councils of Burmese Associations (who had hitherto refused to co-operate with the dyarchical Government in Burma, or even take part in elections), was held at the Jubilee Hall, Rangoon, in the first week of July. At this mass meeting it was resolved to form an Anti-Separation League. The policy of the League was laid down in five Resolutions, the effect of which was to reject the Constitution for a separated Burma outlined by the Prime Minister at the end of the Round Table Conference, and to declare the League's opposition to separation from India on the basis of this Constitution ; to " protest emphatically " against the idea of permanent and unconditional inclusion in the Indian Federation, and to continue opposition to separation till a Constitution be granted " satisfactory and acceptable to the people of Burma." The meeting resolved also to take an active part in the impending election with a view to combating separation on the conditions held out by the Prime Minister's statement. The election was held in November, 1932, and the electorate returned a majority of candidates describing themselves as " Anti-Separationists " and as adherents to the policy adopted by the Anti-Separation League formed at the Jubilee Hall meeting.

7. In December, 1932, the question of separation from India on the basis of the Constitution outlined by His Majesty's Government, or of inclusion, as a British Indian Province, in the Indian Federation, formed the subject of a protracted debate in the Burma Legislative Council. The Council eventually, on 22nd December, adopted a Resolution which was identical in substance and almost in terms with those adopted at the Jubilee Hall meeting. It (1) opposed the separation of Burma from India on the basis of the Constitution outlined by the Prime Minister on 12th January, 1932 ; (2) emphatically opposed the unconditional and permanent federation of Burma with India ; (3) promised continued opposition to the separation of Burma from India except on certain conditions ; and (4) proposed that, in the event of these conditions not being fulfilled, Burma should be included in the Indian Federation on special conditions differentiating her from other Provinces and including the right to secede at will from the Federation.

8. Such a Resolution indicated no clear choice between the alternatives that had been placed before the Council. But it was hoped that, in the light of the Indian White Paper published in March, 1933, and in the light also of the statement made by the Secretary of State for India on 20th March in answer to questions in the House of Commons, as to the nature of the two alternatives still open for choice by Burma, the Burma Legislative Council might yet give a less equivocal indication of the desire of the people of Burma in respect of the two courses offered. Accordingly, a special session of the Council was, at the request of the majority of the party leaders, summoned for 25th April, 1933, and was held between that date and 6th May.

This special session proved entirely unfruitful. It was prorogued on 6th May without any resolution being adopted either for Burma's inclusion

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in the Indian Federation or for the separation of her government from that of India. As a result, there is available no other authoritative indication of the considered view of the representatives of the people of Burma as to the course which should be adopted than that contained in the negative and conditional Resolution of 22nd December, 1932.

In the second paragraph of that Resolution the Burma Legislative Council expressed itself as emphatically opposed to unconditional and permanent federation with India, and such further evidence as has since accumulated regarding the attitude of the people and political parties of Burma, including statements by party leaders, points to the conclusion that, whatever division of opinion may exist in Burma as to the merits of the Constitution outlined in the Prime Minister's statement, there is an almost unanimous opinion in favour of ultimate separation from India and against federation on the same terms as the other Provinces of India.

General Description of the Scheme.

9. Before examining the scheme in detail it is desirable in the first place to refer to a question affecting the position within the Empire of a Burma separated from India. Unless provision to the contrary is made, the moment Burma ceases to be part of British India she will, by virtue of the Interpretation Act, 1889, which defines a " Colony " as " any part of His Majesty's dominions exclusive of the British Islands and of British India," automatically become " a Colony " for all purposes of English law. Although there is no necessary connection between the status of a " Colony " and that of a " Crown Colony," it is clearly desirable that the position of Burma should be unambiguous, and it would be necesary to insert in the Constitution a provision to the effect that, notwithstanding anything in the Interpretation Act, the expression " Colony " in any Act of the Parliament of the United Kingdom should not include Burma. At the same time provision would be made to ensure that Acts of Parliament which have hitherto applied to Burma as part of British India should continue to do so.

10. The separation of Burma from India would also require on the financial side that arrangements should be made for an equitable distribution between India and Burma of assets and liabilities existing at the time of coming into force of the Act; and provision would have to be made in the Act to give statutory effect to such determination and to such agreements as might be made thereunder by the respective Governments of the two countries.

11. In view of the fact that, as already pointed out, the constitutional principles underlying this scheme are substantially the same as those which have been applied in relation to the Indian proposals, much that has been said in the Indian White Paper is applicable also to the present proposals. But it is believed that the nature of the present proposal will more readily be understood if a short description of their general purport is given at the outset.

12. The scheme proposed is for an Executive consisting of the Governor as representing the Crown, aided and advised by a Council of Ministers responsible (subject to the qualifications to be explained later) to a Legislature composed of two Houses and consisting as to the Upper Chamber of 36 members, of whom one-half would be elected by the Lower Chamber and one-half would be non-official persons nominated by the Governor in his discretion for the purpose of making the Chamber as fully representative as possible of the interests of all sections of the community. The Lower Chamber would consist of rather more than 130 members, of whom a proportion would represent minorities and special interests.

13. In the Government so composed would be concentrated all the functions which, in the case of India, are proposed to be divided between the Federal and Provincial Authorities. But, as in India, the transfer of responsibility would not be complete. Certain Departments, namely those concerned with

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Defence, External Affairs, Ecclesiastical Affairs, and the Affairs of Excluded Areas (to be called, in the case of Burma, " Schedule A areas "), to which for reasons presently to be explained, would be added, in the case of Burma, the control of monetary policy, currency and coinage, would be entrusted to the Governor personally, and these matters he would control in responsibility to His Majesty's Government and Parliament. The Governor would also be given powers similar to those proposed to be conferred on the Governor-General and Governors in India in relation to dissolution of the Legislature, refusal of assent to Bills, the grant of previous sanction to the introduction of certain classes of legislation, etc. The administration of all other matters would be transferred to Ministers responsible to the Legislature, but the Governor, again following the proposals made in relation to India, would be declared to have a special responsibility for certain matters, namely :—

(*a*) the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof;

(*b*) the safeguarding of the financial stability and credit of Burma;

(*c*) the safeguarding of the legitimate interests of minorities;

(*d*) the securing to the members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests;

(*e*) the prevention of commercial discrimination;

(*f*) the administration of the areas named in Schedule B to the Constitution Act;

(*g*) any matter which affects the administration of any department of government under the direction and control of the Governor.

The effect of entrusting these responsibilities to the Governor and the manner in which it is anticipated they would be discharged are described in the Indian White Paper, and it has not been thought necessary to reproduce here what is said in that Paper.

14. It is now possible to draw attention to the points in regard to which it has been thought the special requirements of Burma would make some divergence from the Indian proposals desirable, and to indicate the effect of those divergences.

15. In the first place it will be observed that it is proposed that the control of monetary policy, currency and coinage should be treated as a reserved subject. The reasons for this proposal are two-fold. Burma would at the outset be within the currency system of India, and it is likely to be some time before conditions would render it possible for her to adopt a separate currency system of her own; the subject, moreover, is one in regard to which Burma possesses no expert knowledge. It is, therefore, proposed that these matters should be under the personal control of the Governor, who would be empowered to appoint a Financial Adviser directly responsible to him.

16. The different composition proposed for the Burma Legislature is, of course, mainly due to the absence of the detailed arrangements involved in the accession of the Indian States to the Indian Federation, but also in part to the fact that the communal difficulties which have necessitated special arrangements in India have, practically speaking, no counterpart in Burma.

17. The importance to Burma of the immigration problem might also render it necessary to make some special provision in this respect.

18. Again, in regard to the administration of what, in the case of India, have been described as Excluded or Partially Excluded areas, conditions in Burma may demand slightly different treatment. Detailed provisions for the treatment of such areas in Burma have therefore been excluded from the scope of this tentative scheme. It is proposed in the case of Burma that the areas falling within the two categories mentioned above should be enumerated in two separate Schedules, A and B, to the Constitution Act,

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and it will therefore be convenient to refer to them as Schedule A or Schedule B areas rather than Wholly or Partially Excluded areas. A provisional list of these areas will be found in Appendix II.

THE PUBLIC SERVICE.

19. As regards the All-India Services, Burma, like any other Indian Province, is at present served by the Indian Civil Service, the Indian Police, and the Indian Service of Engineers. But since the last instalment of reforms, when the administration of forests was made a transferred subject in Burma and Bombay, recruitment to the Indian Forest Service in Burma has ceased; recruitment now being made instead by the Local Government to the Burma Forest Service (Class I). As in the case of India, it is proposed that under the new Constitution recruitment should cease in Burma for the Indian Service of Engineers. As regards the Indian Civil Service and the Police, the Services which would correspond to these in Burma in future would, of course, be differently named, but the Secretary of State would continue to recruit Europeans to them in the same proportion as at present, pending a statutory enquiry into the recruitment question, which would take place after a period to be determined (*see* proposal 93).

20. Burma is also served by officers of the Central Services, *e.g.*, the Railway Services, the Indian Audit and Accounts Service, the Indian Posts and Telegraphs, and the Imperial Customs Service. Members of these Services remaining in Burma would be absorbed in new Services administered by the Government of Burma independently of the Government of India.

21. As regards Central Service officers now serving in Burma, some were recruited by the Government of India for service in Burma alone, others were recruited either by the Secretary of State or the Government of India without special reference to service in Burma. Officers falling in the first category would be compulsorily transferred to the service of the Government of Burma. Transfer to the Government of Burma of officers falling in the second category would be subject to the consent of the officers themselves and of the authority which appointed them, and would be a matter for arrangement between the Governments of India and Burma.

22. In addition to the ordinary Provincial Service, which covers the whole of the civil administration in the middle and lower grades, Burma possesses the Burma Frontier Service. This Service is now controlled and recruited by the Local Government, but many of its members, in common with many members of the Provincial Services, have rights guaranteed by the Secretary of State. In view of the fact that if Burma were separated from India most of the officers of the Burma Frontier Service would serve in areas under the sole control of the Governor, it would seem proper that the Service should be recruited and controlled by the Governor acting in his discretion.

23. Existing service rights of present members of the above-mentioned Services would be preserved under the Constitution Act, subject to a few inevitable changes of which an example is that persons appointed by the Government of India would on transfer to service in Burma cease to be liable to dismissal by the Governor-General and become instead liable to dismissal by the Governor of Burma. The principal changes of this kind are indicated against notes in the Proposals. Persons appointed in future by the Secretary of State to the Services which would replace the Indian Civil Service and the Indian Police would enjoy the same rights as persons appointed by the Secretary of State to the Indian Civil Service and the Indian Police before the Constitution Act comes into force, except that in the first instance the right to retire under the regulations for premature retirement would, in the case of officers recruited after the inauguration of the new Constitution, extend only to those appointed before the decision to be taken regarding future recruitment following upon the statutory enquiry referred to in paragraph 19 above. The right to retire under those regulations would not be enjoyed by officers

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serving permanently in Departments under the direct control of the Governor, but it would be extended to those officers of the present Central Services (Class I) who were appointed by the Secretary of State and who might be transferred permanently to Departments handed over to the control of Ministers in Burma.

24. As in the case of India, provision would be made for continued recruitment by the Secretary of State to the Ecclesiastical Department. The question of continued recruitment by the Secretary of State to the Superior Medical and Railway Services is under examination.

25. As regards Family Pension Funds, officers in Burma who, before the coming into force of the Constitution Acts, were members of one of the All-India Family Pension Funds, would be permitted to retain their membership of such Fund.

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NOTE.—*The use of italics in the following proposals indicates a divergence from the proposals of the Indian White Paper* (*Cmd.* 4268 *of* 1933).

Numbers of corresponding proposals in Indian White Paper.

THE PROPOSALS.

GENERAL.

1. The general principle underlying all these proposals is that all powers appertaining or incidental to the government of the territories for the time being belonging to His Majesty the King in Burma and all rights, authority and jurisdiction possessed in that country—whether flowing from His Majesty's sovereignty over the Province of Burma, or derived from treaty, grant, usage, sufferance or otherwise in relation to other territories—are vested in the Crown and are exercisable by and in the name of the King. 1

2. *The territories belonging to His Majesty the King in Burma will be declared to be those which at the date of coming into force of the Act constitute the Province of Burma in British India.* The date of the coming into force of the Act will be fixed by Royal Proclamation.

3. *Provision will be made to except Burma from the definition of "Colony" in the Interpretation Act.**

4. *Provision will be made for the continuance in force, until repealed by competent authority, of all laws of the Parliament of the United Kingdom which at present apply to Burma as part of British India, of laws of the Indian Legislature which apply to Burma, and of laws passed by the existing Burma Legislature, together with the body of rules, notifications and instructions issued under these laws.*

5. *It will be declared that all rights and obligations under international treaties, conventions or agreements which before the commencement of the Constitution Act were binding upon Burma as part of British India shall continue to be binding upon her.*†

THE EXECUTIVE.

6. The executive authority in Burma, including the supreme command of the Military, Naval and Air Forces in Burma, will be exercisable on the King's behalf by a Governor holding office during His Majesty's pleasure, *who will also be Commander-in-Chief.*‡ 6

All executive acts will run in the name of the Governor.

7. The Governor will exercise the powers conferred upon him by the Constitution Act as executive head in Burma and such powers of His Majesty (not being powers inconsistent with the provisions of the Constitution Act) 8

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* The object of proposals 3 and 4 is to ensure that all legislation and regulations which at present apply to Burma as part of British India still continue to apply to her, and to prevent the separation of Burma from British India from bringing her within the ambit of Imperial laws passed with reference to "Colonies" as defined in the Interpretation Act, 1889, *i.e.*, "any part of His Majesty's Dominions exclusive of the British Islands and of British India." *See* paragraph 9 of Introduction.

† A similar provision is to be found in section 148 (1) of the South Africa Act. Whether or not such a provision is necessary or desirable in the Indian Constitution Act, it seems clearly desirable in the case of a separated Burma, to make it clear beyond doubt, on the lines of proposal 4, that all obligations hitherto binding upon Burma as part of British India shall continue to apply to her unless and until abrogated by competent authority.

‡ The Indian White Paper proposes to continue the separate appointment of a Commander-in-Chief in India. No corresponding appointment seems either necessary or desirable in the case of Burma, in view of the smaller size of the military forces concerned. But it is thought desirable to invest the Governor with the title of Commander-in-Chief to emphasise the fact that the executive military power is vested in him.

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as His Majesty may be pleased by Letters Patent constituting the office of Governor to assign to him. In exercising all these powers the Governor will act in accordance with an Instrument of Instructions to be issued to him by the King.

9 **8.** The draft of the Governor's Instrument of Instructions (including the drafts of any amendments thereto) will be laid before both Houses of Parliament, and opportunity will be provided for each House of Parliament to make to His Majesty representations for an amendment, or addition to, or omission from, the Instructions.

10 **9.** The Governor's salary will be fixed by the Constitution Act, and all other payments in respect of his personal allowances, or of salaries and allowances of his personal and secretarial staff, will be fixed by Order in Council; none of these payments will be subject to the vote of the Legislature.

The Working of the Executive.

11 and 107 **10.** The Governor will himself direct and control the administration of certain Departments of State—namely, Defence, External Affairs, Ecclesiastical Affairs—and also the affairs of the areas named in Schedule A to the Constitution Act,* *and monetary policy, currency and coinage.*†

12 **11.** In the administration of these Reserved Departments, the Governor will be assisted by one or more Counsellors, not exceeding three in number, who will be appointed by the Governor, and whose salaries and conditions of service will be prescribed by Order in Council. *Of these Counsellors one may at the discretion of the Governor, be appointed to be Financial Adviser.*

13 **12.** For the purpose of aiding and advising the Governor in the exercise of powers conferred upon him by the Constitution Act, other than powers connected with the matters mentioned in paragraph 10, and matters left by law to his discretion, there will be a Council of Ministers. The Ministers will be chosen and summoned by the Governor and sworn as Members of the Council and will hold office during his pleasure. The persons appointed Ministers must be, or become within a stated period, members of one or other Chamber of the Legislature.

14 **13.** In his Instrument of Instructions the Governor will be enjoined *inter alia* to use his best endeavours to select his Ministers in the following manner, that is, in consultation with the person who, in his judgment, is likely to command the largest following in the Legislature, to appoint those persons who will best be in a position collectively to command the confidence of the Legislature.

15 **14.** The number of Ministers and the amounts of their respective salaries will be regulated by Act of the Legislature, but, until the Legislature otherwise determines, their number and their salaries will be such as the Governor determines, subject to limits to be laid down in the Constitution Act.

The salary of a Minister will not be subject to variation during his term of office.

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* See paragraph 18 of the Introduction.

† In the case of the Indian Federation it is proposed to transfer the whole subject of Finance to the charge of a responsible Minister, but subject to the prior establishment and successful operation of a Reserve Bank and subject to a special responsibility laid upon the Governor-General for the preservation of the financial stability and credit of the Federation. There is no proposal to set up a Reserve Bank in Burma In the case of Burma it is proposed, subject to a special responsibility of the same kind as that it is proposed to impose upon the Governor-General in India, to transfer the general subject of Finance to Ministerial control, but to reserve "Monetary policy, currency and coinage" to the Governor as a department in his sole charge (assisted by a Financial Adviser). It is, however, proposed that, for some time to come, Burma should continue within the Indian currency system.

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15. The Governor will, whenever he thinks fit, preside at meetings of his Council of Ministers. He will also be authorised, after consultation with his Ministers, to make at his discretion any rules which he regards as requisite to regulate the disposal of Government business and the procedure to be observed in its conduct, and for the transmission to himself and to his Counsellors in the Reserved Departments, and to the Financial Adviser, of all such information as he may direct. 16

16. The Governor will be empowered, at his discretion, after consultation with Ministers, to appoint a Financial Adviser to assist him, and also to advise Ministers on matters regarding which they may seek his advice. The Financial Adviser will be responsible to the Governor and will hold office during pleasure; his salary and conditions of service will be fixed by the Governor in his discretion, and will not be subject to the vote of the Legislature. 17

17. Apart from his exclusive responsibility for the Reserved Departments (proposal 10), the Governor will be declared to have a "special responsibility"* in respect of— 18 and 70

(*a*) The prevention of any grave menace to the peace or tranquillity of Burma or any part thereof;

(*b*) the safeguarding of the financial stability and credit of Burma;

(*c*) the safeguarding of the legitimate interests of minorities;

(*d*) the securing to the members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests;

(*e*) the prevention of commercial discrimination;

(*f*) the administration of the areas named in Schedule B to the Constitution Act.†

(*g*) any matter which affects the administration of any department of government under the direction and control of the Governor.

It will be for the Governor to determine in his discretion whether any of the "special responsibilities" here described are involved by any given circumstances.

18. If in any case in which, in the opinion of the Governor, a special responsibility is imposed upon him it appears to him, after considering such advice as has been given him by his Ministers, that the due discharge of his responsibility so requires, he will have full discretion to act as he thinks fit, but in so acting he will be guided by any directions which may be contained in his Instrument of Instructions. 19

19. The Governor in administering the Departments under his own direction and control, in taking action for the discharge of any special responsibility, and in exercising any discretion vested in him by the Constitution Act, will act in accordance with such directions, if any, not being directions inconsistent with anything in his Instructions, as may be given to him by a principal Secretary of State. 20

20. The Governor's Instrument of Instructions will accordingly contain *inter alia* provision on the following lines:—

"In matters arising in the Departments which you direct and control on your own responsibility, or in matters the determination of which is by law committed to your discretion, it is Our will and pleasure that you should act in exercise of the powers by law conferred upon you in such a manner as you may judge right and expedient for the good government of Burma, subject, however, to such directions as you may from time to time receive from one of Our principal Secretaries of State. 21

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* See paragraphs 25 and 47 of the Introduction in the Indian White Paper.

† See paragraph 18 of Introduction.

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" In matters arising our of the exercise of powers conferred upon you for the purposes of the government of Burma other than those specified in the preceding paragraph it is Our will and pleasure that you should, in the exercise of the powers by law conferred upon you, be guided by the advice of your Ministers, unless so to be guided would, in your judgment, be inconsistent with the fulfilment of your special responsibility for any of the matters in respect of which a special responsibility is by law committed to you ; in which case it is Our will and pleasure that you should, notwithstanding your Ministers' advice, act in exercise of the powers by law conferred upon you in such manner as you judge requisite for the fulfilment of your special responsibilities, subject, however, to such directions as you may from time to time receive from one of Our principal Secretaries of State."

The Legislature.*

General

22 **21.** The Legislature will consist of the King, represented by the Governor, and two Chambers, to be styled the Senate and the House of Representatives, and will be summoned to meet for the first time not later than a date to be specified in the Proclamation which fixes a date for the coming into force of the Act.

Every Act of the Legislature will be expressed as having been enacted by the Governor, by and with the consent of both Chambers.

23 **22.** Power to summon, and appoint places for the meeting of, the Chambers, to prorogue them and to dissolve them, either separately or simultaneously, will be vested in the Governor at his discretion, subject to the requirement that they shall meet at least once in every year, and that not more than 12 months shall intervene between the end of one session and the commencement of the next.

The Governor will also be empowered to summon the Chambers for the purpose of addressing them.

24 **23.** Each House of Representatives will continue for five years unless sooner dissolved. *No term will be fixed to the life of the Senate.*

25 **24.** A Member of the Council of Ministers will have the right to speak, but not to vote, in the Chamber of which he is not a Member.

A Counsellor will be *ex-officio* an additional member of both Chambers for all purposes except the right of voting.

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* The proposals for the constitution of the Legislature are modelled closely on those for the Indian Federal Legislature, but it is not possible for them to correspond exactly. Such minor differences as are suggested rest on the conclusions of the Burma Round Table Conference or upon the advice of the Governor of Burma. The reason for these differences is that the circumstances in Burma differ from those which exist in India. In the first place, the communal problem in the Indian sense does not exist in Burma, and apart from special provision for the reasonable representation of certain well-defined minority communities such as the Indian and European, it is proposed that members of the Lower Chamber in Burma should be elected by general constituencies on a common franchise. Secondly, there are no States to which special representation in the Legislature requires to be given. It is proposed that the Upper Chamber in Burma should be constituted as to half of its 36 members by election by the Lower Chamber and that the remaining half should consist of non-officials nominated by the Governor in his discretion, with the object of making the Upper Chamber as far as possible fully representative of the interests of different sections of the population (proposal 25). The Government of Burma advocate a minimum age limit of 35 for membership of the Burma Senate, but as a limit of 30 has been proposed for Second Chambers in the Indian Provinces proposal 26 makes no specific suggestion. It is also proposed that, subject to the Governor's power of dissolution in exceptional circumstances, the life of the Upper Chamber should not be subject to termination (proposal 23). Some device is, however, required to ensure that it remains in touch with public opinion. It is therefore proposed (proposal 28) that one-quarter of the members should retire every two years.

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The only other point of difference in this connection from the Indian proposals is that in the case of Burma it is proposed (proposal 37) that the powers of the two Chambers should be entirely equal except for the vesting of Supply in the Lower Chamber alone, while in the case of the Indian Federal Legislature not only Supply, but also the initiation of Money Bills, rests with the Lower House alone, subject, as regards Supply, to a power in the Upper Chamber, if a motion to that effect is moved on behalf of Government, of requiring a Joint Session to be called if it disapproves of a reduction or rejection of any Demand by the Lower Chamber.

The Composition of the Chambers

25. The Senate will consist, apart from the Governor's Counsellors, *of not more than* 36 *members of whom* 18 *will be elected by the House of Representatives and* 18 *(who shall not be officials) will be nominated by the Governor in his discretion.* **26**

26. A member of the Senate will be required to be *not less than* (30 *or* 35) *years of age* and a British subject, and to possess certain prescribed property qualifications, or to possess qualifications to be prescribed by the Governor with a view to conferring qualification upon persons who have rendered distinguished public service. **27**

27. If the seat of a Senator becomes vacant, his place will be filled either by election by the House of Representatives or by nomination by the Governor, according to the method by which he had himself obtained his seat. **28**

28. *One-quarter of the Senators will retire at the expiration of every period of two years, this quarter being composed alternately of one-half of the nominated members and one-half of the elected members ; the first quarter to retire to consist of nominated members. The selection of those Senators who are to retire at the expiration of the first two periods of two years after the first summoning of the Senate to be determined by lot. (Subject to the above arrangements the tenure of seats to be for eight years).*

29. The House of Representatives will consist, apart from the Governor's Counsellors, *of* [133] *members, of whom* 119 *will be elected to represent general constituencies and* 14 *elected to represent special constituencies.* **29**

30. A member of the House of Representatives will be required to be not less than 25 years of age and a British subject. **30**

31. Casual vacancies in the House of Representatives will be filled by the same method as that followed in the case of the election of the vacating member. **31**

32. Every member of either Chamber will be required to make and subscribe an oath or affirmation in the following form before taking his seat :— **33**

" I, *A. B.*, having been $\frac{\text{elected}}{\text{nominated}}$ a member of this $\frac{\text{Senate}}{\text{House of Representatives}}$, do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King, His heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter."

33. The following disqualifications will be prescribed for membership of either Chamber :— **34**

(*a*) in the case of elected members or of members nominated by the Governor, the holding of any office of profit under the Crown other than that of Minister ;

(*b*) a declaration of unsoundness of mind by a competent Court ;

(*c*) being an undischarged bankrupt ;

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(*d*) conviction of the offence of corrupt practices or other election offences;

(*e*) in the case of a legal practitioner, suspension from practice by order of a competent Court;

but provision will be made that the last two disqualifications may be removed by order of the Governor at his discretion;

(*f*) having an undisclosed interest in any contract with the Government; provided that the mere holding of shares in a company will not by itself involve this disqualification.

35 **34.** A person sitting or voting as a member of either Chamber when he is not qualified for, or is disqualified from, membership will be made liable to a penalty of in respect of each day on which he so sits or votes, to be recovered in the High Court by suit instituted with the consent of a Principal Law Officer of the Government.

36 **35.** Subject to the Rules and Standing Orders affecting the Chamber there will be freedom of speech in both Chambers of the Legislature. No person will be liable to any proceedings in any Court by reason of his speech or vote in either Chamber, or by reason of anything contained in any official report of the proceedings in either Chamber.

37 **36.** The following matters connected with elections and electoral procedure, in so far as provision is not made by the Act, will be regulated by Order in Council:—

(*a*) The qualifications of electors;
(*b*) The delimitation of constituencies;
(*c*) The method of election of representatives of minorities and other interests;
(*d*) the filling of casual vacancies; and
(*e*) Other matters ancillary to the above;

with provision that Orders in Council framed for these purposes shall be laid in draft for a stated period before each House of Parliament.

For matters other than the above connected with the conduct of elections the Legislature will be empowered to make provision by Act. But until the Legislature otherwise determines, existing laws or rules, including the law or rules providing for the prohibition and punishment of corrupt practices or election offences and for determining the decision of disputed elections, will remain in force, subject, however, to such modifications or adaptations to be made by Order in Council as may be required in order to adapt their provisions to the requirements of the new Constitution.

Legislative Procedure

38 **37.** Bills may be introduced in either Chamber.

39 **38.** The Governor will be empowered at his discretion, but subject to the provisions of the Constitution Act and to his Instrument of Instructions, to assent in His Majesty's name to a Bill which has been passed by both Chambers, or to withhold his assent, or to reserve the Bill for the signification of the King's pleasure. But before taking any of these courses it will be open to the Governor to remit a Bill to the Chambers with a Message requesting its reconsideration in whole or in part, together with such amendments, if any, as he may recommend.

Without prejudice to the provisions of proposal 40 no Bill will become law until it has been agreed to by both Chambers either without amendment or with such amendments only as are agreed to by both Chambers, and has been assented to by the Governor, or, in the case of a reserved Bill, until His Majesty in Council has signified his assent.

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39. Any Act assented to by the Governor will within twelve months be subject to disallowance by His Majesty in Council. 40

40. In the case of disagreement between the Chambers, the Governor will be empowered, in any case in which a Bill passed by one Chamber has not, within three months thereafter, been passed by the other, either without amendments or with agreed amendments, to summon the two Chambers to meet in a joint sitting for the purpose of reaching a decision on the Bill. The members present at a Joint Session will deliberate and vote together upon the Bill in the form in which it finally left the Chamber in which it was introduced and upon amendments, if any, made therein by one Chamber and not agreed to by the other. Any such amendments which are affirmed by a majority of the total number of members voting at the Joint Session will be deemed to have been carried, and if the Bill, with the amendments, if any so carried, is affirmed by a majority of the members voting at the Joint Session, it shall be taken to have been duly passed by both Chambers. 41

In the case of a Money Bill, or in cases where, in the Governor's opinion, a decision on the Bill cannot, consistently with the fulfilment of his responsibilities for a Reserved Department* or of any of his "special responsibilities," be deferred, the Governor will be empowered in his discretion to summon a Joint Session forthwith.

41. In order to enable the Governor to fulfil the responsibilities imposed upon him personally for the administration of the Reserved Departments and his "special responsibilities," he will be empowered at his discretion— 42

(*a*) to present, or cause to be presented, a Bill to either Chamber, and to declare by Message to both Chambers that it is essential, having regard to his responsibilities for a Reserved Department or, as the case may be, to any of his "special responsibilities," that the Bill so presented should become law before a date specified in the Message; and

(*b*) to declare by Message in respect of any Bill already introduced in either Chamber that it should for similar reasons become law before a stated date in a form specified in the Message.

A Bill which is the subject of such a Message will then be considered or reconsidered by the Chambers, as the case may require, and if, before the date specified, it is not passed by the two Chambers, or is not passed by the two Chambers in the form specified, the Governor will be empowered at his discretion to enact it as a Governor's Act, either with or without any amendments made by either Chamber after receipt of his Message.

A Governor's Act so enacted will have the same force and effect as an Act of the Legislature, and will be subject to disallowance in the same manner, but the Governor's competence to legislate under this provision will not extend beyond the competence of the Legislature as defined by the Constitution

42. It will be made clear by means of the enacting words of a Governor's Act, which will be distinguished from the enacting words of an ordinary Act (see proposal 21), that Acts of the former description are enacted on the Governor's own responsibility. 43

43. Provision will also be made empowering the Governor in his discretion, in any case in which he considers that a Bill introduced, or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his "special responsibility" for the prevention of any grave menace to the peace or tranquillity of Burma, to direct that the Bill, clause or amendment shall not be further proceeded with. 44

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* These responsibilities cover all matters specified in proposal 10.

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Procedure with regard to Financial Proposals

45 **44.** A recommendation of the Governor will be required for any proposal in either Chamber of the Legislature for the imposition of taxation, for the appropriation of public revenues, or any proposal affecting the public debt, or affecting, or imposing any charge upon, public revenues.*

46 **45.** The Governor will cause a statement of the estimated revenue and expenditure, together with a statement of all proposals for the appropriation of those revenues, to be laid, in respect of every financial year, before both Chambers of the Legislature.

The statement of proposals for appropriation will be so arranged as—

(*a*) to distinguish between those proposals which will and those which will not (see proposal 47) be submitted to the vote of the Legislature, and amongst the latter to distinguish those which are in the nature of standing charges (for example, the items marked † in the list in proposal 47) ; and

(*b*) to specify separately those additional proposals (if any), whether under the Votable or non-Votable Heads, which the Governor regards as necessary for the discharge of any of his " special responsibilities."

47 **46.** The proposals for the appropriation of revenues, other than proposals relating to the Heads of Expenditure enumerated in paragraph 47, and proposals (if any) made by the Governor in discharge of his special responsibilities, will be submitted in the form of Demands for Grants to the vote of the House of Representatives. The House of Representatives will be empowered to assent or refuse assent to any Demand or to reduce the amount specified therein, whether by way of a general reduction of the total amount of the Demand or of the reduction or omission of any specific item or items included in it.

49 **47.** Proposals for appropriations of revenues, if they relate to the Heads of Expenditure enumerated in this paragraph, will not be submitted to the vote of either Chamber of the Legislature, but will be open to discussion in both Chambers, except in the case of the salary and allowances of the Governor.

The Heads of Expenditure referred to above are :—

(i) Interest, Sinking Fund Charges and other expenditure relating to the raising, service and management of loans† ; expenditure fixed by or under the Constitution Act† ; expenditure required to satisfy a decree of any Court or an arbitral award.

(ii) The salary and allowances of the Governor† ; of Ministers† ; of the Governor's Counsellors† ; of the Financial Adviser† ; of the Governor's personal and secretarial staff and of the staff of the Financial Adviser.

(iii) Expenditure required for the Reserved Departments‡ ; or for the discharge of the duties imposed by the Constitution Act on a principal Secretary of State.

(iv) The salaries and pensions (including pensions payable to their dependants) of Judges of the High Court† ; and expenditure certified by the Governor after consultation with his Ministers as required for the expenses of that Court.

(v) Salaries and pensions payable to, or to the dependants of, certain members of the Public Services and certain other sums payable to such persons.§

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* This paragraph represents the constitutional principle embodied in Standing Order 66 of the House of Commons, which finds a place in practically every Constitution Act throughout the British Empire :—

" This House will receive no petition for any sum relating to public service or proceed upon any motion for any grant or charge upon the public revenue, whether payable out of the consolidated fund or out of money to be provided by Parliament, unless recommended from the Crown."

‡ i.e. *all* the matters specified in proposal 10.

§ See Appendix I, Part III.

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The Governor will be empowered to decide finally and conclusively, for all purposes, any question whether a particular item of expenditure does or does not fall under any of the Heads of Expenditure referred to in this paragraph.

48. At the conclusion of the budget proceedings the Governor will authenticate by his signature all appropriations, whether voted or those relating to matters enumerated in proposal 47; the appropriations so authenticated will be laid before both Chambers of the Legislature, but will not be open to discussion. **50**

In the appropriations so authenticated the Governor will be empowered to include any additional amounts which he regards as necessary for the discharge of any of his special responsibilities, so, however, that the total amount authenticated under any head is not in excess of the amount originally laid before the Legislature under that Head in the Statement of proposals for appropriation.

The authentication of the Governor will be sufficient authority for the due application of the sums involved.

49. The provisions of proposals 44 to 48 inclusive will apply with the necessary modifications to proposals for the appropriation of revenues to meet expenditure not included in the Annual Estimates which it may become necessary to incur during the course of the financial year. **51**

Procedure in the Legislature

50. The procedure and conduct of business in each Chamber of the Legislature will be regulated by rules to be made, subject to the provisions of the Constitution Act, by each Chamber; but the Governor will be empowered at his discretion, after consultation with the President, or Speaker, as the case may be, to make rules— **52**

(*a*) regulating the procedure of, and the conduct of business in, the Chamber in relation to matters arising out of, or affecting, the administration of the Reserved Departments, or any other special responsibilities with which he is charged; and

*(*b*) prohibiting, save with the prior consent of the Governor given at his discretion, the discussion of or the asking of questions on any matter affecting relations between His Majesty or the Governor and any foreign Prince or State.

In the event of conflict between a rule so made by the Governor and any rule made by the Chamber, the former will prevail and the latter will, to the extent of the inconsistency, be void.

Emergency Powers of the Governor in relation to Legislation

51. The Governor will be empowered at his discretion, if at any time he is satisfied that the requirements of the Reserved Departments, or any of the "special responsibilities" with which he is charged by the Constitution Act render it necessary, to make and promulgate such Ordinances as, in his opinion, the circumstances of the case require, containing such provisions as it would have been competent, under the provisions of the Constitution Act, for the Legislature to enact. **53**

An Ordinance promulgated under the proposals contained in this paragraph will continue in operation for such period, not exceeding six months, as may be specified therein; the Governor will, however, have power to renew any Ordinance for a second period not exceeding six months, but in that event it will be laid before both Houses of Parliament.

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* Some provision will also be required on lines of proposal 109 of the Indian White Paper, having due regard to the fact that the areas in Burma which will correspond to Excluded and Partially Excluded Areas in India may require slightly different treatment.

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An Ordinance will have the same force and effect, whilst in operation, as an Act of the Legislature; but every such Ordinance will be subject to the provisions of the Constitution Act relating to disallowance of Acts and will be subject to withdrawal at any time by the Governor.

54 **52.** In addition to the powers to be conferred upon the Governor at his discretion in the preceding paragraph, the Governor will further be empowered if his Ministers are satisfied, at a time when the Legislature is not in session, that an emergency exists which renders such a course necessary, to make and promulgate any such Ordinances for the good government of Burma, or any part thereof, as the circumstances of the case require, containing such provisions as, under the Constitution Act, it would have been competent for the Legislature to enact.

An Ordinance promulgated under the proposals contained in this paragraph will have, while in operation, the same force and effect as an Act of the Legislature, but every such Ordinance—

(*a*) will be required to be laid before the Legislature and will cease to operate at the expiry of six weeks from the date of the reassembly of the Legislature, unless both Chambers have in the meantime disapproved it by Resolution, in which case it will cease to operate forthwith; and

(*b*) will be subject to the provisions of the Constitution Act relating to disallowance as if it were an Act of the Legislature; it will also be subject to withdrawal at any time by the Governor.

Provisions in the event of a Breakdown in the Constitution

55 **53.** The Governor will be empowered at his discretion, if at any time he is satisfied that a situation has arisen which renders it for the time being impossible for the Government to be carried on in accordance with the provisions of the Constitution Act, by Proclamation to assume to himself all such powers vested by law in any authority in Burma, as appear to him to be necessary for the purpose of securing that the Government shall be carried on effectively.

A Proclamation so issued will have the same force and effect as an Act of Parliament; will be communicated forthwith to a Secretary of State and laid before Parliament; will cease to operate at the expiry of six months unless, before the expiry of that period, it has been approved by Resolutions of both Houses of Parliament; and may at any time be revoked by Resolutions by both Houses of Parliament.

Powers of the Legislature

Replaces proposals 111 to 118 of the Indian White Paper.

54. *Subject to any special provisions that may be made in respect of the areas to be named in Schedules to the Constitution Act, the Legislature will have power to make laws—*

(*a*) *for all persons, courts, places and things within the territories for the time being belonging to His Majesty in Burma; and*

(*b*) *for all subjects of His Majesty and servants of the Crown in Burma but without and beyond the territories for the time being belonging to His Majesty;*

(*c*) *for all subjects of His Majesty being of Burma domicile without and beyond the confines of Burma; and*

(*d*) *for the raising, maintaining, disciplining and regulating of officers, sailors, marines, soldiers, airmen and followers in his Majesty's Burma forces, where ever they are serving, in so far as they are not subject to the Naval Discipline Act or the Army Act or the Air Force Act or to any similar law enacted by the competent authority in India.*

The power to make laws as above will include the power to repeal or amend laws enacted, before the separation of Burma from India, by the Indian Legislature or the Provincial Legislature of Burma.

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55. It will be outside the competence of the Legislature to make any law affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of Burma or the law of British nationality. It will similarly not be competent to make any law affecting the Naval Discipline Act, the Army Act and the Air Force Act, *or any similar laws enacted by the competent authority in India. It will also be provided that all authorities in Burma shall give full effect to such Indian laws in respect of persons in Burma to whom they apply.* Neither will the Legislature be able to amend the Constitution Act except in so far as the Act itself provides. **110**

56. Subject as above, the consent of the Governor, given at his discretion, will be required to the introduction in the Legislature of legislation which repeals or amends or is repugnant to any Act of Parliament extending to Burma, or any Governor's Act or Ordinance* or which affects any Department or matter reserved for the control of the Governor, or religion or religious rites and usages, or the procedure regulating criminal proceedings against European British subjects. **119**

57. The giving of consent by the Governor to the introduction of a Bill will be without prejudice to his power of withholding his assent to, or of reserving, the Bill when passed; but an Act will not be invalid by reason only that prior consent to its introduction was not given, provided that it was duly assented to by the Governor, or by His Majesty in the case of Bills reserved for His Majesty's pleasure. **121**

58. The Legislature will have no power to make laws subjecting in Burma any British subject (including companies, partnerships or associations incorporated by or under any law in force in Burma), in respect of taxation, the holding of property, the carrying on of any profession, trade, business or occupation, or the employment of any servant or agent or in respect of residence or travel within the boundaries of Burma, to any disability or discrimination based upon his religion, descent, caste, colour or place of birth; but no law will be deemed to be discriminatory for this purpose on the ground only that it prohibits either absolutely or with exceptions the sale or mortgage of agricultural land in any area to any person not belonging to some class recognised as being a class of persons engaged in, or connected with, agriculture in that area, or which recognises the existence of some right, privilege or disability attaching to the members of a community by virtue of some privilege, law or custom having the force of law. **122**

A law, however, which might otherwise be void on the ground of its discriminatory character will be valid if previously declared by the Governor, at his discretion, to be necessary in the interests of the peace and tranquillity of Burma or any part thereof.

59. The Legislature will have no power to make laws subjecting any British subject domiciled in the United Kingdom (including companies and partnerships incorporated or constituted by or under the laws of the United Kingdom) to any disability or discrimination in the exercise of certain specified rights, if a Burman subject of His Majesty or a company, &c., constituted by or under the law in force in Burma, as the case may be, would not, in the exercise in the United Kingdom of the corresponding right, be subject in the United Kingdom to any disability or discrimination of the same or a similar character. The rights in question are the right to enter, travel and reside in any part of Burma; to hold property of any kind; to carry on any trade or business in, or with the inhabitants of, Burma; and to appoint and employ at discretion, agents and servants for any of the above purposes. **123**

Provision will be made on the same lines for equal treatment on a reciprocal basis of ships registered respectively in Burma and the United Kingdom.

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* A Governor's Ordinance for the purpose of this proposal means an Ordinance as described in proposals 51 and 52.

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60. *It will be necessary to consider whether the principles underlying proposal* 59 *should be adopted as between Burma and India.*

124 **61.** An Act of the Legislature, however, which, with a view to the encouragement of trade or industry, authorises the payment of grants, bounties or subsidies out of public funds, will not be held to fall within the terms of paragraphs 58 and 59 by reason only of the fact that it is limited to persons or companies resident or incorporated in Burma, or that it imposes on persons or companies not trading in Burma before such Act was passed as a condition of eligibility for any such grant, bounty or subsidy, that a company shall be incorporated by or under the laws of Burma, or conditions as to the composition of the Board of Directors or as to the facilities to be given for training Burmans.

62. Provision will require to be made in regard to the registration in Burma of medical practitioners registered in the United Kingdom and in India. (*See* footnote to proposal 123 of the Indian White Paper.)

Financial Powers and Relations.

Property, Contracts and Suits.

130 **63.** All legal proceedings which may be at present instituted by or against the Secretary of State in Council in respect of matters in or concerning Burma, will, subject to the reservations specified below, be instituted by or against the Government of Burma.

64. *Arrangements will be made for the determination of an equitable distribution between India and Burma of assets and liabilities existing at the time of coming into force of the Act ; and provision will be made in the Act to give statutory effect to such determination and to such agreements as may be made thereunder by the respective Governments of the two countries.*

The proposals contained in paragraphs 133 *and* 134 *of the Indian White Paper will, if adopted, have the effect of maintaining as against the Secretary of State for India remedies which before the Act might have been enforced against the Secretary of State in Council, both as regards matters arising in India and matters arising in Burma. Provision will, therefore, be made in the distribution of assets and liabilities referred to above for the determination, as between the revenues of India and of Burma, of the ultimate liability in respect of such matters ; and the Secretary of State will be given power to secure the implementing of any judgment or award against him in respect of a matter arising in Burma.*

131 **65.** *Subject to the agreed distribution provided for in the preceding paragraph, all property in Burma which immediately before the date of the coming into force of the Constitution Act was vested in His Majesty for the purposes of the government of India will be vested in His Majesty for the purposes of the government of Burma.*

132 **66.** Existing powers of the Secretary of State in Council in relation to property allocated under paragraph 64 and in relation to the acquisition of property and the making of contracts will be transferred to and become powers of the Governor. All contracts, etc., made under the powers so transferred will be expressed to be made by the Governor and may be executed and made in such manner and by such person as he may direct, but no personal liability will be incurred by any person making or executing such a contract.

133 **67.** The Secretary of State will be substituted for the Secretary of State in Council in any proceedings instituted before the commencement of the Act by or against the Secretary of State in Council.

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Statutory Railway Board.

68. Provision will be made for vesting the management of the railways in Burma in a Statutory Railway Board constituted on lines analogous to those of the corresponding body to be set up in India.

Borrowing Powers.

69. The Government of Burma will have power to borrow for any of the purposes of the government of Burma upon the security of the revenues of Burma within such limits as may from time to time be fixed by law. **146**

70. Arrangements will require to be made to secure that Burma sterling loans shall be eligible for Trustee status on appropriate conditions. **147**

General.

71. Provision will be made securing that the revenues of Burma shall be applied for the purposes of the government of Burma alone. **150**

THE HIGH COURT.

72. The existing High Court established by Letters Patent will be maintained. **168**

73. The Judges of the High Court will continue to be appointed by His Majesty and will hold office during good behaviour. The tenure of office of any Judge will cease on his attaining the age of 62 years, and any Judge may resign his office to the Governor. **169**

74. The qualifications for appointment as Chief Justice or Judge will remain as at present, except that any person qualified to be a Judge will be eligible for appointment as Chief Justice, and that the existing provision, which requires that one-third of the Judges must be barristers or members of the Faculty of Advocates in Scotland and that one-third must be members of the Indian Civil Service, will be abrogated. **170**

75. The salaries, pensions, leave and other allowances of Judges of the High Court will be regulated by Order in Council. But neither the salary of a Judge nor his rights in respect of leave of absence or pension will be liable to be varied to this disadvantage during his tenure of office. **171**

76. The power to appoint temporary additional Judges and to fill temporary vacancies in the High Court will be vested in the Governor in his discretion. **172**

77. Subject to any provision which may be made by the Legislature the High Court will have the jurisdiction, powers and authority vested in it at the time of the commencement of the Constitution Act. **173**

78. The Legislature will have power to regulate the powers of superintendence exercised by the High Court over subordinate Courts. **175**

79. *As regards appeals to the King in Council, subject always to the right of His Majesty to grant special leave, existing rights of appeal will be preserved, and in addition an appeal will lie without leave from the High Court to the Privy Council in any matter involving the interpretation of the Constitution Act.*

THE SECRETARY OF STATE'S ADVISERS.

80. The Secretary of State will be empowered to appoint *two persons (of whom one must have held office for at least* 10 *years under the Crown in Burma)* for the purpose of advising him. **176**

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177 **81.** Any person so appointed will hold office for a term of five years, will not be eligible for reappointment, and will not be capable, while holding his appointment, of sitting or voting in Parliament.

178 **82.** The salary of the Secretary of State's advisers will be £ a year, to be defrayed from monies provided by Parliament.

179 **83.** The Secretary of State will determine the matters upon which he will consult his advisers, and will be at liberty to seek their advice, either individually or together, on any matter. But so long as a Secretary of State remains the authority charged by the Constitution Act with the control of any members of the Public Services in Burma he will be required to lay before his advisers *sitting jointly with the advisers, provision for whose appointment is made in proposal* 176 *of the Indian White Paper,* and to obtain the concurrence *of the majority of the body so formed* to any draft of rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service, and any order which he proposes to make upon an appeal admissible to him under the Constitution Act from any such member.

The Public Services

General

180 **84.** Every person employed under the Crown in Burma will be given a full indemnity against civil and criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of his duty.

181 **85.** Every person employed in a civil capacity under the Crown in Burma will hold office during His Majesty's pleasure, but he will not be liable to dismissal by any authority subordinate to the authority to whom he was appointed* ; or to dismissal or reduction without being given formal notice of any charge made against him and an opportunity of defending himself, unless he has been convicted in a criminal Court or has absconded.

(a) *Persons appointed by the Secretary of State in Council before the commencement of the Constitution Act, and persons to be appointed by the Secretary of State thereafter.*

182 **86.** Every person appointed by the Secretary of State in Council before the commencement of the Constitution Act will continue to enjoy all service rights possessed by him at that date or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable. The Secretary of State will also be empowered to award compensation in any other case in which he considers it to be just and equitable that compensation should be awarded.

A summary of the principal existing service rights of persons appointed by the Secretary of State in Council is set out in Appendix I (Part I). These rights will be in part embodied in the Constitution Act and in part provided for by rules made by the Secretary of State.

NOTE.—*An appeal lying previously to the Governor-General of India will in future lie directly to the Secretary of State.*

183 **87.** The Secretary of State will after the commencement of the Act make appointments to the Services which will replace the Indian Civil Service and the Indian Police in Burma† and the Ecclesiastical Department. The conditions of service of all persons so appointed, including conditions as to pay and

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* Persons appointed by the Governor-General or by the Governor-General in Council and transferred permanently for service in Burma will be liable to dismissal by the Governor of Burma, and persons appointed by subordinate authorities in India and similarly transferred will be liable to dismissal by authorities in Burma of corresponding status.

† See Introduction, paragraph 19.

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allowances, pensions and discipline and conduct, will be regulated by rules made by the Secretary of State. It is intended that these rules shall in substance be the same as those now applicable in the case of persons appointed by the Secretary of State in Council before the commencement of the Act.

88. Every person appointed by the Secretary of State will continue to enjoy all service rights existing as at the date of his appointment, or will receive such compensation for the loss of any of them as the Secretary of State may consider just and equitable. The Secretary of State will also be empowered to award compensation to any such person in any other case in which he considers it to be just and equitable that compensation should be awarded. **184**

89. The Secretary of State will be required to make rules regulating the number and character of posts to be held by persons appointed by the Crown, by the Secretary of State in Council or by the Secretary of State, and prohibiting the filling of any post declared to be a reserved post otherwise than by the appointment of one of those persons, or the keeping vacant of any reserved post for a period longer than three months without the previous sanction of the Secretary of State or save under conditions prescribed by him. **185**

90. Conditions in regard to pensions and analogous rights will be regulated in accordance with the rules in force at the date of the Constitution Act, and the Secretary of State will have no power to make any amending rules varying any of these conditions so as to affect adversely the pension, etc., of any person appointed before the variation is made. An award of pension less than the maximum pension admissible will require the consent of the Secretary of State. The pensions of all persons appointed before the commencement of the Constitution Act will be exempt from Burma taxation if the pensioner is residing permanently outside Burma. The pensions of persons appointed by the Secretary of State or by the Crown after that date will also be exempt from Burma taxation if the pensioner is residing permanently outside Burma. **186**

91. The existing rule-making powers of the Secretary of State in Council will continue to be exercised by the Secretary of State in respect of persons appointed by the Secretary of State in Council or to be appointed by the Secretary of State until His Majesty by Order in Council made on an Address of both Houses of Parliament designates another authority for the purpose. Any rule made by the Secretary of State will require approval as specified in proposal 83, unless and until both Houses of Parliament by Resolution otherwise determine. **187**

92. Provision will be made whereby any person appointed by the Crown who is or has been serving in Burma in a civil capacity and any person who, though not appointed by the Secretary of State in Council before the commencement of the Constitution Act or by the Secretary of State after its commencement, holds or has held a post borne on the cadre of the Indian Civil Service may be given such of the rights and conditions of service and employment of persons appointed by the Secretary of State in Council or by the Secretary of State, as the Secretary of State may decide to be applicable to his case. **188**

93. A statement of the vacancies in, and the recruitment made to, the Services and Departments to which the Secretary of State will appoint after the commencement of the Constitution Act will be laid annually before both Houses of Parliament. **189**

A statutory enquiry will be held into the question of future recruitment to the Services which will replace the Indian Civil Service and the Indian Police after a period to be determined.* The decision on the results of this

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* See paragraph 19 of Introduction.

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enquiry, with which the Government of Burma will be associated, will rest with His Majesty's Government, and be subject to the approval of both Houses of Parliament.

(b) *Persons appointed or to be appointed otherwise than by the Secretary of State in Council or the Secretary of State.*

190 **94.** The Government of Burma will appoint and, subject to the following paragraphs, determine the conditions of service of all persons in the service of Government other than persons appointed by the Crown, by the Secretary of State in Council, by the Secretary of State, *or by the Governor in discharge of the responsibility imposed upon him under the proposals contained in paragraph* 10.

95. *Provision will be made for the compulsory transfer to the service of the Government of Burma of persons recruited by the Government of India‡ before the commencement of the Constitution Act for service in Burma alone.*

191 **96.** Every person in the Service of the Government of Burma at the commencement of the Constitution Act, *and all persons in the service of the Government of India at the date of commencement of the Burma Constitution Act and transferred thereafter to that of the Government of Burma,* will continue to enjoy all service rights they enjoyed at the date of such transfer. A summary of the principal existing rights is set out in Appendix I (Part II).

NOTE.—*In the case of persons transferred from the service of the Government of India to that of the Government of Burma, appeals will in future lie only to the appropriate authority in Burma.*

192 **97.** No person appointed by an authority other than the Secretary of State in Council who was serving in Burma in a civil capacity before the commencement of the Constitution Act, *and no person in the service of the Government of India at the date of the commencement of that Act and transferred thereafter to service in Burma,* will have his conditions of service in respect of pay, allowances, pension or any other matter adversely affected, save by an authority in Burma competent to pass such an order on the 8th March, 1926, or with the sanction of such authority as the Secretary of State may direct.

193 **98.** No rule or order of the Government of Burma affecting emoluments, pensions, provident funds, or gratuities, and no order upon a memorial will be made or passed to the disadvantage of an officer appointed to a Central Service, Class I or Class II, or to a Burma Provincial Service, before the commencement of the Act, without the personal concurrence of the Governor. No post in a Service which replaces a Central Service, Class I or Class II, or in any Service replacing a Provincial Service shall be brought under reduction if such reduction would adversely affect any person who, at the commencement of the Constitution Act, was a member of those Services, without the sanction of the Governor or, in the case of any person appointed by the Crown or by the Secretary of State in Council, of the Secretary of State.

194 **99.** Every person, whether appointed before or after the commencement of the Constitution Act, who is serving in a civil capacity in a whole-time permanent appointment, will be entitled to one appeal against any order of censure or punishment, or against any order affecting adversely any condition of service, pay, allowances, or pension, or any contract of service, other than an Order made by the Government in the case of officers serving under its control.

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‡ See paragraph 21 of Introduction.

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(c) *Public Service Commission.*

100. There will be a Public Service Commission for Burma. The members of the Public Service Commission will be appointed by the Governor, who will also determine at his discretion their number, tenure of office, and conditions of service, including pay, allowances, and pensions, if any. The Chairman at the expiration of his term of office will be ineligible for further office under the Crown in Burma. The eligibility of the other members for further employment under the Crown in Burma will be subject to regulations made by the Governor. **197**

101. The emoluments of the members of the Public Service Commission will not be subject to the vote of the Legislature. **198**

102. The Public Service Commission will conduct all competitive examinations held in Burma for appointments to the Government service. The Government will be required to consult it on all matters relating to methods of recruitment, on appointments by selection, on promotions, and on transfers from one service to another, and the Commission will advise as to the suitability of candidates for such appointments, promotions or transfers. **199**

103. The Government will also be required, subject to such exceptions (if any) as may be specified in regulations to be made by the Secretary of State or Governor, as the case may be, to consult the Public Service Commission in connection with all disciplinary orders (other than an order for suspension) affecting persons in the public services in cases which are submitted to the Government for orders in the exercise of its original or appellate powers; in connection with any claim by an officer that Government should bear the costs of his defence in legal proceedings against him in respect of acts done in his official capacity; *in connection with any claim by an officer that he has suffered loss of rights existing at the date of his transfer to service under the Burma Government;* and in connection with any other class of case specified by regulations made from time to time by the Secretary of State or Governor as the case may be. But no regulations made by the Governor will be able to confer powers on the Commission in relation to any person appointed by the Secretary of State without the assent of the Secretary of State. **200**

104. The Government will be empowered to refer to the Commission for advice any case, petition, or memorial if they think fit to do so; and the Secretary of State will be empowered to refer to the Commission any matter relating to persons appointed by him on which he may desire to have the opinion of the Commission. **201**

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APPENDIX I.

(PART I.)

List of principal existing Rights of Officers appointed by the Secretary of State in Council.

NOTE.—In the case of sections the reference is to the Government of India Act, and in the case of rules to rules made under that Act.

1. Protection from dismissal by any authority subordinate to the appointing authority (Section 96B (1)).
2. Right to be heard in defence before an order of dismissal, removal or reduction is passed (Classification Rule 55).
3. Guarantee to persons appointed before the commencement of the Government of India Act, 1919, of existing and accruing rights or compensation in lieu thereof (Section 96B (2)).
4. Regulation of conditions of service, pay and allowances, including Burma allowance, and discipline and conduct, by the Secretary of State in Council (Section 96B (2)).
5. Power of the Secretary of State in Council to deal with any case in such manner as may appear to him to be just and equitable notwithstanding any rules made under Section 96B (Section 96B (5)).
6. Non-votability of salaries, pensions and payments on appeal (Sections 67A (3) (iii) and (iv) and 72D (3) (iv) and (v)).
7. The requirement that rules under Part VII–A of the Act shall only be made with the concurrence of the majority of votes of the Council of India (Section 96E).
8. Regulation of the right to pensions and scale and conditions of pensions in accordance with the rules in force at the time of the passing of the Government of India Act, 1919 (Section 96B (3)).
9. —(i) Reservation of certain posts to members of the Indian Civil Service (Section 98).

   (ii) Appointment of persons who are not members of the Indian Civil Service to offices reserved for members of that service only to be made subject to rules made by the Governor-General in Council with the approval of the Secretary of State in Council (Section 99), or in cases not covered by these rules to be provisional until approved by the Secretary of State in Council (Section 100).
10. Determination of strength (including number and character of posts) of All-India Services by the Secretary of State in Council, subject to temporary additions by the Governor-General in Council or Local Government (Classification Rules 24 and 10).
11. Provision that posts borne on the cadre of All-India Services shall not be left unfilled for more than three months without the sanction of the Secretary of State in Council (Classification Rule 25).
12. Appointment of anyone who is not a member of an All-India Service to posts borne on the cadre of such a Service only to be made with the sanction of the Secretary of State in Council, save as provided by any law or by rule or orders made by the Secretary of State in Council (Classification Rule 27).
13. Sanction of the Secretary of State in Council to the modification of the cadre of a Central Service, Class I, which would adversely affect any officer appointed by the Secretary of State in Council, to any increase in the number of posts in a Provincial Service which would adversely affect any person who was a member of a corresponding All-India Service on 9th March 1926, or to the creation of any Specialist Post which would adversely affect any member of an All-India Service, the Indian Ecclesiastical Establishment, and the Indian Political Department. (Provisos to Classification Rules 32, 40 and 42.)

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14. Personal concurrence of the Governor required to any order affecting emoluments, or pension, any order of formal censure, or any order on a memorial to the disadvantage of an officer of an All-India Service (Devolution Rule 10).
15. Personal concurrence of the Governor required to an order of posting of an officer of an All-India Service (Devolution Rule 10).
16. Right of complaint to the Governor against any order of an official superior in a Governor's Province and direction to the Governor to examine the complaint and to take such action on it as may appear to him just and equitable (Section 96B (1)).
17. Right of appeal to the Secretary of State in Council, (i) from any order passed by any authority in India, of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal, or (ii) from any order altering or interpreting to his disadvantage any rule or contract regulating conditions of service, pay, allowances or pension made by the Secretary of State in Council, and (iii) from any order terminating employment otherwise than on reaching the age of superannuation (Classification Rules 56, 57 and 58).
18. Right of certain officers to retire under the regulations for premature retirement.

(PART II.

List of principal existing Rights of Persons appointed by Authority other than the Secretary of State in Council

NOTE.—In the case of sections the reference is to the Government of India Act, and in the case of rules to rules made under that Act.

1. Protection from dismissal by any authority subordinate to the appointing authority (Section 96B (1)).
2. Right to be heard in defence before an order of dismissal, removal or reduction is passed, subject to certain exceptions (Classification Rule 55).
3. Regulation of the strength and conditions of service of the Central Services, class I and class II, by the Governor-General in Council and of Provincial Services by Local Government subject, in the case of the latter, to the provision that no reduction which adversely affects a person who was a member of the Service on the 9th March 1926 should be made without the previous sanction of the Governor-General in Council (Classification Rules 32, 33, 36, 37, 40 and 41).
4. Personal concurrence of the Governor required to any order affecting emoluments or pension, an order of formal censure, or an order on a memorial to the disadvantage of an officer of a Provincial Service (Devolution Rule 10).
5. Right of appeal from any order of censure, withholding of increments or promotion, reduction, recovery from pay of loss caused by negligence or breach of orders, suspension, removal or dismissal, and any order altering or interpreting to his disadvantage a rule or contract regulating conditions of service, pay, allowances or pension, and in the case of subordinate services the right of one appeal against an order imposing a penalty (Classification Rules 56, 57, 58 and 54).

(PART III.)

NON-VOTABLE SALARIES, &C. (CIVIL)

The salaries and pensions of the following classes of persons are non-votable :—

(*a*) persons appointed by or with the approval of His Majesty or by the Secretary of State in Council before the commencement of the Constitution Act or by a Secretary of State thereafter ;

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(*b*) persons appointed before the first day of April 1924, by the Governor-General in Council or by a Local Government to Services and posts classified as superior ;

(*c*) holders in a substantive capacity of posts borne on the cadre of the Indian Civil Service ;

(*d*) members of the Public Service Commission ;

(*e*) holders in a substantive capacity before the commencement of the Constitution Act of posts in an Indian Central Service.

The following sums payable to such persons fall also under item (v) of paragraph 47, namely :—

Sums payable to, or to the dependants of, a person who is, or has been, in the service of the Crown in Burma under any Order made by the Secretary of State in Council, by a Secretary of State, by the Governor-General in Council, or by the Governor of Burma upon an appeal preferred to him in pursuance of Rules made under the Constitution Act.

For the purposes of the proposals in this Appendix the expression " salaries and pensions " will be defined as including remuneration, allowances, gratuities, contributions, whether by way of interest or otherwise, out of the revenues of Burma to any Provident Fund or Family Pension Fund, and any other payments or emoluments payable to, or on account of, a person in respect of his office.

APPENDIX II.

(See paragraph 18 of Introduction.)

PROVISIONAL LIST OF AREAS TO BE INCLUDED IN SCHEDULE A AND SCHEDULE B TO THE CONSTITUTION ACT.

Schedule A.

District	Area
1. Federated Shan States	Northern Shan States. Southern Shan States.
2. Arakan Hill Tracts	Arakan Hill Tracts (late Hill District of Arakan).
3. Chin Hills	Chin Hills (including the Pakôkku Hill Tracts).
4. Myitkyina	Myitkyina Kachin Hill Tracts. Mogaung Kachin Hill Tracts. Kamaing Kachin Hill Tracts. Sadôn Kachin Hill Tracts. Htawgaw Kachin Hill Tracts. Putao Sub-Division (late Putao District).
5. Bhamo	Sinlum Kachin Hill Tracts. Shwegu Kachin Hill Tracts.
6. Upper Chindwin	Somra Tract. Kanti State. Thaungdut State.
7. Katha	Katha Kachin Hill Tracts.

Schedule B.

1. Myitkyina	Other than the Hill Tracts specified in item 4 of Schedule A.
2. Bhamo	Exclusive of the Hill Tracts specified in item 5 of Schedule A.
3. Upper Chindwin	Homalin Sub-division and the Tamu Township of the Mawlaik.
4. Salween	

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JOINT COMMITTEE ON

INDIAN CONSTITUTIONAL REFORM

[SESSION 1933-34]

VOLUME I
(PART II)
PROCEEDINGS

[The REPORT of the Joint Committee [*Session 1933-34*] will be found in Volume I (Part I).]

[The RECORDS of the Joint Committee [*Session 1933-34*] will be found in Volume II.]

[*The PROCEEDINGS, EVIDENCE, and RECORDS of the Joint Committee* [Session 1932-33] *will be found in the following Parliamentary Papers of 1933:* H.L. 79 (I), (II A, B, C, and D), and (III); *or* H.C. 112 (I), (II A, B, C, and D), and (III).]

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* The Joint Committee decided to consider the Draft Report laid before them by the Lord in the Chair.

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The cost of printing draft reports and marshalled list of amendments was	425	0	0
The cost of the shorthand notes of the Discussions was	246	17	7
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ORDERS OF REFERENCE

HOUSE OF LORDS

Die Jovis 23° *Novembris* 1933

Message from the Commons that they have come to the following Resolution to which they desire the concurrence of this House, viz. : That, before Parliament is asked to take a decision upon the proposals contained in Command Paper 4268, it is expedient that a Joint Committee of Lords and Commons, with power to call into consultation representatives of the Indian States and of British India, be appointed to consider the future government of India and, in particular, to examine and report upon the proposals in the said Command Paper : The said message *considered* (on motion) : Then it was *moved*, That this House do concur in the said Resolution communicated by the Commons (The Lord Chancellor) ; *agreed to ;* and a message ordered to be sent to the Commons to acquaint them therewith.

Die Martis 28° *Novembris* 1933

Message from the Commons that they have appointed a Committee to consist of Sixteen Members to join with a Committee of this House, with power to call into consultation representatives of the Indian States and of British India, to consider the future Government of India and, in particular, to examine and report upon the proposals contained in Command Paper 4268 ; that they have made the following Orders :—

That the Committee have power to send for persons, papers, and records, and to sit notwithstanding any Adjournment of the House.

That the Committee have power to report from time to time.

That the Committee have power to report from day to day or otherwise the Minutes of Evidence taken before them and such other records as they may think fit.

That the Committee have power, if the House be not sitting, to send such Minutes and records to the Clerk of the House, who shall thereupon give directions for the printing and circulation thereof, and shall lay the same upon the Table of the House at its next meeting.

That the Committee have power, if they so determine, to appoint one or more sub-committees to take evidence or to consider any matters that may be referred to them.

That any sub-committees so appointed shall have power to send for persons, papers, and records and to sit notwithstanding any Adjournment of the House.

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That any evidence taken by such sub-committees shall be reported by them to the main Committee.

That the Minutes of Evidence taken before, and Records reported from, the Joint Committee appointed in Session 1932–33 to consider Indian Constitutional Reform be referred to the Committee.

That Eight be the quorum.

And to request this House to appoint an equal number of Lords to be joined with the Members of their House: The said Message *considered* (on motion).

Then it was *moved*, That a Committee of Sixteen Lords be appointed to join with the Committee of the Commons, as mentioned in the said Message, and that the Lords following be named of the Committee :—

Lord Archbishop of Canterbury.	Earl Peel.
Lord Chancellor.	Lord Middleton.
Marquess of Salisbury.	Lord Ker (M. Lothian).
Marquess of Zetland.	Lord Hardinge of Penshurst.
Marquess of Linlithgow.	Lord Irwin.
Marquess of Reading.	Lord Snell.
Earl of Derby.	Lord Rankeillour.
Earl of Lytton.	Lord Hutchison of Montrose.

That leave be given to the Committee to lay upon the Table from day to day or otherwise the Minutes of Evidence taken before them and also such other records as they may think fit ; that such Minutes of Evidence and records be printed, and delivered out ; That, if the House be not sitting, such Evidence and records shall be deemed to have been laid upon the Table of the House when delivered to the Clerk of the Parliaments.

That the Committee have power, if they so determine, to appoint one or more sub-committees to take evidence or to consider any matters that may be referred to them ; that any evidence taken by any such sub-committee shall be deemed to be evidence taken before the Joint Committee.

That leave be give to the Committee to report from time to time.

That the Minutes of Evidence and Records of the Joint Committee on Indian Constitutional Reform laid upon the Table in the last Session be referred to the Committee (The Lord Chancellor) ; *agreed to :*

Ordered, That such Committee have power to agree with the Committee of the Commons in the appointment of a Chairman : Then a Message was ordered to be sent to the Commons to inform them of the appointment of the said Committee by this House, to acquaint them with the above resolutions, and to propose that the Joint Committee do meet in Grand Committee Room No. 10, *To-morrow, at Five o'clock.*

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Die Mercurii 29° *Novembris* 1933

Message from the Commons, that they have ordered that the Committee appointed by them to join with the Committee of this House as a Joint Committee on Indian Constitutional Reform do meet the Lords Committee in Grand Committee Room No. 10 this day at Five o'clock as proposed by their Lordships.

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HOUSE OF COMMONS

Wednesday, 22nd November, 1933

Resolved, That, before Parliament is asked to take a decision upon the proposals contained in Command Paper 4268, it is expedient that a Joint Committee of Lords and Commons, with power to call into consultation representatives of the Indian States and of British India, be appointed to consider the future government of India and, in particular, to examine and report upon the proposals in the said Command Paper.—(*Secretary Sir Samuel Hoare.*)

Message to the Lords to acquaint them therewith.

Thursday, 23rd November, 1933

Message from the Lords that they concur with the Commons in their Resolution communicated to them this day, viz.: "That, before Parliament is asked to take a decision upon the proposals contained in Command Paper 4268, it is expedient that a Joint Committee of Lords and Commons, with power to call into consultation representatives of the Indian States and of British India, be appointed to consider the future government of India and, in particular, to examine and report upon the proposals in the said Command Paper."

Friday, 24th November, 1933

Resolution of the House [22nd November] relative to the appointment of a Joint Committee on Indian Constitutional Reform, which was ordered to be communicated to the Lords, and the Lords Message [23rd November] signifying their concurrence in the Resolution, read:

Ordered, That a Select Committee of Sixteen Members be appointed to join with a Committee to be appointed by the Lords, with power to call into consultation representatives of the Indian States and of British India, to consider the future government of India and, in particular, to examine and report on the proposals contained in Command Paper 4268.

Ordered, That the Committee have power to send for persons, papers, and records, and to sit notwithstanding any Adjournment of the House.

Ordered, That the Committee have power to report from time to time.

Ordered, That the Committee have power to report from day to day or otherwise the Minutes of Evidence taken before them and such other records as they may think fit.

Ordered, That the Committee have power, if the House be not sitting, to send such Minutes and records to the Clerk of the House,

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who shall thereupon give directions for the printing and circulation thereof, and shall lay the same upon the Table of the House at its next meeting.

Ordered, That the Committee have power, if they so determine, to appoint one or more Sub-Committees to take evidence or to consider any matters that may be referred to them.

Ordered, That any Sub-Committees so appointed shall have power to send for persons, papers, and records and to sit notwithstanding any Adjournment of the House.

Ordered, That any evidence taken by such sub-committee shall be reported by them to the main Committee.

Ordered, That the Minutes of Evidence taken before, and Records reported from, the Joint Committee appointed in Session 1932–33 to consider Indian Constitutional Reform be referred to the Committee.

Ordered, That Eight be the quorum.—(*Captain Margesson.*)

Message to the Lords to acquaint them therewith, and to request them to appoint an equal number of Lords to join with the Committee appointed by this House.

Committee *nominated* of,—Major Attlee, Mr. Butler, Mr. Cadogan, Sir Austen Chamberlain, Mr. Cocks, Sir Reginald Craddock, Mr. Davidson, Mr. Isaac Foot, Secretary Sir Samuel Hoare, Mr. Morgan Jones, Sir Joseph Nall, Lord Eustace Percy, Miss Pickford, Secretary Sir John Simon, Sir John Wardlaw-Milne, and Earl Winterton. —(*Captain Margesson.*)

Tuesday, 28th November, 1933

Message from the Lords that they have appointed a Committee consisting of sixteen Lords to join with a Committee of the Commons as a Joint Committee on Indian Constitutional Reform, pursuant to the Commons Message of this day.

They communicate that they have come to the following Resolutions, viz.: That leave be given to the Committee to lay upon the Table from day to day, or otherwise, the Minutes of Evidence taken before them, and also such other Records as they may think fit; that such Minutes of Evidence and Records be printed, and delivered out; that, if the House be not sitting, such Evidence and Records shall be deemed to have been laid upon the Table of the House when delivered to the Clerk of the Parliaments.

That the Committee have power, if they so determine, to appoint one or more sub-committees to take Evidence or to consider any matters that may be referred to them; that any Evidence taken by any such sub-committee shall be deemed to be Evidence taken before the Joint Committee.

That leave be given to the Committee to report from time to time.

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That the Minutes of Evidence and Records of the Joint Committee on Indian Constitutional Reform laid upon the Table in the last Session be referred to the Committee.

They propose that the Joint Committee do meet in Committee Room No. 10, To-morrow, at Five o'clock.

So much of the Lords Message as relates to Indian Constitutional Reform *considered.*

Ordered, That the Committee appointed by this House do meet the Lords Committee as proposed by their Lordships.—(*Captain Margesson.*)

Message to the Lords to acquaint them therewith.

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THE REPORT OF THE JOINT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM WILL BE FOUND IN VOLUME I, PART I.

LORDS AND MEMBERS PRESENT
AND DELEGATES FROM BURMA IN ATTENDANCE AND MINUTES OF PROCEEDINGS OF THE COMMITTEE

Die Mercurii 29° Novembris 1933

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

The Order of Reference is read.

It is moved, that the Marquess of Linlithgow do take the Chair.

The same is agreed to.

The Course of Proceedings is considered.

The Committee decide to call into consultation the following representatives from Burma :—

SRA SHWE BA, T.P.S.
MR C. H. CAMPAGNAC, M.B.E.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.
U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYABJI.

A preliminary discussion is held on the proposals in the Burma White Paper (*vide* Second Appendix, Vol. I, Part I).

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

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Die Jovis 30° Novembris 1933

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

A further preliminary discussion is held on the proposals in the Burma White Paper (*vide* Second Appendix, Vol. I, Part I).

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

Die Veneris 1° Decembris 1933

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF LYTTON.
LORD KER (M. LOTHIAN).
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

A further preliminary discussion is held on the proposals contained in the Burma White Paper (*vide* Second Appendix, Vol. I, Part I).

Ordered that the Committee be adjourned to Tuesday next at half-past ten o'clock.

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Die Martis 5° Decembris 1933

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

The following Delegates from Burma were also present :—

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.
U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Chairman is heard to welcome the representatives from Burma who have arrived to confer with the Committee in response to their invitation.

The Course of Proceedings is considered.

Ordered that the Committee be adjourned till to-morrow at three o'clock.

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Die Mercurii 6° Decembris 1933

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

The following Delegates from Burma were also present :—

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.
U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee decide that the Preliminary General Discussion between themselves and the Delegates from Burma on the question whether Burma should be separated from or federated with India shall be printed and laid before both Houses of Parliament.

The Committee proceed to discuss the question as to whether Burma should be separated from or federated with India, with the Delegates from Burma.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

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Die Jovis, 7° Decembris 1933

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

The following Delegates from Burma were also present :—

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.
U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the question as to whether Burma should be separated from or federated with India, with the Delegates from Burma.

Ordered that Record B1, being a record of the discussion held yesterday and this day, be printed and be laid before both Houses of Parliament (*vide* Vol. II, Records (Session 1933–34), pp. 115–176).

The Committee proceed to discuss the proposals in the Burma White Paper (*vide* Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

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Die Veneris 8° Decembris 1933

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
SIR JOSEPH NALL.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
EARL WINTERTON.

The following Delegates from Burma were also present :—

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.
U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (*vide* Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned to Tuesday next at half-past ten o'clock.

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Die Martis 12° Decembris 1933

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

The following Delegates from Burma were also present :—

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.
U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (*vide* Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned till to-morrow at three o'clock.

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Die Mercurii 13° Decembris 1933

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD RANKEILLOUR.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

The following Delegates from Burma were also present :—

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.
U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
Mr. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (*vide* Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

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Die Jovis 14° Decembris 1933

Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

The following Delegates from Burma were also present :—

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.
U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (*vide* Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

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Die Veneris 15° Decembris 1933

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. BUTLER.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
SIR SAMUEL HOARE.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

The following Delegates from Burma were also present :—

SRA SEWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.
U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
Mr. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (*vide* Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned to Tuesday at half-past ten o'clock.

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Die Martis 19° Decembris 1933

Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

The following Delegates from Burma were also present :—

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.
U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (*vide* Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

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Die Mercurii 20° Decembris 1933

Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

The following Delegates from Burma were also present :—

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.
U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (*vide* Second Appendix, Vol. I, Part I) with the Delegates from Burma.

The Lord in the Chair is heard to take leave of the Delegates from Burma.

The Secretary of State for India is also heard to take leave of the Delegates from Burma.

U Ba Pe is heard to take leave of the Committee.

The Secretary of State for India is heard to request the leave of the Committee to lay Records A.1 and A.2 before them, being :—

A.1.
- I. Notes by the Secretary of State for India on the Points of Difference between the Proposals for Constitutional Reform in Burma and in India.
- II. Memorandum by the Secretary of State for India on the Franchise, Composition of the Legislature, and Representation of Minorities and Special Interests in Burma.
- III. Memorandum by the Secretary of State for India on Excluded Areas in Burma.

A.2.
- I. Memorandum by the Secretary of State for India on Discrimination in Burma.
- II. Memorandum by the Secretary of State for India giving Proposals for the future administration of the Burma railways.

Ordered that Records A.1 and A.2 be *printed* and be laid before both Houses of Parliament. (*vide* Volume II, Records (Session 1933–34).

Ordered that the Committee be adjourned to Tuesday the 30th of January at three o'clock.

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Die Martis 30° Januarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of the 20th December last are read.

The Committee proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

Die Veneris 2° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Tuesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next at half-past four o'clock.

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Die Lunæ 5° Februarii 1934

Present :

LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

It is moved by the Chairman, that a letter be addressed to the relatives of Mr. Rangaswami Iyengar to express the sympathy of the Committee with them on the death of Mr. Rangaswami Iyengar and their deep appreciation of his work as a member of the British India Delegation to the Committee.

The same is agreed to.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

Die Martis 6° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

SIR AUSTEN CHAMBERLAIN in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

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Die Mercurii 7° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

SIR AUSTEN CHAMBERLAIN in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday at half-past ten o'clock.

Die Veneris 9° Februarii 1934

Present :

LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.

SIR AUSTEN CHAMBERLAIN in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next at half-past four o'clock.

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Die Lunae 12° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

Die Martis 13° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

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Die Mercurii 14° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

Die Veneris 16° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next at half-past four o'clock.

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Die Lunae 19° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

Die Martis 20° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

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Die Veneris 23° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Tuesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next at half-past four o'clock.

Die Lunae 26° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

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Die Martis 27° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

Die Mercurii 28° Februarii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Tuesday the 6th of March next at half-past ten o'clock.

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Die Martis 6° Martii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday, the 28th of February last, are read.

The Committee again proceed to discuss the propcsals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

Die Mercurii 7° Martii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGF OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

It is moved by the Chairman, That a letter be addressed to the relatives of Miss Pickford to express the sympathy of the Committee with them on the death of Miss Pickford and their deep appreciation of her work as a member of the Committee.

The same is agreed to.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

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Die Veneris 9° Martii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next at half-past four o'clock.

Die Lunae 12° Martii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

The Chairman is heard to inform the Committee, that a telegram has been received from U Thein Maung, on behalf of the Delegation from Burma, expressing their sympathy with the relatives of the late Miss Pickford, and their appreciation of her work as a member of the Committee.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

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Die Martis 13° Martii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

Die Mercurii 14° Martii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Secretary of State for India is heard to request the leave of the Committee to lay Record B.2 before them, being Memoranda submitted by the Delegates from Burma after the termination of their discussions with the Joint Committee.

Ordered that Record B.2 be *printed* and be laid before both Houses of Parliament (*vide* Vol. II (Session 1933–34), Records, pp. 177–274).

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

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Die Veneris 16° Martii 1934

Present :

Lord Archbishop of Canterbury.	Mr. Attlee.
Marquess of Salisbury.	Mr. Butler.
Marquess of Zetland.	Major Cadogan.
Marquess of Reading.	Sir Austen Chamberlain.
Earl of Derby.	Mr. Cocks.
Earl Peel.	Sir Reginald Craddock.
Viscount Halifax.	Mr. Davidson.
Lord Middleton.	Sir Samuel Hoare.
Lord Ker (M. Lothian).	Mr. Morgan Jones.
Lord Hardinge of Penshurst.	Sir Joseph Nall.
Lord Snell.	Lord Eustace Percy.
Lord Rankeillour.	Sir John Wardlaw-Milne.
Lord Hutchison of Montrose.	Earl Winterton.

Sir Austen Chamberlain in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next at half-past four o'clock.

Die Lunae 19° Martii 1934

Present :

Lord Archbishop of Canterbury.	Mr. Attlee.
Marquess of Salisbury.	Mr. Butler.
Marquess of Zetland.	Major Cadogan.
Marquess of Reading.	Mr. Cocks.
Earl of Derby.	Sir Reginald Craddock.
Earl Peel.	Mr. Davidson.
Viscount Halifax.	Mr. Foot.
Lord Ker (M. Lothian).	Sir Samuel Hoare.
Lord Hardinge of Penshurst.	Mr. Morgan Jones.
Lord Snell.	Sir Joseph Nall.
Lord Rankeillour.	Lord Eustace Percy.
Lord Hutchison of Montrose.	Sir John Wardlaw-Milne.
	Earl Winterton.

The Lord Archbishop of Canterbury in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

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Die Martis 20° Martii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
EARL WINTERTON.

SIR AUSTEN CHAMBERLAIN in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

Die Mercurii 21° Martii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

SIR AUSTEN CHAMBERLAIN in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

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Die Veneris 23° Martii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF READING.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
SIR SAMUEL HOARE.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

SIR AUSTEN CHAMBERLAIN in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next, at half-past four o'clock.

Die Lunae 26° Martii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past four o'clock.

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Die Martis 27° Martii 1934

Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee agai proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

Die Mercurii 28° Martii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Tuesday the 17th of April next at half-past ten o'clock.

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Die Martis 17° Aprilis 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday the 28th of March last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

Die Mercurii 18° Aprilis 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
SIR SAMUEL HOARE.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

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Die Veneris 20° Aprilis 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Tuesday next at half-past ten o'clock.

Die Martis 24° Aprilis 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

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Die Mercurii 25° Aprilis 1934

Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

Die Veneris 27° Aprilis 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
VISCOUNT HALIFAX.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
MR. MORGAN JONES.
LORD EUSTACE PERCY.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Tuesday the 1st of May next at half-past ten o'clock.

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Die Martis 1° Maii 1934

Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
LORD MIDDLETON.
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
LORD EUSTACE PERCY.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

It is moved by the Chairman, That, leave having been given by the House of Lords for the Clerk to the Joint Committee to attend to be examined as a witness before the Committee of Privileges of the House of Commons, he is authorised by the Joint Committee, when so attending, to produce all correspondence referring to the evidence given by the Manchester Chamber of Commerce.

The same is Agreed to.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday the 14th May at a quarter-past three o'clock.

Die Lunae 14° Maii 1934

Present :

MARQUESS OF SALISBURY.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Tuesday the 1st of May are read..

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Tuesday the 29th instant at half-past ten o'clock.

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Die Martis 29° Maii 1934

Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Monday, 14th May, are read.

The Secretary of State for India is heard to request the leave of the Committee to lay Record B.3 before them, being, Supplementary Memoranda submitted by Delegates from Burma commenting on Memoranda submitted by Mr. K. B. Harper on Trade Relations between India and Burma and on Commercial Discrimination. (*Vide* Vol. II, Records (Session 1933–34), pp. 275–291).

Ordered, that Record B.3 be *printed* and laid before both Houses of Parliament (*vide* Records, Vol. II).

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Tuesday the 5th of June next at half-past ten o'clock.

Die Martis 5° Junii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Tuesday, 29th May last, are read.

The Committee again proceed to discuss the proposals contained in the White Paper (*vide* Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday the 18th of June next at three o'clock.

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Die Lunae 18° Junii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN SIMON.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Tuesday, the 5th of June, are read.

The following Draft Report is laid before the Committee by the Lord in the Chair.

ORDERED TO REPORT :—

That this Committee was appointed at the commencement of the present Session.

The Minutes of Evidence taken before, and Records reported from, the original Committee were referred to us. For purposes of convenience this Report treats the present Committee as though it had been in existence since the appointment of the original Committee on the 11th April, 1933.

We record with profound regret the death of two of our members, Lord Burnham and Miss Pickford, and we are deeply sensible of the loss which we have sustained by being deprived of the aid of their experience and judgment in the preparation of our Report.

We were empowered to call into consultation representatives of the Indian States and of British India, and we accordingly invited the following Delegates to attend our deliberations :—

Delegates from the Indian States

Rao Bahadur Sir V. T. Krishnama Chari, C.I.E.
Nawab Sir Liaqat Hyat-Khan, O.B.E.
Nawab Sir Muhammad Akbar Hydari.
Sir Mirza Muhammad Ismail, C.I.E., O.B.E.
Sir Manubhai Nandshanker Mehta, C.S.I.
Sir Prabhashankar Dalpatram Pattani, K.C.I.E.
Mr. Y. Thombare.

Note—The Report as amended and finally agreed to by the Joint Committee will be found in Volume I, Part I.

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Delegates from Continental British India

His Highness the Right Honourable Sultan Sir Mohamad Shah, Aga Khan, G.C.S.I., G.C.I.E., G.C.V.O.
Sir C. P. Ramaswami Aiyar, K.C.I.E.
Dr. B. R. Ambedkar.
Sir Hubert Carr.
Mr. A. H. Ghuznavi.
Lieut.-Colonel Sir Henry Gidney.
Sir Hari Singh Gour.
Mr. A. Rangaswami Iyengar.
Mr. M. R. Jayakar.
Mr. N. M. Joshi.
Mr. N. C. Kelkar.
Begum Shah Nawaz.
Rao Bahadur Sir A. P. Patro.
Sir Abdur Rahim.
The Right Honourable Sir Tej Bahadur Sapru, K.C.S.I.
Sir Phiroze Sethna.
Dr. Shafa'at Ahmad Khan.
Sardar Bahadur Buta Singh.
Sir Nripendra Nath Sircar.
Sir Purshotamdas Thakurdas, C.I.E., M.B.E.
Mr. Zafrullah Khan.

Delegates from th Province of Burma

Sra Shwe Ba.
Mr. C. H. Campagnac, C.B.E.
Mr. N. M. Cowasji.
U Kyaw Din.
Mr. K. S. Harper.
U Chit Hlaing.
U Thein Maung.
Dr. Ba Maw.
U Ba Pe.
Dr. Ma Saw Sa.
U Shwe Tha.
Mr. S. A. S. Tyabji

All the above were able to attend with the exception of Mr. Kelkar, who was prevented by illness from coming to England. We have learned with very great regret of the death of Mr. Rangaswami Iyengar since his return to India.

The Delegates took part in more than seventy of our meetings, some of which were devoted to discussion between the Delegates and ourselves, and others to the hearing of evidence.

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We desire to place on record our appreciation of the assistance which we have derived from our full and frank discussions with the Delegates, for many of whom so long an absence from their own country must have caused great personnel inconvenience and sacrifice. Their advice and co-operation have been of the greatest value to us. Many of them have also furnished us with separate memoranda on various points, and we may mention in particular the Joint Memorandum signed by all the British Indian Delegates

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who were still in England, which has been of great service to us as focussing British Indian views and to which we shall have occasion often to refer in the course of our Report.

We have held meetings in all and have examined over 120 witnesses, whose evidence has been printed in Volumes 2A, 2B and 2C of the Minutes of Evidence published in the autumn of 1933. We are much indebted to all the witnesses for the assistance which they gave us, but our special gratitude is due to the Secretary of State for India, who, though a member of the Committee, took the perhaps unprecedented course of tendering himself as a witness, and who replied to nearly 6,000 questions during the nineteen days over which his evidence extended. In no other way could we have been so effectively enabled to distinguish, and to examine in all their bearings, the intricate and difficult issues which we are charged to consider. We have also been fortunate in having at our disposal the practical knowledge of Indian affairs acquired by many of our own number from their personal experience in high office or in other work in India.

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CHAIRMAN'S DRAFT REPORT TO BE SUBMITTED TO THE JOINT SELECT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM

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**Note.*—For convenience it may be noted that this Part I was never considered, as the Committee agreed to consider an alternative Part I laid before them by the Lord in the Chair on the 24th July, 1934. *Vide infra* pp. 470-491.

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PART I*

INTRODUCTION

The Statutory Commission's survey.

1. The conditions of the problem with the examination of which we have been entrusted are brilliantly described in the comprehensive survey which forms Volume I of the Report of the Statutory Commission. We are not aware that the accuracy of this survey has been impeached, and we are content to take it both as the starting point and the textbook of our own investigation. Nor, indeed, could we do otherwise; for it would have been impossible for us in the time at our disposal to have accumulated and digested so vast a mass of fact and detail. We desire to place on record our deep obligation to the work of the Commission and our conviction that, if we had not had before us the fruits of their patient and exhaustive enquiries, we should scarcely have been able to enter upon, much less to complete within any measurable space of time, the task which Parliament has imposed upon us. Nevertheless, if the labours of the Commission have happily relieved us of the task of restating by way of introduction the conditions of the Indian problem, there are certain elements in it which must so sensibly affect the judgment which we are invited to form and the recommendations which it will be our duty to make that we may be permitted briefly to refer to them.

The peoples of India.

2. The sub-continent of India,[1] lying between the Himalayas and Cape Comorin, comprises an area of 1,570,000 square miles with a population now approaching 340,000,000. Of this area British India comprises about 820,000, and the Indian States 700,000, square miles, with populations of about 260,000,000 and 80,000,000 respectively. It is inhabited by many races and tribes, speaking over two hundred different languages or dialects, and often as distinct from one another in origin, tradition and manner of life, as are the nations of Europe. Two-thirds of its inhabitants profess Hinduism in one form or another as their religion; over 77,000,000 are followers of Islam; and the difference between the two is not only one of religion in the stricter sense, but also of race, of law, and of culture. They may be said indeed to represent two distinct and

* *Note.*—For convenience it may be noted that this Part I was never considered, as the Committee agreed to consider an alternative Part I laid before them by the Lord in the Chair on the 27th July, 1934. *Vide infra*, pp. 470–491.

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separate civilisations. Hinduism is distinguished by the singular phenomenon of caste, which is the basis of its religious and social system and which, save in a very restricted field, remains impervious to the more liberal philosophies of the West; the religion of Islam on the other hand is based upon the conception of the equality of man. In addition to these two great communities, there is also to be found an infinite variety of other religions and sects, ranging from

i.e., excluding Burma: *see infra*, para. 45.

the simple beliefs of Animism to the mystical speculations of the Buddhist. The great majority of the people of India derive their living from the soil and practise for the most part a traditional and self-sufficing type of agriculture. The gross wealth of the country is very considerable, but owing to the vast number of its inhabitants the average standard of living is low and can scarcely be compared even with that of the more backward countries of Europe. Literacy is rare outside urban areas, and even in these the number of literates bears but a small proportion to the total population.

The Indian States.

3. In its political structure India is divided between British India and the Indian States. The latter are nearly 600 in number. They include 109 States, among them great States like Hyderabad, Mysore, Baroda, Kashmir, Gwalior and Travancore, the Rulers of which are entitled to a seat in the Chamber of Princes; 128 which are represented in the Chamber by 12 of their own order elected by themselves; and 327 Estates, Jagirs, and others which are only States in the sense that their territory, often consisting only of a few acres, does not form part of British India. The more important States within their own territories enjoy all the principal attributes of sovereignty, but their external relations are in the hands of the Paramount Power. The sovereignty of others is of a more restricted kind, and over others again the Paramount Power exercises in varying degrees an administrative control.

British India.

4. British India consists of nine Governors' Provinces (excluding Burma), together with certain other areas administered under the Government of India itself. The Governors' Provinces possess a considerable measure of executive and legislative independence; but over all of them the Government of India and the Central Legislature can exercise executive and legislative authority. In respect of certain matters, known as transferred subjects, the Provincial Executives are responsible to their Legislatures; but the Governor-General in Council is independent of the Central Legislature and responsible only to the Secretary of State and through him to Parliament. An official *bloc* forms part of both the Central and Provincial Legislatures and in general acts in accordance with the wishes of the Governor-General and Provincial Governors respectively. British India is administered through a number of services, some of them all-India services, and some provincial. Of the former the most important is the Indian Civil Service, recruited by the Secretary of State.

Features of present constitution.

5. Such in the barest outline is the present constitutional structure of British India, into the details of which we shall have occasion to enter with more particularly when we deal with the specific proposals of the White Paper in their order. It will be seen that its main features are a Central Executive, responsible only to the Secretary of State and through him to Parliament; Provincial

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Executives exercising powers over a wide field, responsible in certain matters but not in others to the Provincial Legislatures; and Central and Provincial Legislatures exercising the law-making power, but with no control over the Executive in one case and with only a limited control in the other. Yet notwithstanding the measure of devolution on the Provincial authorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralised Government, with the Governor-General in Council as the keystone of the whole constitutional edifice; and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their responsibilities for the peace, order and good government of India.

Results of British rule.

6. We are not of opinion that British rule in India stands in need of any apologist. We claim for it neither infallibility nor perfection; but if, as with all governments, it has at times fallen into error, its errors have been nobly and amply redeemed. Its first justification is that it has given to India that which throughout the centuries she has never possessed, a Government whose authority is unquestioned in any part of the sub-continent; next, that it has barred the way against the foreign invader and has maintained tranquillity at home; and lastly, by the creation of a just administration and an incorruptible magistracy, that it has established the rule of law, and has secured to every subject of His Majesty in British India the right to go in peace about his daily work and to retain for his own use the fruit of his labours. Nor ought we to omit to notice how small is the British element in the services by whose agency these results have been brought about. The total European population of British India to-day, including some 60,000 British troops, is only 135,000; the total British element in the superior services is about 3,150; and of these there are approximately 800 in the Indian Civil Service and 500 in the Indian Police.

The Mogul Empire.

7. The magnitude of this achievement cannot be justly estimated without reference to the condition of things which preceded it. The arts of government and administration were not indeed unknown to the Moguls, and the strong hand of the Emperors who reigned between 1525 and 1707 maintained a State which ultimately embraced the larger part of India and did not suffer by comparison with, if it did not even surpass in splendour, the contemporary monarchies of Europe. But the strength of the Mogul Empire depended essentially upon the personal qualities of its ruling House, and when the succession of great Emperors failed, its collapse inevitably followed; nor during its most magnificent period was its authority unchallenged either within or without its borders. Its system of government resembled that of other Asiatic despotisms. The interests of the subject races were made subservient to the ambitions, and often to the caprices, of the monarch; for the politic toleration of Akbar found no imitator among his successors.

The imperial splendour became the measure of the people's poverty, and their sufferings are said by a French observer, long resident at the Court of Aurungzeb, to have been beyond the power of words to describe.

The post-Mogul period.

8. There are pages in the history of India, between the collapse of the Mogul Empire and the final establishment of British supremacy, which even to-day cannot be read without horror. With

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but brief intervals of relief, vast tracts were given over to the internecine struggles of the princes, the guerilla warfare of petty chiefs, and the exactions of Indian and European adventurers; and to townsmen and peasants alike, the helpless victims of malice domestic, foreign levy, and the whole apparatus of anarchy, it might have seemed that the sum of human misery was complete. It is in the improvement which has taken place in Indian agriculture since the establishment of peace and security that the Royal Commission in 1928 found a measure of the extent to which husbandry had been injured and its progress delayed by the long period of disorder and unrest that preceded the British occupation.

Restoration of peace and order.

9. Such were the conditions out of which British rule created a new and stable polity, not without the support and co-operation of Indians themselves. Peace and order were re-established, the Relations of the Indian States with one another and with the Crown were finally determined, and the rule of law made effective throughout the whole of British India. On this solid foundation the majestic structure of the Government of India rests, and it can be claimed with certainty that in the period which has elapsed since 1858, when the Crown assumed supremacy over all the territories of the East India Company, the intellectual and material progress of India has been greater than it was ever within her power to achieve during any other period of her long and chequered history.

Unity created by British rule.

10. The success of British rule has produced many, and sometimes unforeseen, consequences. A strong central Government, without a rival to challenge its authority, has transformed British India into a single unitary State. A sense of political unity has been thereby created and there have emerged the beginnings of a sense of nationality, transcending, as it would seem, the profound divisions of race, language, and religion, and based upon the conception of India as the common heritage of all her peoples. India is far from being yet a homogeneous nation; she is perhaps (and the future alone can tell) a nation in the making; but we do not think it open to question that the growth of any national spirit has only been rendered possible by the existence of a powerful and disinterested government, willing to play the part of an impartial arbiter, and able by the exercise of its authority to keep under control the centrifugal and disruptive forces produced by acute religious and racial conflict. It is a singular reflection that in the English tongue Indian nationalists have found

the most convenient vehicle for the public discussion and interchange of their political ideas; but none can fail to appreciate its significance.

Growth of national idea.

11. It would be as unreasonable to feel surprise at the growth of this spirit as it would be idle to deny its existence. It was begotten of the political union between the two countries and it has been sustained and nourished by an ardent study of British constitutional theory. Indian political thought, postulating too hastily the universal validity of the latter, a premise to which few Englishmen would give an unqualified assent, has not failed to point out a supposed inconsistency between theory and practice in the case of British rule in India; but the reality of the Indian argument rests in our opinion on other and broader grounds.

Basis of strength of Government of India.

12. The strength of the Government of India for many generations may, as it seems to us, be referred to two causes; the first, its accountability to Parliament, which has given it a quality of stability

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and permanence impossible of attainment otherwise by a system of personal rule; the second, its general acceptance by the mass of the Indian people. These were able indeed, and with good cause, to recognise the distinction between good governors and bad; but, so long as they were left alone, knew nothing of, or at least were indifferent to, any distinction between the forms of government itself. A people, whose ambitions are wholly negative and do not extend beyond a desire for peace and tranquillity, will be content to accept any form of government which is strong and reasonably impartial, and that Government must be deemed the most successful which is able to satisfy the aspirations of those whom it governs at the particular stage of development which they have attained. It is perhaps the most signal tribute to British rule in India that the performance of all the fundamental purposes of government, that is to say, the maintenance of law and order and an upright administration, is now accepted as a matter of course, so that men are free to turn their thoughts to other things. Conditions have thus been created favourable in the case of an acute and ingenious race to speculation upon the forms of government, and, as a natural consequence, to the rise of that which is sometimes called a politically minded class. Men become no longer content to be well governed, but desire a voice in their own government. The Montagu-Chelmsford Reforms and the Government of India Act, 1919, were designed to meet the demand then made. The claim is now to have a voice in the selection of those who govern.

Want of harmony between Government and people.

13. The benevolent autocrat no less than the tyrant holds by a precarious tenure, if in the last analysis he has not the support of a body of public opinion, whether tacit or expressed; like Antaeus in the ancient myth, he must draw strength from contact with the soil. The moralist may deplore, but the least cynical must admit, that the sentiment of gratitude plays but a small part in the formation of that

opinion, and we should doubtless listen with incredulity to a historian who should ascribe it to the English people after the Conquest; yet the Normans made England a nation and laid the foundations of a system of law and administration which endures to this day. There is ample evidence that enlightened Indian opinion has a very just appreciation of the benefits derived from the British connection, but the attachment of a people to its government is not always determined by an objective calculation of material interests. The subtle ferments of education, the impact of the War, and the beginnings of that sense of nationality to which we have already alluded, go far to explain the want of harmony which exists between the present system of government and public opinion in India, so far as the latter is vocal. It may be justly observed that the qualification is a vital one and that there are no means of gauging the opinion of the vast and inarticulate mass of the cultivators who make up nine-tenths of the population and to whom an equitable land revenue settlement and the timely advent of the monsoon are likely for many years to be of greater importance than the most radical political changes. But though Parliament is a trustee for the masses of India and cannot disclaim the responsibilities which it has assumed on their behalf, it would in our opinion be unjust to judge the political consciousness of her people by the standard of the least instructed class.

Public opinion in India.

14. No appreciation of the Indian problem would be complete if it affected to disregard the want of harmony of which we have spoken. Where, as in India, political education has not extended beyond a

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class small in comparison with the total population, it may be conceded that alleged manifestations of public opinion are often of doubtful value, nor indeed are there wanting those who would refuse to attribute to them value of any kind. But we are not prepared to admit that over a period of four years the members of three Round Table Conferences and the members of this Committee have listened to the arguments and have shared the debates of men who represented in India no one but themselves. We are satisfied that a public opinion exists in India which it would be a profound error for Parliament to ignore; that the estrangement between that opinion and the present system of government is prejudicial to the interests of both countries; and that a readjustment of relations between the two partners is required.

The moment propitious for a readjustment of relations.

15. The moment is propitious for a readjustment of this kind. For the first time in the history of India, representatives of her Princes and peoples have sat for many months in counsel with representatives of His Majesty's Government and of the great political parties of the United Kingdom; and for the first time in the history of Parliament Indian delegates have taken part in the proceedings of a Joint Select Committee and have illuminated our discussions, even if circumstances forbid them to share our responsibilities. We do not suggest, nor would any Indian claim,

that the conclusions which emerged from the minute and laborious diligence of the three Round Table Conferences are binding upon the United Kingdom or upon India; but they are not on that account to be neglected or contemned. They are the fruits of an effort which will be deemed as laudable by a future, as it might have seemed incredible to a past, generation, to ascertain whether any substantial measure of agreement was possible upon the principles which should, or might, inform a new Constitution for India. It can scarcely have been supposed by the promoters of those Conferences that the free and unfettered discussion of questions so formidable and complex would succeed in producing a complete and harmonious reconciliation of contradictory or at least divergent opinions; but the common measure of agreement achieved must, we apprehend, have exceeded their most hopeful expectations.

Emergence of body of central opinion.

16. We do not wish to imply that any scheme for the future government of India is at present in existence which can be said to have been agreed even unofficially between representatives of the two countries. We realize too that there is a party in India with whom the prospects of agreement of any kind may be remote; but from the discussions and personal contacts of the last four years there has emerged a body of central opinion (for so we may describe it) in the creation of which a juster appreciation by each side of the difficulties and even more of the motives of the other has been perhaps not the least potent influence. This is a new and hopeful phenomenon. It is possible now to distinguish much common ground, where previously the dividing gulf might have seemed unbridgeable; and it will not be denied that, if the movement of British opinion has contributed to this result, so also has that of India. On the common ground thus marked out we believe that the foundations could be laid of a firm and enduring structure.

The Preamble to the Act of 1919.

17. If then we are satisfied, for the reasons which we have given, both that a readjustment is necessary and that the moment for effecting it is propitious, it becomes our duty to consider the form which such a readjustment should take. For this purpose it is well

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to recall that the ultimate aims of British rule in India have been often stated and are on record. They are set out with precision in the Preamble to the Government of India Act, 1919, which runs as follows :—

"Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the Empire :

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :

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And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples :

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility :

And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities."

Subsequent declarations have not in our opinion added anything to the substance of this preamble, which is conceived in such wide and general terms that we should hesitate to put any limit upon its implications, save those which necessarily arise from the use of such words as "gradual" and "progressive." We are content, therefore, to take the Preamble as a clear statement of the policy and aims of Parliament in relation to the government of India.

The Indian demand for responsible government accepted.

18. The readjustment of the relations between the two partners ought, in the Indian view, to take the form of the grant forthwith, subject to certain conditions, of responsible government both in the Provinces and at the Centre. There is no date or time-limit mentioned in the Preamble, and on this aspect of the matter, Parliament is bound by no pledges, and is free to make its own decision. It can grant the demand, or it can reject it as premature and unwise ; and the grave and difficult task is laid upon us of recommending to Parliament what its choice should be. After mature and anxious deliberation and with a full sense of our responsibilities, we have come without hesitation to the conclusion that it would be wrong and prejudicial to the interests of both countries to reject the Indian claim ; and we shall endeavour in the paragraphs which follow to explain and justify that conclusion. The quality of the problem, as we shall indicate, differs in the Provinces and in the Centre, but there are nevertheless certain general considerations which are applicable to both.

Meaning of responsible government.

19. The demand for responsible government in the Provinces was admitted by the Statutory Commission, and it might be sufficient for us to adopt the arguments which led them to that decision, and from which we see no reason to dissent ; but we think it right to add some observations of our own. We desire also to make it clear that by

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responsible government we mean a form of government in which the executive is in some sense accountable to the Legislature, and not one which implies no more than the substitution of Indian Ministers for official Councillors. It has seemed to us that this distinction was not

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always kept in mind by some of the Indian witnesses whom we heard, and, though we can understand prominence being given to the conception of government of Indians by Indians, it is necessary to emphasise that self-government and responsible government are by no means the same thing. We use advisedly the expression "in some sense accountable," lest we should be thought to advocate the adoption in India without qualification of the parliamentary system which obtains in the United Kingdom, a matter to which we propose to make reference subsequently in this Report.

Need for encouraging sense of responsibility.

20. No Indian Federation is likely in our opinion to become a successful and thriving State unless (so far as British India is concerned) it is based upon autonomous Provincial units with a vigorous and independent political life of their own. The present dyarchic system in the Provinces, as the Statutory Commission point out, which was designed to develop a sense of responsibility, has sometimes tended to encourage a wholly different attitude. A sense of responsibility is an attribute of character, not a garment to be put on or discarded at will. It may be strengthened by inherited tradition, but it must be acquired in the hard school of experience; and the Statutory Commission rightly observe that it can only be taught by making men responsible politically for the effects of their own actions. It is the misfortune of India that throughout all the centuries which preceded the establishment of the British Raj this doctrine has been unknown or obnoxious to her rulers. Of the mischiefs which have followed and of the effect upon the national character, it is unnecessary to speak; but it is not for us to complain if Indians now seek to apply a remedy which they have learned from an attentive study of our own history, and which indeed we have held out to them as the ultimate view of our policy in India. We do not think that the opportunity ought any longer to be denied them.

Responsible government and social reform.

21. Secondly, we are convinced that progress in one direction of supreme importance to India can only be achieved under a system of responsible government. We may indeed legitimately claim that for the greater part of her material and intellectual progress she is mainly indebted to British rule, which has also ensured the order and tranquillity without which no progress of any kind is possible. But from one aspect of Indian life Government has deliberately stood aside; it has followed a policy of neutrality and non-interference in all matters which touch the religions of India. It is not difficult to justify that policy, whether on grounds of expediency or on other grounds; but so closely are the habits and customs of the people bound up with their religious beliefs that the effect has been to put grave obstacles in the way of social legislation by the Government of India in a sphere of immense and growing importance. In no other sphere, as all thoughtful Indians recognise, is the need for social reform more urgent and vital; yet Government is debarred,

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by the considerations we have stated, from effective interference in such matters as child marriage or the appalling problem of the untouchables. There are fetters which only Indian hands can strike

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off ; and we can do no more than give Indian reformers the opportunity themselves of attempting the task. We are under no illusions as to the difficulties and obstacles which they are likely to encounter, but we are clear for the reasons which we have given that under responsible government alone can the attempt be made with any prospect of success.

Unwisdom of disappointing Indian expectations.

22. Lastly, we cannot ignore the swift march of events during the last few years. We have already spoken of the manner in which representatives of India have been willing to co-operate with men of this country for the purpose of reaching some common measure of agreement and of the success which, as it seems to us, has attended their efforts. It would be a matter of profound regret to us if the fruits of this co-operation were abandoned or at least treated as of little account. The singular change which has come over the Indian political scene is as encouraging as it is impressive ; and the evidence satisfies us that it is due in large part to the belief of Indians that the joint labours of the last four years will not be thrown away. We cannot take the responsibility of recommending to Parliament a course of action which would not only disappoint a belief so strongly and universally held, but which we are convinced would also produce most unhappy consequences. It will be said that this is an argument of mere expediency, but we do not so regard it. We see the opportunity of terminating an estrangement between the two countries which, if it is allowed to continue, can bring nothing but harm to both of them. The material interests at stake are not inconsiderable, and Parliament will rightly desire to take them into account ; but the other factors to which we have drawn attention seem to us not less vital because imponderable and we believe that an even greater importance is to be attributed to them.

Special problem of responsibility at the Centre.

23. Much of what we have said applies equally to the Centre and to the Provinces, but the problem of responsibility at the Centre raises grave issues of its own. We do not forget that the Statutory Commission were unable to convince themselves that this further step was justified at the time when they made their Report, and we cannot lightly put aside the reasons which led them to that conclusion. It is admitted by responsible Indian leaders that whatever form the Central Government may take, the defence and external relations of India must for the time being remain the exclusive responsibility of the Governor-General. Hence any measure of responsible government at the Centre must involve a system of dyarchy ; but the Statutory Commission held strongly the view that a unitary government at the Centre was essential and should be preserved at all costs. " It must be a government ", they wrote, " able to bear the vast responsibilities which are cast upon it as the

central executive organ of a sub-continent presenting complicated and diverse features which it has been our business to describe " ; and they expressed the opinion that a plan based on dyarchy was unworkable and no real advance in the direction of developing central responsibility at all. To this we might add that what we have ourselves said above on the subject of dyarchy in the Provinces appears at first sight to be wholly inconsistent with any contrary view.

The change effected by the declaration of the Princes.

24. We recognise the force and weight of all these arguments, but we have to deal with a state of things which did not, and indeed could not, enter into the consideration of the Statutory Commission when they reached their decision on this matter. Their examination of the problem was prosecuted at a time antecedent to the declaration

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by the Princes of their willingness to enter an All-India Federation, and, though they looked forward to such a Federation in the future, and indeed so framed their recommendations as to prepare the way for it, they had no choice but to deal with things as they then were and not as they might afterwards become. We, on the other hand, have to take into account as a new factor, the declaration of the Princes that they are willing now to enter into an All-India Federation, but subject always to this condition, that the Federal Government is a responsible and not an irresponsible government. The importance of this declaration cannot be over-estimated, and if the choice is to be made between a responsible government at the Centre with the accession of the Princes and a continuance of the present system (even with some modification) without them, we cannot doubt what the choice would be. The Indian States, both geographically and economically, are an integral part of India, and as the Statutory Commission observe, there are few subjects which should form the field of activity of a central government in India which do not interest also the States. Their accession to an All-India Federation will in our opinion be found to be no less to their own advantage than it will undoubtedly be to the advantage of India as a whole; but apart from this they have a special contribution of their own to make. They will strengthen the association between India and the Crown; and we are also persuaded that they will introduce into the new Constitution a cautious and conservative element, with a practical experience in the problems of government, which will make for sobriety and stability in Indian politics of the future.

The arguments of the Statutory Commission.

25. Our recommendation then is conditional upon the accession of the Princes; and if we are asked what the position would be, if the Princes should resile from their declaration, we can only reply that in that event, which happily there is no reason to contemplate, we are unaware of any pledges which bind either Parliament or His Majesty's Government, and that the matter will be at large. But the problem of dyarchy at the Centre remains, and the objections to it so strongly urged by the Statutory Commission have still to be considered. In our opinion a system of dyarchy

at the Centre such as we propose is not open, at least in an equal degree, to the criticisms levelled against it in the Provinces. There is only an imperfect analogy between the reservation of defence or external relations and that of the present reserved subjects in the Provincial sphere. In the Provinces the administration of the reserved subjects touches so closely that of the subjects transferred to Ministers that an administrative decision in one field may profoundly affect decisions in another, and a division of responsibility cannot fail to have perplexing consequences. Contact between the subjects of defence or external relations and the range of subjects which, if our recommendations are accepted, would fall within the sphere of Ministers at the Centre is, if not remote, at least not a matter of daily occurrence. It is no doubt true that the Army at the Centre and police in the Provinces are both concerned with the preservation of order, but their functions in this respect differ so widely that administratively they present far more points of contrast than of likeness. We do not by any means overlook the question of finance or the reactions of the Army budget upon the finance of the central administration; but here again no question arises of a constant impingement of one administrative sphere upon the other. Lastly, it is reasonable to suppose that the interest of the Princes in

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all matters relating to the defence of India will make them unwilling to support any action tending to blur the responsibility of the Governor-General in this field or to become parties to ill-conceived criticism of his administration of the reserved departments. We are led to the conclusion, therefore, that the objections of the Statutory Commission are not in themselves an insuperable bar to the grant of responsible government even at the Centre, and we are not satisfied that the sacrifice of unity will render impossible the establishment of an efficient central executive.

Present relations between Government and Legislature.

26. As our enquiry has proceeded, we have been increasingly impressed not by the strength of the Central Government as at present constituted, but by its weakness. It is confronted by a Legislature whose members are unrestrained by the knowledge that they themselves may be required to provide an alternative government, whose opinions are uninformed by the experience of power, and who are prone to regard support of government policy as a betrayal of the national cause. It is abundantly clear from the political history of the last twelve years that criticism by the Assembly has constantly influenced the policy of government; if the tendency of that criticism has been mainly destructive, this has been mainly due to the circumstances which we have just described. As a result, the prestige of the Government has been lowered, and disharmony between Government and Legislature has come to be regarded as an inevitable feature of their relationship. If this has been the case under existing conditions, we cannot doubt that the position would deteriorate still further if an irresponsible Centre were to be superimposed upon a number of autonomous Provinces.

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Difficulty of reconciling an irresponsible Centre with provincial autonomy.

27. It has been made clear to us that, with few exceptions, Indians of every shade of political opinion have come, rightly or wrongly, to regard a measure of responsible government at the Centre as the hallmark of nationhood, and as a thing vital to the status and self-respect of India. If these hopes and desires were now to be thwarted by the limitation to the provincial field of the principle of responsibility, we think the consequences would be disastrous alike in the Provinces and at the Centre. We apprehend that the centrifugal forces latent in all federal constitutions would be dangerously increased, and that if an irresponsible Centre were to come into conflict with autonomous Provinces upon an issue where the popular cause was championed by the Provinces, there might emerge a state of affairs which would threaten nothing less than the integrity of the Federation. Nor could we hold it reasonable to contemplate the successful coercion, by an irresponsible Central Executive, of autonomous Provinces whose governments enjoyed the full support of public opinion and of the Legislatures, both Central and Provincial.

Requirements of a successful Constitution.

28. Two qualities must attach to a successful Constitution: the first, that it should be workable; the second, that those to whom it is offered should be prepared to make it work. For the reasons we have given, we think that any Constitution will be found to be lacking in both these requirements which proposes, as a permanent arrangement, the co-existence of an irresponsible Central Executive with a number of autonomous Provinces in which responsible government has been established. In our view the grant of some measure of responsibility at the Centre is an act not of rashness but rather of wise and prudent statemanship, and we are unable to resist the conclusion that those who have been moved to take a contrary view have failed in a just appreciation of the realities and values of the situation.

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British conception of parliamentary government.

29. We have said above that by responsible government we mean a form of government in which the executive is in some sense accountable to the Legislature, and we are here faced by a grave and difficult problem. It is not unnatural that, in the words of the Statutory Commission, most of the constitutional schemes propounded by Indians should closely follow the British model, nor can Parliament be insensible to the compliment implied by such a preference at a time when the principles of parliamentary government have been successfully challenged in many parts of Europe and are regarded with suspicion or doubt in others. But the successful operation of parliamentary government postulates beyond question the existence of certain essential conditions. It has been observed by a statesman of our own time, whose liberal sympathies and whose knowledge of the working of democratic institutions will be questioned by none, that "the English constitution, which we admire as a masterpiece of delicate and complicated mechanism would anywhere but in England be full of difficulties and dangers . . . it works by a body of understanding which no writer can formulate and of habits which centuries have been needed to instil." We think that

Lord Bryce would not have denied that the understanding and habits of which he speaks are in the main the creation of, as they have in their turn helped to promote, the growth of mutual confidence between the great parties in the State and of the fundamental belief, transcending the political differences of the hour, which each has come to repose in the good faith and motives of the other. Many causes have contributed to this result, which has not been achieved without stress and effort, and even civil conflict; and we shall be chary of giving credit to race or temperament for national characteristics which perhaps with equal justice may be attributed to the happy accident that we inhabit an island, and that for nearly a thousand years our political evolution has been undisturbed by the fact, and scarcely even by the menace, of foreign invasion.

Essentials of parliamentary government.

30. Parliamentary government, as it is understood in the United Kingdom, is based essentially on the principle of majority rule, and majority rule is not a working principle of government, unless the minority for the time being are willing to accept, or at least to acquiesce in, the decisions of the majority. The existence of organised political parties, each able and willing to take over the responsibilities of government when the time arrives, is perhaps so necessary for the efficient working of the system that it may also be regarded as an essential element in it. It is nevertheless a singular paradox that in England the party system is a successful instrument of government mainly because there is always a large body of opinion which owes no permanent allegiance to either party, but gives its support in a greater or less degree to each party in turn; and it is this body of opinion which, reacting instinctively against extravagant movements on one side or the other, preserves an equipoise and tends always to bring the vessel back to an even keel. In the absence of a central balancing force of this kind, there must always be the danger of a permanent majority and a permanent minority; and since no room is then left for compromise or adjustment, violent stresses are set up which, unless corrected or restrained, are sufficient to disrupt and even to destroy the State.

Difficulties of the problem in India.

31. There are in India no parties as we understand them, and no mobile body of political opinion such as we have described. In their place we are confronted with the secular antagonism of Hindu and Muhammadan, representatives not only of two religions but of

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two civilisations; with numerous self-contained and exclusive minorities, all a prey to anxiety for their future and profoundly suspicious of the majority and of one another; and with the rigid and immutable divisions of caste, itself a denial and repudiation of every democratic principle. The only forces making for homogeneity or solidarity which we are able to discern are the beginnings of the idea of Indian nationality which we have already mentioned, and possibly also the sense of provincial citizenship, which in some Provinces, and perhaps in all is of real and growing significance.

But none can predict whether either of those forces will in the end prove strong enough to absorb and obliterate the religious and racial cleavage, which indeed tends to become more and more acute with each successive transference of political power into Indian hands. Communal representation must be accepted as inevitable at the present time; but it is a strange commentary on some of the democratic professions to which we have listened.

A middle course possible.

32. We lay stress on these matters because in truth they are of the essence of the problem, and we should be doing no good service to India by glozing them over or concealing them. It is wiser to face the facts. Things are what they are and not other things; and it cannot in the circumstances be a matter for surprise that many are to be found who, with every sympathy for Indian aspirations, declare that responsible government is on practical grounds an impossibility in India. We have come nevertheless to a different conclusion. We recognise the difficulties and we desire that they should be recognised by Indians themselves. We recognise also that if free play were given to the powerful forces which would be set in motion by an unqualified system of parliamentary government, the consequences might be disastrous to India and perhaps irreparable. But there is a middle course, and we are thus led to a consideration of what have come to be known as "safeguards."

Safeguards necessary in the interests of India herself.

33. We confess that we do not greatly care for the expression, since it has been constantly misinterpreted as implying an unreasonable insistence upon the need for protecting British, at the expense of Indian, interests, and upon a selfish reservation of powers wholly inconsistent with responsible government. Nothing could be further from the truth; not only are safeguards such as we contemplate not inconsistent with some form of responsible government, but in the present circumstances of India it is no paradox to say that they are the necessary complement to any form of it, without which indeed it could have little or no hope of success. It will be found that the grant of responsible government to almost all British communities has been accompained by safeguards of some kind, varying according to the circumstances of the community; and it is in exact proportion as Indians show themselves to be not only capable of taking and exercising responsibility but able to resolve the difficulties of which we have spoken that both the need for safeguards and their use will disappear. Those difficulties have neither been created, nor can they be resolved, by Parliament; they are inherent in the conditions of India; and if their existence necessarily qualifies the grant of responsible government, it is not on Parliament that criticism should fasten. We propose to examine later in this Report the nature of the safeguards suggested by His Majesty's Government, and it is sufficient here to say that we could not recommend Parliament to approve an experiment, which we recognize to be not without risk and even danger, unless provision were made, so far as can reasonably be done for securing the conditions which in our opinion will alone make

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it possible for the experiment to succeed at all. We therefore think it right to formulate what seem to us to be the essential elements in any new constitutional settlement.

Need for flexibility;

34. One essential element is flexibility, so that opportunity may be afforded for the natural processes of evolution with a minimum of alteration in the constitutional framework itself. The deplorable and paralysing effect of prescribing a fixed period for constitutional revision requires no comment in the light of events since 1919; but we are also impressed with the advantage of giving full scope for the development in India of that indefinable body of understanding, of political instinct, and of tradition, which Lord Bryce, in the passage which we have quoted, postulates as essential to the working of our own constitution. The success of a constitution depends indeed far more upon the manner and spirit in which it is worked than upon its formal provisions. It has been observed by an English judge that insistence by everyone upon their strict legal rights would make the world an intolerable place, and the observation is peculiarly appropriate in the constitutional sphere, where theory may prove sterile and even dangerous unless expanded or adapted by an accepted body of usage and practice. The new Indian Constitution must contain in itself the seeds of growth. It is impossible to foresee, so strange and perplexing are the conditions of the problem, the lines which constitutional progress will eventually follow; and it is, therefore, the more desirable that those upon whom responsibility will rest should have all reasonable scope for working out their own salvation by the method of trial and error.

for a strong Executive;

35. Next, we desire to emphasize the necessity for securing a strong Executive both in the Provinces and at the Centre. We have little to add to what the Statutory Commission have written on this point, and in our judgment they do not exaggerate when they say that nowhere in the world is there such frequent need for courageous and prompt action as in India and that nowhere is the penalty for hesitation and weakness greater. We do not doubt that Indian Ministers, like others before them, will have ample opportunities for realising the truth of this and of learning the lesson which it teaches. But, since we see no prospect for some time to come of Ministries united by a common political faith and supported by an organised and disciplined party, we do not think that the risk of divided counsels and therefore of weakness in action is one which can be ignored. There must, therefore, be (to quote again the Statutory Commission) a power which can step in and save the situation before it is too late; there should be the fullest scope for self-government but, if there is a breakdown, then an alternative authority must operate unhampered. Such intervention ought nevertheless to take place only as a last resort, and must not be regarded as part of the normal machinery of government; otherwise we see a risk that it may be invoked for the purpose of disclaiming responsibility in cases where it is above all things necessary that those on whom the primary

responsibility is imposed should be ready and willing to bear it. Nor ought the Executive to be entirely at the mercy of the Legislature. We have no wish to under-rate the legislative function; but in India the executive function is in our judgment of over-riding importance. In the absence of disciplined political parties, the sense of responsibility may well be of slower growth in the Legislatures and the

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threat of a dissolution can scarcely be the same potent instrument in a country where, by the operation of a system of communal representation, a newly elected Legislature will often have the same complexion as the old. We touch here the core of the problem of responsible government in the new Indian Constitution, and we shall examine it in greater detail later in our Report.

for efficiency in administration;

36. No less important than a strong Executive is the maintenance of a pure and efficient administration, the backbone of all good government. The establishment of a public service, at once disinterested and incorruptible, is not the least of the benefits which British rule has given to India, and it is perhaps the most prized. We do not doubt that here and there in the lower official ranks the belief may still persist, an unhappy legacy of the misgovernment of the past, that office is a source of profit and corruption a venial thing; and it would be surprising if it were otherwise for the habits of centuries are not so easily eradicated. We have ample proof, however, that Indian officials who occupy responsible positions hold as dear as any of their British colleagues the standards and traditions of the services to which they belong, and we see no reason why under a new order the standards should become lower, or the traditions lost. But the efficiency of a service is no less vital than its honesty. In no country perhaps does the whole fabric of government depend to a greater degree than in India upon its administration; and it is indeed literally true, as the Statutory Commission observe, that the life of millions of the population depends on the existence of a thoroughly efficient system. But no service can be efficient if it has cause for anxiety or discontent. It is essential therefore, in our judgment, that those whose duty it is to work this system should be freed from anxiety as to their status and prospects under the new Constitution, and that new entrants should not be discouraged by any apprehension of inequitable treatment. We have every hope that such anxieities or apprehensions will prove unfounded, but they may be none the less real on that account; and, so long as they exist, it is necessary that all reasonable measures should be taken to quiet them.

for an impartial and disinterested authority.

37. Lastly, we record our conviction that the existence of an authority in India, armed with adequate powers, able to hold the scales evenly between conflicting interests and to protect those who have neither the influence nor the ability to protect themselves, will be as necessary in the future as experience has proved it to be in the past. He would be a bold man who would prophesy

the direction or effect of the new political forces in India, whether they will heal or accentuate existing divisions, whether they will promote toleration or encourage intolerance. Other, and perhaps most, peoples have achieved unity only after prolonged and often sanguinary internal conflict. We have rightly insisted in India upon a different solution; but if we have for that reason changed or deflected the natural processes of historical evolution we have also assumed the responsibility of ensuring that the experiment is conducted with justice towards all and with malice towards none.

Disuse of safeguards the measure of their success.

38. Such in our opinion are the essential elements in a new Constitution for India, which any safeguards proposed, by whatever name they are called, should be designed to secure; and when we come to examine those which have been suggested by His Majesty's Government, their efficacy for this purpose will be the test by which we shall judge them. Seen in their proper perspective, they will

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promote and not hinder a normal constitutional development, but we are none the less persuaded that no constitutional development is possible without them. They are at once the background of the experiment and the condition of its initiation ; and the extent to which they are found unnecessary will be the true measure of its success.

Consequences of the alternative solution.

39. We desire to touch upon one or two broader issues before concluding this part of our Report. We are not so vain as to suppose that our recommendations will secure unanimous approval ; but we would invite those who differ from us to consider very earnestly the possible alternatives. No one has suggested that any retrograde step should be taken, very few that the existing state of things should be maintained unaltered ; and the necessity for constitutional advance, at least within the limits of the Statutory Commission's report, may therefore be regarded as common ground. The question of responsibility at the Centre thus becomes the essence of the problem. But if that question should be determined in the negative, Parliament must be prepared to face the inevitable consequences, two of which in our opinion transcend all the others in importance ; first, the Princes' declaration will no longer hold good, and the prospect of an All-India Federation disappears, perhaps for ever, but certainly for many years to come ; and, secondly, the co-operative efforts of the last few years and that body of central opinion which we have described and which has seemed to us so vital and hopeful an element in the future relations of the United Kingdom with India are irretrievably destroyed. These are grave issues. We should hesitate to forecast all the effects of the Princes withdrawal or the dissipation of Indian confidence, but of this we are very certain, that the difficulties of the Government of India would be increased almost to breaking point and that it would have to discharge its heavy responsibilities without the support of any section of Indian public opinion. We do not say that the

task would be impossible, but we confess that we should shrink from the deliberate thrusting upon any government of so grievous a burden.

Lord Macaulay's questions.

40. A policy with consequences such as these is one which we could never recommend to Parliament, nor can we believe that Parliament, weighing its own responsibilities to India, would willingly accept it. We cannot indeed complain if those whom we fail to convince lay stress upon the possible consequences of another policy. It has been, and will be, urged that no Dominion has ever been faced within its border at one and the same time with all the problems with which India has to deal ; with the ever present risk of hostilities on her frontier ; with the cleavage between communal interests ; with innumerable differences of race and speech ; with a financial system largely dependent for its credit on centres outside India ; and with a vast population in every stage of civilisation. All these things are true, and yet even the sum of them does not seem to us to conclude the argument. An answer has still to be found to the questions asked a century ago by a great servant of India, in a speech of which it was said that to have heard it might console the younger members of the House for never having heard Edmund Burke : " Do we think that we can give the people of India knowledge without awakening ambition ? Or do we mean to awaken ambition and provide it with no legitimate vent ? " The answer has now to be given : and we hold strongly that it is more consonant

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with the dignity of Parliament and with the traditions of the British people, if, when the time has come for Parliament to share its power with those whom it has sought to train in the arts of government, it should do so not ungraciously nor in any grudging spirit.

The United Kingdom and India.

41. There are moments in the affairs of nations when a way is opened for the removal of long-standing differences and misunderstandings and for the establishment between people and people of new relations more in harmony with the circumstances of the time than those which they replace. Adjustments of this order, when they involve a transference of political power, must inevitably provide a sharp test of national character; and the instinct for the time and manner of the change is the sure mark of political sagacity and experience. If there are those to whom the majestic spectacle of an Indian Empire make so powerful an appeal that every concession appears almost as the betrayal of a trust, we would ask them to look at the other side of the picture, different indeed in content, but not less charged with realities. India also has a right to be heard before judgment is pronounced; and her plea to be allowed the opportunity of applying principles and doctrines which we ourselves have taught cannot be met by a simple traverse or by a denial of her interest in the cause.

India and the Crown.

42. It has seemed to some that to permit India to control her own destiny is to sever the tie which unites her to the Crown and to the United Kingdom. Never could we contemplate the rupture of

that beneficent and honourable association; but we believe that a union of partners may prove an even more enduring bond. We do not deny that the creation of an Indian Empire has profoundly affected the position of the United Kingdom and has magnified its influence in the affairs of the world; but we do not think that the selfish or vainglorious element predominates in the pride which this country takes in the work accomplished. The best of those who were and are responsible for it have ever regarded themselves as the servants of India and not merely as the agents of a foreign power; nor do we forget that it could not have been carried through without the co-operation of Indian hands. It has not needed our enquiry to remind us how great a place India fills in our own history. There is no part of His Majesty's dominions with the same power to recall memories or to stir emotions, and none with so great a succession of warriors and administrators, by the story of whose achievements our hearts are still moved, as Sir Philip Sidney by the song of Percy and Douglas, more than with a trumpet. But the whole earth is the sepulchre of famous men, and those of whom we speak are now become a part no less of India than of English history. Their arduous and patient labours founded a new and mighty State; and it is upon the foundations which they have laid that, as we hope, an Indian Federation will be built, in which under the Crown the people of India will find political contentment as well as scope for the free and orderly growth of national life.

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PART II

THE WHITE PAPER

The Committee's terms of reference.

43. Our terms of reference direct us to consider the future government of India and in particular to examine and report upon the proposals in Command Paper 4268, commonly known as the White Paper. The latter, in fact, embodies a complete scheme for Indian constitutional reform; and we have found it convenient to make it the basis of our deliberations, though we have not in any way restricted them to the proposals which it contains. In these circumstances it has appeared to us equally convenient to take the White Paper, which in any case we have been directed to examine and report upon, as the general basis of this Report, and to set out our recommendations as to the future government of India in the form of a commentary upon the White Paper scheme.

Arrangement of White Paper.

44. The proposals in the White Paper fall under three main heads, which have been commonly referred to as Provincial Autonomy, Federation and Responsibility at the Centre. The terminology is not very happy, but is well enough for the present purpose, and we shall not be misunderstood if we adopt it as a provisional description. It is our intention to examine the principles which underlie these proposals and to state certain general conclusions at which we have arrived, and thereafter to examine separately the proposals in relation to the following complementary or subsidiary matters :—Distribution of Legislative Powers, Finance, the Services, the Judiciary, Commercial Discrimination, Constituent Powers, the Secretary of State and the Council of India, the Reserve Bank, the Future Administration of Indian Railways, Audit and Auditor-General, Advocates-General, and Transitory Provisions. This appears to us the more convenient course to adopt, in order that the essential elements of the scheme put forward by His Majesty's Government may be seen in their proper perspective, unobscured by the mass of detail which the White Paper necessarily contains.

Burma.

45. The proposals in the White Paper do not deal specifically with the question of Burma in relation to Indian constitutional problems, because opinion in Burma on the future of the country had not at the date of the issue of the White Paper become crystallized. The Statutory Commission recommended that Burma should cease to be a part of British India, and we have arrived at the same conclusion. In these circumstances it is our intention to deal fully with the future constitution of Burma in Part III of our Report, where we shall set out and discuss the reasons which have appeared to us to justify our recommendation.

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I.—PROVINCIAL AUTONOMY

(1) The Autonomous Provinces

Definition of Provincial Autonomy.

46. The scheme of Provincial Autonomy, as we understand it, is one whereby each of the Governors' Provinces will possess a Governor and Legislature having exclusive authority within the province in a precisely defined sphere, and in that sphere free from all control (or practically all control) by the Central Government. This we conceive to be the essence of Provincial Autonomy, though no doubt there is room for wide differences of opinion with regard to the manner in

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which that exclusive authority is to be exercised. It represents a fundamental departure from the present system, under which the Provincial Governments exercise a devolved and not an original authority. The Act of 1919 and the Devolution Rules made under it, by earmarking certain subjects as "provincial subjects," created indeed a sphere within which responsibility for the functions of government rests primarily upon the provincial authorities; but that responsibility is not an exclusive one, since the Governor-General in Council and the Central Legislature still exercise an extensive authority throughout the whole of the Provinces. Under the proposals in the White Paper, the Central Government and Legislature would, generally speaking, cease to possess in the Governors' Provinces any legal power or authority with respect to any matter falling within the exclusive Provincial sphere.

The principle accepted.

47. "The Provinces are the domain," wrote the authors of the Montagu-Chelmsford Report, "in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit." Their intention was to give an independent life to the organisms which would in future form the members of a British India Federation, an ideal at that time not within measurable distance. To-day, so rapid has been the march of events since 1919, we are discussing not only a Federation of British India, but an all-India Federation; and we could not ourselves contemplate such a Federation, whether it comes about in the immediate or more distant future, which in its British India aspect is composed of other than autonomous units, independent within their own sphere of any central control. We have arrived, therefore, at the same conclusion on this subject as the Statutory Commission, and substantially on the same grounds.[1] Of all the proposals in the White Paper, Provincial Autonomy has received the greatest measure of support on every side. The economic, geographical, and racial differences between the Provinces on the one hand and the sense of provincial individuality on the

[1] Report, Vol. II, para. 27.

other, have greatly impressed us. The vast distances of India and the increasing complexity of modern government are strong additional arguments in favour of the completion of the process begun in 1919, and of a development in which the life of each Province can find vigorous and adequate expression, free from interference by a remote central government. We proceed, therefore, to consider the manner in which the proposals of His Majesty's Government give practical effect to the autonomy principle.

The Ambit of Provincial Autonomy

Distribution of legislative powers between Centre and Provinces.

48. The first problem is to define the sphere within which Provincial Autonomy is to be operative. The method adopted by the White Paper (following in this respect the broad lines of Dominion Federal Constitutions) is to distribute legislative power between the Central and Provincial Legislatures respectively, and to define the Central and Provincial spheres of government by reference to this distribution.[2] In Appendix VI, List II, of the White Paper are set out the matters with respect to which the Provincial Legislatures are to have exclusive legislative powers, and the sphere of Provincial Autonomy in effect comprises all the subjects in this list. The subjects in List II (the exclusively Provincial List) represent generally with certain additions

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those which the Devolution Rules under the Act of 1919 earmarked as "provincial subjects" and we are of opinion that in its broad outline the List provides a satisfactory definition of the provincial sphere. We shall have certain suggestions and recommendations to make later, when we come to consider the List in detail, and there are a few subjects included in it with regard to which a complete provincialization might, as it seems to us, be prejudicial to the interests of India as a whole. It will, however, be convenient to leave this aspect of the matter for subsequent examination.

Concurrent legislative powers.

49. There is, however, another List (Appendix VI, List III), in which are set out a number of subjects with respect to which it is proposed that the Central Legislature shall have a power of legislating concurrently with the Provincial Legislatures, with appropriate provision for resolving a possible conflict of laws.[1] Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature, and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the Central Legislature should also have a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout the country, in others to guide and encourage provincial effort, and in others again to provide remedies for mischiefs arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single Province. Instances

[1] White Paper, Proposals 111, 112.
[2] White Paper, Proposal 114.

of the first are provided by the subject matter of the great Indian Codes, of the second by such matters as labour legislation, and of the third by legislation for the prevention and control of epidemic disease. It would in our view be disastrous if the uniformity of law which the Indian Codes provide were destroyed or whittled away by the uncoordinated action of Provincial Legislatures. On the other hand, local conditions necessarily vary from Province to Province, and Provincial Legislatures ought to have the power of adapting general legislation of this kind to meet the particular circumstances of a Province.

Provincial legislation to meet local requirements.

50. We had at first thought that the case could be met by so defining the powers of the Central Legislature as to restrict its competence in this sphere to the enacting of broad principles of law, the Provincial Legislatures being left to legislate for the Provinces within the general framework thus laid down. We are, however, satisfied that, with regard at any rate to some of the subjects in List III, the local conditions in a Province may require the enactment of legislation modifying a general law applicable to the Province, and that the power of enacting complementary legislation alone would not suffice. If it be said that this difficulty could be met by entrusting the Central Legislature with the power themselves to legislate for the purposes of meeting the particular needs of a single Province, our answer would be that it is wrong in principle to give the Central Legislature power to enact legislation for one Province only, on a matter which *ex hypothesi* must necessarily be one of exclusively local concern. There is no analogy between local legislation enacted by the Parliament at Westminster at the instance of a single local authority, and a power to legislate for an autonomous British India Province. Nor can we disregard the obvious fact that the necessity for obtaining Central legislation

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might in practice cause grave difficulties to a Province, especially in cases where the demand for an amendment of the law is immediate and urgent.

Conflicts of law in concurrent field.

51. The White Paper proposes that where there is conflict between the Central and Provincial legislation with respect to a subject comprised in List III, the Central Legislation shall prevail, unless the Provincial legislation is reserved for and receives the assent of the Governor-General.[1] This appears to us an appropriate device for effecting a reconciliation between the two points of view, and it has the further merit of avoiding the legal difficulties to which any attempt further to refine the definitions in Part III for the purposes of distributing the legislative power between the Central and Provincial Legislatures would of necessity create. We, therefore, approve the principle of the Concurrent List, though we reserve for subsequent consideration the question of the particular subjects which in our opinion ought to be included in it.

[1] White Paper, Proposal 114.

The residuary legislative power.

52. We have pointed out above that in List II are set out the matters with respect to which the Provincial Legislatures are to have exclusive legislative powers and that, generally speaking, this List provides a satisfactory definition of the provincial sphere. List I in Appendix VI similarly sets out the matters with respect to which the Central Legislature is to have exclusive legislative powers; and these two Lists (together with the Concurrent List) are so widely drawn that they might seem at first sight to cover the whole field of possible legislative activity, and to leave no residue of legislative power unallocated. It would, however, be beyond the skill of any draftsman to guarantee that no potential subject of legislation has been overlooked, nor can it be assumed that new subjects of legislation, unknown and unsuspected at the present time, may not hereafter arise; and therefore, however carefully the Lists are drawn, a residue of subjects must remain, however small it may be, which it is necessary to allocate either to the Central Legislature or to the Provincial Legislatures. The plan adopted in the White Paper is that the allocation of this residue should be left to the discretion of the Governor-General, and settled by him *ad hoc* on each occasion when the need for legislation arises.

Cleavage of opinion in India.

53. We cannot regard this plan as a satisfactory one, though it may be inevitable. We gathered from our discussions with the Indian delegates that a profound cleavage of opinion exists in India with regard to the allocation of residuary legislative powers, one school of thought, mainly Hindu, holding as a matter of principle that these powers should be allocated to the Centre, and the other, mainly Muhammadan, holding not less strongly that they should be allocated to the Provinces. In these circumstances the proposals of His Majesty's Government are obviously in the nature of a compromise. It will be observed that, for the purpose of reducing the residuary powers to the smallest possible compass, the lists of subjects dealt with in List I and List II respectively are necessarily of great length and complexity; but that if it had been possible to allocate residuary legislative powers to e.g. the Provinces, only a list of Central powers would have been required, with a provision to the effect that the legislative powers of the Provinces extended to all powers not expressly allocated to the Centre; and conversely, if the residue had been allocated to the Centre. This broadly is the plan which has been adopted in Canada and Australia, the residuary powers being vested,

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in the case of Canada, in the Dominion Legislature, and, in the case of Australia, in the Legislatures of the States. Experience has unhappily shown that even so it has been impossible to avoid much litigation on the question whether legislation on a particular subject falls within the competence of one Legislature or the other; and it is only too clear that the possibility of litigation is immensely increased by the plan adopted in the White Paper. The more the two Lists enter into detail, the greater that possibility must be; and yet, if the principle of two Lists is accepted, we do not see how this detailed statement of legislative powers can well be avoided.

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Difficulty of rejecting White Paper proposal.

54. We do not doubt that these difficulties were as present to the minds of His Majesty's Government as they are to our own, and we fully appreciate the reasons which have led them to adopt a plan on which criticism can so readily fasten. We are unwilling, therefore, to recommend an alteration in the White Paper proposal, though we have not overlooked the scope for litigation which two long and detailed lists, each defining an exclusive legislative jurisdiction, must afford. It seems to us that the logical conclusion of the proposals in the White Paper would be the allocation to the Provincial Legislatures of all legislative powers (apart from those included in the Concurrent List) which are not expressly assigned to the Central Legislature; but we recognise that logic is not always a safe guide where an apparently irreconcilable difference of opinion exists between the great Indian communities on a matter which both of them appear to regard as one of principle.

Existing and Future Governors' Provinces

The present Governors' Provinces.

55. The existing Governors' Provinces are the Presidencies of Bengal, Madras and Bombay, and the Provinces known as the United Provinces, the Punjab, Bihar and Orissa, the Central Provinces, Assam, the North-West Frontier Province, and Burma. We have considered the problem of Burma in a separate part of our Report, and it is unnecessary to say more in this place than that we have come to the conclusion that Burma should cease to be a part of British India. The White Paper proposes that there shall in future be a new Province of Sind and a new Province of Orissa, the former being carved out of the Presidency of Bombay, and the latter mainly out of the Province now known as Bihar and Orissa, but also including a portion of what is now Madras territory, and a very small area from the Central Provinces.

Sind.

56. On the constitution of Sind as a separate Governor's Province, we quote the following passage from the Statutory Commission's Report: "We have great sympathy with the claim, but there are grave administration objections to isolating Sind and depriving it of the powerful backing of Bombay before the future of the Sukkur Barrage is assured and the major readjustments which it will entail have been effected. Even if it were held that the time is ripe for the separation of Sind to be seriously considered there would have to be a close and detailed enquiry into the financial consequences which would follow from such a step before a decision could be taken."[1] When this opinion was recorded the Barrage was still under construction; but it is now completed and successfully in operation, though the general fall in agricultural prices has necessarily affected the financial position. The financial difficulties involved in the creation of an autonomous Sind have been examined first by an expert committee and later by a conference

[1] Report, Vol. .

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of representatives of Sind presided over by an official, and the findings of both Committees have been reviewed by the Government of India and by His Majesty's Government. We are informed that it is now anticipated that the new Province would start with an initial yearly deficit of about ¾ crore, which would be gradually extinguished in about 15 years, and that after that period the Province should be able to dispense with assistance. We discuss elsewhere the effect of the separation of Sind from Bombay upon both Central and Bombay finances, and it is sufficient to say here that the difficulties do not appear to be of such magnitude as to form any insuperable bar to the establishment of a separate Province.

Case for separation from Bombay.

57. The difficulty of administering from Bombay a territory racially and geographically separated from the rest of the Presidency has proved capable of being overcome under present arrangements; but the case for separation, which is strong under any form of administration, is greatly strengthened if the administration of Bombay is transferred over to an Executive responsible to the Legislature. The question is, however, one which has aroused acute communal controversy. The case for separation has been pressed not merely by the Sindi Muhammadans but also by Muhammadan leaders elsewhere in India. Separation has been as strongly opposed by the Hindu minority in Sind who, though they only form about 27 per cent. of the population, are economically powerful and under the present provincial franchise actually form a majority of the voters. It is impossible not to sympathise with the desire of the Hindu community in Sind to remain under the rule of the richer Bombay Government, which is also likely to share their communal sympathies. Nevertheless, it seems to us that, apart from other considerations, the communal difficulties that would arise from attempting to administer Sind from Bombay would be no less great than those which may face a separate Sind administration. It is proposed that the Hindus shall be allotted a considerable proportion of the seats in the Legislature, and they will of course enjoy the protection of the special safeguards for minorities which will apply to the minorities in other Provinces; and it may be noted that a Sindi Muhammadan witness who appeared before us recognized that the Hindus must play an important part in the government of the Province.[1] We have reached the conclusion that Sind ought to become a separate Governor's Province. In view of the very special importance to the Province of the continued success of the Barrage project and of the very large financial issues involved, which will concern the Federal Government as well as the Province of Sind, it is proposed that the Governor of Sind should have a special responsibility for the administration of the Barrage.[2] This seems to us an essential provision and is one to which we understand that little or no objection has been taken.

[1] Minutes of Evidence, Q.—A.496.
[2] White Paper, Proposal 70.

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Orissa.

58. The Statutory Commission describe the union which now exists between Orissa and Bihar as " a glaring example of the artificial connection of areas which are not naturally related ";[1] and the demand of the Ooriyas for separation has been long and insistent. The main difficulty here is a financial one, since Orissa is now and may well remain a deficit area. A separate Province of Orissa would

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however be perhaps the most homogeneous province in the whole of British India, both racially and linguistically; the communal difficulty is practically non-existent; and its claim appears to have the sympathy and support of all parties in India. The financial effect of the creation of the proposed new Province upon the finances of the Federation is discussed elsewhere, and we are satisfied that no difficulties of a financial kind beyond those which already exist are likely to be caused thereby. In these circumstances we recommend that a new Province of Orissa be constituted.

The Central Provinces and the Berars.

59. We may here mention the situation which exists in the Central Provinces in connection with the territory known as the Berars. This territory forms part of the dominions of His Exalted Highness the Nizam of Hyderabad, but has since 1853 been under British administration and in 1902 was made the subject of a perpetual lease granted by His Exalted Highness. It is administered with, but not as part of, the Central Provinces. The inhabitants elect a certain number of representatives, who are then formally nominated as members of the Central Provinces Legislature; and legislation both of that Legislature and of the Central Legislature is applied to the Berars through the machinery of the Foreign Jurisdiction Act. It has been announced that an arrangement has now been made between the Government of India and His Exalted Highness, whereby, without derogation from His Exalted Highness's sovereignty, the Berars shall be administered as part of a new Province to be known as the Central Provinces and the Berars, that is to say, if and when Provincial Autonomy is established under the new Constitution. We have learned with great satisfaction of this arrangement, which will obviate the difficulties which might otherwise have arisen if the setting up of responsible government in the Central Provinces had necessitated a severance between two areas which have so long been in substance, if not in form, under a single administration; and we think that the successful working of Provincial Autonomy in the Central Provinces will owe much to His Exalted Highness's wise and far-seeing action.

Provincial boundaries.

60. The White Paper proposes that the present Governors' Provinces shall retain the boundaries which exist at the present time, with such alterations as the establishment of Sind and Orissa may involve.[2] In the case of Sind, the new Province is to comprise the whole area at present under the jurisdiction of the Commissioner in

[1] Report, Vol. II, para. 38.
[2] White Paper, Proposal 61.

Sind, and it is suggested that the boundaries of Orissa shall be those recommended by a Committee which inquired into the subject in 1932, with certain modifications considered desirable by the Government of India. We understand that in the case of Orissa the boundaries proposed have given rise to local controversy; but the question involves administrative considerations on which we are not competent to express an opinion, and in our judgment it must be left to the Government of India and His Majesty's Government to determine. The White Paper does not refer to the possibility of a future revision or adjustment of provincial boundaries, but provision will have to be made in the Constitution Act for this purpose; and we are clear that it should be a function of the Central Legislature and Government, though the initiative must come from the Provinces concerned.

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Constitution of future Governors' Provinces.

61. It is possible that in the future it may be found desirable to constitute new Governors' Provinces, either by a sub-division or an amalgamation of existing areas. We think that the power to create a new Governor's Province should be reserved to the Crown and to Parliament, but that it should only be exercised on an address from the Central Legislature, and, where an existing Governor's Province is affected, at the request of that Province.

(2) The Provincial Executive

The Provincial Executive.

62. We come now to the proposals of the White Paper on the subject of the Provincial Executive, and it will be convenient in this part of our Report to consider two general questions, first, the Provincial Executive as such, and second, its relation to the Provincial Legislature.

The present Executive.

63. The Statutory Commission in the first part of their Report describe the Provincial Executive as it at present exists, and it is unnecessary for us to repeat in detail what they have already said.[1] In brief, the "provincial subjects" with which the Provincial Executive is now concerned are sub-divided into "transferred subjects" and "reserved subjects." The first group are administered by the Governor acting with Ministers, the second by the Governor in Council. The Members of the Governor's Council, who may not exceed four and of whom by an invariable rule at least half are Indians, are appointed by His Majesty and one at least must have been for not less than twelve years in the service of the Crown in India; the Ministers are appointed by the Governor. The Governor presides at meetings of his Executive Council, where ordinarily the decision of the majority prevails, though the Governor has in case of equality of votes a casting vote and in certain circumstances a right to over-rule his Councillors. The Ministers are chosen by the Governor from the elected members of the Provincial Legislative Council and are not

[1] Report, Vol. I, paras. 156–161.

members of the Executive Council, though in many Provinces both Executive Councillors and Ministers meet regularly under the presidency of the Governor for the purpose of discussing matters of common interest; in Madras, for example, we understand that it has been always the practice to regard Councillors and Ministers as forming as it were a single body, by which all questions of policy are discussed, though the responsibility for actual decisions upon them rests upon the Governor in Council or on the Governor advised by his Ministers, as the case may be, according to the nature of the subject. The Governor is required to be "guided by" the advice of his Ministers in relation to transferred subjects, unless he sees sufficient cause to dissent, in which case he may require action to be taken otherwise than in accordance with that advice. Ministers hold office at the Governor's pleasure, but the financial powers of the Legislature give the latter the means of influencing ministerial policy. The members of Council, though *ex-officio* members of the Legislature, are independent of it and in practice are appointed for a fixed term of five years.

Executive power of authority to be vested in Governor.

64. The White Paper proposes to do away with this dyarchical system. It vests the whole executive power and authority of the Province in the Governor himself, as the representative of the King, and it provides the Governor with a Council of Ministers to "aid and advise" him in all matters, except such matters as will

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be left by the Constitution to the Governor's discretion.[1] The proposal, therefore, is to give Ministers, who (according to the White Paper) may not be officials and will be members of a Legislature to which they will look for support, the constitutional right to advise the Governor over practically the whole of the provincial sphere. It will be observed that Provincial Autonomy does not necessarily imply a system of government of this kind, and the two should not be confused; but, for the reasons which we have given earlier in this Report, we think that the time has now come for enabling Indians to assume a greater measure of responsibility for the government of the Provinces, and in our opinion (though we reserve for subsequent consideration the details of the scheme) the proposal in the White Paper which we have described above is the correct constitutional method of bringing about that result. It is according to precedent, and it is based upon English constitutional theory and practice.

Analogy with British constitutional system.

65. The adoption of English constitutional forms need not, however, imply, and the White Paper does not contemplate, the establishment in each Province of a system analogous in all respects to that which prevails in the United Kingdom at the present day; nor

[1] White Paper, Proposal 66. There will be in a few Provinces certain "Excluded Areas" (*i.e.*, tracts where any advanced form of political organization is unsuited to the primitive character of the inhabitants). These will be administered by the Governor himself and Ministers will have no constitutional right to advise him in connexion with them.

is there any inconsistency in this, as some have supposed. A brief examination of the manner in which from time to time those forms have been adapted in practice to the needs of other communities in allegiance to the Crown will sufficiently make this clear.

British constitutional theory.

66. In English theory all executive power (with certain exceptions not here relevant) is to-day, as it has been from the earliest times, vested in the Monarch. The limits of this power are determined in part by common law and in part by statute, but within those limits the manner of its exercise is not subject to any legal fetter, save in so far as a statute may specify formalities for the doing of a particular executive act. But at all times in English history the Monarch has had counsellors to aid and advise him in the exercise of his power, and their status and functions at different periods mark the successive stages of constitutional development. The great nobles, who had claimed a prescriptive right to be consulted and who were often powerful enough to subject to their will a weak or reluctant King, gave place, as the complexity of government increased, to a more permanent Council, whose members were the King's servants, selected by him from nobles and commoners alike, whom he consulted or not as he pleased, and who became the instruments of his own policy. The growing influence of the House of Commons at a later date made it necessary for the King always to number among his advisers persons who were members of that body; and the last stage was reached when he sought the advice, not of the Council as a whole, but only of those members of it who represented the predominant political party of the day. By the middle of the 19th century, constitutional usage and practice had so far supplemented constitutional law that the powers possessed in legal theory by the Sovereign were almost entirely exercised on the advice of Ministers possessing for the time being the confidence of Parliament.

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Its flexibility.

67. This ingenious and convenient adjustment of a legal framework to the successive stages of political evolution has given a flexibility to the English Constitution which it would have been impossible to secure by any Act of Parliament or written Declaration of Rights. To imprison constitutional practice and usage within the four corners of a written document is to run the risk of making it barren for the future. This was foreseen by the framers of those Dominion and Colonial Constitutions which have followed the British model; and, since it by no means followed that the circumstances of a new State were appropriate for the application of the whole body of English doctrine in its most highly developed form, recourse was had to another device, no less flexible, for the purpose of indicating to the Governor-General or Governor how far in the exercise of the executive power he was to regard himself as bound by English precedent and analogy. This is the Instrument of Instructions; and, though Dominion and Colonial Constitutions, and especially the former, necessarily embody much that is still

regulated by usage and custom in the United Kingdom, the Instrument of Instructions long preserved (and in many cases still preserves) a sphere in which constitutional evolution might continue without involving any change in the legal framework of the Constitution itself.

Adaptation to different stages of constitutional development.

68. It has thus been found possible in communities in every state of development which possess constitutions based upon the English model, without doing violence to existing forms of government, to bring them into harmony with the political circumstances of the time. Constitutional usage and practice is an ever changing body of doctrine and not an immutable body of dogma; nor can it be assumed *a priori* that usage and practice which may be eminently adapted to the circumstances of the United Kingdom can be applied without any qualification to the circumstances of India. This would be to assume that the political development in India has reached the same stage as in this country, and we shall not be taken as implying either censure or criticism, if we say that the facts are notoriously otherwise. The picture presented by India is that of a country with a population so far from homogeneous and so divided by racial and religious antagonisms that government by unqualified majority rule is admittedly impossible at the present time; and the proposal of the White Paper that even the Governor's Council of Ministers should be so constituted as to include as far as possible members of important minority communities appears to be firmly supported by the great mass of Indian political opinion.

Governor's power to dissent from Ministers' advice.

69. The White Paper recognises, rightly as it seems to us, that in these circumstances the Governor, in whom the executive power of the Province is legally vested, may from time to time have to exercise on his own responsibility powers which elsewhere and under other conditions might be exercised on the advice of Ministers.[1] It is permissible to recall the religious and political conflicts which distracted our own country for so many generations before the settlement which followed the events of 1688. It is not until after that date that the beginnings of responsible government, as we now know it, are to be found; and for many years the Monarch, even if he sought the advice of Ministers continued to act on his own judgment in every branch of the administration. Not until the two great parties in the State could trust each other not to abuse the political power which the hazard of the polls might place in the hands of one

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of them would it have been possible effectively to secure peace and good government without the presence of some authority able and willing to exercise that power independently of both.

The instrument of Instructions.

70. It would be possible to rely entirely upon prerogative instruments for the purpose of adapting English constitutional practice to the conditions which obtain to-day in India. Thus the Instrument of Instructions might direct the Governor to be guided generally

[1] White Paper, Proposals 70–73.

by the advice which he receives from his Ministers, but reserve to him a very wide discretion to act upon his own responsibility when the circumstances seemed so to require; and for this plan many precedents are to be found in the history of Colonial Constitutions. Or the Instrument might specify certain particular matters with regard to which the Governor is to exercise his own discretion, whatever the advice of his Ministers might be; and precedents for this are also to be found. The White Paper, however, introduces a new method for which, so far as we are aware, no exact precedent is to be found, but which is not hastily to be rejected on that account. It proposes that the Constitution Act shall declare that for certain specified purposes the Governor is to have a "special responsibility,"[1] and we understand the intention to be that the Instrument of Instructions shall refer in terms to these special responsibilities and direct the Governor, where in his opinion one of them is involved, to take such action as he thinks that the circumstances may require, even if this means dissenting from the advice tendered to him by his Ministers; while in other matters he will be guided by that advice.

Relations between Governor and Ministers.

71. We have already pointed out that in the present Government of India Act there is a provision which requires the Governor to be "guided by" the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion. The White Paper, as we read it, does not propose that the Constitution Act itself shall contain any provisions on this subject; it provides that the Governor shall have a Council of Ministers to aid and advise him, but leaves his relations with his Ministers to be determined wholly by the Instrument of Instructions. We approve this departure from the provisions of the existing Act, for to impose a statutory obligation on the Governor to be guided by ministerial advice is to convert a constitutional convention into a rule of law, and thus perhaps to bring it, most undesirably, within the cognizance of the Courts. We are also of opinion that to declare in the Act itself that certain special responsibilities are to rest upon the Governor instead of leaving them to be enumerated hereafter in the Instrument of Instructions is a plan which has much to commend it. In the first place, it will be an assurance to Indian public opinion that the discretionary power of the Governor to dissent from his Ministers' advice is not intended to be unlimited; and secondly, it will secure to Parliament the right to consider and debate the scope of the Governor's powers, before the Constitution Bill passes finally from their control.

Constitutional implications of Governor's "special responsibilities."

72. We do not understand the declaration of a special responsibility with respect to a particular matter to mean or even to suggest that on every occasion when a question relating to that matter comes up for decision, the decision is to be that of the Governor to the exclusion of his Ministers. In no sense does it define a sphere from which the

[1] White Paper, Proposal 70.

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action of Ministers is excluded. In our view, it does no more than indicate a sphere of action in which it will be constitutionally proper for the Governor, after receiving ministerial advice, to signify his dissent from it and even to act in opposition to it, if in his own unfettered judgment he is of opinion that the circumstances of the case so require. Nor do we anticipate that the occasions on which a Governor will find it necessary so to dissent or to act in opposition to the advice given to him are in normal circumstances likely to be numerous ; and certainly they will not be, as some appear to think, of daily occurrence. We leave for later consideration the list of the special responsibilities themselves and the manner in which they are defined ; but, if we have rightly appreciated their place in the Constitution, it appears to us unnecessary to seek to define them with meticulous accuracy, though we readily admit that their general scope and purpose should be set out with sufficient precision.

Parliament and the Instrument of Instructions.

73. The White Paper proposes a novel procedure in connexion with the Instrument of Instructions, viz., that an opportunity shall be given to Parliament of expressing an opinion upon it before it is finally issued by the Crown.[1] There is, we think, ample justification for this proposal, which has been rightly extended not only to the original Instrument but also to any subsequent amendments of it ; and we are satisfied that in no other way can Parliament so effectively exercise an influence upon Indian constitutional development. It is essential that the vital importance of the Instrument of Instructions in the evolution of the new Indian Constitution should be fully appreciated. Thus, Ministers would have no constitutional right under the Act to tender advice upon a matter declared by the Act to be within the Governor's own discretion ; but the Governor could in any event, and doubtless often would, consult them before his own decision was made ; and if at some future time it seemed that this power of consultation might with safety be made mandatory and not permissive, we can see nothing inconsistent with the Act in an amendment of the Instrument of Instructions for such a purpose. But so grave are the issues involved in the Indian constitutional problem that it would be neither wise nor safe in the case of India to deny Parliament a voice in the determination of the progressive stages of that evolution. The initiative in proposing any change in the Instrument must necessarily rest with the Crown's advisers, that is to say, with the government of the day ; but the consequences of any action taken may be so far reaching and so difficult to foresee that Parliament, if denied a prior right of intervention, may find itself compromised in the discharge of the responsibilities which it has assumed towards India, and yet powerless to do anything save to protect. For this reason we are clearly of opinion that, as the White Paper proposes, it is with Parliament that the final word should rest.

[1] White Paper, Proposal 64.

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Special questions connected with the Executive.

74. We have now considered the nature of the Provincial Executive in broad outline ; but five questions of capital importance which arise in connexion with the subject remain to be examined. These are : (i) The nature of the Governor's special responsibilities ; (ii) the Governor's selection of Ministers ; (iii) the field in which Ministers are to be entitled to advise the Governor ; (iv) the arrangements whereby the Governor will secure that his information with

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regard to the current affairs of the Province is adequate to enable him to discharge his special responsibilities; (v) the special and additional powers, if any, which the Governor ought to possess.

(i) *Nature of the Governor's Special Responsibilities*

The Governor's "special responsibilities" defined.

75. It is proposed in the White Paper that the Governor shall have a special responsibility in respect of—

(*a*) the prevention of any grave menace to the peace or tranquillity of the Province, or any part thereof; (*b*) the safeguarding of the legitimate interests of minorities; (*c*) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests; (*d*) the prevention of commercial discrimination; (*e*) the protection of the rights of any Indian State; (*f*) the administration of areas declared, in accordance with provisions in that behalf, to be partially excluded areas; (*g*) securing the execution of orders lawfully issued by the Governor-General.[1]

The Governors of the North West Frontier Province and of the proposed new Province of Sind are respectively declared to have in addition a special responsibility in respect of—

(*h*) any matter affecting the Governor's responsibilities as Agent of the Governor-General in the Tribal and the Trans-Border Areas; and (*i*) the administration of the Sukkur Barrage.

Peace and tranquillity of the Province, Minorities, Public Services.

76. With regard to (*a*), the Joint Memorandum of the British-India Delegation urges a double limitation on the scope of this special responsibility; the first, that the special responsibility itself should be restricted to cases in which the menace arises from subversive movements or activities tending to crimes of violence; and secondly, that any action taken by the Governor under it should be confined to the Department of Law and Order. We cannot accept these suggestions. Terrorist, subversive movements, and crimes of violence, are no doubt among the graver menaces to the peace or tranquillity of a Province; but they do not by any means exhaust the cases in which such a menace may occur, and we can see no logical reason for the distinction which the Joint Memorandum seeks to draw. Still less can we see any justification for restricting the Governor's action to the department of law and order, by which

[1] White Paper, Proposal 70.

we suppose is meant the Police Department. There are many other branches of administration in which ill-advised measures may give rise to a menace to the peace or tranquillity of the Province; and we can readily conceive circumstances in connection with land revenue or public health, to mention no others, which might well have this effect. With regard to (*b*), the Joint Memorandum suggests that the phrase "legitimate interests" should be more clearly defined, and that it should be made clear that the minorities referred to are the racial and religious minorities generally included by usage in that expression. We doubt if it would be possible to define "legitimate interests" any more precisely. The obvious intention is to secure some means by which minorities can be reasonably assured of fair treatment at the hands of majorities, and "legitimate interests" seems to us a very suitable and reasonable formula. Nor do we think that any good purpose would be served by attempting to give a legal definition of "minorities," the only effect of which would be to limit the protection which the Governor's special responsibility is intended to afford. No doubt it will be the five or six well recognised and

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more important minorities in whose interests the Governor's powers will usually be invoked; but there are certainly other well-defined sections of the population who may from time to time require protection, and we can see no justification for defining the expression for the purpose of excluding them. We need hardly say that we have not in mind a minority in the political or parliamentary sense, and no reasonable person would, we think, ever so construe the word. With regard to (*c*), the Joint Memorandum proposes that here also the expression "legitimate interests" should be clearly defined, and that the Governor's special responsibilities should be restricted to the rights and privileges guaranteed by the Constitution. We assume that the intention of the White Paper is to guarantee to public servants not only their legal rights but also equitable treatment, a thing not susceptible in our opinion of legal definition. The authors of the Joint Memorandum would no doubt say that Ministers can be trusted to act in these matters in a reasonable way, and we do not doubt that this is so; but we think that they should also assume that neither will Provincial Governors act unreasonably in discharging the special responsibilities which the Constitution Act will impose upon them. If Ministers in fact act reasonably, as no doubt they will, the occasions on which a Governor will find it necessary to dissent from the advice which they tender to him may never in practice arise.

Rights of States Partially Excluded Areas.

77. We discuss elsewhere (*d*), *i.e.*, the prevention of commercial discrimination. With regard to (*e*), the "rights" here referred to must necessarily mean rights enjoyed by a State in matters not covered by its Instrument of Accession,[1] which may be prejudiced by administrative or legislative action in a neighbouring Province. The duty, as we understand it, is laid on the Governor to secure

[1] See *infra*, para. 152.

that the balance is held evenly between Province and State, and clearly in a matter of this kind he will be guided by the advice or directions of the Governor General. With regard to (*f*), the responsibility for the government of partially excluded (as opposed to wholly excluded) areas will primarily rest upon Ministers; but we agree that, in view of the responsibility which Parliament has assumed towards the inhabitants of the backward and less civilised tracts in India, it is right to impose a special responsibility in this respect upon the Governor.

Execution of orders of Governor-General.

78. With regard to (*g*), it is clear that this must be a special responsibility of the Governor. The Governor-General exercises a wide range of powers in responsibility to the Secretary of State and through him to Parliament. The exercise of some of these powers may from time to time require the co-operation of provincial administrations, and a Governor must be in a position to give effect to any directions or orders of the Governor-General designed to secure this object, even if their execution may not be acceptable to his own Ministers. We refer elsewhere to the case where a difference of opinion has occurred between Federal and Provincial Ministers in the ministerial sphere, arising out of directions given by the former which the latter are unwilling to obey.[1]

Special circumstances of North-West Frontier Province and Sind.

79. With regard to (*h*), it is apparent that the close connection between the Governor-General's exclusive responsibility for Defence and External Affairs and the administration of the Tribal and other Trans-border Areas which march with the administered districts of the North-West Frontier Province makes a provision of this kind

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necessary. With regard to (*i*), we agree that this special responsibility is necessary in the case of Sind, in view of the vital influence upon the future finances of the Province of the successful operation of the Sukkur irrigation scheme and of the large financial interest which the Central Government has in it.

(ii) *The Governor's Selection of Ministers*

Qualifications proposed for Ministers.

80. The White Paper proposes that the Instrument of Instructions shall direct the Governor to select his Ministers in consultation with the person who in his judgment is likely to command the largest following in the legislatures, and to appoint those persons, including so far as possible members of important minority communities, who will best be in a position collectively to command the confidence of the Legislature. It is also proposed that Ministers must be, or become within a stated period (by which we understand a period of six or twelve months to be intended) members of the Legislature.[2]

[1] *Infra*, paras. 220–221.
[2] White Paper, Proposal 66.

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Ministerial responsibility and representation of communities.

81. The question how a direction to the Governor to include among his Ministers, so far as possible, members of important minority communities is to be reconciled with ministerial responsibility, in the accepted sense of that expression, to a Legislature which is itself based on a system of communal representation and in which the numbers of the representatives of the different communities are fixed by statute and unalterable, will be more conveniently discussed later when we examine the more general question of the relation of the Provincial Executive to the Provincial Legislature.[1] We accordingly confine ourselves here to a consideration of the proposal in the White Paper that every Minister shall be, or become within a stated period, a member of the Legislature.

Difficulties of proposal that Ministers should be elected Members of Legislature.

82. Indian opinion appears to attach great importance to this qualification as securing in the most effective manner control by the Legislature over the Executive. It is unknown to the constitutional law of the United Kingdom; but it has long been the rule in this country that a Minister must either find a seat within a reasonable time or resign his appointment, unless the Prime Minister should see fit to recommend him for a peerage; so that the qualification exists in practice, if not in law, though during the War there were instances of Ministers who had a seat in neither House. On the other hand we were impressed by the argument that at least in some Provinces the Governor might find it difficult to constitute an efficient Ministry from the members of a small and inexperienced Legislature; and it is no doubt true that in India owing to the very small proportion which the educated classes bear to the total population, there is no certainty that in the smaller Provinces the Legislatures will always contain men fit or experienced enough to assume the heavy responsibilities which Provincial Autonomy under the new order must necessarily involve. It was, therefore, suggested to us that the Governor ought not to be thus restricted in his choice, and that he ought to be in a position, if the need should arise, to select a Minister or Ministers from persons otherwise qualified for appointment but to whom the doubtful pleasures of electioneering might make no appeal.

Suggested methods for meeting difficulty.

83. In the Provinces with a bicameral Legislature, in which a nominated element will find a place, the difficulty is unlikely to arise, if it were understood, or perhaps provided in the Act itself, that these nominations were reserved to the Governor's discretion

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40 The real difficulty arises in the unicameral Legislatures, most of which are likely to be found in the smaller and poorer Provinces. Various suggestions were made to us : (1) that the Governor should be empowered, if he thought fit, to appoint a Minister from outside the Legislature, the Minister so appointed having
45 precisely the same status as other Ministers and sharing their policy and political fortunes, with the right to take part in all proceedings of

[1] *Infra*, paras. 108–113.

the Legislature, though not entitled to vote ; (2) that in addition to the elected members, there should be one or two members nominated by the Governor, who would be eligible for appointment as Ministers, though not necessarily so appointed ; (3) that the Governor should be
5 empowered, if he desired to have an outside Minister, to nominate the person whom he selected as a member *ad hoc* of the Legislature ; and (4) that the Ministers themselves should be empowered, if so requested by the Governor, to co-opt someone from outside and present him to the Governor for appointment. Of these suggestions, we un-
10 hesitatingly prefer the first. We can see no advantage, and many disadvantages, in the second and third, both of which appear to us to have an air of unreality about them ; and we reject the fourth as infringing the Governor's prerogative.

Governor's choice should not be fettered.

15 consideration to the matter, that it would be wise in the circumstances not to limit the Governor's choice of Ministers in the manner proposed by the White Paper, and that the first of the above suggestions should be adopted. The fear that the control of the Legislature over Ministers would be thereby weakened is, in our
20 opinion, greatly exaggerated ; in France, for example, where instances of Ministers appointed from outside the two Chambers are by no means unknown, there seems to be no evidence of any weakening of Parliamentary control over the Governments of which they were members. We cannot suppose for a moment that a
25 Governor would employ a power of this kind for the purpose of appointing a whole Ministry from outside the Legislature, but, if this is thought to be a danger to be guarded against, the matter can be dealt with by appropriate directions in the Instrument of Instructions. The Indian delegates, we think, saw in the unrestricted
30 choice of Ministers a means of re-introducing an official bloc, and it is true that one of the proposals in the White Paper is that the holding of any office under the Crown other than that of Minister shall disqualify for membership of a Provincial Legislature, so that no official could become a Minister, if membership of the
35 Legislature is a necessary qualification for Ministerial appointments. In our view an official bloc is more correctly defined as a body of members of the Legislature who vote in accordance with official instructions, but who are not themselves Ministers or members of the Government. The presence in the
40 Council of Ministers of a Minister who is chosen from outside the Legislature, even supposing him to be an official (which we do not suggest), could not in any way restrict or diminish the control of the Legislature over Ministers ; a Minister so chosen will not be less responsible to the Legislature than any of his colleagues ; and
45 he will have to defend his actions against criticisms in the Legislature itself. We see, therefore, nothing inconsistent with constitutional principle in what we now propose, and we are of opinion that it will often be found to add an element of strength

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to the Provincial Executive. We need, however, scarcely say that a Governor would be very unwise to appoint a Minister in this way unless he had satisfied himself that the other Ministers were willing to accept him as a colleague.

(iii) *The Sphere of Action of Ministers*

Law and order.

85. The White Paper, as we have already stated, proposes that Ministers shall advise the Governor in all matters other than the administration of Excluded Areas and matters left by law to the Governor's own discretion. With regard to the first of these two exceptions, we approve the conclusions, and are content to adopt the arguments, of the Statutory Commission; and with regard to the second, such matters must *ex hypothesi* be left to the Governor's sole decision, though he may, and no doubt often will, consult Ministers upon them. With regard to other matters which fall within the provincial sphere, the only question, but one of first rate importance, on which there is any substantial dispute, is whether the administration of the subjects known compendiously as "law and order" should be retained in the Governor's hands.

Arguments for and against transfer.

86. This question is one on which strong views are held on both sides. On the one hand, it is urged that the grant of responsible government to an autonomous Province would be a mockery, if the administration of law and order were withheld. On the other, it is objected that the maintenance of law and order is in India so vital a function of the Executive that it would be incurring too great a risk to transfer it to Indian Ministers, until they had proved their capacity in other and less dangerous fields; that the morale of the police would be imperilled by political pressure upon Ministers, which they might not have the strength or courage to resist; and that the impartiality of the force in the event of communal disturbances might become suspect. It would be idle to deny the force of these arguments, especially when it is remembered that the public order and security of a Province depends not more on the executive action of the police than on the efficient performance of his administrative, as distinguished from judicial, functions by the district magistrate, who would under the proposals in the White Paper equally be subject to the control of a Minister. Nevertheless, after an anxious consideration of all the circumstances, we do not see our way to differ from the conclusion reached, not without hesitation, by the Statutory Commission.

Control of law and order an essential attribute of responsible government.

87. We find ourselves unable to conceive a government to which the quality of responsibility could be attributed if it were prohibited from exercising the first and most fundamental of all functions of government, that of the preservation of order. In no other sphere has the word "responsibility" so profound and

[1] White Paper, Proposal 70 (*a*).

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significant a meaning; and we doubt whether Ministers who are denied the opportunity of learning responsibility in this sphere are ever likely to become proficient in the other arts of government. From one point of view indeed the transfer of these functions to an Indian Minister may be in the interest of the police themselves, whom it will no longer be possible to attack, as they have been attacked in the past, as agents of oppression acting on behalf of an alien power; but we prefer to base our conclusion

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upon the broader grounds indicated above. Nevertheless, it must not be supposed that we are blind to the risks implicit in the course which we advocate; for these, in our opinion, cannot be regarded lightly or as the phantoms of a reactionary imagination. The qualities most essential in a police force, discipline, impartiality, and confidence in its officers, are precisely those which would be most quickly undermined by any suspicion of political influence or pressure exercised from above; and it would indeed be disastrous if in any Province the police force, to whose constancy and discipline in most difficult circumstances India owes a debt not easily to be repaid, were to be sacrificed to the exigencies of a party or to appease the political supporters of a Minister. If, however, Indian Ministers are to be given an opportunity of showing the stuff of which they are made, as we think they must, these are risks which must be run. Nothing will afford a more conclusive test of the fitness of Indians to govern themselves than their handling of this particular problem; and by their success or failure public opinion both in this country and in India will judge them.

The Governor's special responsibility.

88. There are, however, other proposals in the White Paper which have a very important bearing upon this question. In the first place, it will be remembered that one of the matters in respect of which the Governor is declared to have a special responsibility is "the prevention of any grave menace to the peace or tranquillity of the province or any part thereof." If, therefore, the Governor should be of opinion that the administration of law and order is, through the action or inaction of Ministers, jeopardizing the peace or tranquillity of the province, it will be open to him to take such action as he may think fit to meet the situation. This does not, of course, imply interference in the routine administration of the police force; so to interfere would obviously diminish the sense of responsibility in Ministers and would not be in the interest of the police force itself. But if, by reason of ill-timed measures of economy or of the exertion of political or other improper influence upon the force, the preservation of order were endangered, then, in our opinion, the intervention of the Governor under his special responsibility would be justified. We are not to be taken as assuming that such a state of things must necessarily arise; we only point out that, if it should, the White Paper does not leave the Governor without a remedy. Secondly, another special

[1] White Paper, Proposal 70 (*c*).

responsibility of the Governor is "the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests." These are important safeguards, and should go far to qualify the fears of those who are apprehensive lest the high quality and standards of the present police forces will suffer with their transfer to the control of Indian Ministers.

The Police Rules.

89. The importance in this connection of the body of regulations known as the Police Rules was brought to our notice. The administration of the police is largely governed by these rules, which are promulgated from time to time under powers given to various Police Acts; and it was suggested to us that provision ought to be made giving the Governor a discretionary power to assent to, or dissent from, any proposed alteration in the rules. We do not doubt that the efficiency, and perhaps the discipline, of a police force might be

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affected by amendments of a particular kind; but to give so extensive a power to the Governor seems to us neither necessary nor desirable. In the first place, we understand that a large number of the rules deal with routine matters of quite minor importance, and are constantly amended in effect on the responsibility of the Inspector-General of Police himself; and it would clearly be absurd if every amendment of this kind required the Governor's concurrence. On the other hand, it may well be that the subject matter of some of the rules is so vital to the well-being of the police force that they ought not to be amended without at least the Governor's knowledge. We have not been able in the time at our disposal to make a minute study of the rules; but if His Majesty's Government, after a further examination of the subject, came to the conclusion that certain rules were properly included in a category of this kind and made special provision with regard to them, and possibly also with regard to the Police Acts themselves, in the legislative proposals which they will submit to Parliament, we should be prepared to agree; nor can we see why a safeguard of this kind need operate in any way to diminish the responsibility for the administration of law and order, which, as we have already said, we think should in future rest upon Indian Ministers themselves.

The Special Branch.

90. There is one other matter which arises in connection with the police and to which we think it convenient to draw attention in this place. It has been represented to us very forcibly that, whatever may be the decision with regard to the transfer of law and order generally, special provision ought to be made with regard to that branch of the police which is concerned with the suppression of terrorism. We do not here refer to those members of the police who are occupied in combating terrorism as part of their regular functions in the prevention of crime and maintenance of order, but to that which is sometimes known as the Special Branch, a body of carefully selected officers who devote themselves to the collection and sifting of information on which their comrades in the force can subsequently

take action. Their work necessarily involves the employment of confidential agents and others from whom the information is obtained; and it is stated to us, and we see no reason to doubt the fact, that the supply of information derived from these sources would at once cease, if the identity of those who furnished it became known, or might become known, outside the police force itself. This being so, it has been urged that the operations of the Special Branch ought to be placed under the exclusive control of the Governor, since otherwise the organisation which at present exists, and which is an essential instrument in the fight against terrorism, would be disrupted, and would be difficult, and perhaps impossible, to reconstitute.

Secret intelligence reports.

91. The problem is a difficult one, though at the moment it is only of immediate importance in the Province of Bengal. The Special Branch is an integral part of the police force and is in no sense independent of the provincial Inspector-General of Police. It is exclusively concerned with the collection and sifting of information, and any executive action which may follow from its investigations is undertaken by the ordinary police force. But if it is impossible to distinguish between the two, then (it is said) an Indian Minister, who may have to defend subsequently before the Legislature an arrest or prosecution made or begun by his orders, must have the right to satisfy himself that the information is trustworthy on which he is invited to act, and the

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names of the agents from whom it has been obtained could not in the last resort be withheld from him. We think that those who argue thus are not acquainted with the general practice in matters of this kind. We are informed by those who have experience in such matters in this country that in a secret service case the names of agents are in no circumstances disclosed to Ministers, and that (for reasons which we fully appreciate) a case has never been known in which a Minister has even asked for the information. We think that Indian Ministers, if and when they take over the administration of law and order, would be wise themselves to adopt so salutary a convention; but we are satisfied that the difficulty arises, not because Indian Ministers are likely to disclose the names of agents or even to demand them, but because the agents have an ineradicable suspicion that the information will in fact become known. So long as this suspicion or belief exists, the consequences are the same, whether it is ill-founded or not.

Powers of Governor.

92. We do not think it desirable that the Constitution Act should vest in the Governor himself the control of the Special Branch. On the other hand we can conceive a state of things arising in which the discharge of the special responsibility to which we have referred above might make it necessary for him to direct the Inspector-General of Police in the Province in no circumstances to disclose the source of any information which may be obtained by the Special Branch to any person whatsoever without the Governor's prior approval. It might even be thought advisable to refer to this possibility in his Instrument of Instructions. But the necessity

for action of this kind could scarcely arise, unless the efforts of the police in the suppression of terrorism had not the sympathy, or at least failed to gain the support, of Ministers, a possibility which we hope that we may regard as remote; and in that case it would in our opinion be preferable to empower the Governor, with the consent of the Governor-General, to take over and administer himself the whole anti-terrorist organisation until such time as he and the Governor-General are satisfied, perhaps after a change of Ministry, that it can be safely entrusted once more to those whose constitutional duty it is to see that the law is properly enforced. This would, we think involve the appointment of some person selected by the Governor at his discretion to act as his spokesman for the time being in the Legislature. We might add that it was suggested to us as an alternative proposal that the Special Branches throughout India should in future be under the control of the Governor-General, since there is at the present time an Intelligence Service under the control of the Central Government which necessarily works in close contact with all the provincial police forces. This, however, would involve the creation of a new reserved service under the control of the Governor-General, a course which we should deprecate. In our opinion it would be a more convenient arrangement if in future the intelligence work at the Centre in its internal security aspect were assigned to the Department of Defence as part of the latter's normal functions. The central intelligence service would in that case continue to act as a clearing house for information generally, and the local police would be able, and no doubt anxious, to avail themselves of its services; but to impose on the Governor-General any statutory functions in relation to the police administration of a Province seems to us a plan which has nothing to commend it.

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(iv) *The Governor and the Provincial Administration*

Relations between Governor and provincial administration.

93. The question has been raised whether the Governor under a provincial Constitution such as is now proposed will have at his disposal sufficient information as to the current affairs of the Province to enable him to take timely action in a case where the due discharge of any of his special responsibilities seems to call for his intervention. This is a vital issue, for the special powers of the Governor would be entirely nugatory if, by reason of his divorce from current administrative business, the circumstances which might require the exercise of those powers were brought too late to his notice. In our opinion, however, the proposals in the White Paper, if fully carried into effect, are adequate for the Governor's protection in this respect.

Importance of the office of Governor.

94. The Governor's office is at the present time one of great prestige and authority. Of a large part of the Provincial Administration he is not only the titular but the actual head; and in the administration of the "transferred subjects" also, where he is even now guided by the advice of Ministers, he is able to exercise an influence, both legitimate and constitutional, to an extent for

which it would probably be difficult to find analogies in the more politically developed States of Europe and America. He presides at meetings of his Ministers, and they are accustomed to look to him for assistance and support; and we see no reason why for many years to come a Council of Ministers, advising over the whole field, and not only over a part, of the provincial administration, should be anxious to deprive themselves of the assistance which a Governor of ripe experience will be able to give them, or regard themselves as representatives of an opposing interest. On the other hand, it has been pointed out to us that much of the information of the Governor with regard to current affairs is derived from his intercourse with the Secretaries to Government, almost always members of the Civil Service, who by a practice of long standing enjoy the right of regular access to him for the purpose of discussing cases which in their view merit his personal attention; and obviously the Governor as the head of the provincial Executive will have the unquestionable right to send for and to see any officer of his Government at any time. No doubt under a different order such personal communication between a Governor and the Secretaries would not occur without the assent, express or implied, of the Ministers concerned; but we find it difficult to suppose either that that assent would be withheld or that a Minister would not be kept fully acquainted by the Secretary in charge of the Minister's department with any discussion which had taken place between himself and the Governor. Nevertheless, we recognise that, not only for the avoidance of error or misunderstanding, but also as a protection to the Governor in cases where his relations with Ministers may not be always harmonious, it is well to put certain specific powers in the Governor's hands.

Rules of Executive business.

95. The White Paper authorises the Governor, after consultation with his Ministers, to make, at his discretion, any rules which he regards as requisite to regulate the disposal of Government business and the procedure to be observed in its conduct, and for the transmission to himself of all such information as he may direct.[1] We understand that both the distribution and conduct of public business have in India long been regulated almost entirely by rules of this kind, and there is therefore nothing strange or novel in the proposal. The Governor's rules under the new Constitution will no doubt

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require to be framed on rather different lines, and, if they are modified in some directions, to be expanded in others; but we see no ground for supposing that the rule making power cannot be adapted to meet all the reasonable requirements of the case. It would, for example, be competent for the Governor to prescribe by rule that orders on certain specified matters are not to be passed unless the decision on them has been initialled by himself. This would ensure that all matters in that particular sphere were at least brought to his attention before action was

[1] White Paper, Proposal 69.

taken upon them. We are not suggesting that the decision taken would on that account be the Governor's alone, without, or contrary to, the advice of his Ministers. Unless his special responsibilities were involved, his decision would be guided by their advice; but that advice would be given after discussion, and the Governor would be in a position, if he had views of his own on the matter, to invite Ministers to weigh and consider them before their advice is given. We give the above as an example only, for we do not conceive it our duty, even if we had the necessary special knowledge to make recommendations on all the matters which the rule making power could possibly include. But we think there ought in any case to be a rule laying down with precision the relations between the Governor, his Ministers, and the Secretaries to Government. If it is to be the Council of Ministers who will in future aid and advise the Governor, it is plain that the Governor can no longer be advised directly and independently by the Secretaries to Government; but we should regard it as extremely unfortunate if the latter were deprived of access to the Governor or prevented from submitting to him such papers as in their opinion he ought to see. We do not attempt to lay down the form which rules for this purpose should take; but it is a matter to which we attach considerable importance and it is one to which we desire to draw the special attention of His Majesty's Government.

The Governor's Staff.

96. It is essential that the Governor should have at his disposal an adequate personal and secretarial staff of his own. This is recognised in the White Paper, where it is proposed (rightly, in our opinion) that the salary and allowances of such a staff are to be fixed by Order in Council, and, though included in the annual proposals for the appropriation of revenue, are not to be submitted to the vote of the Legislature.[1] We think also that there should be at the head of this staff a capable and experienced officer of high standing. Such an officer would be a man fully conversant with the current affairs of the Province and in close contact with the administration; but we do not for a moment contemplate that he should exercise any executive functions himself; still less, as some of the Indian delegates seemed to think, that he should occupy in any sense a position analogous to that of a Deputy-Governor. But so long as a sphere remains in which the Governor is not necessarily guided by the advice of Ministers, we cannot doubt that the Governor will require the assistance which an officer of this kind can give. There is no precise analogy between his position, as we conceive it, and that of any present-day civil servant in Whitehall; and we have no doubt that his duties will vary from time to time as constitutional practice and usage grows. In some respects he will occupy the position at present filled by the Governor's Private

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Secretary, but we think it right that he should in future be known by some other designation, and we suggest for consideration that of Secretary to the Governor.

[1] White Paper, Proposal 65.

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Influence of Governor on working of responsible government.

97. It is clear that the successful working of responsible government in the Provinces will be very greatly influenced by the character and experience of the provincial Governors. We concur with everything which has been said by the Statutory Commission on the part which the Governors have played in the working of the reforms of 1919,[1] and we do not think that the part which they will play in the future will be any less important or valuable. We take note here, though the matter is not altogether relevant to the subject which we have been discussing, of a suggestion pressed by some of the British India Delegation that in future Governors should always be appointed from the United Kingdom and indeed that there should be a statutory prohibition against the appointment of persons who are members of the Indian Civil Service. We cannot accept this suggestion. We hold strongly the view that His Majesty's selection of Governors ought not to be fettered in any way; and, that there may be no misunderstanding on the point, we desire to state our belief that, in the future no less than in the past, men in every way fitted for appointment as the Governor of a Province will be found among members of the Civil Service who have distinguished themselves elsewhere in India.

(v) *Special Powers of Governor*

Governor's special powers.

98. It is plain that, for the due discharge of his special responsibilities, it may not always suffice for the Governor to be able to dissent from the advice tendered to him by Ministers; in some circumstances it may be essential that further powers should be at his disposal. This is recognised in the White Paper, in which it is proposed to give the Governor certain legislative and financial powers. The powers which it is proposed to entrust to the Governor in the event of the breakdown in the constitutional machinery may also be considered under this head.

Legislative powers.

99. As regards legislative powers, the White Paper proposes to empower the Governor at his discretion, to present, or cause to be presented, a Bill to the Legislature with a Message that it is essential, having regard to any of his special responsibilities, that the Bill should become law before a date specified in the Message, and to declare by Message in respect of any Bill already introduced that it should for similar reasons become law before a stated date in a form specified in the Message.[2] If before the date specified the Bill is not passed, or is not passed in the specified form, as the case may be, the Governor will be empowered at his discretion to enact it as a Governor's Act, either with or without any amendments made by the Legislature after receipt of his Message. Under the present Government of India Act, where a provincial Legislature has refused leave to introduce, or has failed to pass in the form recommended by the Governor, any Bill relating to a reserved subject, the Governor may

[1] Report, Vol. I, para. 165.
[2] White Paper, Proposal 92

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certify that the passage of the Bill is essential for the discharge of his responsibility for the subject and thereupon the Bill shall be deemed to have passed and shall, on signature by the Governor,

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become an Act of the Legislature. It will be seen, therefore, that one difference between the existing procedure and that which is now proposed is that in the former case a certified Bill is deemed to be an Act of the Legislature, whereas in the latter it is declared to be (what indeed it is) a Governor's Act. So far as this difference in nomenclature is concerned, we concur in the proposal of the White Paper, for we can see no possible advantage in describing an Act as the Act of the Legislature, when the Legislature has expressly declined to enact it. But the members of the British India Delegation desired to go further, and, though they did not dissent from giving the Governor the power in appropriate circumstances to enact legislation, urged that he should do so on his own exclusive responsibility, and that the Legislature ought not to be associated with the process in any way. In their view the proposals in the White Paper tended in the first place to blur the respective responsibilities of Governor and Legislature, and in the second to enable the Governor to seek support in the Legislature against his Ministers and thus to undermine the position of the latter.

Governor's powers should be exercised independently of Legislature.

100. There is much force in the British India argument, and if we thought that the intention, or even the effect, of the proposal were to enable the Governor to go behind the back of his Ministers for the purpose of securing the passage of legislation which they themselves were unwilling to sponsor, we think that the argument would be conclusive. We are not, however, clear that this is necessarily so. We agree that, if a Governor finds it necessary to make use of his special legislative powers, the responsibility for using them must be his alone, and that he ought not to seek to persuade the Legislature to take any part of it upon themselves. On the other hand, though it is no less undesirable that the Governor should, save in most exceptional circumstances, exercise a power which is ordinarily the prerogative of the Legislature, there is much to be said for giving the Legislature up to the eleventh hour an opportunity to reconsider legislative proposals which perhaps they have declined for political or party reasons to consider upon the merits, and for thus enabling a Bill to become law by the regular constitutional process; and it would certainly be unfortunate if a Governor found himself compelled to exercise his special powers, when he might be able to achieve his object in some other way. This we conceive to be the intention underlying the White Paper proposals, and, if so, they ought not lightly to be rejected. They also leave the way open for a compromise between Governor and Legislature, in the event of a difference of opinion between the two; for the Governor may, as the result of further discussion, be willing to sacrifice part of a Bill, if he can secure the passage of the remainder, and the Legislature may be willing on their side to pass the Bill, if those particular parts are omitted.

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Modification of White Paper proposal suggested.

101. We doubt if a Governor ought ever to present a Bill to the Legislature which his Ministers have refused to sponsor. If he does so, because he anticipates that he will secure a majority for the Bill, then it must be assumed that his Ministers no longer possess the confidence of the Legislature, and his proper course would be to dismiss them and appoint others in their place. On the other hand, if Ministers are of opinion that there is a reasonable chance of the Bill passing, because there is a change of attitude in the Legislature or on any other ground, then, as it seems to us, it is for Ministers themselves to sponsor the Bill, if they approve it. The logical

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conclusion would seem to be that a Governor should exercise his legislative powers, when he thinks it necessary so to do, without reference to the Legislature at all, even though his Ministers may hold as strongly as he does that the legislation is necessary ; *a fortiori*, where they are opposed to it. But we are impressed with the advantage which would accrue, if an opportunity were given to the Legislature for revising a hasty or unconsidered decision previously made or threatened. We accordingly recommend that the Governor should be empowered to notify the Legislature by Message (if, that is, the Legislature is sitting) that he intends at the expiration of, say, one month to enact a Governor's Act, the terms of which would be set out in the Message. The Legislature would be under no obligation to take any action on the Message ; but it would be open to them, if they thought fit, to present an address to the Governor at any time before the expiration of the month, praying him only to enact the proposed Act with certain amendments, which the Governor could consider upon their merits ; or the Legislature might even think fit to reverse their former decision and to forestall the Governor by themselves enacting legislation in the sense desired by the Governor. There would, if this recommendation is accepted, be no presentation of a Bill to the Legislature, as proposed by the White Paper, but only a notification of the Governor's intention to exercise his powers ; and we do not see how it could then be said that the Governor was seeking to enlist support against his Ministers or trying to induce the Legislature to share a responsibility which belongs to him alone. We observe that the White Paper proposes that whereas temporary Ordinances, if extended beyond six months, are to be laid before Parliament,[1] there is no similar proposal in the case of Governor's Acts. We think that the same rule should apply in both cases.

Ordinances.

102. The next special power which it is proposed to give the Governor is the power (for use in emergencies) of issuing temporary Ordinances, to be valid for not more than six months in the first instance, but renewable once for a similar period.[2] At the present time, this power is only exercisable whether for a single Province or for the whole of British India by the Governor-General ; but we cannot doubt that in an autonomous Province it should in future

[1] White Paper, Proposal 103.
[2] *Ibid.*

be vested in the Governor himself. It was urged by the British India Delegation that the power should continue to be vested in the Governor-General ; and if it should be thought that his concurrence should be obtained, we do not dissent, though we should be content with the proposal in the White Paper as it stands ; but in any case it is obvious that no Governor would exercise so unusual and important a power without prior consultation with the Governor-General.

Appropriation of revenues.

103. The White Paper next proposes that the Governor shall be empowered to include in the annual appropriation of revenue authenticated by him any additional amounts which he regards as necessary for the discharge of his special responsibilities, provided that the total amount so authenticated under any head of expenditure does not exceed the amount which was proposed to be appropriated under that head when the financial proposals for the year were first laid before the Legislature ; that is to say, the Governor will have power to restore any sums included by him for the above purposes

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in the original proposals for appropriation, if the Legislature has subsequently rejected or reduced them.[1] We have no comment to make upon this proposal, for it is clearly essential that the Governor should possess powers of this kind, if he is to be in a position at all times to discharge the special responsibilities which it is intended to impose upon him; and we think that the limitation which is suggested on the exercise of the power is a reasonable one.

Ordinances made on Ministers' advice.

104. It is to be observed that the Governor will only be able to avail himself of the special powers, legislative and financial, which we have described above, when in his opinion one of his special responsibilities is involved and the due discharge of that responsibility requires the exercise of the power. In the case of a Governor's Act or the restoration of a rejected appropriation, we have no doubt that this is a proper restriction to impose. In the case, however, of the Ordinance-making power, the matter does not seem at first sight to be so clear; for an Ordinance assumes the existence of an emergency, and this might arise in connection with any branch of the administration, whether the Governor's special responsibilities were involved or not. But we notice that the White Paper also proposes that the Governor shall have power to make Ordinances for the good government of the Province at any time when the Legislature is not in session, if his Ministers are satisfied that an emergency exists which renders such a course necessary.[2] Such an Ordinance is to be laid before the Provincial Legislature and will cease to operate at the expiration of six weeks from the date of the re-assembly of the Legislature, unless in the meantime the Legislature has disapproved it by resolution. There are thus two kinds of Ordinance contemplated, the first made on the Governor's own responsibility and in the

[1] White Paper, Proposal 99.
[2] White Paper, Proposal 104.

discharge of his special responsibilities, the second on the advice of Ministers and therefore necessarily in a sphere in which the Governor will be guided by their advice. In these circumstances the whole field appears to be covered and we are satisfied that the Governor's power of making Ordinances on his own responsibility is properly limited to those cases only in which his special responsibilities are involved.

Governor's powers in event of breakdown of constitution

105. Lastly, it is proposed to give the Governor power at his discretion, if at any time he is satisfied that a situation has arisen which for the time being renders it impossible for the government of the Province to be carried on in accordance with the provisions of the Constitution Act, by Proclamation to assume to himself all such powers vested in any provincial authority as appear to him to be necessary for the purpose of securing that the Government of the Province shall be carried on effectively. This Proclamation will have the same effect as an Act of Parliament, and will cease to be in force at the expiration of six months unless previously approved by resolutions of both Houses of Parliament, though it may be at any time revoked by similar resolutions.[1] Events in more than one Province since the reforms of 1919 have shown that powers of this kind are unhappily not yet obsolete; and it is too soon to predict that even under responsible government their existence will never be necessary. We do not read the White Paper as meaning that the Governor, in the event of a breakdown of the Constitutional machinery, is bound to take over the whole government of the Province and administer it himself on his own

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undivided responsibility. We conceive that the intention is to provide also for the possibility of a partial breakdown and to enable the Governor to take over part only of the machinery of government, leaving the remainder to function according to the ordinary law. Thus the Governor might, if the breakdown were in the legislative machinery of the Province alone, still carry on the government with the aid of his Ministers, if they were willing to support him; we are speaking of course of such a case as the refusal of the Legislature to function at all, and not merely to lesser conflicts or disputes between it and the Governor. If we are right in our interpretation, we approve the proposals, and we are of opinion that it would be unwise, if not impracticable, to specify in any detail the action which the Governor should be authorised to take. A constitutional breakdown implies no ordinary crisis and it is impossible to foresee what measures the circumstances might demand. It is right, therefore, that the Governor should be armed with a general discretionary power to adopt such remedies as the case may require.

Responsibility of Governor to Secretary of State and Parliament.

106. It is clear that where the Governor is exercising his special powers or is acting in his discretion, he must be constitutionally responsible to some authority, and that responsibility will be in the first instance to the Governor-General and through him to the

[1] White Paper, Proposal 105.

Secretary of State and ultimately to Parliament. This is the effect of the White Paper proposal, and it is unnecessary for us to comment upon it.[1]

(3) Relations between the Provincial Executive and Legislature.

Aspects of responsible government of India.

107. We have said in an earlier part of this Report that by responsible government we mean a form of government in which the Executive is in some sense accountable to the Legislature, and we have pointed out the undeniable fact that, while the Indian demand is for parliamentary government on the British model, the essential conditions of parliamentary government as it is understood in the United Kingdom neither exist in India at the present time nor are likely to come into existence for many years to come. For this reason it seems desirable that we should attempt to examine in greater detail the relations between the Executive and the Legislature under the plan proposed in the White Paper.

Composite Ministries proposed by White Paper.

108. The White Paper proposes that the Governor shall be directed by his Instrument of Instructions to select his Ministers " in consultation with the person who, in his judgment, is likely to command the largest following in the Legislature " and " to appoint those persons (including so far as possible members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature."[2] Assuming, as we do, that the Legislature will be based on a system of communal representation, it will be seen that this proposal contemplates the formation of a composite Ministry, representative not (as in the United Kingdom) of a single majority party or even of a coalition of parties, but also of minorities as such. We do not suppose that any other plan would commend itself to the minority communities at the present moment, and we must, therefore, accept it as a necessary element in the scheme; but it is not parliamentary government in the British sense.

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Desirability of encouraging parties on non-communal lines

109. It is our earnest hope that in the future parties may develop in India which will cut across communal lines; but we entertain some doubt whether the proposed directions in the Instrument of Instructions, if literally obeyed, may not operate to prevent both the growth of parties and the formation of homogeneous Ministries. The obligation imposed upon the Governor of including among his Ministers members of important minority communities is no doubt qualified by the words " so far as possible "; and much will depend upon the meaning which is to be attached to this qualification. It may be read as meaning that, whenever a member of a minority community is willing to accept office then the Governor is to have no option but to appoint him; and it would be exceedingly unfortunate if a Governor at some future date were thereby prevented from

[1] White Paper, Proposal 72.
[2] White Paper, Proposal 67.

encouraging a healthier development on non-communal lines. We think, therefore, that the formula proposed in the White Paper merits re-examination with a view to giving greater latitude to the Governor. We recognise that nothing ought to be done at the present time which would excite suspicion or distrust in the mind of the minorities and we have no doubt that for many years to come the minorities will expect to be represented in every Ministry; but we should be sorry to think that this is to be an eternal and immutable feature of Indian politics.

A strong Executive not incompatible with parliamentary government.

110. We have emphasised the vital importance in India of the Executive. It has seemed to us in the course of our discussions with the British India delegates that in their anxiety to increase the prerogatives of the Legislature, they have been apt to overlook the functions of the Executive, an attitude not perhaps surprising in those to whom at the present time the Legislature offers the main field of political activity. But if the responsibility for government is henceforward to be borne by Indians themselves they will do well to remember that to magnify the Legislature at the expense of the Executive is to diminish the authority of the latter and to weaken the sense of responsibility of both. The function of the Executive is to govern and to administer; that of the Legislature to vote supply, to criticize, to educate public opinion, and to legislate; and great mischief may result from attempts by the latter to invade the executive sphere. The belief that parliamentary government is incompatible with a strong Executive is no doubt responsible for the distrust with which parliamentary institutions have come to be regarded in many parts of the world. The United Kingdom affords a sufficient proof that a strong Executive may co-exist even with an omnipotent Parliament if the necessary conditions are present; and the strength of the Executive in this country may, we think, be attributed with not more justice to the support of a disciplined party than to the inveterate and cherished tradition of Parliament that the prerogatives of the Legislature are not to be jealously or factiously asserted in such a way as to prevent the King's Government from being carried on. " His Majesty's Opposition " is not an idle phrase, but embodies a constitutional doctrine of great significance.

Collective responsibility of Ministers.

111. A composite Ministry, though for the moment we accept it as inevitable, seems to us unlikely for some time to produce a strong Executive, since it will not have the support of a disciplined party, and the tradition of which we have spoken is as yet unknown in India. It is difficult to avoid the conclusion that its members will

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tend to regard themselves as responsible to the various communities whom they represent rather than to the Legislature as a whole. The British-India delegates laid indeed great stress upon the collective responsibility of the Provincial Ministries, and in their Joint Memorandum have urged that the Instrument of Instructions should definitely contain a direction to the Governor that the collective responsibility of Ministers is to be introduced forthwith.

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This seems to us to confuse cause and effect, and we confess our inability to understand how collective responsibility could be thus " introduced " by any directions to a Governor. The Governor can, and we hope will, insist that, when his Ministers advise him, they do so with a single voice. The collective responsibility of Ministers to the Legislature is, however, not a rule of law to be put into operation at discretion, but a constitutional convention which only usage and practice can define or enforce, and which depends no less upon the attitude of the Legislature than upon that of Ministers themselves. A wise Governor will seek to encourage political conditions which favour the growth of this convention ; but since it is the outcome and not the cause of ministerial solidarity, it is as likely to be hindered as to be helped by artificial devices which take no account of the realities of the situation. It is an element of strength in an Executive, and for that reason we attach great importance to it ; but in our judgment its evolution and adoption are matters which must be left to Indians themselves.

Dangers of government by groups.

112. A Ministry such as we have described, with no permanent majority on which to rely and without the bond of a common political faith, may well find it difficult to assert its authority over the Legislature, and here we think that a very real danger lies. Nothing could be more disastrous to India than a system under which the Executive is at the mercy of a number of constantly shifting groups in the Legislature. The account given by the Statutory Commission of the working of the existing provincial Constitution is not very encouraging. " Governors in choosing their Ministers," they observe, " have had an exceptionally difficult task. It could seldom be predicted what following a Minister would have in the Legislature, quite apart from the fact that his acceptance of office was often followed, owing to personal rivalries, by the detachment of some of his previous adherents,"[1]—a statement amply confirmed by our own information ; and it should also be remembered that Ministers will not in future be able to rely upon the official bloc, which, in the words of the Statutory Commission, " has helped to decrease the instability of the balance of existing groups in the Legislature, and has made the tenure of office of Ministers far less precarious,"[2] It may be said that these difficulties will disappear under responsible government. We hope that it will be so, and we should not have recommended that the experiment be made, if we were not satisfied that under no other system can Indians learn how to govern themselves. But we are bound to add that in our opinion a sense of corporate responsibility in Legislatures constituted wholly on a communal basis is likely to be of slow growth, and that the education of provincial legislators may sometimes prove an expensive luxury to the Province. We have therefore considered in what way it may be possible to strengthen the Executive and to make its authority more effective.

[1] Report, Vol. I, para. 230.
[2] *Ibid.*, para. 228

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Methods for securing stability of the Executive.

113. An Executive must necessarily lack authority unless it can be certain of a reasonable length of tenure, and our attention has been drawn to more than one device for the purpose of securing this end. Among these was a suggestion that the Ministry, after its appointment by the Governor, should present itself to the Legislature and demand a vote of confidence, and that when this had been accorded it should remain in office for a fixed period, which might be from one to three years, and should only be removable (unless previously dismissed by the Governor) by a vote of non-confidence, passed by something more than a bare majority of votes. Under this proposal, a Ministry would remain in office, even though the Legislature might refuse supply, and the responsibility for any untoward consequences which might ensue would be upon Legislature alone. This plan, attractive at first sight, does not seem to us a workable one. A Legislature, determined to withhold support from a new Ministry, might refuse time after time to give the initial vote of confidence, and the result would be a complete deadlock. Secondly, the existence of a Ministry which had not in fact the confidence of the Legislature could in practice be made impossible, whether or not the formal vote of non-confidence was passed; for we doubt whether any Ministers would be willing to continue in office, even though they enjoyed a statutory tenure, if they could secure neither supply nor the passage of any part of their legislative programme. There is not in our opinion any effective method of securing by statutory enactment under a system of parliamentary government permanence of tenure to a Ministry faced by a consistently hostile Legislature; and to this we might add that nothing is less likely to promote a sense of responsibility in the Legislature than the knowledge that, even if only for a specified and limited period, the Executive is irremovable.

Use of Governor's special powers to support Ministers.

114. We see, however, no reason why a hostile vote, even on a demand for supply, should always involve the fate of a Ministry, and no doubt in the course of time the matter will come to be regulated by constitutional conventions. Much will depend upon the Governor and on the support which he is able to give to the Ministers of his choice. It has often been assumed that, when the Governor finds himself compelled to make use of his special powers, the occasion will ordinarily be a difference between himself and his Ministers. We think on the contrary that differences are much more likely to occur, where the Legislature acts irresponsibly, between the Legislature on the one hand, and the Ministry, supported by the Governor, on the other; and where this is so, it seems to us that circumstances might well arise in which the use of his special powers by the Governor or an intimation to the Legislature of his intention to use them would contribute to the strength of a Ministry which was willing to co-operate with him. Ministers would not, of course, be entitled of their own motion to advise the Governor to make use of his special powers; it would be the Governor himself who would

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request their advice. But Ministers, if prepared to advise, would have to accept responsibility to the Legislature for any action taken; since the Governor's special powers are not intended to be used for the purpose of enabling Ministers to escape a responsibility which properly belongs to them. We think, however, that the judicious use by the Governor of these powers in the manner indicated (even

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though they are limited to the sphere of his special responsibilities) might often prove invaluable for the purpose of strengthening a Ministry which is willing to carry on the necessary functions of government but cannot do so owing to factious and irresponsible obstruction in the Legislature, and which the Governor is satisfied cannot be replaced by any alternative Ministry which would not encounter similar treatment.

The reserve powers of the Governor.

115. Under most Constitutions, the power of dissolution is a potent instrument in bringing an irresponsible Legislature to its senses; for members are thereby brought face to face with constituents to whom they must justify their conduct. It will be available in the Indian Provinces, according to the scheme of the White Paper, at the Governor's discretion. This, we agree, is as it should be, and we think that even the threat to use it will often enable a Governor to give extremely effective support to his Ministry; but we do not forget that under a system of communal representation even a general election is likely to produce a Legislature with the same complexion as its predecessor, at least until the time, which may be very far distant, when political parties are more independent of communal divisions. But, even if the constitutional machinery should break down altogether, the White Paper provides a means whereby the King's Government may still be carried on. We have already drawn attention to the proposal that the Governor should in such an emergency be empowered to assume to himself (subject to the over-riding authority of Parliament) all such powers vested by law in any provincial authority as appear to him to be necessary for the administration of the affairs of the Province; and therefore in the last resort he could suspend the Legislature and for the time being administer the Province without it. Here also we think that, if his Ministers were willing to support him, and to take the responsibility of doing so, he might properly inform them of his willingness to exercise his powers upon their advice, subject always to such directions as he might receive from the Governor-General. Provisions of this kind, as the Statutory Commission rightly observe, "are no repudiation of the principle of self-government; they cannot come into play unless the principle of self-government is itself repudiated."[1] We hope, and are willing to believe, that it will never become necessary to put them into operation; but we are none the less persuaded that their inclusion in the Constitution will have a beneficial effect. Nothing is more calculated to quicken a sense of responsibility in the Legislatures than a clear perception of the

[1] Report, Vol. II, para. 99.

inevitable consequences of irresponsibility; and, though it may seem paradoxical to say so, we think that the existence in the background of these reserve powers of the Governor may well prove the real and most effective guarantee for the development of a genuine system of responsible government.

Solution of the problem lies in Indian hands.

116. We may be thought to have laid too great emphasis upon the difficulties likely to arise in the working of the new Constitution in an Indian Province; but we have endeavoured to describe the situation as it has presented itself to us, without prejudice or exaggeration; and if we have emphasised its difficulties it is because we are anxious that Indians should not be misled by deceptive analogies with the constitutional practice of the United Kingdom. Responsible government is not, as it has sometimes seemed to us that they regard it, an automatic device or even a machine running

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on a motive power of its own. It postulates conditions which Indians themselves have still to create, nor is a technique which the British people have painfully developed in the course of many generations to be acquired in India in the twinkling of an eye. The success of the experiment which we advocate can only be proved by its results, and the political education both of the Legislatures and of the electorate is likely to be a slow process. But we are none the less convinced that Indians must be given the opportunity of purchasing their own experience, and we are at one with the Statutory Commission in seeing no future for responsible government in India unless the difficulties to which we have thought it right to draw attention are not directly faced and in the end surmounted.

(4) The Provincial Legislature

Unicameral and Bicameral Legislatures

Provincial Legislatures.

117. The White Paper proposes that in each Governor's Province there shall be a Provincial Legislature consisting, except in Bengal, the United Provinces, and Bihar, of the King, represented by the Governor, and a Legislative Assembly. In the three Provinces named, it is proposed that the Legislature shall consist of the King, represented by the Governor, and a Legislative Council as well as a Legislative Assembly. It is also proposed that after a period of ten years, a bicameral Legislature may abolish its Legislative Council, and that a unicameral Legislature may present an address to the Crown praying for the establishment of a Legislative Council.[1]

Second Chambers suggested for Bombay and Madras

118. We are of opinion that Legislative Councils should also be established in Bombay and Madras, where the conditions are substantially the same as in Bengal and the United Provinces. Apart from this, we concur in the proposals of the White Paper, subject to certain small changes in the composition of the Legislative Councils in Bengal, the United Provinces, and Bihar ; and our recommendations

[1] White Paper, Proposal 74.

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for all five Councils are set out in an Appendix to this part of our Report.[1] We think that where, after the ten-year period, a Province with a unicameral Legislature seeks to have a second Chamber, it ought to be allowed to indicate in the Address which it presents to the Crown the size and composition of the Chamber which it desires to have. We do not doubt that the Crown would always endeavour to ascertain the wishes of the Province, but the Constitution Act should make it clear that the Province has the right to inform the Crown what its wishes are.

The Composition of the Legislatures

The Communal Award and the Poona Pact.

119. The White Paper sets out in detail the proposed composition of each Provincial Legislature, specifying both the allocation of seats and the method of election to them.[2] In the case of the Legislative Assemblies, these are based upon the Communal Award issued by His Majesty's Government on August 4th, 1932, with such modifications as have been rendered necessary (1) by the later proposal to create a new Province of Orissa, and (2) by the so-called Poona Pact of September 25th, 1932. It will be recalled that owing to the failure of the various communities to reach any agreement on the subject, principally because of a radical divergence of opinion on the vital question of separate electorates and the distribution of communal seats, His Majesty's Government reluctantly undertook the task of devising themselves a scheme for the composition of the new Legislatures. When their Award was

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published, they announced their determination not to entertain any suggestions for its alteration or modification which were not supported by all parties affected, but that if any of the communities mutually agreed upon a practicable alternative scheme, they would be prepared to recommend to Parliament that that alternative should be substituted for the corresponding provisions in the Award. In the Award special arrangements were made to secure representation for the Depressed Classes. These were criticised by Mr. Gandhi as introducing an artificial division between two parts of the Hindu community, and he expressed his intention of "fasting unto death" as a protest against them. Thereupon negotiations were initiated between the representatives of the caste Hindus and of the Depressed Classes, and an agreement resulted which was embodied in the Poona Pact. This agreement in the view of His Majesty's Government was within the terms of the announcement made by them, and therefore properly to be included as an integral part of the Communal Award.

Effect of the Poona Pact.

120. The substance of the Poona Pact is the reservation to the Depressed Classes of a number of seats out of the seats classified as general seats in the Award, which means in effect out of Hindu seats, since Hindus form the great bulk of the general electorates. These

[1] *Infra*, p. .
[2] White Paper, Appendix III.

reserved seats will, however, be filled by an unusual form of double election. All members of the Depressed Classes who are registered on the general electoral roll of certain constituencies will elect a panel of four candidates belonging to their own body, and the four persons who receive the highest number of votes in this primary election will be the only candidates for election to the reserved seat; but the candidate finally elected to the reserved seat will be elected by the general electorate, that is to say, by caste Hindus and by members of the Depressed Classes alike. The number of seats reserved for the Depressed Classes under the Poona Pact is practically double the number reserved under the Communal Award; but whereas under the latter there was to be a direct election to those seats by a separate Depressed Classes electorate, there will now be an election by the general electorate, although the candidates for election will have been previously selected by means of a primary election at which members of the Depressed Classes only will be entitled to vote. Since the Pact does not, and indeed could not, increase the total number of seats assigned by the Communal Award to the different Legislatures, it follows that any increase in the seats reserved for the Depressed Classes must involve a diminution in the seats which will be available for caste Hindus.

The White Paper proposals accepted.

121. The Communal Award was criticised by more than one witness who appeared before us on the ground that it operates inequitably in the case of Bengal, and even more inequitably with the modifications resulting from the Poona Pact. There was also criticism of the Award from other Provinces in which the Hindus are in a minority; but elsewhere the Award appears to have met with acceptance, and we entertain no doubt that if any attempt were now made to alter or modify it, the consequences would be disastrous. The arrangement which it embodies appears to us to be well thought out and balanced, and to disturb any part of it would be to run the risk of upsetting the whole. It accepts indeed the

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principle of separate electorates for the Muhammadan, Sikh, Indian Christian, Anglo-Indian, and European communities, but we recognize that this is an essential and inevitable condition of any new constitutional scheme. We may deplore the mutual distrust of which the insistence on this demand by the minorities is so ominous a symptom, but it is unhappily a factor in the situation which cannot be left out of account, nor do we think that we can usefully add anything to what we have already said on the subject. We accept therefore the proposals in the White Paper for the composition of the Legislative Assemblies. As regards the Poona Pact, we are satisfied that it was made between persons who may properly be regarded as representative of the caste Hindus on the one hand and of the Depressed Classes on the other, and for that reason we think that it falls within the terms of the announcement made by His Majesty's Government and that it ought not to be disturbed. We

say frankly that we do not care greatly for it, and still less for the methods which brought it into existence. We are of opinion that the original proposals of His Majesty's Government constituted a more equitable settlement of the general communal question; but the Pact was made by accredited leaders of the communities concerned, and was acquiesced in at the time by the communities themselves, or at least elicited no protest; and, if we say no more, it is because we should be reluctant to believe that Indian political leaders, who presumably look forward to occupying positions of responsibility when India achieves self-government, will in the future be willing to be influenced by, or to yield to, pressure of the kind which was exerted at Poona two years ago.

Composition of Second Chambers.

122. The Communal Award did not extend to the Legislative Council of any Province. The composition of these Councils which is set out in the White Paper is however based upon the same principles as the Communal Award; but, since the Legislative Councils are much smaller bodies than the Legislative Assemblies and it would be impossible therefore to provide in them for the exact equivalent of all the interests represented in the Lower House, it is proposed to include a certain number of nominated seats to be filled by the Governor at his discretion and accordingly available for the purpose of redressing any possible inequality. We think that this is a reasonable arrangement, and we have included provision for it in the detailed recommendations which are set out in the Appendix above referred to.

The Provincial Franchise

The existing franchise.

123. The provincial electorate under the existing franchise numbers approximately 7,000,000 men and women, or about 3 per cent. of the population of British India. It will be recalled that the Southborough Committee in 1919, on whose recommendations the present franchise is based, were of opinion that the time was not ripe for any extension of the franchise to women, but Parliament required the Electoral Rules made under the Government of India Act to be so drawn as to enable the Provincial Councils to pass resolutions admitting women to the franchise on the same terms as men, and resolutions for that purpose have in fact been passed in every Province. But, since the franchise is in the main a property qualification and few Indian women are property owners in their own right, the number of women thus admitted to the franchise was very small and does not at the present time amount to more than about 315,000.

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The proposals of the Statutory Commission and the Franchise Committee.

124. The Statutory Commission were of opinion that the existing franchise was too limited and recommended that it should be extended so as to enfranchise about 10 per cent. of the total population, and they laid a special emphasis upon the need for increasing the ratio of women to men voters. In 1932, between the Second and Third Sessions of the Round Table Conference,

a Franchise Committee, which was presided over by one of our own number, was appointed by His Majesty's Government for the purpose of examining the whole subject, with a view to an increase of the electorate to a figure not less than the 10 per cent. of the population suggested by the Statutory Commission nor more than the 25 per cent. suggested at the First Session of the Round Table Conference. We are greatly indebted to the admirable and exhaustive Report of the Franchise Committee, which reached its conclusions after prolonged and intensive discussions in India with the Provincial Governments and with Provincial Franchise Committees; and we are satisfied that their recommendations have met with general support from Indian public opinion, expressed not only in India but also at the Third Session of the Round Table Conference, in the evidence of the witnesses who appeared before us, and in the discussions which we have had with the British-India delegates.

The proposals in the White Paper.

125. The proposals of His Majesty's Government for the Provincial Franchise are set out in Appendix V to the White Paper, and are essentially based, with certain modifications of minor importance only, save in the case of the women's franchise, on the Report of the Franchise Committee. We are informed that the proposals have the general support of the Government of India and of the Provincial Governments. The basis of the franchise proposed is essentially, as at present, a property qualification (that is to say, payment of land revenue or of rent in towns, tenancy, or assessment to income tax), supplemented by an educational qualification and by certain special qualifications designed to secure an adequate representation of women and to enfranchise approximately 10 per cent. of the Depressed Classes (called in Appendix V Scheduled Castes) by the enfranchisement of retired, pensioned and discharged officers, non-commissioned officers and men of His Majesty's Regular Forces, and by the provision of a special electorate for the seats reserved for special interests, such as labour, landlords and commerce. The individual qualifications vary according to the circumstances of the different Provinces: but the general effect of the proposals is to enfranchise approximately the same classes and categories of the population in all Provinces alike.

Estimate of numbers of proposed electorate.

126. We were warned, and can readily believe, that pending the preparation of Electoral Rolls the figures furnished to us must of necessity be regarded as only approximate. It is, however, estimated that the proposals in the White Paper would, if adopted, create a male electorate of between 28,000,000 and 29,000,000, and a female electorate of over 6,000,000, as compared with the present figures of 7,000,000 and 315,000; that is to say, 14 per cent. of the total population of British India would be enfranchised as compared with the present 3 per cent.; and the proposals, therefore, go beyond the percentage suggested by the Statutory Commission and are nearly midway between the maximum and minimum percentages suggested by the First Round Table Conference.

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General effect of proposals.

127. We are satisfied on the information before us that the proposals taken as a whole are calculated to produce an electorate representative of the general mass of the population and one which will not deprive any important section of the community of the means of giving expression to its opinions and desires. The proposals will in the case of most Provinces redress the balance between town and country, which is at the present time too heavily weighted in favour of urban areas; they will secure a representation for women, for the Depressed Classes, for industrial labour, and for special interests; and they will enfranchise the great bulk of the small landholders, of the small cultivators, of the urban ratepayers, as well as a substantial section of the poorer classes.

The proposals administratively practicable.

128. The difficulties which must always attach to any great and sudden extension of the franchise, both in connection with the compilation of the electoral roll and in the actual conduct of elections, are mainly administrative in India, because literacy is rare and the number of persons available to act as efficient Returning Officers extremely limited. These are practical obstacles which ardent reformers are sometimes apt to forget; but we are informed that, while the strain of the first election will undoubtedly be considerable, the electorates proposed, subject to certain minor modifications and to one more important modification which we recommend below in the case of Bihar and Orissa, are accepted by the responsible authorities as administratively practicable. The existing system of election is the direct system, which has been in force since 1920, and appears on the whole to have worked well. The Franchise Committee after an exhaustive investigation of possible alternatives recommended its retention, and they have the support both of the authorities in India and of Indian public opinion. The proposals in the White Paper are accordingly based upon direct election by territorial constituencies in the case of the various communities, special arrangements being made for election in the case of the constituencies which represent special interests. We are informed that His Majesty's Government are not yet in a position to submit their final proposals for the method of election to the seats reserved for women or for the qualifications to be prescribed in the case of certain of the constituencies representing special interests. These matters are still under investigation in India and proposals with regard to them must depend on the result of further expert examination.

Suggestions for group system of election considered.

129. We have carefully examined a suggestion to substitute for direct election in territorial constituencies an indirect system of election by means of local groups. At first sight an arrangement of this nature would appear to have the advantage of widening the basis of the franchise, of giving an equal vote at the primary stage to every adult, of facilitating voting by the primary elector, and of securing a more experienced and intelligent secondary elector; and having regard to these considerations, we felt it our duty, despite the fact

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that discussion and experiment in India had led the Indian Franchise Committee to reject it, again to consider its practicability. The effect of the evidence given before us by witnesses of great experience has however been to show that, superficially attractive as a system of group election may be, the objections to it in existing conditions in India are decisive. We have been especially impressed by the administrative difficulties involved in constituting electoral groups,

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given the existence of caste and the reality of the communal problem, and by the argument that faction runs so high in many Indian villages that group elections would inevitably become highly contested and that it would be necessary to provide for them all the machinery of an ordinary election. We were also informed not only that conditions in the villages had changed so materially of late that the circumstances which some six or seven years ago made it justifiable to put forward a proposal for the use of the group system no longer existed, but that there was no real support for the introduction of such a system either from public or from official opinion in India. In the light of our further investigation of this question we are satisfied that in the case of the Provincial Legislatures the balance of advantage clearly lies in present conditions in retaining the system of direct election.

The White Paper proposals approved with certain modifications.

130. We regard the franchise proposals in the White Paper as generally satisfactory, subject to the modifications which we indicate below. In the case of the general franchise, we think that only one modification of substance is necessary. In Bihar and Orissa it is proposed that the qualification in rural areas shall be based upon payment of the chaukidari tax at the minimum rate of six annas per annum ; but since the White Paper was laid before Parliament the Provincial Government after further investigation have reported that administrative considerations make it impossible to deal with so large an electorate as this franchise would create. We recommend that, in view of this undoubted difficulty, the rural franchise in Bihar and Orissa should be raised from six annas to nine annas ; and we also recommend that in view of the dislocation caused by the recent earthquake, the general rural franchise in the Province should as a temporary measure be fixed as twelve annas for the purpose of the first election under the new Constitution.[1] We recognise that these recommendations, if adopted, will produce in Bihar and Orissa a percentage of enfranchisement much smaller than in any other Province, but we think that they are justified by the special circumstances of the case. We also recommend as part of the arrangements which have been made with His Exalted Highness the Nizam in connexion with the Berars, that in the case of Berar constituencies the educational qualification should include the passing of a corresponding examination in Hyderabad and that the military service qualification should cover retired, pensioned or discharged officers, non-commissioned officers or soldiers of His Exalted Highness's regular forces.

[1] Corresponding modifications will be necessary for Sambalpur and Santhal Parganas, for which a special franchise is proposed in the White Paper.

Women's franchise proposals compared with Franchise Committee's recommendations.

131. The present ratio of women to men electors for the Provincial Legislatures is approximately 1 : 20. The recommendations of the Franchise Committee would increase the ratio to 1 : 4·5 by extending the franchise to all women (1) who possess a property qualification in their own right ; (2) who are the wives or widows of men with the property qualification for the present Provincial Legislatures (slightly different qualifications are proposed for Bihar and Orissa and for the Central Provinces) ; and (3) who have an educational qualification of literacy (this last qualification to be registered only on application by the potential voter). These recommendations are estimated to produce a women's electorate of some 6,000,000. The proposals in the White Paper are identical with those of the Franchise Committee, save that women qualified in respect of property held by a husband are required to make application to be

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placed on the electoral roll, and that the educational standard has in most cases been substantially raised. We are informed that on the latest estimates available, these proposals would produce a women's electorate of some 6,000,000 as against a male electorate of between 28,000,000 and 29,000,000, a ratio approximately equivalent to that recommended by the Franchise Committee. But of these 6,000,000 only some 2,000,000, that is to say, women qualified to vote in respect of the ownership of property in their own right, would automatically be placed upon the roll; for the remainder, who would be qualified in respect either of property held by a husband or of education, an application to the Returning Officer would be required. We have received very strong representations from representatives of women's organisations and from representative women both in this country and in India that the effect of this proposal would be to prejudice very seriously the position of women under the new Constitution. On the other hand, we are informed that the authorities in India view with apprehension any proposals which would substantially increase the administrative difficulties likely in any event to be caused in polling the new and extended electorates, and they have urged also the importance of giving full weight in connection with the women's franchise to Indian social conditions.

Vital importance of women's franchise.

132. Apart from the difficulties involved in the retention of the "application" requirement, we have received strong representations in favour of the substitution of the literacy qualification (to be registered on application) recommended by the Franchise Committee for the qualification of an educational standard proposed in the White Paper. It has been urged before us that in many Provinces the educational standard proposed in the White Paper is so high that it will seriously prejudice the legitimate claims of women in general, and in particular the woman who has been educated at home. Representations have also been made to us in favour of the extension of the franchise to the wives of men with the military service qualification for the vote and the pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers of the Regular forces.

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We have given anxious consideration to all these questions. We concur in everything which has been said by the Statutory Commission on the necessity for improving the status and extending the influence of the women of India and it is in our opinion impossible to exaggerate the importance of securing in the new Constitution a substantial increase of enfranchised women voters. "The women's movement in India" the Commission observe, "holds the key of progress, and the results it may achieve are incalculably great. It is not too much to say that India cannot reach the position to which it aspires in the world until its women play their due part as educated citizens."[1] This is profoundly true and must be realised by every Indian who has the interests of his country at heart. We are only too well aware of the formidable obstacles which every reformer in this field will encounter, and we cannot forget the painful impression made upon us by one witness, claiming (we hope and believe without justification) to represent the great majority of orthodox Hindus, part of whose evidence could only be construed as approving, or at least condoning, the dreadful practice of suttee. We are therefore all the more convinced of the necessity for strengthening the position of women under the new Constitution, and we are not satisfied in the light of the discussions which have taken place that the proposals

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in the White Paper are adequate to achieve this object. We are particularly impressed by the unfortunate consequences likely to follow from the "application" requirement, though we fully recognise that under existing conditions there are strong arguments in favour of it which can be adduced. We sympathise also with the contention that the standard of the educational qualification is too high, and we are wholly in agreement with those who desire to enfranchise the wives of men with the military service qualification for the vote, and the pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers of the Regular forces.

Modifications in White Paper proposals recommended.

133. In these circumstances, after a careful examination of the whole problem and in the light of further enquiries which have been made at our request by the Government of India and the local Governments, we recommend the following modifications in the White Paper proposals for the women's franchise; and we record our opinion that it should not be beyond the administrative capacity of the Provincial Governments to give effect to them, even though they may involve some temporary difficulties in the early days of the new Constitution:—(1) that the "application" requirement should be dispensed with in the case of women qualified in respect of a husband's property in Bengal, Bihar and Orissa, the Central Provinces, and in urban areas in the United Provinces; (2) that in Bombay, the Central Provinces, the United Provinces, the Punjab, and Assam a literacy qualification should be substituted as the educational qualification; (3) that in Madras, Bengal, the United Provinces, the Central Provinces, the Punjab, and Bihar and Orissa, the wives of men with the military service qualification for the vote, and pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers of the Regular forces should be enfranchised, registration in this case being on application only; and (4) that in cases in which registration will still be only on application such steps as are possible should be taken to mitigate the deterrent effect of this requirement on the registration of votes by women, e.g., by permitting application by the husband (subject to suitable penalties in the event of false statements, etc.) on behalf of a wife, and by the entry of a woman's name as "wife of A.B.C." in cases in which, for social or religious reasons, there is any objection to the entry of the actual name on the electoral roll.

[1] Report, Vol. I, para. 71.

Recommendations with regard to women's franchise.

134. Before leaving this subject we wish to place on record our view that it is important to attain at as early a date as possible, and if practicable before the second election under the new Constitution, the ratio of not less than approximately one woman to five men electors, save possibly in Bihar and Orissa, which was recommended by the Indian Franchise Committee. We understand that in most Provinces under the proposals embodied in the White Paper, with the modifications proposed by us above, the ratio of women to men eligible to exercise the franchise will be higher than 1 : 5; but the deterrent effect of the "application" requirement, so long as it is necessary to retain it, particularly in the case of women qualified in respect of a husband's property, is likely in practice to produce a much less favourable ratio of women to men on the electoral registers. In certain Provinces, moreover, the ratio even of women eligible to vote to men may apparently be less favourable than 1 : 5. The remedy for this situation is, in our opinion, the withdrawal of the

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"application" requirement, at any rate in the case of women qualified in respect of a husband's property, at as early a date as practicable, with a consequent increase in the number of women on the electoral roll. We are in favour also of the lowering of the educational standard for women to literacy in those Provinces in which a higher standard is now proposed not later than the second election under the new Constitution; this should result in the Provinces in question in a further increase in the number of women eligible to exercise the franchise.

The education qualification for men.

135. The Franchise Committee recommended the adoption of the Upper Primary Standard as a general educational qualification for men. The White Paper substitutes a higher standard in certain Provinces. It has been represented to us that the adoption of a high educational qualification, and in particular of the matriculation standard, would have an unfortunate result on male education and would discriminate against the boy attending the vernacular middle school in favour of the boy matriculating in the secondary school. This question has at our request been further examined by the Government of India and the Provincial Governments; though they admit that there may be some force in the criticism, they do not consider the risks involved as serious enough to call for any modification of the proposal in the White Paper; and we do not feel able, after considering the matter, to differ from their conclusion.

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Election expenses and corrupt practice.

136. We desire in conclusion to drawn attention to the question of election expenses and corrupt practices. The White Paper proposes that, save as otherwise provided in the Constitution Act itself, the Provincial Legislatures should be empowered to make provision for matters connected with the conduct of elections, but that until they do so existing laws or rules, including laws or rules providing for the prohibition and punishment of corrupt practices or election offences, should remain in force. The Statutory Commission observe that they have no wish to over-emphasise, but that they could not disregard the indications to them in more Provinces than one of the presence and effects of corruption; and they urge therefore that suitable limits should be defined and enforced for election outlay, the existing law being in their opinion inadequate.[1] We think that this is a matter which may properly engage the attention of His Majesty's Government, and it may be thought desirable that the Constitution Act itself should embody provisions with regard to it.

Future extension of franchise.

137. The question of a future extension of franchise is one which cannot be divorced from the question of other amendments of the Constitution Act. We do not therefore discuss it in this place and reserve our observations for a later part of our Report, in which the whole problem of what may conveniently be called Constituent Powers is considered.[2]

Powers of Provincial Legislatures

Powers of Provincial Legislatures

138. We have referred elsewhere to the Lists in Appendix VI of the White Paper, which set out the subjects with respect to which the Provincial Legislatures will have the power of making laws for the peace and good government of the Province, an exclusive power in one case (List II) and in the other a power exercisable concurrently with the Federal Legislature (List III), and further discussion of them is unnecessary here. Certain restrictions on these legislative powers are however proposed. In the first place the Provincial Legislatures

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will not be competent to make any law affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of British India, the law of British nationality, the Army, Air Force, and Naval Discipline, Acts, or the Constitution Act itself, save in the last case in so far as the Constitution Act otherwise provides.[3] Few, if any, of these subjects are likely to come within the scope of the legislative powers of the Provincial Legislatures, as defined by Lists II and III, and the restriction is therefore more apparent than real, though we agree that it is a proper one. The Legislatures will also have no power to make certain laws of a discriminatory kind, a subject which it will be more convenient to discuss later.[4] Secondly, the consent of the Governor-General, given

[1] Report, Vol. II, para. 110.
[2] *Infra*, paras. 350–377.
[3] White Paper, Proposals 119–120.
[4] *Infra*, paras. 326 *et seq.*

at his discretion, will be required to the introduction in a Provincial Legislature of legislation which (1) repeals, amends, or is repugnant to, any Act of Parliament extending to British India or any Governor-General's Act or Ordinance, or (2) which affects any Department reserved to the control of the Governor-General, or (3) which affects the procedure regulating criminal proceedings against European British subjects. Thirdly, the consent of the Governor, given at his discretion, will be required to the introduction of legislation (1) which repeals, amends, or is repugnant to, a Governor's Act or Ordinance, or (2) which affects religion or religious rites and usages.

The White Paper proposals approved.

139. We have little comment to make upon these proposals. It was indeed suggested to us that the necessity for the Governor's consent to the introduction of legislation affecting religious rites and usages might prejudice attempts to promote valuable social reforms. We do not think that social reform is likely in the least to suffer by its retention, and we are clearly of opinion that it would be unwise for the present to abandon a safeguard which is already in existence and which might prove very necessary at times of religious or communal disturbance. We had also thought at first that a Provincial Legislature ought not to be empowered (as they are not empowered at present) to pass a law which repeals or is repugnant to an Act of Parliament extending to British India, even though the prior consent of the Governor to its introduction in the Legislature might be required. We understand, however, that the great bulk of the existing law in India is the work of Indian legislative bodies and that there are in fact very few Acts of Parliament (apart from those relating to subjects on which it is proposed that the Legislatures shall have no power to legislate at all) which form part of the Indian statute book, and fewer still dealing with matters which will fall within the provincial sphere. In these circumstances we think that the proposal should stand; but the Governor's Instrument of Instructions might perhaps direct him to reserve bills which appear to him to fall within this category.

Governor's assent to Bills.

140. The proposals with regard to the Government's assent to Bills are in standard consitutional form.[1] They provide that the Governor may at his discretion either assent to a Bill, or refuse his assent, or may reserve the Bill for the consideration of the Governor-General, who may in his turn either assent or withhold his assent or reserve the Bill for the signification of His Majesty's pleasure. We note a proposal whereby the Governor would be empowered to return a Bill to the Legislature for reconsideration in whole or in part,

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together with such amendments, if any, as he may recommend. A provision of this kind (which has Dominion as well as Indian precedent in its favour) may, we think, prove extremely useful for the purpose of avoiding or mitigating a conflict between the Governor, or perhaps the Governor and his Ministers, and the Legislature, and will afford opportunities for compromise which would not otherwise be available.

[1] White Paper, Proposal 88.

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Excluded Areas.

141. It is proposed that the powers of a Provincial Legislature shall not extend to any part of the Province which is declared to be an "Excluded Area" or a "Partially Excluded Area." In relation to the former, the Governor will himself direct and control the administration; in the case of the latter he is declared to have a special responsibility. In neither case will any Act of the Provincial Legislature apply to the Area, unless by direction of the Governor given at his discretion, with any exceptions or modifications which he may think fit. The Governor will also be empowered at his discretion to make regulations having the force of law for the peace and good government of any Excluded or Partially Excluded Area, but subject in this case to the prior consent of the Governor-General. We have already expressed our approval of the principle of Excluded Areas, and we accept the above proposals as both necessary and reasonable.[1]

Procedure in the Legislatures

Ordinary procedure.

142. The proposals in the White Paper are rightly designed to give a Provincial Legislature ample power to regulate its own procedure and business; but we note with approval that the Governor is to be empowered at his discretion, after consultation with the presiding officer of the Legislature, to make rules regulating procedure and the conduct of business in relation to matters arising out of, or affecting, any of his special responsibilities, and that any rules made by him for this purpose will prevail over any rule made by the Legislature itself which may conflict or be inconsistent with them.[2]

Financial procedure.

143. The proposals with regard to financial procedure seem to us generally to be well considered. They are based upon the principle, which must always be the foundation of any sound system of public finance, that no proposal can be made for the imposition of taxation, for the appropriation of, or affecting or imposing any charge upon, public revenues without the recommendation of the Governor; that is to say, it can only be made on the responsibility of the Executive.[3] We understand that, apart from this, legislative procedure in matters of finance differs in India from that which exists in the United Kingdom. There is, for example, no annual Appropriation Act in India, the proposals for the appropriation of revenue being submitted to the Legislature in the form only of Demands for Grants, and a resolution of the Legislature approving a Demand is sufficient legal warrant for the appropriation. No substantial alteration in this system is suggested in the White Paper, and, though we have given some consideration to the matter, we are satisfied that no good reason has been shown for modifying in the new Constitution Act a system with which Indians are familiar and which appears to have worked sufficiently well in practice.

[1] White Paper, Proposal 108.
[2] White Paper, Proposal 102.
[3] White Paper, Proposal 95.

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Annual proposals for appropriation of revenue.

144. The proposals for the annual appropriation of revenue will, according to the White Paper, be grouped in three categories[1]: (1) those which will not be submitted to the vote of the Legislature, though (with one exception) they will be open to discussion; (2) those which will be so submitted; and (3) proposals, if any, which the Governor may regard as necessary for the fulfilment of any of his special responsibilities. The importance of those which fall into the first category makes it desirable that we should set them out in full, and they are as follows :—

(i) Interest, Sinking Fund Charges and other expenditure relating to the raising, service, and management of loans; expenditure fixed by or under the Constitution Act; expenditure required to satisfy a decree of any Court or an arbitral award;

(ii) The salary and allowances of the Governor (these will not be open to discussion); of Ministers; and of the Governor's personal or secretarial staff.

(iii) The salaries and pensions, including pensions payable to their dependents, the Judges of the High Court or Chief Court or Judicial Commissioners; and expenditure certified by the Governor, after consultation with his Ministers, as required for the expenses of those Courts;

(iv) Expenditure debitable to Provincial revenues required for the discharge of the duties imposed by the Constitution Act on the Secretary of State;

(v) The salaries and pensions payable to, or to the dependents of, certain members of the Public Services and certain other sums payable to such persons.

Non-votable heads of expenditure.

145. It will be observed that most of these Heads of Expenditure are identical with, or analogous to, payments which would in the United Kingdom be described as Consolidated Fund charges and as such would not be voted annually by Parliament. The two principal exceptions are the salaries of Ministers and the salaries and pensions payable to certain members of the Public Services or to their dependents. We think the inclusion of Ministers' salaries is justified. The convention in this country whereby a motion for a nominal reduction in the salary of a Minister has become a convenient method of criticizing a Department or ventilating grievances appears not to have established itself in India. On the contrary, Legislatures have been known to mis-use their powers in such a way as to deprive Ministers of the whole of their salaries, and have thus rendered it impossible for the Governor to have not only the Ministry of his choice but any Ministry at all, a notable example of the way in which the exercise of its powers by a Legislature may by constitutional usage be made to serve a valuable purpose in one country and yet prove wholly destructive in another. We therefore

[1] White Paper, Proposals 95–100.

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approve the proposal in the White Paper, and we are of opinion that ample, and no less convenient, opportunities for criticizing the Executive will still remain. The non-votable character of salaries and pensions payable to members of the Public Services raises questions of a different kind, which we propose to consider later.[1] The separate specification of the proposals regarded by the Governor as necessary for the fulfilment of his special responsibilities calls for no comment.

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System of Demands for Grants.

146. All proposals for appropriation, other than those relating to the heads of expenditure enumerated above, will be submitted to the Legislature in the form of Demands for Grants, and the Legislature will have the right to assent to, or reduce, or to refuse assent to, any Demend including those which the Governor has proposed as necessary for the fulfilment of his special responsibilities. Except in the latter case (the Governor being empowered to restore any such Grants, if he thinks it desirable to do so), the decision of the Legislature is final ; and it is this power in the matter of supply which will give the Legislature its real control over the Executive. We have already discussed the difficulties which may arise if that power is factiously or irresponsibly exercised, and it is not necessary to repeat what we then said. It has been objected that the Heads of Expenditure which will not be subject to the vote of, but only open to discussion by, the Legislature are so extensive as materially to diminish the field of responsible government in the Province. We are satisfied that there is little, if any, substance in this objection. Most of the Heads of Expenditure, as we have pointed out, would not, even in the United Kingdom, be the subject of an annual vote by Parliament ; and the inclusion of those which do not fall within that category is for reasons which we have given elsewhere clearly justified as a matter of reasonable precaution, if responsible government itself is to be a reality in the future.

Powers of Legislative Councils and conflicts between the two Chambers.

147. It is proposed that, in those Provinces where the Legislature is bicameral, Money Bills shall be initiated in, and Demands for Grants submitted to, the Legislative Assembly alone.[2] We think that this is right, and that the Legislative Council should not be regarded in any sense as a body having equal powers with the Legislative Assembly, but rather a body with powers of revision and delay, for the purpose of exercising a check upon hasty and ill-considered legislation. Nevertheless, the possibility of a conflict between the two Chambers cannot be disregarded. The method proposed by the White Paper for resolving such a conflict is to give the Governor the power, after a lapse of three months, to summon the two Chambers to meet in a Joint Session for the purpose of reaching a decision on any legislation which has been passed by one Chamber but rejected by the other, the Bill being taken to have been duly passed by both

[1] *Infra*, paras. 269 *et seq.*
[2] White Paper, Proposal 91

Chambers if approved by a majority of the members voting at the Joint Session. We do not think that this is a satisfactory solution. The period of three months is too short, and would make the powers of the Legislative Council derisory ; it ought in our opinion to be one of twelve months at least, except in the case of a Money Bill, the delay of which even for three months might obviously have mischievous consequences. It may be urged that the sessions of the Provincial Legislatures will be comparatively short and that it is never likely in practice that the period of delay will be only three months ; but we regard the difference as one of principle. The case of a Bill on which in the Governor's opinion a decision cannot, consistently with the fulfilment of his special responsibilities, be deferred is on a different footing ; and we agree that in this case the Governor must himself be empowered to summon forthwith a Joint Session. It seems to us also that, in view of the relative powers of the two Chambers, a Bill introduced in the Legislative Council but rejected by the Legislative Assembly should lapse, and that the machinery of a Joint Session should be confined to the converse case, and

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should be put in motion only if the Legislative Assembly so desires. There should be no possibility of further amendment in the Joint Session save for amendments relevant to the points of difference which have arisen between the two Chambers, and the decision of the Presiding Officer, who will presumably be the President of the Upper Chamber, on the admissibility of any amendment should be final and conclusive.

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APPENDIX (I)

COMPOSITION OF PROVINCIAL LEGISLATIVE COUNCILS

		Bengal.	*Bihar.*	*Bombay.*	*Madras.*	*United Provinces.*
Nominated by the Governor in his discretion :—						
Not less than		6	3	3	6	6
Not more than		8	4	4	8	8
General	Directly elected.	10	9	20	18	34
Muhammadan ..	Directly elected.	17	4	5	4	17
European	Directly elected.	3	1	1	1	1
Indian Christians ..	Directly elected.	—	—	—	2	—
Elected by the method of the single transferable vote by members of the Provincial Lower House		27	12	—	23	—
Total—						
Not less than		63	29	29	54	58
Not more than		65	30	30	56	60

The members directly elected will be elected from communal constituencies.

The franchise will be based on high property qualifications, combined with a qualification based on service in certain distinguished public offices, as is proposed in Appendix V, Part II, of the White Paper.

The qualifications above indicated will also apply to candidates, but special provisions may be necessary in the case of women and the Depressed Classes.

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II.—THE FEDERATION

Federation and the Crown

Federal Union of States and Provinces.

148. We pass now to the proposal in the White Paper to create a new polity in which both the British India Provinces and the Indian States will be federally united. On the principle of the proposal we can entertain no doubts ; but this will be a Federation of a kind for which, so far as we are aware, no historical precedent is to be found. Federations, whether in the past or at the present day, have commonly resulted from the union of independent, or at least autonomous, States, which have agreed to come together for the purpose of creating a new central organism deriving its powers and authority from the surrender by the federating units of a defined part of their own sovereignty or autonomy, the powers and authority thus derived being thenceforward exercised by the new organism in the interests and on behalf of the whole body. The Indian States possess sovereignty in varying degrees, but at the present moment the Indian Provinces are not even autonomous ; for they are subject to both the administrative and legislative control of the Government of India and such authority as they exercise has only

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been devolved upon them under a statutory rule-making power by the Governor-General in Council. It is therefore the first condition precedent of a federal scheme that these Provinces should be endowed with an autonomy and individuality of their own; but since it is proposed that the Act which brings this about should at the same time create a potential Federation, the new central organism cannot be derived from any formal agreement between the Provinces and the States, but must come into existence by new and hitherto unknown methods. It must be created, with the aid of Parliament, through the instrumentality of the Crown.

Existing distribution of authority in British India.

149. The dominion and authority of the Crown extends over the whole of British India and is exercised subject to the conditions prescribid by the existing Government of India Act. It is derived from many sources, in part statutory and in part prerogative, the former having their origin in Acts of Parliament, and the latter in rights based upon conquest, cession or usage, some of which have been directly acquired, while others are enjoyed by the Crown as successor to the rights of the East India Company. The Secretary of State is the Crown's responsible agent for the exercise of all authority vested in the Crown in relation to the affairs of India, and for the exercise also of certain authority which he derives directly from powers formerly vested in the Court of Directors and the Court of Proprietors of the East India Company, whether with or without the sanction of the body once known as the Board of Control. The superintendence, direction and control of the civil

and military Government of India is declared by the Government of India Act to be vested in the Governor-General in Council, and the government or administration of the Governors' and Chief Commissioners' Provinces respectively in the local governments; but powers of superintendence, direction and control over " all acts, operations and concerns which relate to the government or revenue of India " are, subject to substantial relaxation in the transferred provincial field, expressly reserved to the Secretary of State; and whether the Governor-General in Council exercises (though no doubt under the general control of the Secretary of State) original powers of his own, or is only the agent and mouthpiece of the Secretary of State, remains perhaps an open question. It is one which has been the subject of dispute in the past between Secretaries of State and the Governor-General; but the spheres of their respective jurisdictions are now well recognised, and the Secretary of State, though maintaining his powers of control, does not in practice exercise any powers of direct administration, a result to which the increasing authority of the Indian Legislature has no doubt materially contributed.

Legal basis of new Federal Constitution.

150. It is clear that in any new Constitution in which autonomous Provinces and Indian States are to be federally united under the Crown, not only can the Provinces no longer derive their powers and authority from devolution by the Central Government, but the Central Government cannot continue to be an agent of the Secretary of State. Both must derive their powers and authority from a direct grant by the Crown. We apprehend, therefore, that the legal basis of a reconstituted Government of India must be, first, the resumption into the hands of the Crown of all rights, authority and jurisdiction in and over the territories of British India, whether they are at present vested in the Secretary of State, the Governor-General in Council, or in the provincial Governments and Administrations; and

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second, their redistribution in such manner as the Act may prescribe between the Central Government on the one hand and the Provinces on the other. A Federation of which the British India Provinces are the constituent units will thereby be brought into existence; but since the rights, authority and jurisdiction which will be exercised on behalf of the Crown by the Central Government do not extend to any Indian State, unless the Ruler has agreed to their exercise for federal purposes in relation to the State, it follows that the accession of an Indian State to the Federation cannot take place otherwise than by the voluntary act of its Ruler. The Constitution Act cannot itself make any Indian State a member of the Federation; it will only prescribe a method whereby the State may accede and the legal consequences which will flow from the accession. There can be no question of compulsion so far as the States are concerned. Their Rulers can enter or stand aside from the Federation as they think fit. They have announced their willingness to consider federation with the Provinces of British India on certain terms;

but whereas the powers of the new Central Government in relation to the Provinces will cover a wide field and will be identical in the case of each Province, the Princes have intimated that they are not prepared to agree to the exercise by a Federal Government for the purpose of the Federation of a similar range of powers in relation to themselves. This is a further aspect of the matter which differentiates the proposed Federation from any other; for not only will some of the constituent units be States whose subjects will continue to owe allegiance to their own Rulers, modified only within the federal sphere, but the powers and authority of the Central Government will differ as between one constituent unit and another.

Proposed scheme a practicable one.

151. The above is in broad outline the scheme adopted in the White Paper,[1] and it seems to us the only method by which such a Federation could be created. We have already said that there are no precedents to which recourse might be had for guidance, though the recent devolution of certain powers of the Spanish Republic, hitherto a completely unitary State, on the new autonomous Province of Catalonia perhaps affords a partial and limited analogy; but we know of no Federation with constituent units which occupy a position similar to that of any Indian State acceding to the Indian Federation. The latter will be unique in character among the Federations of the world; but though for that reason difficulties and complexities are inevitable in the scheme proposed, we regard it as neither unnatural nor impracticable. It will undoubtedly demand for its successful working goodwill on both sides; but that is a postulate of every Federation, and our enquiry gives us no reason to suppose that goodwill will be wanting.

Rulers' Instruments of Accession.

152. It is proposed that the Ruler of a State shall signify to the Crown his willingness to accede to the Federation by executing an Instrument of Accession;[2] and this Instrument (whatever form it may take) will, we assume, enable the powers and jurisidction of the Ruler in respect of those matters which he has agreed to recognise as federal subjects to be exercised by the federal authorities brought into existence by the Constitution Act; that is to say, the Governor-General, the Federal Legislature, and the Federal Court, but strictly within the limits defined by the Instrument of Accession. Outside these limits the autonomy of the States and their relations with the Crown will not be affected in any way by the Constitution Act. The list of exclusively federal subjects is set out in List I of Appendix VI to the White Paper, to which we have already drawn attention,

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and we understand the hope of His Majesty's Government to be that Rulers who accede will in general be willing to accept items 1 to 48 of List I as federal subjects. We have indicated our view that the Lists in Appendix VI require some modification, a matter with which we deal hereafter; and, therefore, though we speak of

[1] White Paper, Proposal 1.
White Paper, Proposals 2–3.

items 1 to 48, we do not wish to be understood as necessarily implying that we accept all these items as appropriately falling within the federal sphere, so far as regards the Indian States, or that we think that the definition of some of them is not susceptible of improvement. Subject to this, it is convenient to consider the questions which arise in connection with the Instrument of Accession on the basis of the White Paper proposal, with the explanations which have been given to us on behalf of His Majesty's Government.

Instruments should, so far as possible, follow a standard form.

153. It would, we think, be very desirable that the Instruments of Accession should in all cases be in the same form, though we recognise that the list of subjects accepted by the Ruler as federal may not be identical in the case of every State. Questions may arise hereafter whether the Federal Government or the Federal Legislature were competent in relation to a particular State to do certain things or to make certain laws, and the Federal Court may be called upon to pronounce upon them; and it would in our opinion be very unfortunate if the Court found itself compelled in any case to base its decision upon some expression or phraseology peculiar to the Instrument under review and not found in other Instruments. Next, we think that the lists of subjects accepted as federal by Rulers willing to accede to the Federation ought to differ from one another as little as possible, and that a Ruler who desires in his own case to except, or to reserve, subjects which appear in what we may perhaps describe as the standard list of federal subjects in relation to the States ought to be invited to justify the exception or reservation, before his accession is accepted by the Crown. We do not doubt that there are States which will be able to make out a good case for the exception or reservation of certain subjects, some by reason of existing treaty rights, others because they have long enjoyed special privileges (as for example in connection with postal arrangements, and even currency or coinage) in matters which will henceforward be the concern of the Federation; but in our judgment it is important that deviations from the standard list should be regarded in all cases as exceptional and not be admitted as of course. We do not need to say that the accession of all States to the Federation will be welcome; but there can be no obligation on the Crown to accept an accession, where the exceptions or reservations sought to be made by the Ruler are such as to make the accession illusory or merely colourable.

Accession of sufficient number of States a condition precedent to Federation.

154. We regard the States as an essential element in an All-India Federation; but a Federation which comprised the Provinces and only an insignificant number of the States would scarcely be deserving of the name. This is recognised in the White Paper, where it is proposed that the Federation shall be brought into existence by the issue of a Proclamation by His Majesty, but that no such Proclamation shall be issued until the Rulers of States representing not less than half the aggregate population of the States and entitled to not less than half the seats to be allotted to the States in the

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Federal Upper Chamber have signified to His Majesty their desire to accede to the Federation.[1] We accept the principle of this proposal. We observe also that it is proposed that both Houses of Parliament should first present an Address to His Majesty praying that the Proclamation may be issued. We approve this proposal, because Parliament has a right to satisfy itself not only that the prescribed number of States have in fact signified their desire to accede, but also that the financial, economic, and political conditions necessary for the successful establishment of the Federation upon a sound and stable basis have been fulfilled. This is a matter which we discuss more fully in a subsequent part of our Report, and it is unnecessary to do more than allude to it here.[2] We note also in passing that the establishment of autonomy in the Provinces is likely to precede the establishment of the Federation ; but in our judgment it is desirable, if not essential, that the same Act should lay down a constitution for both, in order to make clear the full intention of Parliament.

Differentiation of functions of Governor-General and Viceroy.

155. We have spoken above of the rights, authority and jurisdiction of the Crown in and over the territories of British India. But the Crown also possesses rights, authority and jurisdiction elsewhere in India, including those rights which are comprehended under the name of paramountcy. All these are at present exercised on behalf of the Crown, under the general control of the Secretary of State, by the Governor-General in Council ; and it will be necessary that they should also be resumed in their entirety into the hands of the Crown. But clearly they cannot under the new Constitution be exercised on behalf of the Crown by any federal authority, save in so far as they fall within the federal sphere, and only then when they affect a State which has acceded to the Federation. The White Paper proposes that (subject to the exception which we have mentioned) they should in future be exercised by the representative of the Crown in his capacity as Viceroy ; and that, in order to put the distinction beyond doubt, the office of Governor-General should be severed from that of Viceroy.[3] We agree with what we conceive to be the principle underlying this proposal, but we are not clear that the method employed to give effect to it is entirely appropriate. We agree that there must be a legal differentiation of functions in the future ; and it may well be that His Majesty will be pleased to constitute two separate offices for this purpose. But we assume that for many years to come, if not always, the two offices will continue to be held by the same person, and, so long as this is so, we think that the title of Viceroy should attach to him in his double capacity ; we do not presume to suggest a designation for the separate office whose incumbent will represent the Crown in its relations with the States outside the Federal sphere. But the suggestion which we have made

[1] White Paper, Proposal 4.
[2] *Infra*, para. 268.
[3] White Paper, Introd., para. 10.

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involves no departure from the underlying principle of the White Paper that outside the Federal sphere the States relations will be exclusively with the Crown and that the right to tender advice to the Crown in this regard will lie with His Majesty's Government.

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The Area of Federal Jurisdiction

Area of Federation.

156. The area of federal jurisdiction will extend in the first instance to the whole of British India, which comprises at the present time the Governors' Provinces and the Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands, and Aden.[1] We give below our reasons for holding that Aden should henceforth cease to be part of British India. As regards the States which have acceded to the Federation, the federal jurisdiction will extend to them only in respect of those matters which the Ruler of the State has agreed in his Instrument of Accession to accept as federal.

Aden.

157. The Settlement of Aden which comprises the town of Aden itself and certain immediately adjacent districts is at present administered by the Government of India as a Chief Commissioner's Province. Responsibility for the hinterland of Aden, which is commonly known as the Aden Protectorate and which is not British territory, has since 1917 rested with His Majesty's Government, who have also since the same date been responsible for the military and political affairs of the Settlement. Under arrangements reached in 1926, an annual contribution, subject to a maximum of £150,000, but which amounts at the moment only to some £120,000, is made from Indian revenues to military and political expenditure on the Settlement and the Protectorate. The population of the Settlement is predominantly Arab, the Indian population, which is however of great commercial importance, numbering only about one seventh of the whole.

Effect of constitutional proposals.

158. Proposals for Indian constitutional reform inevitably necessitated consideration of the future position of Aden, and in particular of the question whether the Settlement could satisfactorily be included in the new arrangements, or whether it would not be preferable to transfer responsibility for its civil administration to His Majesty's Government, in whom military and political responsibility for the Settlement and complete responsibility for the affairs of the hinterland already vests. We have received strong representations against any alteration in the status of Aden from important and influential Indian interests. On the other hand we have received representations in favour of transfer from the Arab population who appear to view with some apprehension the possibility that Aden may permanently remain a part of British India.

[1] White Paper, Proposals 5, 56–60.

Its separation from British India recommended.

159. We recognise the natural reluctance of Indian public opinion to sever a connection of almost a century's standing with an area the development of which is largely due to Indian enterprise and where much Indian capital is engaged. But great importance must also be attached to the interests and the feelings of the Arab majority of the population of the Settlement. We are impressed apart from this by the geographical remoteness of Aden from India; by the difficulties of merging it satisfactorily in a new Indian Federation; by the impracticability of a complete divorce between the civil administration of the Settlement on the one hand and political and military control of the Settlement and Protectorate on the other; and by the anomaly of including in such new constitutional arrangements as may be approved for India an area predominantly Arab in population. already to some extent under Imperial control, and in practice inseparable from the Aden Protectorate for which India has ceased to be in any way responsible.

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The constitutionally anomalous position which would arise in regard to Defence, if the present arrangements were allowed to continue under the new constitution, would be particularly marked. We are, moreover, inclined to see some force in the argument that it is desirable on general grounds, given the importance of Aden from a strategic standpoint to the Empire in the East as a whole, and not merely to any individual unit, that its control should vest in the Home Government. After full consideration we are of opinion that the administration of the Settlement of Aden should be transferred from the Government of India to His Majesty's Government not later than the date of the establishment of Federation. In reaching this conclusion we have not ignored the apprehensions expressed by Indian interests connected with Aden as to the possible prejudicial effect of a transfer upon their position. We have, however, ascertained that His Majesty's Government are prepared in the event of transfer not merely to relieve India of her annual financial contribution, but to preserve a right of appeal in judicial cases to the Bombay High Court; to maintain (in the absence of any radical change in present economic circumstances) the existing policy of making Aden a free port; to leave nothing undone to keep the administration at its present standard; and to impose no additional taxation unless in their opinion such a course is quite inevitable. They are further prepared to agree that a proportion of Indian Service personnel shall be retained for some years after the date of transfer; that no racial discrimination shall be permitted; and that British Indian subjects shall be allowed to enter the Protectorate under precisely the same conditions as any other British subjects. These assurances ought, in our view, adequately to meet the apprehensions to which we have referred above.

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III.—RESPONSIBILITY AT THE CENTRE

The Federal Centre.

160. We come lastly to the proposals in the White Paper which relate to the Federal Government and Legislature.[1] Much that we have said in connection with the Provinces applies equally to the Centre, but there are special problems connected with the latter for which there neither is nor can be any provincial counterpart. The Federal Government will be the point of contact between the Provinces and the Indian States which accede to the Federation; it will be the connecting link between all the constituent units as such, and there must exist at the Centre a residuary and ultimate responsibility for the peace and tranquillity of the whole of India. The authority and functions of the Governor-General as the representative of the Crown assume in all these spheres a particular importance, especially in relation to Defence and External Affairs; and in connexion with the latter subjects the problems associated with a dyarchical system have to be examined. We propose to consider, first, the Federal Executive and the Federal Legislature and the relations between the two; and, secondly, the relations between the Federation and its constituent units, that is, the Provinces and those Indian States which have become members of the Federation.

(1) The Federal Executive.

The present Executive in India.

161. The present executive authority in India, both in civil and in military matters, is the Governor-General in Council. The members of the Governor-General's Executive Council, of whom not less than three must be persons who have been for at least ten years in the

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service of the Crown in India, are appointed by the Crown, and their appointments are in practice for a term of five years, though there is no statutory limit. The Commander-in-Chief is ordinarily, though not necessarily, a member of the Council, and in that case has rank and precedence next after the Governor-General himself. The present Council consists of six members (of whom three are Indians), in addition to the Governor-General and the Commander-in-Chief. The Governor-General presides at meetings of his Council, and the decision of the majority of those present prevails, though the Governor-General has a casting vote in the event of an equality of votes, and may, if any measure is proposed which in his judgment affects the safety, tranquillity or interests of British India, or any part thereof, over-rule the Council. The three members of the Council who are required to have been in the service of the Crown in India are invariably selected from the Indian Civil Service; the post of Law Member has for some years past been filled by an Indian lawyer, and that of Finance Member by a person with financial experience from the

[1] White Paper, Proposals 6–55.

United Kingdom. An official is not qualified for election as a member of either Chamber of the Central Legislature, and if any non-official member of either Chamber accepts office under the Crown in India his seat is vacated; but every member of the Governor-General's Council becomes an ex-officio member of one of the Chambers and has the right of attending and addressing the other, though he cannot be a member of both. The Executive Government is not responsible to the Indian Legislature, but only to the Secretary of State and thus to Parliament; and the Governor-General in Council, if satisfied that any demand for supply which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, can act as if it had been assented to, notwithstanding the refusal of the demand or any reduction in its amount by the Legislative Assembly. The Governor-General himself has also power in case of emergency to authorise such expenditure as may in his opinion be necessary for the safety or tranquillity of British India, or any part thereof. These provisions secure the complete independence of the Executive, though the Legislature can and does exercise an influence upon policy in a marked and increasing degree.

Executive power and authority of Federation to be vested in Governor-General.

162. The White Paper proposes that, as in the case of the Governor in a Province, the executive power and authority of the Federation shall vest in the Governor-General as the representative of the King.[1] This power and authority will be derived from the Constitution Act itself, but the Governor-General will also exercise such prerogative powers of the Crown (not being powers inconsistent with the Act) as His Majesty may be pleased to delegate to him. The former is to include the supreme command of the military, naval and air forces in India, but it is proposed that power should be reserved to His Majesty to appoint a Commander-in-Chief to exercise in relation to those forces such powers and functions as may be assigned to him. In relation to a State which is a member of the Federation the executive authority will only extend to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession. It is then proposed that there shall be a Council of Ministers,[2] chosen and summoned by the Governor-General and holding office during his pleasure, to aid and advise him in the exercise of the powers conferred on him by the Constitution Act other than his powers relating to (1) defence, external affairs and ecclesiastical affairs, (2) the administration of British Baluchistan,

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and (3) matters left by the Act to the Governor-General's discretion.[3] In respect of certain specified matters the Governor-General, like the Governor of a Province, is declared to have a "special responsibility"; and his Instrument of Instructions will direct him to be guided by the advice of his Ministers in the sphere in which they have the constitutional right to tender it, unless in his opinion one of his

[1] White Paper, Proposal 6.
[2] White Paper, Proposal 13.
[3] White Paper, Proposals 5, 11 and 13.

special responsibilities is involved, in which case he will be at liberty to act in such manner as he judges requisite for the fulfilment of that special responsibility, even though this may be contrary to the advice which his Ministers have tendered.[1]

Introduction of responsible government.

163. It will be seen that the White Paper proposals are the same (*mutatis mutandis*) for the Federal, as they are for the Provincial, Executive. It is not therefore necessary for us to repeat what we have already said on the subject, and especially on the importance which will attach to the Governor-General's Instrument of Instructions. The Instrument will direct him to appoint as his Ministers those persons who will best be in a position collectively to command the confidence of the Legislature;[2] and this direction, taken in conjunction with the proposals which we have set out, is, as we have said elsewhere, the correct constitutional method of bringing into existence a system of responsible government. We observe that Ministers are to advise the Governor-General in the exercise of the powers conferred on him by the Constitution Act (other than powers relating to the subjects which we have mentioned above); and we assume therefore that they will not be entitled to advise him in the exercise of any prerogative powers of the Crown which may be delegated to him, presumably in the Letters Patent constituting the office. We are of opinion that this is a proper distinction to draw; and that Ministers should not, for example, have the right to advise on the exercise of such a prerogative of His Majesty as the grant of honours, if His Majesty should be pleased to delegate a limited power for that purpose. There is no interference here with the principle of responsible government, for it is not proposed that His Majesty should be empowered to delegate any powers which are inconsistent with the Act.

Special questions in connection with the Federal Executive.

164. We pass to a consideration of some special questions which arise in connection with the Federal Executive, and they may conveniently be discussed under the following heads:—

(i) The nature of the Governor-General's special responsibilities;
(ii) the Governor-General's selection of Ministers;
(iii) the Reserved Departments;
(iv) the Governor-General and the Federal Administration;
(v) the special powers of the Governor-General.

(i) *Nature of the Governor-General's Special Responsibilities*

The Governor-General's "special responsibilities."

165. The White Paper defines the matters in respect of which the Governor-General is declared to have a special responsibility in the following terms:—(*a*) the prevention of any grave menace to the peace or tranquillity of India, or any part thereof; (*b*) the safeguarding of the financial stability and credit of the Federation;

[1] White Paper, Proposal 21.
[2] White Paper, Proposal 14.

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(c) the safeguarding of the legitimate interests of minorities; (d) the securing to the members of Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests; (e) the prevention of commercial discrimination; (f) the protection of the rights of any Indian State; (g) any matter which affects the administration of any department under the direction and control of the Governor-General.

Responsibility for peace and tranquillity of India.

166. All that we have said on (a) in relation to the Governor of a Province applies with equal, if not greater, force in the case of the Governor-General, and we have little to add to it. The Governor-General, as the authority in whom the exclusive responsibility for the defence of India is vested, must necessarily be free to act, according to his own judgment, where the peace or tranquillity of India, or any part of India, is threatened, even if he finds himself thereby compelled to dissent from the advice tendered to him by his Ministers within their own sphere; but, since we assume that his Ministers will have equally at heart the preservation of peace and tranquillity, we hope that we may assume that differences of opinion between them and the Governor-General on this subject will seldom, if ever, arise.

Responsibility for safeguarding financial stability and credit of the Federation.

167. Federal Ministers will under the White Paper proposals become responsible for finance; but (to quote the Second Report of the Federal Structure Committee of 13th January, 1931) it is recognised to be "a fundamental condition of the success of the new Constitution that no room should be left for doubts as to the ability of India to maintain her financial stability and credit, both at home and abroad," and that it is therefore necessary "to reserve to the Governor-General in regard to budgetary arrangements and borrowing such essential powers as would enable him to intervene if methods were being pursued which would in his opinion seriously prejudice the credit of India in the money markets of the world." To this we might add that the grave responsibilities which attach to the Governor-General in the matter of defence afford a further and no less cogent reason. In our opinion, though the expression "budgetary arrangements and borrowing" indicates generally the sphere in which it is desirable that the Governor-General should have power, if necessary, to act, it would be unwise to attempt to define this special responsibility in more precise terms than are proposed in the White Paper. Any further directions for the guidance of the Governor-General would find a more appropriate place in his Instrument of Instructions, as indeed the Joint Memorandum of the British-Indian Delegation suggests. The White Paper also proposes, rightly in our opinion, that the Governor-General should be empowered in his discretion, but after consultation with his Ministers, to appoint a financial adviser to assist him in the discharge of this special responsibility.[1] The British-Indian Delegation concur, provided it is made clear that

[1] White Paper, Proposal 17.

the financial adviser is not intended to interfere in the day to day administration of financial business; and they suggest indeed that it would be an advantage if he were designated the adviser to the Ministry as a whole as well as to the Governor-General. We think that he must be regarded technically as the Governor-General's adviser, but his advice ought to be available to Ministers and we hope that they will freely consult him. We have no doubt that the

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Governor-General will always endeavour to secure the appointment of a person acceptable to his Ministers ; for since we may assume that he will be a person selected not only by reason of his financial qualifications but also for his tact and commonsense, the value of his services would in our judgment be no less diminished if he held himself aloof from Ministers than if he sought to interfere in matters outside his proper functions. We think that such an adviser, if the right selection is made, may prove of the greatest assistance both to the Governor-General and to Ministers, and that the more successful he is in the performance of the duties attaching to his office, the less likelihood will there be of exercise by the Governor-General of any of his special powers.

Responsibility for protecting the rights of Indian States.

168. We have nothing to add to what we have already said with regard to the special responsibilities specified under (*c*), (*d*) and *e*). As regards (*f*), " the protection of the rights of any Indian State," we have already expressed the view that this special responsibility only applies where there is a conflict between rights arising under the Constitution Act and those enjoyed by a State outside the federal sphere. It may be necessary for the Governor-General to deal with such a conflict not only in his capacity as the executive head of the Federation but also in his capacity as the representative of the Crown in its relations with the States ; but his special responsibility must necessarily arise in the first capacity only. The responsibility specified in (*g*) calls for no comment, since it is plain that the Governor-General must be free to exercise his own judgment in any matter which affects the administration of any of the reserved departments, even though it arises primarily within the ministerial sphere.

(ii) *The Governor-General's Selection of Ministers*

Selection of Ministers.

169. [As in the case of the Provinces, it is proposed that federal Ministers must be, or become within a stated period, members of one or other Chamber of the Legislature.[1] We have expressed the opinion that the Governor of a Province ought not to be thus restricted in his choice of Ministers, and we think that in principle the choice of the Governor-General ought similarly to be unrestricted. The reasons which led us to the above conclusion in regard to the Provinces do not however apply with the same force, and we have no doubt that it would be very rarely, if at all, that the Governor-General would find it necessary or desirable to appoint Ministers who are not

[1] White Paper, Proposal 13.

members of the Legislature or unlikely to become members within the prescribed period. Since also it is proposed that there shall be a small element nominated by the Governor-General in the Upper Chamber of the Legislature, the question is even less likely to arise in practice ; but we think nevertheless that no distinction should be made in this particular respect between the Federation and the Provinces.]

(iii) *The Reserved Departments*

The Reserved Departments and the Governor-General's Counsellors.

170. The White Paper proposes that the Governor-General shall himself direct and control the administration of the Departments of Defence, External Affairs and Ecclesiastical Affairs ; [1] these matters will therefore remain outside the ministerial sphere, and the Governor-General's responsibility with respect to them will be to the Secretary of State and thus ultimately to Parliament. The Governor-General could not, it is plain, undertake in person so great

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an administrative burden, and it is therefore proposed that he should be assisted by not more than three Counsellors who will be appointed by him and whose salaries and conditions of service will be prescribed by order in Council.[2] Since also it is necessary that the Governor-General should have a spokesman in the Legislature on matters connected with the Reserved Departments, each Counsellor will be ex-officio an additional member of both Chambers of the Legislature for all purposes, though without the right to vote; and we assume that there will be no restriction on his right to take part in any of the debates in the Legislature if he desires to do so.

Defence

171. The Department of Defence is a cardinal Department, for it is responsible for the defence of India in all its aspects, whether concerned with internal security or with protection from foreign invasion. The sober and impressive chapter on the Army in India which forms part of the Statutory Commission's survey makes it unnecessary for us to discuss in any detail the difficulties and complexities of this vital subject in its relation to India, and we do not desire either to add to or qualify their presentation of the problem.[3] Their investigation led them indeed to a conclusion which differs, in its constitutional aspect, from our own, but on the facts of the matter we find ourselves in complete agreement with them.

The Statutory Commission on the Army in India.

[1] White Paper, Proposal 11. It is also proposed that the Governor-General shall himself direct and control the administration of British Baluchistan (White Paper, Proposal 5); but there will not be a Reserved Department of British Baluchistan, which will be a Chief Commissioner's Province and will be in no different position from other Chief Commissioners' Provinces, except that Ministers will not advise the Governor-General in relation to its administration.

[2] White Paper, Proposal 12.

[3] Report, Vol. I, paras. 111–126.

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172. The commission, convinced that dyarchy in the Central Government was wholly inadmissible, inquired whether any other plan was feasible which would provide adequately for the needs of Indian defence and offer at the same time an earlier prospect for further constitutional advance; and they suggested as the only possible answer that the protection of the Indian frontiers should not, at any rate for a long time to come, be regarded as a function of an Indian Government in relation with an Indian Legislature, but as a responsibility to be assumed by the Imperial Government.[1] This plan has not, we think, found advocates even among those who would be prepared to assent generally to the recommendation of the Commission; and it seems to us to avoid the difficulties of one kind of dyarchy by creating what is in substance, if not in form, another. We are unwilling for reasons which we have already given that the problem of defence should for ever bar the way to any form of responsibility at the Centre, and we are prepared to accept the risks which we recognise to be implicit in a dyarchical system; but it is an essential condition of the experiment that in the sphere of defence the Governor-General's responsibility should remain undivided and unimpaired and that the Department of Defence should be under his exclusive direction and control. It should be remembered also that it is through this agency that the obligation will be discharged which the Crown has assumed for the protection, whether externally or internally, of the States. Responsible British-India opinion does not deny the necessity for the reservation, though the

The Commission's recommendation.

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Joint Memorandum of the British-India Delegations seeks to add certain qualifications, to which we shall refer later; and we proceed therefore to a consideration of some of the more important questions which it involves.

Relations between Department of Defence and other Departments.

173. No department of Government can be completely self-contained, and a Department of Defence is no exception to the rule. Its administration does not indeed normally impinge upon the work of other Departments, save in time of war or other grave emergency; but its policy and plans may be greatly influenced by theirs, and by the knowledge that it is able to rely upon their co-operation at moments of crisis. It is vital, therefore, that where defence policy is concerned the Department should be able to secure that its views prevail in the event of a difference of opinion. The special responsibility which it is proposed that the Governor-General shall have in respect of any matter affecting the administration of the Departments under his direct control will enable him in the last resort to secure that action is not taken in the ministerial sphere which might conflict with defence policy; and he will also be able to avail himself of the power which the Federal Government will possess to give directions as to the manner in which the executive authority in the Provinces is to be exercised in relation to any matter affecting the administration of a federal subject, since Defence is none the less a

[1] Report, Vol. II, paras. 195–215.

federal subject because reserved. Thus the maintenance of communications, especially on mobilisation, is a vital military necessity, and the Governor-General must have power in case of need to issue directions to the Railway Authority, or to require the Minister in charge of communications to take such action as the Governor-General may deem advisable. In the provincial sphere questions may arise with regard to the control of lands, buildings or equipment maintained or required by the Department, or with regard to such matters as facilities for manœuvres or the efficiency and well-being of defence personnel stationed in provincial areas. In all matters of this kind where there is a difference of opinion with other authorities, the final responsibility for a decision, if defence policy is concerned, must rest with the Governor-General and his views must prevail.

Co-operation essential.

174. It may be assumed that practice the willing co-operation of the other departments of Government—Federal or Provincial—will render unnecessary any recourse to these special powers; and we should view with dismay the prospects of any new Constitution, if the relations between the ministerial and the reserved Departments were conducted in an atmosphere of jealousy or antagonism. The influence of the Governor-General will no doubt always be exerted to secure co-ordination and harmony; but it may well be that some permanent co-ordinating machinery will be desirable. The British-India Joint Memorandum suggests a statutory Committee of Indian Defence which in other respects would be modelled on the Committee of Imperial Defence; but we are not sure that its authors fully appreciate the position and functions of the latter, since it is not a statutory body and its value is perhaps increased by that very fact. We are disposed to think that a body with statutory powers and duties might embarrass the Governor-General and even be tempted to encroach upon his functions. A consultative body established at the Governor-General's discretion would not be open to that criticism and might, we think, have many advantages.

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Suggestions of British-India Delegation.

175. The Joint Memorandum observes that, since the Governor-General in Council exercises superintendence, direction and control over the military as well as the civil government in India, the reservation of the Department of Defence to the Governor-General will have the effect of depriving Ministers of the influence over Army policy which at the present time Indian Members of the Governor-General's Council are able to exert. It urges therefore (1) that the Governor-General's Counsellor in charge of the Department of Defence should always be a non-official Indian, and preferably an elected member of the Legislature or a representative of one of the States; (2) that the control now exercised by the Finance Member and the Finance Department should be continued; and (3) that all questions relating to army policy and the annual army budget should be considered by the entire Ministry, including both Ministers and Counsellors; though it is admitted that in cases of difference the decision of the Governor-General must prevail. As to the first point,

we do not think that the Governor-General's choice ought to be fettered in any way, and he must be free to select the man best fitted in his opinion for the post. As to the second, we understand that the Military Finance and the Military Accounts Departments are at the present time subordinate to the Finance Department of the Government of India, and not to the Army Department. It seems to us a necessary corollary of the reservation of defence that both of them should be brought under the Department of Defence, since the responsibility for the expenditure which they supervise can only be that of the Governor-General. But the transfer would not preclude an arrangement whereby the Federal Department of Finance is kept in close touch with the work of both these branches and we do not doubt that some such arrangement ought to be made. As to the third point, we observe a proposal in the White Paper that the Governor-General's Instrument of Instructions should direct him to consult the Federal Ministers before the army budget is laid before the Legislature;[1] and so long as nothing is done to blur the responsibility of the Governor-General it seems to us not only desirable in principle, but inevitable in practice, that the Federal Ministry, and in particular, the Finance Minister, should be brought into consultation before the proposals for defence expenditure are finally settled.

Indianization.

176. We pass to the vexed question of Indianization. The Governor-General's Instrument of Instructions will, we understand, formally recognise the fact that the defence of India must to an increasing extent be the concern of the Indian people, and not of the United Kingdom alone.[2] With this general proposition we are in entire agreement, and we have every sympathy with what the Statutory Commission rightly call the natural and legitimate aspirations of India. But Indianization is a problem which admits of no facile solution, and least of all one based upon the automatic application of a time-table; and if we should seem to emphasize its difficulties, it is because we are anxious that Indian political leaders should be realists in this matter, and not because it is either our desire or our intention to derogate from or to evade the pledges which have been given by successive Governments in this country.

The practical difficulties.

177. It is sometimes said that so long as the officer ranks of the Indian Army are not fully Indianized complete self-government must be indefinitely deferred. We do not regard that view as self-evident; and indeed the problem of Indianization does not appear to us to be essentially related to the constitutional issues with which we are

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concerned. Since however it has been brought before us, we think it wise to repeat the conclusions of the Statutory Commission that " the issues involved are too vital, and the practical difficulties too great, to justify a precipitate embarkation on a wholesale process of substituting Indian for British personnel in the Indian Army."[3]

[1] White Paper, Introd., para. 23.
[2] *Ibid.*
[3] Report, Vol. II, para. 196.

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A further difficulty arises from the difference (in a military sense) between the martial and the other races of India. We are well aware that this difference is alleged to have no existence in fact or at least to have been exaggerated for political purposes; but no unprejudiced person can deny that it is there, and that it is beyond the power of Parliament to alter it. There are some things which even an Act of Parliament cannot do. It is subdued to what it works in, and spiritual values are beyond its scope; and something more than a section in a statute is required to eliminate racial differences or to breathe life into the elements which go to the making of a national army. Parliament can provide the conditions in which the creation of a homogeneous Indian nation may become possible; but the act of creation must be the work of Indian hands.

Further development of Indianization necessary, but a time-limit impracticable.

178. We think it right to mention these things because of the suggestion put forward in the British-India Joint Memorandum that there should be a definite programme of Indianization with reference to a time limit of 20 or 25 years, and that one of the primary duties of an Indian Army Counsellor should be the provision and training of Indian officers for the programme of Indianization. It is in our judgment impossible to include in the Constitution Act or in any other statute a provision for the complete Indianization of the Army within a specified period of time. The scheme introduced in 1931 provides for the Indianization of the equivalent of one Cavalry Brigade and one Infantry Division complete with all arms and ancillary services; and we are assured that it has been initiated by the military authorities in India with the fullest sense of their responsibility in the matter and that further developments will depend upon the success of the experiment. If the experiment succeeds, the process will be extended and developed, and Indians can rely on all the sympathy and assistance which we are able to give them for the purpose of creating an army of their own. We endorse the measured words of the Statutory Commission: " Neither British politician or Indian politician can wisely decide such matters without special knowedge and expert advice. We are only concerned here to convey a double warning—a warning on the one hand that Britain cannot indefinitely treat the present military organization of India as sacrosanct and unalterable, but must make an active endeavour to search for such adjustments as might be possible; and a warning on the other hand that Indian statesmen can help to modify the existing arrangement in the direction of self-government only if they too will co-operate by facing the hard facts and by remembering that those who set them out for further consideration are not gloating over obstacles, but are offering the help of friends to Indian aspirations."[1]

Rights of Defence personnel, etc.

179. It will be more convenient to consider certain questions which have been raised in connection with the rights of Defence personnel in that part of our Report in which we deal with the rights of the

[1] Report, Vol. I, para. 126.

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Services generally. The question of the future recruitment for the Indian Medical Service, which has an important military bearing, is discussed in the same place, and it is unnecessary therefore to do more than mention it here.

The Commander in Chief.

180. The White Paper proposals have been thought to contemplate the possible abolition of the office of Commander in Chief in India. We do not so read them and we are assured that no such intention is in the mind of His Majesty's Government.

External Affairs

External affairs.

181. The Department of External Affairs is in our opinion rightly reserved to the Governor-General, if only because of the intimate connection between foreign policy and defence. At the present time the Foreign Department, of which the Governor-General himself holds the portfolio, is only concerned with the relations between the Government of India on the one hand and foreign countries on the other, and not with the relations between the Government of India and the Dominions; and we are informed that the expression "External Affairs" is not intended to include the latter, a decision with which we concur. It was urged before us that the making of commercial or trade agreements with foreign countries was essentially a matter for which the future Minister for Commerce should be responsible rather than the Governor-General. In the United Kingdom, however, all agreements with foreign countries are made through the Foreign Office. Any other arrangement would lead to grave inconvenience; but when a trade or commercial agreement is negotiated, the Foreign Office consult and co-operate with the Board of Trade, whose officials necessarily take part in any discussions which precede the agreement. We assume that similar arrangements will be adopted in India, and that the Department of External Affairs will maintain a close contact with the Department of Trade or Commerce; but we are clear that agreements of any kind with a foreign country must be made by the Governor-General, even if on the merits of a trade or commercial issue he is guided by the advice of the appropriate Minister.

Ecclesiastical Affairs

Ecclesiastical affairs.

182. The origin of the Ecclesiastical Department is to be found in the obligation imposed by the Charters of the East India Company to provide chaplains on their ships and at their stations; and since 1858, when the rights and obligations of the East India Company finally passed to the Crown, the Government of India have rightly regarded it as their duty to provide for the spiritual needs of British troops stationed in India and, so far as circumstances admit, of the European members of the Civil Services. The Secretary of State in Council has under his general powers established and maintained for this purpose a cadre of official chaplains appointed by himself and

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has authorised grants-in-aid out of Indian revenues for the maintenance of churches and of a certain number of non-official chaplains, the present annual expenditure of the Department being approximately 40 lakhs. Since the Indian Church Act, 1927, and the Indian Church Measure of the same year, by virtue of which the Church in India became an autonomous body, Indian Bishops are no longer appointed by the Crown.

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Limit for future ecclesiastical expenditure suggested.

183. Under the proposals in the White Paper the powers of the Secretary of State will pass to the Federal Government, but will be exercised under the personal direction of the Governor-General, subject (as in the case of the other Reserved Departments) to the general control of the Secretary of State. It is clear that any sudden or unreasonable curtailment of Government assistance might gravely embarrass the new autonomous Indian Church, but obviously the latter must in course of time come to depend less and less upon Government assistance, whether in the form of the provision of official chaplains or of grants in aid for the maintenance of non-official chaplains or churches; and we understand that the policy of the Government of India is gradually to reduce ecclesiastical expenditure with the ultimate intention of restricting it to provision for the spiritual needs of British troops and, within reasonable limits, of the civil official population. The expenditure of the Department will not therefore rise above the present figure and may fall below it as time goes on. We approve the arrangement proposed, but we think that in the circumstances the Constitution Act should specify a maximum figure above which the annual appropriation for ecclesiastical expenditure cannot go. It appears that the whole of the expenditure in respect of official chaplains is now classified as civil expenditure, although a large proportion of the maintained churches and the services of over 90 per cent. of the official chaplains at present employed minister primarily to the spiritual needs of the Army; and it is a matter for consideration whether ecclesiastical expenditure for Army purposes should not be under the control of the Department of Defence. We understand that this question is now under examination by the Government of India.

(iv) *The Governor-General and the Federal Administration*

Ministers and Counsellors.

184. We do not think it necessary to repeat the observations which we have already made on this subject in connexion with the Provinces; for they are equally applicable to the relations between the Governor-General and the Federal Administration. But the existence of the Reserved Departments and the Governor-General's Counsellors introduces an additional factor. The Federal Government will be a dyarchical, and not a unitary, government, the Governor-General's Ministers having the constitutional right to tender advice to him on the administration of a part only of the affairs of the Federation,

while the administration of the other part remains the exclusive responsibility of the Governor-General himself. In these circumstances it is clear that the Governor-General's Counsellors, who will be responsible to the Governor-General alone and will share none of the responsibility of the Federal Ministers to the Federal Legislature, cannot be members of the Council of Ministers. It has indeed been suggested that, for the purpose of securing a greater unity in the Government, the Counsellors ought to form part of the Ministry, entering and leaving office with them, whatever the political complexion of the Ministry may be. An artificial arrangement of this kind, completely divorced from the realities of the situation, is in our opinion quite inadmissible. The Counsellors could not by a simulated resignation diminish their responsibility to the Governor-General, nor would the Government become any more unitary than it was before. It is no doubt true that legal fictions which mask a change of substance by preserving the outward form have

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often proved a valuable aid to constitutional development; but a fiction whereby the form but not the substance is altered can serve no useful purpose. We hope nevertheless that the Counsellors, even if they cannot share the responsibility of Ministers, will be freely admitted to their deliberations. It would indeed be difficult, if not impossible, to conduct the administration of the Department of Defence in complete aloofness from other departments of government; and the maintenance of close and friendly relations with Departments under the control of Ministers can only increase its efficiency. We understand the intention of His Majesty's Government to be that the principle of joint deliberation shall be recognised and encouraged by the Governor-General's Instrument of Instructions. We warmly approve the principle, and we think that it will prove a valuable addition to the machinery of government without derogating in any way from the personal responsibility of the Governor-General for the administration of the Reserved Departments.

Misapprehensions as to position and functions of Counsellors.

185. We recognise the difficulty which necessarily attaches to a dyarchical system, and that for its successful working, tact and sympathy of no common order will be required on both sides. The White Paper states that the proposals which it contains "proceed on the basic assumption that every endeavour will be made by those responsible for working the Constitution to approach the administrative problems which will present themselves in the spirit of partners in a common enterprise."[1] If this assumption proves, as we hope, to be well-founded, many difficulties will disappear. Some at least of them appear to arise from a misunderstanding of the White Paper. Thus we were informed that, though the normal number of the Governor-General's Counsellors would probably be two, it was thought advisable to take power to appoint a third in case of need; but according to the Joint Memorandum of the British-India Delegation, fears have been expressed in India that, if a third Counsellor is appointed and "is

[1] White Paper, Introd., para. 26.

placed in charge of the special responsibilities of the Governor-General," he may develop into what is described as "a super-Minister, whose activities must necessarily take the form of interference with the work of the responsible Ministers." It is impossible to forecast with any accuracy the volume of work involved in the Governor-General's administrative responsibilities, and it may well be that the appointment of a third Counsellor will be found necessary; but, if we may respectfully say so, the notion that there is a danger of his becoming a "super-Minister" seems to us altogether fantastic. To speak of a Counsellor being "placed in charge of the special responsibilities of the Governor-General" is wholly to misapprehend the conception of the special responsibilities embodied in the White Paper, which do not set apart a governmental or departmental sphere of action from which Ministers are excluded, or even one in which the Governor-General has concurrent powers with his Ministers. We do not, as we have said elsewhere, anticipate that the occassions on which the Governor-General or a Governor will find himself compelled in the discharge of his special responsibilities to dissent from ministerial advice tendered to him are likely to be numerous; and the Governor-General and his Counsellors, even if the latter had the power, will not have such ample leisure at their disposal as to be tempted to utilise it for the purpose of interfering with the day to day administration business of Ministers.

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The Governor-General's staff.

186. The Governor-General, even more than the provincial Governors, will require an adequate staff with an officer of high standing at its head. Whether one of the Counsellors will fill this position it is unnecessary for us to consider, for the question is administrative rather than constitutional; but it is of exceptional importance that the Governor-General should be well served and we do not doubt that this matter has engaged, and will continue to engage, the earnest attention of His Majesty's Government.

(v) *The Governor-General's Special Powers*

Special powers.

187. The special powers, legislative and financial, of the Governor-General as described in the White Paper do not differ (*mutatis mutandis*) from those which it is proposed to give to the Governor of a Province. It is therefore sufficient to refer to what we have already said upon the subject in an earlier part of this Report, and we have nothing to add to it here.

(2) Relations between the Federal Executive and Legislature

Difficulties created by composite nature of Executive and Legislature;

188. We have considered in an earlier part of our Report the problem of the relations between the Executive and the Legislature of a Province; and when we examine the relations between the Federal Executive and Legislature, it is plain that many of the same questions arise. But a further complication is introduced into the Federal Executive, for it is proposed that the Governor-General should, in

selecting the Ministers who are likely to command the confidence of the Legislature, include "so far as possible" not only members of important minority communities but also representatives of the States which accede to the Federation.[1] We have already stated our opinion that the acceptance of this principle, inevitable though we recognise it to be, is likely to retard the growth of political parties in the true sense; and it is perhaps even more likely to do so at the Centre than in the Provinces, since we can scarcely doubt that State representation will always be regarded by the States themselves as a necessary and essential element in every administration. The Federal Legislature, though intended to be representative of India as a whole, will itself be largely based upon a system of communal representation; and in these circumstances we do not overlook the possibility that in place of an Executive which propounds, and a Legislature which deliberates upon, a national policy, there may be found two bodies each tending to become, in a classic phrase, "a congress of ambassadors from different and hostile interests, which interests each must maintain as an advocate and agent against other agents and advocates."

and by dyarchy.

189. The proposed dyarchical character of the Government augments, or at least does not diminish, the complexities of the situation. It is unnecessary to repeat all that the Statutory Commission have said on the working of dyarchy in the Provinces; but we may usefully quote one passage from their Report: "The practical difficulty in the way of achieving the objective of dyarchy and of obtaining a clear demarcation of responsibility arises not so much in the inner counsels of government as in the eyes of the Legislature, the electorate and the public. Provincial Legislatures were by the nature of the Constitution set the difficult task of discharging two different functions at the same time. In the one sphere, they were to exercise control over policy; in the other, while free to criticise and vote or withhold supply, they were to have no responsibility.

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The inherent difficulty of keeping this distinction in mind has been intensified by the circumstances under which the Councils have worked to such an extent that perhaps the most important feature of the working of dyarchy in the Provincial Councils, when looked at from the constitutional aspect, is the marked tendency of the Councils to regard the Government as a whole, to think of Ministers as on a footing not very different from that of Executive Councillors, to forget the extent of the opportunities of the Legislatures on the transferred side, and to magnify their functions in the reserved field."[2] To this we may add the Commission's references to the importance (not always, we think, fully realised) of the part played by the official bloc in making the present system workable, by the assurance which it has given to the responsible Ministers of at least one body of supporters on whom they could always rely. "There

[1] White Paper, Proposal 14.
[2] Report, Vol. I, paras. 232, 233.

is no Province", the Commission say, "in which the official bloc has not at some time or other been of decisive value to Ministers, and in some Provinces there has never at any time been a sufficiently large or cohesive ministerial party to enable Ministers to ignore the assistance of their official supporters."[1] These facts have had an important influence on the working of the dyarchical constitution.

Unifying forces.

190. The difficulties to which we have drawn attention are no doubt formidable, and we do not seek to minimise them; but we are far from regarding them as fatal. As regards the composite nature of the Executive, it is perhaps worth observing that few, if any, Federations have in practice found it possible to constitute an Executive into which an element of representation does not in some sense enter. The Swiss Constitution, by providing that not more than one member of the Federal Council may be chosen from one canton, secures the direct representation at any given time of at least seven cantons; and we doubt whether a Canadian or Australian Prime Minister, or a German Chancellor before recent events in Germany, could ever form a Ministry in which claims to representation by some at least of the constituent units of the Federation were disregarded. It will be said that, at any rate in the case of Canada and Australia, the different elements in the Ministry are selected primarily because they are members of the majority party in the Legislature, and only secondarily because they represent other interests which a Prime Minister cannot afford to neglect. This is no doubt true, and we do not seek to push the analogy too far; but we think that the formation of all Federal Executives will always be found to involve considerations which, happily for himself, the Prime Minister of a unitary Government can leave altogether out of account. Next, it is to be observed that the functions of the Federal Executive under the White Paper scheme are necessarily more limited in scope than under the existing constitution, and relate essentially to matters of all-India interest. Tariffs, currency and transport are national, not communal, questions; and it is not unreasonable to assume that any clash of interest with regard to them will tend in future to have an economic rather than a communal origin. There will, therefore, be centripetal as well as centrifugal forces; and it seems to us indeed conceivable that, until the advent of a new and hitherto unknown alignment of parties, a central Executive such as we have described may even come to function, as we believe that the Executive of the Swiss Confederation functions, as a kind of business committee of the Legislature.

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Defence the crucial question.

191. Of the difficulties presented by the system of dyarchy we desire to speak frankly. We do not doubt that in what the Statutory Commission call "the inner counsels of government" they can readily be solved; and the moderating and unifying influence which the Governor-General, both as the head of the Executive and as representative in India of the Crown, will be in a position to exercise

[1] Report, Vol. I, para. 229.

must always be a powerful factor. But "the task of discharging two different functions at the same time" may prove no less difficult for the Federal, than it has been for a Provincial, Legislature, and a great responsibility will rest upon the Federal Legislature, if the scheme is to prove workable in practice, without (as we hope) the intervention of the Governor-General or recourse to any of his special powers. In the reserved sphere the Legislature will have the power to criticize, but not to thwart, the Executive; to influence, but not to determine, policy; and since in this sphere Defence is infinitely the most important subject, the crucial question is whether the Legislature will be prepared, where Defence is concerned, to adopt a responsible and not an irresponsible attitude. We cannot deny that it may be tempted (in the phrase of the Statutory Commission) "to magnify its functions in the reserved field." The military budget and the progress of Indianization are matters on which strong views are held; and it is not to be supposed that under a dyarchical system they will cease to be of interest to legislators. But it is upon the clear demarcation of responsibility that the White Paper scheme depends, and we must state as emphatically as we can that its maintenance is one of the essential conditions of responsible government at the Centre.

Influence of the Indian States.

192. It will be said that the practical working of dyarchy in the Provinces as it has been depicted by the Statutory Commission is scarcely a recommendation for its introduction at the Centre, and that the Governor-General's Counsellors in any conflict with the Legislature may find themselves in a difficult position without the support of an official bloc. We do not dispute the force of this argument; but we have given reasons elsewhere for holding that the administrative difficulties of dyarchy at the Centre are not comparable with those which it has presented in the Provinces, where the interrelation of the two branches of the government makes it impossible in practice to divide the administration of provincial business into mutually exclusive compartments. The same District Officer may, for example, have to give effect to directions from a Minister and an Executive Councillor, each in his own sphere; but the Governor-General's Reserved Departments are administratively separate and self-contained, and we are satisfied that the practical difficulties which have been experienced in the Provinces are far less likely to arise. Secondly, we repeat that our recommendation in favour of responsibility at the Centre is conditional on the accession to the Federation of the Indian States. In all matters relating to Defence their interest is a powerful and reassuring factor. Dyarchy could not for many years to come be an adequate solution of the problem of defence with an exclusively British-India Centre. With the accession of the Indian States it becomes at once an all-India problem, and the presence in the Federal Legislature of representatives of the States will afford a guarantee, if any be required, that these grave matters will be weighed and considered with a full appreciation of the issues at stake.

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193. We draw attention in conclusion to an argument which has been frequently urged, that the grant of responsible government at the Centre is likely to be prejudicial to the interests of the masses of India. We are unable to appreciate the force of this argument when it is used, as it commonly is, by those who are willing to concede responsible government to an autonomous Province. A cursory glance at the list of subjects which comprise the exclusively provincial field will show that the activities of government which most closely affect the interests of the masses fall within the provincial sphere. It is true that there are also subjects in the federal field which might touch those interests. Some of these relate to social matters in which, for reasons which we have already given, measures of reform seem to us beyond the power of any but a responsible Indian Government to undertake. Of the others, tariffs are perhaps the most important; but in our opinion it may well prove that the interests of the consumer will be more fully weighed and safeguarded than they have sometimes been in the past by a Legislature in which agricultural interests will be strongly reinforced by the representatives of the Indian States.

Responsibility at the Centre and the interests of the masses.

(3) The Federal Legislature

Composition of, and election to, the Legislature

194. There is no part of the subject of our enquiry which has seemed to us to present greater difficulties than the question of the method of election to a Central Legislature for India. It is one on which there has always been a marked difference of opinion; and we recall that the Joint Select Committee which considered the Government of India Bill in 1919 did not accept the recommendations of the Southborough Committee which had been embodied in the Bill, and that there is a similar divergence between the recommendations of the Statutory Commission and the proposals in the White Paper. In these circumstances our task has been an anxious one, and we have only arrived at our conclusions after a careful and prolonged examination of the matter in all its aspects.

Difficulty of the subject.

195. The White Paper proposes that the Federal Legislature shall consist of the King, represented by the Governor-General, and two Chambers, to be styled the Council of State and the House of Assembly. The Council of State is to consist of not more than 260 members, of whom 150 will be representatives of British India, not more than 100 will be appointed by the Rulers of States who accede to the Federation, and not more than 10 will be nominated by the Governor-General in his discretion. The Governor-General's Counsellors, who will be ex-officio members of both Chambers for all purposes except the right of voting, are not included in the above figures; and it is provided that the members to be nominated by the Governor-General shall not be officials. The House of Assembly will consist of not more than 375 members, of whom 250

Composition of Council of State and Federal House Assembly proposed in White Paper.

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will be representatives of British India, and not more than 125 will be appointed by the Rulers of States who have acceded to the Federation.[1]

196. The representatives of British India in the Council of State will to the number of 136 be elected by the members of the Provincial Legislatures, by the method of the single transferable vote. Indian Christian, Anglo-Indian and European members of the Provincial Legislatures will not be entitled to vote for these representatives,

Method of election to Council of State.

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but 10 non-provincial communal seats will be reserved for them (7 for Europeans, 2 for Indian Christians and one for Anglo-Indians), these seats being filled by three electoral colleges, consisting respectively of the European, Indian Christian and Anglo-Indian members of the Provincial Legislatures, and voting for the European and Indian Christian seats being by the method of the single transferable vote. Coorg, Ajmer, Delhi and Baluchistan will each have one representative. Members of the Coorg Legislature will elect to the Coorg seat, but special provision is to be made in the case of the other three.[2]

Method of election to the House of Assembly.

197. The representatives of British India in the House of Assembly will be elected by direct election in provincial constituencies, except in the case of three of the seats reserved for Commerce and Industry, and one of the labour seats, where the constituencies will be non-provincial. Election to the seats allotted to the Muhammadan, Sikh, Indian Christian, Anglo-Indian and European constituencies will be by voters voting in separate communal electorates; and all qualified voters who are not voters in one of these constituencies will be entitled to vote in a general constituency. Election to the seats reserved for the Depressed Classes out of the general seats, will be in accordance with the arrangements embodied in the Poona Pact, which we have described elsewhere. Election to the woman's seat in each of the Provinces to which such a seat is allocated will be by members of the Provincial Legislature voting by the method of single transferable vote; the special seats assigned to Commerce and Industry will be filled by election by Chambers of Commerce and other similar associations; and the special seats assigned to landowners will be filled by election in special landholders' constituencies.[3]

The precedent of other Federations.

198. The proposals in the White Paper thus follow other Federal Constitutions in adopting direct election for the Lower House. We are then confronted with the question whether, in spite of precedents, such a system is appropriate in the case of so vast a country as India, and whether circumstances do not require the substitution of some method of indirect election, and, if so, what that method ought to be.

[1] White Paper, Proposals 22–37.
[2] White Paper, Appendix I.
[3] White Paper, Appendix II.

Direct or indirect election.

199. Direct election has the support of Indian opinion and is strongly advocated by the British-India Delegation in their Joint Memorandum. It has been the system in India for the last twelve years, and has worked on the whole reasonably well, though, it should be remembered, with a much more limited franchise than that now proposed. The Southborough Committee which visited India in 1919 for the purpose of settling the composition of, and the method of election to, the Legislatures set up by the Government of India Bill of that year, did, it is true, recommend the indirect system; but the Joint Select Committee which examined the Bill were of a contrary view, and Parliament accepted the opinion of the Committee. It may also be argued that, with the increase in the size of the Legislatures now proposed, it will be possible to effect so appreciable a reduction in the size of the existing constituencies as to diminish the objections based on that feature of the present system. But even the reduction in the size of constituencies which would follow from the White Paper proposals will still leave them unwieldy and unmanageable, unless the number of seats is increased

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beyond all reasonable limits. Where a single constituency may be greater in extent than the whole of Wales, a candidate for election could not in any event commend or even present his views to the whole body of electors, even if the means of communication were not, as in India, difficult and often non-existent, and quite apart from obstacles presented by differences in language and a widespread illiteracy; nor could a member after election hope to guide or inform opinion in his constituency. These difficulties would be serious enough with the comparatively limited franchise proposed in the White Paper; but future extensions of that franchise would be inevitable, and it is obvious that with every increase in the electorate these difficulties are enhanced.

Essentials of representative government.

200. A close and intimate contact between a representative and his constituency is of the essence of representative government, so that the former may be conscious of a genuine responsibility to those whom he represents, and the latter that they are able to influence his actions and in case of need call him to account. The relationship has been described in a passage familiar to all: "It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents; their wishes ought to have great weight with him, their opinion high respect, and their business his unremitted attention"; but we confess that we can recognize no likeness to this description in any relations which could exist between a member of the Central Legislature in India and the vast constituencies which he would represent under a system of direct election.

Indirect election recommended.

201. We realise the strength of Indian opinion in this matter, and we are far from denying that the present system has produced legislators of high quality; but we are now recommending to Parliament the establishment of self-government in India and we

regard it as fundamental that the system of election to the Central Legislature should be such as to make the responsibility of a member to those who elect him a real and effective responsibility. We do not think that this can be secured under a system of direct election proposed in the White Paper, and, though we are conscious that we are reversing the decision made by Parliament in 1919, we have come to the conclusion, notwithstanding the theoretical objections which can be urged against it, that there is no alternative to the adoption of some form of indirect election.

Election to Federal House of Assembly by Provincial Assemblies.

202. We have examined many systems of indirect election Systems based upon electoral groups at first sight have many attractions, but we have felt bound to reject them for reasons similar to those which we have already given in that part of our Report which deals with the provincial franchise.[1] We have also considered election by municipal and other local bodies, which was a prominent feature of the Morley-Minto Constitution; but we are satisfied that the system did not work well, and that there is no justification for an attempt to revive it. We have come to the conclusion that the Provincial Assemblies form the only possible electoral colleges, and we recommend accordingly that the Federal House of Assembly should be, in the main, elected by members of those bodies. We should have been glad if it had been possible to provide for election by the method of single transferable vote, since this would have avoided the necessity of reproducing at the Centre the system of a communal distribution of seats. We however found ourselves unable to recommend this; firstly, because the special interests

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such as commerce, industry, landlords and labour, would not obtain adequate representation; and secondly, because, though the single transferable vote would in all probability make it possible for the communities to obtain substantially the same representation as under the White Paper proposal, the minority communities would regard it with suspicion, and we think it essential that nothing should be done which would afford opportunities for re-opening the communal question. We accordingly recommend that the Hindu, Muhammadan, and Sikh seats should be filled by the representatives of those communities in the Provincial Assemblies voting separately for a prescribed number of communal seats; and that within the Hindu group special arrangements should be made for the Depressed Classes. With regard to the Indian Christians and Europeans, their representation in the Provincial Assemblies is so small that this plan would not be suitable, and we think, therefore, that it will be necessary that they should vote in an electoral college formed by their representatives in all the Provincial Assemblies.

The Council of State.

203. The White Paper proposes that the members of the Council of State should be elected by the members of the Provincial Legislatures, including members of the Provincial Upper Chambers where

Supra, para. 129.

the Legislature is bicameral. The method of election proposed is that of the single transferable vote, a communal distribution of seats being thereby avoided; but special arrangements are contemplated for Europeans, Anglo-Indians and Indian Christians, which would not otherwise be in a position to secure adequate representation. No provision is made for representation in the Council of State of special interests. We accept these proposals in principle, but if, as we recommend, the Provincial Assemblies are to elect to the Federal House Assembly, it will clearly be necessary to find different electoral colleges for the Council of State. It seems to us that the only alternative electoral college is the Provincial Legislative Council in those Provinces where a Legislative Council exists; and in the unicameral Provinces we recommend that an *ad hoc* electoral college should be constituted of persons elected by an electorate broadly corresponding to the electorate for the Legislative Councils in bicameral Provinces, the communal distribution of seats in this electoral college corresponding to that in the Provincial Assemblies.

Council of State should be constituted on more permanent basis.

204. The White Paper proposes that each Council of State shall continue for seven years and each Federal House of Assembly for five years, power being reserved to the Governor-General in his discretion to dissolve both Houses, either separately or simultaneously. We prefer a Council of State constituted on a more permanent basis, and accordingly recommend that it should not be subject to dissolution, that its members should be elected for a period of nine years, and that one-third should retire and be replaced at the end of every third year (special arrangements would in that event be required for the first nine-year period following on its first constitution).

Size of the two Federal Houses

205. The numbers proposed in the White Paper for the two Federal Houses have been the subject of criticism, and we see many advantages in Houses of a smaller size, especially in view of the proposals to which we refer hereafter for Joint Sessions of both Houses. We are however convinced, after a careful examination of the whole question, that the balance of convenience is against

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any reduction of the numbers proposed in the White Paper. In the first place, the size of the Houses will regulate the number of seats available for the representation of the Princes, and unless this representation is generally acceptable to the Princes as a whole, they may be unwilling to federate and the first condition precedent to the establishment of the Federation would not be fulfilled. Certain of the larger States have, it is true, expressed a preference for substantially smaller Houses, but we are satisfied that the general body of States would be unwilling to accept any arrangement which assigned to the States less than 100 seats in the Federal Upper House. There is general agreement that the States should have a 40 per cent. representation in this House, which implies a House of about 250 members, as the White Paper proposes. For reasons which we discuss in connexion with the relative powers of the two Houses, we think it important also that their proportionate

strength should be as in the White Paper. It follows therefore that since the Upper House is to have a strength of about 250, the Lower House cannot be reduced below the White Paper figure. There are also weighty reasons which affect British India for adhering to the White Paper proposals as regards numbers. If the size of the Council of State were materially reduced and if, as we have recommended, one-third of its membership is replaced every three years, the number of members whom provincial electoral colleges would be called upon to choose at any given election would be too small for the method of the single transferable vote to produce an equitable result from the point of view of minorities; and we should greatly regret the introduction of a communal basis for the Federal Upper House. There is another consideration affecting the Federal House of Assembly. It would be difficult, if the size of this House were reduced, to make any proportionate reduction in the number of seats assigned to special interests, since this would in several instances deprive them of seats which they have in the existing Legislative Assembly. These special interest seats, apart from those assigned to European commerce and industry, would in practice be almost entirely occupied by members of the Hindu community. We think it important that the Muhammadan community should have secured to it, as the White Paper proposes, one-third of all the British-India seats; but if the number of the special interest seats is to remain undisturbed, the application to a substantially smaller House of the undertaking given to the Muhammadans would result in a disproportionate number of the ordinary (non-special) seats being allocated to the Muhammadans. The combined effect of the considerations mentioned in this and the preceding paragraph has led us to the conclusion, notwithstanding all the arguments which can be urged on the other side, that the size of the two Houses should stand as in the White Paper.

206. We have set out in the Appendix (II) to this part of our Report[1] a description of the scheme of indirect election which we recommend for the Council of State and for the Federal House of Assembly, so far as the British-India representatives are concerned. The details of the scheme are necessarily complex, and we think that they can be better appreciated if dealt with in this manner. It may well be that on further examination parts of the scheme will be found to require readjustment or revision in matters of detail, and we do not desire that our recommendations should be taken as precluding a further expert examination of it.

Details of scheme set out in Appendix.

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Representation of the States.

207. The representatives of the States will be appointed by the Rulers of the States concerned. A difficult question arises, however, with regard to the allocation among nearly six hundred States of the 100 and 125 seats available for the States as a whole in the Council of State and Federal House of Assembly respectively. The White

Paper does not deal with this matter, which we are informed has been under discussion between the Governor-General and the Princes for some time past, and we have been furnished with details of a scheme which the Governor-General has propounded as a basis for discussion. This scheme is set out in the Appendix (III) to this part of our Report.[1] It proceeds on the principle that the allocation of seats among the States should, in the case of the Council of State, take account of the relative rank and importance of the State as indicated by the dynastic salute and other factors, and in the case of the House of Assembly, should be based in the main on population. So far as we are able to judge, a scheme on these lines would be a reasonable one, and would be appropriate to the new constitutional arrangements which we contemplate. We observe that it makes provision for the pooling by groups of States of the representation allotted to them individually, with the object of securing a form of representation more suited to their common interests, and for giving legal effect to any arrangements so made. We see many advantages in a plan of this kind, if it should prove practicable.

Temporary weightage in compensation for non-acceding States.

208. The scheme makes provision for the representation of the whole of the States of India. It may well be however that not all the States will accede, at any rate in the early years of the Federation; nor could States under a minority administration in any event accede until the Ruler had taken over the government of the State. The White Paper proposes that any vacancies arising from non-accession should for the time being remain unfilled. The States have urged that this arrangement would operate to the prejudice of those States which have in fact acceded in relation to the British-India portion of the Legislature, and we are of opinion that there is substance in the objection. We do not think that it would be reasonable to allocate to the States which accede the whole representation of those who are holding back; but we recommend that the representatives of the States which have acceded should be empowered to elect additional representatives in both Houses up to half the number of States' seats (including those States whose Rulers are minors) which remain unfilled. We think, however, that this arrangement should cease to operate when as a result of accessions 90 per cent. of the seats allocated to the States are filled, and in any event at the expiration of 20 years from the establishment of the Federation.

Tenure of States' representatives.

209. A suggestion was brought to our notice that provision should be made in the Constitution Act for the vacation of his seat by a member of the Legislature appointed by the Ruler of a State if called upon to do so by notice in writing from the Ruler. We could not accept this suggestion. We conceive that a State representative, although he is nominated and not elected, holds his seat by precisely the same tenure as an elected representative from British India, and no distinction should be made between the two.

[1] *Infra*, p. 116.

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Powers of the Federal Legislature

Powers of Federal Legislature.

210. The observations which we have made in connexion with the powers of the Provincial Legislatures apply generally, *mutatis mutandis*, to the Federal Legislature, and we are of opinion that the same general restrictions on the legislative power should apply in both cases. We note that in addition to the legislative proposals which in a Province require the Governor's previous sanction, and will, in the Federal Legislature, require the sanction of the Governor-General, legislative proposals affecting any Reserved Department, the coinage and currency of the Federation, or the powers and duties of the Reserve Bank in relation to the management of currency and exchange, will also require the Governor-General's previous sanction.[1] We have no comment to make on the first of these, which is a necessary corollary on the reservation to the Governor-General of the control over certain Departments; and we deal with the second and third elsewhere in connexion with the Reserve Bank.

The Governor-General's assent, etc., to Bills.

211. It is proposed (and we concur) that the Governor-General's powers with regard to assent to, reservation of, or withholding assent from, any Bills presented to him should be the same as in the case of the Governor of a Province, except that the Governor-General reserves a Bill for the signification of His Majesty's pleasure, whereas a Governor reserves it for the consideration of the Governor-General.[2]

British Baluchistan.

212. It is proposed that the powers of the Federal Legislature shall not extend to the Chief Commissioner's Province of British Baluchistan. The legislation required is to be obtained either by Regulations made by the Governor-General at his discretion or by the application by him to the Province, with or without modification, of any enactment of the Federal Legislature, an arrangement which we are satified is the most appropriate which could be devised for an area of this character.[3]

Procedure in the Federal Legislature

Procedure in the Federal Legislature.

213. On this subject also it is unnecessary to repeat what we have already said in connexion with the Provincial Legislatures. We draw attention, however, to three heads of expenditure which it is proposed should not be submitted to the vote of the Legislature, and which necessarily have no counterpart in the Provinces.[4] These are (1) expenditure for a Reserved Department; (2) expenditure for the discharge of the functions of the Crown in and arising out of its relations with the Rulers of Indian States; and (3) expenditure for the discharge of the duties imposed by the Constitution Act

[1] White Paper, Proposal 119.
[2] White Paper, Proposal 39.
[3] White Paper, Proposal 58.
[4] White Paper, Proposal 49.

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on the Secretary of State. The inclusion of the first necessarily follows from the reservation of administration and control to the Governor-General. The second would include the expenses of the Political Department and other matters connected with the rights and obligations of Paramount Power. We understand the third to refer to such matters as expenditure in connexion with the Secretary of State's establishment in London, liabilities incurred by him on contracts or engagements to which he is or will become a

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party under the provisions of the Constitution Act, and payments of compensation to members of the Public Services under his power in that behalf. We have no comments to make on any of these proposals.

Relations between the two Houses.

214. We have pointed out that the Provincial Upper Houses are not intended to be bodies having equal powers with the Legislative Assemblies. In the case of the Federal Legislature, the proposals in the White Paper contemplate two Houses with nearly co-equal powers. The principal difference is in the sphere of finance. It is proposed that Money Bills should only be introduced in the Lower House, the Upper House having power to amend or reject them; and that in relation to Demands for Grants the power of the Upper House should be limited to requiring, but only at the instance of the Government, that any Demand which has been reduced or rejected by the Lower House should be brought before a Joint Session.[1] We entirely endorse the principle that, so far as possible, the two Houses should have equal powers; but we are not satisfied that the proposals to which we have just referred sufficiently secure this. We think that the Upper House should have wider powers in relation to finance, and that it should be able not only to secure that a rejected grant is reconsidered at a Joint Session of the two Houses, but also to refuse its assent to a grant which has been accepted by the Lower House. We think therefore that all Demands should be considered first by the Lower House and subsequently by the Upper, and that the powers of each House in relation to any Demand should be identical, any difference of opinion being resolved at a Joint Session to be held forthwith. Consistently with the same principle, we think that Money Bills should be capable of introduction in the Upper Chamber as well as in the Lower.

Joint Sessions.

215. We approve the plan of resolving the differences between the Houses by the decision of a majority of the two Houses sitting and voting together. But the principle of equality of powers requires that an effective voice in the final decision should be secured to the Upper House, and it is for that reason that we have accepted the numerical proportion between the two Houses proposed in the White Paper, that is to say, a proportion of approximately 2 : 3. The principle also makes appropriate a departure from the scheme of Joint Sessions which we have recommended in the case of the

[1] White Paper, Proposals 38, 41, and 48.

Provinces. There is no necessity for so long a period to elapse before the Joint Session is held as in the Provinces, where the functions of the Upper House are only those of revision and delay. We do not think that the White Paper proposals are in all respects satisfactory. In particular, we think that there would be an advantage in extending the period after which a Joint Session may be held from three months to six, and in providing that it should not be held during the session of the Legislature in the course of which the difference of opinion arose between the Houses. It should be for the Federal Government to decide whether a Bill is to lapse or be referred to a Joint Session; and in the former case the Government should inform the Legislature of their decision before the end of the current session. The above should be the ordinary procedure; but in the case of Money Bills, Bills affecting the Reserved Departments, or Bills which in the opinion of the Governor-General involve his special responsibilities, the Governor-General must have power in his discretion to summon a Joint Session and obtain a decision forthwith. Amendments to any

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Bill which is brought before a Joint Session should be subject to the rules which we have recommended in the case of the Provinces.

States' representatives and British-India legislation.

216. The question was much discussed before us whether any special provision ought to be included in the Constitution Act prohibiting States' representatives from voting on matters of exclusively British-India concern. The British-India Delegation in their Joint Memorandum urge that this should be done, and their suggestions are briefly as follows :—(1) that in a division on a matter concerning solely a British-India subject, the States' representatives should not be entitled to vote; (2) that the question whether a matter relates solely to a British-India subject or not should be left to the decision of the Speaker of the House, which should be final; but (3) that if a substantive vote of no confidence is proposed on a matter relating solely to a British-India subject, the States' representatives should be entitled to vote, since the decision might vitally affect the position of a Ministry formed on a basis of collective responsibility; (4) that if the Ministry is defeated on a subject of exclusively British-India interest, it should not necessarily resign. We do not think that these suggestions would in any way meet the case. Circumstances may make any vote of a Legislature, even on a matter intrinsically unimportant, an unmistakable vote of no confidence; the distinction between formal votes of no confidence and other votes is an artificial and conventional one, and it would be impossible to base any statutory enactment upon it. On the other hand, the States have made it clear that they have no desire to interfere in matters of exclusively British-India concern, nor could we suppose that it would be in their interests to do so; but they are anxious, for reasons which we appreciate, that their representatives should not be prevented by any rigid statutory provisions from exercising their own judgment, from supporting a Ministry with whose general policy they are fully in agreement, or from withholding

their support from a Ministry whose policy they disapprove. In these circumstances we think that the true solution is to allow the matter to be regulated by the common sense of both sides and by the growth of constitutional practice and usage, and indeed we have no doubt that both parties will find it in their mutual interest to come to some suitable working arrangement at an early stage. We have, however, one suggestion to make which we think may be worth consideration. Under the Standing Orders of the House of Commons all Bills which relate exclusively to Scotland and have been committed to a Standing Committee are referred to a Committee consisting of all the members representing the Scottish constituencies, together with not less than ten nor more than fifteen other members. We think that a provision on these lines might very possibly be found useful, and that the Constitution Act might require that any Bill on a subject included in List III should, if extending only to British India, be referred to a Committee consisting either of all the British-India representatives or a specified number of them, to whom two or three States' representatives could, if it should be thought desirable, be added.

(4) The Relations between the Federation and the Federal Units

Administrative nexus between the Federation and its constituent units.

217. The transformation of British India from a unitary into a Federal State necessitates a complete readjustment of the relations between the Federal and Provincial Governments. The Provincial Governments are at the present time subordinate to the Central

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Government and under a statutory obligation to obey its orders and directions though the Central Government, and indeed, the Secretary of State himself, is bound by statutory rules not to interfere with the provincial administration save for certain limited purposes in matters which under the devolution rules now fall within the transferred provincial sphere. But though the respective spheres of the Centre and of the Provinces will in future be strictly delimited and the jurisdiction of each (except in the concurrent field which we have described elsewhere) will exclude the jurisdiction of the other, the conception of a Federation necessarily implies the existence of a nexus of some kind between the Federation and its constituent units. We have discussed elsewhere in our Report both the legislative and the financial nexus which the White Paper proposes to create; and we confine our observations here to the administrative relations between the Federal Government as such on the one hand and the Provincial Governments and the Rulers or Governments of the Indian States on the other.

Duty of Provincial Government to give effect to federal laws.

218. The Federal Legislature will have power to enact legislation on federal subjects which will have the force of law in every Province and, subject to any such limitations as may be contained in the Ruler's Instrument of Accession, in every Indian State which is a member of the Federation. The administration and execution of

these laws may be vested in the Federation itself and in federal officers; or the Legislature may devolve upon the Provincial Governments or their officers the duty of executing and administering the law on behalf of the Federal Government (in the case of a State this would be done by means of an agreement between the Governor-General and the Ruler of the State). In the case of laws relating to subjects in respect of which the Federal and the Provincial Legislatures have concurrent powers of legislation, we understand the intention to be (though the White Paper is by no means clear in this respect) that the functions of administration and execution are to vest in the Provincial Governments. The White Paper proposes that it shall be the duty of a Provincial Government so to exercise its executive power and authority, in so far as it is necessary and applicable for the purpose, as to secure that due effect is given within the Province to every Act of the Federal Legislature which applies to that Province.[1] This, as we read it, is a statement of the constitutional duty of every Province in relation to federal laws, which has no sanction behind it other than the moral obligation which must always rest upon the constituent units of a Federation to give effect to the laws of the political organism of which they form a part. But something more is required to secure the due execution by a provincial Government of laws relating to subjects on which the Federal Legislature is alone competent to legislate; and the Federal Government must be empowered to give directions to a provincial Government for the purpose of securing that due effect is given in the Province to any such law and that the manner in which the Provincial Government's executive power and authority is exercised in relation to the administration of the law is in harmony with the policy of the Federal Government.

Distinction between legislation in the exclusive and concurrent fields.

219. We have said that the White Paper does not make clear the distinction which, as it seems to us, ought to be drawn in this connexion between federal laws within the exclusive, and those within the concurrent, field. We think that the Federal Government ought to have power to give directions to a provincial Government

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with regard to the first; but with regard to the second, the administration of which will be essentially a matter of provincial concern, the Provinces must be left to act as they think right, though we hope in no anti-federal spirit. In the case of the States, it is proposed that the Ruler should accept the same general moral obligation, which, as we have said, will rest upon the Provincial Governments, to secure that due effect is given within the territory of his State to every Federal Act which applies to that territory.[2] But we think that the White Paper rightly proposes that any general instructions to the Government of a State for the purpose of ensuring that the federal obligations of the State are duly fulfilled shall come directly from the Governor-General himself.

[1] White Paper, Proposal 125.
[2] White Paper, Proposal 127.

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Enforcement of Federal Government's directions.

220. It is, however, necessary to provide for a situation, though we may be permitted to hope that it will never in practice arise, in which a Provincial Government has declined to carry out the directions which it has received from the Federal Government. These directions would be issued in the name of the Governor-General as the executive head of the Federation, in whose name all executive acts will run; but, where (as will commonly be the case) the directions relate to matters within the ministerial sphere, the Governor-General will be acting upon the advice of his Ministers. Among the special responsibilities of the Governor of a Province is one for "securing the execution of orders lawfully issued by the Governor-General"; and, since the directions of which we have spoken would be lawful orders of the Governor-General, it would become the duty of the Governor to secure their execution in opposition to the policy and (it must necessarily follow) to the advice, of his Ministers. We do not think that the Governor of a Province ought to be placed in a position in which in effect he is compelled to over-rule his own Ministers at the instance of federal Ministers; and where a conflict of this kind arises between the Federal Government and the Government of a Province any directions by the Governor-General which require the Governor to dissent from, or to over-rule, the provincial Ministry ought to be given in the Governor-General's discretion. The Governor-General would thus become the arbiter between the Federal and the Provincial Government, and we think that disputes between the two are far more likely to be settled amicably by the Governor-General's discretionary intervention. It cannot be assumed that the fault in cases of this kind will always lie with the Province; the Federal Government may have been tactless or unwise; and the Governor-General should not be under any constitutional obligation to take action against his better judgment, if the effect would only be to accentuate or embitter the dispute.

Modification of White Paper proposals suggested.

221. We are of opinion that the proposals in the White Paper on this subject require modification. It should be made clear that the authority of the Federal Government only extends to the giving of directions to a Provincial Government in relation to the administration and execution of Federal Acts with respect to subjects on which the Federal Legislature is alone competent to legislate; and that for the purpose of implementing any directions so issued the Governor-General may in his discretion issue such orders to the Governor as he may think fit. A consequential modification will in that event be required in the definition of the Governor's special responsibility for securing the execution of orders lawfully issued by the Governor-General.

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Governor-General's ultimate responsibility for peace of whole of India.

222. The White Paper proposes to empower the Governor-General in his discretion to issue instructions to the Governor of a Province as to the manner in which the executive power and authority in the Province is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or any part thereof.[1] It

[1] White Paper, Proposal 126.

has been suggested that in view of the special responsibility of the Governor to which we have referred above this proposal is superfluous. We do not think it is. The Governor of a Province is to have a special responsibility for the prevention of any grave menace to the peace or tranquillity of his own Province, and we think that, but for the proposal to which we have referred, his special responsibility for securing the execution of orders lawfully issued by the Governor-General would necessarily be read as referring to the execution of orders issued by the Governor-General within the sphere of the Governor's statutory functions. But, to take one example which occurs to us, a conspiracy in one Province to disturb the peace and tranquillity of another might well be outside the Governor's special responsibility for the prevention of any grave menace to the peace or tranquillity of his own Province; and since we have no doubt that an ultimate and residuary responsibility for the peace and tranquillity of the whole of India must vest in the Governor-General, it is plain that the latter's power to give directions to a Governor should be wide enough to cover this case, and that it should be obligatory on a Governor to give effect to those directions, even though it is the peace of a neighbouring Province and not his own which is endangered.

Inter-provincial disputes.

223. We do not observe any proposals in the White Paper dealing with disputes or differences between one Province and another, other than disputes involving legal issues, for the determination of which the Federal Court is the obvious and necessary forum. Yet it cannot be supposed that inter-provincial disputes will never arise, and we have considered whether it would not be desirable to provide some constitutional machinery for disposing of them. At the present time the Governor-General in Council has the power to decide questions arising between two Provinces in cases where the Provinces concerned fail to arrive at an agreement, in relation to both transferred and reserved subjects; but plainly it would be impossible to vest such a power in the Governor-General or in the Governor-General or Federal Ministry after the establishment of Provincial Autonomy, though we do not doubt that the good offices of both will always be available for the purpose. But after careful consideration we have come to the conclusion that it would be unwise to include in the new Constitution any permanent machinery for the settlement of disputes of the sort which we have in mind, and in our opinion the more prudent course will be to leave the Provinces free to develop such extra-constitutional machinery as the future course of events may show to be desirable. There will be necessarily many subjects on which inter-provincial consultation will be necessary, as indeed has proved to be the case even at the present time; and we anticipate that sooner or later a system of provincial conferences, held at regular intervals, will come into existence, as we believe has happened in Canada. Suggestions for a formal Inter-Provincial Council have been made to us, but we do not think

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that the time is yet ripe for this. The assistance of Parliament may one day be invoked for the purpose of creating such a Council, but we think that this is a matter on which Indian opinion will be better able to form a considered judgment after some experience in the working of the new Constitution.

Water rights.

224. There is however one subject with respect to which we are of opinion that specific provision ought to be made. The Government of India has always possessed what may be called a common law right to use and control in the public interest the water supplies of the country, and a similar right has been asserted by the legislation of more than one Province as regards the water supplies of the Province. "Water supplies" is now a provincial subject for legislation and administration, but the Central Legislature may also legislate upon it "with regard to matters of inter-provincial concern or affecting the relations of a Province with any other territory". Its administration in a Province is reserved to the Governor in Council, and is therefore under the ultimate control of the Secretary of State, with whom the final decision rests when claims or disputes arise between one Provincial Government and another, or between a Province and a State. This control of the Secretary of State obviously could not continue under the new Constitution, but it seems to us impossible to dispense altogether with a central authority of some kind.

A provincial subject under the White Paper.

225. The White Paper proposes to give to the Provinces exclusive legislative power in relation to "water supplies, irrigation and canals, drainage and embankments, water storage and water power," and reserves no powers of any kind to the Federal Government or Legislature.[1] The effect of this is to give each Province complete powers over water supplies within the Province without any regard whatever to the interests of neighbouring Provinces. The Federal Court would indeed have jurisdiction to decide any dispute between two Provinces in connection with water supplies, if legal rights or interests were concerned; but the experience of most countries has shown that rules of law based upon the analogy of private proprietary interests in water do not afford a satisfactory basis for settling disputes between Provinces or States where the interests of the public at large in the proper use of water supplies are involved. It is unnecessary to emphasise the importance from the public point of view of the distribution of water in India, upon which not only the prosperity, but the economic existence, of large tracts depends.

Modification of White Paper proposals suggested.

226. We do not think that it would be desirable, or indeed feasible, to make the control of water supplies a wholly federal subject; but for the reasons which we have given it seems to us that complete provincialization might on occasion involve most unfortunate consequences. We suggest therefore that where a dispute arises between two units of the Federation with respect to an alleged use

[1] White Paper, Appendix VI List II.

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by one unit of its executive or legislative powers in relation to water supplies in a manner detrimental to the interests of the other, the aggrieved unit should be entitled to appeal to the Governor-General acting in his discretion, and that the Governor-General should be empowered to adjudicate on the application. We think, however, that the Governor-General, unless he thinks fit summarily to reject

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the application, should be required to appoint an Advisory Tribunal for the purpose of investigating and reporting upon the complaint. The Tribunal would be appointed *ad hoc,* and would be an expert body whose functions would be to furnish the Governor-General with such technical information as he might require for the purposes of his decision and to make recommendations to him. Such recommendations, though they would naturally carry great weight with the Governor-General, would not necessarily be binding on him, and he would be free to decide the dispute in such manner as he thought fit. We think also that provision should be made for excluding the jurisdiction of the Federal Court in the case of any dispute which could be referred to the Governor-General in the manner which we have suggested. We should not propose that the powers of the Governor-General should extend to a case where one unit is desirous of securing the right to make use of water supplies in the territory of another unit, but only to the case of one unit using water to the detriment of another. With this limitation we believe that the plan would be a workable one, and that it could not reasonably be regarded as inconsistent with the conception of Provincial Autonomy.

Central research

227. We have found occasion in later paragraphs to draw attention to the importance of the co-ordination of research in connection with the special subjects of Forestry and Irrigation. It is a matter very relevant to any consideration of the future relations between the Federal and Provincial Governments. Whatever criticisms may have been levelled in the past against an excessive centralisation of government in India, they can have little application to the facilities thereby created for the pooling of ideas and of methods so as to enable the whole of India to benefit from the administrative experience of every part. It would be deplorable if the establishment of Provincial Autonomy were to lead the Provinces to suppose that each could regard itself as self-sufficient, or to tempt the Centre to disinterest itself in the efforts which it has made in the past to collect and co-ordinate information for general use. If our recommendations are adopted, the existing central research institutions will remain under the exclusive control of the Federal Government, but they can only flourish if assured that the interest and support of the Provincial and States' Governments are still assured to them. The Statutory Commission made special reference to the Council of Agricultural Research, which was established as a result of the recommendations of the Royal Commission on Agriculture in India, and we agree with them in thinking that similar institutions might with advantage be established in other fields, such as Public Health and Education.

APPENDIX (II)

Scheme for Election of British India Representatives to Council of State and House of Assembly

Council of State

1. The British India representatives will number 150, elected in the manner described below, together with 6 members nominated by the Governor-General in his discretion.

2. The members, other than those nominated, will be elected in three separate Divisions, A, B and C.

Members in Division A will retire after three years from the date when the House is first constituted, and thereafter every nine years.

Those in Division B after six years from that date and thereafter every nine years.

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Those in Division C after nine years from that date and thereafter every nine years.

The members to be elected for each of the three Divisions will be allocated as follows :—

	A	*B*	*C*	*Total.*
Madras	0	10	10	20
Bombay	8	0	8	16
Bengal	10	0	10	20
United Provinces	10	10	0	20
Punjab	8	8	0	16
Bihar	0	8	8	16
Central Provinces (with Berar) ..	0	8	0	8
Assam	0	5	0	5
North-West Frontier Province ..	0	0	5	5
Sind	5	0	0	5
Orissa	5	0	0	5
Coorg	0	0	1	1
Ajmer	0	0	1	1
Delhi	0	0	1	1
Baluchistan	0	0	1	1
Indian Christians	1	0	1	2
Anglo-Indians	0	0	1	1
Europeans	3	1	3	7
Total ..	50	50	50	150

3. The Indian Christian, Anglo-Indian and European members will be chosen by three Electoral Colleges of their own for the whole of British India, composed respectively of the Indian Christian, Anglo-Indian and European members of the Provincial Legislatures (including members from the Upper Houses of bicameral Provinces). The method of voting by the European Electoral College, when more than one seat is to be filled, will be the single transferable vote.

4. In the Provinces of Madras, Bombay, United Provinces and Bihar the Muhammadan members of the Provincial Upper House voting alone will elect one member for each of the two Divisions of the Federal Upper House in which the Province is represented. The remainder of the seats allocated to the Governors' Provinces, apart from these 8 seats, will be filled in the following manner :—

(*a*) In the bicameral Governors' Provinces the members will be elected by all the members of the Provincial Upper House (except Indian Christian, Anglo-Indian and European members) by means of the single transferable vote.

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(*b*) In the unicameral Governors' Provinces, where Upper Houses do not exist, the members will be elected by a specially constituted Electoral College by means of the single transferable vote. The composition of these Electoral Colleges will be as follows :—

Province.	*General.*	*Sikh.*	*Muhammadan.*	*Total.*
Punjab	16	11	30	57
Central Provinces (with Berar) ..	31	—	5	36
Assam	21	—	12	33
North-West Frontier Province ..	5	1	19	25
Sind	10	—	18	28
Orissa	27	—	3	30

Members of the Electoral Colleges will be chosen by direct election from territorial communal constituencies. The franchise will be similar to that employed in other Provinces for direct election to the Provincial Upper House.

5. Special provisions will be necessary for the selection of the representative from Chief Commissioners' Provinces, except in the case of Coorg where the representative will be elected by members of the Coorg Legislature.

6. When the Federal Council of State is constituted for the first time, on that occasion, and on that occasion only, members of all three Divisions will

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have to be elected at the same time. There will, therefore, in the case of six Provinces be candidates for two different Divisions simultaneously. The election will take place first for the Division which will be re-elected later than the other one. Those candidates who are not successful in the election for that Division will form the candidates for the immediately following election for the other Division.[1]

7. Casual vacancies among the elected members of the Council of State will, so long as communal representation is retained as a feature of the Constitution, be filled by election by those members of the Provincial Upper House (or Electoral College) who are members of the Community to which the vacating member belongs, as proposed in the White Paper.[2]

8. It will be observed that, although one-third of the Council of State will be renewed at a time, the representatives of any given Province will be renewed half at a time in the larger Governors' Provinces, and the whole at a time in other Provinces. The object of this arrangement is to avoid reducing the number of seats to be filled at any Provincial election to an extent which would be likely to have the effect of producing inequitable results from the system of proportional representation.

9. The object of the provision of eight seats to be filled by Muhammadan electors only is to secure that the Muhammadan community should be in a position to secure one-third of all the British India seats if every Muhammadan elector in using first and succeeding preferences gave priority to all candidates of his own community.

[1] It will probably be found possible to avoid a double reference to the voters. After the election to one Division is completed, the election to the other Division could presumably take place on the basis of the original voting papers, the names of the candidates already successful for the other Division being eliminated and the preferences on the voting papers being renumbered accordingly.

[2] White Paper, Proposal 28.

We agree with the proposal in the White Paper[1] that the Muhammadan community should be placed in a position in which they could achieve this result, and it is unlikely, that they would be able to do so without the allocation to them of these few specifically communal seats. This special provision is analogous to that which the Secretary of State for India has proposed for the same purpose in modification of Appendix I of the White Paper.[2]

10. In the Governors' Provinces a candidate will be qualified for election to the Council of State if he (or she) is qualified for election to the Provincial Upper Chamber (or Electoral College, as the case may be).

Special provisions will be required for the qualifications of other candidates.

Federal House of Assembly

11. The British India representatives in the Assembly will number 250, elected in the manner described below.

12. The allocation of seats between Provinces and between the various special interests and communities will be in accordance with the numbers set out in the Table in Appendix II of the White Paper.

13. The method of election to the special interest seats, that is to say, to the special seats assigned for women, commerce and industry, landholders and labour, will be as proposed in Appendix II to the White Paper.

14. In the Governors' Provinces, election to the seats in the Assembly allocated as General or Muhammadan will be by the members of the Provincial Lower House who hold respectively General or Muhammadan seats in that House. Members who hold special interest seats in the Provincial Lower House will not participate. In the Punjab those members who hold Sikh seats in the Provincial Legislature will elect to the six Sikh seats from the Punjab in the Assembly. Subject to the following provision relating to the Depressed Classes, the method of voting within each of the above groups of electors will be the single transferable vote.

15. In the case of General seats, it would be a simplification if there were no seats reserved for the Depressed Classes, reliance being placed on the

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proportional representation system to secure a due share of the General seats for the members of the Depressed Classes. Unless, however, the adoption of such a course were agreed between the caste Hindus and Depressed Classes, we regard it as desirable to avoid disturbing, so far as possible, the arrangements in the White Paper for Depressed Classes representation in the Federal Lower House which are based on the Poona Pact. Accordingly, out of the General seats there will be reserved for the Depressed Classes the number of seats indicated in Appendix II to the White Paper.

16. The following seems to be a possible method for combining procedure for reservation of seats with the use of the single transferable vote. After the voting papers have been received, and before the single transferable vote procedure is applied, those Depressed Class candidates, up to a number equal to that of the reserved seats, who receive the highest number of first preferences would be declared to be elected. The single transferable vote procedure would then be applied for the election to the remaining general seats. It is necessary to provide, in accordance with the Poona Pact, that the only candidates qualified to be elected to the reserved seats should be those elected by a primary to a number equal to four times the number of reserved seats. In order to constitute a primary of adequate size, we think that it might consist, not only of those members of the Provincial Lower House

[1] White Paper, Introd., para. 18.
[2] Evidence. Answer to Question 7811.

who hold the seats reserved therein for Depressed Classes but also of those who were successful candidates at the primary Depressed Class elections for the Provincial Lower House though they did not secure seats at the final election for that House.

17. The seats allocated to Indian Christians, Anglo Indians and Europeans will be filled by election by three Electoral Colleges of their own composed of all those who hold respectively Indian Christian, Anglo-Indian and European seats in the Provincial Lower Houses. Those who hold special interest seats in those Houses will not participate. These Electoral Colleges, composed of members from all the Provinces, will elect separately the member from each Province to which is allocated an Indian Christian,[1] Anglo-Indian or European seat.

18. Special provisions will be necessary for the selection of the representatives from Chief Commissioners' Provinces, except in the case of Coorg, where the representative will be elected by members of the Coorg Legislature.

19. In Governors' Provinces (and Coorg) a candidate will be qualified for election to a seat in the Federal Assembly (other than a special interest seat) if he is qualified for election to the Provincial Lower House for a General, Muhammadan or Sikh seat, as the case may be. Qualifications for a candidate for those General seats which are reserved for the Depressed Classes will be as described above.

Special provisions will be required for the qualifications of candidates in Chief Commissioners' Provinces other than Coorg.

[1] In Madras there are *two* Indian Christian seats. Voting for these will be by means of the single transferable vote.

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APPENDIX (III)

Scheme of distribution of States' seats in Federal Legislature as propounded by Governor-General as basis of discussion.

In *Annexure A* below, list I includes (*a*) the seats allotted to cc in States individually which are not included in the regional lists II–IX which follow; (*b*) the total number of seats allotted to the States with continuous or alternating representation included in each of the regional lists II–IX; and (*c*) the total number of seats allotted in list X to the joint representation of groups of minor non-salute States which are not included in the regional lists. *Annexure B* gives the States accorded individual representation in order of salute and population with the representation allotted to each.

There are 104 States' seats in the Council of State. Four seats have been added to the 100 seats referred to in the body of the Report, in place of the States' share (40 per cent.) of the 10 seats which the White Paper proposed should be filled by nomination by the Governor-General. The nominated seats in the Council of State will accordingly be reduced to six from British India.

The 104 seats available in the Council of State have been divided into three categories: (*a*) those to be filled continuously by one State, (*b*) those to be filled in alternation by two or more States, as shown in groups in lists II–IX, and (*c*) those to be filled by the representatives of the groups of minor States given in list X; the three categories having been determined with a view to enabling as many States as possible to enjoy individual representation with due regard to their relative importance, and, where a seat is shared between two or more, to their proximity.

The 125 seats available in the House of Assembly have been distributed roughly on a population basis, but in such a way as to reduce slightly the number of seats available to the most populous States so as to secure separate representation for as many States as possible. So far as possible the groups for alternating representation of States in a single seat proposed for the Council of State have been retained for the Assembly. But it is intended that in the latter Chamber the States grouped together shall nominate joint representatives instead of having the option of occupying in turn the seat allotted to them.

It is proposed that group representation shall be subject to the following provisions. If not less than half the number of Rulers combined in a particular group accede to Federation, they shall be entitled to fill the seat allotted to the group. To meet cases of difficulty when less than 50 per cent. of the members of a group accede to Federation, the Governor-General should be empowered to determine disputes and to vary the composition of groups when necessity arises. The members of an alternating group shall be entitled, each in turn, to appoint a representative for a period of one calendar year. But if States so prefer they may pool their allotted quota of seats with those of other States so as to be represented by joint nominees, thus possibly, where entitled under the scheme only to a seat in rotation, securing instead continuous joint representation. To enable such arrangements to be made voluntarily between States the Governor-General shall be empowered to vary the distribution of groups as scheduled to the Constitution Act where necessity arises, subject to his being satisfied that the arrangements proposed would not adversely affect the rights and interests of other States which do not desire to participate therein.

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ANNEXURE A

LIST I

	Name of State	*No. of Seats in the Upper House*	*Population*	*No. of Seats in the Lower House*
(*a*)	Hyderabad	5	14,436,148	14
	Mysore	3	6,557,302	7
	Kashmir	3	3,646,243	4
	Gwalior	3	3,523,070	4
	Baroda	3	2,443,007	3
	Kalat	2	342,101	1
	Travancore	2	5,095,973	5
	Cochin	2	1,205,016	1
	Rampur	1	465,225	1
	Benares	1	391,272	1
	Sikkim	1	109,808	—
(*b*)	*Rajputana Agency* (List II)	19	11,180,826	17
	Central India Agency (List III)	17	6,365,030	14
	Western India and Gujarat States Agencies and certain States from Rajputana and Deccan States Agencies (List IV)	13	4,784,910	12
	Deccan States and Kolhapur Agency (List V)	5	2,322,314	5
	Punjab States Agency and Tehri (Garhwal) (List VI)	11	5,048,964	11
	Bengal and Assam States (List VII) ..	2	1,418,942	3
	Madras States Group (Pudukkottai, Banganapalle and Sandur) (List VIII)	1	453,495	1
	Eastern States Agency—Bihar and Orissa States (14 *States*) *and Central Provinces States* (9 *States*) (List IX)	3 2	4,100,460 2,193,661	9 5
(*c*)	*Non-salute States, not provided for above* (List X)	5	2,818,876	7
		104		125

LIST II

Rajputana

Upper House		*Lower House*		
Name of State	*No. of Seats*	*Name of State*	*Population*	*No. of Seats*
Udaipur	2	Udaipur	1,566,910	2
Jaipur	2	Jaipur	2,631,775	3
Jodhpur	2	Jodhpur	2,125,982	2
Bikaner	2	Bikaner	936,218	1
Alwar	1	Alwar	749,751	1
Kotah	1	Kotah	683,804	1
Bharatpur	1	Bharatpur ..	486,954	1
Tonk	1	Tonk	317,360	1

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LIST II—*continued*

Upper House		*Lower House*		
Name of State	*No. of Seats*	*Name of State*	*Population*	*No. of Seats*
Dholpur	1	*Group I*		
Karauli	1	Dholpur	254,986	1
		Karauli	140,525	
			395,511	
Bundi	1	*Group II*		
Sirohi	1	Bundi	216,722	1
		Sirohi	216,528	
(15- and 13-gun States and 9-gun State of Shahpura in groups of 2 and 3—alternate representation.)			433,250	
Group I		*Group III*		
Dungarpur	1	Dungarpur	227,544	1
Banswara		Banswara	225,106	
			452,650	
Group II		*Group IV*		
Partabgarh	1	Partabgarh	76,539	1
Jhalawar		Jhalawar	107,890	
Shahpura		Shahpura	54,233	
			238,662	
Group III		*Group V*		
Jaisalmer	1	Jaisalmer	76,255	1
Kishengarh		Kishengarh	85,744	
19			161,999	17

LIST III

Central India

Upper House		*Lower House*		
Name of State	*No. of Seats*	*Name of State*	*Population*	*No. of Seats*
Indore	2	Indore	1,318,217	2
Bhopal	2	Bhopal	729,955	1
Rewa	2	Rewa	1,587,445	2
Datia	1			
Orchha	1	*Group I*		
Dhar	1	Datia	158,834	1
		Orchha	314,661	
			473,495	
(15- and 13-gun States in groups of 2—alternate representation.)		*Group II*		
Group I		Dha	243,430	1
Dewas (Senior)	1	Dewars (Senior)	83,321	
Dewas (Junior)		Dewas (Junior)	70,513	
			397,264	

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LIST III—*continued*

Upper House			*Lower House*		
Name of State		*No. of Seats*	*Name of State*	*Population*	*No. of Seats*
Group II			*Group III*		
Jaora		1	Jaora	100,166	1
Ratlam			Ratlam	107,326	
				207,492	
(11-gun States in group of 2—alternate representation.)			*Group IV*		
Panna		1	Panna	212,130	1
Ajaigarh			Ajaigarh	85,895	
				298,025	
(11-gun States in group of 3—alternate representation.)			*Group V*		
Charkhari		1	Charkhari	120,351	1
Chhatarpur			Chhatarpur	161,267	
Baoni			Baoni	19,132	
				300,750	
(11- and 9-gun States in group of 5—alternate representation.)			*Group VI*		
Bijawar		1	Bijawar	115,852	1
Samthar			Samthar	33,307	
Maihar			Maihar	68,891	
Nagod			Nagod	74,589	
Baraundha			Baraundha	16,071	
				308,810	
(11-gun States in group of 2—alternate representation.)			*Group VII*		
Barwani		1	Barwani	141,110	1
Ali Rajpur			Ali Rajpur	101,963	
				243,073	
11-gun States in group of 3—alternate representation.)			*Group VIII*		
Jhabua		1	Jhabua	145,522	1
Sailana			Sailana	35,223	
Sitamau			Sitamau	28,422	
				209,167	
(11-gun States and 9-gun State of Khilchipur in group of 3—alternate representation.)			*Group IX*		
Rajgarh		1	Rajgargh	131,891	1
Narsingarh			Narsingarh	113,873	
Khilchipur			Khilchipur	45,583	
	17			291,347	14

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LIST IV

Western India and Gujarat States; States of Palanpur, and Danta from the Rajputana Agency; and Janjira from the Deccan States Agency

Upper House		*Lower House*		
Name of State	*No. of Seats*	*Name of State*	*Population*	*No. of Seats*
Cutch	1	Cutch	514,307	1
Idar	1	Idar	262,660	1
Nawanagar	1	Nawanagar ..	409,192	1
Bhavnagar	1	Bhavnagar ..	500,274	1
Junagadh	1	Junagadh ..	545,152	1
(13- and 11-gun States in groups of 2—alternate representation).				
Group I		*Group I*		
Rajpipla	1	Rajpipla	206,114	1
Palanpur		Palanpur ..	264,179	
			470,293	
Group II		*Group II*		
Dhrangadhra	1	Dhrangadhra ..	88,961	1
Gondal		Gondal	205,846	
			294,807	
Group III		*Group III*		
Porbandar	1	Porbandar ..	115,673	1
Morvi		Morvi	113,023	
			228,696	
(11- and 9-gun States in groups of 3—alternate representation).				
Group I		*Group IV*		
Radhanpur	1	Radhanpur ..	70,530	1
Wankaner		Wankaner ..	44,259	
Palitana		Palitana	62,150	
			176,939	
Group II		*Group V*		
Cambay	1	Cambay	87,761	1
Janjira		Janjira	110,366	
Dharampur		Dharampur ..	112,051	
			310,178	
(9-gun States in groups of 3 and 4—alternate representation).				
Group I		*Group VI*		
Baria	1	Baria	159,429	1
Chhota Udepur		Chhota Udepur ..	144,640	
Sant		Sant	83,538	
Lunawada		Lunawada ..	95,162	
			482,769	
Group II		*Group VII*		
Balasinor	1	Balasinor ..	52,525	1
Bansda		Bansda	48,807	
Sachin		Sachin	22,107	
Jawhar		Jawhar	57,280	
Group III		Dhrol	27,653	
Dhrol	1	Limbdi	40,088	
Limbdi		Wadhwan ..	42,602	
Wadhwan		Rajkot	75,540	
Rajkot		Danta	23,023	
Danta			389,625	12
	13			

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LIST V

Deccan States and Kolhapur

Upper House

Name of State	*No. of Seats*
Kolhapur	2
(9-gun States in a group of 4—alternate representation).	
Sangli	1
Savantvadi	
Mudhol	
Bhor	
(Non-salute States in groups of 5—alternate representation).	
Group I	
Jamkhandi	1
Miraj (Senior)	
Miraj (Junior)	
Kurundwad (Senior) ..	
Kurundwad (Junior) ..	
Group II	
Akalkot	1
Phaltan	
Jath	
Aundh	
Ramdurg	
	5

Lower House

Name of State	*Population*	*No. of Seats*
Kolhapur ..	957,137	1
Group I		
Sangli	258,512	1
Bhor	141,546	
	400,058	
Group II		
Savantvadi ..	230,589	1
Mudhol	62,860	
	293,449	
Group III		
Jamkhandi ..	114,282	1
Miraj (Senior) ..	93,957	
Miraj (Junior) ..	40,686	
Kurundwad (Senior)	44,251	
Kurundwad (Junior)	39,563	
	332,739	
Group IV		
Akalkot	92,636	1
Phaltan	43,285	
Jath	91,102	
Aundh	76,507	
Ramdurg ..	35,401	
	338,931	5

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LIST VI

Punjab States and Tehri-Garhwal

Patiala			2
Bahawalpur			2
Khairpur			1
Kapurthala			1
Jind			1
Nabha			1
(11-gun States and 9-gun State of Loharu in groups of 3—alternate representation.)			
	Group I		
Mandi			
Bilaspur			1
Suket			
	Group II		
Tehri-Garhwal			
Sirmur			1
Chamba			
	Group III		
Faridkot			
Malerkotla			1
Loharu			
			11

Patiala	1,625,520	2
Bahawalpur ..	984,612	1
Khairpur ..	227,183	1
Kapurthala ..	316,757	1
Jind	324,686	1
Nabha	287,574	1
Tehri-Garhwal ..	349,573	1
Group I		
Mandi	207,465	
Bilaspur	100,994	1
Suket	58,408	
	366,867	
Group II		
Sirmur	148,568	
Chamba	146,870	1
	295,430	
Group III		
Faridkot	164,364	
Malerkotla ..	83,072	1
Loharu	23,338	
	270,774	11

LIST VII

Bengal and Assam States

Cooch Behar		1
(Alternate representation.)		
Tripura		1
Manipur		
		2

Cooch Behar ..	590,886	1
Tripura	382,450	1
Manipur	445,606	1
		3

LIST VIII

Madras States

Upper House	
Name of State	*No. of Seats*
(Group representation.)	
Pudukkottai	
Banganapalle	1
Sandur	

Lower House		
Name of State	*Population*	*No. of Seats*
Pudukkottai ..	400,694	
Banganapalle ..	39,218	1
Sandur	13,583	
	453,495	

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LIST IX

Eastern States Agency

(a) *Bihar and Orissa States*

(9-gun States in a group of 4—alternate representation.)

Mayurbhanj	1
Patna	
Kalahandi	
Sonpur	

(Non-salute States in groups of 5—alternate representation.)

Group I

Keonjhar	1
Dhenkanal	
Nayagarh	
Talcher	
Nilgiri	

Group II

Gangpur	1
Bamra	
Seraikela	
Baud	
Bonai	
	3

(b) *Central Provinces*

(Non-salute States in a group of 4—alternate representation.)

Bastar	1
Surguja	
Raigarh	
Nandgaon	

(Non-salute States in a group of 5—alternate representation.)

Khairagarh	1
Jashpur	
Kanker	
Sarangarh	
Korea	
	2

(a) *Bihar and Orissa States*

Mayurbhanj ..	889,603	1
Patna	566,924	1
Kalahandi ..	513,716	1
Sonpur	237,920	1
Keonjhar ..	460,609	1
Gangpur	356,674	1
Dhenkanal ..	284,326	3
Nayagarh ..	142,406	
Seraikela	143,525	
Baud	135,248	
Talcher	69,702	
Bonai	80,186	
Nilgiri	68,594	
Bamra	151,047	
	1,892,297	
		9

(b) *Central Provinces*

Bastar	524,721	1
Surguja	501,939	1
Raigarh	277,569	3
Khairagarh ..	157,400	
Jashpur	193,698	
Kanker	136,101	
Sarangarh ..	128,967	
Korea	90,886	
Nandgaon ..	182,380	
	1,167,001	5

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LIST X

Non-Salute States

Upper House		*Lower House*		
Name of State	*No. of Seats*	*Name of State*	*Population*	*No. of Seats*
States in Western Kathiawar and Eastern Kathiawar Agencies ..	1	States in Western Kathiawar Agency	421,435	1
States in Sabar Kantha, Gujarat States and Deccan States Agencies	1	States in Eastern Kathiawar and Old Banas Kantha Agencies ..	467,096	1
		States in Old Mahi Kantha, Gujarat States and Deccan States Agencies	377,413	1
Bihar and Orissa and Central Provinces States (Eastern States Agency)	1	Bihar and Orissa and Central Provinces States (Eastern States Agency) ..	822,200	2
Central India States and Rajputana States (Kushalgarh and Lawa) ..	1	Central India States and Rajputana States (Kushalgarh and Lawa)	319,089	1
Simla Hill States and Kalsia, Pataudi and Dujana ..	1	Simla Hill States and Kalsia, Pataudi and Dujana	437,787	1
	5			7

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ANNEXURE B

Note.—(*The left-hand figures are those of the population in thousands.*)

State		Upper House	Lower House
Salute—21 *guns*			
Hyderabad	14,436	5	14
Mysore	6,557	3	7
Kashmir	3,646	3	4
Gwalior	3,523	3	4
Baroda	2,443	3	3
Salute—19 *guns*			
Travancore	5,096	2	5
Udaipur	1,567	2	2
Indore	1,318	2	2
Kolhapur	957	2	1
Bhopal	730	2	1
Kalat ..	342	2	1
Salute—17 *guns*			
Jaipur	2,632	2	3
Jodhpur	2,126	2	2
Patiala	1,626	2	2
Rewa ..	1,587	2	2
Cochin	1,205	2	1
Bahawalpur	985	2	1
Bikaner	936	2	1
Kotah	683	1	1
Cutch	514	1	1
Bharatpur	487	1	1
Tonk ..	317	1	1
Bundi	217	1	1/2
Karauli	141	1	1/2
Salute—15 *guns*			
Alwar	750	1	1
Rampur	465	1	1
Orchha	315	1	1/2
Idar ..	263	1	1
Dholpur	255	1	1/2
Dhar ..	243	1	1/3
Dungarpur	228	1/2	1/2
Khairpur	227	1	1
Banswara	225	1/2	1/2
Sirohi	217	1	1/2
Datia ..	159	1	1/2
Sikkim	110	1	—
Kishengarh	86	1/2	1/2
Dewas (Senior)	83	1/2	1/3
Partabgarh	77	1/3	1/3
Jaisalmer	76	1/2	1/2
Dewas (Junior)	70	1/2	1/3

State		Upper House	Lower House
Salute—13 *guns*			
Cooch Behar	590	1	1
Junagadh	545	1	1
Bhavnagar	500	1	1
Nawanagar	409	1	1
Benares	391	1	1
Tripura	382	1/2	1
Jind ..	325	1	1
Kapurthala	316	1	1
Nabha	287	1	1
Palanpur	264	1/2	1/2
Rajpipla	206	1/2	1/2
Porbandar	116	1/2	1/2
Jhalawar	108	1/3	1/3
Ratlam	107	1/2	1/2
Jaora ..	100	1/2	1/2
Dhrangadhra	89	1/2	1/2
Salute—11 *guns*			
Manipur	446	1/2	1
Pudukkottai	401	group	1/3
Tehri-Garhwal	350	1/3	1
Panna	212	1/2	1/2
Mandi ..	207	1/3	1/3
Gondal	206	1/2	1/2
Faridkot	164	1/3	1/3
Chhatarpur	161	1/3	1/3
Sirmur	149	1/3	1/2
Chamba	147	1/3	1/2
Jhabua	146	1/3	1/3
Barwani	141	1/2	1/2
Rajgarh	132	1/3	1/3
Charkhari	120	1/3	1/3
Bijawar	116	1/5	1/5
Narsingarh	114	1/3	1/3
Morvi	113	1/2	1/2
Janjira	110	1/3	1/3
Alirajpur	102	1/2	1/2
Bilaspur	101	1/3	1/3
Cambay	88	1/3	1/3
Ajaigarh	86	1/2	1/2
Malerkotla	83	1/3	1/3
Radhanpur	71	1/3	1/3
Suket	58	1/3	1/3
Wankaner	44	1/3	1/3
Sailana	35	1/3	1/3
Samthar	33	1/5	1/5
Sitamau	28	1/3	1/3
Baoni	19	1/3	1/3

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State		Upper House	Lower House
Salute—9 guns			
Mayurbhanj	..	890	1/4	1
Patna	..	567	1/4	1
Kalahandi	..	514	1/4	1
Sangli	..	259	1/4	1/2
Sonpur	..	238	1/4	1
Savantvadi	..	231	1/4	1/2
Baria ..	..	159	1/4	1/4
Chhota Udepur		145	1/4	1/4
Bhor ..	..	142	1/4	1/2
Dharampur	..	112	1/3	1/3
Lunawada	..	95	1/4	1/4
Sant ..	..	84	1/4	1/4
Rajkot	..	76	1/5	1/5
Nagod	..	75	1/5	1/5
Maihar	..	69	1/5	1/5
Mudhol	..	63	1/4	1/2
Palitana	..	62	1/3	1/3
Jawhar	..	57	1/4	1/4
Shahpura	..	54	1/3	1/3
Balasinor	..	53	1/4	1/4
Bansda	..	49	1/4	1/4
Khilchipur	..	46	1/3	1/3
Wadhwan	..	43	1/5	1/5
Limbdi	..	40	1/5	1/5
Banganapalle		39	group	1/3
Dhrol	..	28	1/5	1/5
Loharu	..	23	1/3	1/3
Danta..	..	23	1/5	1/5
Sachin	..	22	1/4	1/4
Baraundha	..	16	1/5	1/5

State		Upper House	Lower House
Salute—Non-salute			
Bastar	..	525	1/4	1
Surguja	..	502	1/4	1
Keonjhar	..	461	1/5	1
Gangpur	..	357	1/5	1
Dhenkanal	..	284	1/5	3/8
Raigarh	..	278	1/4	3/7
Jashpur	..	194	1/5	3/7
Nandgaon	..	182	1/5	3/7
Khairagarh	..	157	1/4	3/7
Bamra	..	151	1/5	3/8
Seraikela	..	144	1/5	3/8
Nayagarh	..	142	1/5	3/8
Kanker	..	136	1/5	3/7
Baud	..	135	1/5	3/8
Sarangarh	..	129	1/5	3/7
Jamkhandi	..	114	1/5	1/5
Miraj (Senior)		94	1/5	1/5
Akalkot	..	93	1/5	1/5
Jath	..	91	1/5	1/5
Korea	..	91	1/5	3/7
Bonai	..	80	1/5	3/8
Aundh	..	76	1/5	1/5
Talcher	..	70	1/5	3/8
Nilgiri	..	69	1/5	3/8
Kurundwad (Senior).		44	1/5	1/5
Phaltan	..	43	1/5	1/5
Miraj (Junior)		40	1/5	1/5
Kurundwad Junior).		40	1/5	1/5
Ramdurg	..	35	1/5	1/5
Sandur	..	14	group	1/3

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IV. SPECIAL SUBJECTS

(1) The Distribution of Legislative Powers

Importance of the subject.

228. In an earlier part of this Report we have discussed briefly and in general terms our conception of a statutory distribution of legislative powers between the Centre and the Provinces as an essential feature of Provincial Autonomy and as being itself the means of defining its ambit. But the precise method by which this general purpose is to be effected is a matter of such paramount importance to the working of the Constitution which we envisage as to demand more detailed examination.

The plan of a statutory delimitation of legislative powers.

229. We have already explained[1] that the general plan of the White Paper, which we endorse, is to enumerate in two lists the subjects in relation to which the Federation and the Provinces respectively will have an exclusive legislative jurisdiction; and to enumerate in a third list the subjects in relation to which the Federal and each Provincial Legislature will possess concurrent legislative powers—the powers of a Provincial Legislature in relation to the subjects in this list extending, of course, only to the territory of the Province. The result of the statutory allocation of exclusive powers will be to change fundamentally the existing legislative relations between the Centre and the Provinces. At present the Central Legislature has the legal power to legislate on any subject, even though it be classified by rules under the Government of India Act as a provincial subject, and a Provincial Legislature can similarly legislate for its own territory on any subject, even though it be classified as a central subject; for the Act of each Indian Legislature, Central or Provincial, requires the assent of the Governor-General, and, that assent having been given, section 84 (3) of the Government of India Act provides that "the validity of any Act of the Indian Legislature or any local Legislature shall not be open to question in any legal proceedings on the ground that the Act affects a provincial subject or a central subject as the case may be." If our recommendations are adopted, an enactment regulating a matter included in the exclusively Provincial List will hereafter be valid only if it is passed by a Provincial Legislature, and an enactment regulating a matter included in the exclusively Federal List will be valid only if it is passed by the Federal Legislature: and to the extent to which either Legislature invades the province of the other, its enactment will be *ultra vires* and void. It follows that it will be for the Courts to determine whether or not in a given enactment the Legislature has transgressed the boundaries set for it by the exclusive List, federal or provincial, as the case may be. The questions which may arise

[1] *Supra*, para. 48.

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as to the validity of legislation in the concurrent field are more complicated, and we shall discuss them later; but here, also, disputes as to the validity of legislation will in the last resort rest with the Courts.

Any other plan inconsistent with Provincial Autonomy.

230. We do not disguise the fact that these proposals will open the door to litigation of a kind which has hitherto been almost unknown in India; nor have we forgotten that the Statutory Commission expressed the hope that the provisions of the existing Act which we have mentioned above would be preserved.[2] As we shall explain

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our recommendations will have the effect of preserving in the limited sphere of the concurrent field the main feature of the existing system; but we feel no doubt that the White Paper correctly insists upon a statutory allocation of exclusive jurisdictions to the Centre and the Provinces respectively as the only possible foundation for the Provincial Autonomy which we contemplate. We are fully sensible of the immense practical advantages of the present system, and of the uncertainties and litigation which have followed elsewhere from a statutory delimitation of competing jurisdictions; but we are satisfied that a relationship between Centre and Provinces, in which each depends in the last resort for the scope of its legislative jurisdiction on the decision of the Central Executive as represented by the Governor-General, would form no tolerable basis for an enduring Constitution and would be inconsistent with the whole conception of autonomous Provinces.

The revised Lists.

231. The Lists, as they appear in Appendix VI to the White Paper, are described as illustrative and do not purport to be either complete or final. Since their publication, however, they have been subjected to a careful scrutiny by the Government of India and the Provincial Governments, whose criticisms have in their turn been examined by the framers of the original Lists; and the results of this scrutiny and examination have been placed at our disposal. In the light of this further information we are satisfied (though the final form must be a matter for the draftsman) that the revised Lists which we append to this chapter represent a workable and appropriate allocation of legislative powers.

Two Lists or one as the method of defining exclusive jurisdictions.

232. We confine our attention for the moment to Lists I and II, which define respectively the exclusive jurisdiction of the Centre and of the Provinces. We believe that the attempt which these Lists represent to allocate by enumeration with any approach to completeness the functions of legislation, including taxation, to rival Legislatures is without precedent. In other Constitutions the method adopted has usually been to specify exhaustively the subjects allocated to one Legislature and to assign to the other the whole of the unspecified residue, and this method has not only the merit of simplicity, but diminishes greatly the opportunity for litigation. But, as we have

[2] Report, Vol. II, para. 154.

said elsewhere, opinion in India is sharply divided into two opposing schools of thought, one of which refuses to countenance the bias in favour of the Centre, which is assumed to follow from the possession by the Centre of residual powers, while the other as rigidly refuses to concede the possession of these powers to the Provinces. We are ourselves convinced that the laborious and careful enumeration of both sets of subjects has secured that in fact no material and unforeseen accretion of power, either to Centre or Provinces, would result from the elimination of one List or the other; and we are satisfied that the process has reduced the residue to proportions so negligible that the apprehensions which have been felt on one side or the other are without foundation. Recognising, however, the strength of Indian feeling on this matter we are unwilling to disturb the compromise embodied in the White Paper, the effect of which is to empower the Governor-General acting in his discretion to allocate the Centre or Province as he may think fit the right to legislate on any matter which is not covered by the enumeration in the Lists. We are conscious of the objections to this proposal;

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it is inconsistent with our desire to see a statutory delimitation of legislative jurisdictions: and the power vested in the Governor-General necessarily empowers him not merely to allocate an unenumerated subject, but also in so doing to determine conclusively that a given legislative project is not, in fact, covered by the enumeration as it stands,—a question which might well be open to argument, though we assume that in practice the Governor-General would seek an advisory opinion from the Federal Court. On the other hand, it must not be forgotten that an enumeration of the powers of the Centre and the allocation of the unspecified residue to the Provinces involves the consequence that the Provinces would acquire the right to assume to themselves any unspecified sources of taxation which might hereafter be devised; and if this position were accepted it might well be necessary to deal separately and by a different method with the power to impose taxation. We recommend, however, as some mitigation of the uncertainty arising from the inevitable risks of overlapping between the entries in the Lists, that the Act should provide that the jurisdiction of the Federal Legislature shall, notwithstanding anything in Lists II and III, extend to the matters enumerated in List I and that the jurisdiction of the Federal Legislature under List III shall, notwithstanding anything in List II, extend to the matters enumerated in List III. The effect of this will be that, in case of conflict between entries in List I and entries in List II, the former will prevail, and, in case of conflict between entries in List III and entries in List II, the former will prevail so far as the Federal Legislature is concerned.

The Concurrent List.

233. We turn now to the problems presented by the Concurrent List. We have explained elsewhere our reasons for accepting the principle of a Concurrent List, but the precise definition of the powers to be conferred upon the Centre in relation to the matters contained in it

presents a difficult problem. In the first place, it appears to us that, while it is necessary for the Centre to possess in respect of the subjects included in the List a power of co-ordinating or unifying regulation, the subjects themselves are essentially provincial in character and will be administered by the Provinces and mainly in accordance with provincial policy; that is to say, they have a closer affinity to those included in List II than to the exclusively federal subjects. At the same time, it is axiomatic that, if the concurrent legislative power of the Centre is to be effective in such circumstances, the normal rule must be that in case of conflict between a Central and a Provincial Act in the concurrent field, the former must prevail. But an unqualified provision to that effect would enable an active Centre to oust provincial jurisdiction entirely from the concurrent field, and would thus defeat one of the main purposes of the latter. We have already expressed our approval of the device adopted in the White Paper for the purpose of meeting this difficulty, under which the Governor-General, acting in his discretion, is made the arbiter between conflicting claims of Centre and Provinces. This in effect preserves in the limited sphere of the concurrent field the existing legislative relation between Centre and Provinces which excited the admiration of the Statutory Commission; but it seems to us impossible, consistently with our conception of Provincial Autonomy, to preserve it in its entirety. We think, however, that it would be a mistake to attempt to limit the powers of the Central Legislature in this field by any statutory definition of the purpose for which, or the conditions subject to which, they are to be used.

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Relations between Centre and Provinces in the concurrent field.

234. There are obvious attractions to those who wish to see the freedom and initiative of the Provinces as unfettered as possible in an attempt to ensure by provisions in the Constitution Act that the powers of the Centre in the concurrent field are to be capable of use only where an all-India necessity is established, and where the enactment in question can appropriately be, and in fact is, applied to every Province. We are clearly of opinion that such a restriction, apart from the prospect of litigation which it opens up, would tend to defeat the objects we have had in view in revising the List of concurrent subjects. For similar reasons we should strongly deprecate any provision requiring the prior assent of the Provinces, or of a majority of them, as a condition precedent to the exercise by the Centre of its powers in this field, or the condition suggested in the White Paper that the Centre is to be debarred from so using its powers in respect of a concurrent subject as to impose financial obligation on the Provinces. We recognise that, in practice, it will be impossible for the Centre to utilise its powers in the concurrent field without satisfying itself in advance that the Governments to whose territories a projected measure will apply are, in fact, satisfied with its provisions and are prepared in cases where it will throw extra burdens upon provincial resources to recommend to their own

Legislatures the provision of the necessary supply; but we consider that the practical relationships which are to develop between Centre and Provinces in this limited field must be left to work themselves out by constitutional usage and the influence of public opinion, and that no useful purpose would be served by attempting to prescribe them by means of rigid legal sanctions and prohibitions. Nevertheless, we regard it as essential to satisfactory relations between Centre and Provinces in this field that the Federal Government before initiating legislation of the kind which we are discussing should ascertain provincial opinion by calling into conference with themselves representatives of the Governments concerned. It follows that, while we fully accept the proposals in the White Paper for defining the constitutional duties and obligations of Provincial Governments in relation to the execution of Federal Acts of all kinds, whether they relate to matters included in List I or to those in List III, we think that they need qualification in so far as they are intended to empower the Federal Government to issue mandatory directions to the Provinces. Such a power is clearly essential in relation to the federal field proper; but we do not think that it should extend to matters relating to the execution of federal laws in the concurrent field. At the same time we recommend that, although no statutory limitation should be imposed upon the exercise by the Centre of its legislative powers in the concurrent field, the Governor-General should be given guidance in his Instrument of Instructions as to the manner in which he is to exercise the discretion which the White Paper proposes to vest in him in relation to matters arising in the concurrent field.

Proposal that Acts should not be open to challenge after a specific period.

235. We observe with interest a proposal in the White Paper that, in order to minimize uncertainties of law and opportunites for litigation, provision should be made for limiting the period within which the validity of an Act may be called in question on the ground that it was not within the competence of the Legislature which enacted it.[1] We know of no precedent for a provision of this kind, though there are enactments in this country which make certain forms of subordinate or delegated legislation unchallengeable in the Courts

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after a specified period. We are not disposed to reject it on that account; but, if it is adopted, we think that the period of limitation should be adequate and not less than five years.

The legislative relations between the Federal Legislature and the States.

236. Our observations have been hitherto directed solely to the legislative relations between the Federation and the Provinces. The relations between the Federation and the States in this sphere will not, and cannot, be the same. The effect of the proposals in the White Paper is that, while every Act of the Federal Legislature regulating any subject which has been accepted by a State as a federal subject will apply *proprio vigore* in that State as they will apply in a Province, a duty identical with that imposed upon

[1] White Paper, Proposal 118.

Provincial Governments being imposed upon the Ruler to secure that due effect is given in his territories to its provisions, yet this jurisdiction of the Federal Legislature in the States will not be exclusive. It will be competent for the States to exercise their existing powers of legislation in relation to such a subject, with the proviso that, in case of conflict between a State law and a Federal law on a subject accepted by the State as federal, the latter will prevail. We understand that the States, who are free agents in this respect, are likely in the first instance to take their stand upon the Federal List proper and to accept the jurisdiction of the Federal Legislature in nothing which is outside the boundaries of that List; but we hope that in course of time they may be willing to extend their accessions at least to certain of the items, such as Bankruptcy and Insolvency, in the Concurrent List.

Formal changes in the revised Lists.

237. We desire to draw attention to certain points in connection with the revised Lists of Subjects. We may observe in the first place that certain of the entries in List I as it appears in the White Paper are so framed as to provide for variation of treatment in relation to the States. The revised List is, however, framed in terms which are appropriate to India as a whole, and makes no attempt to meet the case of States which might not be prepared to accept the whole subject without variation. This we are satisfied is the more convenient course, the natural medium for recording any variation from the general content of a federal subject, whether in respect of the acceding States in general or of an individual State, being each Ruler's Instrument of Accession. Another general principle which has been observed in revising the Lists and which has involved a number of minor modifications is the desirability of defining every entry in terms appropriate to a legislative power and of omitting all entries which are in essence descriptive of executive power. Such expressions as "control" and "regulation" have therefore been avoided; and we assume that the draftsman of the Constitution Bill will find it necessary to define in some appropriate manner, elsewhere in the Bill, the scope of the executive or administrative authority of the Federal and of the Provincial Governments respectively. In any case we recommend, in consonance with what we have said in earlier paragraphs, that the Act should contain an express provision declaring the administration of subjects in List I to be (subject to the right of the Federal Legislature to devolve any administrative powers for the purpose upon the Provincial Governments) a federal, and the administration of subjects in Lists II and III a provincial, function.

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Alterations suggested in the entries relating to the defence of India.

238. The revised Lists also contain a number of changes of substance. Apart from a considerable revision of the language of the first five entries of List I, as they appear in the White Paper, which collectively define the ambit of the reserved subject of Defence, the first entry, "the common defence of India in time of an

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emergency declared by the Governor-General" has been omitted entirely. The intention of this item was, we understand, to give the Federal Legislature (and, in consequence, the Governor-General for the purposes of his personal legislative power) extensive powers on the lines of the English Defence of the Realm Act. We fully agree that it is essential that such a power should be vested in the Federal authorities, but we are of opinion that it should not be left to be deduced from a schedule of legislative powers, but should be the subject of an express provision in the body of the Act. We are informed that it was only by a majority of one that five Judges of the High Court of Australia decided that the power to legislate for "defence" in the Commonwealth Constitution Act justified legislation on the lines of the Defence of the Realm Act; and the provision which we recommend in order to place this vital matter beyond doubt should make it clear that the emergency power in question is not limited to "defence" in the sense of repelling external aggression, but that it covers internal disturbance also, and that, where an emergency has been declared by the Governor-General, the Federal Legislature may make on any subject laws which will override any laws which conflict with them, the Governor-General's personal legislative power being of course co-extensive in this repect with the power of the Federal Legislature. As an additional safeguard we would require that every proposal for legislation in the exercise of this power should be subject to the previous consent of the Governor-General. We recognise that the inclusion of internal disturbance (which should be defined in terms which will ensure that for this purpose it must be comparable in gravity to the repelling of external aggression) among the circumstances which, in an emergency, will enable the Governor-General to confer upon himself, or upon the Federal Legislature, as the case may be, the power to invade the exclusively provincial sphere and to override provincial legislation within that sphere, may be criticized as a derogation from the general plan of Provincial Autonomy which we advocate; but in the absence of such a power we could not regard the Governor-General as adequately armed to discharge the ultimate responsibility which rests upon him for the peace and tranquillity of the whole of India.

Other alterations in the Lists.

239. It would extend this chapter to an unreasonable length if we were to set out in detail all the changes which a revision of the three Lists has involved. We are the less willing to do so, because we recognise that the revised Lists themselves will require further expert scrutiny before they are finally submitted to Parliament as part of the legislative proposals of His Majesty's Government. We think, however, that if the revised Lists are compared with the Lists in the White Paper, such changes as have been made, in addition to those already mentioned will, for the most part, be found to speak for themselves.

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Existing laws.

240. We assume that there will be a provision in the Constitution Act continuing in force (until amended hereafter) the whole body of

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existing Indian law. But it will clearly be necessary before the Act comes into force to redistribute all powers conferred by that law so as to make them conform to the distribution of powers effected by the Constitution Act.

THE REVISED LISTS

(The unbracketed figures represent the entries in the Lists set out in the White Paper; the figures in brackets represent the order in which the revised entries should be shown).

LIST I (FEDERAL)

Item		
1		Omitted for reasons given above.
2	(1)	His Majesty's naval. military and air forces in India and any other armed force raised in India (other than military and armed police maintained by Provincial Governments and armed forces maintained by the Rulers of Indian States), including the employment of those forces for the protection of the Provinces against internal disturbance and for the execution and maintenance of the laws of the Federation and the Provinces.
3	(2)	His Majesty's naval, military and air force works.
4	(3)	Local self-government in cantonment areas and the regulation therein of house accommodation.
5		Omitted—has been combined with item 2.
6	(46)	The Benares Hindu University and the Aligarh Muslim University.
7	(47)	Ecclesiastical affairs, including European cemeteries.
8	(4)	External affairs, including international agreements, but with regard to future agreements relating to subjects within the exclusive jurisdiction of a unit, only so far as they have been made with the previous concurrence of that unit.
9	(5)	Emigration from and immigration into India and inter-provincial migration, including in relation thereto regulation of foreigners in India.
10	(6)	Pilgrimages beyond India.
11A	(7)	Extradition.
11B	(8)	Fugitive offenders.

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Item		
12	(9)	(i) Construction of railways other than minor railways. (ii) Regulation of federal railways and regulation of other railways in respect of— (*a*) maximum and minimum rates and fares; (*b*) terminals. (*c*) safety; (*d*) routeing and interchangeability of traffic; (*e*) responsibility as carriers. (Definitions (to be inserted in the Act): "Railways" includes tramways. "Light and feeder railway" means a railway not in physical connection with or of the same gauge as an adjacent railway extending beyond a single unit. "Minor railways" means light and feeder railways wholly within a unit. "Federal railways" includes all railways other than minor railways and railways owned by a State and managed by or on behalf of the Ruler of that State.)

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13	(10)	Air navigation and aircraft, including the regulation of aerodromes.
14	(11)	Inland waterways passing through two or more units, including shipping and navigation thereon as regards mechanically propelled vessels, but not including water supplies, irrigation, canals, drainage, embankments, water storage or water power.
15	(12)	Maritime shipping and navigation, including carriage of goods by sea.
16	(13)	Regulation of fisheries beyond territorial waters.
17		Omitted—has been combined with item 14.
18	(14)	Lighthouses (including their approaches), beacons, light-ships and buoys.
19	(15)	Port quarantine and marine hospitals.
20	(16)	Declaration and delimitation of major ports and constitution and powers of Port Authorities in such posts.
21	(17)	Postal, telegraphic, telephone, wireless (including broadcasting) and other like services and control of wireless.
22	(18)	Currency, coinage and legal tender.
23	(19)	Public debt of the Federation.
24	(20)	Post Office Savings Bank.
25	(21)	[Incorporation and regulation of] Corporations for the purposes of the subjects in this list; Corporations having objects not confined to one unit; Banking, Insurance, Financial and Trading Corporations not being Co-operative Societies.

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Item		
26	(22)	Development of industries in cases where such development is declared by or under federal law to be expedient in the public interest.
27	(23)	Cultivation and manufacture of opium; sale of opium for export.
28A	(24)	Possession, storage and transport of petroleum.
28B	(25)	Explosives.
29	(26)	Arms and ammunition.
30	(27)	Copyright, inventions, designs, trade marks and merchandise marks.
31		Transferred to List III.
32	(29)	Cheques, bills of exchange, promissory notes and other like instruments.
33		Omitted—see "Regulation of mechanically propelled vehicles" in List III.
34	(32)	Import and export of commodities across the customs frontiers as defined by the Federal Legislature; duties of customs.
35	(48)	Salt.
36	(49)	Duties of excise on the manufacture and production of tobacco and other articles except— (i) potable alcoholic liquors; (ii) toilet and medicinal preparations containing alcohol, Indian hemp, opium or other drugs or narcotics; (iii) opium, Indian hemp, and other drugs and narcotics.
37	(50)	Taxes on the capital and the income (other than the agricultural capital and income) of companies.
38	(33)	Geological Survey of India.
39	(34)	Botanical Survey of India.

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40	(36)	Meteorology.
41A	(37)	Census.
41B	(38)	Statistics for the purposes of subjects in this List.
42	(39)	Federal Agencies and Institutes for Research and for professional and technical training or promotion of special studies.
43	(40)	The Imperial Library, Indian Museum, Imperial War Museum, Victoria Memorial and any similar institution controlled and financed by the Federal Government.
44	(41)	Pensions payable by the Federal Government or out of federal revenues.
45	(42)	Federal Services and Federal Public Service Commission.

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Item		
46	(43)	Lands and buildings in possession of the Federal Government so far as they are not affected by provincial legislation or are exempted by Federal legislation from the operation of Provincial legislation.
47	(44)	Offences against laws on subjects in this List.
48		Omitted as unlikely to be required by the terms of the Act.
49	(51)	Taxes on other incomes (other than agricultural income), but subject to the power of the Provinces to impose surcharges.
50	(52)	Duties in respect of succession to property other than land.
51	(53)	Taxes on mineral rights and on personal capital other than land.
52	(54)	Terminal taxes on railway, tramway or air-borne goods and passengers and taxes on railway or tramway fares and freights.
53	(30)	Fixation of rates of stamp duty in respect of bills of exchange, bills of lading, cheques, letters of credit, promissory notes, policies of insurance, proxies and receipts.
54		Omitted as covered by the substantive provisions proposed with regard to legislation on residual subjects.
55	(55)	Naturalisation.
56	(56)	Conduct of elections to the Federal Legislature, including election offences and disputed elections.
57	(31)	Standards of weight.
58	(57)	Chief Commissioners' Provinces.
59	(58)	Survey of India.
60	(59)	Archæology, including ancient and historical monuments.
61	(35)	Zoological Survey.
62		Re-drafted and transferred to List III.
63	(60)	Jurisdiction, powers and authority of all Courts, except the Federal Court and the Supreme Court, with respect to the subjects in this List.
64		Omitted.
New items		
(*a*)	(28)	Insurance other than State insurance.
(*b*)	(61)	The extension of the powers and jurisdiction of officers and men of the Provincial Police Forces to areas outside the Province.
(*c*)	(45)	Imposition of fees, taxes, cesses and duties in connection with the subjects in this List, but not including fees to be paid in Courts.

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LIST II (PROVINCIAL)

Item		
1	(1)	Local self-government, including matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlements and other local authorities in the Province established for the purpose of local self-government and village administration.
2	(2)	Hospitals and dispensaries, charities and charitable institutions in and for the Province.
3	(3)	Public health and sanitation.
4	(16)	Pilgrimages other than pilgrimages beyond India.
5	(5)	Education.
6	(6)	Public works, lands and buildings vested in or in the possession of the Crown for the purposes of the Province.
7	(7)	Compulsory acquisition of land.
8	(9)	Roads, bridges, ferries, tunnels, ropeways, causeways, and other means of communication.
9	(8)	Minor railways.
10		Included in item 9.
11	(11)	Water supplies, irrigation and canals, drainage and embankments, water storage and water power.
12	(22)	Land revenue, including— (*a*) assessment and collection of revenue; (*b*) maintenance of land records, survey for revenue purposes and records of rights; (*c*) alienation of land revenue.
13	(23)	Land tenures, including transfer and devolution of agricultural land; easements.
14	(24)	Relations of landlords and tenants and collection of rents.
15	(25)	Courts of Wards and encumbered estates.
16	(26)	Land improvement and agricultural loans.
17	(27)	Colonization.
18	(28)	Pensions payable by the Provincial Government or out of Provincial revenues.
19		Included in item 13.
20	(29)	Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, agricultural education, protection against destructive pests and prevention of plant diseases.
21	(30)	Veterinary department, veterinary training, improvement of stock and prevention of animal diseases.

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Item		
22	(13)	Fisheries.
23	(34)	Co-operative societies.
24	(35)	[Incorporation and regulation of] Corporations other than those mentioned in List I.
24A	(36)	Trading, literary, scientific, religious and other societies and associations not being corporations.
25	(17)	Forests.
26	18)	Production, manufacture, possession, transport, purchase and sale of liquors, opium and other drugs and narcotics not covered by item 19 of List III.

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	27	(19)	Duties of excise on the manufacture and production of— (i) potable alcoholic liquors ; (ii) toilet and medicinal preparations containing alcohol, Indian hemp, opium or other drugs and narcotics ; (iii) opium, narcotics, hemp, and other drugs.
	28	(39)	Administration of justice, including the constitution and organisation of all Courts and fees to be paid therein, except the Federal Court and the Supreme Court.
	29	(40)	Procedure in Rent and Revenue Courts.
	30	(41)	Jurisdiction, powers and authority of all Courts, except the Federal Court and the Supreme Court, with respect to subjects in this List.
	31		Transferred to List III.
	32	(42)	Fixing of rates of stamp duty in respect of instruments other than those mentioned in item 53 of List I.
	33		Transferred to List III.
	34	(37)	Registration of births and deaths.
	35	(38)	Religious and charitable endowments.
	36	(43)	Mines and the development of mineral resources in the Province.
	37	(44)	Control of the production, supply and distribution of commodities.
	38	(45)	Development of industries, except in so far as they are covered by item No. 26 in List I.
	39		Transferred to List III.
	40		Transferred to List III.
	41		Transferred to List III.
	42	(46)	Gas.
	43	(47)	Smoke nuisances.
	44	(48)	Adulteration of foodstuffs and other articles.
	45	(49)	Weights and measures except standards of weight.
	46	(50)	Trade and commerce within the Province.
	47		Transferred to List III.

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Item		
48	(12)	Ports except in so far as they are covered by item 20 of List I.
49	(10)	Inland waterways being wholly within a Province, including shipping and navigation thereon.
50	(52)	Police (including railway and village police).
51	(53)	Betting and gambling except State lotteries.
52	(54)	Prevention of cruelty to animals.
53	(55)	Protection of wild birds and wild animals.
54	(20)	Vehicles other than mechanically propelled vehicles.
55	(21)	Dramatic performances and cinemas except sanction of cinematograph films for exhibition.
56	(56)	Coroners.
57	(57)	Criminal tribes.
58		Transferred to List III.
59	(58)	Prisons, reformatories, Borstal institutions and other institutions of a like nature.
60	(59)	Prisoners.
61	(60)	Pounds and the prevention of cattle trespass.
62	(61)	Treasure trove.
63	(62)	Libraries, museums and other similar institutions, controlled and financed by the Provincial Government.

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64	(63)	Conduct of elections to the Provincial Legislature, including election offences and disputed elections.
65	(64)	Public Services in the Province and the Provincial Public Service Commission.
66	(65)	Surcharges within such limits as may be prescribed by Order in Council on federal rates of income tax and supertax, to be assessed on the incomes of persons (not companies) resident in the Province.
67	(66)	Imposition of fees, taxes, cesses, or duties in connection with the subjects in this List and of taxation in any of the forms specified in the annexure hereto.
68A	(31)	Relief of the poor.
68B	(32)	Unemployment.
69	(33)	Health insurance and invalid and old-age pensions.
70	(51)	Money-lenders.
71	(4)	Burials and burial grounds other than European cemeteries.
72	(67)	Offences against laws on subjects in this List.
73		Omitted
74		Omitted.
75	(68)	Statistics for the purpose of the subjects in this List.
76	(70)	Generally any matter of a merely local or private nature in the Province.

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Item		
77		Omitted.
New items		
(*a*)	(14)	Innkeepers.
(*b*)	(15)	Markets and fairs.
(*c*)	(69)	Public debt of the Province.

ANNEXURE

Item		
1 to 5		Omitted—already covered by the entries in List II—*see* item 67.
6	(1)	Capitation taxes.
7	(2)	Duties in respect of succession to land.
8	(3)	Taxes on lands and buildings, animals, boats, hearths, and windows; sumptuary taxes and taxes on luxuries.
9	(4)	Taxes on trades, professions, callings and employments.
10	(5)	Taxes on consumption; cesses on the entry of goods into a local area; taxes on sale of commodities and on turn-over; taxes on advertisements.
11	(6)	Taxes on agricultural incomes.
12		Omitted—*see* item 32 of List II.
13	(7)	Taxes on entertainments, amusements, betting and gambling.

LIST III (CONCURRENT)

1	(1)	Jurisdiction, powers and authority of all Courts, except the Federal Court and the Supreme Court, with respect to the subjects in this List.
2	(2)	Civil Procedure, including the law of Limitation and all matters now covered by the Code of Civil Procedure.
3	(3)	Evidence and oaths.
4	(4)	Marriage and divorce.

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	5	(5)	Age of majority and custody and guardianship of infants.
	6	(6)	Adoption.
35	7	(7)	Registration of deeds and documents.
	8A	(8)	The law relating to :—
			(*a*) Wills, intestacy and succession save as regards agricultural land.
			(*b*) Transfer of property (other than agricultural land).
40			(*c*) Trusts and trustees.
			(*d*) Contracts, including partnership.
			(*e*) Powers of Attorney.
			(*f*) Carriers.
			(*g*) Arbitration.

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Item		
8B	(9)	Bankruptcy and insolvency.
9	(13)	Crimes other than offences against laws on subjects in List I or List II.
10	(14)	Criminal Procedure, including all matters now covered by the Indian Code of Criminal Procedure.
11	(17)	Newspapers, books and printing presses.
12	(18)	Lunacy and lunatic asylums.
13	(19)	Regulation of the working of mines, but not including mineral development.
14	(20)	Factories.
15	(21)	Employers' liability and workmen's compensation.
16	(22)	Trade Unions.
17	(23)	Welfare of labour, including, in connection therewith, provident funds.
18	(24)	Industrial and labour disputes.
19	(27)	Poisons and dangerous drugs.
20	(32)	The recovery in a Province of public demands (including arrears of land revenue and sums recoverable as such) arising outside that Province.
21	(31)	Legal, medical and other professions.
22		Transferred to List I.
23		Omitted.

New items

(*a*)	(28)	The prevention of the extension from one Province to another of infectious and contagious diseases or pests affecting men, animals or plants.
(*b*)	(12)	Administrators-General and official trustees.
(*c*)	(26)	Electricity.
(*d*)	(25)	Boilers.
(*e*)	(16)	European vagrancy.
(*f*)	(29)	The sanctioning of cinematograph films for exhibition.
(*g*)	(15)	Inter-provincial removal of prisoners with the consent of the Province.
(*h*)	(30)	Mechanically propelled vehicles.
(*i*)	(33)	The recognition of laws, public Acts, records and judicial proceedings.
(*j*)	(10)	Law of non-judicial stamps, but not including the fixation of rates of duty.
(*k*)	(11)	Actionable wrongs not relating to subjects in List I or List II.
(*l*)	(34)	Imposition of fees, taxes, cesses and duties in connection with the subjects in this List, but not including fees to be paid in Courts.
(*m*)	(35)	Statistics for the purposes of the subjects in this List.

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(2) Federal Finance.

Two-fold division of subject.

241. This subject falls naturally into two parts: first, the allocation of the sources of revenue between the Federation and the Units; and second, the additional expenditure involved by the proposed constitutional changes. We have had the advantage of a comprehensive and objective review of the facts and figures relating to both parts of the subject by Sir Malcolm Hailey, which has been printed among the Records of the Committee. We reproduce here from this document the figures of estimated revenue and expenditure of the Central and Provincial Governments for 1933–34, in order that it may be possible to view in proper perspective the various questions dealt with below.

Budget Estimates of Revenue and Expenditure of Central and Provincial Governments in 1933–34

Central Revenue

	Rs. = £ Crores.	millions.
Customs (net) ..	50·27	37·70
Income taxes (net) ..	17·21	12·91
Salt (net)	7·60	5·70
Other taxes (net) ..	0·60	0·45
Net tax revenue..	75·68	56·76
Opium (net)	0·63	0·47
Railways (net) ..	Nil	Nil
Currency and Mint (net)	1·11	0·83
Payments from States	0·74	0·56
Total	78·16	58·62

Provincial Revenues

Land Revenue ...	35·29	26·47
Excise	14·85	11·14
Stamps	12·40	9·30
Registration	1·14	0·85
Scheduled Taxes ..	0·43	0·32
Total tax revenue	64·11	48·08
Forests (net)	0·69	0·52
Irrigation (net) ..	0·49	0·37
Miscellaneous.. ..	11·32	8·49
N.W.F.P. subvention	1·00	0·75
Total	77·61	58·21

Central Expenditure

	Rs. = £ Crores.	millions.
Postand Telegraphs (net)	0·61	0·46
Debt:		
Interest (net) ..	8·97	6·73
Reduction of Debt..	6·89	5·17
Civil Administration (net).	8·76	6·57
Pensions (net) ..	3·02	2·26
Civil Works (net) ..	1·72	1·29
Defence Services (net)	46·20	34·65
Subvention to N.W.F.P.	1·00	0·75
Miscellaneous (net) ..	0·74	0·55
Total	77·91	58·43

Provincial Expenditure

Land Revenue and General Administration	14·86	11·14
Police	12·38	9·28
Jails and Justice ..	7·66	5·75
Debt	4·21	3·16
Pensions	5·08	3·81
Education	11·80	8·85
Medical and Public Health	5·23	3·92
Agriculture and Industries..	2·89	2·17
Civil Works	8·33	6·25
Miscellaneous.. ..	7·34	5·51
Total	79·78	59·84

Allocation of Sources of Revenue between the Federation and the Federal Units

The allocation of resources a problem common to all Federations.

242. In any Federation the problem of the allocation of resources is necessarily one of difficulty, since two different authorities (the Government of the Federation and the Government of the Unit), each with independent powers, are raising money from the same body of taxpayers. The constitutional problem is simplified if it is possible to allocate separate fields of taxation to the two authorities,

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but the revenues derived from such a division, even where it is practicable, may not fit the economic and financial requirements of each party; neither do these requirements necessarily continue to bear a constant relation to each other, and yet it is difficult to devise a variable allocation of resources. So far as we are aware, no entirely satisfactory solution of this problem has yet been found in any federal system.

The existing system in British India.

243. So far as British India is concerned the problem is not a new one. Though the separation of the resources of the Government of India and the Provincial Governments under the existing Constitution is in legal form merely an act of statutory devolution, which can be varied by the Government of India and Parliament at any time, nevertheless from the practical financial point of view there is already in existence in British India a federal system of finance. This system is fully described in the Report of the Statutory Commission. Determined to avoid the inconveniences which had already been experienced from a system of " doles " from the Centre to the Provinces or from a system of heads of revenue shared between the two parties, the authors of the present Constitution adopted an almost completely rigid separation of the sources of revenue assigned respectively to the Centre and to the Provinces. From the point of view of expenditure, the essentials of the position are (and no change in this respect is to be expected) that the Provinces have an almost inexhaustible field for the development of social services, while the demands upon the Centre, except in time of war or acute frontier trouble, are more constant in character. The Provinces have rarely had means adequate for a full development of their social needs, while the Centre, with taxation at a normal level, has no greater margin than is requisite in view of the vital necessity for maintaining unimpaired both the efficiency of the defence services and the credit of the Government of India which rests fundamentally upon the credit of India as a whole, Centre and Provinces together.

Its results.

244. Both Centre and Provinces have, however, been severely affected by the world economic depression; and the financial position of both has been severely strained. Rates of taxation have had to be increased in all directions, and every department of government has had to submit to retrenchment; but the way in which the strain has been borne is a tribute to the essential soundness of the present financial system. Past experience of the existing system leads to two conclusions on which there is general agreement: (*a*) that there are a few Provinces where the available sources of revenue are never likely to be sufficient to meet any reasonable standard of expenditure; and (*b*) that the existing division of heads of revenue between Centre and Provinces leaves the Centre with an undue share of those heads which respond most readily to an improvement in economic conditions. This has led to a very strong claim by the provinces for a substantial share in the taxes on income. This claim, as might be expected, has been pressed most vigorously

by the more industrialised Provinces like Bombay and Bengal, especially as their relative position was not improved by the abolition of the contributions which at the date of the establishment of the present constitution were paid by the Provinces to the Centre and were relatively larger in the case of the more completely agricultural Provinces.

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Effect of entry of the States into Federation.

245. The subjects which will be directly administered and paid for by the Centre and by the British India Provinces respectively will not, if our recommendations are accepted, be materially changed under the new Constitution, and, but for the entry of the States into the Federation, the problem of the allocation of resources could be resolved by reviewing and overhauling the existing system. The entry of the States however removes one very serious problem. The incidence of the sea customs duties is upon the consumers in the Indian States and the consumers in British India alike; the States have no say under the present system in the fixing of the tariff. With the continued rise for many years past in the level of the import duties, the States have pressed more and more for the allocation to them of a share in the proceeds of these duties. There is of course another side to the picture in the increased cost of the defence services, which is for the benefit of the States as well as for British India; but, nevertheless, the question was becoming one of formidable difficulty, and was recognised as such in the report of the Indian States Committee of 1928-29, presided over by Sir Harcourt Butler. With their entry into the Federation the States will take part in the determination of the Indian tariff, and their claim to a separate share in the proceeds disappears. But if their entry removes this major problem, it introduces another, though less formidable, complication. It is obviously desirable that, so far as possible, all the Federal Units should contribute to the resources of the Federation on a similar basis. Broadly speaking, no difficulty arises in the sphere of indirect taxation which constitutes some four-fifths of the Central revenues; the difficulty arises over direct taxation, that is to say, taxes on income. If the Federation retains the whole of taxes on income, as the Centre does at present, it would be natural to require that the subjects of the federating States should also pay income tax and that the proceeds (or part thereof) should be made available for the federal fisc. The States have made it plain that they are not prepared to adopt any plan of this kind.

Plan suggested for allocation of taxes on income.

246. It will be seen therefore, from two different lines of approach, that the most difficult question that arises in the problem of allocation is that of the treatment of taxes on income. In earlier discussions at the Round Table Conference a plan was evolved by which, in the main, all the taxes on income were to be assigned to the Provinces, the resulting deficit in the Federal Budget being made up for the time being by contributions from the Provinces, which it was hoped could be gradually reduced over a prescribed period of years and would finally disappear, as new federal resources

were developed. The position which would be likely to result from a plan of this kind was examined in India in 1932 by the Federal Finance Committee presided over by one of our own number. The Committee declared itself unable to assume the abolition of such provincial contributions within any period that could be foreseen; and this conclusion, and the objections felt to the reintroduction of provincial contributions, experience of which had not been too fortunate under the existing Constitution, led to the abandonment the Government of this scheme.

Difficulty of determining equitable basis for taxes on income between Federation and Provinces.

247. There is little doubt that from the economic point of view it is desirable that the Provinces should, if it is practicable, share in the proceeds of taxes on income. There has been considerable discussion, since the abandonment of the plan just described, as to the amount of this share. If the problem is considered merely as one of striking a theoretically correct balance between the States and British India, on the assumption that the States will not be

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subject to the federal income tax, there are many factors to be taken into account. Some of the federal expenditure will be for British India purposes only, such as subsidies to deficit British India Provinces; there has also been controversy on the question whether the service of part of the pre-Federation debt should not fall on British India alone; and further, part of the proceeds of taxes on income is derived from subjects of Indian States, e.g., holders of Indian Government securities and shareholders in British India Companies. The States also make a contribution in kind to defence of which there is no counterpart in the Provinces of British India. It seems to us both unnecessary and undesirable to attempt any accurate balancing of these factors or to determine on a basis of this kind what share of the income tax could equitably be retained by the Federation. It will be wiser to base the division upon the financial and economic needs of the Federation and the Units. Nor is it likely that any disequilibrium between British India and the States that might result from such a method of treatment would be of a serious character. The difficulty is rather that the Federal Centre is unlikely, at least for some time to come, to be able to spare much, if anything, by way of fresh resources for the Provinces, apart from the pressing needs of deficit areas to which we refer below. But it is equally undesirable to leave the Provinces with no indication of the share which they may ultimately expect when the strain of present economic difficulties becomes less severe. It is also necessary that any transfer should be gradual, if dislocation of both federal and provincial budgets is to be avoided.

The White Paper proposal.

248. The solution of this problem proposed in the White Paper may be briefly described as follows[1]: Taxes on income derived from federal sources, *i.e.*, federal areas or emoluments of federal officers, will be permanently assigned to the Federation. Of the yield of the rest

[1] White Paper, Proposals 139, 141.

of the normal taxes on income (except the corporation tax referred to later) a specified percentage (to be fixed by Order in Council at the last possible moment) is to be assigned to the Provinces. This percentage is to be not less than 50 per cent. nor more than 75 per cent. Out of the sum so assigned to the Provinces the Federal Government will be entitled to retain an amount which will remain constant for three years and will thereafter be reduced gradually to zero over a further period of seven years, power being reserved to the Governor-General to suspend these reductions, if circumstances made it necessary to do so. The Federal Government and Legislature would, in addition, be empowered to impose a surcharge on taxes on income, the proceeds of which would be devoted solely to federal purposes. We understand it to be implicit in this proposal that the power should only be exercisable in times of serious financial stress; and when such surcharges are in operation the States would make contributions to the federal fisc, assessed on a predetermined basis, so as to make them a fair counterpart of the yield of the surcharges from British India. The conditions under which the States are ready to accept this proposal were explained in a statement made to us on behalf of the Indian States Delegates[1]; and we agree that conditions of the kind mentioned are not unreasonable.

Criticisms of the proposal.

249. Some obvious criticisms can be made on this plan for dealing with the taxes on income. If a specified percentage of the yield of taxes on income is to be assigned to the Provinces, any alteration in the rate of tax will affect both parties (Federation and Provinces),

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though there may be only one which desires either an increase or a diminution in the yield. It may be suggested that the yield of a given basic rate should be assigned either to the Federation or the Provinces, the remainder going to the other. We are, however, informed that a plan of this kind would not fit well into the Indian income tax system, which differs considerably from the British. It is also said that the anomaly is more apparent than real, since, at least for many years to come, both Federation and Provinces will need as much money as can be obtained from taxes on income, and the fixing of the rate is likely to depend more on taxable capacity than on the precise budgetary position at any given moment of either.

Modifications suggested.

250. We agree that the percentage which is ultimately to be attained should be fixed as late as possible by Order in Council; but we see little or no prospect of the possibility of fixing a higher percentage than 50 per cent., even as an ultimate objective, and there is an obvious difficulty in prescribing in advance, as the White Paper does, a time-table for the process of transfer, even though power is reserved to the Governor-General to suspend the process (or, as we assume, its initiation). The facts discussed below indicate that for some time to come the Centre is unlikely to be able to do much

[1] Minutes of Evidence, Q.8023.

more than find the funds necessary for the deficit Provinces; and that an early distribution of any substantial part of the taxes on income is improbable. We think that it would be an improvement if the periods of three and seven years, instead of being fixed by statute, were controlled by Order in Council (the Governor-General's power to suspend being of course retained).

Suggestion of British-India Delegation.

251. The Joint Memorandum of the British-India Delegation recognises the difficulty of predetermining the various factors in this problem, and recommends an enquiry after three years. The Delegation do not state by what authority they consider that any decision consequent upon it should be taken, but perhaps intend that the decision should rest with the Federal Government. This does not seem fair to the Provinces.

Objections of Bengal and Bombay.

252. A further objection has been taken by some witnesses that it is not fair to Provinces such as Bengal and Bombay that the transfer of the provincial share of taxes on income should be delayed; and that so long as the Federation cannot spare the money, there should be some equitable form of contribution to the Federation from all the Provinces alike. But any plan of this kind must inevitably lead in effect to a return to a system of provincial contributions which has been explored and abandoned. We do not recommend such a course.

Scheme of White Paper generally recommended.

253. It must be admitted that the White Paper proposals for dealing with taxes on income present many difficulties, but the problem does not admit of any facile solution, and except for the suggestion made above, we do not ourselves feel able to propose an improved scheme. We should add that the actual method of distribution between the Provinces of any share in the taxes on income is a technical problem of some complexity. The report of the Federal Finance Committee suggests a useful line of approach, and we do not think that it is part of our duty to suggest a detailed scheme.

Corporation Tax.

254. There are two further questions connected with taxes on income on which some comment is desirable. The White Paper proposes to treat specially the taxes on the income or capital of companies.[1]

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We understand this to refer to taxes of the nature of the existing Corporation Tax, which is a supertax on the profits of companies. It is proposed that the Federation should retain the yield of this tax and that after ten years the tax should be extended to the States, a right being reserved to any State which prefers that companies subject to the law of the State should not be directly taxed to pay itself to the federal fisc an equivalent lump sum contribution. We approve this proposal, although the details of the arrangement with the States seem likely to be complex.

[1] White Paper, Proposal 142.

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Provincial surcharges.

255. The White Paper also proposes that a Provincial Legislature should be empowered to impose a surcharge not exceeding 12½ per cent. on the taxes levied on the personal income of persons resident in the Province, and to retain the proceeds for its own purposes.[1] There is, we understand, a considerable difference of opinion in India on this suggestion. It might lead to differential rates of tax on the inhabitants of different Provinces, and although a limit would be set to the possible differences, this is in itself undesirable. The rates of taxes on income are likely also to be sufficiently high to make it difficult to increase the rate by way of surcharge, and to give the Provinces such a power might well nullify the emergency power of imposing a surcharge which we think it essential that the Federation should possess. On the other hand, the proposal would undoubtedly give an elasticity to provincial revenues, which would be very desirable until the transfer of their share of the income tax is completed. But after balancing the considerations on either side, we are on the whole not in favour of it.

The deficit Provinces.

256. We come now to the question of deficit Provinces. The problem of Sind differs from that of the others, since it is not expected that this Province will permanently remain a deficit area. Other Provinces, notably Orissa and Assam, are, so far as can be foreseen, areas in which there is no likelihood that revenue and expenditure can be made to balance under the general scheme of allocation of resources, present or proposed ; and in these cases it is intended that there shall be a fixed subvention from the federal revenues.[2] Although it will no doubt be necessary to make it constitutionally possible after a period of years to vary the amount, we understand that the intention is, so far as possible, to make it a permanent and stable contribution and thus to avoid the danger that the Province, instead of developing its resources, may be tempted to rely on expectations of extended federal assistance ; and we agree. It is proposed that the Provinces to be assisted and the amounts of the subvention should be determined after further expert enquiry at as late a date as possible. The case of the North West Frontier Province stands on a different footing. This Province is at present in receipt of a contribution of a crore of rupees (·75)[3] annually from the Centre, the need for which arises mainly from special expenditure in the Province due to strategic considerations, though not strictly to be classified as Defence expenditure. In this case it seems essential that there should be power to review the amount from time to time, though here also too frequent changes would be open to the objection to which we have referred above.

[1] White Paper, Intro., para. 57 ; Appendix VI, List II (66).
[2] White Paper, Proposal 144.
[3] The figure in brackets here and elsewhere in this section denotes the equivalent figure in millions sterling at 1*s.* 6*d.* the rupee.

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Excise and export duties.

257. The White Paper proposals introduce two new features into the plan for the division of resources apart from the arrangements discussed above. Subject to the approval of the Governor-General in his discretion, power is given to the Federation to allot to the Federal Units (and not merely to the Provinces) a share of the yield of salt duties and of excise duties, other than those specifically assigned to the Provinces, and also of export duties.[1] We understand that the main purpose of this provision in relation to salt duties and excises is to make the financial scheme more elastic in the interest of future developments; and it is very probable that a power to assign a share to the Units may facilitate the introduction of a new tax. With this desire to avoid too great a rigidity in the plan of allocation we agree. The particular instance of export duties requires special mention, since it is proposed in the case of the jute export duty that it should be obligatory to assign at least one-half of the proceeds to the producing units. We understand that this proposal is made largely in the interests of Bengal, which has undoubtedly suffered severely under the existing plan of allocation; and the circumstances are so special as, in our opinion, to justify special treatment.

Terminal and other taxes.

258. Another feature in the scheme is a category of taxes (of which railway terminal taxes, if imposed, would probably become by far the most important) in which the power to impose the tax is vested solely in the Federation, though the proceeds would be distributed to the Provinces, subject to the right of the Federation to impose a surcharge for federal purposes.[2] We can well understand that in cases where uniformity in the rate of tax, or central administration is essential, machinery of this kind may be desirable, even though no part of the proceeds is retained for the Centre.

Interest of the Provinces in the Federal budget.

259. The fact that the Federal Units either will, or may, share in the yield from certain federal taxes implies that the Federal Budget cannot be the concern of the Federal Government and Legislature alone. This may result in some blurring of responsibility, and from the point of view of constitutional principle is open to objection; but we see no escape from it. In order to bring about mutual consultation between Federation and Units in matters of this kind, the White Paper proposes that federal legislation upon them should require the prior assent of the Governor-General, to be given only after consultation with both the Federal and the Governments of the Units.[3] We are doubtful whether a statutory obligation to consult the Units may not give rise to difficulties, and we see some advantage in directing the Governor-General in his Instrument of Instructions to ascertain the views of the Units by the method which appears to him best suited to the circumstances of the

[1] White Paper, Proposal 137.
[2] White Paper, Proposal 138.
[3] White Paper, Proposal 140.

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particular case. On the other hand, a suggestion has been made for an entirely different solution of the problem, and that all Central receipts which are to go in aid of provincial revenues should be paid into a special Provincial Fund to be administered for the benefit of the Provinces by the Governor-General on the advice of a statutory Inter-Provincial Council representing the Provincial Governments. We are disposed to think that this would tend to undermine the independence of the

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Provinces, and the administration of such a fund would present serious difficulties. We prefer not to deal with the problem of distribution in this manner, and to leave the methods of consultation between Centre and the Units to be determined by convention and usage rather than by rigid statutory provisions.

Financial adjustments between the Federation and the States.

260. The entry of the States into Federation, apart from the major questions referred to above, involves some complicated financial adjustments, mainly in respect of tributes and ceded territories; but these, though of importance to individual States, do not fundamentally affect the federal finance scheme as a whole. They have been exhaustively examined in the Report of the Indian States Enquiry Committee, which was also presided over by one of our members. We do not think it necessary to review the intricate adjustments there discussed, and it is sufficient to say that we endorse the main principles on which the Report is based, and in particular the gradual abolition over a period of years (corresponding to the period proposed for the assignment to the Provinces of a share of the taxes on income) of any contribution paid by a State to the Crown which is in excess of the value of the immunities which it enjoys.

States' maritime customs.

261. Of the problems discussed in the Indian States Enquiry Committee's Report, the most difficult and serious is that of the maritime States in relation to sea customs. The present position, which varies between one State and another, is fully explained in the Report; and we understand that at the moment questions of importance are at issue between the Government of India and some of these States on this subject. We think it most desirable that these difficulties should have been resolved before the Federation comes into being. The general principle which we should like to see applied in the case of the maritime States which have a right to levy sea customs is that they should be allowed to retain only so much of the customs duties which they collect as is properly attributable to dutiable goods consumed in their own State; but we recognise that treaty rights may not make it possible in all cases to attain this ideal. But if insistence upon treaty or other rights in any particular case makes such an arrangement (perhaps with certain adjustments or modification) impossible, then it seem to us that the question will have to be seriously considered whether the State could properly be admitted to the Federal system. It is

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unnecessary to emphasize the importance of securing that there is a genuine uniformity in the rates of customs duties levied respectively at State ports and at the ports of British India.

Borrowing powers.

262. Before leaving this part of the subject of federal finance, reference should be made to the arrangements proposed for the regulation and co-ordination of federal and provincial borrowing.[1] The proposals in the White Paper on the subject seem to us acceptable, subject to one additional provision. A Provincial Government will be empowered to borrow directly from the Federal Government, or itself to raise a loan, though the latter will require the sanction of the Federal Government if the Province is already in debt to the Centre. We think that this is right; but it puts great power in the hands of the Federal Ministry, who might, by refusing the application of a Province or by insisting upon unreasonable conditions, assume the right of controlling the general policy of a Province in a manner which we do not think was contemplated. In these circumstances, it seems to us that the ultimate decision whether consent

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has been unreasonably withheld in any instance should rest with the Governor-General in his discretion.

The additional expenditure involved by the proposed constitutional changes

Additional cost of Federation.

263. We have been furnished with an estimate of the new overhead charges which would result from the adoption of the Constitution proposed in the White Paper; that is to say, the additional expenditure required by reason (*inter alia*) of an increase in the size of the Legislatures and electorates, or the establishment of the Federal Court. These would amount to ¾ crore (·56) per annum, attributable to the establishment of Provincial Autonomy, and another ¾ crore (·56) per annum, attributable to the establishment of the Federation. We understand that these would be the only fresh burdens imposed upon the taxpayers of India as a direct result of the constitutional changes. The amount, under present financial conditions, is by no means negligible, but is not of very serious dimensions. There are, however, apart from the new overhead charges, certain other factors affecting the financial position which it is necessary to pass in review. The most important of these is the separation of Burma; and although this will not in itself involve a financial loss to the taxpayers of India and of Burma considered as a whole, the revenues of India will suffer a loss estimated to be possibly as much as 3 crores (2·2) a year, less the yield of any revenue duties on imports from Burma which may be introduced from the date of separation.

Subventions to deficit Provinces: Sind.

264. The next most considerable adjustment is that due to the separation of Sind. It is estimated that there will be an initial deficit in Sind of about ¾ crore (·56) a year, but that this will gradually diminish and be ultimately extinguished over a period of

White Paper, Proposals 148, 149.

some fifteen years, by the end of which time it is believed that the agricultural developments connected with the Sukkur Barrage scheme will be complete. If Sind were not constituted a separate Province this deficit would fall to be met from Bombay revenues, except for a small sum of about 10 lakhs (·07), the estimated cost of new overhead charges (this sum is included in the total estimate of new overhead charges mentioned above). It is proposed that a subvention should be given from federal revenues to Sind, of a prescribed but gradually diminishing amount. Here again, except for the 10 lakhs already mentioned, there is no additional burden imposed upon the taxpayers of India as a whole, but the relief given to Bombay, which is by no means unneeded, will impose some additional strain on federal revenues.

Orissa.

265. The subventions to other deficit Provinces also react on federal finance, but we understand that the problem is one which it would have been necessary to face before long under the existing Constitution, since it is clearly impossible to allow the continued accumulation of deficits by a Province, if over a number of years it is beyond its power within the resources assigned to it to balance its expenditure and revenue. Special reference must be made to the case of Orissa. This will undoubtedly be a deficit area and will require a subvention of something like 30 lakhs (·22) a year; but of this only about 15 lakhs (·11) a year, which is the estimate for new overhead charges, involves any additional burden on federal revenues and has already been included in the total figure for new overhead charges referred to above. The balance would in effect have had

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to be provided by subvention from the Centre even if a new Province of Orissa were not constituted. The existing Province of Bihar and Orissa is faced with serious financial difficulties, aggravated by the recent earthquake, and the separation of Orissa only means that the new Province will receive the subvention which would otherwise have come to it indirectly through the Government of Bihar and Orissa. It will be an advantage to the Government of Bihar to be free of the administration of a deficit area which is distinct from the rest of the Province, with which communication is difficult, and whose problems are different from those which confront Bihar.

Cost of adjustments with the States.

266. The factors above mentioned come into play on the inauguration of Provincial Autonomy. The only fresh factor, apart from the new overhead charges of ¾ crore (·56) a year, which is introduced by Federation itself is the proposed financial adjustment with the States to which we have already referred and which it is suggested shall be extended over a period of years. This will ultimately involve a net loss to federal revenues of something less than 1 crore (·75) per annum.

General conclusions.

267. The general conclusion therefore is that though no formidable new financial burden would be thrown on the taxpayers of India as a whole as a direct result of the constitutional change proposed, the

necessity for giving greater elasticity to provincial resources, the subventions to the deficit Provinces, and also the separation of Burma, will impose a further strain on the finances at the Centre. India is still suffering from the effects of the general financial depression, and the low level of agricultural prices has been and still is a very formidable problem. But the state of Indian finance reflects great credit on those responsible for its administration, and the storm is being weathered more successfully than in most other countries. Economic recovery would no doubt, as in the past, produce speedily a very marked improvement in the situation; but at the moment special emergency taxation and special economies are still in force, and little more can be done than make both ends meet, though a beginning has been made in the present year towards easing provincial difficulties by a central grant to the jute producing Provinces.

The financial situation in relation to constitutional changes.

268. It has been argued in some quarters that constitutional change should be postponed until the financial horizon is clearer, but the additional difficulties attributable to the change (and such as they are they relate mainly to Provincial Autonomy and not to Federation) are but a small part of a financial problem which has in any event to be faced, and is, we hope and believe, in process of solution. No doubt before the new Constitution actually comes into operation His Majesty's Government will review the financial position and inform Parliament how the matter stands. It is suggested in the White Paper that at the last possible date there should be a financial enquiry for settling certain details, such as the amount of the subventions to the deficit Provinces.[1] This seems to us a suitable procedure, but we do not conceive, nor do we understand that it is intended, that any such expert body could be charged with the duty of deciding whether the position was such that the new Constitution could be inaugurated without thereby aggravating the financial difficulties to a dangerous extent. On this point, as we have said, Parliament must at the appropriate time receive a direct assurance from His Majesty's Government.

[1] White Paper, Introd., para. 60.

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(3) The Indian Public Services

The Public Services under responsible government.

269. The problem of the Public Services in India and their future under a system of responsible government is one to which we have given prolonged and anxious consideration. The grant of responsible government to a British possession has indeed always been accompanied by conditions designed to protect the interests of those who have served the community under the old order and who may not desire to serve under the new; but if, as we believe, the men who are now giving service to India will still be willing to put their abilities and experience at her disposal and to co-operate with those who may be called on to guide her destinies hereafter, it is equally necessary that fair and just conditions should be secured to them. This does not imply any doubt or suspicion as to the treatment which they are likely to receive under the new Constitution; but, since in India the whole machinery of government depends so greatly upon the efficiency and contentment of the Public Services as a whole, especially during a period of transition, it is a matter in which no room should be left for doubt. It is not because he expects his house to be burned down that a prudent man insures against fire. He adopts an ordinary business precaution, and his action in doing so is not to be construed as a reflection either upon his neighbours' integrity or his own.

The British element in the Services.

270. The United Kingdom no less than India owes an incalculable debt to those who have given of their best in the Indian Public Services, and the obligation must be honoured to the full. But the question has another and scarcely less important aspect; for we are convinced that India for a long time to come will not be able to dispense with a strong British element in the Services, and the conditions of service must be such as to attract and hold the best type of man. So long as the British element is retained, Parliament, in the interests of India as well as of this country may rightly require not only that the Services are given all reasonable security but that none is deterred from entering them by apprehensions as to his future prospects and career.

Present Organisation and Recruitment

The Indian Civil Services.

271. The Civil Services in India are classified in three main divisions: (1) the All-India Services; (2) the Provincial Services; and (3) the Central Services. The All-India Services, though they work no less than the Provincial Services under the Provincial Government, are all appointed by the Secretary of State, and he is the final authority for the maintenance of their rights. Each All-India Service is a single Service and its members are liable to serve anywhere in India; but unless transferred to service under the Central Government, the whole of their career lies ordinarily in the Province to which they are assigned on their first appointment.

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The All-India Services.

272. The All-India Services consist of the Indian Civil Service; the Police; the Forest Service; the Service of Engineers; the Medical Service (Civil); the Educational Service; the Agricultural Service and the Veterinary Service. Recruitment however by the Secretary of State to the Buildings and Roads Branch of the Service of Engineers. to the Educational Service, the Agricultural Service and the Veterinary Service, ceased in 1924 on the recommendation of the Lee

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Commission. The composition and total strength of these Services on 1st January, 1933, were as follows :—

1.	2. Europeans.	3. Indians.	4. Total.
Civil Service	819	478	1,297
Police	505	152	665 [1].
Forest Service	203	96	299
Service of Engineers ..	304	292	596
Medical Service (Civil) ..	200	98	298
Educational Service ..	96	79	175
Agricultural Service ..	46	30	76
Veterinary Service ..	20	2	22
	2,193	1,227	3,428

The Provincial Services.

273. The Provincial Services (in the sense in which the expression is ordinarily used, which excludes not only the members of All-India Services working in the Province, but also the numerous subordinate Services) are, and always have been, almost entirely Indian in composition, and cover the whole field of provincial civil administration in the middle grades. Appointment to these Services are made by the Provincial Governments who, broadly speaking, control their conditions of service, and show an increasing tendency to restrict their recruitment to candidates from the Province. In many branches of the administration members of All-India and Provincial Services work side by side though the higher posts are usually filled by the former.

The Central Services.

274. The Central Services are concerned with matters under the direct control of the Central Government. Apart from the Central Secretariat, the more important of these Services are the Railway Services, the Indian Posts and Telegraph Service, and the Imperial Customs Service. To some of these the Secretary of State makes appointments, but in the great majority of cases their members are appointed and controlled by the Government of India; and if these Services are taken as a whole, Indians out-number Europeans even in the higher grades, while, with the exception of the railways, the middle and lower grades may be said to be wholly Indian. The Anglo-Indian community has always furnished a large number of recruits to the Central Services, especially the Railways, the Posts and Telegraphs, and the Imperial Customs Service.

[1] Including 8 officers who had not been classified in either category.

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Rights of present members of the Public Services

Rights of present members of the Services.

275. In considering the rights and safeguards proposed in the White Paper for personnel already in the Services at the date when the Constitution Act comes into force, it will be convenient first of all to take the rights and safeguards applicable to all personnel; secondly, those applicable to officers appointed by the Secretary of State; and thirdly, those applicable to officers appointed by other authorities.

Rights and Safeguards applicable to all personnel: the special responsibility of the Governor-General and Governors.

276. It will be recalled that a special responsibility is imposed on the Governor-General and on each of the Provincial Governors for "the securing to members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests." Some of the British-India Delegates objected to a special responsibility expressed in such wide terms, and hold that it should extend only to the rights given by the Constitution Act itself. It has been explained to us that the purpose

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of the wider definition is to secure to the Services equitable and reasonable treatment in essential matters not covered specifically by statute. For example, it has long been the settled policy of Government that suitable medical attendance should be available to members of the Services and their families, though there is nothing to that effect in the existing Act or in the rules made under it. We agree that, in the circumstances, something more than "rights" is required, and we must leave it to the draftsman to decide whether "legitimate interests" is sufficient to cover the whole field which, we think, ought to be covered.

Dismissal and reduction

277. Protection against dismissal by any authority subordinate to the authority by whom he was appointed is secured to every member of the public service by the present Government of India Act, and a statutory rule provides that he shall not be dismissed or reduced without being given formal notice of any charge made against him and an opportunity of defending himself. Provisions on the same lines should obviously find a place in the new Constitution.[1]

Indemnity for past acts.

278. The White Paper proposes that there shall be a full indemnity against civil and criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of duty.[2] In view of threats which have been made in certain quarters, especially against the Police, we think that it is justifiable to give this measure of protection to men who have done no more than their duty in very difficult and trying circumstances. But we think that the certificate by the Governor-General or Governor, as the case may be, ought to be made conclusive on the question of good faith.

[1] White Paper, Proposal 181.
[2] White Paper, Proposal 180.

Officers appointed by the Secretary of State.

279. In addition to the rights and safeguards common to all members of the Public Services, it is proposed that there shall be secured to every officer appointed by the Secretary of State all service rights possessed by him at the date of the commencement of the Constitution Act or a right to such compensation for the loss of any of them as the Secretary of State may consider just and equitable.[1] A list of the existing service rights are set out in Part I of Appendix VII of the White Paper. Some of them are conferred by the present Government of India Act and could only be modified or abolished by an amending Act; others are embodied in statutory rules made by the Secretary of State in Council. As things stand at present the latter could no doubt be taken away or modified at any time by the same authority; but the whole body of service rights from whatever source derived, may properly be regarded as forming a single code, which the members of the All-India Services now serving may equitably claim should not be varied (at least without a right of compensation) to their disadvantage, and we concur with the White Paper proposal which we are glad to observe had the approval of the Services Sub-Committee of the First Round Table Conference.

Equitable rights to compensation.

280. In addition to the provision for compensation for the loss of service rights, it is proposed that the Secretary of State should be empowered to award compensation in any other case in which he considers it to be just and equitable that compensation should be awarded.[2] This is no doubt a very wide and general power; but it is impossible to forsee and provide in a statute against all the contingencies that may arise in the administration of a great Service

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and we do not, therefore, dissent from the proposal. The Secretary of State assisted by his Advisers[3] may be trusted to preserve a reasonable balance between the interests of the Services on the one hand and those of Indian revenues on the other.

Further safeguards not necessary.

281. We have examined with particular care in this connection the suggestions made to us both orally and in writing by the various Service Associations, but have come to the conclusion that no further measures of protection are required. We see no advantage, for example, in requiring the concurrence of the Governor to the personnel of the Committees of Enquiry into the conduct of officers. Nor do we consider that a case has been made out for resuming to the Secretary of State the detailed regulation for his own Services of travelling and compensatory allowances, which are, and have long been, regulated by the authorities in India. In the discharge of his special responsibility for securing the legitimate interests of the Services as a whole, the Governor would be bound to satisfy himself

[1] White Paper, Proposal 182.
[2] *Ibid.*
[3] *Infra*, para. 362.

that a Committee of Enquiry into an officer's conduct was so constituted as to ensure a fair hearing; and similarly that travelling allowances are on an adequate scale.

Summary of more important conditions of service.

282. We may point out that among the conditions of service which will be secured to all serving officers appointed by the Secretary of State, if our recommendations are accepted, are the following:—

(1) a right of complaint to the Governor or Governor-General against any order from an official superior affecting his conditions of service;

(2) a right to the concurrence of the Governor or Governor-General to any order of posting or to any order affecting emoluments or pensions, and any order of formal censure;

(3) a right of appeal to the Secretary of State against orders passed by an authority in India—

(*a*) of censure or punishment,

(*b*) affecting disadvantageously his conditions of service, and

(*c*) terminating his employment before the age of superannuation;

(4) regulation of his conditions of service (including the posts to be held) by the Secretary of State, who will be assisted in his task by a body of Advisers, of whom at least one-half will have held office for at least ten years under the Crown in India;

(5) the exemption of all sums payable to him or to his dependants from the vote of either Chamber of the Legislatures.

For contingencies not susceptible of statutory definition, the special responsibility of the Governor-General and Governors, and the control which the Secretary of State and his Advisers will exercise over the conditions of service of officers appointed by the Secretary of State, will in our opinion afford a sufficient, and, indeed, the only possible, protection. There is a point in every system of administration where some authority must have discretion to deal with such contingencies, and must be left to deal with them in an equitable manner.

Officers appointed otherwise than by the Secretary of State.

283. The power to regulate the conditions of service of officers not appointed by the Secretary of State has already been delegated to the Government of India in the case of the Central Services and to Provincial Governments in the case of the Provincial Services but

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without prejudice to certain rights existing at the time of delegation. The continuance in full of these rights is secured under the White Paper proposals.[1]

Defence Services.

284. Although this chapter is mainly concerned with the Civil Services, we think it right to mention the position of members of the Defence Services as a whole, including not only the officers,

[1] White Paper, Proposals 191–194.

non-commissioned officers and men of the Defence Forces in India but also the corresponding grades of civil officials whose work lies within the sphere of Defence and who are paid from Defence estimates. They are clearly entitled to the same kind of rights and protection as they now enjoy as regards their service conditions, although the protection need not necessarily be provided in precisely the same form as that proposed for members of the Civil Services, since Defence personnel will not be affected by the constitutional changes in precisely the same way as the Civil Services are likely to be affected. Nevertheless, their rights should not be left in doubt. Their pay and pensions would be included under the head of expenditure required for the reserved Department of Defence, and as such would not be submitted to the vote of the Legislature. There should be no room for misunderstanding on this point.

Future Recruitment to the Public Services

Future recruitment for Indian Civil Service and Indian Police.

285. We have found the problem of the future recruitment of the two principal administrative services in India, the Indian Civil Service and the Indian Police, among the most difficult of those with which we have had to deal. The appointing authority must necessarily control the main conditions of service, and if control remains with the Secretary of State, there will to that extent be a derogation from the powers which an autonomous Province might expect and claim to exercise over the officers who are working under it. Such a derogation is inevitable in the case of officers recruited by the Secretary of State before the establishment of the new Constitution; but it was urged before us and has been again emphasised by the British-India Delegation in their Joint Memorandum that future recruitment by the Secretary of State of officers who serve a Provincial Government is incompatible with Provincial Autonomy, and that the All-India Services ought henceforth to be organised on a provincial basis and recruited and controlled exclusively by the Provincial Governments.

Continuance of Recruitment by Secretary of State recommended.

286. We are very sensible of the logical force of this argument, and in the case of most of the All-India services, we fully accept it, subject to certain qualifications to which we refer hereafter. But the functions performed by members of the Indian Civil Service and the Indian Police are so essential to the general administration of the country, and the need therefore for maintaining a supply of recruits, European and Indian, of the highest quality is so vital that we could not view without grave apprehension an abrupt change in the system of recruitment simultaneously with the introduction of fundamental changes in the system of government. It is of the first importance that in the early days of the new order, and indeed until the course of events in the future can be more clearly foreseen, the new constitution should not be exposed to risk and hazard by a radical change in the system which has for so many generations

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produced men of the right calibre. All the information which we have had satisfies us that in the present circumstances only the existing system of recruitment is likely to attract the type of officer required, and we have come to the conclusion, as proposed in the White Paper,[1] that recruitment by the Secretary of State both to the Indian Civil Service and the Indian Police must continue for the present, and that the control of their conditions of service must remain in his hands. We have considered, but have felt obliged to reject, the possible alternative of recruitment by the Governor-General in his discretion. The change in that case might no doubt be represented as one of form rather than of substance, since the Governor-General would be acting under the directions of the Secretary of State; but we are satisfied that the psychological effect at this juncture upon potential recruits would be such as to make the suggestion quite unacceptable.

Position should be reviewed in light of experience.

287. We recognise that the recommendation which we have felt it our duty to make is one which may not be welcome to Indian opinion. We desire therefore to make it clear that it is not intended to be a permanent and final solution of this difficult question. Our aim, as we have already said, is to ensure that the new constitutional machinery shall not be exposed during a critical period to the risks implicit in a change of system. We observe in the White Paper a proposal that at the expiration of five years from the commencement of the Constitution Act an enquiry should be held into the question of future recruitment for these two Services, the decision on the results of the enquiry (with which it is intended that the Governments in India shall be associated) resting with His Majesty's Government, subject to the approval of both Houses of Parliament.[2] We endorse the principle that the whole matter should be the subject of a further enquiry at a later date; but past experience leads us to doubt the wisdom of fixing a definite and unalterable date for the holding of an enquiry of this kind. We agree that no useful purpose would be served by an enquiry before the expiration of five years; but we think it must be left to the Government of the day, in the light of the then existing circumstances, to determine whether after that period the time has arrived for such an enquiry. It may be said that this is to postpone the final determination of the question to an indefinite future, but this is by no means our intention. We hope that the situation will have become so far clarified within five years from the establishment of Provincial Autonomy that an enquiry may then be found of advantage; but where so much is difficult and perplexing it would be wrong to tie in advance the hands of those on whom the responsibility will rest for coming to a decision. Nor must it be assumed that such an enquiry will be merely a formal prelude to a change of system. It will furnish the information on which an ultimate decision can be based, but we do not desire to anticipate

[1] White Paper, Proposal 183.
[2] White Paper, Proposal 189.

or prejudice the final conclusion. It seems to us that the enquiry would be most conveniently made by a small body of administrative experts, who (though it is impossible at this stage to formulate any precise terms of reference) might be invited to consider (1) whether the Indian Civil Service or the Indian Police, or both, should continue to be recruited on an All-India basis or be replaced in any particular Province or in all Provinces by an exclusively provincial Service

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and (2) if recruitment is to continue on an All-India basis, by what authority shall recruitment be made and what shall be the future conditions of service.

The Indian Medical Service (Civil).

288. Under existing arrangements there is no direct recruitment for the Indian Medical Service (Civil). Vacancies are filled from among officers appointed to the Indian Medical Service who have had a period of military duty. We note the view expressed in the Report of the Services Sub-Committee of the first Round Table Conference that there should in future be no Civil Branch of the Indian Medical Service, and that the Civil Medical Service should be recruited through the Public Services Commissions. The Sub-Committee however added that the Governments and Public Services Commissions in India should bear in mind the requirements of the Army and of British officials in India, and should take steps to recruit an adequate number of European doctors to their respective Medical Services and to offer such salaries as would attract a good type of recruit. We are however convinced on the information supplied to us that the continuance of the Civil Branch of the Indian Medical Service will provide the only satisfactory method of meeting the requirements of the War Reserve and of European members of the Civil Services, and that it will be necessary for the Secretary of State to retain the power which he at present possesses (although medical matters have since 1920 been under the control of Ministers) to require the Provinces to employ a specified number of Indian Medical Service officers. In making these recommendations we have not been unmindful of the natural desire of the Provinces to develop Medical Services entirely under their own control. But the requirements of the Army and of the Civil Services have an over-riding claim.

The Superior Railway Services.

289. The present position is that recruitment of European personnel to the Superior Railway Services is divided between the Secretary of State in Council and the High Commissioner for India. The former makes all first appointments of persons of non-Asiatic domicile to the Indian Railway Service of Engineers, Transportation (Traffic) and Commercial Departments and Transportation (Power) and Mechanical Engineering Departments; and the latter various specialist appointments such as Bridge, Signal and Electrical Engineers, Works Managers and Medical Officers; and also Engineers to fill temporary posts.

Future recruitment.

290. Under the ratios recommended by the Lee Commission in 1924, 25 per cent. only of the total direct appointments to the Superior

Railway Services is British, but the full effect of the corresponding ratio of Indian appointments will not be apparent for some years, as the great majority of the higher posts will continue to be filled by officers appointed to the Service before 1924. We recommend that the existing ratio of British recruitment should be continued for the present and should include a due proportion of Royal Engineer officers. We think however that the new Railway Authority should, in the future, appoint British recruits. The Railway Authority will, by its constitution, be a strong and independent body, interested solely in the efficiency of the Railways, and able to secure for its personnel satisfactory conditions of service; moreover the policy of the Board in relation to recruitment will be subject to the directions of the Governor-General whenever in the opinion of the latter the interests of defence or his special responsibilities are involved.

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The Ecclesiastical and Political Departments.

291. We approve the proposal in the White Paper that the Secretary of State should continue to make appointments to the Ecclesiastical Department.[1] Recruitment to the Political Department is indirect, vacancies being filled by transfers from the Indian Army and the Civil Service (mainly the Indian Civil Service) and, to a small extent by the promotion of subordinate political officers. The Governor-General approves transfers from the Indian Civil Service and the Indian Army; transfer from other All-India Services and promotions from the subordinate Services are approved by the Secretary of State on the recommendation of the Governor-General.

Political Department posts.

292. The Statutory Commission made no specific recommendations for the future organisation and recruitment of the Political Department, of which at present the Governor-General himself holds the portfolio. Its total strength on 1st October, 1933, was 108 posts. These include on the External side the secretariat, district and judicial appointments in the North-West Frontier Province and Baluchistan, as well as the political agencies in tribal territory; political agencies on the Persian Gulf and a proportion of consular appointments in Persia; the civil administration of Aden and such appointments as those at the Legations in Afghanistan and Nepal and the Consulate-General at Kashgar. On the Internal side they include the appointments to political agencies and residencies through which the relations of the Crown with the Indian States are conducted; and the civil administration of the Chief Commissioner's Provinces of Coorg and Ajmer Merwara, and of the assigned tract of Bangalore and other British cantonment areas in the Indian States.

Future recruitment.

293. The White Paper contemplates that after the commencement of the Constitution Act, when the Governor-General assumes responsibility in his other capacity for conducting the relations of the Crown with the Indian States in matters not accepted as federal

[1] White Paper, Proposal 183.

by their Rulers in their Instruments of Accession, it may, for political reasons, be found desirable to make the duties of political officers in the Indian States interchangeable with those of political officers employed by the Governor-General in the Reserved Department of External Affairs. We accept the view that there is no immediate need to divide, and recruit separately, the personnel of the two Departments. Responsibility for recruitment to the political side of the Department will remain with the Secretary of State. For the time being there may be practical convenience in filling appointments in that Department by seconding officers from the Department of External Affairs, more especially as the number of posts in either Department is comparatively small and the variety of functions assigned to them makes it desirable that the field of recruitment should be a wide one. Officers of the Indian Army and Members of the Indian Civil Service appointed to the Department by the Governor-General, and other officers appointed by the Secretary of State, would enjoy the same measure of protection as we recommend should be accorded to officers appointed to the Services by the Secretary of State.

The Forest Service.

294. Since 1924 the Forests in Bombay and Burma have been administered by a responsible Minister, and under Provincial Autonomy this will in future be the case in all Provinces. We

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emphasise the necessity for co-ordinated research in all forestry matters, and we regard it as essential that the Central Institute at Dehra Dun for Forest Research should be maintained. But it is not only in research that co-ordination of effort between the different Provinces is, and must continue to be, important. Each Province should know what the other Provinces are doing in such administrative matters as the preparation and carrying out of working plans. At present this co-ordination is secured through the Inspector General of Forests with the Government of India. We think that in future co-ordination will best be secured by the creation of a Board of Forestry on which, in addition to forestry experts, representatives of the Provincial Governments would serve; and we think that the Provinces should be empowered to combine for the purpose of setting up such a Board and contributing to its expenses.

Future recruitment.

295. We consider that appointments of the European and Indian officers required for the higher administrative posts in the Forest Service should in future be made in India. But in the case of a small and very technical service such as the Forest Service, we do not think that the best results could be obtained by separate provincial recruitment; and we recommend therefore that the Provinces should from time to time, with the assistance of the Board of Forestry, prepare a joint statement of their collective requirements in the matter of personnel and entrust the Federal Public Service Commission with the duty of recruitment on their behalf. The actual appointment of recruits should, however, be made by the Provincial Government under whom he is intended to serve, since that Government will control his conditions of service. We regard it as essential to the success of recruitment that a common training centre should be maintained, and we earnestly hope that the present College at Dehra Dun will be made available for that purpose. We hope also that Provincial Governments will continue the very useful practice of lending any officers required by the Federal Government for such purposes as the staffing of the Central Institute for research and of the Training College and for forestry administration in the Andamans. We think also that the Provinces should be willing to fill higher administrative posts from the Forest Service of another Province, if a suitable candidate from their own Province is not available. In all these matters the Board of Forestry should be able to maintain effective touch between the various Provincial Governments.

The Irrigation Service.

296. Irrigation under Provincial Autonomy will also come under the control of a responsible Minister. We emphasize in this case also the paramount need for research and co-ordination. The Royal Commission on Agriculture in India did not recommend the establishment of a central research station for reasons which we accept; but they expressed a strong opinion that Provinces should devote more attention to the various problems that confront Irrigation Engineers. Unlike the Forests, there is no longer any officer with the Government of India who can give advice on Irrigation matters, although his place is to some extent taken by the present Central Board of Irrigation, which we consider should be developed on lines similar to those on which we have recommended the formation of a Board of Forestry. An efficient organisation for the dissemination of information is also essential and we recommend that the existing Central Bureau of Information should be retained and developed on the lines suggested in the Royal Commission's Report.

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Present organisation.

297. The higher administrative posts in the Irrigation Service are at present filled by members of the Indian Service of Engineers. Since 1924 on the recommendation of the Lee Commission recruitment of irrigation engineers has been in the proportion of 40 Europeans and 40 Indians for every 100 appointments, the remainder being filled by officers promoted from the Provincial Services of whom the great majority are Indians. In all cases, appointments are made by the Secretary of State.

Future recruitment.

298. The continued recruitment of an adequate number of highly qualified engineers, European as well as Indian, is clearly essential to the efficiency of the irrigation system, especially in the North-West of India, on which the prosperity and indeed the very existence of millions of the population depends. It might well be argued that the Irrigation Service is for this comparable in importance within its own sphere to the Indian Civil Service and the Police Service and that its future recruitment and control should be in the same hands. But after a close examination of the question, our conclusion is that the Irrigation Service ought to become a Provincial Service ; and we

are not convinced that even in the Punjab, which is perhaps the crucial case, the situation necessitates a different policy without at least first allowing the Province to prove that it can successfully recruit its own Service. We are informed that there are at present 67 Europeans and 69 Indians in the Irrigation Branch of the Indian Service of Engineers in the Punjab and that, if the recruitment of Europeans now ceased, the number of Europeans would normally drop to 42 in 1939 and to 21 in 1949 ; that is to say, there would be for some years unless some incalculable factor intervened, such as greatly increased retirements on proportionate pension, a sufficient number of fully trained officers to fill the most essential posts, those of the three Chief Engineers and fifteen Superintending Engineers. The question of irrigation is scarcely of less importance in Sind but we think that the Governor's special responsibility for the Sukkur barrage is there a sufficient safeguard. We think that the Provinces should seek the assistance of the Federal Public Service Commission and the Central Board of Irrigation in matters affecting recruitment.

Question of future resumption of recruitment by the Secretary of State.

299. Nevertheless we are of opinion that a power to resume recruitment should be reserved to the Secretary of State, if a Provincial Government unfortunately proved unable to secure a sufficient number of satisfactory recruits and it appeared that the economic position of the Province and the welfare of its inhabitants was thereby prejudiced ; and provision should accordingly be made for that purpose in the Constitution Act.

Recruitment for other Services.

300. Under the White Paper proposals the Governments in India will have a free hand in regard to the recruitment for all other Services.[1] We hope that the establishment of Public Service Commissions will assist them in this most responsible task ; and we endorse the observations both of the Royal Commission in 1924 and of the Statutory Commission upon the vital necessity for excluding political or personal influences. We desire to emphasize also the assistance which the Federal Public Service Commission will be able to give to the Provincial Commissions in the establishment and maintenance, so far as the differing requirements and resources of the provinces may admit, of common standards of qualifications and remuneration.

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Public Service Commissions

Public Service Commissions.

301. The Public Service Commissions at present existing in India are the Central Public Service Commission, established under the Government of India Act, and the Madras Service Commission, established under an Act of the Madras Legislature in 1929. The legislation necessary for setting up a Public Service Commission in the Punjab has been passed, but the establishment of the Commission awaits an improvement in the finances of the Province. The White Paper proposes the continuance of the Central Public Service Commission as a Federal organ, and the setting up in each Province of a Provincial Public Service Commission.[1]

[1] White Paper, Proposal 190.

Their functions.

302. The functions proposed for all these Commissions are advisory in character and similar to those at present performed by the Central and Madras Commissions.[2] We regard it as essential that each Provincial Government should be able to avail itself of the advice of a Public Service Commission. We recognise that it is not practicable to establish one Public Service Commission for all India but we should view with some apprehension the setting up of some ten Provincial Public Service Commissions in addition to the Federal Public Service Commission. We hope therefore that advantage will freely be taken of the proposed provision, which we cordially endorse, whereby the same Provincial Commission would be enabled to serve two or more Provinces jointly, or alternatively, that it should be open to a Province to make use of the services of the Federal Public Service Commission, subject to agreement with the Federal authorities. Without accepting the proposals in the White Paper for the composition and working of these Commissions in every detail, we regard them as generally satisfactory.

Payment of Emoluments and Pensions

Funds for the payment of service emoluments.

303. Before leaving this part of our Report, we propose to deal with one matter of general interest to all classes of officers by whatever authority appointed, that is to say, the availability of cash for the payment of Service emoluments, and more particularly for the payment of pensions of officers appointed by the Secretary of State.

Certain suggestions rejected.

304. It appeared from the evidence tendered by the various Service Associations that there is apprehension among the Services on this point, and we have very carefully considered whether it requires any special provision in the Constitution Act. We are clear in the first place that it would be undesirable to place officers appointed by the Secretary of State in a privileged position in respect of the provision of cash for current pay, though it is to be remembered that their emoluments will not be subject to the vote of the Legislatures. Regular and punctual payment of emoluments is a legitimate interest of all persons in the Public Services, and no one class of officers can be admitted to have a prior claim in this respect. On the more general question, we have examined suggestions which have been made for a system of prior charges or for building up a reserve fund. We are informed that the percentage of the total annual revenues of a Province which would be required for the payment of all Service emoluments may be taken as approximately 40 per cent. ; and we are satisfied that in respect of payments which constitute so large a proportion of the total annual liabilities of a Province the suggestions are quite impracticable.

[1] White Paper, Proposal 195.
[2] White Paper, Proposals 199–201.

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No special provision required.

305. In so far as the apprehension may be that a temporary deficiency in the cash required to meet such current obligations as the issue of monthly pay might occur, not through any failure in the annual revenues, but through excessive commitments in other directions, the good sense of the Government, and the advice of a strong Finance Department, must in our opinion be relied on as the real safeguard. Nor must it be forgotten that, although a Governor will not have a special responsibility for safeguarding the financial stability and credit of the Province, it will most certainly be his duty to see that he has information furnished to him which would enable him to secure such financial provision as may be required for the discharge of his other special responsibilities, including of course his special responsibility for safeguarding the legitimate interests of the Services.

Claims for pensions by officers appointed by the Secretary of State.

306. We have said that no distinction can, or ought to be, drawn between the claim of the various classes of officers serving in a Province for the due payment of their emoluments, but to this general statement of principle we think that there should be one qualification. If difficulties should unfortunately arise in regard to a claim to pension by an officer appointed by the Secretary of State who has served from time to time in different Provinces, we think that it would be unreasonable that he should have to make his claim against a number of authorities in respect of different portions of his pension. We therefore approve the proposal in the White Paper that the claims of all officers appointed by the Secretary of State for their pensions should be against the Federal Government only, the necessary adjustments being made subsequently between the Federal Government in the Province or Provinces concerned ;[1] and, if that recommendation is adopted, we think that officers appointed by the Secretary of State need have no anxiety regarding the regular and punctual payment of their own pensions and those of their dependants.

Family Pension Funds.

307. There is, however, one category of pension payments which stands apart from the rest. The assets of the various Family Pension Funds have been contributed by the subscribers and are their property in a very special sense. We think it right that subscribers to these funds should be given the opportunity of saying whether they desire that a sterling fund should be created with trustees in this country out of which the necessary payments would be made.

The Anglo-Indian Community

Anglo-Indians and the Services.

308. We observe with satisfaction that the White Paper gives effect to a suggestion made with general agreement at the Third Round Table Conference for safeguarding Government grants-in-aid for the education of the Anglo-Indian and domiciled European community. We have inquired whether any additional provision in

[1] White Paper, Proposal 186.

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the Constitution Act is desirable in order to secure to a very small community, which has established a strong claim to consideration by its history and its record of public service, the maintenance of the special position in some of the Public Services, which it has won by its own efforts. We recall that the Services Sub-Committee of the First Round Table Conference recommended that special

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consideration should be given to the claims of this community for employment in the Services; but we have come to the conclusion that it would not be in the best interests of the community itself to single it out for any special statutory protection in this respect. Provision for the due representation in the Services of minority communities is at present secured by administrative measures and not through the Government of India Act; and we are informed that these measures are now being carefully reviewed in order to ensure that when the Constitution Act comes into force arrangements will be in operation adequate to protect the legitimate interests of minorities, including the Anglo-Indian community. We think that the special attention of the Governor-General and the Governors should be drawn in the Instruments of Instructions to these arrangements, and that they should be directed to maintain them without modification, except in so far as may become necessary in the interests of the minority communities themselves or of public policy.

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(4) The Judicature

The Federal Court

The Federal Court.

309. A Federal Court is an essential element in a Federal Constitution. It is at once the interpreter and guardian of the Constitution and a tribunal for the determination of disputes between the constituent units of the Federation. The establishment of a Federal Court is part of the White Paper scheme, and we approve generally the proposals with regard to it.[1] We have, however, certain comments to make upon them, which we set out below.

The Judges of the Federal Court.

310. The Court should, we think, consist of a Chief Justice and not more than six or eight Judges, the maximum number being specified in the Constitution Act, but we do not suppose that for some time to come it will be necessary to appoint more than three or four. The retiring age for Federal Judges should be 65 and not 62. We observe that the Judges are to hold office during good behaviour, and not, as is at present the case with Judges of the Indian High Courts, at pleasure. We think that this is right, but we assume that it is not intended that the Legislature should have power to present an Address praying for the removal of a Federal Judge; and in our opinion a Judge should not be removed for misbehaviour, except on a report by the Judical Committee of the Privy Council, to whom His Majesty should be empowered to refer the matter for consideration. We concur generally with the qualifications proposed for the Judges, but we doubt whether in principle any distinction ought to be drawn in the Constitution Act between judges, advocates and pleaders of State Courts and those of the High Courts, though this does not of course mean that any obligation would be imposed upon the Crown to appoint a Judge who had not all the necessary professional qualifications. We assume that the White Paper proposals mean throughout by " State Court " the Court of highest jurisdiction in the State. A suggestion was made that a High Court Judge who is a member of the Civil Service ought not to be regarded as qualified. We could not agree to so invidious a distinction being drawn between one High Court Judge and another, though it may well be that His Majesty may in practice see fit to appoint only such qualified persons as have had a legal training before their appointment to the High Court Bench.

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311. It is proposed that the Federal Court shall have an original jurisdiction in— Original jurisdiction of Federal Court.

(i) any matter involving the interpretation of the Constitution Act or the determination of any rights or obligations arising thereunder, where the parties to the dispute are (*a*) the Federation and either a Province or a State, or (*b*) two Provinces or two States, or a Province and a State;

[1] White Paper, Proposals 151-162.

(ii) any matter involving the interpretation of, or arising under, any agreement entered into after the commencement of the Constitution Act between the Federation and a Province or a State, or between two Provinces or a Province and a State, unless the agreement otherwise provides.

This jurisdiction is to be an exclusive one, and in our opinion rightly so, since it would be altogether inappropriate if proceedings could be taken by one unit of the Federation against another in the Courts of either of them. But we think that the jurisdiction ought to include not only the interpretation of the Constitution Act, but also the interpretation of federal laws, by which we mean any laws enacted by the Federal Legislature. It is essential that there should be some authoritative tribunal in India which can secure a uniform interpretation of federal laws throughout the whole of the Federation.

312. It is also proposed that the Federal Court shall have an exclusive appellate jurisdiction from any decision given by the High Court or any State Court, so far as it involves the interpretation of the Constitution Act or of any rights or obligations arising thereunder; but that no appeal shall lie except with the leave of the Federal Court or of the High Court of the Province or State, or unless in a civil case the value of the subject matter in dispute exceeds a specified sum. In this case also we think that the jurisdiction ought to be extended to include the interpretation of federal laws. We had at first thought on a constitutional issue appeal should lie without leave; but we appreciate that in a country where litigation is so much in favour this might result in an excessive number of unnecessary appeals. We therefore approve the proposals in the White Paper, though we think that the Federal Court ought to have a summary power of disposing of appeals or applications for leave to appeal in any case where they appear to be frivolous or vexatious or brought only for the purposes of delay. It was urged before us that to permit a litigant in a State Court to apply to the Federal Court for leave to appeal, if the State Court had already refused leave, would be to derogate from the sovereignty of the Ruler of the State, and that the refusal of a State Court to grant leave to appeal at, any rate in a case concerning the interpretation of federal laws, should be treated as final. We should much regret the inclusion of a provision of this kind, nor do we appreciate the argument that the sovereignty of the Ruler would be affected. The appellate jurisdiction of the Federal Court, so far as regards an Indian State, can only arise from the voluntary act of the Ruler himself, viz., his accession to the Federation; the jurisdiction is in no sense imposed on him *ab extra*. It is, however, proposed that all appeals to the Federal Court should be in the form of a Special Case to be stated by the Court appealed from, and, if it would give satisfaction to the States, it might be provided that the granting of leave to appeal by the Appellate jurisdiction of Federal Court.

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Federal Court should take the form of Letters of Request directed either to the State Court itself or to the Government of the State for transmission to the Court.

Appeals to Privy Council.

313. The appeal to the Privy Council is preserved, and it is proposed that an appeal shall lie without leave in any matter involving the interpretation of the Constitution Act, but in any other case only by leave of the Federal Court (without prejudice to the grant of special leave by His Majesty), unless the value of the subject matter in dispute exceeds a specified sum. We have no comment to make on this proposal, except that we assume that the jurisdiction of the Privy Council will extend to appeals involving rights and obligations arising under the Constitution Act, as well as the interpretation of the Act itself. Effect will be given to the decisions of the Federal Court, as is the case with decisions of the Privy Council, by the Courts from which the appeal has been brought; and all Courts within the Federation will be bound to recognise decisions of the Federal Court as binding upon themselves. We may perhaps point out that the jurisdiction of the Privy Council in relation to the States will be based upon the voluntary act of the Rulers themselves, *i.e.*, their Instruments of Accession.

Advisory jurisdiction of Federal Court.

314. It is proposed that the Federal Court shall have a jurisdiction similar to that possessed by the Privy Council under Section 4 of the Judicial Committee Act, 1833, which provides that His Majesty may refer to the Committee for hearing or consideration any matters whatsoever as His Majesty may think fit, and that the Committee shall thereupon hear and consider the same, and shall advise His Majesty thereon. The expression used in the White Paper is " any justiciable matter which the Governor-General considers of such a nature and such public importance that it is expedient to obtain the opinion of the Court upon it." Exception was taken to the word " justiciable," and we think perhaps that " any matter of law " would be preferable. We concur generally in the proposal, and we are of opinion that this advisory jurisdiction may often prove of great utility. We agree that it need not be limited to the federal sphere and that the right of referring any matter to the Court for an advisory opinion should be in the Governor-General's discretion. We understand the practice in the United Kingdom is that all such references are heard in open court and that counsel appear and argue as in an ordinary case *inter partes*. We assume that the same practice will be followed in India, and that there will be no question, as some of the British-India delegates appeared to think, of a private and confidential opinion being communicated by the Court to the Governor-General.

Appointment and salaries of Federal Judges.

315. It is common ground that the Federal Judges should be appointed by the Crown; and we think that their salaries should be specified in the Constitution Act or determined by His Majesty in Council and not subject to variation without the assent of Parliament.

The Supreme Court

Proposal for future establishment of a Supreme Court.

316. The White Paper proposes that the Federal Legislature should be empowered to establish a separate Supreme Court to hear appeals from the provincial High Courts (1) in civil cases and (2) in criminal cases where a death sentence had been passed, provided of course that an appeal did not lie to the Federal Court. The Court would in

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effect take the place of the Privy Council, though an appeal would still lie to the latter by leave of the Supreme Court or by special leave of His Majesty. We have given very careful consideration to this proposal, but we do not feel able to recommend its adoption. A Supreme Court of this kind would be independent of, and in no sense subordinate to, the Federal Court; but it would be impossible to avoid a certain overlapping of jurisdictions, owing to the difficulty of determining in particular cases whether or not a constitutional issue was raised by a case under appeal. This might involve the two Courts in undignified and very undesirable disputes, and we are satisfied that the existence of two such Courts of co-ordinate jurisdiction would be to the advantage neither of the Courts themselves nor of the Federation. There is much to be said for the establishment of a Court of Appeal for the whole of British India, but in our opinion this would be most conveniently effected by an extension of the jurisdiction of the Federal Court, and we think that the Legislature should be empowered to confer this extended jurisdiction upon it. It has been objected that not only would so great an increase in the personnel of the Court be required as to make it difficult to find a sufficient number of Judges with the necessary qualifications, but also that the essential functions of the Federal Court as guardian and interpreter of the Constitution would tend to become obscured. We fully agree that the quality of the Federal Judges is a matter of the highest importance and that nothing ought to be done which might diminish or impair the position of the Court in its constitutional aspect, but we think that the fears expressed are unfounded. In the first place, it is clear that there would have to be a strict limitation on the right of appeal, so as to secure that only cases of real importance came before the Court; and, if this were done, we see no reason why a comparatively small number of additional Judges should not suffice. Secondly, we assume that the Court would sit in two Chambers, the first dealing with Federal, and the second with British-India, appeals. The two Chambers would remain distinct, though we would emphasise the unity of the Court by enabling the Judges who ordinarily sit in the Federal Chamber to sit from time to time in the other Chamber, as the Chief Justice might direct, or Rules of Court provide; but beyond this we do not think that the two Chambers should be interchangeable.

A Court of Criminal Appeal not recommended.

317. The Supreme Court under the White Paper proposals would, however, as we have said, have jurisdiction to hear certain criminal appeals from British India. We are satisfied that these would be so numerous that, if the Federal Court were given the extended

jurisdiction which we have suggested, an increase in the number of Judges would be required in excess of anything which we should be willing to contemplate. The question then arises whether the Federal Legislature should be empowered, if and when they thought fit, to set up a separate Court of Criminal Appeal for British India, subordinate to the Federal Court. After careful consideration we have come to the conclusion that a Court of Criminal Appeal is not required in India. Nearly every case involving a death sentence is tried in a District Court, from which an appeal lies to the High Court, and, apart from this, no death sentence can be carried out until it has been confirmed by the High Court. Only three of the High Courts (excluding Rangoon) exercise an original criminal jurisdiction, and though there is no further appeal from these Courts, every prisoner under sentence of death can appeal for remission or commutation of

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sentence to the Provincial Government and ultimately to the Central Government, or, if he wishes, can ask for special leave to appeal to the Privy Council. In these circumstances the rights of a condemned man seem to be very fully safeguarded, and we think that no good purpose would be served by adding yet another Court to which appeals can be brought.

The High Courts

The High Court Judges.

318. The Provincial High Courts, which enjoy a deservedly high reputation throughout British India, are scarcely affected by the White Paper proposals[1]; but we note the following points. It has been represented to us that the retiring age of Judges should not be raised to sixty-two, but should continue to be sixty; and we concur. We have suggested that in the case of the Federal Court the age should be sixty-five, because it might otherwise be difficult to secure the services of High Court Judges who have shown themselves qualified for promotion to the Federal Court; but the evidence satisfies us that in India a Judge has in general done his best work by the time that he has reached the age of sixty. We note also that the present statutory requirement that not less than one-third of the Judges of every High Court must have been called to the English, Scottish, or Irish Bar, and that not less than one-third must be members of the Indian Civil Service is to be abrogated. We are informed that the rigidity of this rule has sometimes caused difficulty in the selection of Judges, and we do not therefore dissent from the proposed amendment of the law; but we are clear (and we are informed that is the general opinion of their colleagues) that the Indian Civil Service Judges are an important and valuable element in the judiciary, and that their presence adds greatly to the strength of the High Courts. It has been suggested that their earlier experience tends to make them favour the Executive against the subject, but the argument does not impress us; we are satisfied that they bring to the Bench a knowledge of Indian country life and conditions which town-bred barristers and pleaders

[1] White Paper, Proposals 167–175.

may not always possess, and we do not doubt that the Crown will continue to appoint them. The Indian Civil Service Judges are not at the present time eligible for appointment as Chief Justice of a High Court, though we understand that this rule does not apply in the case of Chief Courts. We see no reason for this invidious distinction, and we think that His Majesty's freedom of choice should not be thus fettered. As regards the tenure of High Court Judges, we think that it should be the same as that which we have recommended for Judges of the Federal Court.[1]

Administrative machinery of High Courts.

319. The administrative machinery of the High Courts is at the present time (save in the case of the Calcutta High Court) subject to the control of the Provincial Governments and Legislatures, and there is evidence that the latter have from time to time tended to assert their powers in a way which might under the new Constitution affect the efficiency of the Courts. The White Paper proposes that in future any expenditure certified by the Governor, after consultation with his Ministers, to be required for the expenses of the High Court shall not be submitted to the vote of the Legislative Assembly, though it will be open to discussion by them.[2] We think that in the circumstances this is a reasonable arrangement and will avoid the difficulties to which we have referred.

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Federal and Provincial Legislation in relation to the High Courts.

320. We observe that the Federal Legislature is to have an exclusive power to make laws touching the jurisdiction, powers and authority of all Courts in British India (except the Federal Court and the Supreme Court) with respect to the subjects on which it is exclusively competent to legislate, and that the Provincial Legislatures will similarly have power to make laws touching the jurisdiction, powers and authority of all Courts within the Province with respect to subjects on which those Legislatures are exclusively competent to legislate. It has been suggested that this would enable either the Federal or a Provincial Legislature, if they so desired, to deprive the High Courts of much of their jurisdiction, and to transfer it to courts of an inferior status, to the grave prejudice of the rights of His Majesty's subjects in India. In theory this is no doubt possible; but it is, in our view, a necessary consequence of the distribution of legislative powers which we recommend that both the Federal and Provincial Legislatures should have a law-making power for the purposes which we have mentioned, and, whatever use they may make of it, we are satisfied that they will never willingly enact legislation which would prejudice or affect the status of the High Courts. Our information is indeed that, so great is the confidence felt in the impartiality and ability of the High Courts, a converse policy is much more likely, if the past is any guide, to be adopted. But, in order that the position of the High Courts may be fully safeguarded, it is for consideration whether the Governor-General and Governors should not be directed in their Instruments of Instruction to reserve any Bill which in their opinion would so derogate from the powers of the High Court as to endanger the position which those Courts are under the Constitution Act clearly designed to fill.

[1] *Supra*, para. 310.
[2] White Paper, Proposal 98 (iii).

The Subordinate Judiciary

Necessity for securing independence by subordinate judiciary.

321. This subject is not mentioned in the White Paper, but there are aspects of it which seem to us of such importance that we think it right to state our opinion upon them. The Federal and High Court Judges will be appointed by the Crown and their independence is secure; but appointments to the subordinate judiciary must necessarily be made by authorities in India who will also exercise a certain measure of control over the judges after appointment, especially in the matter of promotion and posting. We have been greatly impressed by the mischiefs which have resulted elsewhere from a system under which promotion from grade to grade in a judicial hierarchy is in the hands of a Minister exposed to pressure from members of a popularly elected Legislature. Nothing is more likely to sap the independence of a magistrate than the knowledge that his career depends upon the favour of a Minister; and recent examples (not in India) have shown very clearly the pressure which may be exerted upon a magistracy thus situated by men who are known or believed to have the means of bringing influence to bear upon a Minister. It is the subordinate judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior judges. We have given anxious consideration to this matter and our recommendations are as follows.

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Candidates seeking to exercise political influence should be disqualified.

322. A strict rule ought in our opinion to be adopted and enforced, though it would be clearly out of place in the Constitution Act itself, that recommendations from, or attempts to exercise influence by, members of the Legislature in the appointment or promotion of any member of the subordinate judiciary are sufficient in themselves to disqualify a candidate, whatever his personal merits may be. We would admit no exception to this rule, which has for many years past been accepted without question in the Civil Service of the United Kingdom. We do not for a moment suggest that Indian Ministers will be willing to adopt any lower standards; but this is a matter in which the right principle ought to be laid down at the very outset of the new constitutional order; and the observations which we have thought it our duty to make may perhaps serve in the future to strengthen the hands of Ministers who find themselves exposed to improper pressure from those whose standards may not be as high as their own.

(a) The Civil Judiciary

Subordinate judges and munsiffs.

323. In the case of subordinate judges and munsiffs, the Provincial Government—that is to say, the Governor advised by the appropriate Minister, after consultation with the Public Service Commission and with the High Court—should make rules defining the standard of qualifications for candidates seeking to enter the Judicial

service. Candidates should be selected for appointment by the Public Service Commission, in consultation with the High Court, subject to any general regulations made by the Provincial Government as to the observance of communal proportions. The Minister would be informed by the Commission of the candidate or the candidates selected by them, and the appointment would be made by the Governor on the Minister's recommendation. The Public Service Commission would of course act in an advisory capacity only, but we cannot conceive that any Minister would reject their advice or recommend an appointment without it. We think it of first importance that promotions from grade to grade or from the rank of munsiff to that of subordinate judge, and also the leave and postings of munsiffs and subordinate judges, should be in the hands of the High Court, subject to the usual rights of appeal of the officer affected.

District judges.

324. In the case of District Judges or additional District Judges, first appointment should, if the candidate is a member of the Indian Civil Service, be made by the Governor on the recommendation of the Minister, after consultation with the High Court. A recommendation by the Minister for the appointment of a member of the subordinate judicial service should only be made with the approval of the Public Service Commission and of the High Court. A recommendation for a direct appointment from the Bar should be made from among persons nominated by the High Court, subject to any general regulations in force regarding communal proportions. A District Judge should only be promoted (except in the case of automatic time scale promotions) on a recommendation by the Minister after consultation with the High Court; and the same rule should apply to postings. In all the cases covered by this paragraph we think that the Governor should have a discretion to reject a recommendation if he does not concur with it.

(b) The Criminal Magistracy

Deputy Magistrates and tehsildars.

325. In the case of deputy magistrates, sub-deputy magistrates and tehsildars, the High Court have little knowledge of their judicial work, and none at all of the work which a large number of them

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perform in their executive or administrative capacities. Candidates for a first appointment to these posts should be selected by the Public Service Commission, and the appointment should be made from the candidates so selected by the Governor on the recommendation of the Minister. In the case of subsequent promotions or postings, the Minister should ask for the recommendations of the District Magistrate, in consultation, where necessary, with the Sessions Judge of the district in which the subordinate magistrate works; and we think that, if these recommendations are disregarded, some machinery should be devised for bringing the matter to the notice of the Governor.

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(5) Commercial and other Forms of Discrimination

Reasons why statutory provision is necessary.

326. The importance attached in this country to this part of the Indian constitutional problem has been both misunderstood and misrepresented. It has been misunderstood, because it was thought to imply a belief that the accepted policy of Indian political leaders is to destroy or injure British commercial interests by unfair and discriminatory legislation or otherwise; and misrepresented, because it has been made the basis of a suggestion that His Majesty's Government are seeking to impose unreasonable fetters upon the future Indian Legislature for the purpose of securing exceptional advantages to British, at the expense of Indian, commerce. The belief and the suggestion are equally without foundation. The Second Round Table Conference in 1931 adopted a resolution to the effect that there should be no discrimination between the rights of the British mercantile community, firms and companies, trading in India, and the rights of Indian born subjects; witnesses who appeared before us spoke in the same sense; and the British-India Delegation in their Joint Memorandum state that on the question of principle there has always been a substantial measure of agreement in India. On the other hand, we have been assured no less strongly by those who represent British commercial interests that they ask for no exceptional or preferential treatment, and that their policy is one of a fair field and no favour. The question therefore resolves itself to a consideration of the best method of giving practical effect to the avowed policy and intentions of all concerned. It may indeed be asked why, in view of the assurances of which we have spoken, it is necessary to deal with the matter at all in the Constitution Act; and to this our answer must be that, though we hope and believe that the statutory provisions which we contemplate will in the event prove to have been an excess of caution, yet there have also been statements of a very disturbing character made from time to time by influential persons in India, which could not fail to give rise to suspicions and doubts; and statutory provision by way of reassurance has for that reason become an evident necessity. Nor are the doubts and suspicions thus aroused confined to trading interests in this country; for the minorities in India have expressed similar apprehensions and are anxious to have a statutory safeguard for what they conceive to be their rights.

Administrative discrimination.

327. Discrimination may be of two kinds, administrative or legislative. We are satisfied that with regard to the first a statutory prohibition would be not only impracticable but useless, for it would be impossible to regulate by any statute the exercise of its discretion by the Executive. The true safeguard against discrimination of this kind must be found in the good sense of Indian Ministers. But at the same time we agree with the proposal in the White Paper[1] that the

[1] White Paper, Proposals 18 and 70.

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Governor-General and Governors in their respective spheres should have imposed upon them a special responsibility for the prevention of discrimination, thus enabling them, if action is proposed by their Ministers which would have discriminatory effect, to intervene, and, if necessary, either to decline to accept their advice or (as the case may require) to exercise the special powers which flow from the possession of a special responsibility. But, although we think that the main purpose of this special responsibility will be to counteract discriminatory action in the administrative sphere,—and indeed that it is the only available means for that purpose,—we think that its definition might be made more precise and its ambit more clear; and with this object we suggest that the definition should be "for the prevention of discrimination in matters in respect of which provision is made elsewhere in the Act against discrimination by legislative enactment."

The Fiscal Autonomy Convention

328. Before considering the scope which should be given to provisions in restraint of legislative discrimination, we think it right to observe that it is not our intention that any of the provisions which we contemplate for the purpose of preventing discrimination, whether administrative or legislative, should be so utilised as to interfere with or limit the fiscal autonomy which India has enjoyed since the acceptance of the recommendations made by the Joint Committee on the Bill of 1919, commonly called the Fiscal Autonomy Convention. At the same time, fears have been expressed lest the unrestricted operation of this Convention might result, with no remedy available, in the imposition of penal tariffs upon British goods with the object, not of furthering Indian trade, but of injuring British trade, in order to put pressure upon this country for political purposes. We are satisfied that it was not in the minds of the authors of the Fiscal Autonomy Convention, and has never during the period of its operation been in the mind of His Majesty's Government, that the Convention should be invoked in aid of such a policy; and we have been assured by the Indian Delegates that there would be no desire in India that unrestricted fiscal freedom should be utilised in future for a purpose so destructive of the basis of that conception of partnership upon which the whole of our recommendations proceed. In these circumstances we shall, in fact, be making no change in the existing fiscal relations between India and this country if we seek to make plain on the face of the Statute that it is not a legitimate or permissible use of Indian fiscal freedom to discriminate against British trade as such: and we think it essential that on this matter there should be no ground for misapprehension in future. We therefore recommend that to the special responsibilities of the Governor-General enumerated in the White Paper there should be added a further special responsibility defined in some such terms as follows:—"the prevention of the subjection (otherwise than in accordance with commercial or trade agreements) of British goods imported into India from the United Kingdom to discriminatory treatment as compared with those imported from other countries."

The Governor-General's Instrument of Instructions.

329. But in making this recommendation we further recommend that the Governor-General should be given clear directions in his Instrument of Instructions as to the scope of the special responsibility in question. The instructions we contemplate would indicate that this special responsibility is not intended to affect the competence of the Indian Legislature and of his Government to develop their own fiscal

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and economic policy: that the duty imposed upon him by this provision is that of preventing imports from the United Kingdom from being singled out for specially unfavourable treatment in respect of such matters as customs duties, prohibitions or restrictions (other than measures concerned with the preservation of health) compared with the treatment accorded to imports from other countries: that he should understand that it is not within his functions in this respect to attempt to limit the freedom of the Federal Government to negotiate with other countries for the securing of mutual tariff concessions: and finally, that he should be enjoined that it is his duty under this special responsibility not only to prevent discriminatory action, legislative or administrative, but also action which, though not in form discriminatory, is so in fact.

Legislative discrimination.

330. We have said that it is, in our view, impossible to attempt any precise definition, with a view to its prohibition, of administrative discrimination. Legislative discrimination, however, stands upon a different footing, and it is in our judgment possible to enact provisions against it. We do not forget that to the Statutory Commission the technical objections to any attempt to define discriminatory legislation in a constitutional instrument seemed decisive[1]; but we observe that the Federal Structure Committee in their Fourth Report, which was adopted by the Second Round Table Conference, saw "no reason to doubt that an experienced parliamentary draftsman would be able to devise an adequate and workable formula, which it would not be beyond the competence of a court of law to interpret and make effective." The opinion of a body which contained so many distinguished lawyers must carry great weight, and we concur with them in thinking that the attempt should be made. We do not think that the White Paper proposals on the subject are very clear or precise, and in the paragraphs which follow we shall indicate the statutory provisions which, as it seems to us, ought to find a place in the Constitution Act.

General considerations.

331. We think it right to make by way of preface some general observations. Firstly, we express our entire agreement with the statement of the British-Indian Delegation in their Joint Memorandum "that a friendly settlement by negotiation is by far the most appropriate and satisfactory method of dealing with this complicated matter," and we shall have certain suggestions to make later on this aspect of it. Secondly, we are of opinion that no case has been made out for extending the scope of any arrangements made in such a way

[1] Report, Vol. II, para. 156.

as to include the relations between India and other parts of His Majesty's dominions. It is not for us to comment upon or to criticize certain aspects of Dominion policy towards Indian subjects of His Majesty, but we cannot be unaware of the strong feeling in India on this subject, and India may justly claim the right to protect the interests of her own people in other lands. Lastly, we think that, so far as possible, any statutory enactment should be based upon the principle of reciprocity.

Laws imposing certain conditions and restrictions should not apply to British subjects domiciled in the United Kingdom.

332. Subject to what we say hereafter on the question of reciprocity, we are of opinion (1) that no law[1] restricting the right of entry into British India should apply to British subjects domiciled in the United Kingdom; but there should be a saving for the right of the authorities in India to exercise any statutory powers which they may possess to exclude or remove undesirable persons, whether domiciled in the United Kingdom or elsewhere; and (2) that no law relating to taxation, travel and residence, the holding of property,

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the holding of public office, or the carrying on of any trade, business, or profession in British India, should apply to British subjects domiciled in the United Kingdom, in so far as it imposes conditions or restrictions based upon domicile, residence or duration of residence, language, race, religion, or place of birth.

Companies incorporated in the United Kingdom and in India.

333. As regards companies, we are of opinion (1) that a company incorporated now or hereafter in the United Kingdom, should, when trading in India, be deemed to have complied with the provisions of any Indian law relating to the place of incorporation of companies trading in India, or to the domicile, residence or duration of residence, language, race, religion, descent or place of birth, of the directors, shareholders, or of the agents and servants of such companies; and (2) that British subjects domiciled in the United Kingdom who are directors, shareholders, servants or agents of a company incorporated now or hereafter in India should be deemed to have complied with any conditions imposed by Indian law upon companies so incorporated, relating to the domicile, residence or duration of residence, language, race, religion, descent or place of birth, of directors, shareholders, agents or servants.

Provisions should be on basis of reciprocity.

334. There should however be reciprocity between India and the United Kingdom; and accordingly if a United Kingdom law imposes in the United Kingdom upon Indian subjects of His Majesty domiciled in India or upon companies incorporated in India conditions, restrictions or requirements in respect of any of the above matters from which in India British subjects domiciled in the United Kingdom and companies incorporated in the United Kingdom would otherwise be exempt, the exemption enjoyed by the latter would *pro tanto* cease to have effect.

[1] "Law" throughout this section is intended to include any regulations, bye-laws, etc., having the force of law.

Shipping.

335. We think that separate provision should be made for the case of ships and shipping; and it might be enacted that ships registered in the United Kingdom should not be subjected by law in British India to any discrimination whatsoever, as regards the ship, officers or crew, or her passengers or cargo, to which ships registered in British India would not be subjected in the United Kingdom.

Exceptions.

336. We are satisfied that there would have to be certain exceptions. Thus, the statutory provisions which we have suggested ought not to affect any laws in force at the commencement of the Constitution Act, or laws which exempt from taxation persons not domiciled or resident in India. We are also disposed to think that some provision ought to be made for the purpose of securing that the Executive is not unduly hampered in case of emergency; and it is for consideration whether the provisions which we have suggested should find a place in the Constitution Act ought not to be subject to the power of the Governor-General and the Provincial Governors to declare in their discretion that a law to which those provisions would otherwise apply is necessary in the interests of the peace or tranquillity of India (or a Province, as the case may be) or any part thereof.

Bounties and subsidies.

337. A further exception seems necessary in connection with the Indian Acts, federal or provincial, which authorise the payment to companies or firms of grants, subsidies or bounties out of public funds for the purpose of encouraging trade or industry in India. A Committee, known as the External Capital Committee, in 1925 recommended that certain conditions should be attached

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to grants of this kind and their recommendations were adopted and have since that date been acted upon, by the Government of India. These seem to us to have been conceived in a very reasonable spirit, and we do not think that any objection could be taken to them. But we think that a distinction may properly be drawn between companies already engaged at the date of the Act which authorizes the grant, in that branch of trade or industry which it is sought to encourage, and companies which engage in it subsequently; and we therefore recommend that in the case of the latter it may be made a condition of eligibility for the grant that the company should be incorporated by or under Indian law, that not more than half of the directors shall be Indians, and that the company shall give such reasonable facilities for the training of Indians as the Act may prescribe. In the case of the former, the reciprocal provisions which we have suggested would continue to apply, and the company should be equally eligible to participate in the grant with Indian companies.

Bills discriminatory in fact though not in form.

338. The effect of our recommendations for the statutory prohibition of certain specified forms of discrimination would be, of course, to lay open to challenge in the Courts as being *ultra vires* any legislative enactment which, having been assented to by the Governor-General or a Governor, as the case may

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be, is alleged to be inconsistent with these prohibitions. But it will clearly be the duty of the Governor-General and of the Governors to exercise in accordance with these statutory prohibitions their discretion in giving or withholding their assent to Bills. And we think that the Instrument of Instructions should make it plain, as we have already indicated in connexion with the Governor-General's special responsibility in relation to tariffs, that it is the duty of the Governor-General and of the Governors in exercising their discretion in the matter of assent to Bills not to feel themselves bound by the terms of the statutory prohibitions in relation to discrimination but to withhold their assent from any measure which, though not in form discriminatory, would in their judgment have a discriminatory effect. We have made, we hope, sufficiently plain the scope and the nature of the discrimination which we regard it as necessary to prohibit, and we have expressed our belief that statutory prohibitions should be capable of being so framed as generally to secure what we have in view. We are conscious, however, of the difficulty of framing completely watertight prohibitions and of the scope which ingenuity may find for complying with the letter of the law in a matter of this kind while violating its spirit. It is, in our view, an essential concomitant of the stage of responsible government which our proposals are designed to secure that the discretion of the Governor-General and of the Governors in the granting or withholding of assent to all Bills of their Legislature should be free and unfettered; and in this difficult matter of discrimination in particular we should not regard this condition as fulfilled if the Governor-General and Governors found themselves strictly bound by the terms of the statutory prohibitions. We further recommend that, if in any case the Governor-General or a Governor feels doubt whether a particular Bill does or does not offend against the intentions of the Constitution Act in the matter of discrimination, he should be instructed to reserve the Bill for the signification of His Majesty's pleasure.

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Practice of professions.

339. Our attention has been called to the question of the qualifications required for the practice of the different professions in India, and the suggestion has been made that persons holding United Kingdom qualifications ought to be secured a statutory right to practise in India by virtue of those qualifications. The case of medical practitioners has features of its own and we deal with it separately in the paragraphs which follow: but with regard to professional qualifications in general we are unable to accept the suggestion. No person has at the present time a right to practise his profession in India by virtue of a United Kingdom qualification, unless that qualification has been recognised as giving a title to practise (as has been done in more than one instance) by some Indian law; an English barrister, for example, only has the right to practise before an Indian High Court if the rules of the Court have given a right of audience to

English barristers. We can see no justification for imposing upon Indian Legislatures a statutory restriction in this respect which does not exist at the present moment, and we think that they should be free to prescribe the conditions under which the practice of professions generally in India is to be carried on. But it seems to us that the vested interests of those who are practising a profession in India at the commencement of the new Constitution Act may properly be safeguarded; and we think that they should have a right to continue to practise notwithstanding any future Act which may be passed by any Indian Legislature requiring Indian qualifications as a condition of practice. We may however be permitted to express the hope that when the different professions in India become, as we hope they will, organised and controlled by their own governing bodies, arrangements will be freely made with the corresponding bodies in the United Kingdom for the mutual recognition in both countries of the qualifications prescribed by each, or at least that mutual facilities will be given for their acquisition.

Burma.

340. On the assumption that Burma will be separated from British India we think that British subjects domiciled in India ought to be accorded in Burma the same treatment which would be given in India to British subjects domiciled in the United Kingdom, save as regards the right of entry into Burma, on which in view of the special circumstances we shall have recommendations to make in due course. These matters would fall to be dealt with in the separate legislation which will be required to establish the new constitutional machinery in Burma; but it will also be necessary to consider to what extent corresponding treatment should be accorded in India to British subjects domiciled in Burma, provision for which would find a place in the Indian Constitution Act; and our recommendations on this matter also will be found in that part of our Report which deals with Burma.

Opportunity should be given for conventional arrangements in the future

341. We have expressed our concurrence with the statement in the British-Indian Joint Memorandum that "a friendly settlement by negotiation is by far the most appropriate and satisfactory method" of dealing with the question of discrimination. At the first Round Table Conference the Report of the Minorities Sub-Committee was adopted which contained a paragraph to the effect that there should be no discrimination between the rights of the British mercantile community trading in India and the rights of Indian born subjects, and that "an appropriate convention based on reciprocity should be entered into for the purpose of regulating these rights." It was

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suggested by some that a convention for this purpose should be negotiated forthwith, and it was argued that in that event statutory provision in the new Constitution would be rendered unnecessary. We have no doubt however that such a convention, designed to regulate rights under a new constitutional order, could not with propriety be made except with the new Indian Government, and that the proposal made in January, 1931, was for that reason

impracticable. Nevertheless, since we hold strongly that the conventional is preferable to the statutory method, and that agreement and goodwill form the most satisfactory basis for commercial relations between India and this country, we think that there should be nothing in the Constitution which might close the door against a convention. We recommend accordingly that provision be made enabling His Majesty, if satisfied that a convention has been made between His Majesty's Government in the United Kingdom and the new Government of India covering the matters with which we have already dealt in this part of our Report, and that the necessary legislation for implementing it has been passed by Parliament and by the Indian Legislature, should be empowered to declare by Order in Council that the statutory provisions in the Constitution Act shall not apply so long as the convention continues in force between the two countries. It may be said that the practical result will be exactly the same, and this no doubt is true; but the merit of the proposal, as we see it, is that it would enable the Indian Government and Legislature, if they so desire, to substitute a voluntary agreement for a statutory enactment, and would therefore give to the arrangements for the reciprocal protection of British subjects in India and the United Kingdom respectively the conventional basis which in our judgment it is most desirable that they should have.

Medical Qualifications

Provisions of Medical Act, 1886.

342. The question of the mutual recognition of medical practitioners in the United Kingdom and British India has unhappily become a matter of political controversy in India during the last few years; and in view of its importance to both countries, it seems desirable that we should describe shortly the present position. The Medical Act, 1886, empowers His Majesty by Order in Council to apply the Act to any British possession " which in the opinion of His Majesty affords to the registered medical practitioners of the United Kingdom such privileges of practising in the said British possession . . . as to His Majesty may seem just ". The Act has been applied to British India, in view of the recognition there accorded to practitioners registered in the United Kingdom; and this entitles any person who holds an Indian medical diploma recognised for the time being by the General Medical Council as " furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of medicine, surgery and midwifery " to be registered on application in the United Kingdom medical register. The Act also provides that where the General Medical Council have refused to recognise a medical diploma for this purpose, the Privy Council, on application being made to them, may, if they think fit, after considering the application and after communication with the General Medical Council, order the latter to recognise the diploma, and the Council are thereupon under a statutory obligation to do so. It will thus be seen that, though the Act is based upon the principle

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of reciprocity, the General Medical Council is not compelled to give an automatic recognition to each and every diploma conferred in the other countries to which the Act applies, but is entitled, subject to an appeal to the Privy Council, to satisfy itself that any particular diploma is such as to furnish a sufficient guarantee of the possession of the requisite medical knowledge and skill. We understand that in countries where there is some central authority corresponding to the General Medical Council, the Council is accustomed to consult that body for the purpose of satisfying itself that a particular diploma about which perhaps a question has been raised affords the guarantee required; but where such body does not exist, the Council must of course make its own inquiries. We should point out that the General Medical Council in the United Kingdom does not itself confer medical degrees. It keeps the medical register; that is to say, a register of medical practitioners who have passed a qualifying examination in medicine, surgery, and midwifery, held by Universities in the United Kingdom and certain other bodies, in which a standard of proficiency satisfactory to the Council has been attained; and the Council, though they do not themselves examine, are thus able in effect to secure that the qualifying examinations and the standard of proficiency are adequate.

Withdrawal of recognition of Indian medical diplomas.

343. Until very recently there was no central body in India corresponding to the General Medical Council, and therefore no authority with power to secure and maintain a common standard for the medical qualifications evidenced by the diplomas recognized by the various provincial Medical Councils in India. It appears that there was in consequence a considerable variation in the standards adopted by these bodies, and the Council some four years ago took the drastic step of refusing any longer to accord recognition to Indian medical diplomas, as the Indian Legislature had refused to provide the money for a system of inspection which would have been acceptable to the General Medical Council pending the establishment of a system of inspection by an all-India Medical Council. It is perhaps not surprising that the action of the Council caused resentment and protest. It was believed by many that political, or at least ulterior, motives lay behind it; but no one who is aware of the integrity and independence of the Council and its complete dissociation from every kind of political influence can doubt that it was inspired solely by a desire to promote the interests of medical education and to secure the highest standard of proficiency in those who claimed to be admitted to the United Kingdom register. On the merits of the dispute we are not of course competent to pronounce, nor are we able to say whether the Council might have achieved their purpose in some way less likely to wound Indian susceptibility; but of the purity of its intentions we cannot entertain any doubt, and it is to be regretted that none of those affected though fit to avail themselves of the right of appeal to the Privy Council and to obtain a decision from a body whose impartiality could not be questioned.

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Indian Medical Council Act, 1933.

344. The controversy has had, at any rate, one satisfactory result; for the Indian Legislature have now passed an Act known as the Indian Medical Council Act, 1933, which sets up a Medical Council for the whole of British India with substantially the same functions as those of the General Medical Council in the United Kingdom. This Act sets out in the First Schedule the medical qualifications

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granted by medical institutions in British India, which are to be recognised for the purposes of the Act, and gives the Council power to secure by inspection and, in the last resort, by the withdrawal of recognition an adequate standard of proficiency. In the Second Schedule are set out the medical qualifications granted by medical institutions outside British India which are to be recognized for the purposes of the Act, and in this list are included the registrable qualifications granted by licensing bodies in the United Kingdom which admit to the United Kingdom medical register. These are to continue unaltered for a period of four years, but the Council are empowered to enter into negotiations with the authority in any country outside British India entrusted with the maintenance of a register of medical practitioners for the settlement of a scheme for the reciprocal recognition of medical qualifications. The Governor-General is to be informed of the decisions of the Council to recognise or refuse to recognise the medical qualifications proposed by the authority abroad for recognition in British India; and he is to frame a new Schedule (to become effective four years after the commencement of the Act) which will comprise the medical qualifications thereafter to be recognised. Provision is also made enabling the Governor-General in Council after the expiration of four years to amend the Schedule and to add further qualifications, or to recognise only qualifications granted before or after a specified date. It will thus be seen that the Governor-General in Council would, on the representations of the Indian Medical Council, be free to withdraw at any time after the expiration of four years the recognition in British India secured to medical practitioners on the United Kingdom medical register, though there is a saving for all medical qualifications granted previously.

The Act a basis for satisfactory arrangements in the future.

345. We appreciate and sympathise with the efforts of the Indian medical profession to put its house in order, and we hope that co-operation between the two Councils (for we are convinced that good will is not lacking on either side) will go far to ensure an amicable and agreed solution of the present difficulty. We are of opinion that the Indian Medical Council Act, with only slight modifications, can be made the basis of a permanent and satisfactory arrangement. The references in the Act to the Governor-General in Council will in any event require modification under the new Constitution, and at first sight it would appear that it would be sufficient to substitute a reference to the Governor-General, *i.e.*, the Governor-General advised by his Ministers, since this is a matter falling within the ministerial sphere. But we confess that we should find difficulty

in agreeing that the Governor-General is an appropriate authority for determining whether any particular qualification should be recognised; for this is not a matter of policy, but one which involves technical and professional considerations. We think that the true solution is to be found in an adaptation of the provisions in the United Kingdom Act which we have mentioned above, whereby any refusal by the General Medical Council to recognise a medical diploma granted abroad may be made the subject of an appeal to the Privy Council; and we suggest that if after the expiration of four years the Indian Medical Council proposes to withhold recognition of any of the United Kingdom qualifications set out in the Second Schedule to the Indian Act, an appeal should lie to the Privy Council, whose decision should be final. The Act of 1886 requires the Privy Council, before giving its decision on a refusal to recognise a diploma granted

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abroad, to communicate with the General Medical Council, and there should be a corresponding provision that in the converse case there should be communication with the Indian Medical Council; but we are disposed to think that the law should be amended so as to provide that in either case both Councils should be communicated with before the decision of the Privy Council is given. We hope that before the four years have expired, as a result of joint action between the two Councils, the General Medical Council will have seen its way to restore its recognition of Indian diplomas, and that discussions may proceed between them free from political influence or bias and with the sole object of promoting the interests of medical education in both countries.

The Indian Medical Service.

346. There is one aspect of this question which seems to us to present special features. It is not necessary to emphasise the importance of the Indian Medical Service from the military point of view; and in our opinion the members of the Service ought by virtue of the commissions which they hold to be deemed to possess all necessary statutory qualifications entitling them to practise.

Fundamental Rights

A declaration of fundamenta rights impracticable.

347. The question of so-called fundamental rights, which was much discussed at the three Round Table Conferences, was brought to our notice by the British-India Delegation, many members of which were anxious that the new Constitution should contain a declaration of rights of different kinds, for reassuring minorities, for asserting the equality of all persons before the law, and for other like purposes; and we have examined more than one list of such rights which have been compiled. The Statutory Commission observe, with reference to this subject:—"We are aware that such provisions have been inserted in many Constitutions, notably in those of the European States formed after the war. Experience however has not shown them to be of any great practical value. Abstract declarations are useless, unless there exist the will and the means to make them effective."[1] With these observations

[1] Report, Vol. II, para. 36.

we entirely agree: and a cynic might indeed find plausible arguments in the history during the last ten years of more than one country for asserting that the most effective method of ensuring the destruction of a fundamental right is to include a declaration of its existence in a constitutional instrument. But there are also strong practical arguments against the proposal, which may be put in the form of a dilemma: for either the declaration of rights is of so abstract a nature that it has no legal effect of any kind, or its legal effect will be to impose an embarrassing restriction on the powers of the Legislature and to create a grave risk that a large number of laws may be declared invalid by the Courts because inconsistent with one or other of the rights so declared. An examination of the lists to which we have referred shows very clearly indeed that this risk would be far from negligible. There is this further objection, that the States have made it abundantly clear that no declaration of fundamental rights is to apply in State territories; and it would be altogether anomalous if such a declaration had legal force in part only of the area of the Federation. There are however one or two legal principles which might, we think, be appropriately embodied in the Constitution, and we direct attention to them in the paragraphs which follow. There are others, not strictly of a legal

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kind to which perhaps His Majesty will think fit to make reference in any proclamation which He may be pleased to issue in connection with the establishment of the new order in India.

Eligibility for holding public office, etc.

348. Among the proposals in the White Paper is one which would put it beyond the power of any Legislature in British India to make laws (with certain exceptions) subjecting any British subject to any disability or discrimination in respect of a variety of specified matters, if based upon religion, descent, caste, colour or place of birth.[1] This proposal seems to us too wide and likely to fetter unduly the powers of the Indian Legislatures; and we understand that His Majesty's Government have, after consultation with the Government of India, arrived at the same conclusion. We agree that some declaration of the general rights of British subjects in India is required, but we think that it would be preferable to base it upon the existing section of the Government of India Act. We think that this declaration should provide that no British subject, Indian or otherwise, domiciled in India shall be disabled from holding public office or from practising any trade, profession or calling by reason only of his religion, descent caste, colour or place of birth; and it should be extended, as regards the holding of office under the Federal Government, to subjects of Indian States.

Expropriation of private property.

349. We think also that the expropriation in British India of private property, except for public purposes and on payment of compensation to be assessed by some independent authority, should be expressly prohibited. This would quiet doubts which have been caused in India by certain Indian utterances and would tend to strengthen the forces of law and order.

[1] White Paper, Proposal 122.

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(6) Constituent Powers.

Meaning of Constituent Powers.

350. The White Paper proposes (and we entirely concur) that, whatever the powers of the Indian Legislatures may be in relation to Acts of Parliament in general, they shall not extend to the enactment of any law affecting the provisions of the Constitution Act, except in so far as that Act itself empowers them to do so.[1] By "Constituent Powers," therefore, we mean powers conferred by the Constitution Act upon some authority other than Parliament to vary specified provisions of the Act, whether or not such variation is required by the Act to be subject to the approval of Parliament.

Grant of Constituent Powers to Indian Legislatures not yet practicable.

351. We are satisfied that, though there are various matters in the Constitution Act which after an interval of time might in principle be left quite appropriately to modification by the Central or Provincial Legislatures, as the case may be, as subsequent experience may show to be desirable, it is not practical politics here and now to attempt to confer such powers upon them. It would be necessary not merely to decide what matters could thus be dealt with, but also to devise arrangements to ensure that the various interests affected by any proposed modification were given full opportunity to express their views, and that changes which they regarded as prejudicial to themselves could not be forced upon them by an inconsiderate majority. With a Constitution necessarily so framed as to preserve so far as may be a nice balance between the conflicting interests of Federation and Provinces, of Province and Province, of minority and majority, and, indeed, of minority and minority, and with so much that is unpredictable in the effects of the inter-play of these forces, it is plain that it would be a matter of extreme difficulty to

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devise arrangements likely to be acceptable to all those who might be affected; and it would probably be found that the balance could only be preserved and existing statutory rights only guaranteed by a number of restrictions and conditions upon the exercise of the constituent powers which would make them in practice unworkable. But whether or not this can reasonably be regarded as a defect in the Constituent Act, we do not think that the question is one of immediate importance, since we should have felt bound in any event to recommend that the main provisions of the Act should remain unaltered for an appreciable period, say, for ten years, in order to ensure that the Constitution is not subjected at the outset to the disturbances which might follow upon hasty attempts to modify its details.

Constitutional amendment otherwise than by Act of Parliament.

352. At the same time we are satisfied that there are various matters which must be capable from the beginning of modification and adjustment by some means less cumbrous and dilatory than amending legislation in Parliament. To meet this need, we recommend that the requisite powers for ensuring elasticity, where it is

[1] White Paper, Proposal 110

necessary, should be placed by the Act in the hands of His Majesty's Government, but subject, nevertheless, to the control of Parliament. We may add that we could not in any case regard some of the provisions to which we think that this procedure should apply as appropriately entrusted to any authority in India for amendment or modification. The White Paper proposes that the regulation of certain matters should be prescribed in detail by His Majesty in Council after the Constitution Act is passed, and that any subsequent variations should be effected in the same manner. Orders in Council are commonly made upon the advice of Ministers without the intervention of Parliament, but there is also a well-established procedure, for which precedents are to be found in many Acts of Parliament, whereby both Houses of Parliament are enabled to consider and to approve the drafts of any proposed Orders before they are finally submitted to His Majesty; and in certain cases we think that this procedure would be appropriate for the Orders in Council now under consideration.

Administrative matters.

353. The matters which, under the White Paper,[1] it is proposed to prescribed by Order in Council fall into three categories. The first class comprises:—

(*a*) The payments (other than salary proper, which is to be fixed by the Act itself) to be made to the Governor-General and Governors on their own account and that of their personal staffs;

(*b*) The salaries and conditions of service of the Governor-General's Counsellors;

(*c*) The salaries, pensions, leave and other allowances of the Judges of the Federal Court and of the High Courts.

We see no reason why, except in the case of (*c*),[2] Parliament should desire to concern itself directly with these matters, the settlement of which is in the nature of an executive function.

Matters which should be under control of Parliament.

354. But there are other matters to be prescribed[3] which are of an essentially different nature:—

(*a*) the percentage of income tax which is to be assigned to the Provinces and the basis on which that assignment is to be made;

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(*b*) the sum to be retained at the outset by the Federation out of the proceeds of taxes on income which would otherwise be assigned to the Provinces ;

(*c*) the basis on which the States are to contribute to Federal revenues during the operation of Federal surcharge on income tax ;

[1] White Paper, Proposals 10, 12, 152, 171.
[2] See *supra*, para. 315.
[3] White Paper, Proposals 37, 87, 106, 139 141, 144.

(*d*) the subventions to be made from Federal revenues to certain deficit Provinces ;

(*e*) the qualifications of electors to the Provincial and Federal Legislatures ; the delimitation of constituencies , the method of election of representatives of communal and other interests ; the filling of casual vacancies and other ancillary matters ; and

(*f*) the specification of the areas to be treated as Excluded and Partially Excluded, respectively.

Some of these matters can scarcely be determined until after the Constitution Act is on the statute book ; and to set out the others in the Act itself would add greatly to its length and complexity. We agree, therefore, that the method of proceeding by Order in Council, with a power to modify subsequently by the same method, is both necessary and appropriate.

Procedure suggested.

355. In the determination of all matters in this second category, we think it essential that Parliament should have a voice ; and we recommend that a provision should be included in the Constitution Act requiring every Order in Council relating to them to be laid in draft before both Houses of Parliament for thirty sitting days before it is submitted to His Majesty. It would thus be open to either House to criticize the draft, if its provisions appeared objectionable, and His Majesty's Government would then have to consider whether it should not be withdrawn or revised ; but we think also that His Majesty's Government should also have the power, in any case where such a course seemed desirable, to submit the draft to both Houses for approval by affirmative Resolution. A procedure of this kind would, we think, enable Parliament to retain effective control over these subsidiary matters, and would secure that demands were only made upon parliamentary time when the intrinsic importance of the proposals made was sufficient to justify such a course.

Resolutions for constitutional amendment by Indian Legislatures.

356. We have given reasons for our conviction that a specific grant of constituent powers to authorities in India is not at the moment a practicable propostion. We think, however, that a plan whereby the new Legislatures can be associated with the modification hereafter of the provisions of the Act, or of any Order in Council, relating to the composition and the size of the Legislatures or the qualifications of electors, is very desirable. It is, of course, competent for any Legislature in India to pass a Resolution advocating a constitutional change, with a request that its Resolution should be forwarded to His Majesty's Government for consideration, and for this no provision in the Constitution Act would be required. But in our view it ought hereafter to be possible, under specified conditions, for a responsible Government in India, with the approval of its Legislature, to be assured that any such Resolution is actually taken into consideration by His Majesty's Government and their decision upon it formally recorded. We recommend, therefore, that where an Indian Legislature

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has passed a Resolution of this kind and has presented an Address to the Governor-General or Governor, as the case may be, praying that His Majesty may be pleased to communicate it to Parliament, the Resolution shall be laid before both Houses of Parliament not later than six months after its receipt, with a statement of the action which His Majesty's Government propose to take upon it.

Resolutions should be subject to certain conditions.

357. But we think that this procedure should be subject to the following conditions :—

(*a*) that the Resolution should be confined in scope to matters concerning the size and composition of, and the franchise for, the legislatures ;

(*b*) that the Federal Legislature should have no power to propose an alteration in the size or composition of either Chamber which would involve a variation of the proportions of the seats allotted to the States and the Provinces respectively, or of the relative size of the two Houses ;

(*c*) that the procedure should not come into force until the expiry of ten years—in the case of a Provincial Legislature from the inauguration of Provincial Autonomy, and in the case of the Federal Legislature from the inauguration of the Federation ;

(*d*) that, as a guide to His Majesty's Government and Parliament in this matter, the Governor-General or Governor, as the case may be, should be required, in forwarding a Resolution, to state his own views on the question of its effect upon the interests of any minority or minorities ; and, finally,

(*e*) that the Resolution should have been proposed on the motion and on the responsibility of the Federal or Provincial Ministers, as the case may be.

(7) The Secretary of State and the Council of India

The Secretary of State in Council.

358. The Secretary of State in Council is by statute a body corporate, and the powers exercisable by the corporation thus brought into existence are singular and indeed in some respects anomalous, because inconsistent with the doctrine of ministerial responsibility. The Council itself consists of the Secretary of State and not less than eight nor more than twelve members, of whom at least one-half must have served or resided in India for at least ten years. The members other than the Secretary of State hold office for a term of five years, but, like His Majesty's Judges and the Comptroller and Auditor-General, may be removed from office on an address presented to the Crown by both Houses of Parliament.

Powers of the Council of India.

359. The Secretary of State in Council has power to dispose of real or personal estate vested in the Crown, to raise money by way of mortgage, and to make, vary and discharge contracts ; and at the present time in any suit, whether in India or elsewhere, to which the Government of India or any Local Government or any official employed by them is a party, the proceedings must be in the name of the Secretary of State in Council. The Secretary of State in Council is also the only authority for raising loans in this country for the purpose of the Government of India. The Council of India, under the direction of the Secretary of State, is required to " conduct the business transacted in the United Kingdom in relation to the Government of India and the correspondence with India." At meetings of the Council, questions are decided by a majority vote, but the Secretary of State may, if he thinks fit, over-rule the Council, except in certain matters for the decision of which a majority of the Council present and

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voting is required. These matters are: (1) grants or appropriations of any part of the revenues of India; (2) the sale or disposal of real or personal estate and the raising of money thereon by mortgage or otherwise; (3) the making of contracts, including instruments of contract of civil offices in India; (4) the application to the Government of India and the local Governors of authority to perform on behalf and in the name of the Secretary of State in Council any of the obligations of the last two heads; (5) the passing of any order affecting the salaries of members of the Governor-General's Council; and (6) the making of rules regulating various matters connected with the Indian Public Services.

Powers in relation to finance.

360. The Bill which became the Act of 1858 under which the Crown and Parliament first assumed complete responsibility for the government of India, originally provided that the decision of the Secretary of State should be final in all matters which had given rise to a difference of opinion in the Council of India; but the House of Commons insisted upon limiting the authority of the Secretary of

State over the expenditure of Indian revenues, firstly, by requiring the concurrence of the Council of India to grants or appropriations of any part of those revenues, and secondly, by requiring the consent of both Houses of Parliament to the defraying from Indian revenues of the cost of any military operation beyond the external frontiers of India. The purpose of these amendments appears to have been the anxiety of Parliament not to leave a Minister the unfettered disposal of the whole of the revenues of India and of the large patronage which would thereby be placed in his hands, and to afford safeguards against the expenditure of Indian revenues on purposes other than those arising strictly out of the necessities of Indian government. The result has been that His Majesty's Government have never had, and have not now, the power to compel contributions from Indian revenues for Imperial purposes, if a majority of the Council of India refuse to sanction the proposal; and there is reason to believe that the powers of the Council in this respect have on more than one occasion in the past enabled a Secretary of State successfully to resist pressure from his colleagues in the Government to authorize expenditure from Indian revenues which appeared to him prejudicial to the interests of the Indian taxpayer.

Continuance of Council of India not necessary under responsible government.

361. We cannot doubt that under a system of responsible government in India, the Secretary of State in Council could not continue on the present basis. If will no longer be necessary with the transfer of responsibility for finance to Indian Ministers, that there should continue to be a body in the United Kingdom with a statutory control over the decisions of the Secretary of State in financial matters; nor ought the authority of the Secretary of State to extend to estimates submitted to an Indian Legislature on the advice of Indian Ministers. But in our opinion it is still desirable that the Secretary of State should have a small body of Advisers to whom he may turn for advice on financial and service matters and on matters which concern the Political Department.

An advisory body proposed.

362. We concur, therefore, in the proposal in the White Paper that the Secretary of State should be empowered to appoint not less than three nor more than six persons for the purpose of advising him, of whom two at least must have held office for at least ten years under the Crown in India.[1] The Secretary of State will be free to seek their advice, either individually or collectively, on any matter as he may

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think fit, but will not be bound to do so save in one respect only. It is proposed that so long as he remains the authority charged with the control of any members of the Public Services in India, he must lay before his Advisers, and obtain the concurrence of a majority of them to, the draft of any rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service,

[1] White Paper, Proposal 176.

and any order which he proposes to make upon an appeal to him from any member of the service which he controls. These proposals in effect preserve to the Services the safeguards which they at present enjoy through the Council of India, and we have only two suggestions to make with regard to them. We think in the first place that the service of the Advisers who are required to have held office for at least ten years under the Crown in India should not have terminated more than two years before their appointment; and, secondly, it seems to us reasonable in the circumstances that at least half of the Advisers should have the service qualification.

Property, suits, etc.

363. The disappearance of the Secretary of State in Council as a statutory corporation will necessitate provisions in the Constitution Act transferring to the appropriate authority, the Federal Government, Provincial Governments, or the Railway Authority, as the case may be, the rights, liabilities and obligations incurred by the Secretary of State in Council by contract or otherwise before the establishment of the new Constitution, any existing rights or suit and arbitration in this country being preserved against the Secretary of State as the successor to the Secretary of State in Council in respect of these liabilities. It seems to us that provision will also have to be made for giving a juristic personality to the Federal and Provincial Governments for the purpose of enabling them in future to sue and be sued in their own names.

India Office staff.

364. The Statutory Commission expressed the opinion that if material reductions in the India Office staff should result from their recommendations, the question should be considered whether special compensation ought not to be granted to civil servants employed in the India Office for whom equivalent employment cannot be provided elsewhere, since the ordinary rules regulating the compensation of retrenched civil servants did not seem appropriate in the case of officers whose careers might be terminated as a result of changes in high policy.[1] We are informed that the Secretary of State is unable at the present time to make any forecast of the volume of business which the India Office will have to transact under the new order, but that the possibility of retrenchment sooner or later is very real and involves an extraordinary risk which no one on the India Office staff could have foreseen at the date of his entry into the Civil Service and which it is not right to ask him to assume now without any prospect of compensation, if he should be affected. In these circumstances we are of opinion that the power of the Secretary of State to grant compensation from Indian revenues to members of the Indian Public Services should extend to any members of the India Office staff who may be retrenched in consequence of the constitutional changes.

[1] Report, Vol. II, para. 360.

Expenses of India Office.

365. We understand that at the present time the expenses of the India Office establishment are a charge on the revenues of India, but that an annual grant in aid of £150,000 is made by the Treasury. This

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is a matter which ought, we think, to be considered in connection with future changes. It seems to us that it would correspond more nearly with the constitutional position now to be established if the expenses of the India Office were included in the Civil Service Estimates of the United Kingdom, but that Indian revenues should contribute a grant in aid, in view of the functions which the Secretary of State and his Department will continue to perform on behalf of the Governments in India.

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(8) The Reserve Bank

366. We have in an earlier passage referred to the necessity of leaving no room for doubt as to the ability of India to maintain her financial stability and credit at home and abroad. This is naturally of great importance in the sphere of currency and exchange, which, besides their pervading influence on the whole economic structure of the country, may have far-reaching effect upon government finances. At present currency and exchange are the direct concern of the Government of India, but for some time it has been felt to be desirable that they should be entrusted to a central bank, which would also control the credit mechanism of the country. The economic justification for such a change becomes reinforced when constitutional changes are being made in the form of government at the Centre. We agree with the view which, we understand, has been taken throughout by His Majesty's Government that a Reserve Bank on sure foundation and free from political influence should already have been established and in successful operation before the constitutional changes at the Centre take place. The Indian Legislature has recently passed a Reserve Bank of India Act, and we are assured that this measure should provide the Bank with a sound constitution. As regards the date of its inauguration, we understand that no definite statement can yet be made. This must of course depend to some extent on the absence of unfavourable economic developments; but we gather that there is at present no reason to anticipate that it cannot be brought into being well in advance of constitutional changes at the Centre. Reliance on the Bank to play its due part in safeguarding India's financial stability and credit clearly demands that at all events its essential features should be protected against amendments of the law which would destroy their effect for the purpose in view.

Indian Reserve Bank Act, 1934.

367. The White Paper proposals require the prior consent of the Governor-General at his discretion to the introduction of legislation affecting that portion of the Reserve Bank Act which regulates the powers and duties of the Bank in relation to the management of currency and exchange[1]; that is to say, they do not cover the constitution of the Bank itself. We feel however that so narrow a definition leaves open the possibility of amendment to other portions of the Act which might prejudice or even destroy some of the features of the system which we would regard as essential to its proper functioning. It seems clear that the Act must be considered as a whole and we recommend that any amendment of the Reserve Bank Act or any legislation affecting the constitution and functions of the Bank, or of the coinage and currency of the Federation, should require the prior sanction of the Governor-General at his discretion. Certain of the functions vested by the Reserve Bank Act in the Governor-General in Council (of which an important example is the appointment of the Governor,

Certain amendments of Act should require prior sanction of Governor-General.

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Deputy Governor and four nominated Directors of the Bank) will in future require to be vested in the Governor-General in his discretion, and appropriate provision in the Constitution Act will be needed to secure this.

[1] White Paper, Proposal 119.

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(9) Future Administration of Indian Railways.

Railway Policy and a Statutory Railway Authority.

368. It is stated in the White Paper[1] that His Majesty's Government consider it essential that, while the Federal Government and Legislature will necessarily exercise a general control over railway policy, the actual control of the administration of the State Railways in India (including those worked by Companies) should be placed by the Constitution Act in the hands of a Statutory Railway Authority, so composed and with such powers as to ensure that it is in a position to perform its functions upon business principles without being subject to political interference.

Report of Committee in June, 1933.

369. Questions of principle and detail arising out of the proposal were considered by a very representative Committee which sat in London in June, 1933. The Report of the Committee (described as "Sketch Proposals for the Future Administration of Indian Railways") has been made available to us and was published in our Records on 27th July, 1933; and for convenience of reference we reproduce it as an Appendix. We consider that the scheme outlined by the Committee provides a suitable basis for the administration of the Indian Railways, subject, however, to two conditions, to which we attach importance, viz., that not less than three of the seven members of the proposed Authority should be appointed by the Governor-General in his discretion, and that the Authority should not be constituted on a communal basis. We have also considered the question whether the statutory basis for the new Railway Authority should be provided by the Constitution Act or by Indian legislation. There would be obvious advantages in having in being at the earliest possible date a statutory Railway Authority conforming as closely as possible, both in composition and powers, with the body which will function after the establishment of the Federation, and we see no objection to the necessary steps being taken to this end in India. But even so we are clearly of opinion that the Constitution Act must lay down the governing principles upon which this important piece of administrative machinery should be based, and consequently that the provisions of the first (and any subsequent) Indian enactment on this matter should conform with those principles.

Certain matters should be regulated by Constitution Act.

370. In our view it will be necessary to regulate under the Constitution Act the following matters :—

(*a*) The extent of the control of the Federal Government and the Indian Legislature over the Railway Authority (paras. 1 and 2).[2] It will also be necessary under this head to make it clear that the Governor-General's special responsibilities extend to the operations of the Railway Authority.

[1] White Paper, Introd., para. 74.
[2] References are to paragraphs of the Sketch Proposals.

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(*b*) The principles which should guide the Authority (para. 5).

(*c*) The method of appointing members (para. 2, subject to our observations above).

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(*d*) The conditions for the separation of railway finances from general finances (paras. 5–7).

(*e*) The right of the Indian railway companies as laid down in their contracts to have access to the Secretary of State in regard to disputed points and, if desired, to proceed to arbitration (para. 4).

(*f*) Machinery for arbitration proceedings on disputed issues in the railway field (para. 12). It is a matter for consideration whether a tribunal of a permanent character rather than a tribunal *ad hoc*, as suggested by the Committee, would not be more suitable for this purpose.

(*g*) Requirement of prior consent of the Governor-General at his discretion to legislation affecting the constitution or powers of the Railway Authority.

APPENDIX (IV)

Sketch Proposals for the future Administration of Indian Railways

1. Subject to the control of policy by the Federal Government and the Legislature, a Railway Authority will be established and will be entrusted with the administration of railways in India (as described in paragraph 4) and will exercise its powers through an executive constituted as described in paragraph 3.

2. The Railway Authority will consist of seven members. The Committee is divided on the question whether (*a*) three will be appointed by the Governor-General in his discretion and four by the Governor-General on the advice of the Federal Government or (*b*) all will be appointed by the Governor-General on the advice of the Federal Government. Those members of the Committee who are members of the Central Legislature, with the exception of Mr. Anklesaria, support the latter alternative. All the Hindu and Muslim members of the Central Legislature on the Committee agree that out of the seven seats on the Railway Authority two should be reserved for the Muslim community and one for the European community. Sir Phiroze Sethna, Mr. Anklesaria, Sir Manubhai Mehta and the European members of the Committee, while they would welcome an authority representative of all interests and all communities so far as is compatible with efficiency, do not consider that any special provision should be made in the statute for the establishment of the Railway Authority on a communal basis. The seven members so appointed must be possessed of special knowledge[1] of commerce, industry, agriculture or finance, or have had extensive

[1] Mr. Joshi would add "knowledge of public affairs."
Mr. Joshi considers that two seats on the Railway Authority should be specially reserved for representatives of Labour and the travelling public.
Mr. Joshi and Dr. Ahmad consider that if the Authority is to consist of a whole-time Chairman and part-time members, the number should be increased.
Mr. Joshi and Mr. Anklesaria consider that special representation should be given to agriculturalists on the Railway Authority.

administrative experience. The President[1] of the Authority, who shall have the right of access to the Governor-General, will be appointed from the members by the Governor-General in his discretion.

The Federal Minister responsible for Transport and Communications may at any time convene a special meeting of the Railway Authority for the purpose of discussing matters of policy or questions of public interest. At such meetings the Federal Minister will preside. The Federal Minister may by order require or authorise the Railway Authority to give effect to decisions of the Federal Government and the Legislature on matters of policy, and it shall be obligatory on the Railway Authority to give effect to such decisions.

No Minister or member of the Federal Legislature or any other Legislature in India will be eligible to hold office as a member of the Authority till one[2] year has elapsed since he surrendered his office or seat, nor will any person be appointed as a member of the Authority who has been a

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servant of the Crown in India, a railway official in India, or has personally held railway contracts, or has been concerned in the management of companies holding such contracts, within one year of his relinquishment of office or of the termination of the contract as the case may be. The Federal Minister responsible for Transport and Communications may, if he sees fit, attend the ordinary meetings of the Authority or be represented thereat, but in neither case, will there be the right to vote. The members of the Authority will hold office for five years, but will be eligible for re-appointment for a further term of the same length or for a shorter term. (In the case of the first appointments, three will be for three years only, but these members will be eligible for re-appointment for a further term of three or five years.)

Any member of the Authority may be removed from office by the Governor-General in his discretion if, in his opinion, after consultation with the Federal Government, there is sufficient cause for such action.

Members shall be be appointed to the Railway Authority who are prepared to give their services to such an extent as may be required for the proper performance of their duties as laid down in the Statute.[3] Their emoluments shall be such as to secure suitable men who will be prepared to devote sufficient time for the proper discharge of their duties and responsibilities, and will be fixed by the Governor-General in his discretion after consultation[4] with the Federal Government, the emoluments of the members of the first Railway Authority being fixed in the Statute.

3. At the head of the railway executive there will be a Chief Commissioner, who must possess expert knowledge of railway working, and will be appointed by the Railway Authority subject to the confirmation of the Governor-General.[5] A Financial Commissioner will be appointed by the Governor-General on the advice of the Federal Government. He must possess extensive financial experience and have served for not less than 10 years under the Crown or have shown outstanding capacity in the conduct of the financial

[1] Mr. Joshi and Mr Ranga Iyer consider that the appointment of President should be made on the advice of the Federal Government.

[2] Mr. Joshi and Mr. Yamin Khan hold the view that in regard to the membership of a Legislature the year's disqualification should not apply, but that any member of a Legislature appointed to the Railway Authority will *ipso facto* vacate his seat.

[3] Mr. Ranga Iyer, Mr. Padshah, Mr. Joshi, Dr. Ahmad and Mr. Yamin Khan are of opinion that the members should be "whole time," while the other members of the Committee consider that the Committee's recommendation does not exclude the appointment of whole-time members, should experience prove this to be necessary.

[4] Mr. Joshi and Mr. Ranga Iyer hold that "in his discretion after consultation with" should read "on the advice of."

[5] Mr. Joshi would add "and the Federal Government."

affairs of commercial or railway undertakings. The Railway Authority, on the recommendation of the Chief Commissioner, may appoint additional Commissioners who must be chosen for their knowledge of railway working. Except in matters relating to Finance the Chief Commissioner shall have power to overrule his colleagues. The Chief Commissioner will carry out the duties from time to time delegated to him by the Railway Authority and may delegate such powers to his subordinate officers as may be approved by the Railway Authority.

4. The Railway Authority will be responsible for the proper maintenance and efficient operation of the railways vested in the Crown for the purposes of administration (including those worked by Companies), all of which will remain vested in the Crown for the purposes of the Federal Government. The Railway Authority will also exercise the control over other railways in British India at present exercised by or on behalf of Government. Provision will be made for safeguarding the existing rights of Companies working under contracts with the Secretary of State in Council, and it will be the duty of the Railway Authority to refer to the Secretary of State any matters in dispute with the Companies which, under the terms of those contracts, are subject to the decision of the Secretary of State in Council or which may be referred to arbitration. It will be obligatory on the Railway Authority and the Federal Government to give effect to the decision of the Secretary of State or the award of an arbitrator.

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5. In exercising the control vested in it, the Railway Authority will be guided by business principles, due regard being paid to the interests of agriculture, industry and the general public and to Defence requirements. After meeting from receipts the necessary working expenses (including provision for maintenance, renewals, depreciation, bonus and interest on Provident Funds, interest on capital and other fixed charges, payments to Companies and Indian States under contracts or agreements) the surplus will be disposed of in such manner as may be determined from time to time by the Federal Government under a scheme of apportionment running for a period of not less than five years. In the event of a dispute as to the adequacy or otherwise of the allowance to be made in respect of renewals and depreciations the Auditor-General shall be the deciding authority. Pending any new scheme of apportionment the disposal of any surplus will be governed by the arrangements in force at the time the Authority is established.

6. The Railway depreciation, reserve and other funds should be utilised solely for railway purposes, and be treated as far as possible as the property of the Railway Authority. The investment of such funds and the realisation of such investments by the Railway Authority shall be subject to such conditions as the Federal Government may prescribe. A Committee might be convened in India to advise what those conditions should be.

7. Revenue estimates will be submitted annually to the Federal Government, which will in turn submit them to the Federal Legislature, but these estimates will not be subject to vote. If the revenue estimates disclose the need for a contribution from general revenues, a vote of the Legislature will, of course, be required. The programme of capital expenditure will be submitted to the Federal Government for approval by the Federal Legislature. The Federal Government, may, however, empower the Railway Authority to incur capital expenditure subject to conditions to be prescribed.

8. The Railway Authority will be empowered, subject to the powers of the Governor-General in the exercise of his special responsibilities, and subject to the safeguarding of the rights of all officers in the service at the time of the establishment of the Railway Authority, to regulate by rules or by general or special order the classification of posts in the railway services on State-worked lines in British India, and the methods of recruitment,

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qualifications for appointment to the service, conditions of service, pay and allowances, Provident Fund benefits, gratuities, discipline and conduct of those services; to make such delegations as it thinks fit, in regard to appointments and promotions, to authorities subordinate to it; and to create such new appointments in the State Railway Services in British India as it may deem necessary or to make to authorities subordinate to it such delegations as it thinks fit in regard to the creation of new appointments. In its recruitment to the railway services the Railway Authority shall be required to give effect to any instructions that may be laid down to secure the representation of the various communities in India. In regard to the framing of rules to regulate the recruitment of the Superior Railway Services the Public Service Commission[1] shall be consulted. Any powers in regard to matters dealt with in this paragraph at present exercised by the Government of India over Company-managed railways shall in future be exercised by the Railway Authority.

9. The Railway Authority will at all times furnish the Federal Government with such information as that Government may desire, and will publish an Annual Report and Annual Accounts. The Accounts of the State-owned lines in British India will be certified by or on behalf of the Auditor-General.

10. Should any question arise involving a conflict of interest between the various authorities in British India responsible for railways, waterways and roads as competitive means of transport, a Commission will be appointed by the Governor-General to ascertain the views of all the interests concerned and to report, with recommendations, to the Federal Government, whose decision shall be final. The Commission shall consist of one independent expert of the highest standing and experience in transport matters, with whom will be associated, at the discretion of the Governor-General, two or more assessors.

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11. The Federal Government shall lay down regulations for safety on all the Indian railways and one of the Departments of the Federal Government, other than that responsible for Transport and Communications, shall be responsible for the enforcement of such regulations, subject, in the case of the Indian States, to the provisions of their respective Instruments of Accession.

In regard to the railways referred to in paragraph 4,[2] maxima and minima rates and fares shall be fixed by the Railway Authority subject to the control of the Federal Government. Any individual or organisation having a complaint against a railway administration under the control of the Railway Authority in respect of any of the matters which may, at present, be referred by the Railway Department to the Railway Rates Advisory Committee, may have the matter referred, under such conditions as the Federal Government may prescribe, to an Advisory Committee to be appointed by the Federal

[1] Mr. Joshi and Mr. Padshah consider that the Public Service Commission should be consulted in regard to the recruitment of both the Superior and Subordinate Services to the extent practicable.

Sir Muhammad Yakub considers that the Public Service Commission should be utilised in making appointments as far as practicable.

[2] Mr. Mudaliar and Mr. Joshi hold that the restriction under this clause to railways in British India conflicts with the provisions contained in the White Paper on the subject.

Mr. Ranga Iyer considers that the present powers exercised by the Government of India over all railways in Indian States should be exercised by the Railway Authority under the Federal Government.

It was represented on behalf of the Indian States that separate arrangements would be required for railways owned by Indian States, and accordingly no provision has been made for such railways in the scheme except to some extent under safety (paragraph 11, sub-paragraph 1) and again under arbitration (paragraph 12).

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Government. Before the Federal Government passes any order on a recommendation of the Advisory Committee it shall consult the Railway Authority.

12.[1] Provision should be made for the reference, at the request of either the Railway Authority or the Administration of a railway owned by an Indian State of disputes in certain matters such as the construction of new lines, the routing and interchange of traffic and the fixation of rates, to arbitration by a tribunal consisting of one nominee of each party and a chairman approved by both parties. The decision of the Committee should be final and binding on both parties. Should the parties be unable to agree on the nomination of a chairman, he shall be nominated by the Governor-General in his discretion.

The arrangements should be such as not to prejudice the position of the Federal Court as the interpreter of the Constitution and Constitutional documents.

Mr. Mudaliar and Mr. Joshi dissent from the proposals in this clause as antagonistic to the proposals in the White Paper.

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(10) Audit and Auditor-General

The existing audit system.

371. At present, Audit in India, both Central and Provincial, is carried out by a staff under the Auditor-General. He is appointed by the Secretary of State in Council, who also frames rules defining his powers and duties. In India, Accounts and Audit are carried out by a combined staff, so that the Auditor-General has functions in relation to Accounts as well as to Audit. An experiment was tried in recent years in one Province of separating Accounts from Audit but was abandoned on the grounds of expense. There is at present no constitutional provision requiring the report of the Auditor-General to be laid before the Legislature in India, though in fact this is done. Audit of the Accounts of the Secretary of State is carried out by the Auditor of Indian Home Accounts who, in accordance with Section 27 (1), Government of India Act, is appointed by

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the Crown by warrant countersigned by the Chancellor of the Exchequer. His report is by statute presented to Parliament. It has also been found convenient to use the services of the Home Auditor to audit expenditure by the High Commissioner.

The position and functions of the Auditor-General and the Home Auditor have been fully described by the Statutory Commission.[1]

Future arrangements.

372. When under the future Constitution the revenues of India are vested in the Federal and Provincial Governments, and no longer in the Secretary of State in Council as at present, it will clearly be necessary to provide that the Auditor-General in India shall report to those Governments and to the Legislatures in India, instead of to the Secretary of State in Council. With the establishment of Provincial Autonomy it will also be necessary to enable a Province to conduct its own Audit and Accounts if it should desire to do so, although, both on grounds of economy and for other reasons, many advantages would be gained by the maintenance of the present system. Even if some or all of the Provinces should ultimately conduct their own Audit and Accounts, it is desirable that Accounts framed on a common basis should be available for such purposes as the consideration by the Federal Government of applications for loans from Provincial Governments or proposals for the assignment of revenues to Units of the kind mentioned in our earlier section on Federal Finance.[2]

Audit of Home Accounts.

373. As regards payments made by the Secretary of State in this country out of Indian revenues, these will in future be mainly on behalf of the Central Government, especially in relation to Defence. Constitutionally, they will not in general differ from those made by the High Commissioners, except that they will more often relate to Reserved Departments than will be the case with expenditure by the High Commissioner. It appears desirable that the Audit of these

[1] Report, Vol. I, para. 432.
[2] *Supra*, paras. 241–262.

payments should be made by a Home Auditor on behalf of the Auditor-General in India and that the report should go through the latter to the Indian Legislature.

Recommendations.

374. The White Paper contains no proposals relating to the Auditor-General or the Home Auditor, although it recognises that the necessary provision would have to be made.[1] Our recommendations on this subject are as follows :—

Auditor-General in India

(i) The Auditor-General in India should be appointed by the Crown, and his tenure should be similar to that of a High Court Judge, that is, during good behaviour, subject to an age limit, and he should be removable only by the King in Council. He should not be eligible for further office under the Crown in India. His salary and general conditions of service should be prescribed by Order in Council.

(ii) His duties and powers should be prescribed in the first instance by Order in Council, but the Federal Legislature should have power to amend and supplement these provisions, subject to the prior assent of the Governor-General in his discretion to the introduction of the legislation.

(iii) The cadre of the Audit and Accounts Department should be fixed by the Federal Government. Salaries should be

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votable, except in cases where individual salaries are already non-votable under other provisions of the Act.

(iv) Central Audit and Accounts should apply as at present to the Provinces for a period of at least five years; but Provinces should be empowered to take over their own Accounts, or Audit as well as Accounts, on giving three years' notice, the earliest date for such notice being two years after the establishment of Provincial Autonomy. The Constitution Act should provide that if a Province elects to take over its own Audit the Chief Auditor of the Province shall be appointed by the Crown with tenure and conditions of service prescribed in the same way as those of the Auditor-General.

(v) The Report of the Auditor-General on the Federal Accounts should be submitted to the Governor-General, who would be required to lay it before the Federal Legislature. His report on the Provincial Accounts (or the Report of the Provincial Chief Auditor if the Province had taken over Audit) should be submitted to the Governor who would be required to lay it before the Provincial Legislature.

(vi) Whether a Province has taken over Accounts or Audit or not, it is essential that there should be established a uniform general form of Accounts for the Federation and for all British

[1] White Paper. Introd., para. 76.

India Provinces. Apart from this requirement, a Province which had taken over Accounts or Audit should have the same powers *mutatis mutandis*, as the Federal Government, in relation to the duties and functions of the Auditor-General and his staff.

Auditor of Indian Home Accounts

(i) Expenditure from Indian Revenues, Federal or Provincial, incurred in the United Kingdom, whether the disbursements are made in the High Commissioner's Office or in the Office of the Secretary of State should be audited on behalf of the Auditor-General in India by an Auditor of Indian Home Accounts. His report should be sent to the Auditor-General for incorporation in the Auditor-General's own report for presentation to the Indian Legislatures. In the event of a Province having its own Chief Auditor, the Home Auditor would report to him in relation to expenditure relating to that Province.

(ii) The Auditor of Indian Home Accounts should be under the general superintendence of the Auditor-General and subject to the general provisions mentioned above with regard to powers and duties. The Home Auditor should be appointed by the Governor-General in his discretion. His salary, which should be non-votable, and his conditions of service, except that his tenure of office and the procedure for removing him would be the same as in the case of the Auditor-General (though the age limit might differ), would be determined by the Governor-General

(iii) As regards the staff of the Home Auditor, cadre and salaries should be fixed by the Governor-General in his discretion. Salaries should be votable, unless in any individual case non-votable under any other provisions of the Act. The Home Auditor himself should appoint and remove members of his staff. Rights of existing members of the staff of the Home Auditor, including non-votability of salaries, should be protected.

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(11) Advocates-General

Functions of Advocates-General.

375. In the course of our enquiry we have been impressed by the desirability of making available to each Provincial Government the services of a Law Officer of independence and standing, who would occupy substantially the same position as that of the Advocate-General at present attached to the Governments of each of the three Presidencies of Bengal, Madras and Bombay. Section 114 of the Government of India Act enables His Majesty to appoint by warrant an Advocate-General for each of those Presidencies, but defines his functions no more explicitly than by providing that each Advocate-General may take on behalf of His Majesty such proceedings as may be taken by His Majesty's Attorney-General in England. We are informed however that in practice the functions of the Advocate-General may be briefly described as being to advise the Provincial Government on any legal problem which may be referred to him, to represent the Crown in original civil causes in the High Court to which the Crown is a party, and also in any criminal appeals in the High Court which are regarded as of special importance; while instances of his power to take such proceedings as may be taken by the Attorney-General here are his power to enter a *nolle prosequi*, or to grant a fiat for review of verdict, in criminal cases tried by the High Court in its original jurisdiction, and to protect public rights in such matters as public charities and public nuisances.

Advocates-General should be appointed in all Provinces.

376. We think that it will prove under the new Constitution no less necessary that an office of this kind, with a statutory basis, should be at the disposal of all Provincial Governments than it has proved in the past in the three Presidencies, where its existence is due to the fact that in the three Presidencies the High Courts, with which the Advocate-General himself has an historical connexion, have themselves a history differing from that of the High Courts elsewhere. It is no part of our intention to suggest that the office of Advocate-General should, like that of the Law Officers here, have a political side to it; indeed, our main object is to secure for the Provincial Governments legal advice from an officer not merely well qualified to tender such advice but entirely free from the trammels of political or party associations, who would retain his appointment for a recognised period of years irrespective of the political fortunes of the Government or Governments with which he may be associated during his tenure of office. We think in particular, that the existence of such an office would prove a valuable aid to a Ministry in deciding the difficult questions which are not infrequently raised by those prosecutions which require the authority of the Government for their initiation, though we recognise that the responsibility for decisions in these matters must of necessity rest in the last resort on the Government itself. We recommend, therefore, in order to secure the objects which we have in view, that the Constitution Act should require each provincial Governor to select

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at his discretion and appoint an Advocate-General holding office during his pleasure, and should contain an appropriate definition of the functions of the office in the sense in which we have described them above.

Other legal officers.

377. We understand that the Governments of the Provinces to which the office of Advocate-General is not at present attached have to rely for their legal advice either upon an officer, selected usually

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from the cadre of District Judges, who fills the post of Legal Remembrancer, or upon the member of the legal profession appointed in each District to act as Government Pleader and Public Prosecutor. Our proposal for the creation of the office of Advocate-General in every Province will not of course affect the necessity for retaining the existing appointments of Government Pleader and Public Prosecutor; nor do we contemplate that an Advocate-General would be in administrative control of these functionaries. And, although our recommendations are based on the assumption that the Provincial Government will seek the opinion of the Advocate-General on any legal question of importance on which advice is needed, there will still arise in day to day administration numerous matters of less importance which raise legal questions, for dealing with which the services of a Legal Remembrancer will, we have no doubt, continue to be required; indeed we understand that such an officer is found necessary in the three Provinces which at present have an Advocate-General.

The Federal Advocate-General.

378. The historical association with the Government of India of the High Court of Judicature at Calcutta (which, if our recommendations are accepted, will now be terminated, thus placing the High Court in the same relations with the Provincial Government as in the case of all other High Courts) accounts for the fact that the Advocate-General of Bengal acts as a Law Officer not only to the Bengal Government, but also to the Government of India. We think that there can be no justification for continuing this anomalous arrangement, which became still more anomalous when Calcutta, the permanent home of the Advocate-General, ceased to be the headquarters of the Government of India. But it will be in our opinion of the first importance that the Federal Government should have at its disposal the services of an Advocate-General of its own, and this need will be the more marked with the establishment of the Federal Court, before which the Federal Government will require to be represented by an Advocate of standing and repute. Here also we think it essential that the Advocate-General should hold his office on a settled tenure and should have no political associations with the Federal Ministry; and provision for his appointment (which would in this case also be made by the Governor-General acting in his discretion) and functions should be on the same lines as we have indicated in the case of the Provincial Advocates-General.

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(12) The High Commissioner for India

The High Commissioner.

379. There has been a High Commissioner for India in London since 1920. Orders in Council framed under Section 29A of the Government of India Act make provision for his appointment and duties, and various agency functions on behalf of the Government of India and Provincial Governments which were formerly discharged by the India Office have been transferred to him. Under the new Constitution it will be no less essential, and constitutionally even more appropriate, that there should be a High Commissioner, though the White Paper does not make any reference to this subject.

Appointment should be made by Governor-General in his discretion.

380. As the High Commissioner will no doubt continue to serve Provincial Governments as well as the Federal Government it seems to us appropriate that the appointment should be made by the Governor-General in his discretion, though we assume that he would consult his Ministers before doing so. It may be that some of the States which accede to the Federation would also find it useful to employ the agency of the High Commissioner for some purposes, and we consider that it should be open to them to do so.

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Duties of High Commissioner.

381. It will no doubt be necessary for the Constitution Act to make appropriate provisions on various matters connected wiih the High Commissioner, such as the making of contracts and the safeguarding of existing rights of members of his staff who were originally transferred; and it may well be that examination will show that it is the High Commissioner who will be the appropriate authority to assume the liability to be sued in this country in respect of obligations of a Government in India and that provision to that effect should be made in the Constitution Act.

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(13) Transitory Provisions

Transitory provisions necessary, if Provincial Autonomy precedes Federation.

382. We have expressed the opinion[1] that, while it is desirable, if not essential, that the same Constitution Act should make provision both for the establishment of autonomy in the Provinces and also for the establishment of the Federation, the establishment of Provincial Autonomy is likely to precede in time the inauguration of Federation. It is clear therefore that the Constitution Act should contain provisions of a transitory nature which will, on the inauguration of Provincial Autonomy, settle the constitution and powers of the Central Government and Legislature which are for the time being to co-exist with the autonomous Provinces, until such time as they can be replaced by the Federal Government and Legislature for which provision will be made in the Constitution Act.

Proposals in White Paper.

383. This matter is dealt with very briefly in the White Paper.[2] The scheme there contemplated is that the Constitution Act will contain provisions enabling temporary modifications to be made in the provisions relating to the Federation, so as to enable the present Indian Legislature to continue in existence, to suspend the operation of the provisions relating to the Council of Ministers to be appointed by the Governor-General, and to provide during the interim period for the administration of all Departments of the Central Government by the Governor-General, with the assistance of Counsellors responsible to himself, as though they were Reserved Departments. Examination of these proposals has led us to regard them as not in all respects appropriate: for instance, one effect (which we understand was not in fact in the minds of His Majesty's Government when the proposal was framed) of treating all Departments of the Central Government as for the time being Reserved Departments within the meaning of the White Paper would be to remove from the purview of the Legislature all supply required for Central purposes and to make it non-votable. We fully accept so far as it goes the general intention stated in the White Paper as underlying these proposals, viz., that the Central Government, though necessarily deprived of much of its present range of authority in the Provinces, should for the time being be placed in substantially the same position as that occupied by the Governor-General in Council under the existing Act. But we are of opinion that the actual method proposed in the White Paper for securing this result is not the best available, and, indeed, that the purpose to be achieved is not fully stated.

Objects to be secured.

384. We do not attempt to set out in detail the method which should be adopted to secure the object in view, since we recognise that the problem is largely one of the technicalities of draftmanship. We think it right however to indicate the general purposes which, by whatever method, ought in our opinion to be attained as the

[1] *Supra*, para. 154.
[2] White Paper, Proposal 202.

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result of these transitory provisions. It is clear in the first place that it will be necessary to keep in being the existing Central Legislature, composed as at present and elected upon the existing franchise, and with the existing number of nominated members, official and non-official; and in the second place, there should in our opinion be no necessity during the transitory period to alter the composition of, or the method of appointment to, the existing Central Executive. But, granted these two premises, it is equally clear that the establishment of Provincial Autonomy will necessitate consequential changes in the powers of both the Central Legislature and Executive, which will differ but little from the changes which will result from the establishment of Federation.

Modifications in White Paper proposals recommended.

385. Provincial Autonomy as envisaged by our recommendations necessitates, no less than Federation, a statutory distribution of legislative powers between the Central and Provincial Legislatures, and a distribution which will be identical with that contemplated under Federation. Similarly, Provincial Autonomy will involve, so far as the Provinces are concerned, the same statutory distribution of financial powers and resources as that contemplated under Federation. And, in order to determine questions arising between Centre and Provinces out of their legislative and financial relationships, a Federal Court will be no less necessary during the interim period than under Federation. So far as the Executive is concerned, Provincial Autonomy involves the same limitations upon the powers of the Central Executive in relation to the Provinces as will be involved for the purposes of Federation, and, in that connexion, it will be no less necessary under Provincial Autonomy than under Federation to differentiate between the functions of the Governor-General in Council (a corporate body, exercising corporately with very narrow exceptions all the functions of the Central Executive) and those of the Governor-General. In other words, it will be as necessary under Provincial Autonomy as under Federation to give the Governor-General personally that control over the Governors in the exercise of their special responsibilities and of matter left by law to their discretion which is involved in our proposals relating to Provincial Autonomy, and to make it clear that the power which under Federation will vest in the Governor-General acting in his discretion to give mandatory directions through the Governors to Provincial Governments, with which we have already dealt[1], must be vested during the transitory period also in the Governor-General acting in his discretion. We consider further that the recommendation which we have made[2] with regard to the settlement of disputes between Province and Province, or between the Centre and a Province, with regard to water rights should also be brought into force during the transitory period; and that from the date of the

[1] *Supra*, paras. 220–22.
[2] *Supra*, para. 224.

inauguration of Provincial Autonomy the Governor-General should become solely responsible for the control of the relations between the Crown and the States.

Details should be left to draftsman.

386. Such, in our view, are the purposes which any transitory provisions should be designed to secure, and, as we have already indicated, we think that it should be left to the ingenuity of the draftsman to suggest to His Majesty's Government the best and most appropriate method of carrying them into effect.

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PART III

BURMA

(1) Introductory

The "Burma White Paper."

387. The White Paper, as we have said elsewhere, does not deal specifically with Burma, because at the date when it was issued opinion upon the constitutional problem appeared to be still indefinite. The Secretary of State has, however, submitted to us Proposals for a scheme of constitutional reform in Burma, which are set out in a document very similar to the White Paper. This document has been printed among the Records of the Committee, and it will be convenient to refer to it hereafter as "the Burma White Paper"; but the Secretary of State has made it plain that, unlike the Indian White Paper, its recommendations are not to be taken as representing the final and considered policy of His Majesty's Government, but only as a first sketch of the main lines of a possible Constitution, if Burma is separated from India. Since this document was submitted to us, we have had the advantage of full discussions with the Burma Delegates, who also furnished us before and after their departure from this country with a number of memoranda on the Proposals, to which we have given our close attention and which have been of great value to us. These memoranda are also printed among the Committee's Records.

Subjects to be discussed.

388. We propose in this part of our Report to give first a short account of Burma and of the reasons which have led us to the conclusion that it should not form part of the Indian Federation; secondly, to consider the very important question of the trade relations between India and Burma after separation; and thirdly, to set out our recommendations as to the future government of the country in the form of a commentary upon the Burma White Paper.

The Province of Burma

Area of Province.

389. Burma is the largest of the Provinces which at the present time constitute British India. It extends from the high mountainous area in latitude 28° N., where the unadministered tribal tracts of Assam and Bengal march with Tibet and China, to the mouth of the Irrawaddy, latitude 16° N., and to Victoria Point, latitude 9·58° N., on the narrow Malay Peninsula, which divides the Gulf of Siam from the Bay of Bengal. Its total area is some 234,000 square miles; Madras, the next largest Province, has an area of about 142,000 square miles. The population of Burma is, however, only 14,500,000, which is less than the population of any other Indian Province, except Assam and the North-West Frontier Province, with areas of 49,000 and 13,000 square miles respectively.

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Physical features.

390. The Province falls into three main geographical divisions; on the west Arakan, lying between the Bay of Bengal and the range of hills known as the Arakan Yomas, which mark the western side of the Irrawaddy basin; in the centre the Irrawaddy basin, which is in many ways the heart of Burma and the true home of the Burmese people; and on the south-east the long narrow strip comprising the old province of Tenasserim, which runs down the west side of the Malay Peninsula to Victoria Point, and which with Moulmein as its capital was the nucleus of British territorial dominion in Burma. The physical characteristics of these three divisions present striking contrasts, and it is a far cry from the City of Rangoon, planned and laid out on modern lines, with a population of 400,000 and a port

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handling a volume of exports and imports only surpassed in India by Calcutta and Bombay, to the sparsely inhabited mountain tracts where the most primitive forms of cultivation afford a precarious living to isolated tribal communities. Political consciousness ranges correspondingly from that of the European-educated barrister with nationalist ambitions as eager as any to be found in the Provinces in India to the entirely negative attitude of the Wa head-hunter or the tribesman of the Chin Hills, whose sole political emotion is probably an inherited antipathy for, and suspicion of, his cousin in the plains.

Its isolation.

391. The steep and densely wooded mountains on the north and north-west of Burma, where it marches with Assam, Manipur, and Bengal, cut off access from India, and on the east, where its neighbours are the Chinese province of Yunnan in the north, and French Indo-China and Siam in the south, effectively prevent intercourse with adjacent countries save by a few difficult caravan routes. Between continental India and Burma intercourse is and must be wholly by sea; and Rangoon is 700 miles by sea, a forty-eight hours' voyage, from Calcutta, and 1,000 from Madras. In these circumstances it is not surprising that the influence of India upon Burma has been of the slightest; and to this we should add that, Buddhism being the prevailing religion, caste and communalism are unknown, though there are certain racial cleavages, and that the women of Burma are regarded socially and politically as on an equality with men. The Burmese language is spoken by the great majority of the inhabitants, though there are numerous local dialects. Of the total population some 10,000,000 are Burmans, 1,250,000 Karens, and 1,000,000 Shans inhabiting for the most part the frontier tracts; and of the non-indigenous races the most numerous are Indians, who number approximately 1,000,000.

Summary of British connection with Burma.

392. Trading relations between the United Kingdom and Burma began in the latter part of the seventeenth century, but it was not until 1824 that, in retaliation for the invasion of Manipur and Assam by Burmese forces from Arakan, British troops from India were landed in Burma and seized Rangoon and the Tenasserim Coast,

which by the Treaty of Yandabo in 1826 were, with Arakan, ceded to Great Britain. In 1852, following a series of outrages on British subjects by the Burmese Governor of Rangoon, for which no redress could be obtained from the Burmese King, the second Burmese War ended with the annexation of the province of Pegu; and ten years later the coastal districts of Tenasserim and Martaban, with Rangoon and Pegu, were formed into a Chief Commissioner's Province. The friendly relations which had been established in 1867 with King Mindon Min came to an end with the accession in 1878 of King Thibaw, who maintained himself on the throne by the ruthless massacre of all who opposed him, oppressed British traders, and finally entered into negotiations for alliances with European powers. In 1885 the Government of India presented the King with an ultimatum, which was rejected; a British force entered Mandalay without resistance; the King was deposed, and on 1st January, 1886, Upper Burma was by Proclamation annexed to the British Crown. Many years were occupied in restoring order, but gradually a regular system of administration was established; and in 1897 Upper and Lower Burma were constituted as a single Lieutenant-Governorship, with a Provincial Government and a Legislative Council, which originally comprised nine nominated members (including four

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officials), and was gradually expanded until in 1920 it contained thirty members, two elected by the European Chamber of Commerce and the Rangoon Trades Association, and twenty-eight (including twelve officials) nominated by the Lieutenant-Governor.

Attitude of the political parties to separation

Burma and the 1919 reforms.

393. The Declaration of 1917, which held out prospects of advance to Burma no less than to other Provinces, encouraged the growth of a vigorous Home Rule movement, and also, as an immediate objective, a strong demand that Burma should enjoy as fully as the rest of India the advance towards responsible government made possible by the reforms of 1919. A series of deputations of Burman political leaders between 1918–1920 pressed for the application to Burma without restriction or diminution of the dyarchical system of government granted to the Provinces of India by the Act of 1919. In 1921 the Secretary of State decided to recommend to Parliament the extension to Burma of the reforms inaugurated by the Act, and the recommendation was endorsed by the Standing Joint Committee of Parliament on Indian Affairs on 25th May, 1921.

Burma constituted a Governor's Province.

394. Particular questions, such as the franchise suitable to conditions in Burma, the composition of the Legislative Council, and the subjects to be transferred to the administration of Ministers, were remitted to a Burma Reforms Committee presided over by Sir A. F. Whyte. The proceedings of the Committee were hampered by a boycott organised by the General Council of Burmese Associations and the societies affiliated to it, who demanded a much more advanced

Constitution than had been accorded to India and refused to have anything to do with dyarchy, a refusal persisted in until the autumn of 1932 ; but despite the boycott the Committee was able to carry through its task, and following on its Report Burma was constituted a Governor's Province in January, 1923, with a reformed Legislative Council, and a dyarchical system corresponding to that in other Provinces. There was, however, one notable difference ; for in Burma the departments transferred to Ministers included from the outset the Forest Department, which in Burma is of peculiar importance, not only because of the considerable revenue derived from the forests, but also because no less than three-fifths of the total area of the Province consists of forest land.

Co-operators and "anti-separationists."

395. The active political leaders in Burma who accepted as a first instalment the measure of self-government afforded by provincial dyarchy, did not on that account abandon their conviction that both on racial and on economic grounds it would be better for Burma to pursue her own distinct line of development at the first possible opportunity, and foresaw that such an opportunity would be likely to occur after the ten-year period prescribed in the Act of 1919. Accordingly they took their seats in the Legislative Council, and when the time came, stated their opinions freely to the Indian Statutory Commission, who reported that they had little doubt that the resolution passed unanimously by the Legislative Council during their visit to Burma in favour of separation from India was the verdict of the country as a whole. On the other hand, the party which in 1922 had boycotted the Whyte Committee and had refused to enter the Legislative Council or co-operate in a dyarchical form of government, stood aloof and tendered no evidence before the Commission. Their unhelpful tactics have tended to obscure the fact that they too seek, and have steadfastly sought, as their ultimate objective, Burma's independence of India and the development of

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the country on separate lines. The difference between them and what we may call the co-operating parties has, we think, been mainly one of tactics. Whereas the latter are and have been prepared to accept what is granted to the rest of India as a stepping stone to something better, the non-co-operators persist in rejecting every offer made and in standing out on every occasion for the impossible, in the belief that thereby they increase the prospect of extracting from the British Government and Parliament a more liberal constitutional scheme for Burma. They took the opportunity afforded by the election campaign in 1932 (which was to give the electorate a means of expressing through their elected members their views on the question of separation) to excite a wave of feeling not so much against the idea of separation as against the Constitution for a separated Burma outlined by His Majesty's Government at the close of the Burma Round Table Conference, on the ground that it, too, was, as it undoubtedly and inevitably is, dyarchical in nature. Having decided to reject the Constitution held out as a concomitant

of separation, they found it difficult to distinguish this policy from opposition to separation in the abstract; and, describing themselves for the purpose of the election as "anti-separationists," they were driven to advocating the only possible alternative, that is, inclusion in the Federation.

Both parties desire separation.

396. We have satisfied ourselves by discussion with the Delegates from Burma representing the anti-separationist parties that they have no real desire to see Burma included in an Indian Federation; and indeed they frankly admit that on their own terms they would unhesitatingly prefer separation. The policy they have adopted contemplates only the inclusion of Burma in the Indian Federation on the basis of special financial and fiscal conditions (which so far as we have been able to understand them would be inconsistent with the fundamentals of a federal system), and on the understanding that at her chosen moment Burma would be at liberty to secede. We have no hesitation in describing this policy as wholly impracticable, and we can affirm that the Delegates from India who have been associated with us have just as little hesitation in ruling it out as incompatible with the conception of Federation. Its adoption by the Burman anti-separationist leaders is to be explained, we believe, by the mistaken idea that if Burma, as a unit of the Indian Federation, were to take part in such further advances towards full responsible self-government as may be made by the Federation, she would on leaving it at the moment of her choice start off on her own separate course so much further forward in the direction of her ultimate constitutional goal. Criticism in detail of this conception of future possibilities would involve us in dangerous fields of speculation; and we think it sufficient to record our opinion that, even if Burma could be permitted to enter the Indian Federation and to leave it at will, it is certain that Parliament would still regard it as its function to regulate her constitutional status and her relations with other possessions of the Crown. The inference which we draw from our examination of the course pursued by the Burman anti-separationists is tha in fact, they desire the separation of their country from India, but are distrustful of the consequences which may follow if the step is taken now; and we see no reason to dissent from the conclusion at which the Statutory Commission arrived that "so far as there is public opinion in the country it is strongly in favour of separation"; nor do we believe that a recommendation in this sense would seriously offend Burman sentiment in any quarter.

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Separation justified on practical grounds.

397. The question is not, however, one to be decided solely on considerations of sentiment. The Statutory Commission adduced many other most cogent grounds for the separation of the two countries—the absence of common political interests with continental India, the constant and increasing divergence of economic interests, the financial inequities (as they appear in Burman eyes) which association with India inevitably entails. They were also of opinion

that separation should take place at once. "We base our recommendation," they observed, "that separation should be effected forthwith on the practical ground that no advantage seems likely to accrue from postponement of a decision to a future date. The constitutional difficulties of securing Burman participation in the Central Government of India are not prospective but actual. They will grow with every advance in the Indian Constitution and will prejudicially affect not Burma only but India itself."[1] By the emergence into the field of practical politics of the proposal for an Indian Federation these arguments are greatly reinforced. It may be some time before the Federation is actually in operation; but already there are projects directly or indirectly ancillary to it which are rapidly taking shape, and the more deeply Burma became involved in these as a result of her present position as a Province of British India, the more difficult would be her disentanglement from them hereafter. We are, therefore, clearly of opinion that the separation of Burma, if it is to be effected at all, should not be postponed.

Commercial Relations between India and Burma

Economic effects of separation.

398. We should have no hesitation at all in endorsing the conclusion arrived at by the Statutory Commission, if it were not that grave doubts as to the material benefits likely to accrue to Burma as a result of separation have been expressed by persons well qualified to hold authoritative opinions on the complex problems involved. It may be an invidious task to balance national aspirations and sentiment against estimates of profit and loss; but we feel that it would be a sorry concession to Burman sentiment if we were to recommend separation without weighing carefully the possibility of a serious diminution, whether immediate or prospective, of material prosperity. We have alluded to the increasing divergence of economic interests to which the Statutory Commission drew attention; and further evidence of this divergence has been provided by events since the date of their Report. It is said that if Burma were separated from India she would be free to develop her own fiscal policy on lines which are impossible for her while she is tied to India, and that only by separation can she secure the freedom to do so. The matter is, however, not quite so simple. Separation would undoubtedly enable Burma to evolve a fiscal policy more suited to her peculiar needs than the high tariff policy of the Government of India; but it takes time to develop a policy, and still more to gather its fruits, and separation must have consequences of immediate effect, both financial and economic.

Tariffs and separation.

399. An apportionment of assets and liabilities between the two Governments would have to be made, as well as of revenues and charges which are now classified as central. The Statutory Commission examined the probable results of such an apportionment,

[1] Report, Vol. II., para. 224.

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and a more detailed but still incomplete investigation of this aspect of the question was made after the first Round Table Conference, the results of which are embodied in the Report known as the Howard-Nixon Report. The joint investigators were not able to agree as to the basis of adjustment to be adopted in respect of certain charges, and the statistics on which they worked have been substantially affected by the general economic depression, to which Burma, depending almost entirely on the export of natural products, has been exposed as severely perhaps as any country in the world. But we are satisfied, after examining the more recent statistics furnished to us by the Government of Burma, that Burma is at any rate not likely to be any worse off in respect of net revenue as a result of separation, and indeed, if economic conditions improve, may gain considerably. But as regards the immediate effects on trade the position is not so clear. A very considerable trade between Burma and India, averaging in value in normal times some 40 crores (or £30 million) a year, has grown up in the 48 years since Burma was fully annexed to India and it has grown up on a tariff-free basis, the Province of Burma being within India's tariff wall. These conditions would be wholly altered by the fact of separation. Burma would cease to be an economic, no less than a political part of British India, and if nothing is done to prevent it, the tariff of each country would apply against the other.

Effect of tariffs on India-Burma trade.

400. We conceive that one essential provision in any Constitution that may be devised for Burma in the event of separation will be that existing Indian laws shall continue to have effect in Burma after separation unless and until amended or repealed by the Burma Legislature. Some such general provision would in any event be necessary in order to provide the basis on which the administration may be carried on without interruption; but if it extended to the Indian Tariff Acts and the Schedules attached to them the result would be that Burma would have to levy the customs duties prescribed by these Schedules on all goods imported into Burma, including goods imported from India, which hitherto have been free from duty; and similarly with India in the case of goods imported from Burma. Of Burma's total exports, averaging in normal times about 56 crores (£42 millions) per annum, about 48 per cent. (or £18 millions) goes to India, representing about 14 per cent. of India's total imports. Of Burma's total imports, averaging in normal times about 28 crores (or £21 millions) per annum, about 42 per cent. (or £9 millions) are from India, representing 5½ per cent. of India's total exports. Thus the India-Burma trade constitutes nearly half of Burma's export and import trade and an appreciable portion of that of India; and it is clear that the heavy duties of the Indian protective tariff might have a serious effect upon it.

Suggestions for a Trade Convention.

401. We recall that the Burma Sub-Committee of the First Indian Round Table Conference, while advocating the principle of separation, expressed the hope that it might be found possible to

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conclude a Trade Convention between India and Burma, and stressed the importance of causing as little disturbance as possible of the close trade connections which at present exist between the two countries. Detailed suggestions for such a Convention were submitted to us by the Burma Chamber of Commerce, and we have had the advantage of studying memoranda on the subject furnished by

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the Delegates who represented that Chamber and the Burma-Indian Chamber of Commerce and who also gave oral evidence before us. Briefly, the suggestion is this: that until such time as the two new Governments are able themselves to conclude a Trade Agreement, the existing fiscal relations between India and Burma should be maintained by special statutory provision in the two Constitution Acts. This suggestion, if adopted, would leave Burma bound for the time being to impose on imports from other sources than India the duties scheduled to the existing Indian Tariff Acts. But one of the principal considerations urged in favour of the separation of Burma from the rest of India is that the heavy duties imposed by India on certain classes of manufactured goods for the protection of Indian industries are detrimental to the interests of Burma, which demand the cheap importation of such commodities as manufactured iron and steel. The Chamber of Commerce would meet this difficulty by giving liberty to both countries to alter their tariffs (which would at the outset be identical) in relation to third countries (subject to arrangements designed to prevent the import of goods on which the tariff might have been lowered into either India or Burma, as the case might be, in order to re-export to the other), with a proviso that neither country shall without the consent of the other vary existing tariff rates in respect of an agreed list of goods or commodities, that is to say, goods or commodities in respect of which either India or Burma enjoys, by virtue of the existing freedom of trade between them, a preference so valuable that any reduction of it would seriously affect the trade in that article between the two countries

The suggestions criticised.

402. These proposals are at first sight attractive, but they rest on a hypothesis which we believe is not likely to be substantiated in fact. The Memorandum of the Chamber of Commerce strongly deprecates the assumption that the Government of Burma will need any additional revenue which might result from taxing the India-Burma trade. It assumes on the contrary that as the result of the financial settlement with India, Burma will gain to an annual extent sufficient, even in the present depressed conditions, to give her a small surplus with which to meet new expenditure. We are informed that the Government of Burma do not share this view, and anticipate that, even allowing for a favourable settlement, the future Government of Burma will need to raise some revenue from trade with India. But however that may be, it is obvious that whatever gain the settlement may bring to Burma, it will involve an approximately equal loss to Indian revenues; and the Government of India, we understand,

have no doubt at all that they will have to look to taxes on the trade with Burma to make good some of this loss. It may be assumed therefore, that after separation it will not be possible, on the Indian side at any rate, to maintain even for a short period an India-Burma trade free of customs duties; and when one invasion of the free trade system has been made, compensating adjustments will probably be required all round.

Moderate tariffs not necessarily injurious to trade between the two countries.

403. A departure from complete freedom of trade need not in all cases seriously prejudice trade between India and Burma, which depends not so much on the absence of duties as on the margin of protection afforded against competing goods from other sources; and it may well be that in respect of several classes of goods exchanged by Burma and India the imposition of a light import duty would not materially affect the flow of trade. This, however, could only be

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ascertained by expert examination of the trade item by item; and we are of opinion that the first step to be taken is that Burma and India should agree on a list of goods on which duties could safely be imposed up to a prescribed limit sufficient to secure the India-Burma trade against dislocation. It would also be necessary to deal with the question of substituting equivalent import duties for the excise duties at present imposed in India on Burma products, and vice versa. To secure its object, such an agreement would have to be operative from the moment of separation, and it must therefore have been concluded before the new Governments are established, i.e., between the existing Governments. But an agreement by the existing Governments can only be made binding on the Governments to be established by the new Constitution Acts by statutory provision in both Acts

Burma may desire to reduce existing high tariffs on certain goods.

404. Though the primary purpose of any agreement imposed upon the new Governments of India and Burma by the Constitution Acts would be the regulation of India-Burma trade with the minimum disturbance of its existing conditions, this cannot be achieved in isolation. The imposition of duties on goods previously exchanged between India and Burma on a no-duty basis may affect the questions of the duties properly leviable by either country on competing goods from other sources. Moreover, Burma may desire to reduce the high protective duties at present imposed by the Indian tariff on certain manufactured goods imported from outside. This is recognised by the Burma Chamber of Commerce, and their representative in his supplementary memorandum, makes specific suggestions for dealing with the case, and also with the question of re-export from the country of the lower tariff to the other country. The agreement should, therefore, contain as its secondary purpose provisions enabling either country to vary its tariffs on goods from outside sources, but within prescribed limits, so as not to defeat the primary purpose for which it is made.

Period during which a Trade Convention should continue in force.

405. An agreement of this kind embodied in the Constitution Act, even though mutually advantageous to the two countries, must necessarily constitute to some extent an encroachment upon the fiscal liberty which Burma after separation is to enjoy, and which India already enjoys. The encroachment would be less, if the agreement provided full opportunity to both parties to vary details by mutual consent during its currency; but it is in any event desirable that the agreement itself should continue for the shortest period which is compatible with the securing to those concerned in the India-Burma trade of a reasonable measure of certainty as to the immediate future. One possible course would be to impose the agreement for an undefined period subject to denunciation by either country at reasonable notice, say twelve months. If the agreement proved to be congenial to the needs of both, such an arrangement might promise the greatest prospect of stability; but there is a risk that national *amour propre* might lead one or both of the new Governments to denounce it as soon as it had the power to do so, with the result that the agreement might last for little more than the period of notice. Another course, advocated by the Burma Chamber of Commerce, would be to enact that the agreement should continue until replaced by another concluded between the two new Governments. This, however, would give one Government, if it found that it enjoyed an advantage at the expense of the other the option of retaining that advantage indefinitely; nor do we think that it would be fair to impose upon the future Government of Burma

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in the period immediately following separation the heavy burden of negotiating an intricate Trade Agreement. In our opinion, it would be best that the agreement should last for a definite period of one or more years, either Government having the right thereafter to give twelve months' notice to determine it ; and that it should contain provisions for the mutual adjustment of details from time to time during its currency, where both parties desired such adjustments to be made.

Statutory provisions recommended.

406. We recommend, therefore, that the Governor-General of India and the Governor of Burma shall be respectively empowered in their discretion (i) to apply for a prescribed period to the exchange of goods and commodities between India and Burma a scale of customs duties which shall have been mutually agreed between the existing Governments of India and Burma, or determined by His Majesty's Government in default of agreement, the scale not to be susceptible of variation during the prescribed period except by mutual consent ; and (ii) to apply to specified classes of goods and commodities imported into either country from outside sources such variations of the duties imposed by the Indian Tariff Schedules at the date of separation as may have been mutually agreed by the existing Governments of India and Burma before separation, or determined by His Majesty's Government in default of agreement, or as may be mutually agreed thereafter by the two Governments during the prescribed period.

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Immigration of Indian labour.

407. The negotiations for a Trade Agreement might also be extended to the regulation of the immigration of Indian labour into Burma for the first few years after separation. We allude elsewhere in our Report to the desirability of withholding from Indian-British subjects the unrestricted right of entry into Burma after the separation, in order that the Government and Legislature of Burma may be free to regulate the influx of cheap labour in competition with the indigenous sources of supply. The problem is already acute, as the Royal Commission on Labour in India have recorded, and we endorse the opinion expressed by that Commission that the best way of solving the problem is by mutual agreement between the two Governments concerned. But the period immediately after separation is evidently not the most suitable opportunity for negotiating an agreement on a matter which is peculiarly capable of provoking lively animosities, and we are of opinion that, whether or not in direct connection with an agreement to regulate trade relations, at any rate at the same time, an agreement to control the influx of Indian labour into Burma should be concluded between the existing Governments. Such an agreement, which might conceivably run for the same period, and be determinable on the same notice, as the Trade Agreement (though this is a point on which we wish to make no definite recommendation), would also need to be given statutory force by the two Constitution Acts, so as to be effectively binding on the new Governments for the period of its validity.

Conclusions.

408. The difficulty of regulating the economic relations of India and Burma in the period immediately following separation has presented itself to us as the most serious obstacle to a recommendation in favour of separation, which on all other grounds seems plainly to be indicated. We were much impressed by the views of the Delegates representing commercial interests, both European and Indian, on the disturbance of India-Burma trade which might result from separation. We believe, however, that an agreement such as we have suggested would enable both countries to tide over the

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critical period, and in these circumstances we regard ourselves as justified in recommending that the separation of Burma from India should be effected simultaneously with the introduction of the constitutional changes which we have recommended in the case of the other Provinces of India.

(2) The Burma White Paper

The Government of Burmaa unitary government.

409. Before considering in detail the proposals in the Burma White Paper, we have certain preliminary observations to make. It is in the first place evident that a new Constitution for Burma, whatever may be its precise form, must differ in many respects from that which we have recommended in the case of the Governors' Provinces in India. The Government of Burma will be a unitary

government, and therefore no question of any distribution of executive or legislative powers will arise, since the Government will unite in itself all the powers which in a Federated India will be divided between the Federal and Provincial Governments.

The Karenni States.

410. Next, we desire to draw attention to some of the legal consequences of separation. On the Indo-Siamese frontier of Burma lies the territory known as the Karenni States, whose independence was guaranteed by a treaty with the former Burmese Kingdom in 1875. These States are not a part of British India, but are nevertheless part of "India" as defined by the Interpretation Act, 1889, because under the suzerainty of the Crown exercised through the Governor-General. They are under the direct control of the Government of Burma, jurisdiction in them being exercised by the Governor on behalf of the Governor-General by virtue of powers delegated under the Foreign Jurisdiction Act; but their constitutional position seems to differ in no respect from that of Indian States in which the Crown exercises jurisdiction by treaty, usage or otherwise. The jurisdiction therefore which is at present exercised by the Crown through the Governor-General of India, and through the Governor of Burma by virtue of the powers delegated to him, will have to be resumed into the hands of the Crown, and thereafter exercised directly through the Governor of Burma, without the intervention of the Governor-General of India. The Burma White Paper rightly proposes that the first of these objects shall be secured by the Constitution Act itself; for the second a new Foreign Jurisdiction Order in Council will clearly be required.

Application of Acts of Parliament extending to His Majesty's Possessions outside British India.

411. We assume that provision will be made for the continued application to Burma after the separation from India of all Acts of the Imperial Parliament which extend at the present time to Burma as a part of British India. But there are a number of other Acts of Parliament which apply to His Majesty's overseas possessions exclusive of British India; and when Burma ceases to be a part of British India, it would seem that those Acts would, in the absence of provision to the contrary, apply to Burma as they apply elsewhere. Thus, all Acts which are declared to extend to "colonies" would at once become part of the law of Burma, since "colony" is defined in the Interpretation Act, 1889, as "any part of His Majesty's dominions exclusive of the British Islands and of British India." Out attention has been drawn in this connection to the Colonial Laws Validity Act, 1865, some of the provisions of which appear to be quite inconsistent with any Constitution which we could contemplate for Burma. We think that special provisions will be required in the Constitution Act to deal with this point; and we

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agree also with the Secretary of State that no room should be left for any suggestion that the new status of Burma will be assimilated to that of a Crown Colony. Apart from this, it will obviously be necessary to make provision for the continued application to Burma

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of existing British Indian laws, until repealed or amended by the Burmese Legislature or other competent authority; but there will have to be some machinery for adapting those laws to meet the new constitutional situation, as, for example, by substituting the Governor of Burma for the Governor-General in Council, where the latter expression occurs in an existing Act.

Agreements at present binding upon Burma as a part of British India.

412. It is proposed that the Constitution Act should declare that all rights and obligations under international Treaties, Conventions or Agreements which before the commencement of the Act were binding upon Burma as part of British India shall continue to be binding upon her.[1] A similar provision is to be found in section 148(1) of the South Africa Act, 1909, the Act which constituted the Union of South Africa. In that case, however, the States or Provinces by or on whose behalf the Treaties, Conventions or Agreements had been made became part of a new and larger organism, which necessarily assumed responsibility for all the existing obligations of its constituent members; but we are not clear that the case of a State which becomes autonomous by separation from a larger State is precisely analogous, at any rate so far as rights as distinguished from obligations are concerned, and we are disposed to think that the matter may require some further examination.

His Majesty's title in relation to Burma.

413. We should mention here that the Delegates from Burma, both in a Joint Memorandum signed by several of them and orally before us, expressed the hope that His Majesty might be pleased to adopt the title of King-Emperor of Burma. It would not be proper for us to express any opinion on this suggestion until His Majesty's pleasure had been taken; but we may perhaps be permitted to make the following observations. His Majesty's full style and title is "George V by the Grace of God of Great Britain, Ireland, and of the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India"; and Section 1 of the Government of India Act therefore correctly describes the territories for the time being vested in His Majesty in India as governed "by and in the name of His Majesty the King, Emperor of India." From this it is clear that, though it is not incorrect to speak of His Majesty in relation to His Indian Empire as "The King-Emperor," the expression "King-Emperor of India" is not legally a part of His Majesty's style and title. Hence a reference to Burma in the Royal Title could, subject to His Majesty's consent, only be introduced by legislation, which, since the Statute of Westminster became law, would require the concurrence of the Dominion Governments. The Delegates also desired that the Governor should in future be known as the Governor-General of Burma; but this too is a matter on which we think that His Majesty's pleasure would have to be taken.

[1] Burma White Paper, Proposal 5.

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The Executive

The Executive Government.

414. The proposals in the Burma White Paper with regard to the Executive follow generally those in the India White Paper with regard to the Executive Government of the Federation and of the Provinces; that is to say, executive power and authority is to be

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vested in the Governor as the representative of the King, aided and advised by a Council of Ministers.[1] We approve these proposals in principle, and it is not necessary to repeat what we have already said on the subject in the earlier part of our Report; but there are certain divergencies between the India and Burma White Papers to which we should draw attention, as well as other points which arise only in the case of Burma.

Law and Order.

415. The Council of Ministers will have a constitutional right to tender advice to the Governor in the exercise of the powers conferred upon him by the Constitution Act, other than powers connected with certain Departments which will be reserved for the Governor's own direction and control and matters left by the Constitution Act to the Governor's own discretion; but the Governor will be declared to have a special responsibility in respect of certain matters and where they are involved will be free to act according to his own judgment. The matters which it is proposed shall be reserved to the Governor's own direction and control, are Defence, External Affairs, Ecclesiastical Affairs, the affairs of certain Excluded Areas, and monetary policy, currency and coinage. With these we deal later, but we point out that they do not include law and order, which will, therefore, fall within the ministerial sphere, as it will in the Indian Provinces, if our recommendations are accepted. We are of opinion that the responsibility for law and order ought in future to rest on Ministers in Burma no less than in India, and for substantially the same reasons. From one point of view, the problem is less difficult in Burma, because of the absence of communal feeling; but on the other hand, serious crime, especially crimes of violence, appears to be more rife in Burma than in India. In proportion to population, the percentage of murders, dacoities and cattle thefts exceeds (and often greatly exceeds) the percentage in almost every other Province of British India, though there is a marked absence of that form of crime known as terrorism. Nevertheless, though the need for an efficient and disciplined police force in Burma is manifest, we do not think that Burma should be deprived of the opportunity which in our judgment ought to be afforded to the Indian Provinces in this sphere.

The Burma Police.

416. The police in Burma consist of two civil police forces:—(1) the District Police and the Rangoon Police, which are organised on much the same lines as the police forces in the other Indian Provinces and whose main duty is that of detecting and preventing

[1] Burma White Paper, Proposals 6–20.

crime; and (2) ten battalions of the Burma Military Police. Six battalions of the latter are frontier battalions, stationed almost wholly in the excluded tribal areas contiguous to the frontiers, and may be described as a watch and ward gendarmerie. Of the other four battalions, one is a reserve battalion which provides drafts mainly for the frontier battalions and is also responsible for the protection of the railways in times of internal disorder, and three are garrison battalions, two with headquarters in Rangoon and one in Mandalay. These, though organised on a battalion footing, serve in the districts in small detachments as patrolling parties and as a backing to the District Police, and also supply Treasury guards and prisoners' escorts. The latter service requires a well-armed and highly disciplined personnel, and is entrusted in other Provinces to the so-called armed reserves of the civil police, which do not exist under that name in Burma.

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Future organization of Burma Military Police.

417. We are informed that it is in contemplation to place the six frontier battalions and the reserve battalion of the Military Police directly under the Governor as part of the defence organisation, though it is not intended that they shall form part of the regular Defence Force or lose their primary police character. If, as we understand, these battalions are at the present time stationed in the Excluded Areas in proximity to the frontiers, it would clearly be impossible to transfer them with the ordinary civil police to the control of a Minister, and the proposed arrangement seems to us a reasonable and convenient one. We are informed also that in times of grave internal disorder the reserve battalion, and to a limited extent the frontier battalions also, have been called upon to act as additional police outside the Excluded Areas, before recourse is had to military aid; and if in future they become part of the defence organisation under the control of the Governor, it would be possible for the latter in the exercise of his special responsibility for the prevention of grave menace to the peace or tranquillity of Burma to deal effectively with a threatened outbreak without the use of troops, or alternatively to place additional forces at the disposal of the Minister for the same purpose.

Garrison battalions of Military Police.

418. It is intended, we understand, that the three garrison battalions should pass under the control of the Minister responsible for law and order as part of the police force of the Districts, and they would thus correspond to the armed reserves of the civil police in the other Provinces. The frontier and reserve battalions would, however, be available as a reserve striking force in the event of serious disturbance wherever it might occur, or to provide reliefs for men on continuous duty in the districts. These proposals seem to us to be well conceived. The Governor's responsibility for the preservation in the last resource of law and order in Burma may well be heavier than in many of the Indian Provinces, but his position will be stronger in that he will have under his own control the

Department of Defence and the resources which it can afford in the way of additional military police as well as of troops. We have only one suggestion to make. In view of the reservation to the Governor of the Department of Defence, we are disposed to think that the designation of the three garrison battalions which will henceforth be under the control of the Minister as Military Police may tend to confusion. We suggest, therefore, that some other designation should be adopted, and perhaps " the Burma Constabulary " might be regarded as appropriate.

The Governor's special responsibilities.

419. The Governor is to have a special responsibility in respect of (*a*) the prevention of any grave menace to the peace or tranquillity of Burma or any part thereof; (*b*) the safeguarding of the financial stability and credit of Burma; (*c*) the safeguarding of the legitimate interests of minorities; (*d*) the securing to the members of the public services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests; (*e*) the prevention of commercial discrimination; (*f*) the administration of certain Partially Excluded Areas; and (*g*) any matter which affects the administration of any department of government under the direction and control of the Governor. It will be seen that these special responsibilities are substantially the same as those proposed in the case of the Governor-General and Governors of Provinces, and all that we have said upon them elsewhere applies equally in the case of Burma. The suggestion in the Joint Memorandum submitted

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by certain of the Burman Delegates that any dispute on the question whether in a particular case the Governor's special responsibilities are involved should be referred to the Privy Council for decision completely misapprehends the principle underlying the Proposals; and nothing would be more likely to check a healthy constitutional development than to make the relations between the Governor and his Ministers a matter of law rather than of constitutional usage and practice. There are certain aspects of commercial discrimination in the case of Burma which are of sufficient importance to demand separate treatment, and we also leave for subsequent consideration the question of the Excluded Areas.

The Reserved Departments

Defence.

420. The subject of Defence has not the same importance in Burma as it has in India, for there is no North West Frontier problem; but, as the Statutory Commission observe, Burma has on her own borders a less definite but potential danger which, if it actually emerged in concrete shape, she could not deal with single-handed[1]. So long as this is so, it is clear that the Department of Defence must remain under the exclusive control and administration of the Governor; and the more so, since the main pre-occupation of those responsible for the defence of Burma must always lie in the vast Excluded Areas of

[1] Report, Vol. II, para. 220.

the Province, which are also to remain under the Governor's control. It is proposed, and we think rightly, that the Governor should also have the title of Commander-in-Chief. The executive military power will be vested in him, as the head of the Executive Government, and the size of a Burma Defence Force would not in any event justify the separate appointment of a Commander-in-Chief for Burma. We have already mentioned the proposals which are in contemplation with regard to the transfer of certain battalions of the Burma Military Police to the defence organisation. The personnel of these battalions at the present time is, we understand, for the most part Indian, being drawn from men who have served their time with Indian regiments; and whether as time goes on it will be found possible to replace these with Burma personnel is not a matter on which we are competent to express any opinion. We may refer to what we have said on this subject in connection with Indian army problems; but we desire also to point out that the policing and protection of the Excluded Areas, which lie along the frontiers of Burma and which form so large a proportion of the total area of the country, involve military considerations of a special kind which do not arise in India. We refer hereafter to the powers which the Burma Legislature will possess in connection with legislation for the enforcement of army discipline.

Other Reserved Departments.

421. External affairs and ecclesiastical affairs need no comment. The affairs of the Excluded Areas raise, however, various questions which it will be more convenient to discuss separately.[1]

Monetary policy, currency, and coinage.

422. The reservation to the Governor of matters relating to monetary policy, currency and coinage, differentiates the Burma White Paper proposals from those of India in a very important respect. In India it is proposed that the Federal Ministers shall be responsible generally for finance, the Governor-General having only a special responsibility for the safeguarding of the financial stability and credit of the Federation, with a financial adviser to assist him in the discharge of this responsibility. But it has always been made clear

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by His Majesty's Government that the establishment of a Reserve Bank, free from political influence, to which the management of currency and exchange could be entrusted, was a condition precedent to the transfer to Ministers of responsibility for the finance of the Federation. The Reserve Bank has now been established and has every prospect of success, and the condition precedent will therefore be fulfilled. But there is no separate Reserve Bank in Burma, nor, so far as we are aware, is it in contemplation to establish one; and we agree therefore that monetary policy, currency and coinage is properly reserved to the Governor.

The Governor's Counsellors and the Financial Adviser.

423. It is proposed to empower the Governor to appoint at his discretion not more than three Counsellors to assist him in the administration of the Reserved Departments. He will also be empowered at his discretion, but after consultation with his Ministers,

[1]*Infra*, paras. 432–437.

to appoint a Financial Adviser to assist him and also to advise Ministers on matters regarding which they may seek advice. The duties of the Financial Adviser will necessarily cover a wider field than those of the Financial Adviser to the Governor-General of India, not only because of the reservation to the Governor of matters relating to monetary policy, currency and coinage, but also because the Government of Burma will be a unitary Government, uniting itself the financial powers which in India will be shared between the Federal and the Provincial Governments. In these circumstances, we do not think that we can endorse the proposal in the Burma White Paper that one of the Counsellors may, at the discretion of the Governor, be appointed Financial Adviser. We assume that the proposal is based upon grounds of economy; but it seems to us that any saving in expense which might be effected by a combination of the two offices would be more than counterbalanced by the disadvantages which in our opinion would result. We think that Ministers would be unlikely to avail themselves freely of the services of a Financial Adviser who was also in administrative charge of a Reserved Department and directly under the control of the Governor. It is also very important that the Financial Adviser should be in a position in which he could take an impartial and independent view of the whole financial situation, in relation to both the Transferred and the Reserved Departments, and if he were at the same time one of the Governor's Counsellors he could scarcely avoid finding himself from time to time in a position in which his interest in one capacity conflicted with his duty in the other.

The Legislature

The two Houses.

424. It is proposed that the Legislature shall consist of the King represented by the Governor and two Houses, to be styled the Senate and the House of Representatives. The Senate is to consist of not more than 36 members, of whom 18 would be elected by the House of Representatives, and 18, who may not be officials, would be nominated by the Governor in his discretion. The House of Representatives is to consist of 133 members, of whom 119 would be elected to represent general constituencies, and 14 to represent special constituencies. The Governor-General's Counsellors are to be *ex-officio* members of both Houses for all purposes, except the right

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to vote. The Senate is not to sit for any fixed term, but one-quarter of its members are to retire every two years. The House of Representatives is to continue for five years unless sooner dissolved.[1]

Composition of the Houses and franchise.

425. There are no detailed proposals with regard either to the composition of the Houses or to the franchise in the Burma White Paper; but the Secretary of State has since submitted a Memorandum, which is printed among the Records of the Committee,

[1] Burma White Paper, Proposals 21, 23, 24, 25–29.

which contains valuable suggestions with regard to both these subjects.[1] In our opinion suitable provisions can be embodied in the future Constitution Act on the basis of these suggestions; but, though we give them our general approval, there are nevertheless certain points in which we think that they require modification; and to these we draw attention in the paragraphs which follow.

Objections to system of rotational retirements for Senate.

426. We understand that, in the case of those members of the Senate who are to be elected by the House of Representatives, the intention is to adopt the method of the single transferable vote. So far as this is designed to avoid the necessity of communal representation, it has our cordial approval; but we do not think that it will effect its object, viz., to secure adequate representation to substantial minorities, if the proposal in the Burma White Paper is retained, whereby one-quarter of the Senate retires at the expiration of every period of two years. It has been pointed out in memoranda submitted to us by the Burma Chamber of Commerce and others that at the first election, when the full number of 18 seats are to be filled and the requisite quota of votes will be eight, the European, Indian and Karen communities at any rate could count on securing the election of their candidates; but that at the ensuing periodic elections, with only nine vacant seats to fill, no minority candidate could be elected unless all the minority representatives in the Lower House pooled their votes, because the necessary quota would be too large. Alternative proposals have been made to meet this difficulty, but none seem to overcome it entirely; and after full consideration we have come to the conclusion that the system of rotational retirement is unsuitable, and that the better plan would be to provide that the life of the Senate shall be for a fixed period of seven years, unless it is sooner dissolved. But even so the problem of casual vacancies, which always causes difficulty under proportional representation systems, has to be faced, if the minorities are not to be placed in an increasingly unfavourable position as the seven years draw to a close. We have considered more than one plan for meeting this difficulty, none of which are wholly satisfactory; and we think that the best course will be to provide that, where a casual vacancy occurs in a seat held by the representative of a minority community, only candidates of the same community as the vacating member shall be eligible. We recognise that this to some extent introduces a communal element into the Senate, which we regret; but we do not see how in the circumstances it is to be avoided. An alternative suggestion was that casual vacancies should be filled by the Governor's nomination; but we have felt bound to reject this for reasons which it is unnecessary to elaborate.

Composition of House of Representatives.

427. The proposals for the composition of the House of Representatives are fully set out in the Secretary of State's Memorandum, to which we have referred. They provide for 119 general

[1] Records [1933–34], A1, p. 10.

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constituencies and 14 special constituencies. Of the general constituencies, 94 would be non-communal, 12 Karen, 8 Indian, 2 Anglo-Indian, and 3 European. The special constituencies are the University of Rangoon, the Burmese Chamber of Commerce, the Burma-Indian Chamber of Commerce, the Burma-European Chamber of Commerce, the Chinese Chamber of Commerce, the Rangoon Trades Association (European), and Labour (two Indian and two Burman). Out of the non-communal constituencies, three seats would be reserved for women. It will be observed that these proposals are based upon communal representation with separate electorates. We had hoped that it would have been possible to abandon the principle of communal representation in the case of Burma, however necessary it may be for British-India; but we have reluctantly come to the conclusion that, for the present at any rate, this is an impracticable ideal. It is true that there is very little religious cleavage in Burma, since, as we have already observed, toleration is a marked characteristic of the Buddhist creed. There are however racial cleavages; among the indigenous races there is a clear-cut division between Burman and Karen; and the division between the indigenous and non-indigenous (mainly European and Indian) communities is as marked as is the division between the non-indigenous communities themselves. We are not to be understood as suggesting that the different communities live otherwise than in amity with one another, although the feeling between Burman and Indian, especially as competitors in the labour market, from time to time becomes acute; but each community has its own culture and outlook on life, and these do not always blend. It is also to be observed that the minorities have their own representation at the present time in the Burman Legislature, and we are clear that none of them would be prepared to abandon it; indeed, the Burman Delegates themselves with few exceptions, recognised, even if reluctantly, that the claim was one which must be met. We therefore accept the proposals in principle, but we are glad to observe a suggestion in the Secretary of State's Memorandum that it should be permissible for persons who are not members of the communities concerned to stand as candidates for communal constituencies. We endorse this suggestion, and we hope that it may help in the course of time to break down the barrier which at present exists.

Women's seats.

428. It will be observed that three of the ninety-four non-communal seats are, under the proposals in the Memorandum, to be reserved for women. The representative of the women of Burma informed us, however, that Burman women did not desire this reservation, and we are satisfied that this is so. In these circumstances the question arises whether these three seats should be eliminated altogether or assigned elsewhere, possibly as an addition to the representation of special interests. We are of opinion on the information before us that the special interests are already adequately represented, and that the total number of the House of Representatives should therefore be 130 instead of 133.

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Franchise for House of Representatives.

429. We agree generally with the proposals in the Memorandum for the franchise for the Lower House, which will result in a substantial increase in the electorate. The present electorate of Burma consists of 1,956,000 men and 124,000 women; and the proposals in the Memorandum will increase this number to 2,300,000 men and 700,000 women, or 23·26 per cent. of the total population,

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as against 16·9 per cent. The increase in the number of women voters is very striking ; the proportion to the adult female population is increased from 4 per cent. to about 21 per cent., and the proportion of women to men voters from 1 : 14·3 to 1 : 3·5. In British India our recommendations would increase the number of voters from 3 per cent. of the total population of British India to 14 per cent., and the proportion of women to men voters from 1 : 20 to between 1 : 4·5 and 1 : 5 ; and it may be asked why Burma should be accorded such exceptionally favourable treatment. The answer to this is that the standard of living is considerably higher in Burma than in India and this is reflected in a franchise which is for the most part necessarily based on a property qualification. We are informed that, despite this large extension of the franchise, the Government of Burma regard the proposals as administratively practicable, and, that being so, we accept them. The representative of the women of Burma urged that a wifehood franchise should, as in India, be included ; and, having regard to the position which women hold in Burma, we should have been glad to give favourable consideration to this suggestion. We are informed however that the inclusion of a wifehood franchise would increase the number of women voters to a figure approximating to 2,000,000, and that so great an increase in the electorate would present for some years to come an insuperable administrative obstacle. This we can well believe ; and we may point out that this qualification has been adopted in India not so much on its merits as a means of reducing the disparity between the proportion of women and men voters to a ratio as low as 1 : 4, whereas, even without the wifehood qualification, the proportion in Burma would be approximately 1 : 3·5.

Powers of Legislature.

430. The proposals of the Burma White Paper with regard to the powers of the Legislature follow the same lines as those in the case of India and need no further comment except on two points. As in the case of the Indian Legislatures the Burma Legislature will have no power to make any law affecting the Army, Air Force, and Naval Discipline, Acts ; but it is likely that for some time to come Indian forces will be serving in Burma the members of which are subject to the corresponding Indian Acts, and it is clear that it should also be beyond the competence of the Burma Legislature to repeal or amend any of the latter Acts. There will also be certain restrictions on the power of the Burma Legislature to pass discriminatory legislation affecting persons domiciled in the United Kingdom ; but questions will also arise as to their power to pass such legislation affecting persons domiciled in British India. This, however, is a

matter which will be more conveniently discussed later when the subject of discrimination in general is being considered.

Relations between the two Houses.

431. Since the functions of the Government in Burma after separation will extend to all matters which in India will fall within the Federal as well as within the Provincial sphere, it would seem at first sight that the Senate in Burma should correspond, whether in size or in the extent of its powers, rather to the Federal Council of State than to any of the Provincial Legislative Councils. If the House of Representatives has 130 members, the Senate, on the Indian analogy, should have a membership of nearly 100. The proposals in the Burma White Paper, however, contemplate, as we have said, a Senate of 36 members only ; and we understand that this accords generally with the views expressed at the Burma Round Table Conference. We do not think that any larger body would be

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appropriate to the circumstances of Burma; but, that being so, it must follow that the Senate must be regarded as a body having revisory and delaying powers like the Upper House in an Indian Province, rather than one possessing substantially equal powers with the Lower House, like the Council of State. But since the powers of the Burma Legislature will extend over a wider field than those of the Provincial Legislatures in India, we think that the Senate may properly be invested with certain powers which a Provincial Legislative Council does not possess. We accordingly recommend that though Demands for Grants should be a matter for the House of Representatives alone, it should be permissible to introduce Bills, including Money Bills, in either House. Conflicts between the two Houses should be resolved in the manner which we have recommended in the case of the Indian Provinces, with this modification, that it should be permissible for a Bill passed by the Senate, but rejected by the House of Representatives, also to be referred for decision to a Joint Session.

(3) Special Subjects

(a) *Excluded and Partially Excluded Areas*

Distinction between Excluded and Partially Excluded Areas.

432. The Burma White Paper proposes that Excluded Areas should be reserved to the exclusive administration and control of the Governor, but that Partially Excluded Areas should pass under the control of Ministers, though the Governor will be declared to have a special responsibility in respect of the administration of these areas. The Excluded Areas are to be those areas which have been under the existing law notified as " backward tracts "; the Partially Excluded Areas are to be those which are at the present time not removed from the jurisdiction of the Burma Legislature, but which have been excluded from the operation of the Burma Rural Self-Government Act and do not return members to the Legislative Council. The area comprised in the first category extends to 90,200 square miles, with a population of approximately 1,900,000; the

second to 23,000 square miles, with a population of approximately 370,000; and when it is remembered that the total area of Burma is 234,000 square miles, it will be seen that the Excluded and Partially Excluded Areas together comprise very nearly one-half of the area of the whole Province, though they are only inhabited by about one-seventh of the population. Various questions arise with regard to these areas, which it is necessary to consider in some detail.

Arbitrary nature of present classification.

433. In the first place, the distinction which is at present drawn between the Excluded and Partially Excluded Areas appears to be to some extent an arbitrary one, and we find it difficult to understand why some of the Partially Excluded Areas have never been notified as backward tracts; though perhaps the reason may be, in some cases at any rate, that they are of so primitive a character that they have remained practically unadministered and it was therefore a matter of indifference whether they were classified in one category or the other. The Secretary of State's Memorandum,[1] which we understand reflects the views of the Government of Burma, suggests that, where an area has never been formally declared a backward tract and does not consist exclusively of hill districts, it is undesirable to withdraw it from the scope of Ministers and the Legislature, and that it should therefore continue to be regarded as a Partially Excluded Area only. We cannot accept this suggestion, nor do we agree that the omissions of the past should necessarily be perpetuated

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in the future. Such information as we have leads us to think that the Salween district should certainly become an Excluded Area. With regard to the others, our information is not precise enough to enable us to make detailed recommendations; but we are of opinion that the Government of Burma should be requested to examine the whole questions *de novo* and to advise whether, notwithstanding the present legal position, any districts which it is proposed should form part of a Partially Excluded Area are of such a character that their notification as backward tracts would be justified, if the matter were at large.

Difference between Excluded Areas and rest of Burma one of kind and not of degree.

434. We have no doubt at all that the Excluded Areas should remain under the exclusive administration and control of the Governor. The Joint Memorandum of the Burman Delegates expresses the opinion that there should be no wholly Excluded Areas except those included in the Shan States Federation; but the arguments advanced in support of this opinion seem to us to misapprehend entirely the reasons which underlie the proposals in the Burma White Paper. We do not think that we can do better than quote a passage from the Secretary of State's Memorandum, with which we find ourselves in complete agreement.

> "It is important to remember that the word 'backward,' which is the technical term used to denote areas notified under Section 52A of the Government of India Act, 1919 may lead to a serious misunderstanding of the position. It suggests that

[1] Records [1933-34], A1, p. 95.

> the difference between these tracts and the ordinary districts is one of degree of development which will necessarily tend to disappear with time. This is far from the whole truth. The existing backward tracts are hill districts lying on the north, west and east of Burma, and resembling in their general characteristics the backward tracts along the eastern border of Assam. Their inhabitants, mainly Kachins, Chins and Shans, differ radically from those of the plains in race, religion, law, customs, and language, and most of these differences will be bridged, not by a simple process of development, but by the much slower and more difficult process of abandonment of their existing culture. It is the absence of common outlook and aspirations which is perhaps the main factor militating against the assimilation of the backward tracts in the hills in the political institutions of the plains. The history of the relations between the backward tracts and the plains is one of opposition and hostility, and the main reason for undertaking the administration of the tracts was the protection of the plains. Such feelings of antipathy die slowly in remote places; and the inhabitants of the backward tracts are still devoid of any real sense of community, political or otherwise, with the plains. Further, the inhabitants of the backward tracts are ignorant of conditions in the plains and those of the plains are equally ignorant of conditions in the tracts. It is true that since the annexation of Upper Burma, civilising influences have been at work. The Kachins come down with confidence from their hills to market in the villages of the plains and mix more freely with the plainsmen, and in some areas they have come under the influence of missionaries. Kachins and Chins also are recruited to the Burma Rifles and Burma Military Police. But the fact remains that the plains and the backward tracts are different

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worlds with no adequate mutual knowledge and no adequate contact by which such knowledge may be readily diffused. The 'backward tracts' in Burma are admittedly not ripe for representative institutions and have not, it is believed, shown any desire for them. The time will not be ripe for such a change until conditions in the tracts have undergone a fundamental change and until their inhabitants have learned to feel that they are part of a larger political whole. Such a state of affairs is not likely to come to pass within any period that can at present be foreseen. Meanwhile, the Provincial Legislature, however capable of legislating for the plains which it knows and represents, is clearly not qualified to legislate for people it does not represent and for conditions of which it has no adequate knowledge. Added to this is the consideration that law in the backward tracts is mainly customary law supplemented by simple regulations issued under Section 71 of the Government of India Act—a very refractory substance for amalgamation with acts of the Legislature."[1]

[1] Records [1933–34], A1, p. 97.

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The Shan States.

435. The Joint Memorandum of the Burman Delegates draws attention to certain financial arrangements in connection with the Shan States, and recommends that the contribution from Burma revenues to those States should cease and that the States should be required to pay their share of the cost of defence and general administration. We think that the Delegates are under some misapprehension in this matter, for we are informed that no such contribution has been made for the last two years, and that there is no intention of renewing it. We understand the intention to be that after separation the Shan States should be credited with a share of receipts from customs dues proportionate to the consumption of dutiable articles in their area, and with a similar share of income tax and other taxes which are at the present time central sources of revenue, but which will, after separation, be levied in Burma for the purposes of the local Government. The Shan States will in their turn contribute a fixed sum representing the share fairly allocable to them of central expenditure which will in future be borne by Burma, and of the cost of general administration from which the States derive benefit equally with the rest of Burma. This appears to us a reasonable arrangement. We should perhaps explain that the Shan States, though British territory are a quasi-autonomous area administered by the Shan Sawbwas or Chiefs under the general supervision of the Governor, and that since 1922 they have been formed into a species of Federation for certain common purposes. The finances of the Federation have always been kept distinct from the provincial finances of Burma, and we think it desirable that this arrangement should continue. Special provision for this purpose will, we think, be required in the Constitution Act; and we are of opinion (1) that the share of revenue which the Shan States are to receive, as indicated above, and the contribution which they are to make to Burma revenues, should be fixed from time to time by Order in Council; (2) that the States' share of revenue, when fixed, should be a non-votable head of expenditure appropriated for the purposes of the administration of the States; and (3) that the contribution of the States should not be paid directly to Burma revenues but allocated to the Governor for the same purposes. The Burman Joint Memorandum suggests that the financial settlement between

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the Shan States and Burma (i.e., the determination of the share of revenue and of the State's contribution) should be referred to an impartial tribunal and should not be left to be dealt with by the Governor. We understand that in fact a committee of three officers, one representing Burma, one the Shan States, with an independent chairman, has already been set up for the purpose of advising the Governor on this matter, and in these circumstances we do not think that any useful purpose would be served by the appointment of an extraneous tribunal.

Financial arrangements for Excluded Areas.

436. We understand the Burman Delegates also to suggest that the financial arrangements for other Excluded Areas should be the same as those for the Shan States, that their expenditure should be met out of their own revenue, and that they should have

a budget separate from the general Burma budget. There does not seem to us to be any true analogy between the two cases. The Shan States are a compact area, and for all common purposes form a single organised administrative unit; this cannot be said of any of the other Excluded Areas. We think, therefore, that the Burma White Paper rightly proposes that the money required for the administration of those areas, apart from the Shan States, should come from Burma general revenues, and should be a non-votable head of expenditure. We may, however, draw attention to the fact that the forests in the Excluded Areas are at the present time, and will continue to be, under the administration of the Forest Department, which since 1923 has been one of the transferred departments; and the Excluded Areas make a substantial contribution through this channel to the general revenues of Burma.

Karenni States and Namwan.

437. We have mentioned previously the Karenni States, an area of 4,000 square miles with a population of 64,000 which lies on the eastern border of Burma and is not British territory. There is also a small non-British enclave known as the Assigned Tract of Namwan, which is held on a perpetual lease from China in order to facilitate frontier transit questions. It is proposed that these two areas shall be treated on the same footing as Excluded Areas, and that the trifling sums required for administrative purposes in connection with them shall be treated as expenditure on an Excluded Area. In view of the smallness of the areas involved, this seems a convenient arrangement; but we assume that, since they are not British territory, it will still be necessary to legislate for them by means of Foreign Jurisdiction Act procedure.

(b) *The Public Services*

Proposals generally the same as for Indian Services.

438. The proposals in the Burma White Paper on this subject are substantially the same, *mutatis mutandis*, as those in the case of India, and it is only necessary to draw attention to one or two special points. The services in Burma which will in future correspond to the Indian Civil Service and the Indian Police will necessarily have different designations; but present members of the Indian Civil Service who are serving in Burma have informed us of their desire to be still described as members of that Service, and to this we see no objection. In the case of Central Service officers now serving in Burma, it is proposed that those who were recruited by the Government of India for service in Burma alone should be compulsorily transferred to the service of the Government of Burma, but that those who were recruited either by the Secretary of State or by the Government of India without special reference to service

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in Burma should only be liable to transfer to the Government of Burma with their consent and the consent of the authority who appointed them. This seems a reasonable distinction to draw, and we approve it.

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Burma Frontier Service.

439. Burma has one Service which has no exact counterpart in India, viz., the Burma Frontier Service. This is now controlled and recruited by the local Government, but it comprises officers (for example, officers transferred from the Indian Army and some others) who enjoy rights guaranteed by the Secretary of State. We approve the proposal in the Burma White Paper that this service should be recruited and controlled by the Governor in his discretion, since most of the officers who belong to it would be serving in Excluded Areas under the control of the Governor.[1]

Medical and Superior Railway Services.

440. When the Burma White Paper was first published, the question of continued recruitment by the Secretary of State to the Medical and the Railway Services was still under examination. We understand, however, from the subsequent Memorandum submitted to us by the Secretary of State that the intention now is that the proposed statutory Railway Board for Burma shall, in conjunction with the Public Service Commission, control recruitment.[2] We have already recommended that recruitment for the railway service in India should be in the hands of the new Railway Board, and we see no reason why the same principle should not be applied also in the case of Burma. As regards the question of recruitment to the Medical Service, we are informed that this matter is still under consideration, and we have not sufficient information before us to make any considered recommendation; but we are disposed to think that for the time being recruitment should continue to be by the Secretary of State.

The Forest Service.

441. We desire to draw attention to what we have already said on the subject of the Forest Service in India and the need for the co-ordination of research.[3] Our recommendations with regard to the Forest Service in the Indian Provinces are not of course applicable as they stand to the Forest Service in Burma; but we hope nevertheless that arrangements may be made whereby the Central Institute for Research and the Training College at Dehra Dun will be available for Burma entrants. We hope too that nothing will be done which might exclude the possibility of an interchange of officers between the Forest Services of Burma and India; and we refer in this connection to certain of the recommendations of the Burma Sub-Committee of the First Round Table Conference.

The Public Service Commission.

442. It is proposed that there should be a Public Service Commission for Burma.[4] This we regard as an essential provision, and we think that the Constitution Act should in this respect follow the Indian model.

[1] Burma White Paper, Introd. para. 22.
[2] Records [1933–34], A2, p. 11.
[3] *Supra*, paras. 294–5.
[4] Burma White Paper, Proposals 100–104.

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(c) *Commerical and other forms of discrimination*

Discrimination as between Burma and India.

443. In so far as this is a matter between the United Kingdom and Burma, the proposals in the Burma White Paper, supplemented by a subsequent Memorandum submitted to us by the Secretary of State,[1] are the same as those in the case of India, and we may refer

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to what we have said upon the subject in an earlier part of our Report. The Burma White Paper and the Secretary of State's Memorandum, however, deal also with the question of discrimination as between India and Burma after the separation of the two countries, and this raises certain problems of its own.

Position of Indians in Burma.

444. The Memorandum to which we have referred points out that there are in Burma over 1,000,000 persons either domiciled in India or originating from some Indian Province. Some are in the permanent service of the Government, but the greater number are labourers who only intend to stay in Burma for a few years and who by accepting smaller wages tend to oust the indigenous labourer and to lower his standard of living. Others are Indian money lenders who advance money on the security of agricultural land and crops, and whose operations, especially in times of depression, are such as to bring about an extensive transfer of ownership from an indigenous agricultural population to a non-indigenous and non-agricultural class. It is clear that in these circumstances it would be unreasonable to include in a new Constitution for Burma provisions which would in effect give to all persons domiciled in India an unrestricted right of entry into Burma; and it is accordingly proposed that it should be competent for the Burma Legislature to enact legislation restricting or imposing conditions of entry into Burma in respect of all persons other than British subjects domiciled in the United Kingdom. We think that this is right, but we agree with the further proposal which is made by the Secretary of State that, with a view to preventing the imposition of vexatious or unreasonable restrictions or conditions for the entry of Indians of good standing into Burma, the introduction of any legislation regulating immigration into Burma should be subject to the Governor's prior consent. Nevertheless, we hope that these matters will ultimately come to be arranged between India and Burma on a conventional basis, and we refer to earlier observations which we have made on this aspect of the subject. We have also expressed the opinion elsewhere that it may be desirable that any temporary Trade Agreement made between the existing Governments of the two countries with a view to tiding over the difficult period immediately after separation, when the two new Governments will probably be too fully occupied with other matters to enter into a long and intricate negotiation, should also include provisions relating to emigration and immigration.

Existing restrictions.

445. There are certain legal restrictions in force at present on the right of persons of non-Burman birth or domicile to compete for certain public appointments or to qualify for the exercise of certain

[1] Records [1933–34], A2, p. 1.

professions; and it is right that these should be retained. As regards the future, the power of the Burma Legislature to impose conditions or restrictions on entry into Burma should prove a sufficient safeguard. Subject to the above modifications, we are of opinion that the question of discrimination as between India and Burma should be dealt with on the same lines as that of discrimination between India and the United Kingdom.

Medical qualifications.

446. As regards professional qualifications, other than medical, we have nothing to add to what we have already said in the case of India. As regards medical qualifications, the position is different. A local Burma Act at present entitles any person holding a British or Indian medical qualification to practise in Burma, but also empowers the Burma Medical Council to refuse to register any

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practitioner who holds only a qualification conferred in a Dominion or foreign country which does not recognise Indian medical degrees. The recent action by the General Medical Council, to which we have referred elsewhere, in withdrawing their recognition of Indian medical diplomas, did not affect Burma specifically, since we understand that at that time there was no authority in Burma by which such diplomas were granted ; but we are informed that diplomas are now granted by the University of Rangoon. The Indian Medical Act, 1933, which sets out the Indian diplomas which entitle their holders to be placed upon the Indian register does not include among them any diploma granted in Burma, but contains provisions enabling Rangoon diplomas to be included in the list, if the Indian Medical Council are satisfied after investigation that the standard of proficiency prescribed by the University of Rangoon is adequate. According to our information, however, the procedure prescribed by the Act will take some time, and it is unlikely that the Rangoon diploma will in fact be admitted to the list in the near future ; and in these circumstances the position is one of some doubt and obscurity, especially as the Indian Act will obviously require some modification in its application to Burma after the separation of the two countries.

Suggestions for future.

447. We think that all persons at present practising medicine in Burma by virtue of a United Kingdom or Indian qualification ought in any event to have that right assured to them. As regards the future, we hope that it will eventually be found possible by means of reciprocal arrangements between the General Medical Council and the Indian Medical Council on the one hand and the Burma authorities on the other to arrive at a solution satisfactory to all concerned. In the meantime we think that United Kingdom or Indian qualifications which give a right to practise medicine in Burma at the date of the establishment of the new Government should continue to give that right, and that any withdrawal of it by any Burma authority should be appealable to the Privy Council, whose decision should be final and binding on both parties. We

think also that the new Government of Burma would be well advised to consider whether it would not be to their advantage to make arrangements with the Indian Medical Council, subject to the consent of the latter, for a common medical register for both countries. An arrangement on these lines has been made, we understand, between the General Medical Council and the Irish Free State and our information is that it has in practice worked well.

(d) *The Railway Board*

Proposals for a Railway Board.

448. The Secretary of State has furnished us with a Memorandum containing proposals for the constitution of a Railway Board to manage the Burman railways after separation.[1] This follows in its main outlines the proposals which we have already discussed for a Railway Authority in India ; but the problem is a very different one in Burma, where the railway system consists only of some 2,000 miles of railway, and where there are no such complications as arise in India from the existence of company-owned railways or railways belonging to Indian States. Accordingly, while the Indian Railway Board is more correctly described as a Railway Authority, the Railway Board in Burma is intended to be, in the words of the Memorandum, " a Board of Directors for the one railway system owned by the State." Agreeably with this conception, it is proposed that the chief executive officer of the railways shall be ex-officio President of the Board.

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Modifications suggested.

449. We agree generally with the proposals in the Memorandum, subject to the following modifications. We do not think that the Financial Adviser should be a member of the Board, for the same reasons which in our view make it undesirable that he should also be one of the Governor's Counsellors, since his duty and interest might at times be in conflict. We think, nevertheless, that there should be a member of the Board with special financial experience. Secondly, it has been represented to us that the proposed ineligibility for membership of the Board of persons who have contractual relations with the railways would in the case of Burma unduly restrict the field from which suitable members might be selected. We are informed that the Government of Burma recognize the force of this contention, and suggest the inclusion of provisions similar to those which are to be found in the Rangoon Port Act, the effect of which is to make a *personal* interest in a contract a disqualification either for membership or for participation in a discussion of matters relating to such a contract. This suggestion merits, we think, favourable consideration. Thirdly, it seems to us that the Railway Board in Burma ought to be in a position to begin its operations contemporaneously with the establishment of the new Government, and that legislation for this purpose will therefore be necessary before the separation of the two countries. It would obviously be inappropriate for the present Legislature in India to enact such legislation,

[1] Records [1933-34], A2, p. 7.

and we think therefore that it must be enacted in the Constitution Act itself, though it may well be found convenient to leave some of the detailed provisions to be prescribed by Order in Council.

(e) *Constituent powers ; the Judiciary ; Audit and Auditor-General ; Advocate-General*

Constituent powers, etc.

450. The recommendations which we have made on these four subjects in the case of India will, we think, be equally appropriate, *mutatis mutandis*, in the case of Burma. As regards Home Audit, however, it may well be found that the amount of Burma business transacted in London will not be sufficient to justify the appointment of a separate officer as Home Auditor, and in that event we think that some arrangement should be made whereby the Auditor for Indian Home Accounts should also act in an agency capacity for Burma.

(f) *The Secretary of State and his Advisers*

The Secretary of State.

451. We have recommended that the corporation known as the Secretary of State in Council should cease to exist after the establishment of Provincial Autonomy in India, and in that event the Secretary of State in Council would equally cease to exercise any functions in relation to Burma. The question has been raised whether the Secretary of State for India should become in future the Secretary of State for India and Burma. The Joint Memorandum of the Burman Delegates suggests that there should be a separate Secretary of State for Burma, or else that the Secretary of State for the Dominions should hold the office. We are disposed to think that the Secretary of State for India should in future hold two separate portfolios, one as Secretary of State for India and one as Secretary of State for Burma ; and we are of opinion that, though the two offices would be legally distinct, it is most desirable on practical grounds that they should be held by the same person.

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452. The Secretary of State, as Secretary of State for Burma, ought, we think, to have a small body of Advisers, not more than two or three at the most, to advise him on Service matters; but our recommendation in the case of India that the Secretary of State should be bound in certain matters by the opinion of his Advisers or a majority of them would not be altogether appropriate in the case of so small a body, and it is for consideration whether, where Service matters are concerned, the India and Burma Advisers should not sit together and advise jointly.

The Secretary of State's Advisers.

(g) *Financial adjustment between India and Burma*

453. It is clear that on the separation of the two countries there will have to be an equitable apportionment of assets and liabilities, including under the latter head the liability for loans and loan charges which are at present a liability either of the Secretary of State or of the Government of India. The Burma White Paper

Financial adjustment as a consequence of separation.

contains no definite proposals as to the manner in which this apportionment is to be effected; but we assume that it will be necessary to appoint some impartial tribunal who will in the first place lay down the principles of the apportionment, leaving the application of those principles to be worked out in detail at a later date. It will be necessary to include in the Constitution Act provisions giving the force of law in both countries to the award or awards issued from time to time by the tribunal. It is also very desirable that its work should be well advanced by the time the new Government in Burma is established, and we think that steps should be taken for its appointment at as early a date as is reasonably practicable.

The same is read.

The following Draft Report is laid before the Committee by Mr. Attlee.

PART I

INTRODUCTION

1. The problem of Indian Constitutional Reform, the examination of which has been entrusted to us, is one of a magnitude which can hardly be exaggerated. It involves the destinies of over 350 millions of our fellow-subjects, in fact, of one-fifth of the whole human race. We do not consider that it is necessary to set out at great length the material facts and the conditions of the problem, because Volume I of the Report of the Indian Statutory Commission gave an exhaustive survey, the general accuracy of which has been recognized. We would, however, recall that since that Report was published, four years ago, great changes have taken place which have profoundly modified the conditions of the problem. In particular, the Declaration of the Princes of

The Statutory Committee's Survey.

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their readiness to join an All-India Federation, and the conclusions which emerged from the labours of British and Indian statesmen at the three Round Table Conferences are factors in the situation of the utmost importance.

The Evidence before us.

2. The whole subject-matter of Constitutional reform in India has been reviewed many times since the introduction of the Montagu-Chelmsford Reforms. In addition to the very informative Reports of the Reforms Inquiry Committee, the Reports by the Government of India and the Provincial Governments on the working of the present Constitution, and the exhaustive Inquiry of the Indian Statutory Commission, there have been committees dealing with special parts of the problem, notably the Butler Committee on the relationship between the Indian States and the paramount power, the Indian Sandhurst Committee, and the Territorial and Auxiliary Forces Committee, both of which dealt with the question of the Army in India. Further there have been the three Sessions of the India Round Table Conference and the various sub-committees appointed to assist it, and of the Burma Round Table Conference. In addition to this large volume of evidence, dealing primarily with political questions, there have been the Reports of the Committee presided over by Lord Linlithgow, on Agriculture, and that on Labour, presided over by Mr. Whitley, which provide a mine of information on economic and social matters. We have ourselves been sitting for many months and have received and examined many memoranda and heard many witnesses. In addition, we have had the valuable assistance of representative Indian men and women who have participated with us in hearing and examining witnesses and discussions on the White Paper proposals. We cannot, therefore, complain that there is not enough material on which to work. Indeed, the mass of memoranda and evidence is almost beyond the power of any human being fully to digest.

The Principle of the new Constitution.

3. After having heard and considered the whole of the evidence and discussions on this Joint Select Committee, we have come to the conclusion that the principle on which the new Constitution for India should be founded is the right of the Indian peoples to full self-government and self-determination, and should have as its aim the establishing of India at the earliest possible moment as an equal partner with the other members of the British Commonwealth of Nations. We hold that the new Constitution should contain within itself provisions for its own development, and that such safeguards as are necessary should be in the interests of India and that the Reserved Powers should not be such as to prejudice the advance of India, through the new Constitution, to full responsibility for her own government. We are convinced that this policy is the only one that is consistent with the pledges that have been given to India, and that nothing short of that will ensure the continuance of India as a willing and contented partner in the British Commonwealth of Nations.

The two-fold problem.

4. In our view, the problem before us is twofold. We have, on the one hand, to satisfy the legitimate aspirations of the peoples of India for self-government and so to implement the pledges given over a period of years by the Government of this country. Secondly, we have to ensure that self-government shall be given to India in such a way as to ensure that the new Constitution shall place in the hands of the mass of rural cultivators and urban wage earners the possibility of attaining to political power and that as far as possible ample protection shall be given to racial, religious and cultural minorities. We have to recognize that for more than two centuries the whole course of the development of Indian society has been powerfully influenced by the presence of the British in India. During that time Great Britain has by its action made itself responsible for the social and economic system which it has preserved in India, and it cannot escape its responsibility. In handing over power to other hands it must ensure that the interests of the weaker sections of the community are safeguarded.

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Dominion Status.

5. We consider it is necessary to emphasize again what is the goal of British policy in India. That goal is nothing less than Dominion Status. It is not possible for India to reach this goal at one single step, but we are in entire agreement with the Members of the Indian Delegation, that this goal should be clearly stated in the Constitution Act itself. We are the more insistent on this point because evidence has been put before us, with which we wish to record our entire disagreement, which purported to show that Dominion Status, with all its implications, never formed the subject of any pledge to India.

The Declaration of 1917.

6. The pledges given to India have been very many. We wish to state here those which we consider to be the most material. We would first recall the historical declaration of Mr. Edwin Montagu, Secretary of State for India, in the House of Commons, on the 20th of August, 1917, which was in these terms : "The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire."[1] That declaration was embodied in the Preamble to the Government of India Act of 1919, which states as follows : " Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian Administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible Government in British India as an integral part of the Empire.

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples :

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility :

And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities."

Later Pledges.

7. This was given even greater publicity and emphasis by the statement of H.M. The King Emperor, read by H.R.H. The Duke of Connaught, on the 9th February, 1921, to the new Indian Legislature, which contained these words :—" For years, it may be for generations, patriotic and loyal Indians have dreamed of Swaraj for their Motherland. To-day you have the beginnings of Swaraj within my Empire, and the widest scope and ample opportunity for progress to the liberty which my other Dominions enjoy." The same point is made in the revised Instrument of Instructions from His Majesty The King Emperor to the Governor-General of India, dated the 15th March, 1921, which states :—" For above all things it is our will and pleasure that the plans laid by our Parliament . . . may come to fruition to the end that British India may attain its true place among our Dominions."

On the 31st October, 1929, the object of British rule was explicitly reaffirmed by Lord Irwin, when, speaking with the full authority of the British Cabinet, he said that it was " implicit in the declaration of 1917 that the natural issue of Indian Constitutional progress, as there contemplated, is the attainment of Dominion Status."

Lastly there are the concluding words of the Prime Minister at the Final Session of the first Round Table Conference in January, 1931 :—" Finally, I hope, and I trust, and I pray that by our labours together India will come

[1] Official Reports, Commons, Vol. 97, col. 1695.

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to possess the only thing she now lacks to give her the status of a Dominion amongst the British Commonwealth of Nations—what she now lacks for that—the responsibilities and the cares, the burdens and the difficulties, but the pride and the honour of responsible self government." The Prime Minister, as head of the National Government, confirmed the statement of policy then made in the words " My colleagues fully accept that statement of January last as representing their own policy."[1]

Mr. Churchill's statement.

8. An attempt has been made by witnesses before us, notably by Mr. Winston Churchill, to argue that Dominion Status meant something different from that which it was understood by Indians at the time to mean, and that it did not involve the grant to India of a status equal to Australia and Canada. He argued also, that Dominion Status is only a distant, remote goal which it is not practicable to take into consideration in any period of which human beings need take account.[2] We find it difficult to reconcile that meaning with the eloquent words of Mr. Churchill in June, 1921, when he was Secretary of State for the Dominions and Colonies. In a public speech to the Prime Ministers of the British Dominions and Representatives of India, he said, " there was another great part of the Empire represented at that gathering which had not yet become a Dominion, but which moved forward under the Montagu scheme in the work which began with Lord Morley and was continued by Lord Chelmsford, towards a great Dominion Status," and, further, " We owed India that deep debt, and we looked forward confidently to the days when the Indian Government and people would have assumed fully and completely their Dominion Status."

Need for certainty.

9. We ourselves have no doubt that in India these various statements and pledges were understood in their natural meaning, that is to say, that India could look forward to attaining within a reasonable period of time the same status as that of the other Dominions of the British Commonwealth. We feel that nothing could be more unfortunate for the creation of a fruitful partnership between the peoples of this country and India than that words understood in one sense should be subsequently explained away and given a different meaning. We agree with the contention of the Indian Delegates to this Committee when they say in their Memorandum that :

> " Indian public opinion has been profoundly disturbed by the attempts made during the last two or three years to qualify the repeated pledges given by responsible Ministers on behalf of His Majesty's Government. Since it is apparently contended that only a definite statement in an Act of Parliament would be binding on future Parliaments, and that even the solemn declaration made by His Majesty The King-Emperor on a formal occasion is not authoritative, we feel that a declaration in the preamble is essential in order to remove present grave misgivings and avoid future misunderstandings."[3]

Development of the Constitution.

10. We therefore consider that this country is bound to implement this pledge of honour, and to that end we desire that the new Constitution should state beyond all cavil that it is the intention of this country to grant full Dominion Status to India within a measurable period of years, and that the Constitution itself should contain possibilities of expansion and development which may, without further Act of Parliament, realize this objective. We would express our entire agreement with the view of the Indian Statutory Commission that " The first principle which we would lay down is that the new Constitution should, as far as possible, contain within itself provision for its own development."[4] And we would quote further from their Report: " It has been a characteristic of the evolution of responsible government in other parts of the British Empire that the details of the constitution have not

[1] Cmd. 3997 of 1932, p. 415.
[2] Minutes of Evidence, No. 41, p. 1851.
[3] Joint Committee Records, No. 10, p. 37.
[4] Indian Statutory Commission Report, Vol. 2, p. 5.

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been exhaustively defined in statutory language. On the contrary, the Constitutions of the self-governing parts of the British Empire have developed as the result of natural growth, and progress has depended not so much on changes made at intervals in the language of an Act of Parliament, as on the development of conventions, and on the terms of instructions issued from time to time to the Crown's representative. The Preamble to the Government of India Act declares that progress in giving effect to the policy of the progressive realization of responsible government in British India can only be achieved by successive stages; but there is no reason why the length of these successive stages should be defined in advance, or why every stage should be marked by a commission of inquiry. We are profoundly convinced that this method of inquiry at stated intervals has had a most injurious effect on the working of the reformed Constitution, and on Indian political life."[1] They further state: "We believe that what is required is a constitution which, without doing this, will contain some element of elasticity enabling adjustments to be made in accordance with the conditions actually obtaining in any given province at any particular time."[2] We are concerned to give the fullest measure of self-government to India, because the people of this country, having for so many years enjoyed responsible self-government themselves, should not deny it to other parts of the Empire. We consider that the only limiting factors which prevent the grant of full responsible self-government and Dominion Status to India at the present time are those which arise not from any opposition in this country but from the facts of the situation.

Nationalism.

11. We fully recognize the great work that Great Britain has done in India, especially in giving her a sense of political unity which was wanting for so many years, and we are conscious of the many material advantages bestowed by Great Britain and the devotion with which the members of the Public Services have carried out their tasks as servants of India; but we recognize that one of the most striking effects of British rule has been the emergence of a national consciousness in India and the natural desire that Indians should manage their own affairs. We desire to give the fullest possible expression to this national consciousness and to make provision by means of a reformed Constitution for the living forces of Indian Nationalism to be harnessed to the great tasks which confront any government in India. We agree with the statement in the Report of the Indian Statutory Commission, that "until the demands of Nationalism have been reasonably met, enthusiasts for various reforms make common cause with every discontented element and attribute all the evils that they attack to the absence of self-government. In our view, the most formidable of the evils from which India is suffering have their roots in social and economic customs of long standing which can only be remedied by the action of the Indian peoples themselves."

Social and Economic problems.

12. While, however, we desire to give full weight to the claims of Indian Nationalism, we are not unmindful that unless political changes result in giving a better life to the ordinary citizen, they are of little value. We are not blind to the fact that in India, as in most parts of the world, the masses of the people are the prey of economic exploitation. A change in the Constitution which would put the Indian rural population and the urban wage-earners at the mercy of a politically dominant section in possession of economic power might very well intensify the very evils which we desire to see eradicated. While recognizing the public spirit and zeal for reform of many leading Indian statesmen, we cannot but recognize the fact that the majority of the active and politically-minded Indians belong to the privileged and well-to-do classes, that the Hindo social system is based on inequality, and that, in India as elsewhere, the power of wealth in politics is inevitably very strong. We have seen many examples in Europe of nationalist movements, the supporters of which, when striving for political freedom, have

[1] Indian Statutory Committee Report, Vol. 2, p. 5.
[2] *Ibid.*, p. 8.

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professed the keenest desire for advanced social legislation, and have proclaimed a profound faith in democracy; but on many occasions when freedom from alien rule has been obtained, the nationalist governments which followed have exhibited outstanding examples of tyranny, reaction, and social injustice, and it would, in our view, be unwise and unduly optimistic to ignore the possibility of similar happenings in India. We feel, therefore, that the British people cannot discharge their responsibility to the peoples of India unless in any Constitution provision is made for the ultimate attainment of political power by the masses. The vast majority of the Indian population consists of poor, illiterate and as yet inarticulate peasants, who in very many cases are exploited by a particularly vicious system of landlordism and who fall a ready prey to the moneylender. In the big towns and in the planting districts of India there is a large industrialized, or semi-industrialized, population which is liable to be exploited by a capitalist system which is apt to be less enlightened in India than even in the rest of the world. We recognize that in face of the rise of nationalism it is impossible for this country to constitute itself the effective guardian of the weaker sections of the community. We desire, however, to see that, as far as possible, the Constitution should provide safeguards against exploitation of the masses.

White Paper Proposals.

13. It is clear in our view that the White Paper Proposals fall far short of what is necessary. Indeed, if legislation is passed implementing the White Paper the Indian people will be saddled with a Constitution which establishes wealth and privilege in power not only at the Centre, but in the Provinces. While a franchise as wide as is administratively possible at the present time is proposed for the Provincial Lower House, the establishment in Bengal, the United Provinces, and Bihar, Provinces where the landlord system is at its worst, of Second Chambers, designed to give weight to property owners, and the special representation given in all the Lower Chambers to the owners of land and industrial capital, will ensure, in our view, the domination of the wealthier classes, so that political and economic power will be in the same hands. In the Federal Legislature both Chambers are so composed as to be representative almost entirely of vested interests and wealth. Apart from the few seats reserved to Labour and the Depressed Classes, it is practically certain that no place will be found for anyone who can speak on behalf of the 80 or 90 per cent. of the population who own hardly any property.

Safeguards.

14. We recognize the difficulty of providing safeguards for the prevention of the exploitation of the poorer sections of the community, without, at the same time, detracting from the measure of self-government given to India. We do not think, indeed, that it is possible, except in a limited degree, to place the exercise of such safeguards in the hands of the Governor or Governor-General. We believe that what is required is that there should be secured in the Constitution the potentiality of political power for the masses. We are well aware that in the conditions obtaining in India, whatever may be the franchise, for a long period the wealthier classes will be politically dominant; but we consider that, provided the franchise is widely extended, in course of time members of the wealthier classes may find it worth while to court the support of their poorer fellow-citizens and may thus eventually lead them to a realization of the possibilities of a use of political power to obtain their economic enfranchisement. It is, therefore, mainly with a view to protecting the poorer sections of the community from exploitation, that we recognize the need for safeguards, and we desire that the Constitution should contain provisions which will ensure the ultimate introduction of adult suffrage and which will preclude the possibility of an oligarchy disfranchising the majority of the citizens. For similar reasons, we are opposed to the creation of Second Chambers, and to special representation being given to vested interests such as landlords, and we desire that where representation is given to Industry and Commerce it should be only what is necessary to give adequate representation to particular experience which may otherwise be lacking.

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On the other hand we consider that it is necessary that special representation should be given to those classes of the community whose poverty renders them most liable to exploitation. For this reason we approve of the reservation of seats for the Depressed Classes which may have to be continued for many years.

We recognize that special provision is necessary at present to secure in the legislatures the presence of Labour representatives. We hope, however, that this may be only temporary and that with the advent of adult suffrage organized labour may find its expression in the general constituencies.

Safeguards for Minorities.

15. It is necessary, in our view, that adequate safeguards should be provided in the Constitution for protecting the rights of racial, communal, or cultural minorities. The state of Europe to-day provides an abundance of instances of oppression of minorities by majorities. It is unnecessary for us to emphasize the very grave divisions in India caused not merely by the rivalry of the great Hindu and Muslim Communities, but by the existence of many minor communities, and by the division of the Hindu world into numerous castes, and by the existence of the very numerous Depressed Classes. Safeguards for the protection of these minorities are recognized as necessary by most of the prominent leaders of Indian thought. It is, therefore, clear to us that the Constitution, while giving self-government to India, must make provision to see that it is not abused in the interests of particular sections. We have given much consideration to the problem of separate and joint electorates, and, in common with all those who have examined it, we have come to the conclusion that, much as we dislike a system of communal electorates, it is impossible, in view of the grave divisions of opinion in India, to avoid it for the time being. The division of the electorate into watertight compartments and the allocation of seats according to the numbers of various religious communities seems to us to cut very deeply at the roots of a real system of democratic government; but we can only hope that in course of time a realization of their common citizenship may lead the contending communities to sink their mutual suspicions and animosities. Meanwhile, it is necessary to base our proposals for representation at the Centre and in the Provinces on the Communal Award.

Nature of the Constitution.

16. In endeavouring to frame a Constitution we recognize that we are not writing on a clean slate. The working of the Montagu-Chelmsford Reforms has powerfully affected Indian public opinion, and it is impossible to ignore the preferences for particular constitutional forms which have now the sanction of usage over a considerable period of years. Any constitution must satisfy Indian public opinion. This is not to say that in every detail Indian views of what is desirable must be accepted, for we have to consider not merely the politically conscious but also those who as yet have little more than a dim conception of democratic government and electoral systems. Nor would it be right for us to subordinate entirely our greater and longer experience of the working of parliamentary institutions to the views of Indian politicians; but it is necessary always to bear in mind that a faulty constitution which will be worked with goodwill by those whom it most closely concerns is better than a more perfect piece of machinery which no one will operate.

Federation.

17. We accept the conclusions of the Round Table Conference as embodied in the White Paper, that the new Constitution for India must be Federal. We recognize, however, the serious difficulties involved in the attempt to federate units of very different internal constitution, but it is essential, if India is to be a nation, that British India and the Indian States should be associated. The fact that the Central Legislature will be composed of elected representatives from self-governing Provinces, and the nominees of the Rulers of States, in many of which there is not even a shadow of democratic institutions, has necessarily very powerful repercussions when consideration is given to what constitutional arrangements are best at the Centre. We doubt whether this fact has been sufficiently present to the minds of Indian politicians. It would, of course, solve many difficulties if from the start

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the representatives of the Indian States in the Central Legislature were elected, but we recognize that it is impossible for the British Parliament to dictate to the Rulers of the Indian States what form of Constitution they should adopt, and that to attempt to lay down any condition to this end would be to wreck all chances of Federation. But we would like to record our opinion that it would make for constitutional stability and for the growth of a real Indian national consciousness if at least in those States where representative institutions exist those sent to a Central Legislature should be chosen directly or indirectly by the people.

Responsibility.

18. The demand of Indian politicians for responsible government has been stressed over and over again and was reiterated by the Indian Representatives who were our colleagues on the Committee. We are emphatically of the opinion that where responsibility is given it must be real. It involves such an amount of freedom from external control as will allow of profitable experience being derived even from mistakes. A form of responsibility where there is power in some other authority to step in and save people from the consequencies of their own errors, except in extreme emergencies, is unreal. We have been impressed, as, indeed, were the Members of the Indian Statutory Commission, with the fact that under the Montagu-Chelmsford Reforms there was a tendency to breed irresponsibility. The fact that in the Legislatures it was possible for elected representatives to vote against unpopular but necessary measures, secure in the knowledge that a Governor or Governor-General would be at hand to set things right was, in our opinion, a very unfortunate feature of the last ten years. Equally unfortunate, in our view, was the constitution of the Central Government, whereby an irresponsible Executive was faced by a Legislature with little power of control. Responsible government in the minds of many Indians is considered necessarily to mean the British Parliamentary system. It is almost inevitable that the long course of education of Indians in English ideas and on English historical and constitutional text-books should have made this conception almost ineradicable. We are conscious that our Indian colleagues have been apt to regard any variation from what we may call the Westminster model of constitutional government as derogatory to their status as fellow-citizens in the British Commonwealth of Nations, and as conceding something less than they consider is their due. As a matter of fact, our own system of responsible government has no exact reproduction outside the British Commonwealth, while there are examples of responsible government on entirely different models, as, for instance, in the United States of America. We recognise, however, the strength of this conviction on the part of Indian politicians, and we consider that India should be given the fullest opportunity of trying out the British system in the Provincial sphere with as little interference as possible. We think it unlikely that there will be uniform constitutional development in all these Provinces, and, indeed, we think it desirable that the Constitution should be sufficiently flexible to allow of variation and adaptation to the very varied conditions obtaining.

Responsibility at the Centre.

19. We think it essential that real responsibility should be conceded at the Centre. There is no doubt that Indian sentiment strongly demands it, and would consider a Constitution which provided for only some slight or illusory responsibility at the Centre as a denial of India's proper status. There is, too, a further strong argument against giving responsible government in the Provinces and withholding it at the Centre. India has been united for but a short period of time relative to her long history. While the sentiment of Nationalism is strong, there are also powerful tendencies towards Provincialism. There is grave danger that if responsibility were conceded in the Provinces and not at the Centre there might be a growth of separatist feeling. The parts would be developed at the expense of the whole, and the hard-won unity of India, which she owes very largely to the British people, would be shattered. We consider it is essential the Centre should be, as it were, a focal point

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for Indian Nationalism. At the present time the Congress appears to very many Indians as the most vital expression of their nationalist aspirations, and it has been a regrettable fact during the years which have elasped since the Montagu-Chelmsford Reforms that Congress has been to a large extent a body functioning outside the Constitution. It is our desire that Indian Nationalism should find its full expression within the Constitution, and we think this is only possible if real responsibility is given at the Centre as well as in the Provinces.

The Constitution at the Centre.

20. On the other hand, we do not consider it likely that the constitutional arrangements for a unitary state with a population of forty or fifty millions is likely to be suitable for a country of 350 millions and, in fact, there is no country in the world with a population anywhere approaching that of India in which the British system has been put into force. We have to recognize that the form of government applicable to a unitary state is not necessarily that which is best adapted for a federation, while, as we have pointed out above, the fact that the Federation is composed of two categories of Federal units of different constitution, makes it difficult to believe that a system modelled precisely on that in force at Westminster would function effectively.

Reserved Subjects.

21. We consider that there should be no reserved subjects in the Provinces. We do not think that it is necessary for us to emphasize or enlarge on the disadvantages of Dyarchy which were very fully discussed in the Report of the Indian Statutory Commission. No evidence submitted to us has, in our view, shown their considered opinion to be incorrect. The White Paper suggests three subjects for reservation at the Centre. We see no reason why India should not have as full a control over her external affairs as any other Dominion. She is a member in her own right of the League of Nations. We agree, however, that the department of foreign affairs dealing with the relationship of the Viceroy and the Indian States should be reserved. We consider that the Ecclesiastical Department should be abolished and such functions as the provision of chaplains should be transferred to the Department of Defence. On the other hand we recognize that for some years defence must be reserved. The Indian Statutory Commission stated that the great obstacle to giving full self-government to India was the fact that the Military Forces were composed partly of Indian troops with officers of British nationality, and partly of units drawn from Great Britain. It is abundantly clear to us that it is impossible to transfer the control of Forces so composed to an Indian Minister. This is not due to the fact that the Minister would be an Indian, as is sometimes erroneously supposed, but to the well-established practice, which has never been departed from in the history of the British Empire, that Imperial troops must not be put at the disposal of Ministers not responsible to the British Parliament. We desire, however, that the conversion of the Indian Army from a mixed force to an All-Indian Force should be pushed forward with the greatest possible energy, and we make proposals whereby an informed public opinion in the Legislature on Defence questions should be created. We consider that a definite time should be laid down in the Constitution, at the end of which the control of Defence should pass into the hands of responsible Ministers.

Reserved Powers.

22. In our view, while it is necessary that there should be reserved powers in the hands of the Governor-General and the Provincial Governors, we would desire to see these much reduced in scope on those laid down in the White Paper. We consider that the success of the experiment of Indian Self-Government will be shown by the little use which is made of these powers. It is necessary that the power of intervention should not be used so frequently as to lessen the sense of responsibility of the elected Members of the Legislatures and of the responsible Ministers. They should be essentially for use in emergency, and we believe that in future Governors and Governors-General will tend to rely more on their powers of persuasion and advice than on the putting into force of an actual exercise of their will.

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Administration.

23. It has been said that Indian government is far more a matter of administration than politics. This may have been true in the past and even have many elements of truth to-day. There is no disguising the fact of the immense importance to India of a stable administration. There are in India millions of the population who are living in artificial conditions created and maintained by an efficient adminstrative machine. For example, the large agricultural populations in the canal colonies in the Punjab are dependent on a well-administered system of irrigation. It is true to say that the lives of millions depend on this machinery of government, and were it allowed to fall into disrepair the consequences would be far-reaching and disastrous. On the other hand, in our view, it is not possible for an administration, however able, disinterested and incorruptible, to function successfully against the force of public opinion. It is here, we consider, lies the fallacy of those who suggest that it is possible to return to the old condition of affairs in India, when the Members of the Civil Service were in fact the Government. Those days have passed,and we believe that the present generation of Civil Servants recognizes quite clearly the difference of function which they now have to perform, and that, instead of giving orders, they now have to persuade and advise. So long as the majority of the educated classes in India were not politically awake, and so long as those classes had not discovered the means of influencing the masses, it was possible to maintain that the best form of government for India was a disinterested bureaucracy. But as soon as the educated classes became politically awake and as soon as they began to manifest their power, as they have done in recent years, of swaying the masses, the administration had to work under conditions of opposition and criticism which must in time render all its efforts nugatory. We recognize, however, that there is still in India the need for British help in the services, and in this most of the spokesmen of India agreed, and we desire to see that those who serve India during the difficult transitional period through which she is passing should have that security and freedom from anxiety as to their status and prospects which will permit them to give the best services of which they are capable, and we are, therefore, in favour of all reasonable provision being made to this end. We deem it essential that strong and independent Civil Service Commissions should be set up at the Centre and in the Provinces, and welcome the White Paper proposals to this end.

The Date of Federation.

24. We agree with the Indian Delegates in attaching great importance to the fixing in the Constitution Act of a definite date for the inauguration of the Federation. As they said in their Memorandum, "we have in view the psychological effect of such a provision on the political parties in India. The uncertainty that must necessarily result from the absence of any definite date in the Constitution Act for the inauguration of the Federation and the possibility of further delay arising from the procedure of an address in both Houses for the issue of a Proclamation would seriously prejudice the formation or realignment of political parties in India. On the other hand, we have reason to suppose that if a definite date were fixed, even the parties which are dissatisfied with the White Paper Constitution would probably cease to carry on an agitation on the present lines and would be encouraged to concentrate their attention on the new elections. We attach very great importance to this development, since the satisfactory working of the new scheme must necessarily depend on the existence of well-organized parties, prepared to work the scheme."[1] We are entirely in agreement with this view, and for this reason we are unable to concur with the procedure outlined in the White Paper, whereby the inauguration of Federation will be dependent on an address in both Houses of Parliament. Nor can we accept the proposition that the coming into force of the new Constitution should be dependent on the Indian budgetary and financial position being entirely satisfactory. We can see no reasons why canons of finance, which are patently disregarded by all the leading countries of the

[1] Joint Committee Records, No. 10, p. 37.

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world, including our own, should be imposed upon India. India, indeed, has an enviable record in balancing its budget and meeting its financial obligations. It appears to us that, inasmuch as in any event the Government of India must be carried on whether there is financial stringency or not, it is illogical to make self-government depend on financial prosperity. It is particularly undesirable that this should be done in the case of Great Britain and India. Such a proposal seems to us to regard Great Britain and India as creditor and debtor rather than as fellow-members of a commonwealth of nations. Equally, we are unable to accept the view that the bringing into operation of the Federation should be dependent upon the adhesion of the Rulers of States representing not less than half the aggregate population of the States, entitled to not less than half the seats in the Federal Upper Chamber. To agree to such a proposal is to subject the progress of Indian democracy to the veto of a number of autocrats. We consider that the Federation should be established, in the first place, with whatever States are prepared to enter it, and that other States, whenever their Rulers are prepared to accede, should be added. We should, of course, prefer to see the Federation fully representative of All-India from the start, but the entry of the States should not be made a condition of the establishment of responsible government at the Centre.

India and Great Britain.

25. We have been impressed by the great importance which all the Indian Representatives whom we have met lay on the subject of Status. We do not think that this is sufficiently recognized in the White Paper Proposals. We consider it would be well to mark the new departure by a change in the channel through which connection between Great Britain and India is maintained. We should desire that India, on attaining Dominion Status, should come under the Secretary of State for the Dominions, but during the transitional period we think that the India Office should be transformed into a Secretaryship of State for the Self-Governing parts of the British Commonwealth of Nations in the East. The Secretary of State should in our view be responsible not only for India, but also for Ceylon, Burma, and any other portions of the British Commonwealth of Nations which are following the path towards complete self-government. In any event, it is clear to us that the India Office cannot continue to exist on anything like the same lines that have obtained since the Crown took over the administration from the East India Company. At the same time, it is desirable that the experience of the India Office should be fully utilized, and we shall make certain suggestions for reform.

Conclusion.

26. In conclusion we would urge that in inaugurating another stage in the long history of the connection between this country and India we should, above all things, endeavour to exercise the utmost generosity. We are convinced that the only real safeguard for British interests in India is the goodwill of the Indian people. The insistence on a number of small provisions, each one of no very great value in itself, tends to spoil the effect of the great advance which has been made. We are profoundly convinced from our intercourse with our fellow-citizens from India that generosity and fair dealing will create generosity and fair dealing, and that the spirit in which a gift is made is as important as the gift itself. We recognize that in India we are embarking on a great experiment. The establishment of a form of government based on the ideals of Western democracy in an oriental country is almost unprecedented. To attempt to give a population of 350 millions a system of government whereby they will have control over their own affairs is almost unparalleled in political experience; but we are persuaded that the choice before us is either to go forward or to fail. It should be a matter of pride to us that we have carried across the seas the principles of democratic self-government which we have so long practised, and that those seeds have borne fruit. The proposal to endow India with self-government is not, as some suggest, a falling away from the great traditions of the past, but is, on the contrary, the fulfilment of the work of all those great servants of India who have gone out from this country and who have laboured to make India a Nation.

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We have tried to meet, with a full sense of sympathy and responsibility, what we conceive to be the legitimate aspirations of the peoples of India. We believe that in the future as in the past men and women of our own race will be of service in helping India forward on the path of progress and that the bonds of friendship between the two peoples will in no way be weakened but rather strengthened by India becoming an equal partner in the British Commonwealth of Nations.

It is our earnest hope that the peoples of India will seize their great opportunity of leading the East along the path of democratic progress and that all sections will unite in a common aim to make the new constitution productive of ordered freedom and social justice for all.

PART II

PROVINCIAL AUTONOMY

27. We are in general agreement with the proposals of the White Paper for establishing Provincial Autonomy. It is our desire that in each Province a Government responsible to a Legislature should be set up which should have control over the entire Provincial field. We agree generally with the de-limitation proposed in the White Paper between the functions of the Provincial and the Federal Governments. The lists of subjects in Appendix VI seems to us to be sufficiently exhaustive and, with certain reservations in regard to Social and Labour Legislation, to give a satisfactory allocation.

The Provinces

28. We are in agreement with the proposals in the White Paper to constitute two new Provinces—Sind and Orissa. We have carefully considered the objections that have been raised to the separation from Bombay of Sind, which have been mainly based on the possibility of there being a deficit in the Provincial Budget, and to the fact that the prosperity of the Province must depend to a large extent on the proper administration of the Sind Barrage. We consider, however, that there is a very strong case that a territory, racially and geographically separated from the rest of the Presidency, should be given a separate administration. The Governor should be given a special responsibility in relation to the Sukkur Barrage. We are also strongly in favour of the Constitution for the new Province of Orissa, which will, we believe, do an act of justice to the claims of the Oriya-speaking people. We think that the boundaries of the Province should be increased by the addition of the Jaipur Zemindari. We have great sympathy with the desire of the Raja of Parlakimedi for the inclusion of his state in the new Province, but in view of the racial and linguistic composition of the population therein contained, we are unable to recommend that his desires should be acceded to. We believe that even with the creation of these new Provinces there is a strong case for a reconsideration of Provincial boundaries, and we recommend that the Indian Legislature should as soon as possible after the coming into force of the new Constitution set up a Boundaries Commission to delimit the extent of the Provinces and to decide if some should, for greater facility in working, be divided. Generally speaking, we consider that the Provinces, however suitable as administrative units under an autocracy, are, in many cases, too large for the efficient working of democratic institutions for a people at the stage of development of that of many of the inhabitants of India, although, at the same time, we recognise that a Provincial patriotism has, in many instances, already been developed. It is therefore, in our view, essentially a matter which should be decided by the representatives of the Indian people. We would add here a word as to the proposition which has been put before us on many occasions, namely, that no area which is not financially self-sufficient

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should be formed into a Province. We cannot accept this contention. It is a fact that the Indian Provinces and various parts of them differ widely in their financial resources, but we can see no reason why, two areas that admittedly differ in their racial and linguistic composition, should be united in order that one of them might bear the burden of the deficit in the other. In our view, the mere fact of contiguity to a deficit area does not make it equitable to impose a burden on the people of a particular Province. We recognize that it is desirable that no part of India should be seriously retarded in its progress as compared with others by reason of its lack of resources, but we consider that the difficulty should be got over by the grant of funds from the whole of India, rather than that the burden of the deficit areas should be placed on particular Provinces for purely geographical reasons.

The Provincial Executive

29. We are in general agreement with the White Paper in the proposals to abolish dyarchy and to transfer all subjects to Ministers. We have considered with very great care the arguments which have been put forward in some quarters against the transfer of Law and Order or particular parts of that subject, notably the Police; but we think that the reasons given by the Indian Statutory Commission for the transfer are sound. It would be disastrous for British influence in India if, while all the more popular functions of government were transferred to Indian hands, the preservation of order should be retained by the Governor acting through an irresponsible Representative, whether British or Indian. The success of a Police Force depends very largely on the extent to which it is recognized by the people as being maintained in their interests. It would be fatal to the efficiency of the force in the future if it were to be regarded as an instrument of an alien power. It has been suggested to us that there should be some reservation in respect of the Special Branch of the Police, especially in Bengal. The conditions in that Province, due to the activities of the terrorist movement, are altogether exceptional, and we recognize the serious nature of the problem. We think, however, that the evil must be dealt with by Indian statesmen, backed by the full force of public opinion which they should be able to rally to the support of their own government. It is not in our view possible to divide up the control of the Police Force for the Special Branch must depend largely on the co-operation of the members of the force engaged in their ordinary functions of preserving law and order. A doubt has been expressed whether information will be forthcoming as to terrorist activities if the Special Branch is under an Indian Minister, not because the witnesses who came before us had not confidence in the probity of Indian Ministers, but because the informants might suspect that their names might be disclosed. We are, however, satisfied that Indian Ministers will follow the usual practice which obtains in this country and will not seek for information from the Chief of Police as to the names of those on whose information action is taken. We have already stated that we desire to give in the Provincial field the fullest opportunity for the experiment of parliamentary government on the British model. We consider, therefore, that all Ministers should be elected members of the Legislature, and there should be no power in the Governor to appoint as Minister a non-elected person. It has been argued that it might be advisable at some time and in some Provinces for the Governor to have the power of entrusting a particular portfolio to someone who did not owe his position to popular election, and the suggestion has been made that the provision of Second Chambers in some of the Provinces will enable this to be done on lines not unlike those which obtain in this country where some Ministers are Members of the House of Lords. We do not consider that this provision should be included in the Constitution. It is undesirable, we think, that there should be any blurring of responsibility, which must lie definitely either with Ministers responsible to the Legislature or with the Governor if a complete breakdown occurs.

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Selection of Ministers

30. We consider that the Governor in selecting Ministers should follow the practice that obtains in this country, that is to say, that he should send for the individual who, in his opinion, commands the greatest amount of support in the Legislature, and should invite him to form a ministry. We consider that the practice already obtaining in Madras of having a First Minister who is, in fact, the Prime Minister should be followed in all provinces. The White Paper suggests that the Governor should be instructed to choose his Ministry in such a way as to represent the various communities. We do not think that his discretion should be in any way hampered. If real parliamentary government is to be established, it is essential that there should be collective responsibility. At the present time in some Provinces in India the Ministry is composed of Members who draw their support from separate sections and who cannot rely on a majority in the Legislature to support the Ministry as a whole. While in some Provinces such a practice may still be necessary, we consider that experience has shown that a system of groups forms a very weak basis for a government, and we should desire that the Governor, wherever possible, should endeavour to form a homogeneous Ministry.

The Governor's special responsibilities

31. It is proposed in the White Paper that the Governor shall have a special responsibility in respect of: (*a*) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof; (*b*) the safeguarding of the legitimate interests of minorities; (*c*) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests; (*d*) the prevention of commercial discrimination; (*e*) the protection of the rights of any Indian State; (*f*) the administration of areas declared, in accordance with provisions in that behalf, to be partially excluded areas; and (*g*) securing the execution of orders lawfully issued by the Governor-General. The Governors of the North-West Frontier Province and of Sind are respectively declared to have in addition a special responsibility in respect of: (*h*) any matter affecting the Governor's responsibilities as Agent to the Governor-General in the Tribal and other Trans-border Areas; and (*i*) the administration of the Sukkur Barrage. With regard to (*a*) the Joint Memorandum of the British India Delegation urges a double limitation on the scope of this special responsibility: first, that the special responsibility itself shall be restricted to cases in which the menace arises from subversive movements or the activities of a person or persons tending to crimes of violence; and, secondly, any action taken by the Governor under it shall be confined to the department of Law and Order.[1] We accept the first suggestion. We feel that the special responsibilities of the Governor should be reduced to the absolute minimum necessary, and that the provision in the White Paper is drawn in such wide terms as to enable the Governor to step in and overrule Ministers over a very wide field. To give such wide powers of intervention is, in our view, likely to reduce that sense of responsibility which we wish to see created in Ministers and Legislatures. We believe that the success of the Provincial Governments will be shown just in so far as such a power does not have to be exercised, and we consider that powers given to the Governor must be adequate, but in our view they should essentially be emergency powers to be used only where a breakdown threatens and not to be part of the ordinary operation of government. We do not agree, however, that any action taken by the Governor should be confined to the department of Law and Order. This is to fall into the mistake, which may perhaps have arisen owing to the operation of dyarchy, in imagining that Government can be divided up into a series of watertight compartments. With regard to (*b*), we agree with the British India Delegation in thinking that the term "legitimate interests of minorities" is capable of a dangerously wide interpretation. It may be said that

[1] Joint Committee Records No. 10, p. 51.

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the term "minorities" has a special meaning in India and connotes the Minority Communities such as the Muslims, the Sikhs, or Indian Christians, and that the Governor will well understand the scope of the phrase. We fear, however, that it may be possible for some Governor in the future so to interpret the "legitimate interests of minorities" as to make him feel it incumbent upon him to prevent legislation directed to the removal of economic, social and religious abuses; and we should therefore propose that, instead, the words "racial and religious" should be inserted before the word "minorities." We also agree that the words in (*c*) are capable of a wide interpretation, and would prefer that "special responsibility" should relate only to the securing to the Members of the Public Services of the rights definitely provided for them by the Constitution.

Procedure

32. It is contemplated that the Governor should normally preside at meetings of his Ministers. We realize that for some time this practice may be desirable, but we would wish that it may soon fall into desuetude. In the early stages of the new Constitution, Ministers will value the advice of the Governor, but this can be obtained without his direct participation in what amount to meetings of a Cabinet. It is, we think, in the direction of gradually transforming the position of the Provincial Governors into that held by the Governor of a self-governing Dominion that progress towards full self-government will be made in the Provinces. This progress may well be more rapid in some provinces than in others, but, in our view, it is desirable from the start that Ministers should take upon themselves the full responsibility. We recognize that it is necessary that the Governor should be kept fully informed of all that is taking place, if he is to be in a position to carry out his special responsibilities. We believe that this can be fully provided for by his right to lay down rules of business. We consider it necessary that the Governor should be provided with an adequate staff and that the salaries of the Governor and of his staff should be not votable. In particular, it is necessary that he should have a capable and experienced officer of high standing at the head of his staff who would be fully conversant with the current affairs of the Province and in close contact with the administration. It is, in our view obviously necessary, in the case of Provinces to which Governors are sent out from this country, that there should be available a fully-informed officer of high rank if a Governor is to carry out his onerous and responsible duties.

Special Powers

33. We agree with the White Paper, that it is necessary that there should be special powers in the Governor to legislate in case of emergency, but only in emergency. We disagree with the White Paper in the suggestion that where a Governor proposes to pass emergency legislation he should seek the consent of the Legislature. It should be a condition precedent to the introduction of such legislation that it is impossible to get the necessary consent of the Legislature and for the Governor to endeavour to obtain that consent which *ex-hypothesi* will not be forthcoming seems to us to be quite illogical. We consider that all acts of Governors and all temporary ordinances should be laid before Parliament and that the Governor, before legislating or passing ordinances, should have the consent of the Governor-General. We are in agreement with the recommendation of the White Paper, that in the event of a breakdown of the Constitution the Governor should have power, by Proclamation, to assume to himself such powers vested in any Provincial authority as appear to him to be necessary for the purpose of securing that the Government of the Province should be carried on effectively. Events have shown that this may be necessary, and we realize that in any event the Government must be carried on. We desire that there should be the sharpest distinction between ordinary constitutional government and the emergency action of a Governor in the event of a breakdown. It is far better, in our view, to make no pretence of carrying on constitutional government where, for the time being, this has failed.

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Provincial Legislature

34. The White Paper proposes that in each Governor's Province "there will be a Provincial Legislature, consisting, except in the Provinces of Bengal, the United Provinces and Bihar, of the King, represented by the Governor, and of one Chamber, to be known as the Legislative Assembly. In the Provinces just named the Legislature will consist of His Majesty, represented by the Governor, and of two Chambers, to be known respectively as the Legislative Council and the Legislative Assembly." It is also proposed that after a period of ten years "after the commencement of the Constitution Act—(*a*) where the Legislature consists of two Chambers to provide by Act, which both Chambers separately have passed, and have confirmed by a subsequent Act passed not less than two years later, that it shall consist of one Chamber instead of two Chambers; and (*b*) where the Legislature consists of one Chamber, to present an Address to His Majesty praying that the Legislature may be reconstituted with two Chambers." In our view, Second Chambers, as proposed in the White Paper and composed largely of landowners and reactionary elements opposed in general to the wishes of the mass of the people, are undemocratic. We are in favour of one Chamber only. We should like, on this subject, to quote with approval the opinion of some Members of the Indian Statutory Commission.

> "It has generally been proposed in evidence before the Joint Conference to constitute Second Chambers disproportionately representative of vested interests. They fear that such Chambers would be regarded as an undemocratic instrument of Government, and that ceaseless conflict between the two Houses would result. They think that this danger will be a real one, however the Second Chambers may be formed. Whilst a Second Chamber will not be a substitute for the Governor's powers, its existence may be used as an argument for modifying the Governor's powers before this is desirable, and it may support the Lower House against the Governor and so increase rather than prevent friction between him and the Legislature. So long as Ministers are secured in the support of the Lower House, and so obtain the funds which they require, the Second Chamber can exercise little control on the administrative side, and it is here that the influence of a Legislature is most required."[1]

In the Joint Memorandum submitted to us by the British India Delegation they pointed out that only one of their number was in favour of Second Chambers in the three Provinces of Bengal, Bihar, and the United Provinces, while another Member of the Delegation considered that only in the case of the United Provinces was a Second Chamber necessary. All the others were totally opposed to the creation of Second Chambers in Bengal, Bihar, and the United Provinces.[2] There are two other arguments against Second Chambers which must be given due weight. The first is the additional cost on Indian revenues, which would be considerable and out of all proportion to the benefit, if any, to be gained; and the second is the drain on the personnel of the Province which would be made by creating so large a number of seats which must be filled.

Composition of the Legislatures

35. We have found ourselves obliged to accept the existing position in India and to agree reluctantly to the continuation of Communal Electorates, and we, therefore, accept the allocation of seats in the White Paper which are based upon the Communal Award issued by His Majesty's Government on August 4th, 1932, with such modifications as have been rendered necessary by the proposal to create a new Province of Orissa, and by the Poona Pact of September 25th, 1932. We have had a considerable amount of criticism of the Poona Pact by representatives from Bengal on the ground that undue representation is given to the Depressed Classes. In our view, the social and economic position of the Depressed Classes renders it most desirable that

[1] Indian Statutory Committee Report, Vol. II, p. 99.
[2] Joint Select Committee Records, No. 10, p. 52.

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they should be given the fullest representation possible, and we consider that the Communal Award, having been made and the Poona Pact having been accepted by representative Indians, it is not desirable at the present time to depart from either of them. We accept the numbers suggested in the White Paper for the Provincial Legislatures, subject to the following alterations. We can see no reason for the provision for special seats for landlords. In the Report of the Indian Statutory Commission, Volume II, Part II, Chapter 2, Section 90, the question of the special representation of landholders was exhaustively reviewed. They came to the conclusion that the landholding interests have in fact at the present time been returned for four times as many seats as were specially reserved for them, and considered that the special protection furnished to them at the present time could be safely withdrawn. We are entirely in agreement with this view. If special representation were needed it should be given not to those who by reason of their wealth and status in the community command influence and power, but to those who by reason of their poverty and low status are likely to find their claims overlooked. We are also opposed to special representation of universities. We know that the Indian Statutory Commission agreed that university seats should be preserved, but with considerable hesitation. From our own experience we find that university seats do not provide a special class of representative differing in any essential from those who find their way into legislative assemblies through general constituencies, and we, therefore, propose that these special seats should be abolished. With regard to the representation of Commerce and Industry and Planting Interests, here, again, we consider that the wealth and influence of these classes will always be sufficient to obtain for them adequate representation in the legislatures. In the case of Europeans, where admittedly there may be little likelihood of their being elected from general constituencies, we recognize that, in view of the long connection of the British people with India and the special interests of Europeans, that there should be special representation for them. We believe, also, that the presence of Europeans in the Legislative Assemblies has been welcome to their Indian colleagues as bringing in an experience which has been found very valuable. We think that the representation given to Europeans should be frankly given to them as such and they should not be returned as representatives of Industry and Commerce. The abolition of these special seats will provide for an increase in the number to be allotted to the territorial constituencies and thus allow of some reduction in their area and population. This should, of course, be done with due regard to preserving the communal proportions.

Increased Labour Representation.

36. We consider also that there should be an increase in the number of seats reserved for Labour. It might be contended that having rejected the claims of the landholding and capitalist classes to special representation, we are not equitable in retaining special seats for Labour. The answer is the same as that applicable to the case of the depressed classes. It is necessary to give special protection to those whose economic circumstances render them liable to exploitation.

The Indian Franchise Committee in its report stressed the importance of adequate representation of Labour in the legislatures, pointing out that " the force of Labour is in its numbers," and that " until a further lowering of the franchise secures it more wholly adequate representation in the electoral roll " special representation is necessary, and it quotes with approval the views expressed by the Royal Commission on Indian Labour " if special electorates are to remain a feature of the Indian Constitution, there is hardly any class with so strong a claim to representation by this method as industrial labour," and further " If special constituencies are retained it should be recognised that Labour has not less claim to representation than employers."[1] With these views we are in full accord.

[1] Indian Franchise Committee Report, Vol. I, p. 3, and pp. 97-98.

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The Indian Franchise Committee recommended that 38 seats should be given to Labour in the Provincial Legislative Councils as against 46 seats allocated to Commerce and Industry. The White Paper has increased this disparity by adding yet another 10 to the latter. Vested interests are also reinforced in the White Paper proposals by the votes given to the landlords. The Indian Franchise Committee further pointed out that " the administration of labour legislation must for the most part be in the hands of the provinces and we regard it as essential that the Provincial Legislatures should contain representatives of Labour who can watch over the provincial administration and can represent the legitimate desires and grievances of the industrial labouring class."

We therefore consider the representation given in the White Paper as quite inadequate. We support the proposal of the Indian National Trade Union Conference that Labour should be given at least 10 per cent. of the total number of seats.

The method of securing Labour Representation.

37. We should prefer that as far as possible Labour Representation should be obtained by establishing adult suffrage in the industrial and planting and the large cities. We consider that the more developed administration in those areas would be able to cope with increased electorate, while there is no reason why the franchise level should be the same in all constituencies. In our own country there was for many years a great diversity of franchise as between urban and rural areas.

We especially desire this method because it is in our view far better that the needs of the wage earners should be brought home to the candidates of all classes who would be affected by the existence of a labour vote than that labour representatives should be returned by constituencies of electors segregated from the rest of the community.

We recognize, however, that this method is at present only of limited application, and that pending the introduction of adult suffrage generally it is necessary to provide for special constituencies.

Trade Union Constituencies.

38. Accordingly we concur with the Indian Franchise Committee's proposals for Trade Union Constituencies as a temporary measure. The recommendation was to form these constituencies in the following manner :—

(*a*) To qualify as an electoral unit for the purpose of voting for a special Trade Union Constituency, a Union should have been registered for a minimum period of one year (in the case of the first election under the new Constitution six months).

(*b*) Direct voting where the trade union is confined to one area.

(*c*) Where the Trade Union covers two or more centres, election to the seat or seats allotted to the trade unions in the particular province through an electoral college composed of delegates in each union in the proportion of one for every group of one hundred voters.

(*d*) In the varying circumstances of individual provinces seats might, if conditions make it feasible and desirable, be allotted from among the trade union seats to be filled by representatives of trade unions of special importance or of specially large membership.

Qualification of electors.

39. The suggested qualifications of electors to trade union constituencies should be :—

(*a*) Minimum age of 21 years.

(*b*) Paid up membership for at least six months of a registered trade union, which has itself been in existence for twelve months (in the first election under the new Constitution membership three months, registration of union six months).

They also suggest that a candidate for a trade union constituency should be either a member, or an honorary member, or an official as defined in the Trade Unions Act, of one of the trade unions concerned, his position in any of these capacities to be not less than one year's standing.

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Franchise.

40. We are bound to accept the evidence which has been brought before us that at the present time administrative reasons forbid the introduction of adult franchise generally. We, therefore, accept the proposals in the White Paper, subject to what has been stated above with regard to labour representation, with regard to the franchise for male voters. We consider that the constitution should provide definitely for the introduction of adult franchise in the provinces. Power should be given to any Provincial Legislature to widen, but not to narrow the franchise. It should be provided that adult franchise should be in force in all provinces at the general election next following the expiry of ten years from the date of the inauguration of the new provincial constitution.

Women's Franchise.

41. With regard to women, we consider that the White Paper proposals will not bring into the electorate nearly as many women as is desirable. We entirely agree with the views of the Indian Statutory Commission when they say: "The women's movement in India holds the key of progress, and the results it may achieve are incalculably great. It is not too much to say that India cannot reach the position to which it aspires in the world until its women play their due part as educated citizens."[1] We are well aware of the formidable obstacles which every reformer in this field will encounter, for the position of women in India is bound up with the religious views of the great communities. The development of social consciousness among the women of India is phenomenal, and as far as we can ascertain has not been equalled by any other women's political movement in any other part of the world. The development is the more remarkable considering the impediments which such a movement has had to encounter. Nothing could be more disastrous at this juncture than to create the impression among the women of India that the proposed new Constitution treated of persons of less equal citizenship. We therefore recommend the following modifications in the White Paper proposals for women's franchise: (1) That the application requirements should be dispensed with altogether; (2) That a literacy qualification should be substituted for the educational standard qualification; and (3) That the wives, pensioned widows, and mothers of Indian officers, non-commissioned officers and soldiers should be enfranchised; (4) That the wife of a man who is qualified as an elector under the new Constitution shall be entitled to a vote. We are aware that this will mean a big addition to the electorate, but we are persuaded that it would be unfortunate if a big addition to the male electorate were made now without a corresponding increase in the women's vote. Delay now would only mean an increase later, which would have an unsettling effect on the political situation in the provinces.

PART III

FEDERATION

A Federal Union of States and Provinces.

42. We are in agreement with the proposal in the White Paper to transform India into a Federation of the British India Provinces and the Indian States. This as the next stage in the evolution of the Indian polity was suggested in the Montagu-Chelmsford Report and formed the basis of the whole proposals of the Indian Statutory Commission. At the time when the Indian Statutory Commission reported it was quite uncertain as to whether or not the rulers of the Indian States would be prepared to enter a Federation, but this has since been placed beyond all reasonable doubt by the declarations of Indian rulers. They have, however, significantly declared that they would only be prepared to enter a Federation, the Government of which was responsible. The Indian Statutory Commission pointed out that the formation of a Federation entailed a double process: that of the creation of autonomous Provinces and their reintegration in a Federation. We have no doubt that the double process must be embodied in the same Statute

[1] Vol. I, paragraph 71.

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and that the time lag which may be necessary between the establishment of Provincial autonomy and the creation of the Federation should be no longer than that which is absolutely dictated by administrative necessity. We have already set out our views as to the Constitution in the self-governing Provinces. It remains then to consider on what terms the rulers of the Indian States should enter the Federation.

The Ruler's Instruments of Accession.

43. The White Paper proposes that a Ruler of a State shall signify to the Crown his willingness to accede to the Federation by executing an Instrument of Accession, and this Instrument will, we assume, enable the powers and jurisdiction of the Ruler, in respect of those matters which he had agreed to recognise as Federal Subjects, to be exercised by the Federal authorities brought into existence by the Constitution Act. Outside these limits the autonomy of the States and their relations with the Crown will not be affected in any way by the Constitution Act. We accept generally the list of Federal Subjects given in the White Paper. We consider that it is desirable that the Instrument of Accession should in all cases be in the same form and should, as far as possible, include a similar list of subjects. We recognize that there may be some exceptions due to Treaty rights and special privileges, but we consider that there must be a definite minimum laid down and that as far as possible all States should come in on the same terms.

Accession of a sufficient number of States not to be a condition precedent to Federation.

44. The White Paper suggests that a Federation which comprised the Provinces and only a small number of the States would hardly be deserving of the name. We are unable to agree. We consider that the forces making for Federation are so strong that it is certain that before long a majority of the States, in numbers and population, will accede. At the same time, it is possible that there might be some hesitation at the beginning and we see no reason why the rest of India should wait for a certain number of Rulers of States to change their opinions before enjoying responsibility at the Centre. We would prefer that the Federation should start with a very large proportion of the Indian States included in it, but we believe that in any event a start should be made and that it should be possible to build up a Federation by a gradual accretion of States. It is for this reason, among others, that we desire that the conditions of accession should be uniform, and also, as we shall indicate later, that there should be a definite basis of representation for States adhering.

Differentiation of functions of Governor-General and Viceroy.

45. We agree with the proposal in the White Paper, that there must be a legal differentiation of functions between the Representative of the Crown in his capacity as Governor-General of the Federation and as representing the Sovereign in his relationship with the States not adhering to the Federation and to all States in respect of the rights of the Crown outside the sphere of the Federation. We consider that it would be convenient if in his first capacity the King's representative were styled Governor-General and in his second Viceroy.

Area of Federal Jurisdiction.

46. We agree with the proposals of the White Paper, that the area of the Federation should include the whole of British India, with the exception of Aden and Burma. We give below our reasons for holding that Aden should henceforth cease to be part of British India. As regards the States which have acceded to the Federation, the Federal jurisdiction will extend to them only in respect of those matters which the Ruler of the State has agreed in his Instrument of Accession to accept as Federal. We consider that the geographical remoteness of Aden from India and the difficulties of merging it satisfactorily in a new Indian Federation make its separation desirable. Further, it owes its importance essentially to its position as a strategic point on the road to the East. In our view places such as Aden concern the whole Empire and should not be considered the exclusive responsibility of any particular member.

47. We give reasons later for our view that it is desirable that Burma should be separated from India.

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PART IV

RESPONSIBILITY AT THE CENTRE

The need for responsibility.

48. We agree that of all proposals in the White Paper the one which has given rise to most controversy is that of giving responsibility at the Centre. We have already given reasons why we consider that this is essential, both as a fulfilment of the pledges of this country to India, and as a condition precedent to the active co-operation of the Indian people in the new Constitution. This, we believe, applies no less to the Rulers of the States than it does to the representative statesmen and people of British India. We feel, however, the necessity of widening the proposals of the White Paper and providing a measure of elasticity so as to give Indians more and more real responsibility for the government of their country. We would here quote from the evidence given to us by Sir Charles Innes, who as a Member of the Indian Civil Service has spent the best part of a life-time in India, in some of the most important Government positions. He gave it as his view that :—

> " Incomplete self-government is the most difficult form of government ; it is always, so to speak, reaching out to fulfil itself. Canada in the first half of the 19th century offers in some respects a parallel with the India of to-day. There was an irresponsible executive confronted by a powerful legislature, and Canada had its own communal problem in the rivalry of the French and English Canadians. The effects of these factors were much the same as have manifested themselves in recent years in India. There was a tendency towards irresponsibility on the part of the legislature. The tension between the French and English Canadians increased and there was growing bitterness against the Home Government. Finally, there was a rebellion, and it was only Lord Durham's report that saved Canada for the Empire. He recognized that responsibility was the only real remedy for the situation that had arisen. History is repeating itself in India to-day, and much the same phenomena can be seen. The ferment has been immensely increased by the first instalment of self-government. We have set every person in India who understands the matter at all thinking about political advance. It has become an obsession with almost all educated Indians, and they feel that the honour and self-respect of India are bound up with it. As the Indian Statutory Commission put it, there has grown up ' a passionate determination among the politically-minded classes of all Indian races and religions to assert and uphold the claim of India as a whole to its due place in the world,' and there is in India to-day a real Nationalist movement concentrating in itself all the forces which are ' roused up by an appeal to national dignity and national self-consciousness.' Again, communal feeling between Hindu and Muslim is more acute to-day than it has ever been before, and finally during the last twelve years racial feeling against the British has increased in India. Politically-minded Indians tend to believe that the British are standing in the way of their legitimate aspirations and that we do so because in our own interests we are reluctant to give up our hold on India."[1]

Nature of responsibility.

49. We think, however, that it is necessary to point out that responsibility may take many forms. We believe that any attempt to try to create responsibility at the Centre by an exact reproduction of the machinery which functions at Westminster would be doomed to failure. In the first place, the system of responsible government as we know it in this country depends on stable divisions on Party lines and, generally speaking, functions satisfactorily where there are only two main Parties. These Parties should not be the creation of groups formed by Members of the Legislature subsequent to their election, but should represent real divisions of opinion which extend back to the constituencies. In the Federal Legislature, apart from the communal cleavages

[1] Joint Committee Minutes of Evidence, p. 550.

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which already make the working of the British system difficult in many Provinces, there is to be a sharp division of the Legislature into two categories of members, one of elected representatives from British India, the other of nominees of the Rulers of States. It seems difficult, therefore, to envisage the emergence of Parties on the lines familiar to us in this country. Two further obstacles present themselves. The first is that, owing to the nature of the Federation, the Members of the Legislature will not be equally concerned in its territory, and that the jurisdiction of the Federation will not extend as to all subjects equally over that territory, while the other is that the subject-matter of Central administration and legislation provides a rather slender basis for a full parliamentary system. We realise that 90 per cent. of everything that concerns the ordinary citizen comes within the ambit of the Provincial administration. For these reasons we consider that responsibility at the Centre will be developed on lines very different from those obtaining at Westminster. We think that it is not always realised in India that the British Cabinet is in fact the master of the Legislature. This is a result of the Party system, for the Cabinet, though formally selected by the Crown, is really composed of the leading members of the Party in a majority. It maintains its power largely through the discipline of the Party machine, backed by the power of dissolution. We think that this power of the Ministry to control the Legislature will not be reproduced at Delhi; indeed, we think that the Ministry will be far more the servant of the Legislature than its master. Under these circumstances, we think that real responsibility will lie rather with the Members of the Legislature than with the Ministers; that is to say, that the Members of the Legislature will have to take full responsibility for their actions. We do not think that the practice, whereby a Ministry is dependent from day to day on a vote of the Legislature during a Session, is workable in India. We suggest proposals, which will give what is essential—greater stability to the administration.

The sphere of responsibility.

50. We do not wish to repeat here what we have already said with regard to special responsibilities. We consider that the White Paper proposals in regard to the Governor-General are open to the same objection as those suggested in the case of the Provincial Governors and we make the same recommendations for modification. In addition we do not think it necessary that the Governor-General should have a special responsibility for safeguarding the financial stability and credit of the Federation. It is, in our view, useless to give power and responsibility on the one hand and take it away with the other. If Indian representatives are not capable of conducting on sound lines the finances of the Federation, they are not capable of self-government.

Reserved Departments.

51. We see no reason why the Indian Federation should not have control over the Department of Foreign Affairs. We recognise that the Viceroy, in his relations with those Indian States which do not join the Federation, and in relation to all the States in regard to those subjects which are outside the Federation, will continue to control the Department which in the Government of India has been hitherto described as foreign; but we consider that in its relationship to the rest of the world India is entitled to have the same control over her foreign policy as that which is conceded to the other Dominions. It may be suggested that, inasmuch as Indian Defence is to be a Reserved Subject, Foreign Affairs should also be reserved, but in our view this is to turn the argument inside out. Armaments depend on foreign policy. India has for years paid for her own defence, although the foreign policy of the British Commonwealth of Nations, of which she is a member, has been decided without her having an effective voice. We would point out that at the Peace Conferences and subsequently in the League of Nations India has had representation as a nation. We consider that this recognition which was given to her as a consequence of the services of her sons in the Great War

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should be given a full content by conceding to her the same degree of control over her external relations as is enjoyed by her sister States in the British Commonwealth.

Ecclesiastical affairs.

52. It seems to us a mistake to have a special reserved Department of the Government of India to look after the religious ministrations of the Army and Services in India. Such ministrations, in our opinion, should form part of the organization of the Army and the Services. Whether it is wise to make such ministrations a drain on the revenues of a people of other religions is, we think, a point that has not heretofore been sufficiently considered. The Secretary of State for India, in reply to the Archbishop of Canterbury on the question of reserving Ecclesiastical Affairs, said :

" (Archbishop of Canterbury) : Will you be so good as to define as far as you can the exact range and scope of what is called Ecclesiastical Affairs as a Reserved Department ? (Secretary of State) : What we intend to mean by the reservation of the Ecclesiastical Department is the reservation of the existing department, namely, the adequate provision of religious ministrations for the Army and the Services. We do not contemplate any further extensions of the Ecclesiastical Department. That, speaking generally, is the kind of department that we have in mind. (Archbishop of Canterbury) : So that in point of fact, though for good reasons a Reserved Department, it is a very small matter : it affects only religious provision practically to the troops, the Services, and in a few cases Europeans in certain places ? (Secretary of State) : Yes. Indeed, it is of such definitely limited scope that I have often wondered whether it is necessary to exclude it by name at all—whether it did not really come by implication within the field of the Services and the field of defence ; but upon the whole I am convinced that it is better to make an exclusion *nominatim ;* but it is exactly the kind of department that we have in mind. (Mr. Morgan Jones) : May I ask whether it does in point of fact involve any ecclesiastical services for civilians who have no relation at all to the Services ? (Secretary of State) : It is difficult for me off-hand to give an answer to that question. I will look into it. (Mr. Morgan Jones): I will ask it when my turn comes. (Secretary of State): Generally speaking, subject to a few quite minor exceptions, the answer is that it is intended that this Department should be a Department for the Services and for the Army."

While we are prepared to accept the proposition that so long as we have an Army in India their spiritual needs should be provided for, we cannot see why this can only or best be achieved by the proposal of the White Paper to retain the Ecclesiastical Department permanently as a special Reserved Department of the Government of India. We think it would be very much better to abolish this Department and include religious ministrations as an integral part of the Army administration. We would go further and propose that so long as we have an Army and Services in India whose spiritual needs are entirely different from those of the peoples amongst whom they serve, it would be a gracious act on our part if the necessary expenses were placed on British instead of on Indian revenues. We are in any event entirely opposed to this being included as a Reserved Department of the Government of India.

Defence.

53. We agree that Defence must for some years be a Reserved Department, and we accept, therefore, the proposal that the Governor-General should exercise his functions through a Counsellor. We consider that this Counsellor should form part of a unified Ministry. We recognize the serious constitutional issue raised by the existence of the Indian Defence Problem and the way in which it is met at the present time by the Army in India. So long as British troops are employed in India, whether for external defence or for internal security, it is, in our view, impossible to bring them under the orders of a responsible Minister. The Indian Statutory Commission examined the whole constitutional position created by the existence of the Indian Army at great

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length, and they recognized that it was a formidable obstacle to the development of complete self-government. We believe that Indian public opinion is extremely sensitive on this point, but that the majority of the leading statesmen recognize the hard facts of the situation. At the same time, we believe that it is essential that the Constitution should contain provisions for the bringing to an end of an anomalous position. We consider that there should be a definite programme of Indianization with a time-limit of thirty years. It may be urged that it is impossible to lay down an exact period within which an Indianized Army would be capable of the defence of India. There may be truth in this, but we consider that it is necessary, if the work of Indianization is to be pushed forward with the greatest possible energy, that there should be a clearly marked time by which the goal is to be attained. From a study of such reports and documents that have been available to us, we believe that this could be successfully accomplished in a period of twenty-five years. We suggest that that period should be aimed at, but that a maximum of thirty years should be fixed which must not be exceeded.

The Burden of Defence.

At the same time, we are impressed with the very large proportion of her revenues which India spends on Defence. We do not suggest that this is in excess of the amount needed to maintain sufficient forces for the requirements of India, and we are aware that a recent agreement on the subject of the capitation payments has resulted in an advantage of a million pounds a year in India's favour, but we consider that, as compared with other parts of the Empire outside the United Kingdom, India has for years borne, and is still bearing, an undue expense. It may be urged that India's defence by sea is provided by Great Britain, but her danger from the sea is a potential rather than an actual menace. India possesses in the North-West Frontier the one land frontier in the whole of the British Commonwealth which not only borders on areas which are frequently liable to be disturbed, but is exposed to the possibility of invasion by a hostile power. While we recognize the vital necessity of the safe-keeping of this frontier in the interests of India herself, we cannot but recognize that the menace to that barrier may well result, not from anything which India herself does, but from the mere fact of her being a Member of the British Commonwealth. We therefore consider that the whole question of Imperial Defence and the responsibilities of the various Members of the British Commonwealth should be reviewed at an early date in order that it may be considered as to how far the burden now borne by India is equitable. While we agree that Defence must continue to be a reserved subject, we are strongly impressed with the need for building up an informed opinion on Defence matters, and we therefore propose that there should be a Standing Defence Committee of the Legislature.

The Federal Executive.

54. The Federal Executive should, in our view, consist of the Governor-General, the Counsellor in charge of Defence, and Ministers, the number of which we think it undesirable to specify. We consider that when the Legislature has been constituted of Members from the States and Provinces the Governor-General should consult with leading members in order to find out what combination of persons would be likely to command the confidence of the Legislature. He should then submit these Ministers and the Counsellor in charge of Defence as a Ministry to the Legislature for a Vote of Confidence. This Vote should signify the acceptance by the Legislature of the Ministry, and thereafter the Ministry should remain in office for a definite term during which period it could only be removed by a definite vote of No Confidence carried by a two-thirds majority. We conceive of the position of the Ministry as something like that of the Swiss Executive. Formal joint responsibility would not be explicitly laid down, as, indeed, it is not in most constitutions, but the acts of the Government would be the acts of all, and although the Ministry would be composed of heterogeneous elements it would be subject to the very powerful influences which tend to bring solidarity to a body of men in positions of responsibility. We consider that in the early stages of

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the new Constitution the Governor-General will preside at meetings of his cabinet and that only at a later stage will this practice fall into desuetude. There should, however, be a first Minister, who will preside in the absence of the Governor-General and lead in the Legislature. He should hold a portfolio without too heavy an administrative content. For the working of the Legislative machine we suggest the setting up of a number of standing committees, some of which Defence, Finance, Foreign Affairs, should be statutory. These committees should correspond with the functions of the Central Government. They would meet from time to time during the Session. The Minister should preside, while in the case of the Defence, the official Member would do so. We conceive of these committees working somewhat on the lines of those in municipal or in the Ceylon Constitution. The object should be to bring the members of the Legislature into real contact with administration. We think that the Committee stage of a Bill should, wherever possible, be remitted to the standing committee dealing with the particular function of government concerned. We think that in this way, through a developed committee system, much of the difficulty which has been brought to our notice of State Members voting on purely British India questions will be avoided. It would be natural to remit Bills dealing solely with British India to committees of members drawn only from British India. The Defence Committee would have less control than other committees, such as those dealing with finance and foreign affairs, but would, we think, form a valuable field of experience for members. We consider that at all these committees it should be the usual practice for officials to be present, not for influencing policy, but for providing information. In our view, owing to the subject-matter which would be dealt with at the Centre and to the position of the Federation, it is unlikely that governments will be formed with definite legislative programmes, as in this country. We think that much legislation will come forward in the way of private members' Bills. We have made this general sketch of the way in which we might expect responsibility to be exercised at the Centre, because it is important to realize that the British system is not the only system and that it is itself susceptible of reform in some directions. It is a question as to what provisions can be included in the Constitution Act itself. We would rather leave the development of the Constitution at the Centre to the elected Members to work out the forms and methods which seem appropriate. We attach importance, however, to the provision which will give to the Ministry some degree of stability, for we have seen in many countries, where there has been no stable Party system in Legislatures, but only a number of groups, the danger and weakness entailed by constant changes of Ministry; and we should desire that at the Centre, from the start, it should not be assumed that because the Legislature takes a different view from the Ministry on a particular point that therefore the Minister should resign. We consider that changes of Ministry should only take place as the result of a direct Vote of No Confidence.

The Federal Legislature.

55. We have found the greatest difficulty in deciding the question of the method of election to the Central Legislature. It should be recognized that to attempt to provide a legislative body which shall be representative of a population of over 350 millions is without precedent. We are met at the outset by the difficulty of applying the representative system to a unit of such magnitude. We are reluctant to establish at the Centre a very large body, because we do not think that the subject-matter which will be dealt with there will give sufficient occupation to the Members, while the larger the body, the more difficult is effective working. On the other hand, a small Legislature means very large constituencies in which the problem of widening the franchise may present some formidable difficulties. Our objection to Second Chambers in the Provinces applies also to the Centre; indeed, it is strengthened. As we understand the proposals of the White Paper, it is suggested that there should be two Chambers of equal power and of very similar composition, and that in the event of differences between the two Houses, the device of a Joint Session

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should be employed. We consider that, in effect, this really makes the Central Legislature a single Chamber, meeting for certain purposes in two sections, and makes an unnecessary duplication of representation, which results in an unwieldly body of legislatures. We, therefore, propose that there should be only one Chamber at the Centre, and we accept the proportions laid down for representation from the Provinces and the States as apply to a single chamber.

States' Representatives.

56. We realize the difficulty in adjusting the representation of the varied States. The proposal submitted is to allocate seats to both Houses, and seems to combine the criteria of status and population. We consider that the introduction of status unnecessarily complicates the question, and we would desire to see laid down a definite population basis for representation, though we recognize that it may be difficult to obtain consent to this simplification. In any event, we think that there should be a definite formula which could be applied to every State, so that if, as may well be, the Federation is built up by the gradual accession of States, there may be at hand the means of allocating forthwith the representation to which any particular State is entitled. We are opposed to the proposal in the White Paper that any weightage should be given to the States' Representatives if the full number of States has not joined the Federation. We think that by allowing only such representation to the States side as is proportionate to the number and population of the States acceding there will be an incentive on the part of those in the Federation to work for the inclusion of others.

Provincial Members.

57. We have examined the proportion of members allocated to the various Provinces, and while we recognize that a smaller Province must have some addition to its population ratio, we are unable to accept the differentiation made in favour of Bombay and the Punjab at the expense of Madras, Bengal and the United Provinces. We see no reason why Bombay should be allocated almost two members per million while Madras and Bengal get less than one. We consider that all Provinces, with the exceptions mentioned above, should come in on an equal basis. We have considered very carefully the rival claims of direct and indirect election. On the one hand, direct election is favoured by the majority of Indian politicians who have become accustomed to it during the period of the Montagu-Chelmsford Reforms, and it is feared that without a direct election the Centre may tend to be merely the expression of the separatist feelings of a number of Provinces and that the danger of corruption is increased by placing the choice of representatives in the hands of so few electors. On the other hand, we feel grave difficulty in the fact that direct election involves constituencies of very large area and with very large electorates, even on the basis of the franchise proposed in the White Paper. In particular, as we are in favour of adult suffrage, whenever that is practicably attainable, we see great difficulties in its application to the Central Government without creating an unwieldy body of legislatures. We have, however, been forced to come to a conclusion on the matter, and we consider that the weight of argument falls on the side of direct election. We have already expressed our objections to special representation being given to the landlords, the universities, commerce and industry, and these objections hold good at the Centre as well as in the Provinces. We recognize, however, that there is a case for some representation of commerce and industry at the Centre, in view of the character of the questions which will come up for decision here, and we should therefore, as a temporary measure, be prepared to see some representation given to those interests. In other respects, we accept the allocation of seats given in the White Paper, subject to the following variations :—

Representation of Labour at the Centre.

58. The White Paper proposes that in the Federal Assembly Labour should be given ten seats as against twenty-six assigned altogether to the representatives of Commerce and Industry, the landlords and the Europeans. We regard this as wholly disproportionate as it would mean that Labour would only have 4 per cent. of the total seats from British India, and that a few

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thousand Europeans would have a greater voting strength than the many millions of industrial and rural wage earners. As is pointed out by the Indian Franchise Committee, Labour legislation will be predominantly a Federal subject under the new constitution, while the restricted franchise at the Centre will not bring on the electoral roll the same proportion of the working classes as in the case of the provincial legislatures. It is, therefore, especially important that Labour representation should be adequate.

We recommend, therefore, that the seats allotted to Labour should be raised to twenty-six.

We note that according to the White Paper the distribution of seats is to be on a provincial basis. We suggest that this requires modification. Certain trades and industries, such as textiles and railways are distributed over more than one province. If seats should be allocated on a purely provincial basis, certain trade unions would be handicapped, while others would be given more than their reasonable quota of representation. We recommend that Labour seats should be fixed on an industrial basis with due regard to provincial considerations.

Federal Franchise.

59. We accept the provisions of the White Paper for the Federal Franchise, subject to the amendments which we have suggested in respect of the qualifications of women electors, and to our proposals in regard to Labour representation, but we desire to state that we regard the provision as only a temporary one until a means can be found of extending the franchise and of making the British-India side of the Federal Legislature more representative of the masses of the people.

Relations between the Federation and the Federal Units.

60. The transformation of British India from a unitary into a federal state necessitates a complete readjustment of the relations between the Federal and the Provincial Governments. Hitherto the Provincial Governments have been subordinate to the Central Government; they are under an obligation to obey its orders and directions, but under the new constitution the representative spheres of the Centre and the Provinces will be strictly delimited, and the jurisdiction of each will exclude the jurisdiction of the other. We are impressed by the possible dangers of a too strict adherence to the principles of what is known as Provincial Autonomy. The Indian Statutory Commission in its recommendations for Provincial Autonomy was, we think, not unaffected by the desire to give the largest possible ambit to autonomy in the Provincial sphere, owing to their inability at that time to recommend responsibility at the Centre. The larger measure of Indian self-government which has obtained in the Provinces during the past twelve years has also, we think, tended to develop, and perhaps over-develop, a desire for complete freedom of control from the Centre. It is, however, clear to us that there are many matters of administration in which the closest co-operation is needed between Province and Province and also between Provinces and States. It is obvious that there may be differences of policy in regard to irrigation and forests, whereby one unit of the Federation may be injured by another, and the Constitution provides for no redress. We do not think it is possible to give definite powers to the Federal Government in these respects, but we consider that every effort should be made to develop inter-Provincial conferences, whereat administrative problems common to adjacent areas and points of difference may be discussed and adjusted. We think also that where there are definite disputes between Provinces, the Governor-General should be empowered to adjudicate on the appeal of an aggrieved unit, and, unless he thinks fit summarily to reject the application, he should be required to appoint an advisory tribunal for the purpose of investigating the report upon the complaint.

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PART V

SPECIAL SUBJECTS

61. We have already stated that we are in general agreement with the plan in the White Paper for the distribution of legislative powers between the Centre and the Provinces, and we agree that where in the concurrent field there is a conflict of legislatures the Federal law should prevail, but we see certain difficulties in the provision that the Federation should be forbidden to pass legislation imposing a financial burden on the Provinces. The matter particularly arises in respect of Labour Legislation.

Labour Legislation.

62. It is proposed in the White Paper that such subjects as Health Insurance and Invalidity and Old Age Pensions should be subjects of Provincial Legislation. We see serious objection to this, and consider that they should be included in the Concurrent List. While it is necessary that the more industrialized Provinces should be able to legislate on these subjects in the interests of the urban workers and should not have to wait for the concurrence of those which are predominantly rural, it is undesirable to exclude the possibility of All-India legislation which may well become necessary in order that there should be uniformity of treatment of the workers as between Province and Province and that industry in one Province should be burdened with obligations not imposed in another. Mr. N. M. Joshi, in the Memorandum submitted by him, argued that social insurance should also be included in the list of Federal subjects, but here, again, we consider it would be better that it should be in the con-current list. We consider that in order to obtain an All-India Code of Labour and social legislation it is necessary that the Federal Legislature should have power to pass legislation imposing financial liabilities on the Provincial Governments, but that where this is done grants-in-aid from Federal revenues should be paid to the Provinces and also to such Indian States as are prepared to put in force such legislation. It should, in our view, follow that there should be a central inspection and a measure of control, wherever such grants are made. We consider that there seems much to be said for utilizing the machinery of adoptive Acts as used in Great Britain in connection with Local Government legislation. We have to endeavour to steer a course between delay caused by the difficulty of getting less advanced Provinces to agree to such legislation, and the possibility of friction in such matters as factory legislation as between Province and Province or the Provinces and the States. The mechanism of the adoptive Act supported by grants-in-aid in return for inspection seems to us unobjectionable in theory and useful in practice.

Residuary Powers.

63. We recognize that among Indian statesmen there is a considerable difference of opinion in regard to the disposal of residuary powers. Broadly speaking, the Hindu community is in favour of their allocation to the Central Legislature, while the Muslims wish that they should be given to the Provinces. We do not think that this difference of opinion is due to any real disagreement on grounds of constitutional theory, but is dictated by the supposed interests of the two communities, and we feel, therefore, free to consider the matter entirely on its merits, apart from any question of the views that have been put before us by the contending parties. It has generally been the case that in the formation of Federal Constitutions in the early stages centrifugal tendencies have been very strong. These tendencies have in India been reinforced by the fact that a greater degree of responsibility was given under the Montagu-Chelmsford Reforms to the Provinces than to the Centre, and the Representatives of the Provinces have not infrequently tended to press to an extreme the conception of Provincial Autonomy. So that, in fact, a Central Government

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becomes nothing more than a weak and ineffective link between a number of autonomous units. We recognize that the composition of the Central Legislature, representing as it will partly the Provinces and partly the Indian States, may seem to reinforce the arguments of those who claim that residual powers should be in the Provinces; but it has been a general experience in Federations that after a period of time it has been found that the powers of the Central Government are insufficient and that too great a degree of autonomy has been given to Provincial units. We are not unmindful of the danger of centrifugal tendencies developing in India, particularly in view of the fact that some Provinces differ from others in the predominance of certain communities, and we should be unwilling in any way to strengthen and encourage tendencies which would work against the unity of India. We therefore consider that in view of future possibilities, it would be wise that the residuary powers should remain with the Centre.

Finance.

64. We agree with the proposals contained in paragraph 39 of the White Paper, subject to one change. The paragraph suggests that the Budget "will be framed by the Finance Minister in consultation with his colleagues and the Governor-General." We would prefer that the arrangement of the Budget should be in the hands of the Ministry alone, but that it should be their clear duty to make provision for appropriations required for the Reserved Departments and for the discharge of the functions of the Crown in relation to the Indian States, which appropriations will be taken by the Governor-General on his own responsibility. In regard to these appropriations, we note with approval the intimation that the Governor-General "will be enjoined by his Instrument of Instructions to consult his Ministers before reaching any decision on appropriations for the Department of Defence." We also are in general agreement with the proposals contained in paragraphs 56, on page 28 of the White Paper, and the subsequent paragraphs relating to the allocation of revenues between the Federation and the Units. We further agree with proposals 95 to 100 of the White Paper as to the procedure with regard to financial proposals.

As we have already indicated, we are opposed to the creation of Second Chambers, but, in any event, we could not agree to Money Bills being submitted to Joint Sessions of both Houses, or, indeed, being controlled in any way by an Upper House. With regard to Federal finance, the White Paper says: " . . . the Governor-General, if he is unable to accept the proposals of his Ministers or the decision of the Legislature as consistent with the discharge of any of his special responsibilities, will be enabled to bring the resulting appropriations into accord with his own estimates of the requirements, and if necessary, through his special legislative powers, to secure that the annual Finance Act provides him with resources which will cover the appropriations which he finally authenticates." The Governor-General has, therefore, two justifications for interfering with financial autonomy; (1) The need for ensuring sufficient supplies for his Reserved Subjects and for certain salaries; and (2) a special responsibility for the "safety of the financial stability and credit of the Federation." While the first safeguard is probably necessary, so long as there are Reserved Subjects there should be recognised conditions under which the second responsibility should cease to be operative. We do not hold that the investment of British money forms any justification for special safeguarding. In any event, this should only continue until India has established her independent status as a borrower in the world's money market.

Financial Adviser.

65. We are of opinion that the Financial Adviser to be appointed under the White Paper proposals should not be appointed for an indefinite period, but should have a time-limit of not more than ten years, unless his services are requested thereafter by the Minister. His sphere of advice should be limited to the special responsibilities of the Governor-General, though his advice should

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be at the disposal of the Prime Minister and, indeed, of the whole of the Government of India. He should not, however, on any account, be in a position to interfere in the normal sphere of the Finance Member. He should be chosen by the Governor-General in consultation with his Ministers. The White Paper places a special responsibility on the Governor-General for " the safeguarding of the financial stability and credit of the Federation, in order to confer on him powers to step in if the need should arise in the event of the policy of his Ministers in respect of, for example, budgeting or borrowing being such as to be likely, in the Governor-General's opinion, to endanger seriously the provision of resources to meet the requirements of his Reserved Departments or any of the obligations of the Federation, whether directly or indirectly, by prejudicing India's credit in the money markets of the world." It is in order to assist him in the discharge of this special responsibility that the Governor-General is to be empowered to appoint a Financial Adviser. There is no doubt that the credit of India in the money markets of the world is of primary and overwhelming interest to India, even more than to this country. We agree with the Indian Delegates, therefore, when they state in their Memorandum that the Financial Adviser should be an Adviser to the Indian Government. In view of the Memorandum submitted to us by Sir Malcolm Hailey, it is a vital necessity that, taking into consideration the heavy expense that is bound to be entailed in setting up the new Constitution, with a greatly enlarged franchise, the strictest economy should be observed wherever it is possible, without detracting from the nation-building services. We would suggest that the most fruitful fields for the practice of this economy would be (*a*) in the Army expenditure ; (*b*) in the transfer at as early a date as possible of the terms of future recruitment, pay, etc., of the services to the Governments in India ; and (*c*) in having single-Chamber Government, both for the Federation and the Provinces. We think that the Federal Legislature should be empowered, whenever necessary, to impose financial obligations on the Provincial Legislatures in order to secure uniformity throughout the Federation in connection with labour or social legislation. We agree with the White Paper that a special responsibility for the financial stability of the Provinces should not be imposed on Governors.

Commercial Discrimination.

66. India has, since the inauguration of the present Constitution in 1921, worked under a convention which gives her full autonomy in her fiscal affairs—without any interference from Whitehall on any matters on which the Government of India and the Legislature are in agreement. This followed on the Report of the Joint Committee of both Houses of Parliament of 17th November, 1919. Paragraph 33 of that Report said *inter alia* that :

> " Nothing is more likely to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall in the interests of the trade and commerce of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear . . .
>
> " Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa."

His Majesty's Government accepted this recommendation and it was intimated to the Government of India by the Secretary of State on 30th June, 1931. The Statutory Commission in their Report quote the statement made by the Secretary of State in March, 1931, that :

> " After the Report by an authoritative Committee of both Houses and Lord Curzon's promise in the House of Lords, it was absolutely impossible for me to interfere with the right which I believe was wisely given and which I am determined to maintain—to give to the Government of India the right to consider the interests of India first just as we, without any complaint from any other parts of the Empire, and the other parts of the

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Empire, without any complaint from us, have always chosen the tariff arrangements which they think best fitted for their needs, thinking of their own citizens first."[1]

In the course of his evidence before us, Sir Charles Innes, who, before taking up his duties as Governor of Burma, was on the Council of the Governor-General of India as Commerce Member, said in regard to India's attitude to the Ottawa agreements :

"I think it was mainly due to the fact that the Indians realized that it was for themselves to decide whether or not they would ratify that agreement. In the old days, before we introduced this principle of discriminating protection, every Indian thought that Britain kept India a free-trade country in the interest of her own trade. When the Fiscal Convention was introduced and when we passed a Resolution in favour of discriminating protection, and the first Steel Bill was passed, we at once transferred all that from the political sphere to the economic sphere, and in recent years in the Indian Legislative Assembly more and more we have been creating a strong Free Trade Party. It was getting more and more difficult for me to pass Protection Bills. I think that is all to the good ; it shows the value of responsibility, and I am perfectly sure that if we had not taken that action, you would never have got the Indian to agree to the British preference on steel, or to the Ottawa agreement, and it seems to me a very good example of the stimulating effect of responsibility."[2]

We realize the importance of giving full weight to this evidence on the value of placing responsibility on the Indian Legislature, coming, as it does, from one who is in a position to speak with authority.

The Statutory Commission further point out that :—

"An understanding analogous to the fiscal convention has been arrived at in one other region. The Secretary of State has relinquished his control of policy in the matter of the purchase of Government stores for India, other than military stores. The Governments in India, in agreement with the legislatures, are now free to buy stores in India, in this country, or abroad, as seems best to them, and the Secretary of State though he is by statute responsible to Parliament, has undertaken not to intervene."[3]

There is much force in Mr. Baldwin's words :—

"All the safeguards are being examined by the Joint Select Committee, but whatever safeguards we have the real safeguard is the maintenance of goodwill. If there is not a basis of goodwill, your trade will eventually wither away, and I regret to say that some of the measures which have been suggested and which Lancashire people have been asked to support, have, in my judgment, been calculated to destroy rather than to further any possibility of that goodwill between Lancashire and India which we can get, which we ought to get, and which we cannot do without. . . .

"The boycott has died away . . . . by a conviction in the minds of the Indians themselves that we were going to deal honourably with them and keep our word about getting on with the reforms."[4]

The same idea is expressed in the Memorandum submitted to us by Sir Tej Bahadur Sapru :—

"The best safeguard that Lancashire, or for the matter of that England, can have for trade and commerce in India, is the goodwill of the people of India."[5]

We think, therefore, that the time has now come to recognize in the Constitution Act the right and the responsibility of India to settle her own fiscal affairs as freely as and on a basis of equality with Great Britain and the Dominions.

[1] Vol. I, p. 356, para. 402.
[2] Minutes of Evidence Joint Committee, p. 564.
[3] Indian Statutory Commission Report, Vol. I, p. 356, para. 402.
[4] "Times," 30th June, 1933
[5] Record No. 10, p. 27, para. 42, 16th November, 1933.

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We agree with the British India delegates in their Memorandum submitted to us, that the question of Commercial Discrimination might be left to the commercial interests in India and England who would doubtless be able to evolve a friendly settlement by negotiation. Failing that, we agree that it might be provided in the Constitution Act that anything of the nature of discriminatory legislation should require the previous assent of the Governor-General. We think that the formula proposed by the Indian delegates should be adopted, namely, that the Governor-General should not be entitled to refuse his assent unless he is assured that the object of the legislation is, in the words of the Montagu-Chelmsford Report, " not so much to promote Indian commerce as to injure British commerce," or, as proposed by the Statutory Commission, " in order to prevent serious prejudice to one or more sections of the community as compared with other sections."

Disallowance of Acts.

67. We think that the provision for disallowance by the King in Council at any time within twelve months of Acts passed by the Legislature and approved by the Governor-General is a retrograde step for which no reasonable excuse can be put forward. This power which was formerly embodied in some of the Dominion constitutions was finally abandoned by the Statute of Westminster and we see no need to resuscitate it in the case of India.

Fundamental Rights.

68. We are impressed with the insistence with which Indians of all sorts of opinion ask that a statement of their " fundamental rights " should find a place in the new Constitution Act. The Report of the Indian All-Parties Conference also made a strong point of this. The authors of the White Paper " see serious objections " to giving statutory expression to a declaration of this character, and suggest that in connection with the inauguration of the new Constitution a pronouncement on the matter might be made by the Sovereign. We cannot forget that such a pronouncement was made by her late Majesty Queen Victoria in these words :—

> " We declare it to be our Royal will and pleasure that none be in any wise favoured, none elected, or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law, and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.
>
> " And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability and integrity to discharge.
>
> " We know and respect the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State, and we will see that generally in framing and administering the law, due regard be paid to the ancient rights, usages, and customs, of India."

We cannot pretend to believe that full effect has been given to the terms of that Royal Proclamation in India. In view of the fact that it has been impressed on the Indian delegates that no pledges or declarations are binding save such as are embodied in Acts of Parliament, we think the Indian plea is sound, that whenever possible their fundamental rights should be embodied in the Constitution Act and so be secured to them beyond the possibility of

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doubt. A proposed list of these "fundamental rights" is given in Chapter 7 of the Report of the Indian All-Parties Conference.[1] In reference to these they say:—

> "Our first care should be to have our fundamental rights guaranteed in a manner which will not admit their withdrawal under any circumstances. With perhaps less reason than we have most of the modern constitutions of Europe have specific provisions to secure such rights to the people."[2]

They go on very pertinently to say that:—

> "Another reason why great importance attaches to a declaration of rights is the unfortunate existence of communal differences in the country. Certain safeguards and guarantees are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment of religious and communal rights to all communities than by including them among the basic principles of the constitution."[3]

High Commissioner.

69. The High Commissioner for India is at present appointed under Section 29a of the Government of India Act and he has certain powers delegated to him by the Secretary of State for India or the Secretary of State in Council with regard to making contracts. The various Dominions appoint their own High Commissioners as a matter of right without any provision being necessary in their constitutions. We think that India should, in this matter, stand in the same position as the Dominions and that the High Commissioner for India should have an equal status and full powers to act on the instructions of the Government of India without any necessity of reference to Whitehall.

Secretary of State for Self-Governing Areas.

70. We now come to what we consider to be one of the most important points of the new Constitution—the position of the India Office. It is the negation of responsible self-government to have an India Office continue to exist on anything like the same lines as have obtained since the Crown took over the administration from the East India Company. If the Government of India have been an autocracy, the India Office has been much more so. It was said by the Viceroy, Lord Chelmsford, at the inauguration of the present Constitution, that "autocracy is now definitely abandoned." We believe that the time has come to give practical effect to this state of affairs. We should like to see Indian affairs brought at once under the Dominions Office. Failing this, and as a step in that direction, our proposal is that the India Office should be done away with entirely and a new Office created with a Secretary of State for the self-governing parts of the British Commonwealth of Nations in the East. This would include not only India but also Ceylon, Burma, if separated, and other portions of the British Commonwealth of Nations in the East as and when they became self-governing.

Secretary of State's Advisers.

71. We are strongly of opinion that the Advisers of the Secretary of State should not exceed three in number and should be all India's or — in the event of our proposals being adopted for a new Office and Secretary of State for the self-governing portions of the Empire in the East—drawn from such self-governing territories.

Railway Board.

72. During the three sessions of the Indian Round Table Conference this matter, being of comparatively minor importance, did not come up for discussion. It was one of the matters, however, which the Governor-General discussed in Delhi with the Consultative Committee. There is general agreement that there should be a Statutory Railway Board. We are of opinion,

[1] Report of the All Parties Conference, pp. 101–103.
[2] *Ibid.*, p. 89.
[3] p. 90.

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however, that this Board should be set up by the Central Indian Legislature to whom it should be responsible. The Minister who is responsible to the Legislature for the Indian Railways and for the Railway Budget should be *ex officio* Chairman of the Railway Board, but we consider that it is undesirable that he should be subject to interpellation on details of administration, particularly those relating to appointments and promotions.

Reserve Bank.

73. The White Paper proposes, in paragraph 32, that a Reserve Bank, "free from political influence, will have been set up by Indian legislation," before the first Federal Ministry comes into being. If it should be proved impossible successfully to start the Reserve Bank, His Majesty's Government "are pledged to call into conference representatives of Indian opinion." We note that neither at the first nor at the second Round Table Conference was the establishment of the Reserve Bank treated as a condition precedent to the inauguration of the Federation. It was an entirely new proposal brought forward at the third Round Table Conference. We understand that the Indian Legislature has already passed a Reserve Bank of India Act, and we venture to hope that the date of its inauguration may be speedily decided, since we understand that the beginning of the Indian Federation depends upon it. Assuming the establishment of the Bank, we suggest that the Governor and Deputy Governor should be selected by the Governor-General in consultation with his Ministers.

We are not in agreement with the underlying conception of the establishment of the Reserve Bank, namely, that it should be entirely free from political influence.

We consider that decision of policy in respect of credit and currency are vital interests of the community. They should not be made by shareholders whose private interests may not coincide with the welfare of the State, but should be influenced by the Government.

In any event it should be made clear that India's currency and credit policy will be decided in accordance with her own needs and not by the influence of external financial interests or foreign creditors.

The Judicature.

74. We are in substantial agreement with the proposals in the White Paper with regard to the future of the Judicature and for the establishment of a Federal Court, but we dissent from the proposal to create a separate Supreme Court of Appeal. We consider that the object in view would be more conveniently attained by giving to the Legislature power to extend the jurisdiction of the Federal Court. We assume that if this were done the Court would sit in two Chambers, the first dealing with Federal and the second with British-India Appeals.

The Public Services.

75. We are generally in agreement with the proposals in the White Paper with regard to the future of the Public Services, but would recommend two alterations. In the first place we consider that despite the strong arguments submitted to us for the retention of recruiting to the Security Services by the Secretary of State, it is preferable, in view of the strength of Indian sentiment on the point that future recruitment for these services should be in the hands of the Governor-General. Secondly we consider that without impairing the efficiency of the administration some acceleration in the rate of Indianization is practicable.

Burma.

76. We are in general agreement with the proposals in the White Paper regarding the future constitution of Burma. Despite the conflicting results of recent elections we are convinced that the majority of the people of that country are in favour of separation from India and that the anti-separationist movement is actuated rather by desire to obtain a more advanced constitution for a separated Burma than by a wish to keep their country as a province in an Indian Federation.

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We have already in discussing the Indian problem stated our objections to Second Chambers and to the continuation of the Ecclesiastical Establishment and we content ourselves here with saying that the same objections hold good in respect of Burma.

We also would express the hope that the maintenance of communal electorates may be only a temporary phase in the progress towards complete self-government.

The same is read.

It is moved by the Lord in the Chair that the Draft Report laid before the Committee by himself be now considered.

It is moved by Mr. Attlee, as an amendment to the above motion, that the Draft Report laid before the Committee by himself be considered in lieu thereof.

Objected to.

On Question :—

Contents (4)	Not Contents (24).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Marquess of Reading.
	Earl of Derby.
	Earl of Lytton.
	Earl Peel.
	Viscount Halifax.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Simon.
	Earl Winterton.

The said amendment to the above motion is disagreed to.

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It is moved by the Lord in the Chair that the original motion, that the Draft Report laid before the Committee by himself be considered, be agreed to:—

Objected to.

On Question:—

Contents (19).	Not Contents (9).
Lord Archbishop of Canterbury.	Marquess of Salisbury.
Marquess of Zetland.	Lord Middleton.
Marquess of Linlithgow.	Lord Snell.
Marquess of Reading.	Lord Rankeillour.
Earl of Derby.	Mr. Attlee.
Earl of Lytton.	Mr. Cocks.
Earl Peel.	Sir Reginald Craddock.
Viscount Halifax.	Mr. Morgan Jones.
Lord Ker (M. Lothian).	Sir Joseph Nall.
Lord Hardinge of Penshurst.	
Lord Hutchison of Montrose.	
Mr. Butler.	
Major Cadogan.	
Mr. Davidson.	
Mr. Foot.	
Sir Samuel Hoare.	
Lord Eustace Percy.	
Sir John Simon.	
Earl Winterton.	

The original motion is agreed to.

Ordered, that the Committee be adjourned till to-morrow at half-past Ten o'clock.

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Die Martis 19° Junii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

PART I* is again read and postponed.

PART II is considered.

Paragraph 43 is again read and postponed.

Paragraphs 44 and 45 are again read.

It is moved by the Marquess of Salisbury to leave out paragraphs 44 and 45 and to insert the following new paragraph :—

("44. It is unnecessary to discuss how far there have been pledges by this Country to carry out a policy of self-government in India or how far these have been conditional, because the Secretary of State on behalf of His Majesty's Government has stated that the reference to the Joint Committee leaves the recommendations it is to make unreservedly in its hands. Nevertheless, undoubtedly a solemn declaration was made in the Act of 1919 that this Country *intends* to give an increasing measure of self-government to India, and the Committee has been appointed to ascertain how this can best be effected. The White Paper contains the proposals primarily submitted to our consideration, but the White Paper itself has grown out of the Report of the Statutory Commission, and in considering the White Paper we ought to keep constantly in mind not only the facts as the Commission has set them forth, but also the policy recommended in their Report—the outcome of three years close study of the question both here and in India itself.

The Committee, therefore, notes with satisfaction that over a large part of the field of Indian constitutional reform the White Paper and the Report of the Statutory Commission are in general accord, and this by itself places that part of the subject in a special position to command the favourable consideration of Parliament. These two documents agree that the time has arrived when Constitutions for Provincial self-government should be established.

* For convenience it may be noted that this Part I was never considered, as the Committee agreed to consider an alternative Part I laid before them by the Lord in the Chair on the 24th July, 1934, *vide infra*, pp. 470–491.

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491 ; and *vide supra*, paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part I).
A Key is attached (*vide infra*, pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Even if Provincial Constitutions did not have this combined authority behind them, it is reasonable on the face of it that the process of the development of self-government should begin from the bottom. Evidence has been given before us that this is the wish of a great body of orthodox Hindus ; indeed, it was urged by witnesses that we ought to begin with the development of self-government in the villages. Even if the revival throughout India of the ancient village councils may be held to be no longer possible, at any rate there is every reason that we should begin as far down as may be in the administrative scale, that we ought to construct the units before we federate them, and that, therefore, our first duty is to develop self-government in the Provinces. Moreover, it must never be forgotten that the claim of self-government of a Province by the homogeneous people of the Province—of Bengal, for example —by Bengalis or Bombay by Mahrattas—is far stronger than the claim of the many varied races and languages of India to govern India as a whole. It ought, however, at once to be confessed that Provincial Constitutions, even if we go no further, present by themselves many formidable difficulties. To these this Report will return later. It is sufficient to note at this point that such problems as Communal Representation, Indianisation of the Services, the solvency of Provincial finance, the security of Law and Order and the integrity of the Courts, are very complicated and very arduous, and that, therefore, in our view their solution must be tentative, the time having certainly not yet arrived when Parliament can safely wash its hands of the problems which even this Provincial branch of the subject presents.

It follows that the Committee must approach the solution of the further problem connected with the Central Constitution even more cautiously. If the evidence given before the Committee be examined it will be found that no answer has been given to difficulties of great substance which are involved in the proposals of the White Paper for the Central Constitution. With these we proceed to deal subject to this preliminary observation. In the criticisms which follow we must not be taken to underrate the remarkable ability of many Indian Officials and politicians of whom there were striking examples in the Indian Delegation acting with the Joint Committee.

The true character of the Indian problem will never be understood unless the essential difficulties which stand in the way of its solution are borne in mind : that is to say the demand for federation without the provision of equality of status in the units ; the claim of Indians to self-government notwithstanding the lack of personal experience and inherited guidance which handicaps them in exercising the higher functions of government ; the impossibility of any real contact in direct representation between the people and their representatives ; the profound communal differences which split Indian Society into fragments impossible to coalesce ; the novelty of Provincial reform and its necessarily tentative character, and the reaction of these upon the Central Government. Unless these fundamental difficulties can be met any federal system in India must be unworkable. No useful purpose is served by glossing them over ; still less in ignoring them. That is an expedient to which British policy is much accustomed when it is presented with difficulties. We often take refuge in it because we assure ourselves that if these difficulties in practice are found not to work they can always be altered. What is exceptional, however, and vital in the present case is that once the lines of the federal constitution are fixed there can be no retreat. It is this formidable feature in the problem which throws such special responsibility on the Joint Select Committee, a feature and a responsibility which are not always appreciated by expert advisers who are prominent on Indian reform. There are in particular many supporters of the policy of the White Paper who deal in the widest generalities. It is to be doubted whether some of them get further than the simplest fallacious syllogism. The system of government in India has hitherto been authoritarian : it is admitted that this old system must be abandoned : the White Paper abandons it : therefore they approve of the White Paper. The Joint Select Committee cannot be content with an argument on these lines. On the contrary we have been impressed by the general admission that the working of the White Paper policy is highly uncertain. It has been even termed a colossal experiment. The Committee

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has considered how far the colossal experiment is likely to overcome the essential difficulties which have been formulated above.

And first the White Paper proposes that the several units of the federation shall not have equal constitutional status.

This arises from the effort to combine in one Parliamentary federation the States in India and the British Indian Provinces. In the words of a member of the Committee " there are two distinct and different forms of government in existence in India, autocratic personal rule in the Indian States and democratic representative government in British India." It may be added that the personal autocrats are sovereign Princes, owning it is true feudal obedience within certain limits to the King-Emperor, but hitherto completely independent of any purely British Indian authority. It is no matter of surprise that it has been found difficult to weld together in one federation of the normal type units so differently constituted. According to the White Paper the British Indian members of the Federal Legislature are to be elected. Those representing the States are to be nominees of the Princes. It may be asked broadly how long it is likely that a combination of units of such diverse conditions can have any stability. Illustrations of the doubts suggested by this question are to be found in the papers laid before the Committee. A dissolution of the Assembly by the Governor General would as regards two-thirds of that body, elected in British India, have the ordinary effect. The other third would merely be re-nominated by the same Princes as before—a very truncated form of dissolution. Yet this is no small matter; the power of dissolution in the hands of the head of the State is essential to the working of constitutional government. On the other hand though an Indian State representative would have fixity of tenure as against the action of the Governor General we are inclined to think that he would have no fixity of tenure at all as against the Prince, but would hold his seat entirely at the Prince's pleasure. Certain vague assurances it is true were suggested to the Committee, that once they were nominated these State representatives would not be disturbed by their rulers during the term of the legislature. But it may be permitted to doubt whether if a representative differed from the Prince he would in fact long continue to hold his seat. These however are difficulties in detail: a constitutional dilemma of fundamental importance from which there appears to be no issue remains to be mentioned.

The Federal Legislature must embrace all parts of Greater India, and in the White Paper must take action upon British Indian questions as well as upon those interesting the federation as a whole. The question therefore at once arises: are the representatives of the Princes to vote upon issues concerning only British India, with which the States have nothing to do? That perhaps might be admitted as a sort of illogical makeshift if the British Indian representatives were to have a corresponding authority as to the States. But this is not to be so. The Princes' representatives are by law to have a right to which the representatives of the Provinces would have no corresponding authority. The autocratic sovereign rulers of the States would not admit for a moment the intervention of British Indian votes to control their domestic concerns. Nevertheless, their representatives are to be legislators who may have if they please a share in the control of the domestic affairs of British India. There is, it is clear, no answer to the dilemma which these provisions of the White Paper present. All that could be urged, and was urged, in evidence was that in practice there might be established a convention under which the representatives of the States would exercise a self-denying ordinance and would refrain from using their right to intervene in British Indian affairs. How that convention is to be defined was left in the evidence completely undetermined. And for a very good reason, that however it is determined it must inevitably break down. It is a commonplace of constitutional government that the legislature by its votes not only enacts laws but appoints and dismisses responsible Governments. The provisions of a particular measure may interest only British India, yet if it is of sufficient importance for its rejection to involve the existence of the Government,

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this becomes of direct interest to India as a whole, and it is clear that no convention can prevent the representatives of the Princes from taking part in the critical division. It follows that this anticipated convention would break down in the face of any measure of first-class importance upon which the fate of a Government might depend. Neither in theory therefore nor in practice is there any issue from the dilemma.

As an illustration, Income Tax is a notable example of the relative disability under which, under the White Paper, British India would stand. Income Tax could be imposed or maintained upon British Indians by the votes of the States, yet except in an emergency the Princes will admit of no Federal authority to impose direct taxation on their own subjects. Incidentally it follows that direct taxation in all its forms, with one rather doubtful exception, cannot be used for federal purposes, since the Provinces cannot be asked to bear an unequal burden. The fact is that though the Princes under certain conditions are prepared to accept federation they are not willing unreservedly to accept federal authority. The authority of the King-Emperor they willingly acknowledge, but, broadly speaking, as to federal legislation even where they are prepared to accept it they will only carry it out in whatever manner they themselves may consider appropriate. The Princes will take no orders from the federal responsible Government. The federal Government thus can claim obedience to its decisions in some units the Provinces, in other units the States, it can only do so by consent of their rulers.

In considering this subject of the solidarity of the Federation as proposed in the White Paper, it is not out of place to estimate what degree of permanence ought fairly to be attributed to the adhesion to it of the States. The right of discretionary secession would obviously be inadmissible. Yet can we say it is unreasonable, as the evidence on behalf of the Princes claimed, that there should be some such right retained in case of a profound alteration of circumstances. Supposing the White Paper Constitution developed hereafter, with the consent, say, of a passing majority in Parliament. towards Dominion status, which is the avowed objective of Sir Taj Bahadur Sapru and his friends: what then? Dominion status means a Dominion constitution, which would carry with it the power for India to free herself altogether from Imperial authority. Assuredly the Princes cannot be held to be bound to such an evolution of federation against their interests, which are bound up with the maintenance of the principle of unquestioned sovereignty. Yet it can scarcely be doubted that if the majority of the Indian delegation were to have its way this is precisely the situation that the Princes may have to face.

This question of the right of secession emerged in the Burmese discussion before the Committee, and this is therefore an appropriate place to direct the attention of Parliament to the special difficulties which Burma presents. In some ways the case of Burma offers less complication than the case of India. But it has a formidable dilemma of its own. It seems that Burma is in reality opposed to inclusion in the Indian federation and therefore her delegates asked the Committee for a discretionary right to secede. This is clearly inadmissible. On such terms the inclusion of Burma in the federation evidently must be barred. But the alternative of giving her a White Paper Constitution of her own, as is proposed, in the face of the comparative absence of constitutional and political experience seems also indefensible, not to speak of the economic subordination of Burma to India which forbids genuine separation. Yet this is the solution proposed by the supporters of the White Paper.

There is a further difficulty in the general relation of the States to the federation disclosed in the White Paper, which though of an interim character is important. What is to be done in the interests of the States themselves and in the interests of the balance of political power in the federation during the interim period, when only a certain number of them have signified their willingness to join? This problem still awaits the opinion of the Princes before it can be solved.

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The second essential difficulty which was mentioned at the beginning of this part of our Report was the lack of personal experience and inherited guidance which limits Indians in exercising the higher functions of government.

It is common ground that without the British Army India could not be defended from foreign aggression. It is equally admitted that in the last resort British troops are necessary to maintain order in India itself. The Committee have realised in the course of its enquiry the vital character of British services in protecting Indians not only from external enemies but from disorder amongst themselves. On the civil side Indians under British training have made immense advances in administrative efficiency. Many of them possess great ability and they have shown remarkable adaptability to our training in all the manifold details of western administration. But even here few Indians would contend that their Country could for the present be successfully administered without a large measure of guidance by British officials. Yet as the White Paper stands there is little doubt that the services upon which the vast Indian population depends for their security and welfare will under its provisions suffer serious deterioration. This dependence, especially on the side of Defence and Order, appears to us to be inconsistent with genuine self-government. The White Paper itself has regard to this limitation affecting Indians in the higher functions of government, and it provides that the Defence services, together with foreign policy, intimately bound up with these services, are to be reserved to the discretion of the Viceroy alone. But will he be able freely to exercise this discretion ? The answer to this question is of deep significance. It must be remembered that the Viceroy in his capacity as Governor-General has to work, as it is proposed, with a Responsible Government and to pay his troops out of the same purse which is alone available to the responsible Ministers for all other federal purposes. However absolute may be the terms in which his unfettered access to this purse may be safeguarded it is evident that in practice the legislature and the Ministers responsible to it will have the strongest inducement to bring pressure to bear upon him, pressure very difficult to resist, in order to help their own political objectives at the expense of the interests of the Reserved subjects. We feel that such a situation is fraught with discord and will invite friction and inefficiency.

This is one of the principal objections to the financial proposals of the White Paper. It does not however stand alone, but it will increase and exacerbate the financial confusion which apart from it may be anticipated. In truth it is admitted that Indian finances at the present moment constitute an insuperable bar to the immediate operation of a federal constitution and indeed make it doubtful whether even the Provincial constitutions can be started forthwith. It has in fact been said by a high authority who is a member of the Committee that the proposed new Constitution will be built on a financial quicksand. It must be remembered that not only does the Indian financial system share the general depression but that the proposed changes are themselves expensive and the expectation of social reform, always costly, which have been excited must intensify the adverse position. This is not denied. The alternative to which these admissions have driven the White Paper, namely a Federal Constitution with delayed action, that is to say passed in all its details but hung up, presents difficulties of its own of a formidable character. No one can predict how long the financial stress will continue, but until the conditions which the Indian problem may present at the end of the period in question are known it would seem to be most unwise to prejudice the future action of Parliament in circumstances yet undisclosed.

But direct financial difficulties are not the only fiscal anxieties in the path of federation. There is one other element in the question of Indian self-government appertaining to the fiscal policy of the future but concerning this Country as well as India, namely, the possibility of Indian discrimination against the commercial interests of the United Kingdom. This of course does not bear upon the question whether Indians are unable properly to exercise any functions of government, though it must not be left out of sight

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in considering the fiscal provisions of the Constitution Act. In this place therefore we would content ourselves with saying parenthetically that in our view it is impossible under the proposals made to us to provide against administrative discrimination and that if a Central Constitution on the lines of the White Paper were to be adopted we should have to rely for fair treatment in these matters upon the good sense and good feeling of the Federal Government.

The third essential difficulty belongs to the vast size of India and its population and the attempt to represent it in one federal legislature.

The White Paper proposes that British India should be represented in the Federal Legislative Assembly by a system of direct election. The papers laid before us show that some of the most important representatives of the Princes in the delegation were dissatisfied with the method in which the central legislative bodies are proposed to be constituted. It is, however, not necessary to go beyond our own experience to convince us that it is impossible with direct election, in the conditions which prevail in India, for the members of the legislature to be in touch with their constituents or able to escape from the acutest form of machine-made electioneering. That would be true as the proposed franchise stands, but nothing is more certain in constitutional development than that the franchise goes through an inevitable process of extension. The prospect in British India with direct election by what might ultimately be some 100 million electors voting in constituencies in one case as big as Great Britain, only requires to be stated in order to be dismissed. In place therefore of the proposals of the White Paper various systems of indirect election have been submitted to the Committee, notably election of the Central Assembly by members of the Provincial Assemblies.

But this alternative is by no means without objection. We do not escape the fourth essential difficulty in the solution of the Indian Constitutional problem. Whether the system of election is direct or indirect the profound communal schism makes itself felt.

Some members of the Committee had hoped that by availing ourselves of the system of proportional representation Hindus and Moslems might arrive at a fair representation of their respective communities, but we have been assured that any such method as a solution would never be admitted by Indian opinion. Whether the White Paper with its direct election is to be accepted or we adopt indirect election in its place, in any case we must fall back upon the principle of the Communal Award, which is in truth inconsistent with genuine self-government. The fact is that religious circumstances in India admittedly are such that a free representative system is unacceptable. In order that a certain proportion of Moslems should be returned to the Assembly, electors are not to be allowed to vote except for candidates of their own creed. This is rigidly true of Moslem electors and practically true of Hindus, although it is by the wish of the Moslems and not of the Hindus that this abnormal system appears to be necessary. Under the White Paper with its direct election to the Central Legislature, in order to achieve this end an elaborate system of separate creed registers and of differing constituencies is proposed. Some of these complications are escaped if indirect election is substituted in place of the other. But the intermediate electorates it seems must still be separated into two creed parties, Moslems and non-Moslems, on the same principle. The consequence of this creed arrangement is obvious. There will never be an inducement to a member to study the interests of any electors outside his own creed. It follows that though indirect election does get rid of many of the fatal objections which direct election presents, it does not obviate the greatest of all, namely, the the perpetuation of a communal division in the political sphere.

Indirect election has beyond this certain minor objections peculiar to itself. It prejudices the effective power of dissolution in the hands of the Governor-General: not indeed to the same extent as in the case of the States, to which attention has already been called, but still substantially because

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unless since the last central election there have been changes in the complexion of the Provincial Assemblies a dissolution is not likely to produce any change in the balance of opinion in the Central Assembly. Even if the strength of parties in the Provincial Assemblies had been modified since the last Central Election the rigidity of the communal and political obligations under which the Provincial chambers would be bound must always tend to make the result a foregone conclusion.

In the face of these essential difficulties—the difference of status in the units; the want of experience and tradition amongst Indians as to certain functions of government; the difficulties of representation in the Central Assembly; and the communal differences—the White Paper provides a series of safeguards in the shape of special responsibilities vested in the Governor-General to be exercised in his own discretion; for preventing grave menace to peace and tranquility; for safeguarding financial stability; for safeguarding the legitimate interests of minorities; for protecting the rights of the Indian States, and for certain other purposes to be mentioned hereafter. That they should be admitted at all as being required is by itself a grave criticism of a policy which is designed to give self-government, but that these precautions nevertheless correspond to a real necessity in India cannot be denied. The question is, will they be effective and do the politically minded Indians intend them to be effective? In answer to the second question, there can be no doubt, if the words used by the Indian delegation are to be accepted, that they treat all these safeguards as temporary expedients to be swept away within a short period, or at any rate to fall into desuetude. We, however, find it difficult to believe that, having regard to the communal situation revealed in the electoral proposals just described, and to the terrorism of which abundant evidence was laid before us, and to the obvious dangers to the interest of minorities, and to the clashing of the respective rights of the States and the Provinces, there will not be full occasion for the protection aimed at by these safeguards. And the language of Indian delegates which has been cited leads to the conclusion not that the safeguards will not be required but that every effort will be made that they shall not be used. The capital importance in particular of the question of law and order appeared abundantly in the evidence and in the papers laid before the Committee. We deal in another part of our Report with this question in the Provincial sphere. We indicate in that place that the anti-terrorist organisation ought to be directly under the Governor or the Governor-General and the police themselves directly under the Governor where he considers it expedient. But the special responsibility of the Governor-General is very important and we have been convinced that he must be really free to exercise his discretion in preventing any grave menace to the peace and tranquility of these poor people who look to us for protection. Even assuming that it is the intention to make the safeguards effective, with the best will in the world the operation of them will be hampered. As has already been suggested in the case of the reserved services, in respect of all of them their exercise will be subject to unceasing criticism in the legislature and to pressure by the responsible government: for it must be remembered that their whole point is that they should be operative, if at all, against the wishes of the legislature and of the responsible government: otherwise there would be no occasion for them. The mischiefs against which they are directed ought to be prevented in the normal way by the responsible Ministers themselves in their own discretion. It is only because in these matters the responsible Government cannot be trusted that these provisions are inserted in the White Paper. We regard with profound misgiving the prospect of the Governor-General being called upon to use his special powers against the will of his own Ministers. Their natural constitutional course in such circumstances would be to resign. If so, no other Ministers presumably could command a majority and a deadlock must ensue. With this eventuality in front of him the pressure may well be too great for the Governor-General to resist.

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A minor difficulty is that no provision is contained in the White Paper to enable the Governor-General to have that information which is necessary for him in order that he should know when the exercise of this special responsibility is called for. We believe that certain amendments might be introduced to mitigate the difficulty and to increase this opportunity, but at the best we doubt whether this object can be satisfactorily achieved.

There is yet a fifth and last essential difficulty stated at the beginning of this part of our Report which has not yet been dealt with—the tentative character of Provincial reform and its bearing upon the Constitution at the Centre.

What power will the federal government have to guide the Provinces, or in the last resort to enforce its decisions upon the Provinces? In the first place there is vagueness in the proposals submitted to us. It must be understood that between the legislative field under the authority of the Centre and the legislative field under the authority of the Provinces there is to be an intermediate field in which the two have concurrent jurisdiction. It has been argued on high authority that the Federal Government neither could nor ought to enforce upon the Provinces the execution of federal legislation in the concurrent field. We are not satisfied that this looseness of administrative authority will make for good government in the future. But it seems quite clear that the contention proves too much, for if the argument is sound that federal legislation cannot be enforced in the concurrent field, there will be an equal federal impotence in the federal field as well. In the case of the States, as has been already shown, the federal impotence is even greater because whereas in the Provinces acceptance of decisions in the federal field is assumed, in the case of the States the federal government as distinguished from the Viceroy has no constitutional right to enforce its authority. It is true that the power over the States of paramountcy resides in the Viceroy and no doubt the federal Ministers will consider themselves entitled to put pressure upon him to use this power for enforcing their wishes. That pressure may possibly be effective, though this is a procedure that the Princes certainly do not contemplate. The provisions however of the White Paper have in these respects never been sufficiently worked out. Similarly the whole problem of the relation of the new constitution to the general law has not been solved and possibly cannot be solved. There is not merely ambiguity in the treatment of repugnancy between Provincial and Federal legislation, but also it seems between either and the legislation of Parliament itself. Anyhow, as between the Provinces and the Federation something more precise than the provisions of the White Paper are evidently required, though it may be gathered that precision would be very unwelcome to many members of the Indian delegation. In the meantime we may shrink from the vast sea of litigation which is opened up by the consideration of these ambiguities. They illustrate the essential difficulty which lies in an effort to create new constitutions for the units and a new constitution for the federation at the same time.

We must however not be understood to suggest that the Central Government would be powerless, but that it would be powerless in guiding aright the new Provincial administrations. Even if the vagueness of the White Paper were eliminated the federal responsible Government will neither be experienced nor disinterested. It will probably be an uninstructed focus of faction and intrigue. Yet in the interests of the Provinces the wise guidance of some central authority is certainly required. We repeat that we do not think the Central Government in the White Paper would be powerless. We are aware that there is in some minds a tendency to pass lightly over the relation of the Centre and the Provinces on the alleged ground of the relative unimportance of the Central as compared to the Provincial Constitutions. It is said that the scope of the Centre is so restricted that even if its conduct is inadequate or unsatisfactory it could in point of fact do very little harm. We believe this to be a total mistake. Appendix VI which prescribes the different categories of legislation for the Centre and for the Provinces certainly restricts

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the former, but once they are established the central legislature and government, like all other political organisations, will try to develop their authority. No doubt the Provinces in their turn with their constitutions to develop will obstruct the central power where it conflicts with their own, but there will be many occasions in which the two will be combined against the British authority, and the central legislature with its government responsible to it will have, as has been shown in these pages, abundant opportunities for pressure on the Governor General which can be made to subserve the aspirations of the Provinces as well as their own. But they will have no power over the Provinces and no disinterested experience to be their guide, and it is clear that the guidance and ultimate control of some Central authority is a necessary element in reform especially in its early stages. The best chance, perhaps the only chance, for the successful issue from Provincial difficulties will lie in the strength and goodwill of the Centre. Though we are prepared to recommend a far-reaching experiment in Provincial constitutional development upon the lines of the White Paper, we are not insensible to the immense difficulties which will lie in its path; indeed, it is evident that many of the risks to which we have called attention in the case of the Centre will apply to the Provinces as well. But there is one fundamental difference between the two cases. If experience shows that responsible government in the Provinces should be differently constituted, that the proposed safeguards have been misconceived or are useless, it would be possible for Parliament, either using the authority of the Central power, or directly by its own action, to make such changes as in its wisdom it may see are required. But once the Central Legislature is established with its responsible Government upon the lines of the White Paper, short of a catastrophe retreat will be impossible. This Country may watch with dismay a growing misgovernment of the vast masses of the Indian population, and the failure of all the precautions we have taken, and yet may be faced with the practical impossibility by any intervention of its own of making any change. In different parts of India Hindus may oppress Moslems or Moslems Hindus and nothing can be done except at the instance of the responsible Government at Delhi. It may be found that the provisions for the representation of women are wholly inadequate or unwise, as most women's organisations in this Country and in India believe them to be, yet if the oriental prejudice of the Central legislature is unconvinced the British Parliament with all its supposed supreme authority will in fact be powerless.

The essential difficulties have been severally dealt with in this Report. The difference of status of the units; the limitation of experience and tradition under which Indians at present stand in exercising the higher functions of government; the impracticability of representative institutions of the White Paper type for the vast sub-Continent of India; the profound communal differences into which India is split up; the necessarily tentative character of the proposed Provincial reforms and its bearing on the Central Constitution. It has been shown that in respect of none of these do the White Paper proposals for the constitution of the Central Government provide any adequate solution or, short of a catastrophe, show any means of retreat in case of failure. Incidentally, we have pointed out the prohibitive position of Indian finance. The Committee therefore must view with grave concern an acceptance of the proposals of the White Paper on this part of the subject.

If, then, these cannot be accepted and the Provincial constitutions as proposed alone are proceeded with, subject of course to certain modifications following on the discussions in the Committee, on what lines in our judgment should the Central Constitution in India continue for the present? That is a question to which an answer is obviously required.

Whilst the federal proposals as suggested in the White Paper must, we think, be laid aside, the federal objective need by no means be abandoned. On the contrary, we would suggest that in this regard Parliament ought to go as far as the recommendations of the Statutory Commission but no further,

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that is to say as far as the creation of a Greater Indian Council representing the several units of the States and of British India. Parliament may be again reminded, as was done in this Report, of the great authority with which the Statutory Commission spoke in its celebrated findings. There is no question that these were against a Central Constitution to be established forthwith on the lines of the White Paper.

(Page 202.)

> " Federations come about only when the units to be federated are ready for the process, and we are far from supposing that the federation of Greater India can be artificially hastened or that when it comes it will spring into being at a bound."

And again :—

(Page 146.)

> ". . . . we do not think that the evolution of the Constitution at the Centre will necessarily follow this path (viz., Parliamentary institutions). It appears to us that there is a serious danger of development at the Centre proceeding on wrong lines if the assumption is made that the only form of responsible government which can ultimately emerge is one which closely imitates the British Parliamentary system. It is a feature of that system that the Government is liable to be brought to an end at any moment by the vote of the legislature."

In other words—It must not be assumed that India must have a Central Responsible Government on the lines proposed. And again—

(Page 146.)

> " It seems to us most unlikely that if Britain had been the size of India, if communal and religious divisions so largely governed its politics, and if minorities had had as little confidence in the rule of others as they have in India popular government in Britain would have taken this form."

These quotations it is submitted amply confirm the criticisms in this part of our Report. Nevertheless, it must be admitted that the establishment of Provincial Responsible Governments by themselves would not be satisfactory. It would be useless to shut our eyes to the development of the question of Indian reform in recent years, and we agree with others in looking with hope to the spirit of federation which, with the provisional assent of the Princes, has become so prominent. Federal development was, of course, explicitly foreshadowed in the Report of the Statutory Commission. But the Commissioners were of opinion that the time has not arrived when it is possible to decide upon what lines a Federal Constitution ought to be drawn. Our analysis of the difficulties presented by the federal proposals in the White Paper, as will have been seen, fully agrees with this conclusion. Yet we should be loth to abandon federation as the objective. Let us by all means go as far as we can in that direction. In this connection we have been impressed not only by the general attitude of the Princes on this question, but in particular by what we conceive to be a just complaint against the treatment which they have often received from the Government of India. We are satisfied that questions in which the States have a substantial interest have often been settled by the Government of India without consulting, or even informing, the Princes of their intention. It was no doubt such considerations as these that led the Statutory Commission to make their recommendation in paragraph 237 of Volume II for a Greater-India Council :—

(Page 203.)

> " We wish to suggest that steps should be taken now to devise the creation and setting up of a standing consultative body containing representatives both from British India and the Indian States, with powers of discussion and of reaching and recording deliberative results on topics falling within the list of matters of common concern."

In other words the proposal is that the Governments of every Province and of every State should be represented in a Council, whose advice and assistance the Viceroy should seek on every issue which is of interest to India as a whole. We desire most strongly to endorse this recommendation.

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It will be seen at once how long a step this constitutes in the direction of federation. But this federal instrument does not involve the unanswerable difficulties which we have found in the proposals of the White Paper. There would be no question of unequal powers as between the States and the Provinces. There would be no uncertainty as to the character and position of the central Government in relation to the Princes. Subject always to the Treaties, the attributes and operation of paramountcy are established and well understood. Unlike novel experiments it has the stability of tradition, and it would be through paramountcy that the central Government in the person of the Viceroy would continue to exercise his authority in Greater India. There would be no pathless morass to be confronted of direct or indirect election to the central Assembly. There would be no anxiety about discrimination; no dilemma about Burma. There would be no extra expenditure for offices and officials in Delhi. In a word there would be no reason to delay the consummation of the federal principle forthwith. Finally the Central Constitution would be on simple lines, and simple lines are essential in new development.

And yet the new Council would have a great position, because it would have far-reaching influence. It is true that this influence would only be advisory and it is indeed this quality which obviates the difficulties just recited. It would be advisory but it would be none the less weighty; indeed such an advisory instrument is on the direct road of constitutional development as we English have understood and followed it. Everyone of our institutions has passed through that stage. Many of them are advisory still, and even the greatest of them carry the ancient traces upon their formularies. The King's Ministers are still termed his advisers; even the archaic formula in which our laws are enacted has no hint of initiative power except in the Sovereign, and advice still appears in the enacting words as having embodied historically the essential function of the greatest Parliament in the world. This feature of British constitutional development is not an accident; it is because under the form of advice and under that form alone the elasticity can be found which is required for the growth of representative institutions. Arbitrary rules bounded by rigid conditions can never be developed into a living instrument of government, as the growth is developed of an advisory body representing public opinion. Under an advisory method there is no reason to define the rights of an Assembly or the special responsibilities of a Governor-General. The field of discussion in the Council need never be circumscribed, whilst on the other hand the Governor-General need never fear the coercion of a Ministerial deadlock. For the power of an Advisory Council would depend upon the weight of influence in whose name it speaks; and the responsibilities of a Governor-General would be limited only by his sense of public duty.

The Statutory Commission proceed in their Report to elaborate the functions of this Council. They are to have a general scope dealing even with the delicate subject of finance:

> "The Council would provide an opportunity for taking the Indian States into consultation about changes in the tariff."

and indeed about every kind of fiscal legislation. Stretching also beyond specific issues to general questions of policy:

> "It may well be, however, that an even more important part of the work of the Council would be concerned with questions of general policy falling within the schedule of matters of common concern."

The views of the Council are to have access as of right to the Legislature and to the Princes.

> "The views formed by the Council would be recorded in a Report, which would include the record of any dissenting minority, and this Report should be furnished to the Central Legislature as well as to the Chamber of Princes."

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and further :

> " We think that some machinery might be devised by which, at any rate, in important cases, these views might be expounded to the Central Legislature and to the Chamber of Princes."

So that, as has been indicated above the Princes would be fully consulted on all matters of common concern, which would embrace specific proposals as well as questions of general policy ; and thus any legitimate grievance of the past would be fully met.

Such is the proposal towards federation of the Statutory Commission. Further than this we do not think it would be wise for the present to proceed. With the addition then of this Greater-India Council in the Central Constitution the existing Legislature and Executive, somewhat as provided in Proposal 202 of the White Paper, should for the *present* remain, but of course with diminished scope. In the first place the Central Legislature would be deprived of those functions which are to be transferred to the Provinces. In the second place a further limitation would be wise (in this respect again on the same principle as contained in the scheme of the White Paper), namely it should have no authority on the reserved subjects of Defence or Foreign Policy as therein defined. Besides these there is one other consideration which has become apparent in the discussions of the Committee and which if the present Central Constitution in any form is to continue requires attention, namely, the weakness of the Central Executive. This has proved to be a serious blemish as things stand and will be increasingly mischievous in the face of the inexperienced autonomy of the Provinces. It will be remembered how in our deliberations the Indian delegates criticised the proposed provision by which the Governor or the Governor-General could only pass an Act on his own authority of a permanent character after incurring all the friction of a difference with the Legislature. This criticism seems directly in point as against the existing system of certification. It would conform at once both to strength and smoothness of operation if the prerogative power of the Governor General took the simple shape of an ordinance, to be issued either with or without a preliminary discussion in the Legislature, and either as a temporary or permanent enactment as the circumstances may require.

Arising partly from these changes there are one or two other modifications which would be required. It must be admitted that in the circumstances contemplated there might be some danger lest the Executive might to a certain extent lose touch with the legislature and with the public opinion which it represents. To minimise this danger the existing disablement of members of the Assembly from forming part of the Executive Council might be removed. The Governor-General should himself nominate his Council and should have an unrestricted field to nominate his Council either from within or without the Legislature as he should find best for the public service.

It will be noticed that in this Central Constitution as here proposed, whether in respect of the Greater India Council or the Executive Council or the Central Legislature, it is intended to do without the mass of hampering restrictions which form so large a feature in the White Paper. There are indeed hardly any restrictions which are needed to limit the discussion in the Greater India Council. The same is generally true of the Central Legislature as it will continue to exist, except in respect of those mentioned in the present Government of India Act. That this simplicity should become possible is in itself a great desideratum. It is true that the restriction method with all its complication will still be tried out in the Provinces. There would seem to be no other course open to us. But in that case there will be, as has already been said, comparatively little difficulty in modifying it hereafter as experience may prescribe. The case of the Centre is much more critical and the consequence of a mistake much more formidable. The real and reasonable safeguard there ought to be, not in prohibiting discussion or in prescribing complicated and arbitrary limitations of authority (which are

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inconsistent with any genuine system whether of self-government or otherwise) but in full freedom for the representative bodies either to advise or to enact as the case may be, conditioned only by an unfettered power of the Governor-General, negatively by veto or positively by ordinance, to secure what the public interest requires.

In our view, then, the safeguards ought if possible to be simple, but whatever view is taken of simplicity in this connection, at any rate when we are establishing a Central form of Government from which there can be no retreat, there must be an assurance of solidarity between the Governor-General and his Ministers. The device by which he is conceived as exercising his prerogative powers in the teeth of his own Ministers is, we should think, unprecedented and must surely be accepted with the greatest reluctance. We are not prepared to accept it. In the present stage, therefore, of Indian development the Executive Ministers in the Centre should not be subject to the control of the Legislature. They should no doubt do their utmost to carry with them the support of public opinion as represented there. They may or may not be themselves members of the Legislature, but as Ministers they should be responsible only to the Head of the State.

In submitting these recommendations we regret that they are not in conformity with the views of the Indian delegation for whose ability and position we desire to express the greatest respect. But members of the Imperial Parliament have a unique experience in making and working Constitutions and we conceive that we have an overwhelming responsibility to the millions of our fellow subjects in India, wholly uninstructed in these matters, to protect them from the risk of a profound constitutional mistake.")

Objected to.

On Question :—

Contents (5)	Not Contents (21)
Marquess of Salisbury.	Lord Archbishop of Canterbury.
Lord Middleton.	Marquess of Zetland.
Lord Rankeillour.	Marquess of Linlithgow.
Sir Reginald Craddock.	Marquess of Reading.
Sir Joseph Nall.	Earl of Lytton.
	Earl Peel.
	Viscount Halifax.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Hutchison of Montrose.
	Mr. Attlee.
	Mr. Butler.
	Major Cadogan.
	Mr. Cocks.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Mr. Morgan Jones.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

Paragraphs 44 and 45 are again read.

The further consideration of paragraphs 44 and 45 is postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Two o'clock.

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Die Mercurii 20° Junii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF LYTTON.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Yesterday are read.

Paragraphs 46 to 159 are again read and postponed.

Paragraphs 160 to 227 are again read.

It is moved by the Earl of Lytton to leave out paragraphs 160 to 227 and to insert the following new paragraphs :—

III. RESPONSIBILITY AT THE CENTRE

("Having accepted the view expressed in the White Paper that it is desirable to establish a Federal Government at the centre for the whole of India, we have now to consider what form that Government should take. For reasons which we shall explain, we have not felt able to accept the proposals of the White Paper as regards the Federal Government, but before stating the alternative proposals which we recommend it may be useful to summarise briefly :—

(1) The present constitution of the Central Government.

(2) The proposals of the Statutory Commission for its modification.

(3) The proposals of the White Paper for the composition of the Federal Government.

1. *The Present Central Government*

The present executive authority in India, both in civil and in military matters, is the Governor-General in Council. The members of the Governor-General's Executive Council, of whom not less than three must be persons who have been for at least ten years in the service of the Crown in India, are appointed by the Crown, and their appointments are in practice for a term of five years, though there is no statutory limit. The Commander-in-Chief is ordinarily, though not necessarily, a member of the Council, and in that case has rank and precedence next after the Governor-General himself. The present Council consists of six members (of whom three are Indians), in addition to the Governor-General and the Commander-in-Chief. The Governor-General presides at meetings of his Council, and the decision of the majority of those present prevails, though the Governor-General has a casting vote in the event of an equality of votes, and may, if any measure is proposed which in his judgment affects the safety, tranquillity or interests of British India, or any part thereof, overrule the Council. The three members of the Council

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491 ; and *vide supra*, paras. 43–453, pp. 64–253) and NOT to the Report as published. (Vol. I, Part I.)
A Key is attached (*vide infra*, pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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who are required to have been in the service of the Crown in India are invariably selected from the Indian Civil Service; the post of Law Member has for some years past been filled by an Indian lawyer, and that of Finance Member by a person with financial experience from the United Kingdom. An official is not qualified for election as a member of either Chamber of the Central Legislature, and if any non-official member of either Chamber accepts office under the Crown in India his seat is vacated; but every member of the Governor-General's Council becomes an *ex-officio* member of one of the Chambers and has the right of attending and addressing the other, though he cannot be a member of both. The Executive Government is not responsible to the Indian Legislature but only to the Secretary of State and thus to Parliament; and the Governor-General in Council, if satisfied that any demand for supply which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, can act as if it had been assented to, notwithstanding the refusal of the demand or any reduction in its amount by the Legislative Assembly. The Governor-General himself has also power in case of emergency to authorise such expenditure as may in his opinion be necessary for the safety or tranquillity of British India, or any part thereof. These provisions secure the complete independence of the Executive, though the Legislature can and does exercise an influence upon policy in a marked and increasing degree.

The present Central Legislature in India consists of two Chambers. The Upper Chamber, called the Council of State, consists of 60 members, of whom 34 are elected on a high property qualification and 26 are nominated. The President is appointed by the Governor-General for a period of five years, which is the duration of the Council.

The Lower Chamber, called the Legislative Assembly, consists of 145 members, of whom 105 are elcted from Provincial constituencies, on the same franchise as for the Provincial Legislative Councils, but with rather higher electoral qualifications; 26 are official members, and 14 are nominated non-officials, including one representative of the Depressed Classes, the Indian Christians, the Anglo-Indian community, the North-West Frontier Province, the Associated Chambers of Commerce, and Labour interests, respectively. The Legislative Assembly elects its own President, and its duration is limited to three years.

2. *The Proposals of the Statutory Commission*

The Statutory Commission proposed the continuation of the Legislative Assembly (with the title of "Federal Assembly") and the Council of State, as two Chambers of the Central Legislature, but they recommended a system of indirect election for the membership of each of these Chambers. The members of the former were to be elected by the method of proportional representation by the Provincial Councils, those of the latter by the Provincial Second Chambers where they existed, or failing this by the Provincial Councils. The Central Executive, according to their Report, would continue to be the Governor-General in Council, the only change being that the Executive Councillors would in future be selected by the Governor-General. They further recommended that for the purpose of promoting closer co-operation between British India and the Indian States in matters of common concern for India as a whole, a Council for Greater India should be established, containing representatives both of the States and of British India, to deliberate and advise upon matters scheduled as "of common concern."

For reasons which are set forth in their Report, the Statutory Commission were unable to explore more fully the subject of Federation, and the appointment of an Advisory Council for the whole of India was as much as they felt able to recommend at that time. Since then, however, the idea which they were first to suggest has been further examined and discussed at the three Round Table Conferences, and we ourselves have heard a large body of evidence on the proposals of the White Paper. We consider, therefore, that

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it is now possible to go further than the Statutory Commission in recommending the establishment of a central Executive and Legislature, which shall be responsible for carrying out the functions of a Federal Government; but we have had in mind that the units which form the Federation will differ fundamentally in character, and we have sought to establish a Government which would recognise and be compatible with the continuance of their respective characteristics. We consider it essential that the Legislature which represents the Confederate units should be fully responsible, and indeed the Princes have made it clear that they would only consent to join a Federal body which had this character. For this reason we are not prepared to recommend the establishment of a merely Advisory Council, such as was contemplated by the Statutory Commission.

3. *The White Paper Proposals*

The White Paper proposes that, as in the case of the Governor in a Province, the executive power and authority of the Federation shall vest in the Governor-General as the representative of the King. This power and authority will be derived from the Constitution Act itself, but the Governor-General will also exercise such prerogative powers of the Crown (not being powers inconsistent with the Act) as His Majesty may be pleased to delegate to him. The former is to include the supreme command of the military, naval, and air forces in India, but it is proposed that power should be reserved to His Majesty to appoint a Commander-in-Chief to exercise in relation to those forces such powers and functions as may be assigned to him. In relation to a State which is a member of the Federation the executive authority will only extend to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession. It is then proposed that there shall be a Council of Ministers, chosen and summoned by the Governor-General and holding office during his pleasure, to aid and advise him in the exercise of the powers conferred on him by the Constitution Act other than his powers relating to (1) defence, external affairs and ecclesiastical affairs, (2) the administration of British Baluchistan, and (3) matters left by the Act to the Governor-General's discretion. In respect of certain specified matters the Governor-General, like the Governor of a Province, is declared to have a "special responsibility"; and his Instrument of Instructions will direct him to be guided by the advice of his Ministers in the sphere in which they have the constitutional right to tender it, unless in his opinion one of his special responsibilities is involved, in which case he will be at liberty to act in such manner as he judges requisite for the fulfilment of that special responsibility, even though this may be contrary to the advice which his Ministers have tendered.

The White Paper proposes that the Federal Legislature shall consist of the King, represented by the Governor-General, and two Chambers, to be styled the Council of State and the House of Assembly. The Council of State is to consist of not more than 260 members, of whom 150 will be representatives of British India, not more than 100 will be appointed by the Rulers of States who accede to the Federation, and not more than 10 will be nominated by the Governor-General in his discretion. The Governor-General's Counsellors, who will be *ex-officio* members of both Chambers for all purposes except the right of voting, are not included in the above figures; and it is provided that the members to be nominated by the Governor-General shall not be officials. The House of Assembly will consist of not more than 375 members, of whom 250 will be representatives of British India, and not more than 125 will be appointed by the Rulers of States who have acceded to the Federation.

The representatives of British India in the Council of State will to the number of 136 be elected by the members of the Provincial Legislatures, by the method of the single transferable vote. Indian Christian, Anglo-Indian and European members of the Provincial Legislatures will not be entitled to vote for these representatives, but 10 non-provincial communal seats will be reserved for them (7 for Europeans, 2 for Indian Christians,

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and 1 for Anglo-Indians), these seats being filled by three electoral colleges, consisting respectively of the European, Indian Christian and Anglo-Indian members of the Provincial Legislatures, and voting for the European and Indian Christian seats being by the method of the single transferable vote. Coorg, Ajmer, Delhi, and Baluchistan will each have one representative. Members of the Coorg Legislature will elect to the Coorg seat, but special provision is to be made in the case of the other three.

The representatives of British India in House of Assembly will be elected by direct election in provincial constituencies, except in the case of three of the seats reserved for Commerce and Industry, and one of the Labour seats, where the constituencies will be non-provincial. Election to the seats allotted to the Muhammadan, Sikh, Indian Christian, Anglo-Indian and European constituencies will be by voters voting in separate communal electorates; and all qualified voters who are not voters in one of these constituencies will be entitled to vote in a general constituency. Election to the seats reserved for the Depressed Classes out of the general seats, will be in accordance with the arrangements embodied in the Poona Pact, which we have described elsewhere. Election to the woman's seat in each of the Provinces to which such a seat is allocated will be by members of the Provincial Legislature voting by the method of single transferable vote; the special seats assigned to Commerce and Industry will be filled by election by Chambers of Commerce and other similar associations; and the special seats assigned to landowners will be filled by election in special landholders' constituencies.

It will be seen that these proposals go much further in the direction of establishing a responsible Government at the centre than those of the Statutory Commission. In our opinion, however, the proposals of the White Paper have two serious defects which have led us to reject them. In the first place, the responsibility of the Federal Ministers will be restricted to certain departments, whilst for other departments the responsibility will be vested in the Governor-General. The effect of these proposals would be to reproduce at the centre a form of Dyarchy, which experience has shown to be one of the chief defects of the Montagu-Chelmsford reforms, and we endorse everything which was urged in their Report by the Statutory Commission against such a course. In our opinion, to adopt the proposals of the White Paper would be to ignore the lessons of the past, and to invite at the centre, where the consequences would be much more serious, the same friction and deadlocks which Dyarchy has produced in the Provinces.

The second objection which we feel to the proposals of the White Paper is that they do not sufficiently take into account the divergent character of the units which it is sought to federate; and by adopting a democratic basis for the Federal Legislature they necessarily invite future agitation to change the character of the Government in the Indian States.

At the present time there are two systems of Government in India—the personal rule of the Indian Princes, which is indigenous and traditional, and the democratic representative institutions which are in process of being established in the Provinces of British India, as the consequence of British rule. This latter form of Government is still on its trial and though it is the avowed object of Parliament to make such changes in the Constitution as will ensure the ultimate success of this system in the British Indian Provinces, it cannot be said that this object has yet been accomplished. The proposals of the White Paper, and the recommendations we have ourselves made for the establishment of autonomous self-governing Provinces, will we hope facilitate the successful development of democratic institutions in those Provinces. But we are strongly of opinion that any Federal Government which is established in India in present conditions should hold the balance evenly between the two existing systems of Government, and should be capable of being adopted in the future as experience may prove to be desirable.

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The facts which appear to us to be unquestionable in the Indian situation to-day are :—

(1) That both in the Indian States and in the Provinces of British India there are men fully qualified to discharge executive and legislative responsibilities, and that it is desirable without further delay to entrust such responsibilities to those who are qualified to exercise them.

(2) That the low standard of education of the mass of the people, and the presence of acute communal differences make the establishment of any truly representative system of Government immensely difficult.

In our view the chief problem which confronts Parliament at this moment is how to secure the transfer of responsibility to those qualified to exercise it, without endangering the safety of the immense interests of which the Government of India is the trustee, by premature experiments in a system of representation for which India is at present unfitted. The White Paper makes the mistake of transferring only a qualified responsibility to men who have been selected by a system of representation which bristles with difficulties and which no one can regard as wholly satisfactory. In an attempt to approximate to the Westminster model the wholly different conditions of India, it proposes to establish a Constitution so complicated that even men of long Parliamentary experience would find it difficult to work, and which, owing to the divided responsibility which is inherent in its proposals, is more likely to provide discord than establish harmony. In our opinion, a far simpler and more workable solution can be found, and one which is better suited to existing conditions.

Our own Proposals

Bearing these considerations in mind, we may now proceed to formulate the alternative proposals we are disposed to recommend.

We will consider first the Federal Legislature. All the difficulties with which we have been confronted throughout our enquiry on such subjects as the composition of the two Chambers proposed in the White Paper, the merits of direct or indirect election, the basis of the franchise, the representation of special interests, the communal award, etc., arise from the attempt to place upon the general population of British India the responsibility of electing representatives in the Federal Legislature. If we were attempting to federate the self-governing Provinces alone, this would, of course, be necessary. Such was the problem which confronted the framers of the Government of India Act in 1919. The Central Legislature then created dealt with British India alone, and it was inevitable that having introduced representative legislatures in the Provinces, an attempt should be made to create a representative Legislature at the centre. Again, if the Governments of the Indian States had a representative character, in federating them with the British Indian Provinces it would be necessary to give the people of those States a voice in the election of the Federal Parliament. But that is not the problem which now confronts us. We have to federate the Governments of the British Indian Provinces with those of the Indian States. There is no question today of giving representation to the peoples of the Indian States, and until that is done there is no necessity to give direct representation to the peoples of British India.

We therefore propose that at this stage the Federal Legislature should consist of representatives of the various confederate Governments. For this purpose two Chambers are not required, and there would be no object in creating two Chambers to represent the same authorities. We propose that the Federal Legislature should consist of one Chamber composed of the nominees of the various Governments. The Princes who join the Federation would appoint the representatives of their States, and the Governor acting with his Ministers would appoint the representatives of each British Province. The total number of the Legislative Chamber, and the proportion to be assigned

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to the States on the one hand, and the Provinces on the other, and within those categories the numbers to be assigned to each Province are shown in an Appendix. These numbers may require further consideration, if the principle we have advocated is accepted. We have tentatively assigned one-third of the total House to the States and two-thirds to the Provinces. The proportion assigned to each Province follows as closely as possible the lines proposed in the White Paper.

The simplicity of such a procedure is obvious and needs no elaboration. It would avoid all the difficulties created by the White Paper, a consideration of which has occupied so much of our time. The objections which will be raised to it are equally obvious. Those who can only think of Indian constitutional development in terms of British experience, will, of course, protest that such a procedure would involve a departure from the principle which has hitherto been followed in previous constitutional changes already carried out in India. But, as we have already pointed out, the problem of establishing a Federal Constitution in India in present conditions is without parallel in the history of the world, and no precedents are therefore germane. What we have to do is to create a form of Government to which Parliament will think it safe and wise to transfer responsibility, and we can think of no form of legislature to which such responsibility could be more safely transferred than one which consists of representatives of Governments which themselves enjoy such responsibility in their respective spheres.

Under the Constitution which we recommend, the peoples of British India will elect the Parliament to which the Provincial Governments will be responsible, and within the area of each Province democracy will be given for the first time full scope for its successful operation. As we have already said, the principle of personal rule exists in the States, and no one suggests that the States' representatives can be responsible to anyone but the head of their State. The Federal Parliament, therefore, which we propose will accurately represent the responsible elements throughout India, and the composition of such a Parliament would in no way prejudice the continuance side by side of the two systems of Government now existing. There is no ground for supposing that the Central Federal Legislature so composed would not be as faithful an epitome of the actual conditions prevailing in India to-day as the complicated constitution proposed in the White Paper, and there is every ground for believing that it would work much more harmoniously.

The Federal Executive

We now approach the question of the Federal Executive. As we have already said, we believe that there is sufficient material in India from which a competent body of Ministers could be drawn, capable of discharging the functions of an Executive Government. We think that the Governor-General should be free to select his Ministers at his discretion from this material, outside the ranks of the acting Civil Services; and if the Legislature is composed in the manner we have suggested, we see no reason why the Ministers should not be made responsible for it. The Governor-General should be given a special responsibility for the subjects specified in the White Paper, just as the Governor is given a special responsibility in the Provinces, but we do not recommend that a system of dyarchy should be created by reserving any departments from the sphere of the Legislature.

In the Constitution we recommend the Governor-General, acting with his Ministers, would be responsible for the administration of all Federal subjects. The Ministers would be members of the Legislature and would retain office only so long as they retained its confidence. A vote of no-confidence in the Ministry would place upon the Governor-General the obligation to appoint other Ministers who would be acceptable to the Legislature, and the power of dissolving the Legislature would, of course, rest with him.

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These proposals may appear unacceptable at first sight to those whose minds have hitherto travelled along the lines of British Parliamentary procedure, but if the actual conditions in India are studied, we believe that such a Federal Constitution as we have suggested will be found more suitable to those conditions as they now exist, than the complicated proposals of the White Paper. At the same time, it would be capable of development from time to time as circumstances required. Once the practice of Parliamentary Government had been established, the process of increasing the representative character of the Central Legislature could be undertaken gradually as experience proved its justification.

The main difference between our proposals and those of the White Paper is that the White Paper would establish a Legislature which professed to be fully representative of the people of British India, and would withhold from it full responsibility for all Federal subjects, whereas we would establish a Legislature which did not profess to represent the people but did represent the Governments of all the units of Federation, and to that Legislature we would accord full responsibility. The White Paper would look to the future to increase the responsibility of the Legislature—we would look to the future to increase its representative character. We believe that our proposals would better accord with the known facts of the situation, for India to-day is ready for responsibility, it is not ready for popular representation. We would accord at once recognition of what is available and leave to the future the gradual realisation of conditions which only time and experience can produce. The White Paper asks India to wait till to-morrow for the responsibility she is capable of realising to-day, and offers her to-day the outward forms of a representative system which cannot be made real and effective for many years to come.

APPENDIX I

COMPOSITION OF THE FEDERAL LEGISLATURE

Total number 300, of whom 200 will be nominated by the Provincial Governments, and 100 by the Indian Princes.

Distribution of numbers as between the Provinces :—

Madras	32
Bombay	26
Bengal	32
U.P.	32
Punjab	26
Bihar	26
C.P.	10
Assam	4
N.W.F.P.	4
Sind	4
Orissa	4
Total	200

The said amendment is disagreed to.

Paragraphs 160 to 227 are again read.

The further consideration of paragraphs 160 to 227 is postponed.

Paragraphs 228 to 453 are again read and postponed.

Ordered, that the Committee be adjourned to Friday next at half-past Ten o'clock.

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Die Veneris 22° Junii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.
The Proceedings of Wednesday last are read.

PART II is again considered.

Paragraph 43 is again read.

It is moved by Sir John Wardlaw-Milne. Page 21, lines 8 to 14 to leave out from (" basis ") in line 8 to the end of the paragraph and to insert (" for " the setting out of our conclusions although we desire to make it quite plain " that our deliberations have in no way been restricted to the proposals " which it contains.")

The same is agreed to.

Paragraph 43 is again read.
The further consideration of paragraph 43 is postponed.

Paragraphs 44 and 45 are again read and postponed.

Paragraph 46 is again read.
It is moved by the Marquess of Salisbury. Page 22, lines 6 and 7, to leave out from the first (" sphere,") in line 6 to the end of the sentence.
The amendment by leave of the Committee is withdrawn.
It is moved by the Marquess of Salisbury. Page 22, line 20, after (" White " Paper,") to insert (" except to the extent of certain special powers con- " ferred upon the Governor-General ").
The amendment, by leave of the Committee, is withdrawn.

Paragraphs 47 to 50 are again read and postponed.

Paragraph 51 is again read.
It is moved by the Lord Hardinge of Penshurst. Page 24, line 38, to leave out (" device ") and to insert (" method ").
The same is agreed to.
It is moved by the Marquess of Linlithgow on behalf of Sir Austen Chamberlain. Line 40, to leave out (" to ").
The same is agreed to.

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491 ; and *vide supra*, paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part I).
A Key is attached (*vide infra*, pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Paragraph 51 is again read, as amended.

The further consideration of paragraph 51 is postponed.

Paragraph 52 is again read and postponed.

Paragraph 53 is again read.

The following amendments are laid before the Committee.

Sir John Wardlaw-Milne to move. Page 25, lines 21 and 22, to leave out from the beginning of the paragraph to (" We ") in line 22 and to insert (" Although we do not regard this plan as in any way ideal and " would have preferred to avoid it, we believe it to be the only solution " possible in the present conditions in India and we therefore accept " it.")

Sir John Wardlaw-Milne to move. Page 25, lines 28 and 29, to leave out from (" Provinces.") in line 28 to the end of line 29.

The consideration of the said amendments is postponed.

It is moved by Mr. Attlee and Mr. Morgan Jones. Page 25, lines 21 to 49, to leave out from (" one,") in line 21 to the end of the paragraph and to insert (" We do not think that this difference of opinion is due to any real " disagreement on grounds of constitutional theory, but is dictated by the " supposed interests of the two communities, and we feel, therefore, free " to consider the matter entirely on its merits, apart from any question " of the views that have been put before us by the contending parties. " It has generally been the case that in the formation of Federal Con- " stitutions in the early stages centrifugal tendencies have been very strong. " These tendencies have in India been reinforced by the fact that a greater " degree of responsibility was given under the Montagu-Chelmsford " Reforms to the Provinces than to the Centre, and the Representatives " of the Provinces have not infrequently tended to press to an extreme " the conception of Provincial Autonomy. So that, in fact, a Central " Government becomes nothing more than a weak and ineffective link " between a number of autonomous units. We recognize that the " composition of the Central Legislature, representing as it will partly " the Provinces and partly the Indian States, may seem to reinforce " the arguments of those who claim that residual powers should be in " the Provinces; but it has been a general experience in Federations " that after a period of time it has been found that the powers of the " Central Government are insufficient and that too great a degree of " autonomy has been given to Provincial units. We are not unmindful " of the danger of centrifugal tendencies developing in India, particularly " in view of the fact that some Provinces differ from others in the pre- " dominance of certain communities, and we should be unwilling in " any way to strengthen and encourage tendencies which would work " against the unity of India. We therefore consider that in view of " future possibilities, it would be wise that the residuary powers should " remain with the Centre.")

The same is disagreed to.

It is moved by the Lord Eustace Percy. Page 25, to leave out paragraph 53 and to insert the following new paragraph :—

Difficulty of White Paper Proposal.

(" 53. This scheme of allocation of powers has obvious disadvantages. It will be observed that, for the purpose of reducing the residuary powers to the smallest possible compass, the lists of subjects dealt with in all three Lists are necessarily of great length and complexity; whereas (apart from the question of the Concurrent List) if it had been possible to allocate residuary legislative powers to e.g., the Provinces, only a list of Central powers would have been required, with a provision to

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the effect that the legislative powers of the Provinces extended to all powers not expressly allocated to the Centre; and conversely, if the residue had been allocated to the Centre. This broadly is the plan which has been adopted in Canada and Austrialia, the residuary powers being vested, in the case of Canada, in the Dominion Legislature, and, in the case of Australia, in the Legislatures of the States. Even so, experience has unhappily shown that it has been impossible to avoid much litigation on the question whether legislation on a particular subject falls within the competence of one Legislature or the other; and it seems clear that the attempt made in the White Paper to allocate powers over the whole field of legislation by the expedient of specific enumeration must tend considerably to increase the danger of litigation by multiplying points of possible inconsistency.")

The same is agreed to.

New paragraph 53 is again read.

The further consideration of paragraph 53 is postponed.

Paragraph 54 is again read.

It is moved by The Lord Eustace Percy. Page 26, to leave out paragraph 54 and to insert the following new paragraph :—

Cleavage of opinion in India.

(" 54. On the other hand, there are two grounds on which the White Paper scheme may be defended, one of immediate political expediency and the other of constitutional substance. On the first point, we gather from our discussions with the Indian delegates that a profound cleavage of opinion exists in India with regard to the allocation of the residuary legislative powers; one school of thought, mainly Hindu, holding as a matter of principle that these powers should be allocated to the Centre, and the other, mainly Muhammadan, holding not less strongly that they should be allocated to the Provinces. Where apparently irreconcilable difference of opinion thus exists between the great Indian communities on a matter which both of them appear to regard as one of principle, the proposals of His Majesty's Government may be defended as a reasonable compromise. On the point of constitutional substance, it seems to us that, if a choice were to be made between the two alternative principles to which we have just drawn attention, the logical conclusion of the proposals in the White Paper would be the allocation of all residuary legislative powers to the Provincial Legislatures; but this solution would, we think, require to be accompanied by the insertion in List I of some general over-riding power of central legislation in matters of All-India concern, since a new subject of Legislation cannot be left to fall automatically into the Provincial field, irrespective of its national implications. But it is precisely an over-riding clause of this kind which has led to litigation in other non-unitary States. On the whole, therefore, we are unwilling to recommend an alteration of the White Paper proposal in a field in which experience shows that no wholly satisfactory solution is possible.")

The same is agreed to.

New paragraph 54 is again read.

The further consideration of paragraph 54 is postponed.

Paragraphs 55 to 57 are again read and postponed.

Paragraph 58 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 28, lines 12 to 14, to leave out from (" elsewhere ") in line 12 to (" in ") in line 14.

The amendment by leave of the Committee is withdrawn.

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Paragraph 58 is again read.

The further consideration of paragraph 58 is postponed.

Paragraph 59 is again read and postponed.

Paragraph 60 is again read.

It is moved by Mr. Attlee and Mr. Morgan Jones. Page 29, lines 5 to 9, to leave out from (" controversy ; ") in line 5 to the end of the sentence and to insert (" We have fully considered the representations made to us by " Oriya and Telegu witnesses and the views of the Government of India and " of the provincial Governments concerned. We have also studied the " reports of the three inquiries which have been held on the subject. We " think it unlikely that further inquiry will elicit new facts or arguments. " We therefore recommend that the boundaries of the new Province should " be those laid down in the White Paper with the addition of the Jeypore " Zemindary.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Attlee and Mr. Morgan Jones. Page 29, lines 9 to 14, to leave out from (" determine ") in line 9 to the end of the paragraph and to insert (" We believe that even with the creation of these new Provinces there " is a strong case for a reconsideration of Provincial boundaries, and we " recommend that the Indian Legislature should as soon as possible after the " coming into force of the new Constitution set up a Boundaries Commission " to delimit the extent of the Provinces and to decide if some should, for " greater facility in working, be divided. Generally speaking, we consider " that the Provinces, however suitable as administrative units under an " autocracy, are, in many cases, too large for the efficient working of democratic " institutions for a people at the stage of development of that of many of the " inhabitants of India, although, at the same time, we recognise that a " Provincial patriotism has, in many instances, already been developed. It is " therefore, in our view, essentially a matter which should be decided by the " representatives of the Indian people. We would add here a word as to the " proposition which has been put before us on many occasions, namely, that " no area which is not financially self-sufficient should be formed into a " Province. We cannot accept this contention. It is a fact that the Indian " Provinces and various parts of them differ widely in their financial resources, " but we can see no reason why, two areas that admittedly differ in their racial " and linguistic composition, should be united in order that one of them might " bear the burden of the deficit in the other. In our view, the mere fact of " contiguity to a deficit area does not make it equitable to impose a l[illegible]den " on the people of a particular Province. We recognize that it is desirable " that no part of India should be seriously retarded in its progress as compared " with others by reason of its lack of resources, but we consider that the " difficulty should be got over by the grant of funds from the whole of India, " rather than that the burden of the deficit areas should be placed on particular " Provinces for purely geographical reasons.")

The same is disagreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 29, lines 11 to 14, to leave out from (" purpose ; ") in line 11 to the end of the paragraph and to insert (" we think that the actual alteration of boundaries should be carried " out by Order in Council, but that the initiative should come from the " Provinces concerned and should receive the concurrence of the Central " Government and Legislature.")

The same is agreed to.

Paragraph 60 is again read as amended.

The further consideration of paragraph 60 is postponed.

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Paragraph 61 is read.

It is moved by Mr. Attlee, Mr. Morgan Jones, and Sir John Wardlaw-Milne. Page 29, lines 20 and 21, to leave out from (" Legislature,") in line 20 to the end of the paragraph.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 61 is again read.

The further consideration of paragraph 61 is postponed.

It is moved by the Marquess of Linlithgow. Page 29, after paragraph 61, to insert the following new paragraph :—

Constitutional advance in the provincial field.

(" 61A. If effect is given to our recommendations, there will be in India eleven autonomous Provinces. Of these the area of Bengal is approximately 78,000 square miles, and its population approximately 50,000,000 ; the corresponding figures for Madras are 136,000, and 45,000,000 ; for Bombay (excluding Sind) 77,000, and 18,000,000 ; for the United Provinces 106,000, and 48,000,000 ; for the Punjab 99,000, and 24,000,000. It is over these immense areas and populations that Indians will in future be responsible for every function of civil government in the provincial sphere. The area of Great Britain is 89,000 square miles, with a population of 43,000,000 ; of France 212,000 square miles, with a population of 42,000,000 ; of Italy 120,000 square miles, with a population of 42,000,000. We make these comparisons because they illustrate the scope which will be afforded to Indian statesmen by the grant of responsible government in the provincial field, as well as the burden which in every Province will fall upon Indians in both Legislatures and Governments. It is no doubt natural that the attention of political opinion in India should at the time of our enquiry be concentrated rather upon the question of responsibility at the Centre ; and we think that it is therefore all the more important that we should in this place emphasise the magnitude of the constitutional advance which we contemplate in the Provinces and emphasise the extent of the opportunity thus presented to Indians to justify in the service of their respective Provinces their claim for self-government.")

The same is agreed to.

New paragraph 61A is again read.

The further consideration of paragraph 61A is postponed.

Paragraphs 62 to 67 are again read and postponed.

Paragraph 68 is again read.

It is moved by Sir John Wardlaw-Milne. Page 32, lines 16 and 17, to leave out from (" Country ") in line 16 to (" the ") in line 17.

The same is agreed to.

It is moved by Mr. Attlee and Mr. Morgan Jones. Page 32, lines 18 to 25, to leave out from (" otherwise ") in line 18 to the end of the paragraph.

The amendment by leave of the Committee is withdrawn.

Paragraph 68 is again read, as amended.

The further consideration of paragraph 68 is postponed.

Paragraphs 69 and 70 are again read and postponed.

Paragraph 71 is again read.

It is moved by the Lord Eustace Percy and the Earl of Derby. Page 33, to leave out paragraph 71 and to insert the following new paragraph :—

Relations between Governor and Ministers.

(" 71. We have already pointed out that, in the present Government of India Act, there is a provision which requires the Governor to be

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'guided by' the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion. The White Paper, as we read it, does not propose that the Constitution Act itself shall contain any provisions on this subject. The Act will commit certain matters to the Governor's sole discretion, such, for instance, as his power of veto over legislation and the regulation of matters relating to the administration of excluded areas. It will also contain a declaration that certain special responsibilities are to rest upon the Governor. For the rest, it will provide that the Governor shall have a Council of Ministers to aid and advise him, but his relations with his Ministers are left to be determined wholly by the Instrument of Instructions. We agree that it is desirable that the Governors' special responsibilities, over and above the matters which are committed to his sole discretion, should be laid down in the Act itself rather than that they should be left to be enumerated thereafter in the Instrument of Instructions. In the first place, Indian public opinion will thereby be assured that the discretionary powers of the Governor to dissent from his Ministers' advice is not intended to be unlimited; and, secondly, the right will thereby be secured to Parliament to consider and debate the scope of the Governor's powers before the Constitution Bill passes finally from their control. On the other hand, we agree that it would be undesirable to seek to define the Governor's relations with his Ministers by imposing a statutory obligation upon him to be guided by their advice, since to do so would be to convert a constitutional convention into a rule of law and thus, perhaps, to bring it within the cognisance of the courts.")

The same is agreed to.

New paragraph 71 is again read.

The further consideration of paragraph 71 is postponed.

Paragraph 72 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 34, lines 9 and 10, to leave out from (" numerous; ") in line 9 to the end of the sentence.

The amendment by leave of the Committee is withdrawn.

It is moved by Sir John Wardlaw-Milne. Page 34, lines 12 to 15, to leave out from (" defined; ") in line 12 to the end of the paragraph.

The amendment by leave of the Committee is withdrawn.

It is moved by the Lord Hardinge of Penshurst. Page 34, line 13, to leave out (" unnecessary ") and to insert (" undesirable ").

The same is agreed to.

Paragraph 72 is again read, as amended.

The further consideration of paragraph 72 is postponed.

Paragraph 73 is again read.

It is moved by the Marquess of Salisbury. Page 34, line 23, after (" development.") to insert: (" But the method of submission to Parliament " should secure that if either House dissent from the Instrument of " Instructions or from any subsequent amendments of it, it or they should " be of no effect.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 73 is again read.

The further consideration of paragraph 73 is postponed.

Paragraphs 74 and 75 are again read and postponed.

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Paragraph 76 is again read.

It is moved by Mr. Morgan Jones and Mr. Attlee. Page 35, line 36, to leave out (" cannot ").

The same is disagreed to.

It is moved by Mr. Morgan Jones and Mr. Attlee. Page 35, lines 36 and 37, to leave out (" these suggestions ") and to insert (" the first suggestion ").

The same is disagreed to.

It is moved by Mr. Morgan Jones and Mr. Attlee. Page 35, lines 37 to 42, to leave out from (" suggestions.") in line 37 to the end of the sentence and to insert (" We feel that the special responsibilities of the Governor should " be reduced to the absolute minimum necessary, and that the provision in " the White Paper is drawn in such wide terms as to enable the Governor to " step in and overrule ministers over a very wide field. To give such wide " powers of intervention is, in our view, likely to reduce that sense of respon- " sibility which we wish to see created in Ministers and Legislatures. We " believe that the success of the Provincial Governments will be shown " just in so far as such a power does not have to be exercised, and we consider " that powers given to the Governor must be adequate, but in our view they " should essentially be emergency powers to be used only where a breakdown " threatens and not to be part of the ordinary operation of government.")

The same is disagreed to.

It is moved by Mr. Morgan Jones and Mr. Attlee. Pages 35 and 36, to leave out from (" draw.") in line 42, page 35, to (" With ") in line 6, page 36, and to insert (" We do not agree, however, that any action taken by the " Governor should be confined to the department of law and order. This is " to fall into the mistake, which may perhaps have arisen owing to the " operation of dyarchy, in imagining that Government can be divided up " into a series of water-tight compartments.")

The same is disagreed to.

It is moved by Mr. Attlee and Mr. Morgan Jones. Page 36, lines 14 to 25, to leave out from (" formula.") in line 14 to the end of line 25 and to insert (" With regard to the word ' minorities,' we agree with the British Indian " Delegation in thinking that it is capable of a dangerously wide interpretation. " It may be said that the term ' minorities ' has a special meaning in India " and connotes the Minority Communities such as the Muslims, the Sikhs, " or the Indian Christians, and that the Governor will well understand the " scope of the phrase. We fear, however, that it may be possible for some " Governor in the future so to interpret the word as to make him feel it " incumbent upon him to prevent legislation directed to the removal of " economic, social and religious abuses ; and we therefore propose that the " words ' racial and religious ' should be inserted before the word ' minorities'.")

The same is disagreed to.

It is moved by the Lord Ker (M. Lothian). Page 36, line 22, after " protection " to insert (" especially in cases where, as under the proviso to " proposal 122 of the White Paper, an appeal to the Courts for redress against " legislative discrimination based on religion, descent, caste, colour or place " of birth, is precluded by the Constitution.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Morgan Jones and Mr. Attlee. Page 36, line 29, to leave out (" privileges guaranteed ") and to insert (" privileges definitely " guaranteed to them ").

The same is disagreed to.

It is moved by Mr. Morgan Jones and Mr. Attlee. Lines 30 to 41, to leave out lines 30 to 41 inclusive and to insert (" agree with this proposal ").

The same is disagreed to.

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Paragraph 76 is again read.

The further consideration of paragraph 76 is postponed.

Paragraph 77 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 37, line 1, after (" State,") to insert (" with due regard to the established rights of either " party,").

The same is agreed to.

Paragraph 77 is again read as amended.

The further consideration of paragraph 77 is postponed.

Paragraph 78 is again read and postponed.

Paragraph 79 is again read.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 37, lines 23 to 26, to leave out from (" the ") in line 23 to (" makes ") in line 26 and to insert (" Governor's responsibilities within the administered districts of his Province " and the responsibilities of the Governor-General exercised through the person " of the Governor in his other capacity as Agent-General for the Tribal Tracts " on the borders of the Province ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 37, after line 31, to insert the following new sub-paragraph :—

(" But, in our opinion, the two proposals in the White Paper which have reference to special circumstances in particular Provinces do not exhaust the requirements of this kind. It has come to our notice that, under the system of joint administration of the Districts known as the Berars with the Central Provinces which has obtained for many years, and which, as we have already pointed out, will continue under the new Constitution, there has been a tendency on the part of the inhabitants of the Berars, and of their representatives in the Legislature, to criticise the apportionment between the two areas forming the joint Province as favouring unduly the Central Provinces area to the disadvantage of the Berars. We express no opinion as to the justification for such criticisms, but it is evident that, under a system of responsible government, the scope for grievances on this account may well be increased. We think, therefore, that the Governor of the joint Province should have imposed upon him a special responsibility and should thus be enabled to counteract any proposals of his Ministry which he regards as likely to give justifiable ground for complaint on this account. Without attempting to usurp the functions of the draftsman, we suggest that the purpose we have in view would be adequately expressed in defining the special responsibility in some such terms as :—

" ' The expenditure in the Berars of a reasonable share of the revenues raised for the joint purposes of the Berars and the Central Provinces.'

" We think, moreover, that the Governor might appropriately be directed in his Instrument of Instructions to constitute some impartial body to advise him on the principles which should be followed in the distribution of revenues if he is not satisfied that past practice affords an adequate guide for his Ministers and himself for the discharge of the special responsibility imposed upon him in respect of them.

" We also think that the special position of the Berars should be recognised by requiring the Governor, through his Instrument of Instructions, to interpret his special responsibility for ' the protection of the rights of any Indian State ' as involving *inter alia* an obligation upon him, in the administration of the Berars, to have due regard to the commercial and economic interests of the State of Hyderabad.")

The same is agreed to.

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Paragraph 79 is again read as amended.

The further consideration of paragraph 79 is postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. After paragraph 79, page 37, to insert the following new paragraph :—

("79A. We think it desirable to make some reference to the suggestion that among the special responsibilities of the Governor should be included the safeguarding of the financial stability and credit of the Province following the analogy of the special responsibility of this kind, which, as we shall explain later, we recommend should be imposed on the Governor-General in relation to the Federation.[1] A similar proposal was examined and rejected by the Statutory Commission[2] on the ground that a power of intervention over so wide a field would hinder the growth of responsibility. We agree with this view. The other special responsibilities which we recommend will give the Governor adequate powers in relation to supply and taxation to ensure that their due discharge is not impeded by lack of financial resources; we refer specially to one aspect of this matter below.[3] But the addition of a special financial responsibility would increase enormously the range of his special powers. There is no real parallel with the situation at the Centre where there is paramount necessity to avoid action which might prejudice the credit of India as a whole in the money markets of the world, and where so considerable a proportion of the revenues are needed for the expenditure of the reserved departments.[4] The Statutory Commission point out that the Central Government, through their powers of control over Provincial Borrowing, should be able to exercise a salutary influence over Provinces. We also attach importance to this method of checking improvidence on the part of a Province, and, as we explain below,[5] we approve, subject to one modification, the proposals in the White Paper for the regulation of Provincial Borrowing.")

A special responsibility for safeguarding financial stability of Province not recommended.

The same is agreed to.

New paragraph 79A is again read.

The further consideration of paragraph 79A is postponed.

Ordered, that the Committee be adjourned to Monday next at half-past Four o'clock.

[1] *Infra*, paragraphs 165 and 167.
[2] Report, Vol. II, paragraph 189.
[3] *Infra*, paragraphs 303–307.
[4] *Infra*, paragraph 170.
[5] *Infra*, paragraph 262.

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Die Lunae 25° Junii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

Paragraphs 80 to 82 are again read and postponed.

Paragraph 83 is again read.

It is moved by the Lord Eustace Percy. Page 38, line 36, to leave out from the beginning of the paragraph to (" (i) ") in line 42 and to insert (" We have considered various suggestions to meet this difficulty ")

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Isaac Foot. Page 38, line 43, after (" fit,") to insert (" and with the " consent of the Chief Minister ".)

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 39, line 9, to leave out from (" appointment.") in line 9 to the end of the paragraph and to insert (" We can see no advantage, and many disadvantages, in the " second and third of these suggestions, and the fourth is open to the grave " objection that it would infringe the Governor's prerogative. The only " plan, therefore, which, in our opinion, merits consideration is the first. " We have, however, come to the conclusion that such advantages as " might be anticipated from a provision in the Constitution Act enabling " the Governor to appoint to his Ministry one or more persons who are " not members of the Legislature would weigh little in the balance against " the dislike and suspicion with which such a provision would undoubtedly " be viewed almost universally in India—a dislike and suspicion so strong " that we think it unlikely that any Governor would, in fact, find it possible " to exercise such a power. We recommend, therefore, that the proposal in " the White Paper to which we have alluded should remain unchanged.")

Objected to.

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491; and *vide supra*, paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part I). A Key is attached (*vide infra*, pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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On Question :—

Contents (19).	Not Contents (9).
Lord Archbishop of Canterbury.	Marquess of Salisbury.
Lord Chancellor.	Marquess of Linlithgow.
Marquess of Zetland.	Earl of Lytton.
Marquess of Reading.	Lord Middleton.
Earl of Derby.	Lord Rankeillour.
Earl Peel.	Sir Reginald Craddock.
Viscount Halifax.	Sir Joseph Nall.
Lord Ker (M. Lothian).	Lord Eustace Percy.
Lord Hardinge of Penshurst.	Sir John Wardlaw-Milne.
Lord Snell.	
Lord Hutchison of Montrose.	
Mr. Attlee.	
Mr. Butler.	
Major Cadogan.	
Mr. Cocks.	
Mr. Davidson.	
Mr. Foot.	
Sir Samuel Hoare.	
Earl Winterton.	

The said amendment is agreed to.

Paragraph 83 is again read as amended.

The further consideration of paragraph 83 is postponed.

Paragraph 84 is again read.

The following amendments are laid before the Committee.

The Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Isaac Foot to move. Page 39, lines 24 to 29, to leave out from (" members.") in line 24 to (" The ") in line 29.

Sir John Wardlaw-Milne to move. Page 39, lines 41 and 42, to leave out (" (which we do not suggest) ").

The Marquess of Reading, the Lord Ker (M. Lothian), Mr. Isaac Foot, and Sir John Wardlaw-Milne to move. Page 40, lines 1 to 4, to leave out from (" Executive.") in line 1 to the end of the paragraph.

The consideration of the said amendments is postponed.

It is moved by Sir Samuel Hoare, Mr. Attlee, Mr. Cocks, and the Lord Snell. Pages 39 and 40, to leave out paragraph 84.

The same is agreed to.

Paragraph 85 is again read and postponed.

Paragraphs 85 to 88 are again read.

It is moved by Sir Reginald Craddock, the Lord Middleton, Sir Joseph Nall, and the Marquess of Salisbury. Pages 40 to 42, to leave out paragraphs 85 to 88, and to insert the following new paragraph :—

(" 85. In accordance with the recommendations of the Statutory Commission we agree to the proposed transfer to responsible Ministers of subjects of great importance, including among others Land Revenue Administration, Finance, Irrigation, and Forests. The immense responsibilities involved in the efficient administration of these great departments cannot be denied. They are all of vital importance to the interests of the people at large, but the question of law and order stands out by itself and we approach it with a profound sense of its vital importance in the solution of the Indian Constitutional

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problem. In the first place let us say that though no doubt the careful consideration of this subject during recent years, and the discussions upon it, ought to have great weight with our judgment, yet the opinions upon it originally expressed by the various local Governments and by the Provincial Committees elected by the several legislatures to co-operate with the Statutory Commission are in our judgment of special value, because they reflect independent opinions held while the slate was clean and before any pronouncement on this subject or any plans for the reformed Constitution had been made by the Statutory Commission itself or by the Governor General or Provincial Governors or by the Secretary of State. The Commission have summarised these opinions as well as those of the local Governments and have set out the case for and against the transfer of Law and Order with scrupulous fairness in paragraphs 57 to 65 of their second volume. Though, as is well known, the Commission, not without some hesitation, reported in favour of the transfer to the new Provincial Ministers, they made certain observations commenting on these local expert opinions to which we would call attention. In paragraph 58 they write:

> 'In the same way there are British politicians sincerely desirous of helping India along the road indicated by the declaration of August 20th, 1917, and by the preamble of the Government of India Act, who may find great difficulty, whether from want of appreciation of Indian conditions or an innate conviction of the curative effects of self-government, in realising why it is that many experienced and disinterested administrators who are familiar with the actual situation, as well as important bodies of non-official opinion, hesitate to give their support at the present time to the proposal. It would be a great injustice to these men to dismiss their view as mere bureaucratic prejudice.'

And later on, paragraph 59, they say:

> 'we are bound to point out that it (hesitation to approve transfer) is a view by no means confined to the majority of British officers who are Inspectors General of Police in the various Provinces, or to others whether British or Indian in important official positions, but it has been expressly or impliedly supported by large bodies of non-official Indian opinion.'

Moreover, it is surely relevant to the issue with which we are now dealing that the recommendations of the Commission had to be made without any cognisance of the grave problem of terrorist conspiracies in Bengal; of many most serious communal riots (including the shambles of Cawnpore in 1931); of the narrow escape of the European and Anglo-Indian residents in Sholapur in May, 1930; of the dangerous Redshirt movement in the Frontier Province entailing serious military operations; of the rebellion in Burma; and of the attempts made to infect "workers and peasants" with communist doctrines. But this Committee and Parliament cannot regard all these sinister occurrences and movements as incidents to be ignored, nor would it have been possible for the Commission itself to have ignored them had they happened before their Report was presented to Parliament. In our view these later events afford ample reasons for reconsidering the proposal to transfer to the charge of inexperienced Ministers and Legislatures of unknown composition this vitally important department of Law and Justice.

"There is a further point to which we must refer before setting out our conclusions. Defence is a Reserved Subject under the White Paper and that term comprehends not merely defence against foreign aggression or tribal incursions, but the maintenance throughout the land of internal security. It is, therefore, essential that in the disturbed times of communal riots and rebellions such as that which occurred in Burma, there

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must be the closest co-operation between the military and the police. Without such co-operation the troops are at a great disadvantage. They know nothing of the topography of the place in which they are called upon to assist the civil power or of the character of the mobs which they are called upon to overawe. The police have to be their eyes and ears upon all such occasions and it is all-important that the police and the troops should not in these emergencies be under divided control. But it is impossible to estimate how far this co-operation could be obtained if and when the police have come to recognise that their attitude and the support they will receive depend upon Ministers who have had no experience in difficult circumstances, and who, even if they are scrupulously fair, may be subject to popular accusations of partiality or corruption. The Statutory Commission have expressed admiration for the impartial conduct of the police, Hindus and Mohammedans alike, in the case of communal disturbances, and they have rightly attributed this faithful fulfilment of duty to the confidence of the police in their officers, of whom the majority are British. This confidence is born of the belief that the control of the police being reserved, their officers will not only support them but will themselves be supported by the Government. The change over of the control of the police to Ministers, though it may not shake the confidence of the rank and file in their British officers, may well shake the belief in the fulness of the support that the Government will give to the officers themselves, and if that belief is shaken, the disintegration of the loyalty of the police is sure, sooner or later, to follow.

" We believe that these considerations are of general application to the greater part of British India, but we gladly recognise that they will only be felt acutely in particular Provinces, being a relatively small minority of the whole, and we are aware that not only the Statutory Commission itself but many other authorities of great weight have expressed the opinion that full Provincial responsibility cannot be achieved without the transfer. On the whole, therefore, we are prepared to recommend a considerable step in that direction. But this must in our judgment be protected by certain safeguards which the Commission itself suggested and with such adjustments of precaution as have been rendered necessary by the emergence of subversive and terrorist movements since their Report was written.

" The recommendations of the Commission pre-supposed that the rest of their proposed Constitution would be accepted, that is to say that there would be a Government at the Centre not responsible to the legislature, and that there might be official Ministers in the Provinces supplementary to the responsible Governments. We admit that if it were agreed to lay aside the proposals for a Central responsible Government the risks of the transfer of Law and Order even where the Terrorist conspiracy is acute would be greatly diminished. In the same way we believe that the appointment of Councillors as part of the Provincial Governments would give greater security. It has been urged in evidence before us that in two or three Provinces Indians have already been in charge of the Home Department and have administered it with efficiency, but the point does not lie in any difference between an Indian and a European in this capacity. The position of an executive Councillor on the reserved side of Government *vis-à-vis* the legislature is totally different from the position of a Minister under the White Paper scheme. In the first place he acts not as an individual but in the name of the Governor in Council. The decisions he makes are issued on that authority. In the second place he has been appointed by the Crown and unless he himself chooses to resign he is secure of his position for many years without any fear of his critics in the legislature, and without being at the mercy of a violent Press agitation, or of intrigues to bring about his

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resignation. He is thus in a sheltered position. The mere fact that an Indian Executive Councillor has filled this post with satisfaction offers no proof that a Minister in that position would have been equally successful. We consider therefore that the appointment, where he is required, of a nominated Councillor who may take charge of Law and Order, is of great importance. When we use the words 'where he is required' we mean until the Governor is able to satisfy Parliament that these safeguards can be dispensed with.

"We could of course limit our recommendation to the particular instances where terrorist agitation is already acute, but there are other subversive movements and dangerous possibilities, and such a limitation does not adequately cover the necessary conditions. We prefer, therefore, to put it forward in general terms and to advise that the Governor shall himself administer the police through a Councillor nominated by him, but that wherever after a reasonable time he may consider that the interests of the public peace no longer require these precautions, it shall be lawful for the Secretary of State by Order in Council, approved by both Houses of Parliament, to transfer the department to a responsible Minister. Provided that, if at any time, the Governor shall find that by reason of the transfer, the peace and tranquillity of the Province is jeopardised he may, for such time as he may think it expedient, resume such control in whole or in part.

"There is a further reason why these provisions should have effect. The organisation at present in operation against terrorism includes a vital element in the form of an Intelligence Department, both Provincial and Central. The Special Branch, as it is called, operates as a source of information, working through confidential agents. It was proved before us that this sytem is only possible where the agents consider themselves absolutely secure from any revelation of their identities. It is, of course, abundantly possible that an Indian Minister responsible to the Legislature may be as deserving of absolute confidence in this respect as any nominated Councillor, but however that may be we are fully satisfied that rightly or wrongly, none of these agents would believe it, and the evidence was overwhelming that the least suspicion that their information passed into such hands would permanently dry up the source from which it comes. We consider, therefore, that the Special Branch should be maintained under the orders of the Governor-General in his discretion, and that any corresponding organsation in the Provinces should be under its directions through the Governor in his discretion. We think it right to add that these difficulties which surround the Special Branch and their solution carry us back to the question of the police and supply us with an additional cogent reason for entrusting the Governor with the power which we have already indicated of keeping them under his own control through a nominated Councillor. It has been pointed out to us upon great authority that in fighting terrorism it may be necessary not only to make secure the machinery of the Special Intelligence Branch itself, but also to provide that there shall be no obstacles to prevent the police from effectively co-operating with it.")

Objected to.

On Question:—

Contents (5).	Not Contents (19).
Marquess of Salisbury.	Lord Chancellor.
Lord Middleton.	Marquess of Zetland.
Lord Rankeillour.	Marquess of Linlithgow.
Sir Reginald Craddock.	Marquess of Reading.
Sir Joseph Nall.	Earl of Derby.
	Earl of Lytton.
	Earl Peel.

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Contents (5).

Not Contents (19)—*continued.*

Viscount Halifax.
Lord Ker (M. Lothian).
Lord Hardinge of Penshurst.
Lord Hutchison of Montrose.
Mr. Attlee.
Mr. Butler.
Major Cadogan.
Mr. Cocks.
Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Lord Eustace Percy.

The said amendment is disagreed to.

Paragraph 85 is again read.

The further consideration of paragraph 85 is postponed.

Paragraph 86 is again read.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Page 40, line 38, after ("the") to insert ("general").

The same is agreed to.

Paragraph 86 is again read, as amended.

The further consideration of paragraph 86 is postponed.

Paragraph 87 is again read.

It is moved by the Lord Eustace Percy. Page 40, lines 41 to 43, to leave out from ("it") in line 41 to ("order") in line 43, and to insert ("had no "responsibility for").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 41, lines 1 to 3, to leave out from ("and") in line 1 to the end of the sentence and to insert ("nothing "will afford Indians the opportunity of demonstrating more conclusively "their fitness to govern themselves than their action in this sphere").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 41, lines 20 to 26, to leave out from ("Minister.") in line 20 to the end of the paragraph and to insert ("If the transfer is to be made, as we think it should, it is essential that the "Force should be protected so far as possible against these risks, and we "therefore proceed to consider how this protection can be provided").

The same is agreed to.

Paragraph 87 is again read, as amended.

The further consideration of paragraph 87 is postponed.

Paragraph 88 is again read.

It is moved by the Lord Rankeillour and the Lord Hardinge of Penshurst. Page 41, line 27, at the beginning to insert ("In the first place"), and to leave out (", however,").

The same are agreed to.

It is moved by the Lord Hardinge of Penshurst. Page 41, lines 28 and 29, to leave out ("In the first place,").

The same is agreed to.

It is moved by the Lord Rankeillour and the Lord Hardinge of Penshurst. Page 41, line 42, after ("force") to insert ("or from any other cause").

The amendment, by leave of the Committee, is withdrawn.

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It is moved by the Lord Rankeillour and the Lord Hardinge of Penshurst.
Page 41, line 43, after the first (" the ") to insert (" immediate ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 88 is again read, as amended.

The further consideration of paragraph 88 is postponed till tomorrow.

Ordered, that the Committee be adjourned till tomorrow at half-past Ten o'clock.

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Die Martis 26° Junii 1934

Present:

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraph 88 is again considered.

It is moved by the Lord Rankeillour and the Lord Hardinge of Penshurst. Page 41, lines 44 to 47, to leave out from the first ("be") in line 44 to ("Secondly") in line 47, and to insert ("required, even to the extent of "taking into his own hands the administration of any function of Government "that the exigencies of the position might demand. He might indeed in "certain circumstances be confronted with the necessity for retaining such "powers in his hand at the very inception of autonomy.")

The Amendment, by leave of the Committee, is withdrawn.

Paragraph 88 is again read as amended.

The further consideration of paragraph 88 is postponed.

Paragraph 89 is again read.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Page 42, line 23, to leave out ("it may well "be") and to insert ("we are satisfied").

The same is agreed to.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Page 42, line 25, to leave out ("at least the Governor's knowledge") and to insert "(the Governor's consent").

The same is agreed to.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Page 42, lines 26 to 36, to leave out from beginning of line 26 to the end of the paragraph and to insert ("We, therefore, "recommend that the Police Act of 1861 should not be subject to repeal or

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published. (Vol. I, Part I). A Key is attached (*vide infra* pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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" alteration by the Legislature without the prior consent of the Governor-
" General, and that the Police Acts of the Governments of Bombay, Bengal,
" and Madras should be included in the category of Acts which should not be
" repealed or altered by the Provincial Legislature without the previous
" sanction of the Governor-General. And further that a schedule of the more
" important rules securing to the Inspector-General of Police control of the
" administration of the Police Force, shall be drawn up, which rules shall not
" be alterable without the consent of the Governor.")

The same is agreed to.

Paragraph 89 is again read as amended.

The further consideration of paragraph 89 is postponed.

Paragraphs 90 to 92 are again read.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Paragraph 90, page 43, line 6, to leave out (" police force itself ") and to insert (" circle of the particular officers of the police force concerned ").

The same is agreed to.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Paragraph 90, page 43, line 11, after (" reconstitute.") to insert (" The problem is a difficult one and, though, at
" the moment, it is perhaps only of immediate importance in the Province
" of Bengal and to a lesser extent in the provinces which border on Bengal,
" terrorism and revoluntionary conspiracy have not been confined to those
" territories, nor consequently is the necessity for efficient counter-revolution-
" ary measures limited to them. Bengal, however, as has been proved to
" us by the evidence we have received, has a particularly long and disquieting
" record of murder and outrage, of which Indians and Europeans have
" equally been the victims. It has also shown in a marked degree a rise
" or fall in such terrorist crime according as the hands of the authorities have
" been weakened or strengthened, and as precautionary and special measures
" have been relaxed or enforced.")

The further consideration of the said amendment is postponed till to-morrow.

The further consideration of Paragraphs 90 to 92 is postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Two o'clock.

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Die Mercurii 27° Junii 1934

Present:

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraphs 90 to 92 are again considered.

The motion of the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, Sir Austen Chamberlain, and the Lord Eustace Percy. Paragraph 90, page 43, line 11, after (" reconstitute.") to insert (" The problem is a difficult one " and, though, at the moment, it is perhaps only of immediate importance " in the Province of Bengal and to a lesser extent in the provinces which " border on Bengal, terrorism and revolutionary conspiracy have not been " confined to those territories, nor consequently is the necessity for efficient " counter-revolutionary measures limited to them. Bengal, however, as " has been proved to us by the evidence we have received, has a particularly " long and disquieting record of murder and outrage, of which Indians and " Europeans have equally been the victims. It has also shown in a marked " degree a rise or fall in such terrorist crime according as the hands of the " authorities have been weakened or strengthened, and as precautionary " and special measures have been relaxed or enforced.") is again considered.

After discussion the further consideration of the said amendment is postponed.

The following amendments to Paragraphs 90 to 92 are laid before the Committee :—

The Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy to move. Paragraph 91, page 43, lines 12 and 13, to leave out lines 12 and 13 inclusive.

The Lord Hutchison of Montrose to move. Paragraph 91, page 43, lines 28 and 29, to leave out from (" that ") in line 28 to (" and ") in line 29 and to insert (" the practice is that in a secret service case the " names of agents are not disclosed to Ministers ").

All amendments are to the Draft Report (*vide infra* paras. 1–42B, pp. 470–491; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published. (Vol. I, Part I). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Sir John Wardlaw-Milne to move. Paragraph 91, page 43, line 33, to leave out from (" order,") to the end of the line and to insert (" must be understood as themselves adopting ").

The Earl of Lytton to move. Paragraph 91, page 43, lines 36 to 38, to leave out from the second (" agents ") in line 36 to the end of the sentence and to insert (" themselves would not feel secure that their " identity might not be revealed ").

The Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy to move. Paragraph 92, pages 43 and 44 to leave out paragraph 92 and to insert the following new paragraph :—

(" 92. In the circumstances set out above we are convinced that it should be made plain that the control of the organisation which exists, or may hereafter exist, for the purpose of combating the terrorist movement, is in the hands of the Governor-General at the centre and of the Governors in the provinces. To secure the object which we have in view, we recommend that the Central Intelligence Bureau be placed under the control of the Governor-General, as part of the Political and Foreign Department, and that in any province in which a special branch of the Police force exists or may hereafter be brought into being, the Inspector-General shall take his orders direct from the Governor as the agent of the Governor-General in all matters affecting the work of the special branch in whatever branch of police administration such matters may arise. We realise that in such circumstances, the Minister in charge of the portfolio of Law and Order might be unwilling to answer in the Legislature for action taken on the initiative of the Governor, and in that event we recommend that it shall be open to the Governor to appoint some person selected at his discretion to act as his spokesman in the Legislature ").

The Earl of Lytton to move. Paragraph 92, pages 43 and 44, to leave out paragraph 92 and to insert the following new paragraph.

(" 92. The existence of terrorist crime is a special disease which calls for special treatment. It necessitates departures from the ordinary law and the enactment of special legislation such as the Bengal Criminal Law Amendment Act. The Special Branch is an essential feature of the machinery for combating terrorist activities, and as such we consider that it requires special treatment. We therefore recommend that this small and exceptional service where it exists should be a reserved service responsible to the Governor alone.").

Sir John Wardlaw-Milne to move. Paragraph 92, page 43, line 45, after (" Province ") to insert (" (who should continue to have direct access to him) ")

Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell to move. Paragraph 92, page 44, lines 10 to 13, to leave out from (" enforced.") in line 10 to (" We ") in line 13.

The consideration of the said amendments is postponed.

After discussion the further consideration of paragraphs 90 to 92 is again postponed.

Paragraph 93 is again read.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan and the Lord Eustace Percy. Page 44, lines 40 to 42, to leave out from (" notice ") in line 40 to the end of the paragraph.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 93 is again read.

The further consideration of paragraph 93 is postponed.

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Paragraph 94 is again read.

It is moved by the Earl of Derby. Page 45, line 20, to leave out (" assent, express or implied,") and to insert (" knowledge ").

The same is agreed to.

It is moved by the Earl of Derby. Page 45, lines 20 to 25, to leave out from (" concerned ; ") in line 20 to the end of the sentence.

The same is agreed to.

Paragraph 94 is again read as amended.

The further consideration of paragraph 94 is postponed.

Paragraph 95 is again read.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Page 46, lines 20 to 23, to leave out from the beginning of line 20 to the end of the paragraph, and to insert (" We recommend, therefore, that it shall be specifically laid down in the Constitution Act that the rules of business shall contain a provision laying upon Ministers the duty of bringing to the notice of the Governor any matter under consideration in their Departments which involves or is likely to involve any of his special responsibilities; and requiring Secretaries to Government to bring to the notice of the Minister and of the Governor any matters of the same kind ").

The same is agreed to.

Paragraph 95 is again read as amended.

The further consideration of paragraph 95 is postponed.

Paragraph 96 is again read.

It is moved by the Lord Hutchison of Montrose, the Lord Hardinge of Penshurst, and Major Cadogan. Page 46, line 27, after (" the ") to insert (" number,"); lines 34 to 48, to leave out from (" administration; ") in line 34 to the end of the paragraph.

The amendments by leave of the Committee are withdrawn.

Paragraph 96 is again read.

The further consideration of paragraph 96 is postponed.

Paragraphs 97 and 98 are again read and postponed.

Paragraph 99 is again read.

It is moved by the Lord Eustace Percy. Page 48, lines 8 to 21, to leave out from (" Act ") in line 8 to the end of the paragraph and to insert (" We agree that, in addition to the power of issuing emergency ordinances to which we refer later, the Governor should have this reserve power of legislation. We agree also with the proposed change in nomenclature, since we can see no possible advantage in describing an Act as the Act of the Legislature when the Legislature has declined to enact it. But we go further. We agree with the members of the British Indian Delegation in thinking it undesirable that the Governor should be required to submit a proposed Governor's Act to the Legislature before enacting it. We do not, indeed, share the fear, which we understand the British Indian Delegates to entertain, that the Governor might use this procedure for the purpose of seeking support in the Legislature against his Ministers. Our objection rather is that the proposed procedure will be a useless formality in the only circumstances in which a Governor's Act could reasonably be contemplated. If the obstacle to any legislation which the Governor thinks necessary to the discharge of his special responsibilities lies, not in the unwillingness of the Legislature to pass it, but in the unwillingness of his Ministers to sponsor it, his remedy

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" lies, not in a Governor's Act, but in a change of Ministry. If, on the other " hand, the obstacle lies in the unwillingness of the Legislature, there can " clearly be no point in submitting the proposed legislation to it, and to do so " might merely exacerbate political feeling. Since, however, there may be " intermediate cases where an opportunity may usefully be given to the " Legislature for revising a hasty or unconsidered decision previously made or " threatened, we think that the Governor should have the power (which we " presume he would, in any case, possess) to notify the Legislature by Message " of his intention, at the expiration of, say, one month, to enact a Governor's " Act, the terms of which would be set out in the Message. It would then be " open to the Legislature, if it thought fit, to present an address to the Governor " at any time before the expiration of the month, praying him only to enact the " proposed Act with certain amendments which he could then consider upon " their merits; or it might even think fit to revise its former decision and to " forestall the Governor by itself enacting legislation in the sense desired by " him.")

The same is agreed to.

Paragraph 99 is again read as amended.

The further consideration of paragraph 99 is postponed.

Paragraph 100 is again read.

It is moved by the Lord Eustace Percy. Page 48, to leave out paragraph 100.

The same is agreed to.

Paragraph 101 is again read.

It is moved by the Lord Eustace Percy. Page 49, to leave out from the beginning of the paragraph to (" we ") in line 36.

The same is agreed to.

It is moved by Major Cadogan. Page 49, lines 36 to 40, to leave out from (" alone ") in line 36 to the end of the paragraph.

The amendment by leave of the Committee is withdrawn.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 49, lines 39 and 40, to leave out from (" We ") in line 39 to the end of the paragraph and to insert (" consider that all Governor's Acts should be laid " before Parliament and that the Governor, before legislating, should have the " concurrence of the Governor-General ").

The same is agreed to.

Paragraph 101 is again read as amended.

The further consideration of paragraph 101 is postponed.

Paragraph 102 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 50, line 3, to leave out (" if it should be thought ") and to insert (" we agree ").

The same is agreed to.

It is moved by the Lord Hardinge of Penshurst. Lines 4 and 5, to leave out from (" obtained,") in line 4 to the end of the paragraph.

The same is agreed to.

Paragraph 102 is again read as amended.

The further consideration of paragraph 102 is postponed.

Paragraph 103 is again read and postponed.

Paragraph 104 is again read.

It is moved by the Marquess of Linlithgow. Page 50, line 44, after (" resolution ") to insert (" in which case it will cease to operate forthwith ").

The same is agreed to.

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It is moved by the Lord Hardinge of Penshurst. Page 51, line 5, after (" responsibility ") to insert (" but with the concurrence of the Governor-" General ").

The same is agreed to.

Paragraph 104 is again read as amended.

The further consideration of paragraph 104 is postponed.

Paragraph 105 is again read.

It is moved by the Marquess of Linlithgow on behalf of Sir Austen Chamberlain. Page 51, line 12, to leave out from (" Act,") to (" all ") and to insert (" to assume to himself by Proclamation ") ; line 21, to leave out (" obsolete ") and to insert (" unnecessary.") ; and line 35, to leave out (" to ") and to insert (" of ").

The same are agreed to.

Paragraph 105 is again read as amended.

The further consideration of Paragraph 105 is postponed.

Paragraph 106 is again read and postponed.

Paragraphs 107 to 115 are again read.

The following amendments are laid before the Committee :—

Sir Austen Chamberlain to move. Paragraph 107, page 52, line 8, to leave out (" sense ") and to insert (" measure ").

Sir Austen Chamberlain to move. Paragraph 108, page 52, line 31, to leave out (" sense ") and to insert (" form ").

Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell to move. Paragraph 109, pages 52 and 53, to leave out paragraph 109.

Sir John Wardlaw-Milne to move. Paragraph 109, page 52, line 33 to page 53, line 2, to leave out from (" lines ; ") in line 33, page 52, to (" that ") in line 2, page 53, and to insert (" nothing in the proposed " directions of instructions should operate to prevent the growth of " parties and the formation of homogeneous Ministries and we think ").

Sir John Wardlaw-Milne to move. Paragraph 109, page 53, line 6, to leave out (" many years to come ") and to insert (" a time ").

Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell to move. Paragraph 111, page 53, lines 37 and 38, to leave out from (" Ministry,") in line 37 to (" seems ") in line 38.

Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell to move. Paragraph 112, page 54, line 18, to leave out (" such as we have " described,").

Sir John Wardlaw-Milne to move. Paragraph 112, page 54, line 20, to leave out (" assert its authority ") and to insert (" maintain its " influence ").

Sir Austen Chamberlain to move. Paragraph 112, page 54, line 20, to leave out (" assert its authority ") and to insert (" acquire sufficient " authority ") ; and line 26, to leave out (" Constitution ") and to insert (" Constitutions ").

The consideration of the said amendments is postponed.

It is moved by the Lord Eustace Percy, pages 52 to 57, to leave out paragraphs 107 to 115 inclusive and to insert the following new paragraphs :—

Vital importance of Executive in India.

(" 107 In the preceding paragraphs we have approved the proposal of the White Paper to entrust certain wide discretionary powers to the Governor, and we have recommended that, in certain respects, those powers should be strengthened and extended. We should not wish to pass from this subject without some general review of the broad considerations which have led us to these conclusions. The dominant

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consideration is the one which we have already emphasised: the vital importance in India of a strong Executive. It has seemed to us in the course of our discussions with the British Indian delegates that in their anxiety to increase the prerogatives of the Legislature, they have been apt to overlook the functions of the Executive, an attitude not perhaps surprising in those to whom at the present time the Legislature offers the main field of political activity. But if the responsibility for government is henceforward to be borne by Indians themselves they will do well to remember that to magnify the Legislature at the expense of the Executive is to diminish the authority of the latter and to weaken the sense of responsibility of both. The function of the Executive is to govern and to administer; that of the Legislature to vote supply, to criticize, to educate public opinion, and to legislate; and great mischief may result from attempts by the latter to invade the executive sphere. The belief that parliamentary government is incompatible with a strong Executive is no doubt responsible for the distrust with which parliamentary institutions have come to be regarded in many parts of the world. The United Kingdom affords a sufficient proof that a strong Executive may co-exist even with an omnipotent Parliament if the necessary conditions are present; and the strength of the Executive in this country may, we think, be attributed with not more justice to the support of a disciplined party than to the inveterate and cherished tradition of Parliament that the prerogatives of the Legislature are not to be jealously or factiously asserted in such a way as to prevent the King's Government from being carried on. "His Majesty's Opposition" is not an idle phrase, but embodies a constitutional doctrine of great significance.

Difficulties created by communal representation in Ministers.

"108 It is a commonplace that this tradition is as yet unknown in India and that Indian Ministries have not hitherto been able to rely on the support of a disciplined party. The Statutory Commission, in surveying the work of the existing Provincial Constitution, observed that Governors, in choosing their Ministers have had an exceptionally difficult task. It could seldom be predicted what following a Minister would have in the Legislature, quite apart from the fact that his acceptance of office was often followed, owing to personal rivalries, by the detachment of some of his previous adherents. It has been urged upon us by the members of the British-Indian Delegation that these difficulties will tend to disappear under responsible government. We hope that it will be so, and neither we nor the Statutory Commission would have recommended that the experiment should be made if we were not satisfied that under no other system can Indians come to appreciate the value of the tradition of which we have spoken. But it must be remembered that in two respects the difficulties of Provincial Ministries in the future may be greater than in the past. In the first place, they will not in future be able to rely upon the official bloc which, in the words of the Statutory Commission 'has helped to decrease the instability of the balance of existing groups in the Legislature and has made the tenure of office of Ministers far less precarious.' In the second place, each Ministry will, as we have already pointed out, be a composite one. The Legislatures will be based on a system of communal representation, and the Governor will be directed by his Instrument of Instructions to include in his Ministry, so far as possible, members of important minority communities. A Ministry thus formed must tend to be the representative, not, as in the United Kingdom, of a single majority Party or even of a coalition of Parties, but of minorities as such. Moreover, the system of communal representation may also tend to render less effective the weapon to which, under most parliamentary constitutions, the executive resorts when confronted by an obstructive legislature, the weapon of dissolution; for under such a system even a general election may well produce a legislature with the same complexion as its predecessor."

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A statutory permanence of tenure for Ministry inconsistent with Parliamentary government.

"109. It is unfortunately impossible to provide against these dangers by any paper enactment regulating the relations between the Ministry and the Legislature. The British Indian delegates laid great stress upon the collective responsibility of the Provincial Ministries, and in their Joint Memorandum they urged that the Instrument of Instructions should contain a definite direction to the Governor that the collective responsibility of Ministers is to be introduced forthwith. This seems to us to confuse cause and effect. The collective responsibility of Ministers to the Legislature is not a rule of law to be put into operation at discretion, but a constitutional convention which only usage and practice can define or enforce; and, since that convention is the outcome and not the cause of Ministerial solidarity, it is as likely to be hindered as helped by artificial devices which take no account of the realities of the situation. It is noticeable, for example, that, in constitutions like that of France where the principle of collective responsibility is laid down in the constitution, the effect seems to have been merely to introduce the formality of a joint resignation as a preliminary to every reconstruction of a Ministry. Our attention has also been drawn to the possibility of providing that a Ministry, after receiving a vote of confidence from the Legislature on its appointment by the Governor, should remain in office for a fixed period unless previously dismissed by him. The objection to this proposal, of which there are obvious possible variants, is that the existence of a Ministry which had not, in fact, the confidence of the Legislature could, in practice, be made impossible. There is every reason why Ministries in India should refuse to treat a hostile vote, even on a demand for supply, as necessarily entailing resignation; it may even be desirable that a Ministry should only resign on a direct vote of no confidence; but under a system of parliamentary government there is no effective method of securing statutory permanence of tenure to a Ministry faced by a consistently hostile Legislature. All that the framers of a constitution can do in this matter is to refrain from any paper provisions which might tend indirectly to prejudice the development of a sound relationship between Ministry and Legislature. We think that the wording of the Governor's Instrument of Instructions proposed in the White Paper in regard to the selection of his Ministers should be re-examined with a view to giving greater latitude to the Governor. It is our earnest hope that, in the future, parties may develop in the Provincial Legislatures which will cut across communal lines, and the proposed wording of the Instrument of Instructions as it now stands might, if literally obeyed, operate to prevent both the growth of such parties and the formation of homogeneous Ministries. We recognise that nothing ought to be done at the present time which would excite suspicion or distrust in the mind of the minorities, but in this, as in other matters, we think that the course of wisdom is to give the Governor the widest possible latitude.

Governor's reserve powers a guarantee for development of responsible government.

"110. It follows from these considerations that the only way of strengthening the Provincial Executives in India is to confer adequate discretionary powers on the Governor. These powers are defined in the White Paper, we think rightly, as being the Governor's responsibilities, because it is on him that the corresponding special powers must, in the nature of things, be conferred; but the responsibilities are defined and the powers conferred, not for the purpose of superseding Ministers or enabling them to escape responsibilities which properly belong to them, but primarily in order that the executive as a whole may possess the authority which experience shows to be essential to the success of parliamentary government. To none of the Governor's special responsibilities do these considerations apply with more force than to that relating to the Public Services; for the existence of an efficient and contented civil service, immune from political interference and free

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from political partialities, is the indispensable condition, not only for the effective exercise of the Governor's special powers, but also for the strength of the executive as a whole. On this subject we shall have certain further proposals to make in a later part of our Report. Nor is the case different with the Governor's extraordinary power, if the constitutional machinery should break down, to assume to himself (subject to the overriding authority of Parliament) any function of government that may appear to him necessary, even to the extent of suspending the Legislature and administering the Province without it. Like the power of dissolution, which it supplements, this power is designed to strengthen the executive as a whole. We hope, and are willing to believe, that it will never become necessary to put this power into operation; but its existence in the background, together with the whole body of the Governor's reserve powers, may well prove the most effective guarantee for the development of a genuine system of responsible government.")

The said amendment is agreed to.

New paragraphs 107 to 110 are again read.

The further consideration of paragraphs 107 to 110 is postponed.

Ordered, that the Committee be adjourned to Friday next at half-past Ten o'clock.

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Die Veneris 29° Junii 1934

Present:

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

Paragraph 116 is again read.

It is moved by the Marquess of Linlithgow. Page 57, line 26, to leave out (" not ").

The same is agreed to.

Paragraph 116 is again read as amended.

The further consideration of paragraph 116 is postponed.

Paragraph 117 is again read and postponed.

Paragraph 118 is again read.

It is moved by Mr. Attlee and Mr. Cocks. Pages 57 and 58, to leave out paragraph 118 and to insert the following new paragraph :—

(" 118. In our view, Second Chambers, as proposed in the White Paper and composed largely of landowners and reactionary elements opposed in general to the wishes of the mass of the people, are undemocratic. We are in favour of one Chamber only. We should like, on this subject, to quote with approval the opinion of some Members of the Indian Statutory Commission.

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491 ; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published. (Vol. I, Part I). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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"It has generally been proposed in evidence before the Joint Conference to constitute Second Chambers disproportionately representative of vested interests. They fear that such Chambers would be regarded as an undemocratic instrument of Government, and that ceaseless conflict between the two Houses would result. They think that this danger will be a real one, however the Second Chambers may be formed. Whilst a Second Chamber will not be a substitute for the Governor's powers, its existence may be used as an argument for modifying the Governor's powers before this is desirable, and it may support the Lower House against the Governor and so increase rather than prevent friction between him and the Legislature. So long as Ministers are secured in the support of the Lower House, and so obtain the funds which they require, the Second Chamber can exercise little control on the administrative side, and it is here that the influence of a Legislature is most required."

"In the Joint Memorandum submitted to us by the British Indian Delegation they pointed out that only one of their number was in favour of Second Chambers in the three Provinces of Bengal, Bihar, and the United Provinces, while another Member of the Delegation considered that only in the case of the United Provinces was a Second Chamber necessary. All the others were totally opposed to the creation of Second Chambers in Bengal, Bihar, and the United Provinces. There are two other arguments against Second Chambers which must be given due weight. The first is the additional cost on Indian revenues, which would be considerable and out of all proportion to the benefit, if any, to be gained; and the second is the drain on the personnel of the Province which would be made by creating so large a number of seats which must be filled.")

Objected to.

On Question :—

Contents (2).	Not Contents (19).
Lord Snell.	Marquess of Salisbury.
Mr. Attlee.	Marquess of Zetland.
	Marquess of Linlithgow.
	Marquess of Reading.
	Earl of Derby.
	Earl of Lytton.
	Viscount Halifax.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Mr. Butler.
	Major Cadogan.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by the Lord Eustace Percy, the Earl of Derby, and Major Cadogan. Page 57, line 41, after ("Provinces.") to insert ("We see no "reason for giving an exceptional power to the Provincial Legislatures to

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" amend the Constitution in this one respect, and we think that the abolition " or creation of a Legislative Council should, instead, be included among the " questions on which, as we shall later propose in our Report,[1] a Provincial " Legislature shall have a special right to present an address to the Governor " for submission to His Majesty and to Parliament ".)

The same is agreed to.

It is moved by the Lord Eustace Percy, the Earl of Derby, and Major Cadogan. Page 57, line 42, to leave out (" this ") and to insert (" these alterations ").

The same is agreed to.

It is moved by the Lord Eustace Percy, the Earl of Derby, and Major Cadogan. Page 58, lines 2 to 9, to leave out from (" Report[2]. ") in line 2 to the end of the paragraph.

The same is agreed to.

Paragraph 118 is again read as amended.

The further consideration of paragraph 118 is postponed.

Paragraph 119 is read.

It is moved by the Marquess of Linlithgow on behalf of Sir Austen Chamberlain. Page 58, line 22, after (" Government ") to insert (" themselves ") ; line 23, to leave out (" themselves ").

The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 58, lines 32 to 35, to leave out from (" Classes.") in line 32 to (" negotiations ") in line 35, and to insert (" subsequently ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Zetland. Page 58, line 36, to leave out (" the representatives of the caste Hindus and ") and to insert (" a small " group of persons claiming to speak for the Caste Hindus and certain " representatives ".)

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 58, line 36, to leave out the first (" the ").

The same is agreed to.

Paragraph 119 is again read as amended.

The further consideration of paragraph 119 is postponed.

Paragraph 120 is read.

It is moved by the Lord Ker (M. Lothian), the Marquess of Reading, and Mr. Foot. Page 59, lines 12 to 14, to leave out from (" Award ; ") in line 12 to (" be ") in line 14 and to insert (" though the latter gave the Depressed " Classes electors a vote in the general constituencies as well as for the special " seats reserved for themselves ; but whereas under the communal award the " Depressed Classes electors were to vote separately for the seats reserved for " them as well as jointly with other Hindus in the general constituencies, " under the Poona Pact there will now only ".)

The same is agreed to.

[1] *Infra* paras. 356 and 357.
[2] *Infra*, page 73.

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Paragraph 120 is again read as amended.

The further consideration of paragraph 120 is postponed.

Paragraph 121 is read.

It is moved by the Marquess of Zetland. Page 59, to leave out paragraph 121, and to insert the following new paragraph :—

(" 121. We have found ourselves in some difficulty in dealing with this aspect of the problem, owing to the declaration of the Government, referred to in paragraph 119, that they would entertain no suggestions for the alteration of their Award which had not the support of all the parties affected, and we might well have felt justified in the circumstances in holding that the matter was one which had been placed beyond our purview. This course was rendered difficult however, by the representations of those who desired to give evidence before us, as to its effect upon the development of responsible self-government particularly in the Presidency of Bengal; and by deciding, as we did, that such evidence was admissible, we automatically brought the matter within the scope of our enquiry. The original Award was strongly criticised by more than one witness who appeared before us on the ground that it must operate inequitably in the case of Bengal; and it was urged that the disadvantage at which the caste Hindus would be placed under it would be greatly intensified as a result of the adoption of the Poona Pact. Particular objection was taken to the reservation of seats and the employment of separate communal electorates in a province in which the community in whose interest the reservation is made forms a majority of the population. We cannot but be impressed by the force of this contention and we think it desirable that we should set forth our views as to the purpose for which the reservation of seats and the device of separate electorates should be employed.

" The system was introduced at the time of the Minto-Morley Reforms of 1909 with a view to safeguarding the interests of minorities and in particular the Moslem Minority; and while, on general grounds, we may deplore the necessity for such a device we have reluctantly come to the conclusion that in existing circumstances in India the necessity persists. We do not, therefore, propose to elaborate the objections which may be urged against the system as a whole. But it is one thing to concede separate communal electorates for the purpose of giving Minorities reasonable representation in the various legislatures; it is an entirely different thing to employ the system for the purpose of conferring' upon a majority community in any particular province a permanent majority in the legislature unalterable by any appeal to the electorate. Such a course has never hitherto been adopted. It was considered and rejected by the Statutory Commission, who declared that a claim submitted to them which in Bengal and the Punjab would give to the Moslem community a fixed and unalterable majority in the *general constituency* seats, was one which they could not entertain; 'it would be unfair', they wrote, 'that Muhammadans should retain the very considerable weightage they now enjoy in the six provinces and that there should at the same time be imposed, in face of Hindu and Sikh Opposition, a definite Moslem majority in the Punjab and in Bengal unalterable by any appeal to the electorate.' This is the position which will arise if the distribution of seats proposed in the White Paper for the Legislative Assembly of Bengal, is given effect to. The Legislative Assembly is to consist of 250 seats. Of these 51 are allotted to Special interests, leaving 199 general seats. Of these general seats 119 are to be reserved for Moslems leaving 80 for the Hindus. But under the terms of the Poona Pact 30 of these 80 seats are to be reserved

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for the so-called depressed classes, hereafter to be known as the Scheduled Castes, and the number of general seats open to the Caste Hindus is thus reduced to 50. It is probable that in the case of the 20 special interest seats which are open to Moslems and Hindus, the great majority will fall to the Hindus; but even if the Caste Hindus were to secure the whole 20 seats they would still be arbitrarily limited by Statute to 70 seats in a Legislative Assembly of 250. To restrict in this way the possible share in the government of the province, of the community which plays a predominant part in its intellectual and political life, seems to us to be both unwise and unfair. Before making our recommendations we have one further comment to make on the effect in Bengal of the Poona Pact. The object of reserving seats for the depressed classes should be in our view, to secure to the real depressed classes—that is to say the Sudras, or outcasts—a voice in the legislature. We believe that in Bengal the number of such people is small; and we fear that the result of extending the list of scheduled castes as proposed in the White Paper, will be to defeat the object in view, for it will not then be members of the real depressed classes who will be returned for the Scheduled Caste Seats, but members of the powerful Namasudra and Rajbansi Castes who experience no difficulty in getting returned to the legislature even now without any reservation of seats at all, and whose interests are as much opposed to those of the untouchables as are the interests of the highest castes themselves.

" We have now to submit our recommendations. With the Moslems in a majority in any particular province, we think that no reservation of seats for them ought to be necessary, and the logical solution of the problem would be to make no provision for a separate Moslem electorate but to throw the whole of the *general* seats open to Moslems and Hindus, so that candidates whether Moslems or Hindus would have to stand on their merits and make their appeal to the electors at large. We realise, however, that in this case that which is desirable is not necessarily expedient and we feel constrained to suggest a less radical alteration. We therefore, recommend as a general principle that in any province in which seats are reserved for a community which constitutes a majority of the population, a decision whether election in the case of the general seats, including those reserved for the majority community, should be by separate or by joint electorate, should rest with the minority.

" There remains the question of the Poona Pact. We need not recall the circumstances in which the so-called pact was concluded. We do not think that those who were parties to it can be said to have been accredited representatives of the caste Hindus or to have possessed any mandate to effect a settlement. We think that the arrangements for the representation of the depressed classes contained in the original award of His Majesty's Government were preferable and we recommend their adoption. In the appropriate place we give tables setting forth the distribution of seats in the legislatures in accordance with our proposals.

" Apart from the general alteration in the distribution of seats due to a return to the original Communal Award in the case of the Depressed Classes, our proposals involve some further redistribution of the seats in the case of the Legislative Assembly of Bengal and we think it desirable to explain here the reasons for the alterations which we propose. Under the proposals contained in the White Paper the Assembly in Bengal will consist of 250 members. Of these 250 seats 51 will be reserved for the representation of special interests, leaving 199 general territorial constituencies. Of these general seats 119 are to be reserved for Moslems leaving 80 only for the Hindu community including the Depressed Classes. Since the population ratio is approximately 55 per cent. Moslem and 45 per cent. Hindu it follows that so far as the general territorial

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constituencies are concerned the Moslems are being given ten seats more and the Hindus ten seats less than they would be entitled to on a population basis. It is true that this disparity will almost certainly be lessened as a result of the elections to the special interest seats which will be open to Moslems and Hindus. These number 20 and various estimates of the proportions of them which will be won by Moslems and Hindus respectively were submitted to us in the course of the evidence which was laid before us. We think that the Moslems may be expected to secure six of the 20 seats, which would bring their total representation up to 125 seats as compared with 94 seats in the case of the Caste Hindus and the Depressed Classes taken together. But even supposing that the Moslems were to secure none of the 20 seats they would still fill 119 seats as compared with 110 which is the maximum number of seats open to the Caste Hindus and the Depressed Classes combined under the proposals of the White Paper.

" We have already stated our objections to conferring upon a community by statute a definite majority unalterable by any appeal to the electorate. When the relative position of the two communities in Bengal in everything except actual numbers is taken into account, it will be seen that the reasons against placing the Hindu community in a position of permanent statutory inferiority in the legislature are particularly strong. Under British rule the Hindus have played an enormously predominant part in the intellectual, the cultural, the political, the professional and the commercial life of the province. More than 64 per cent. of those who are literate in Bengal are Hindus ; nearly 80 per cent. of the students attending High Schools, nearly 83 per cent. of those in Degree classes, and nearly 86 per cent. of the post graduate and research students are Hindus. A similar preponderance is found in the case of the professions, and in the case of Banking, Insurance and Exchange. In all previous Constitutions the significance of these facts has been admitted. Under the Lucknow Pact (an agreement between Moslems and Hindus arrived at in 1916) the Moslems in Bengal were allotted no more than 40 per cent. of the seats proposed to be filled by Indians by election ; and under the Constitution now in force there are reserved for them only 46 per cent. of the general territorial constituencies.

" In the circumstances set forth above we should have felt justified, had the slate upon which we have to write been a clean one, in recommending that in Bengal all general territorial constituencies should be open to candidates of both communities without reservation of seats or separate electorates (except in the case of the 10 seats reserved for the Depressed Classes). But as we have already pointed out, the slate upon which we have to write is very far from being a clean one, and we have felt obliged to steer a middle course between the claims of the Hindus and the expectations which have been aroused in the minds of the Moslems. Broadly speaking, as will be seen from an examination of the Appendix, the effect of the changes which we propose in the scheme of the White Paper will be as follows :—

(1) To give to Moslems or to Hindus, whichever is the minority community in any particular province, the right to decide whether election in the case of the general territorial constituencies shall be by separate or by joint electorates ;

(2) In the case of Bengal to allot the general territorial seats between Moslems and Hindus on a population basis ; and

(3) To give to the Depressed Classes in all provinces the representation given to them by the Government under their original Award before it was modified by the Poona Pact.

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There is one other point to which we wish to refer. Under the provisions of the White Paper* no change in the distribution of seats under the Communal Award is to be made during the first ten years during which the Constitution is in operation, and thereafter no proposals for modification will be taken into consideration which do not carry with them the assent of the communities affected. We think that it is unlikely that such assent will be given by a community entrenched in a position of statutory superiority in the legislature; and we recommend, therefore, that it should be open to either community at the expiration of ten years to petition Parliament to modify the Award.")

* Paragraph 49 of the Introduction to the White Paper.

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Appendix

COMPOSITION OF PROVINCIAL LEGISLATIVE ASSEMBLIES (LOWER HOUSES).

Province (Population in Millions shown in brackets.)	General.	Depressed Classes.	Representatives from Backward-Areas.	Sikh.	Muhammadan.	Indian Christian.	Anglo-Indian.	European.	Commerce and Industry, Mining and Planting. Special.	Land-holders. Special.	University. Special.	Labour. Special.	Total.
Madras (45·6) ..	134 (including 6 women).	18	1	0	29 (including 1 woman)	9 (including 1 woman).	2	3	6	6	1	6	215
Bombay (18·0) ..	109 (including 5 women).	10	1	0	30 (including 1 woman).	3	2	3	7	2	1	7	175
Bengal (50·1) ..	80 (including 2 women).	10	0	0	109 (including 2 women).	2	4 (including 1 woman).	11	19	5	2	8	250
United Provinces (48·4)	132 (including 4 women).	12	0	0	66 (including 2 women).	2	1	2	3	6	1	3	228
Punjab (23·6) ..	43 (including 1 woman).	0	0	32 (including 1 woman).	86 (including 2 women).	2	1	1	1	5	1	3	175
Bihar (32·4) ..	83 (including 3 women).	6	7	0	40 (including (1 woman).	1	1	2	4	4	1	3	152
Central Provinces (with Berarle) (15·5)	77 (including 3 women).	10	1	0	14	0	1	1	2	3	1	2	112
Assam (8·6)	44 (including 1 woman).	4	9	0	34	1	0	1	11	0	0	4	108
North-West Frontier Province (2·4).	9	0	0	3	36	0	0	0	0	2	0	0	50
Sind (3·9) ..	19 (including 1 v oman).	0	0	0	34 (including 1 woman).	0	0	2	2	2	0	1	60
Orissa (6·7)	46 (including 2 women).	3	2	0	4	1	0	0	1	2	0	1	60

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1. Seats in the Legislative Assemblies in the Governor's provinces will be allocated as shown in the above table.

2. Election to the seats allotted to Moslems, Europeans and Sikhs will ordinarily be by voters voting in separate communal electorates covering between them the whole area of the province, apart from any portions which may in special cases be excluded from the electoral area as *backward*. In any province, however, in which a Moselm or Hindu minority so desires, election in the case of the general territorial constituencies including those allotted to Moslems, shall be by joint electorates. For the purpose of the foregoing paragraph, the wishes of the minority shall be ascertained by means of a resolution moved in the legislative council prior to the coming into operation of the Constitution Act, upon which the members of the minority community will alone be permitted to vote.

3. All qualified electors who are not voters either in a Moslem, Sikh, Indian Christian, Anglo-Indian or European Constituency, will be entitled to vote in a general constituency.

4. Members of the Depressed Classes qualified to vote will vote in a general constituency. In view of the fact that for a considerable period these classes would be unlikely, by this means alone, to secure adequate representation in the Legislature, a number of special seats will be assigned to them as shown in the table. These seats will be filled by election from special constituencies in which only members of the depressed classes electorally qualified will be entitled to vote. Any person voting in such a special constituency will, as stated above, be also entitled to vote in a general constituency. It is intended that these constituencies should be formed in selected areas where the depressed classes are most numerous, and that, except in Madras, they should not cover the whole area of the province.

5. Election to seats allotted to Indian Christians, Anglo-Indians, Labour, Landholders and all other special interests shall be as proposed in the White Paper.

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Objected to.

On Question :—

Contents (9).	Not Contents (14).
Marquess of Salisbury.	Marquess of Linlithgow.
Marquess of Zetland.	Marquess of Reading.
Earl of Derby.	Earl Peel.
Earl of Lytton.	Viscount Halifax.
Lord Middleton.	Lord Ker (M. Lothian).
Lord Hardinge of Penshurst.	Mr. Attlee.
Lord Rankeillour.	Mr. Butler.
Sir Reginald Craddock.	Mr. Cocks.
Sir Joseph Nall.	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

The further consideration of paragraph 121 is postponed to Friday next.

Ordered, that the Committee be adjourned to Monday next, at half-past Four o'clock.

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Die Lunae 2° Julii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The proceedings of Friday last are read.

Paragraph 121 is again considered.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Pages 59 and 60, to leave out from (" Assemblies.") in line 43, page 59, to the end of the paragraph in page 60 and to insert (" We feel " somewhat differently, however, about the Poona Pact. We consider that " the original proposals of His Majesty's Government constitute a more " equitable settlement of the general communal question and one which is " more advantageous to the Depressed Classes themselves in their present " stage of development. They united the two sections of the Hindu Com- " munity by making them vote together in the general constituencies, thereby " compelling candidates to consider the well-being of both sections of his " constituents when appealing for their support, while they secured to the " Depressed Classes themselves sufficient spokesmen in the legislature, elected " wholly by depressed class votes, to ensure their case being heard and to " influence voting, but not so numerous that the Depressed Classes will " probably be unable to find representatives of adequate calibre with results " unfortunate both to themselves and the legislatures. That solution was " altered, in a great hurry, under pressure of Mr. Gandhi's ' fast unto death.' 17
" In view of the fact that His Majesty's Government felt satisfied that the " agreement come to at Poona fell within the terms of their original announce- " ment and accepted it as a valid modification of the communal award, we " do not feel able to recommend them now to reject it.")

It is moved by the Lord Rankeillour. As an amendment to the above amendment, to leave out from (" death ") in line 17 of the amendment to the end of the paragraph and to insert (" In view of " these considerations we feel obliged to recommend the Government " to reconsider the matter especially as regards Bengal.")

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published. (Vol. I, Part I). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Objected to.

On Question :—

Contents (10)	Not Contents (17)
Marquess of Salisbury.	Lord Archbishop of Canterbury.
Marquess of Zetland.	Marquess of Linlithgow.
Earl of Derby.	Marquess of Reading.
Earl of Lytton.	Earl Peel.
Lord Middleton.	Lord Ker (M. Lothian).
Lord Hardinge of Penshurst.	Lord Snell.
Lord Rankeillour.	Mr. Attlee.
Lord Hutchison of Montrose.	Mr. Butler.
Major Cadogan.	Sir Austen Chamberlain.
Sir Reginald Craddock.	Mr. Cocks.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Mr. Morgan Jones.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment to the amendment is disagreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. As an amendment to the original amendment, at the end to insert (" But subsequently to the " arrangement of the Pact objections to it, in relation to Bengal, have been " strongly urged by caste Hindus from that Province. We should welcome " an agreement between the caste Hindus and Depressed Classes to reduce " the number of seats reserved to the latter in Bengal, possibly with some " compensatory increase in such seats in some other Provinces, where a small " addition in favour of the Depressed Classes would not be likely materially " to affect the balance of communities in the Legislature.")

The same is agreed to.

The original amendment as amended is agreed to.

Paragraph 121 is again read.

The further consideration of paragraph 121 is postponed.

It is moved by Mr. Butler and Sir Samuel Hoare. After paragraph 121 to insert the following new paragraph :—

(" 121A. We have given careful consideration in this connexion to the number of seats to be allotted to special interests and in particular to representations submitted to us in favour of a substantial increase in the number of seats to be allotted to Labour in the new Provincial Legislatures. Any material alteration in the number of seats allotted to special interests would inevitably involve a reopening of the Communal Award, and we have indicated above the objections to be seen to this. But we are in any case of opinion that the representation proposed in the White Paper for landlords, commerce and industry, universities and labour, the object of which is essentially to make expert knowledge available in the legislatures and not to give any particular voting strength to individual interests, may be regarded as striking a just balance between the claims of the various interests, and as affording an adequate representation for them. We observe in particular that the representation of labour has been increased from 9 seats in the present Provincial Legislative Councils to a total of 38, the present marked difference between the representation of labour and of commerce and industry being thus very substantially reduced. Having regard to this, to the large number of seats set aside for the Depressed Classes (whose representatives will to some extent at any

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rate represent labour interests), and to the extension of the franchise, which will bring on the electoral roll large numbers of the poorer and of the labouring classes, we are of opinion that the position of labour, the importance of which we fully recognise, is adequately safeguarded under the proposals embodied in the White Paper.")

The Amendment, by leave of the Committee, is withdrawn.

Paragraph 122 is again read.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 60, to leave out paragraph 122 and to insert the following new paragraph :—

(" 122. We accept the numbers suggested in the White Paper for the Provincial Legislatures, subject to the following alterations. We can see no reason for the provision for special seats for landlords. In the Report of the Indian Statutory Commission, Volume II, Part II, Chapter 2, Section 90, the question of the special representation of landholders was exhaustively reviewed. They came to the conclusion that the landholding interests have in fact at the present time been returned for four times as many seats as were specially reserved for them, and considered that the special protection furnished to them at the present time could be safely withdrawn. We are entirely in agreement with this view. If special representation were needed it should be given not to those who by reason of their wealth and status in the community command influence and power, but to those who by reason of their poverty and low status are likely to find their claims overlooked. We are also opposed to special representation of universities. We know that the Indian Statutory Commission agreed that university seats should be preserved, but with considerable hesitation. From our own experience we find that university seats do not provide a special class of representative differing in any essential from those who find their way into legislative assemblies through general constituencies, and we, therefore, propose that these special seats should be abolished. With regard to the representation of Commerce and Industry and Planting Interests, here, again, we consider that the wealth and influence of these classes will always be sufficient to obtain for them adequate representation in the legislature. In the case of Europeans, where admittedly there may be little likelihood of their being elected from general constituencies, we recognize that, in view of the long connection of the British people with India and the special interests of Europeans, that there should be special representation for them. We believe, also, that the presence of Europeans in the Legislative Assemblies has been welcome to their Indian colleagues as bringing in an experience which has been found very valuable. We think that the representation given to Europeans should be frankly given to them as such and they should not be returned as representatives of Industry and Commerce. The abolition of these special seats will provide for an increase in the number to be allotted to the territorial constituencies and thus allow of some reduction in their area and population. This should, of course, be done with due regard to preserving the communal proportions.") Special interests seats.

Objected to.

On Question :—

Contents (4).	Not Contents (24).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Marquess of Reading.

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Contents (4).

Not Contents (24)—*continued.*

Earl of Derby.
Earl of Lytton.
Earl Peel.
Viscount Halifax.
Lord Middleton.
Lord Ker (M. Lothian).
Lord Hardinge of Penshurst.
Lord Rankeillour.
Lord Hutchison of Montrose.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Sir Reginald Craddock.
Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Lord Eustace Percy.
Sir John Wardlaw-Milne.
Earl Winterton.

The said amendment is disagreed to.

It is moved by Sir Austen Chamberlain, page 60, line 20, to leave out (" nominated seats ") and to insert (" seats to be filled by nomination ").

The same is agreed to.

It is moved by the Lord Rankeillour and the Marquess of Zetland, page 60, line 25, at the end, to insert (" We have in other respects followed the scheme " already proposed for the United Provinces in preference to that suggested " for Bengal and Bihar. We think it inexpedient that so large a proportion " of the Second Chamber should be chosen by the First and thereby presu- " mably reflect their views. We think further that the Legislative Councils " should not be dissoluble but that a third of its members should retire at " fixed intervals.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 122 is again read as amended.

The further consideration of paragraph 122 is postponed.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell, page 60, after paragraph 122, to insert the following new paragraphs :—

Increased Labour Representation.

(" 122A. We consider also that there should be an increase in the number of seats reserved for Labour. It might be contended that having rejected the claims of the landholding and capitalist classes to special representation, we are not equitable in retaining special seats for Labour. The answer is the same as that applicable to the case of the depressed classes. It is necessary to give special protection to those whose economic circumstances render them liable to exploitation.

" The Indian Franchise Committee in its report stressed the importance of adequate representation of Labour in the Legislatures, pointing out that ' the force of Labour is in its numbers,' and that ' until a further lowering of the franchise secures it more wholly adequate representation in the electoral roll ' special representation is necessary, and it quotes with approval the views expressed by the Royal Commission on Indian Labour ' if special electorates are to remain a feature of the Indian Constitution, there is hardly any class with so strong a claim to representation by this method as industrial labour,' and further ' If special constituencies are retained it should be recognised that Labour has not less claim to representation than employers.' With these views we are in full accord.

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" The Indian Franchise Committee recommended that 38 seats should be given to Labour in the Provincial Legislative Councils as against 46 seats allocated to Commerce and Industry. The White Paper has increased this disparity by adding yet another 10 to the latter. Vested interests are also reinforced in the White Paper proposals by the votes given to the landlords. The Indian Franchise Committee further pointed out that ' the administration of labour legislation must for the most part be in the hands of the provinces and we regard it as essential that the Provincial Legislatures should contain representatives of Labour who can watch over the provincial administration and can represent the legitimate desires and grievances of the industrial labouring class.'

" We therefore consider the representation given in the White Paper as quite inadequate. We support the proposal of the Indian National Trade Union Conference that Labour should be given at least 10 per cent. of the total number of seats.

The method of securing Labour Representation.

" 122B. We should prefer that as far as possible Labour Representation should be obtained by establishing adult suffrage in the industrial and planting and the large cities. We consider that the more developed administration in those areas would be able to cope with increased electorate, while there is no reason why the franchise level should be the same in all constituencies. In our own country there was for many years a great diversity of franchise as between urban and rural areas.

" We especially desire this method because it is in our view far better that the needs of the wage earners should be brought home to the candidates of all classes who would be affected by the existence of a abour vote than that labour representatives should be returned by constituencies of electors segregated from the rest of the community.

" We recognize, however, that this method is at present only of limited application, and that pending the introduction of adult suffrage generally it is necessary to provide for special constituencies.

Trade Union Constituencies.

122C. Accordingly we concur with the Indian Franchise Committee's proposals for Trade Union Constituencies as a temporary measure. The recommendation was to form these constituencies in the following manner :—

(*a*) To qualify as an electoral unit for the purpose of voting for a special Trade Union Constituency, a Union should have been registered for a minimum period of one year (in the case of the first election under the new constitution six months).

(*b*) Direct voting where the trade union is confined to one area.

(*c*) Where the Trade Union covers two or more centres, election to the seat or seats allotted to the trade unions in the particular province through an electoral college composed of delegates in each union in the proportion of one for every group of one hundred voters.

(*d*) In the varying circumstances of individual provinces seats might, if conditions make it feasible and desirable, be allotted from among the trade union seats to be filled by representatives of trade unions of special importance or of specially large membership.

Qualification of electors.

" 122D. The suggested qualifications of electors to trade union constituencies should be :—

(*a*) Minimum age of 21 years.

(*b*) Paid up membership for at least six months of a registered trade union, which has itself been in existence for twelve months (in the first election under the new constitution membership three months, registration of union six months).

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"They also suggest that a candidate for a trade union constituency should be either a member, or an honorary member, or an official as defined in the Trade Unions Act, of one of the trade unions concerned, his position in any of these capacities to be not less than one year's standing.")

bjected to.

On Question :—

Contents (4).	Not Contents (24).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Marquess of Reading.
	Earl of Derby.
	Earl of Lytton.
	Earl Peel.
	Viscount Halifax.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

Paragraphs 123 and 124 are again read and postponed.

Paragraph 125 is again read.

It is moved by Sir Austen Chamberlain. Page 61, line 25, to leave out ("supplemented by") and to insert ("to which are added"); and line 25, to leave out the second ("by").

The same are agreed to.

Paragraph 125 is again read as amended.

The further consideration of paragraph 125 is postponed.

Paragraphs 126 and 127 are again read and postponed.

Paragraph 128 is again read.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 62, line 35, to leave out ("or") and to insert ("for the detailed allocation as between trade "union and special labour constituencies of the seats allocated to Labour "and").

The same is agreed to.

Paragraph 128 is again read as amended.

The further consideration of paragraph 128 is postponed.

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Paragraph 129 is again read.

It is moved by the Lord Eustace Percy. Page 63, line 19, at the end to insert (" at the present moment").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 63, line 20, to leave out (" in the present condition").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 63, line 21, at the end to " insert (" We do not, however, desire to be understood as reporting against " the introduction of some system of indirect election in the future. The " considerations which we have advanced against its adoption at the present " moment may lose much of their force as social conditions change, and as " institutions of local self-government develop in the Provinces. The " problem is essentially one which Indians must consider for themselves, " and on which we feel sure that Parliament will be ready to listen with " the utmost attention to any recommendations which may be made to it by " Provincial Legislatures ".)

The same is agreed to.

Paragraph 129 is again read as amended.

The further consideration of paragraph 129 is postponed.

Paragraph 130 is again read.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 63, lines 22 to 24, to leave out from the beginning of the paragraph to the end of the first sentence and to insert

(" We are bound to accept the evidence which has been brought before us that at the present time administrative reasons forbid the introduction of adult franchise generally. We, therefore, accept the proposals in the White Paper, subject to what has been stated above with regard to labour representation and to the modifications which we indicate below with regard to the franchise for male voters. We consider that the constitution should provide definitely for the introduction of adult franchise in the provinces. Power should be given to any Provincial Legislature to widen, but not to narrow the franchise. It should be provided that adult franchise should be in force in all provinces at the general election next following the expiry of ten years from the date of the inauguration of the new provincial constitution.")

Objected to.

On Question :—

Contents (4).	Not Contents (22).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Marquess of Reading.
	Earl of Derby.
	Earl Peel.
	Viscount Halifax.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.

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Contents (4).

Not Contents (22)—*continued.*
Sir Austen Chamberlain.
Sir Reginald Craddock.
Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Lord Eustace Percy.
Sir John Wardlaw-Milne.

The said Amendment is disagreed to.

Paragraph 130 is again read.

The further consideration of paragraph 130 is postponed.

Paragraph 131 is again read and postponed.

Paragraph 132 is again read.

It is moved by the Lord Rankeillour. Page 65, lines 14 to 18, to leave out from the beginning of line 14 to the end of the sentence.

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 65, line 18, after ("suttee,") to insert ("The development of "social consciousness among the women of India is phenomenal, and as far "as we can ascertain has not been equalled by any other women's political "movement in any other part of the world. The development is the more "remarkable considering the impediments which such a movement has had "to encounter. Nothing could be more disastrous at this juncture than to "create the impression among the women of India that the proposed new "constitution treated of persons of less equal citizenship.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Austen Chamberlain. Page 65, line 26, to leave out from the beginning of line 26 to the end of the sentence and to insert ("which can be adduced in favour of it").

The same is agreed to.

Paragraph 132 is again read as amended.

The further consideration of paragraph 132 is postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Ten o'clock.

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Die Martis 3° Julii 1934.

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraph 133 is again read.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 65, lines 41 to 43, to leave out from (" with ") in line 41 to (" (2) ") in line 43 and to insert (" altogether ").

Objected to.

On Question :—

Contents (3).	Not Contents (21).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Marquess of Reading.
	Earl of Derby.
	Earl of Lytton.
	Earl Peel.
	Viscount Halifax.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Lord Eustace Percy.

The said amendment is disagreed to.

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491 ; and *vide supra*, paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part I.) A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 65, line 42, after (" husband's ") to insert (" or late husband's ").

The same is disagreed to.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 65, lines 42 and 43, to leave out from (" property ") in line 42 to (" ; (2) ") in line 43.

The same is disagreed to.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 65, line 43, to page 66, line 10, to leave out from (" Provinces ; ") in line 43, page 65, to the end of the paragraph in page 66 and to insert the following new sub-division.

" (2) That a literacy qualification should be substituted for the educational standard qualification ; and (3) That the wives, pensioned widows, and mothers of Indian officers, non-commissioned officers and soldiers should be enfranchised ; (4) That the wife of a man who is qualified as an elector under the new constitution shall be entitled to a vote. We are aware that this will mean a big addition to the electorate, but we are persuaded that it would be unfortunate if a big addition to the male electorate were made now without a corresponding increase in the women's vote. Delay now would only mean an increase later, which would have an unsettling effect on the political situation in the provinces.")

Objected to.

On Question :—

Contents (3).	Not Contents (21).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Marquess of Reading.
	Earl of Derby.
	Earl of Lytton.
	Earl Peel.
	Viscount Halifax.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Lord Eustace Percy.

The said amendment is disagreed to.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 65, lines 44 and 45, to leave out from the beginning of line 44 to (" a ") in line 45.

The same is disagreed to.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 65, lines 46 and 47, to leave out from (" that ") in line 46 to the third (" the ") in line 47.

The same is disagreed to.

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It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 66, line 6, after (" application ") to insert (" personally or by letter or ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 66, line 6, after (" husband ") to insert (" personally or by letter ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 133 is again read.

The further consideration of paragraph 133 is postponed.

Paragraph 134 is again read.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 66, line 27, to leave out (" women ") and to insert (" wives or widows ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 66, lines 28 and 29, to leave out from (" property,") in line 28 to (" with ") in line 29 and to insert (" before the second election under the new constitution ").

Objected to.

On Question :—

Contents (8).	Not Contents (17).
Lord Archbishop of Canterbury.	Marquess of Zetland.
Marquess of Reading.	Marquess of Linlithgow.
Lord Ker (M. Lothian).	Earl of Derby.
Lord Snell.	Earl of Lytton.
Lord Hutchison of Montrose.	Earl Peel.
Mr. Cocks.	Viscount Halifax.
Mr. Foot.	Lord Middleton.
Mr. Morgan Jones.	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell ; line 32, to leave out (" not later than ") and to insert (" before ").

The same is agreed to.

Paragraph 134 is again read as amended.

The further consideration of paragraph 134 is postponed.

Paragraph 135 is again read.

The following amendment is laid before the Committee.

Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell to move. Page 66, lines 44 to 49, to leave out from the beginning of line 44 to the end of the paragraph and to insert (" For these and other reasons we " endorse the recommendation of the Franchise Committee ").

The consideration of the said amendment is postponed.

It is moved by the Lord Eustace Percy. Page 66, lines 44 to 49, to leave out lines 44 to 49 inclusive, and to insert (" We think this objection has con- " siderable force. It may be impossible at the present moment for some

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" Provinces to adopt, as some other Provinces propose to do, so low a standard " as the completion of the fourth class of the primary school, or even the " leaving examination of a middle school, partly owing to lack of records " and partly owing to the number of persons who would thus be enfranchised. " But we think that it should be open to the Provincial Government to " prescribe at least any middle school certificate as the qualification for the " suffrage.")

The same is agreed to.

Paragraph 135 is again read as amended.

The further consideration of paragraph 135 is postponed.

Paragraphs 136 and 137 are again read and postponed.

Paragraph 138 is again read.

It is moved by the Lord Ker (M. Lothian). Page 68, line 10, to leave out from (" ordinance ") to the end of the paragraph.

The same is agreed to.

Paragraph 138 is again read as amended.

The further consideration of paragraph 138 is postponed.

Paragraphs 139 and 140 are again read and postponed.

Paragraph 141 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 69, line 15, after (" reasonable[1] ") to insert (" so far as the Excluded Areas proper are concerned. " We think, however, that a distinction might well be drawn in this respect " between Excluded Areas and Partially Excluded Areas, and that the " application of Acts to, or the framing of Regulations for, Partially Excluded " Areas is an operation which might appropriately be performed by the " Governor acting on the advice of his Ministers, the decisions taken in each " case being, of course, subject to the Governor's special responsibility for " Excluded Areas, that is to say, being subject to his right to differ from the " proposals of his Ministers if he thinks fit.")

The same is agreed to.

Paragraph 141 is again read as amended.

The further consideration of paragraph 141 is postponed.

Paragraph 142 is again read and postponed.

Paragraph 143 is again read.

It is moved by the Lord Rankeillour, the Marquess of Zetland, and Sir Austen Chamberlain. Page 69, line 45, at end to insert (" It must however " be made clear that like powers of borrowing and transfer (or ' virement ') " which are found in Appropriation Acts at home are at the disposal of the " Government ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 69, line 45, at the end to insert (" We assume, of course, that, as at present the governments " in India will, within limits, continue to possess powers of ' virement ' or " re-appropriation ").

The same is agreed to.

Paragraph 143 is again read as amended.

The further consideration of paragraph 143 is postponed.

Paragraphs 144 to 146 are again read and postponed.

[1] White Paper, Proposal 108.

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Paragraph 147 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks and the Lord Snell. Page 71, line 35, to leave out (" that ") and to insert)" we are of the opinion " that in the case of Money Bills the Upper Chamber shall have no power of " amendment, delay or rejection. Moreover in other matters ").

Objected to.

On Question :—

Contents (3).	Not Contents (19).
Lord Snell.	Marquess of Zetland.
Mr. Cocks.	Marquess of Linlithgow.
Mr. Morgan Jones.	Marquess of Reading.
	Earl of Derby.
	Earl of Lytton.
	Earl Peel.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 72, lines 2 to 10, to leave out from (" We ") in line 2 to (" The ") in line 10 and to insert (" accept this solution ").

The same is disagreed to.

It is moved by the Lord Rankeillour and the Lord Eustace Percy. Page 72, lines 5 to 7, to leave out from (" least,") in line 5 to the end of the sentence.

The same is agreed to.

It is moved by the Lord Rankeillour and the Lord Eustace Percy. Page 72, line 12, after (" responsibilities,") to insert (" or with the necessary financing " of the Provincial Administration,").

The same is agreed to.

Paragraph 147 is again read as amended.

The further consideration of paragraph 147 is postponed.

The Appendix (I) is again read and postponed.

Paragraph 148 is again read.

It is moved by the Lord Eustace Percy. Page 74, lines 5 to 29, to leave out from (" united.") in line 5, to the end of the paragraph and to insert : (" We have already given our reasons for approving this proposal in principle and have pointed out that it involves two distinct operations, the one a necessary consequence of the grant of Provincial Autonomy to British India, the other the establishment of a new relationship between British India and the Indian States. It only remains for us to consider the method by which each of these two operations is to be carried out.")

The same is agreed to.

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Paragraph 148 is again read, as amended.
The further consideration of paragraph 148 is postponed.

Paragraph 149 is again read and postponed.

Paragraph 150 is again read.
It is moved by the Lord Eustace Percy. Page 75, line 21, to leave out (" and Indian States").
The same is agreed to.
It is moved by the Lord Eustace Percy. Page 75, line 36, to page 76, line 11, to leave out from the beginning of line 36, page 75, to the end of the paragraph, page 76.
The same is agreed to.

Paragraph 150 is again read as amended.
The further consideration of paragraph 150 is postponed.
It is moved by the Lord Eustace Percy. Page 76, after paragraph 150, to insert the following new paragraph :—

Accession of States to Federation a Voluntary act.

(" 150A. The rights, authority and jurisdiction which will thus be conferred by the Crown on the new Central Government will not extend to any Indian State. It follows that the accession of an Indian State to the Federation cannot take place otherwise than by the voluntary act of its Ruler. The Constitution Act cannot itself make any Indian State a member of the Federation ; it will only prescribe a method whereby the State may accede and the legal consequences which will flow from the accession. There can be no question of compulsion so far as the States are concerned. Their Rulers can enter or stand aside from the Federation as they think fit. They have anounced their willingness to consider federation with the Provinces of British India on certain terms ; but whereas the powers of the new Central Government in relation to the Provinces will cover a wide field and will be identical in the case of each Province, the Princes have intimated that they are not prepared to agree to the exercise by a Federal Government for the purpose of the Federation of a similar range of powers in relation to themselves.")

The same is agreed to.

New paragraph 150A is again read.
The further consideration of paragraph 150A is postponed.

Paragraph 151 is again read.
It is moved by the Lord Eustace Percy. Page 76, to leave out paragraph 151.
The same is agreed to.

Paragraph 152 is again read and postponed.

Paragraph 153 is again read.
It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 77, lines 26 to 34, to leave out from (" Crown.") in line 26 to (" We ") in line 34 and to insert (" We recognise that there may be some exceptions due to Treaty " rights and special privileges, but we consider that there must be a definite " minimum laid down and that as far as possible all States should come in " on the same terms ").
The amendment, by leave of the Committee, is withdrawn.
It is moved by the Lord Ker (M. Lothian). Page 77, line 34, after (" course ".) to insert (" We consider that one of the essential conditions of " Federation should be that States adhering to the Federation, like the " provinces, should accept the principle of internal freedom for trade in India

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"and that the Federal government alone should have the power to impose "tariffs and other restrictions on trade. In cases where States already "impose customs duties at their borders the condition of accession should "be that no addition to such duties should be made, the question of the "conditions on which they shall be reduced or abolished being left to "subsequent negotiation between the State in question and the Federal "government.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 153 is again read.

The further consideration of paragraph 153 is postponed.

Paragraph 154 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 77, line 40 to page 78, line 12, to leave out from the beginning of the paragraph, page 77, to ("We") in line 12, page 78, and to insert ("The White Paper "suggests that a Federation which comprised the Provinces and only a small "number of the States would hardly be deserving of the name. We are unable "to agree. We consider that the forces making for Federation are so strong "that it is certain that before long a majority of the States, in numbers "and population, will accede. At the same time, it is possible that there "might be some hesitation at the beginning and we see no reason why the "rest of India should wait for a certain number of Rulers of States to change "their opinions before enjoying responsibility at the Centre. We would prefer "that the Federation should start with a very large proportion of the Indian "States included in it, but we believe that in any event a start should be "made and that it should be possible to build up a Federation by a gradual "accretion of States. It is for this reason, among others, that we desire "that the conditions of accession should be uniform, and also, as we shall "indicate later, that there should be a definite basis of representation for "States adhering.")

The same is disagreed to.

It is moved by the Lord Hardinge of Penshurst. Page 77, line 47, to leave out ("half") and to insert ("two-thirds").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 78, lines 12 to 14, to leave out from ("here[2]") in line 12 to ("but") in line 14 and to insert ("We consider that the time lag which may be necessary between "the establishment of autonomy in the Provinces and the establishment of "the Federation should not be longer than is absolutely diciated by "administrative necessity.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 78, line 14, to leave out ("but") and to insert ("and").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 78, lines 14 and 15, to leave out ("desirable, if not").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 154 is again read.

The further consideration of paragraph 154 is postponed.

Paragraph 155 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 78, line 17, to page 79, line 1, to leave out from the beginning of line 17, page 78, to ("principle") in line 1, page 79, and to insert :—

("We agree with the proposal in the White Paper, that there "must be a legal differentiation of functions between the Representative

[2] *Infra*, para. 268.

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"of the Crown in his capacity as Governor-General of the Federation "and as representing the Sovereign in his relationship with the States not "adhering to the Federation and to all States in respect of the rights of "the Crown outside the sphere of the Federation. We consider that it "would be convenient if in his first capacity the King's representative "were styled Governor-General and in his second Viceroy. We agree "with the ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy, and Major Cadogan. Page 78, line 35, to page 79, line 4, to leave out from (" proposal,") in line 35, page 78, to the end of the paragraph on page 79.

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 78, lines 37 to 39, to leave out from (" future ; ") in line 37 to the end of the sentence.

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir John Wardlaw-Milne. Page 78, lines 39 to 45, to leave out from (" purpose,") in line 39 to (" made ") in line 45 and to insert (" The " suggestion ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 78, lines 39 and 40, to leave out from (" that ") in line 39 to the first (" the ") in line 40.

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 78, line 41, to leave out from (" and ") to (" We ") and to insert (" this being so ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 155 is again read.

The further consideration of paragraph 155 is postponed.

Paragraphs 156 to 158 are again read and postponed.

Paragraph 159 is again read.

It is moved by the Marquess of Zetland. Page 80, line 20, to leave out from (" We ") to (" force ") and to insert (" appreciate, moreover, the ").

The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 80, lines 33 to 35, to leave out from (" contribution ") in line 33 to (" to ") in line 35.

The amendment by leave of the Committee is withdrawn.

Paragraph 159 is again read as amended.

The further consideration of paragraph 159 is postponed.

Paragraph 160 is again read.

It is moved by the Lord Eustace Percy. Page 81, line 3, after " Legislature.[1]") to insert (" We have already given our reasons for accepting, " in principle, the proposal of the White Paper that the Federal Government " should be in some measure responsible to the Federal Legislature, but that " this responsibility should not extend to all Federal subjects. This being " accepted.")

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 81, line 15, to leave out the second (" the ") and to insert (" certain ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 81, line 20, at the end to insert (" Before doing this, however, we think it is

[1] White Paper, Proposals 6-55.

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"necessary to point out that responsibility may take many forms. We believe "that any attempt to try to create responsibility at the Centre by an exact "reproduction of the machinery which functions at Westminster would be "doomed to failure. In the first place, the system of responsible government "as we know it in this country depends on stable divisions on Party lines "and, generally speaking, functions satisfactorily where there are only two "main Parties. These Parties should not be the creation of groups formed "by Members of the Legislature subsequent to their election, but should "represent real divisions of opinion which extend back to the constituencies. "In the Federal Legislature, apart from the communal cleavages which "already make the working of the British system difficult in many Provinces, "there is to be a sharp division of the Legislature into two categories of "members, one of elected representatives from British India, the other of "nominees of the Rulers of States. It seems difficult, therefore, to envisage "the emergence of Parties on the lines familiar to us in this country. Two "further obstacles present themselves. The first is that, owing to the nature "of the Federation, the Members of the Legislature will not be equally "concerned in its territory, and that the jurisdiction of the Federation will "not extend as to all subjects equally over that territory, while the other is "that the subject-matter of Central administration and legislation provides a "rather slender basis for a full parliamentary system. We realise that 90 per "cent. of everything that concerns the ordinary citizen comes within the "ambit of the Provincial administration. For these reasons we consider that "responsibility at the Centre will be developed on lines very different from "those obtaining at Westminster. We think that it is not always realised "in India that the British Cabinet is in fact the master of the Legislature. "This is a result of the Party system, for the Cabinet, though formally "selected by the Crown, is really composed of the leading members of the "Party in a majority. It maintains its power largely through the discipline "of the Party machine backed by the power of dissolution. We think that "this power of the Ministry to control the Legislature will not be reproduced "at Delhi; indeed, we think that the Ministry will be far more the servant "of the Legislature than its master. Under these circumstances, we think "that the real responsibility will lie rather with the Members of the Legislature "than with the Ministers; that is to say, that the Members of the Legislature "will have to take full responsibility for their actions. We do not think that "the practice, whereby a Ministry is dependent from day to day on a vote "of the Legislature during a Session, is workable in India. We suggest "proposals, which will give what is essential—greater stability to the "administration".)

The amendment, by leave of the Committee, is withdrawn.

Paragraph 160 is again read as amended.

The further consideration of paragraph 160 is postponed.

Paragraph 161 is again read and postponed.

Paragraph 162 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 82, line 38, after ("external affairs") to insert reference to a footnote,[3] and to insert the following as a footnote :—

("[3] This term does not, of course, include relations with the Indian States in matters in which they have not agreed to federate; such matters will be dealt with personally by the Viceroy as representative of the Crown. It follows from this that any State matter which a Ruler has not accepted as federal in the case of his State will not be subject to discussion in the Federal, or a Provincial, Legislature, unless the Governor-General, or the Governor, considers that British Indian interests are affected.")

The same is agreed to.

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Paragraph 162 is again read as amended.

The further consideration of paragraph 162 is postponed.

Paragraphs 163 to 165 are again read and postponed.

Paragraph 166 is read.

It is moved by Mr. Morgan Jones and Mr. Cocks. Page 84, to leave out paragraph 166 and to insert the following new paragraph :—

(" 166. We do not wish to repeat here what we have already said with regard to special responsibilities. We consider that the White Paper proposals in regard to the Governor-General are open to the same objection as those suggested in the case of the Provincial Governors and we make the same recommendations for modification. In addition we do not think it necessary that the Governor-General should have a special responsibility for safeguarding the financial stability and credit of the Federation. It is, in our view, useless to give power and responsibility on the one hand and take it away with the other. If Indian representatives are not capable of conducting on sound lines the finances of the Federation, they are not capable of self-government.")

Objected to.

On Question :—

Contents (2).	Not Contents (20).
Mr. Cocks.	Lord Archbishop of Canterbury.
Mr. Morgan Jones.	Marquess of Salisbury.
	Marquess of Zetland.
	Marquess of Linlithgow.
	Marquess of Reading.
	Earl Peel.
	Viscount Halifax.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

It is moved by the Lord Eustace Percy.

Page 84, lines 16 to 20, leave out from (" sphere ; ") in line 16 to the end of the paragraph.

The same is agreed to.

Paragraph 166 is again read as amended.

The further consideration of paragraph 166 is postponed.

Paragraph 167 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 84, to leave out paragraph 167.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 167 is again read and postponed.

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Paragraph 168 is read.

It is moved by the Lord Eustace Percy. Page 85, line 30, after (" only.") to insert (" , his action in the second capacity being untouched in any way " by the Constitution Act ").

The same is agreed to.

Paragraph 168 is again read as amended.

The further consideration of paragraph 168 is postponed.

Paragraph 169 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Pages 85 and 86, to leave out paragraph 169.

The same is agreed to.

Paragraph 170 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 86, line 11, after (" Ecclesiastical Affairs (1) ") to insert (" For reasons which we " propose to state we disagree with the proposal that the two latter Depart- " ments should be reserved. We agree that Defence must for some years be " a Reserved subject.")

The same is disagreed to.

The further consideration of paragraph 170 is postponed till to-morrow.

Ordered, that the Committee be adjourned till to-morrow at half-past Two o'clock.

[1] White Paper, Proposal 11. It is also proposed that the Governor-General shall himself direct and control the administration of British Baluchistan (White Paper, Proposal 5); but there will not be a Reserved Department of British Baluchistan, which will be a chief Commissioner's Province and will be in no different position from other Chief Commissioners' Provinces, except that Ministers will not advise the Governor-General in relation to its administration.

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Die Mercurii 4° Julii 1934.

Present :

Marquess of Salisbury.	Mr. Butler.
Marquess of Zetland.	Major Cadogan.
Marquess of Linlithgow.	Sir Austen Chamberlain.
Marquess of Reading.	Mr. Cocks.
Earl of Derby.	Sir Reginald Craddock.
Viscount Halifax.	Mr. Davidson.
Lord Middleton.	Mr. Foot.
Lord Ker (M. Lothian).	Sir Samuel Hoare.
Lord Hardinge of Penshurst.	Mr. Morgan Jones.
Lord Snell.	Lord Eustace Percy.
Lord Rankeillour.	Sir John Wardlaw-Milne.
Lord Hutchison of Montrose.	Earl Winterton.

The Marquess of Linlithgow in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraph 170 is again considered.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 86, lines 19–23, to leave out from ("Council[1]") in line 19 to ("and") in line 23, and to insert ("We consider that these Counsellors should form "part of a unified Ministry.")

The same is disagreed to.

Paragraph 170 is again read.

The further consideration of paragraph 170 is postponed.

Paragraph 171 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 86, line 33, to leave out from ("India") in line 33 to the end of the paragraph and to insert ("We recognize the serious constitutional issue "raised by the existence of the Indian Defence Problem and the way in which "it is met at the present time by the Army in India. So long as British "troops are employed in India, whether for external defence or for internal "security, it is, in our view, impossible to bring them under the orders of a "responsible Minister. The Indian Statutory Commission examined the "whole constitutional position created by the existence of the Indian Army "at great length, and they recognized that it was a formidable obstacle to "the development of complete self-government. We believe that Indian "public opinion is extremely sensitive on this point, but that the majority "of the leading statesmen recognize the hard facts of the situation. At "the same time, we believe that it is essential that the Constitution should "contain provisions for the bringing to an end of an anomalous position. "We consider that there should be a definite programme of Indianization "with a time-limit of thirty years. It may be urged that it is impossible "to lay down an exact period within which an Indianized Army would be "capable of the defence of India. There may be truth in this, but we consider "that it is necessary, if the work of Indianization is to be pushed forward "with the greatest possible energy, that there should be a clearly marked "time by which the goal is to be attained. From a study of such reports "and documents as have been available to us, we believe that this could be "successfully accomplished in a period of twenty-five years. We suggest that "that period should be aimed at but that a maximum of thirty years should "be fixed which must not be exceeded."

[1] White Paper, Proposal 12.

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. 1, Part I).

A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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"At the same time, we are impressed with the very large proportion of her revenues which India spends on Defence. We do not suggest that this is in excess of the amount needed to maintain sufficient forces for the requirements of India, and we are aware that a recent agreement on the subject of the capitation payments has resulted in an advantage of a million pounds a year in India's favour, but we consider that, as compared with other parts of the Empire outside the United Kingdom, India has for years borne, and is still bearing, an undue expense. It may be urged that India's defence by sea is provided by Great Britain, but her danger from the sea is a potential rather than an actual menace. India possesses in the North-West Frontier the one land frontier in the whole of the British Commonwealth which not only borders on areas which are frequently liable to be disturbed, but is exposed to the possibility of invasion by a hostile power. While we recognise the vital necessity of the safe-keeping of this frontier in the interest of India herself, we cannot but recognize that the menace to that barrier may well result, not from anything which India herself does, but from the mere fact of her being a Member of the British Commonwealth. We therefore consider that the whole question of Imperial Defence and the responsibilities of the various Members of the British Commonwealth should be reviewed at an early date in order that it may be considered as to how far the burden now borne by India is equitable. While we agree that Defence must continue to be a reserved subject, we are strongly impressed with the need for building up an informed opinion on Defence matters, and we therefore propose that there should be a Standing Defence Committee of the Legislature.") The Burden of Defence.

Objected to.

On Question :—

Contents (3).	Not Contents (21).
Lord Snell.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Marquess of Reading.
	Earl of Derby.
	Viscount Halifax.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

Paragraph 171 is again read.

The further consideration of paragraph 171 is postponed.

Paragraph 172 is again read.

It is moved by the Lord Eustace Percy. Page 87, lines 16 to 18, to leave out from (" and ") in line 16 to (" that ") in line 18, and to insert (" if this be

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" granted, some form of dyarchy, with all its admitted disadvantages is, as " we have already pointed out, inevitable; but the form adopted must be " such ".)

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 87, line 19, to leave out (" should ") and to insert (" will ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 87, line 20, to leave out (" should ") and to insert (" will ").

The same is agreed to.

Paragraph 172 is again read as amended.

The further consideration of paragraph 172 is postponed.

Paragraph 173 is again read.

It is moved by the Lord Eustace Percy. Page 88, line 13, to leave out (" and ") and after (" prevail ") to insert (" and he must have adequate means of giving effect to them ").

The same is agreed to.

Paragraph 173 is again read as amended.

The further consideration of paragraph 173 is postponed.

Paragraph 174 is again read.

It is moved by the Lord Eustace Percy. Page 88, lines 14 to 22, to leave out from the beginning of the paragraph to (" The ") in line 22, and to insert (" In order to secure the effective co-operation of the other departments of " government, Federal or Provincial, and thus to render unnecessary any " recourse to the Governor-General's special powers in ordinary matters of " administration, it may be well to establish some permanent co-ordinating " machinery.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 88 lines 22 to 32 to leave out from (" desirable.") in line 22, to the end of the paragraph and to insert (" We are strongly impressed with the need for " building up an informed opinion on Defence matters, and we therefore " propose that there should be established a Standing Defence Committee of " the Legislature.")

The same is disagreed to.

Paragraph 174 is again read.

The further consideration of paragraph 174 is postponed.

Paragraph 175 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 89, lines 3 to 21, to leave out from (" post.") in line 3 to the end of the paragraph and to insert (" Bearing in mind the very large proportion of her revenues " which India spends on Defence we concur with the second and third " proposals.")

The same is disagreed to.

Paragraph 175 is again read.

The further consideration of paragraph 175 is postponed.

It is moved by the Earl Winterton. Page 89, after paragraph 175, to insert the following new paragraph :—

Employment of Indian troops outside India.

(" 175A. In illustration of the principle that the Governor-General should invite the collaboration of the Federal Ministry to the widest

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extent compatible with the preservation of his own responsibility, we would refer to the question of lending Indian personnel of the Defence forces for service outside India. There have been many occasions on which the Government of India have found themselves able to spare contingents for operations overseas in which considerations of Indian defence have not been involved; and we may presume that such occasions will recur. There appears to be some misconception in India on this point, which it would be desirable to remove. It is not the case that, because a Government can in particular circumstances afford a temporary reduction of this kind in its standing forces, the size of those forces is thereby proved to be excessive; or conversely, that if it is not excessive troops cannot be spared for service elsewhere. These standing forces are in the nature of an insurance against perils which may not always be insistent but which nevertheless must be provided for. There is thus no ground for assuming a *prima facie* objection to the loan of contingents on particular occasions. If on such occasions the Governor-General is asked whether he can lend a contingent, he must decide, first, whether the occasion involves the defence of India in the widest sense, and secondly, whether he can spare the troops having regard to all the circumstances at the time. Both these decisions would fall within the exclusive sphere of his responsibility. If he decided that troops could be spared, the only remaining constitutional issue would be narrowed down to one of broad principle, namely, that Indian leaders as represented in the Federal Ministry should be consulted before their fellow-countrymen were exposed to the risks of operations in a cause that was not their own. In view, however, of the complexities that may arise, we do not feel able to recommend that the ultimate authority of the Governor-General should be limited in this matter. Our proposal is that when the question arises of lending Indian personnel of the Defence Forces for service outside India on occasions which in the Governor-General's decision do not involve the defence of India in the broadest sense, he should not agree to lend such personnel without consultation with the Federal Ministry. We have little doubt that in practice he will give the greatest weight to the advice of the Federal Ministry before reaching his final decision. The financial aspect has also to be considered. Although in the circumstances we are discussing the defence of India would not be involved, it might on occasions be in India's general interests to make a contribution towards the cost of external operations. Proposal 150 of the White Paper reproduces the provision of s. 20 (1) of the Government of India Act that " the revenues of India shall be applied for the purposes of the government of India alone "; and a contribution in the general interests of India would come within the scope of that provision. Under the new Constitution, however, the recognition of interests of this nature would fall within the province of the Federal Ministry and Legislature, since, *ex hypothesi*, they would not be defence interests. If, therefore, the question should arise of offering a contribution from India's revenues in the circumstances we are discussing (and the interests in question did not fall under the other reserved department of External Affairs) we are of opinion that it would need to be ratified by the Federal Legislature.")

Objected to.

On Question :—

Contents (17).	Not Contents (3).
Marquess of Salisbury.	Lord Ker (M. Lothian).
Marquess of Linlithgow.	Mr. Cocks.
Marquess of Reading.	Mr. Morgan Jones.
Earl of Derby.	

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Contents (17)—(*continued*). Not Contents (3).

Viscount Halifax.
Lord Middleton.
Lord Hardinge of Penshurst.
Lord Rankeillour.
Lord Hutchison of Montrose.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Sir Reginald Craddock.
Mr. Davidson.
Sir Samuel Hoare.
Lord Eustace Percy.
Earl Winterton.

The said amendment is agreed to.

New paragraph 175A is again read.

The further consideration of paragraph 175A is postponed.

Ordered, that the Committee be adjourned to Friday next at half-past Ten o'clock.

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Die Veneris 6° Julii 1934.

Present:

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF LYTTON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN SIMON.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

Paragraph 176 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 89, lines 29 to 35, to leave out from the beginning of line 29 to the end of the paragraph and to insert (" We consider that there should be a definite pro- " gramme of Indianization with a time-limit of thirty years. It may be " urged that it is impossible to lay down an exact period within which an " Indianized Army would be capable of the defence of India. There may be " truth in this, but we consider that it is necessary, if the work of Indianization " is to be pushed forward with the greatest possible energy, that there should " be a clearly marked time by which the goal is to be attained. From a study " of such reports and documents as have been available to us, we believe " that this could be successfully accomplished in a period of 25 years. We " suggest that this period should be aimed at, but that a maximum of 30 years " should be fixed which must not be exceeded.")

The same is disagreed to.

Paragraph 176 is again read.

The further consideration of paragraph 176 is postponed.

Paragraphs 177 and 178 are again read.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Pages 89 and 90, to leave out paragraphs 177 and 178.

The same is disagreed to.

Paragraphs 177 and 178 are again read.

The further consideration of paragraphs 177 and 178 is postponed.

Paragraph 179 is again read and postponed.

Paragraph 180 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 91, line 8, at the end to insert, (" Although the Executive authority of the Federation vested " in the Governor-General as the King's representative includes the super- " intendence, direction and control of the military government in the sense

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491; and *vide supra*, paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part I). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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" in which these words are used in section 33 (1) of the Government of India " Act, the command of the Forces in India will be exercised by a Commander- " in-Chief to be appointed by His Majesty.")

The same is agreed to.

Paragraph 180 is again read as amended.

The further consideration of paragraph 180 is postponed.

Paragraph 181 is again read.

It is moved by the Lord Snell, Mr. Cocks and Mr. Morgan Jones. Page 91, to leave out paragraph 181 and to insert the following new paragraph :—

(" 181. We see no reason why the Indian Federation should not have control over the Department of Foreign Affairs. We recognise that the Viceroy, in his relations with those Indian States which do not join the Federation, and in relation to all the States in regard to those subjects which are outside the Federation, will continue to control the Department which in the Government of India has been hitherto described as foreign; but we consider that in its relationship to the rest of the world India is entitled to have the same control over her foreign policy as that which is conceded to the other Dominions. It may be suggested that, inasmuch as Indian Defence is to be a Reserved Subject, Foreign Affairs should also be reserved, but in our view this is to turn the argument inside out. Armaments depend on foreign policy. India has for years paid for her own defence, although the foreign policy of the British Commonwealth of Nations, of which she is a member, has been decided without her having an effective voice. We would point out that at the Peace Conferences and subsequently in the League of Nations India has had representation as a nation. We consider that this recognition which was given to her as a consequence of the services of her sons in the Great War should be given a full content by conceding to her the same degree of control over her external relations as is enjoyed by her sister States in the British Commonwealth.")

The same is disagreed to.

Paragraph 181 is again read.

The further consideration of paragraph 181 is postponed.

Paragraph 182 is again read and postponed.

Paragraph 183 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 92, lines 13 to 36, to leave out from the beginning of line 13 to the end of the paragraph and to insert (" It seems to us a mistake to have a special reserved " Department of the Government of India to look after the religious ministra- " tions of the Army and Services in India. Such ministrations, in our opinion, " should form part of the organization of the Army and the Services. Whether " it is wise to make such ministrations a drain on the revenues of a people of " other religions is, we think, a point that has not heretofore been sufficiently " considered. While we are prepared to accept the proposition that so long as " we have an Army in India their spiritual needs should be provided for, we " cannot see why this can only or best be achieved by the proposal of the " White Paper to retain the Ecclesiastical Department permanently as a " special Reserved Department of the Government of India. We think it " would be very much better to abolish this Department and include religious " ministrations as an integral part of the Army administration. We would go " further and propose that so long as we have an Army and Services in India " whose spiritual needs are entirely different from those of the peoples amongst " whom they serve, it would be a gracious act on our part if the necessary

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" expenses were placed on British instead of on Indian revenues. We are in " any event entirely opposed to this being included as a Reserved Department " of the Government of India.")

The same is disagreed to.

Paragraph 183 is again read.

The further consideration of paragraph 183 is postponed.

Paragraph 184 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 93, line 21, after (" deliberations ") to insert (" —and indeed that there will be free resort by " both parties to mutual consultation ".)

The same is agreed to.

Paragraph 184 is again read, as amended.

The further consideration of paragraph 184 is postponed.

Paragraph 185 is again read and postponed.

Paragraph 186 is again read.

It is moved by the Marquess of Linlithgow. Page 94, lines 24 and 25, to leave out (" even more than the Provincial Governors ").

The same is agreed to.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 94, line 26, after (" head ") to insert (" who would be fully conversant with " Indian affairs and in close contact with the administration.")

The same is disagreed to.

It is moved by the Lord Snell, Mr. Morgan Jones, and Mr. Cocks. Page 94, lines 26 to 28, to leave out from (" head ") in line 26, to (" it ") in line 28.

The same is disagreed to.

Paragraph 186 is again read as amended.

The further consideration of paragraph 186 is postponed.

Paragraph 187 is read and postponed.

Paragraphs 188 to 192 are read.

It is moved by the Lord Eustace Percy. Pages 94 to 97, to leave out paragraphs 188 to 192 inclusive, and to insert the following new paragraph :—

The difficulties of Dyarchy at the Centre and of composite nature of Executive.

("188. We have considered in an earlier part of our Report the problem of the relations between the Executive and the Legislature of a Province, and those remarks apply *mutatis mutandis* to the relations between the Federal Executive and Legislature. It is only necessary to have to refer briefly to two special complications which are introduced into the Federal problem; the existence of the Governor-General's Reserved Departments and the question of the representation of the States in the Ministry. On the first point, we have already spoken frankly of the difficulties presented by a system of dyarchy. We can only repeat that, faced by a choice in which every conceivable alternative involves some division of responsibility and some danger of friction, we recommend the alternative which draws the line of division at Defence and Foreign Affairs as corresponding most nearly with the realities of the situation; that, of these, the cruical question, so far as the Legislature is concerned, is Defence; and that on this question we regard an All-India Federation as the best means of ensuring that the Central Legislature, while discharging its legitimate function of discussion and criticism, will not (in the phrase of the Statutory Commission) seek ' to magnify its functions in the reserved field '. On the second point, it will be observed that,

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under the White Paper proposals, the Governor-General is to be directed by his Instrument of Instructions to include, ' so far as possible ', in his Ministry, not only members of important minority communities, but also representatives of the States which accede to the Federation. It may be thought that this proposal runs the risk of adding to the possible dangers of communal representation in the Ministry, to which we have referred in speaking of the Provinces, the further dangers of territorial representation. This, however, is a common feature of all Federations. Few, if any, have in practice found it possible to constitute an Executive into which an element of territorial representation does not in some sense enter, and in the Swiss Constitution the principle of such representation is explicitly laid down ; so that to advance this as an argument against the White Paper proposals would be, in effect, to reject an All-India Federation even as an ultimate ideal. Moreover, the limitation of the functions of the Federal Executive to matters of essentially All-India interest is calculated to minimise the dangers of both communal and territorial representation. Tariffs and excise duties, currency and transport are national, not communal questions ; and it is not unreasonable to assume that any clash of interest with regard to them will tend in future to have an economic rather than a communal origin. There will, therefore, be centripetal as well as centrifugal forces ; and it seems to us indeed conceivable that, until the advent of a new and hitherto unknown alignment of parties, a central Executive such as we have described may even come to function, as we believe that the Executive of the Swiss Confederation functions, as a kind of business committee of the Legislature.")

After debate the further consideration of the above amendment is postponed.

Paragraphs 188 to 192 are again read.

The further consideration of paragraphs 188 to 192 is postponed.

Paragraph 193 is again read and postponed.

Paragraph 194 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 98, line 30, after (" Paper ") to insert (" It should be recognized that to attempt " to provide a legislative body which shall be representative of a population " of over 350 millions is without precedent. We are met at the outset by " the difficulty of applying the representative system on a basis of direct " representation to a unit of such magnitude. On the one hand, if the constituencies were of a reasonable size, the resultant chamber would be unmanageably large ; if on the other hand, the chamber were of a reasonable " size the constituencies on which it was based would necessarily be enormous.")

The same is agreed to.

Paragraph 194 is again read as amended.

The further consideration of paragraph 194 is postponed.

Paragraph 195 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 99, line 3, at the end to insert ("As we understand the proposals of the White " Paper it is suggested that the two Chambers, except for the proviso that " Money Bills will be initiated in the Assembly and that the range of the " functions of the Upper Chamber in relation to Supply will be less extensive " than those of the Lower Chamber, are to possess equal powers, and that " in the event of differences between the two Houses, the device of a Joint " Session should be employed. We consider that, in effect, this really makes " the Central Legislature a single Chamber, meeting for certain purposes in

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" two sections, and makes an unnecessary duplication of representation, which " results in an unwieldy body of legislatures. We, therefore, propose that " there should be only one Chamber at the Centre, and we accept the pro- " portions laid down for representation from the Provinces and the States as " applying to a single chamber.")

Objected to.

On Question :—

Contents (3).	Not Contents (20).
Lord Snell.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Marquess of Reading.
	Earl of Lytton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Simon.
	Sir John Wardlaw-Milne.

The said amendment is disagreed to.

Paragraph 195 is again read.

The further consideration of paragraph 195 is postponed.

Paragraphs 196 to 198 are again read and postponed.

Paragraphs 199 to 203 are again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Pages 100 to 102, to leave out paragraphs 199 to 203 inclusive, and to insert the following new paragraphs :—

(" 199. There are, broadly, three possible ways of constituting the electorate for the federal legislature so far as British India is concerned, apart from the indirect method adopted in the Minto-Morley reforms, which now has few, if any, supporters : the ordinary system of direct election by electors in territorial constituencies : the indirect system in its group form, whereby the whole electorate is divided into small groups of primary voters, say 20 to 50, who elect secondary electors, who then elect the candidate in ordinary territorial constituencies : and the indirect system in the form in which the legislature of the units which, in the case of India would be the provinces, elect the members of the federal house. We will deal with these in reverse order."

" 200. We are opposed to the third alternative for five main reasons. In the first place it means that the provinces, in effect, will be able to control the Central Legislature and therefore the Ministry. The supreme problem in India is the maintenance of its constitutional unity. The breakdown of its central government is the greatest catastrophe which could overtake the country. Yet to constitute the central legislature by

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what, in effect, will be provincial delegations, the majority of whom will hold their seats on the nomination, and at times of re-election at the discretion, of the Provincial Governments and the parties which support them in office, would, in our view aggravate the tendency to provincial separatism which already exists and endanger the unity of India. It might also confront the Governor-General with situations of great gravity if he alone had to stand for Indian unity as against provincial separatism. We see no reason for abandoning in the case of India the almost invariable practice of other federations that the Upper House should represent the units and the Lower House the nation. In the second place the system inevitably involves the confusion of provincial and all-India issues at times of election with bad results for both central and provincial legislatures. Legislatures ought to be elected on the issues which they are constitutionally responsible for dealing with. The indirect system under consideration means that the provincial elections may turn on all-India issues such as tariffs or income tax, in which case there will be no clear decision about the provincial issues which the legislatures will alone have to deal with in the next few years or that they may turn on provincial issues alone, in which case the electorate will have no voice or influence in all-India issues. In the third place the system inevitably opens the door to corruption for it means that each member of the central legislature, which will deal with matters vitally affecting business and finance, will be elected by a number of provincial electors on the average not more than 7 or 8 in number. So far as we can ascertain the number of members of the Provincial Legislative Assemblies required to elect a member of the All-India Legislative Assembly, according to the proposals for indirect election submitted to us would be as follows :—

	General Seats.	*Moslem Seats.*	*Sikh Seats.*
Madras	8	4	—
Bombay	9	5	—
Bengal	8	7	—
U.P.	8	6	—
Punjab	8	7	6
Bihar	6	5	—
C.P.	10	5	—

"In the Council of State the equivalent numbers would be about the same, though at the first election the members would go through the strange process of electing two members, one after the other. The opportunities for corruption under a system which enables any seven or eight members of a provincial legislature to return a member of the Central Legislature needs no emphasis from us. Fourthly, the system of electing the central legislature by the provincial legislatures is bound to be extremely intricate and confusing with its combination of electoral colleges elected by enormous constituencies in some provinces with election by the provincial Upper Houses which are themselves elected in part by the Provincial Assemblies, in others. It is likely to be caucus ridden and it will inevitably make necessary large numbers of provincial bye-elections whenever an election to the central legislature takes place, with possibly unfortunate results on the stability of the provincial ministries. Finally, this form of indirect system involves reversing a system which has already been in operation for the Indian Legislative Assembly not unsuccessfully for thirteen years and which has the support of the great majority of Indian political leaders. It is sometimes said that the members of existing legislatures are not in adequate touch with their constituents, but this is almost inevitable so long as the legislature itself is without responsibility as it constitutionally is to-day. The contact with the constituencies is likely rapidly to increase with the advent of a measure of responsible government at the centre. In the

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light of these considerations we feel that we have no option but to reject the method of composing the Central legislature by indirect election from the Provincial legislatures."

"201. The arguments for the second alternative, the group system of indirect election, are very strong. On the one hand the population of British India is over 250,000,000, which would mean a population of about 500,000 in every constituency and with adult franchise an electorate of between 250,000 and 300,000 per member, even with a house as large as 500. Such an electorate would be far too large to make possible that effective contact between the representative and his constituents which is the necessary basis for the successful working of Parliamentary institutions. On the other hand there is a great deal to be said for the view that in a country the overwhelming majority of whose people are still illiterate and live in villages, the best basis for a representative system is that the electors for the central assembly should be men or women who have been chosen by small groups of villagers to vote on their behalf. If the groups were of say 25 persons even adult suffrage at the primary stage would only result in 10,000 secondary electors per constituency in a house of 500 or 20,000 in a house of 250. We have, however, been reluctantly convinced by the report of the Indian Franchise Committee, which made a serious attempt to work out a system of this kind, and other evidence, that no group system is practicable to-day in India. The administrative difficulty involved in forming and polling the groups seems to be insuperable, and the problem of framing any system of election within the group which will produce a truly representative elector seems at present to be insoluble, owing to caste, communal and other divisions.")

"202. We are, therefore, driven to the conclusion that the right basis for the constitution of the Federal House is that proposed in the White Paper, namely direct election to the Legislative Assembly from territorial constituencies by an enlarged but still restricted electorate, and indirect election to the Council of State from the Provincial Legislative Assembles by the system of the single transferable vote. We think that this will produce that balance of representation at the centre between the provincial and national interests which the history of other federations shows to be both desirable and to have stood the test of experience. It avoids the constitution of the Council of State mainly by election from provincial Upper Houses, themselves partly the product of indirect elections, which must, as it seems to us, result in a federal second chamber which is unduly representative of vested interests and not sufficiently responsive to popular feeling and needs to be given equal power with an Assembly which is itself indirectly elected by the provincial assemblies. We are prepared to agree to second chambers in the provinces 16
provided they are possessed only of the power to delay and revise hasty or ill-judged legislation for more is not necessary in the restricted sphere of provincial powers. We are in favour of the White Paper proposal that the two houses of the central legislature one of which is to represent the units by indirect election from the popular provincial house and the other the nation by direct election, should have equal powers. But we are opposed to any proposal whereby the two federal houses are indirectly elected by the provincial assemblies and Upper Houses respectively and possessed of equal powers."

"203. We think that the franchise proposed in the White Paper, namely the electorate which has exercised the franchise for the provinces since 1920 and has therefore gained experience, is a sensible extension, and that with the proposals for the special representation of women, labour, landlords, commerce, and depressed clases, it secures a reasonable representation to all the main sections and interests of the community.

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We recognise the difficulty which candidates will have in establishing contact with their constituents in the large areas which the federal constituencies must necessarily comprise, especially so long as separate electorates continue. But the facilities for communication are daily increasing. India has indigenous institutions through which public opinion is able to express itself and with which candidates can get into touch. In almost all countries the radio and quick transport make possible constituencies far larger than were practicable a few years ago. The Indian Franchise Committee has shown that with 250 members for British India the number of electors ought not to exceed 30,000 to 40,000 in each constituency, that the average rural constituency will not exceed 6,000 to 12,000 square miles, and that these constituencies will be one-half the size of the constituencies which have hitherto elected to the present Assembly. We admit the force of the view that under present conditions such constituencies will be difficult to manage, but we think that the objections to such constituencies are far less serious than those which we have urged against constituting the central legislature solely by indirect election from the provincial legislatives. Constituencies of immense area and containing enormous numbers of voters are inherent in large scale Federations, and in Canada, Australia and the United States have been in existence for many decades without impairing the system of representative government. While, however, we support the franchise proposals in the White Paper for the federal assembly, we believe that any considerable extension of the franchise towards adult franchise under a system of direct election to the Assembly would cause an inevitable breakdown. We do not believe that constituencies both of large size and containing an electorate or between 200,000 and 3000,000 people can be made the basis of a healthy Parliamentary system. We think that Parliament and Indian public opinion should face these facts, and recognise that if the elections to the federal Assembly are to be direct, in the sense that the electorate will vote directly for members of that Assembly and on federal issues alone, some system of group election will have to be contrived before any substantial extension of the federal franchise can take place. We are by no means convinced that this cannot be found. The group system apparently works with considerable success in many countries where conditions are not dissimilar to those of India, and we hope that Indian public opinion will recognise that if its declared goal of adult suffrage is to be reached, it must contrive some system of group or secondary election to make it practicable.")

It is moved by Mr. Cocks, Mr. Foot and Mr. Morgan Jones, as an amendment to the above motion, to insert the proposed new paragraphs 199 to (" We ") in line 16, of the proposed new paragraph 202 :—

Objected to.

On Question :—

Contents (5)	Not Contents (18).
Marquess of Reading.	Marquess of Salisbury.
Lord Ker (M. Lothian).	Marquess of Zetland.
Mr. Cocks.	Marquess of Linlithgow.
Mr. Foot.	Earl of Lytton.
Mr. Morgan Jones.	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.

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Contents (5).

Not Contents (18)—(*continued.*)

Mr. Davidson.
Sir Samuel Hoare.
Sir Joseph Nall.
Lord Eustace Percy.
Sir John Simon.
Sir John Wardlaw Milne.
Earl Winterton.

The sa d amendment to the above motion is disagreed to.

The original amendment is again moved.

The same is disagreed to.

Paragraph 199 is again read.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page,100, line 12, to leave out (" may also be argued ") and to insert (" should also be pointed out ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 100, lines 16 to 30, to leave out from (" system,") in line 16 to the end of the paragraph and to insert (" Bearing in mind the strength of Indian opinion in " this matter we have come to the conclusion, notwithstanding the objections " which can be urged against it, that there is no alternative to the adoption " of a system of direct election.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by The Lord Eustace Percy. Page 100, line 30, at the end to insert (" Indeed, any considerable extension of the franchise under a system " of direct election would cause an inevitable breakdown. We do not believe " that constituencies both of large size and containing an electorate of between " 200,000 and 300,000 people can be made the basis of a healthy parliamentary " system. We think that Parliament and Indian public opinion should face " these facts and should recognize that direct election, apart from its im- " mediate merits or demerits at the present time, cannot provide a sound " basis for Indian constitutional development in the future. We cannot " believe that it would be wise to commit India at the outset of her " constitutional development to a line which must prove to be a blind alley.")

The same is agreed to.

Paragraph 199 is again read as amended.

The further consideration of paragraph 199 is postponed.

Paragraphs 200 and 201 are again read and postponed.

The following amendment is laid before the Committee :—

Mr. Attlee, Mr. Cocks, Mr. Morgan Jones and the Lord Snell to move. Pages 100 and 101, to leave out paragraphs 200 and 201.

The consideration of the said amendment is postponed.

The further consideration of paragraphs 200 and 201 is postponed.

Paragraph 202 is again read.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 101, to leave out paragraph 202 and to insert the following new paragraph :—

(" 202. We have examined the proportion of members allocated to the various Provinces, and while we recognize that a smaller Province must have some addition to its population ratio, we are unable to accept

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the differentiation made in favour of Bombay and the Punjab at the expense of Madras, Bengal and the United Provinces. We see no reason why Bombay should be allocated almost two members per million while Madras and Bengal get less than one. We consider that all Provinces, with the exceptions mentioned above, should come in on an equal basis.

"We have already expressed our objections to special representation being given to the landlords, the universities, commerce and industry, and these objections hold good at the Centre as well as in the Provinces. We recognize, however, that there is a case for some representation of commerce and industry at the Centre, in view of the character of the questions which will come up for decision here, and we should therefore, as a temporary measure, be prepared to see some representation given to those interests. In other respects, we accept the allocation of seats given in the White Paper, subject to the following variations :—

"The White Paper proposes that in the Federal Assembly Labour should be given ten seats as against twenty-six assigned altogether to the representatives of Commerce and Industry, the landlords and the Europeans. We regard this as wholly disproportionate as it would mean that Labour would only have 4 per cent. of the total seats from British India, and that a few thousand Europeans would have a greater voting strength than the many millions of industrial and rural wage earners. As is pointed out by the Indian Franchise Committee, Labour legislation will be predominently a Federal Subject under the new constitution, while the restricted franchise at the Centre will not bring on the electoral roll the same proportion of the working classes as in the case of the provincial legislatures. It is, therefore, especially important that Labour representation should be adequate.

"We recommend, therefore, that the seats allotted to Labour should be raised to twenty-six.

"We note that according to the White Paper the distribution of seats is to be on a provincial basis. We suggest that this requires modification. Certain trades and industries, such as textiles and railways are distributed over more than one province. If seats should be allocated on a purely provincial basis, certain trade unions would be handicapped, while others would be given more than their reasonable quota of representation. We recommend that Labour seats should be fixed on an industrial basis with due regard to provincial considerations.

"We accept the provisions of the White Paper for the Federal Franchise, subject to the amendments which we have suggested in respect of the qualifications of women electors, and to our proposals in regard to Labour representation, but we desire to state that we regard the provision as only a temporary one until a means can be found of extending the franchise and of making the British-Indian side of the Federal Legislature more representative of the mass of the people.")

The same is disagreed to.

It is moved by the Lord Eustace Percy. Page 101, lines 15 to 18, to leave out from (" bodies ") in line 15, to (" we ") in line 18, and to insert (" There " are interesting precedents for this, for instance, in the Dutch East Indies, " and there is much to be said for the view that, in principle, it is the best " form of indirect election. Its practical merits, however, depend upon the " character of the local bodies. In India, this form of indirect election was a " prominent feature of the Morley-Minto Constitution, and the general tenor " of the evidence we have received is that the system did not work well and " that this experience of it has created a strong prejudice against it in the " mind of many Indians. Here again, we would repeat what we have said " in paragraph 129, that we do not wish to rule out the introduction of some " system on these lines in the future and that the problem is essentially one

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"which Indians should consider for themselves; but we are satisfied that, "at the present time, it would be a mistake to base the Federal Assembly "upon this form of election.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 202 is again read.

The further consideration of paragraph 202 is postponed.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 101, after paragraph 202 to insert the following new paragraph :—

Indirect election to be regarded in the nature of an experiment.

("202A. We feel strongly, however, that it is impossible for Parliament to lay down to-day the exact form which the Indian Federal Legislature is to take for any long period ahead. This question has been examined by many Commissions and Committees and Round Table Conferences and every proposal which has emerged has been recognised to be the kind of tentative and uncertain compromise which is inherent in an attempt to create a Federation on a scale and of a character hitherto without precedent. We feel, therefore, that while our proposals seem to us the best combination which is practical at the present time, it is inevitable that further consideration should be given to the composition of the central legislature in the light of practical experience of the working of the new constitution. We do not propose that there should be any formal examination of the problem by a statutory Commission after any specific date, for we think that experience has shown that there are strong objections to automatic provisions of this kind. But we consider that it should be clearly understood that after sufficient time has elapsed to enable clear judgments to be formed of the way in which the constitution works and of the new political forces it has brought into being, it may be necessary to propose amendments and that the Indian Federal legislature should lay its recommendations before Parliament in the form recommended in later paragraphs of this Report.")

The same is agreed to.

New paragraph 202A is again read.

The further consideration of paragraph 202A is postponed.

Paragraph 203 is again read.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Pages 101 and 102, to leave out Paragraph 203.

The same is disagreed to.

Paragraph 203 is again read.

The further consideration of paragraph 203 is postponed.

Paragraph 204 is again read.

It is moved by Mr. Cocks and Mr. Morgan Jones. Page 102, lines 22 to 27, to leave out from the beginning of line 22 to the end of the paragraph and to insert ("agree with this proposal.")

Objected to.

On Question :—

Contents (2).	Not Contents (15).
Mr. Cocks.	Marquess of Salisbury.
Mr. Morgan Jones.	Marquess of Zetland.
	Marquess of Linlithgow.
	Marquess of Reading.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.

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Contents (2)

Not Contents (15)—(*continued.*
Lord Hutchison of Montrose.
Mr. Butler.
Sir Austen Chamberlain.
Sir Reginald Craddock.
Mr. Davidson.
Sir Samuel Hoare.
Lord Eustace Percy.
Sir John Wardlaw-Milne.

The Earl Winterton did not vote.

The said amendment is disagreed to.

Paragraph 204 is again read.

The further consideration of paragraph 204 is postponed.

Paragraph 205 is again read.

It is moved by the Lord Eustace Percy. Page 102, line 34, after (" Paper ") to insert (" If the size of the Council of State were materially reduced and if, " as we have recommended, one-third of its membership is replaced every " three years, the number of members whom provincial electoral colleges " would be called upon to choose at any given election would be too small " for the method of the single transferable vote to produce an equitable " result from the point of view of minorities; and we should greatly regret " the introduction of a communal basis for the Federal Upper House. There " is another consideration affecting the Federal House of Assembly. It would " be difficult, if the size of this House were reduced, to make any proportionate " reduction in the number of seats assigned to special interests, since this " would in several instances deprive them of seats which they have in the " existing Legislative Assembly. These special interest seats, apart from " those assigned to European commerce and industry, would in practice be " almost entirely occupied by members of the Hindu community. We think " it important that the Muhammadan community should have secured to it, " as the White Paper proposes, one-third of all the British-India seats; but " if the number of the special interest seats is to remain undisturbed, the " application to a substantially smaller House of the undertaking given to the " Muhammadans would result in a disproportionate number of the ordinary " (non-special) seats being allocated to the Muhammadans.")

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 102, lines 34 and 35, to leave out (" In the first place,") and to insert (" In addition to these considerations " in regard to British Indian representation, it must also be borne in mind " that ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 103, lines 3 to 5, leave out from (" figure.") in line 3 to (" If ") in line 5.

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 103, lines 5 to 27, to leave out from (" numbers.") in line 5 to the end of line 27.

The same is agreed to.

Paragraph 205 is again read as amended.

The further consideration of paragraph 205 is postponed.

It is moved by the Lord Eustace Percy. Page 103, after paragraph 205, to insert the following new paragraph:

Proposal for unicameral Legislature rejected.

(" 205A. We have carefully considered the proposal that the Federal Legislature should consist of one Chamber only. We recognise that there is much to be said for this proposal, but, on the whole, we do not

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feel able to reject the view which was taken by the Statutory Commission and which has been also consistently taken by, we think, the great bulk of both British and Indian opinion during the whole course of the Round Table Conferences, that the Federal Legislature should be bi-cameral. Certainly, a reversal if this view would be distasteful to nearly all, if not to all, the Indian States.")

The same is agreed to.

New paragraph 205A is again read.

The further consideration of paragraph 205A is postponed.

Paragraph 206 is again read and postponed.

Paragraph 207 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 104, lines 11 to 13, to leave out from the beginning of line 11 to the end of the sentence and to insert (" We consider that the introduction of status unneces- " sarily complicates the question, and we would desire to see laid down a " definite population basis for representation, though we recognize that it " may be difficult to obtain consent to this simplification. In any event, " we think that there should be a definite formula which could be applied " to every State, so that if, as may well be, the Federation is built up by the " gradual accession of States, there may be at hand the means of allocating " forthwith the representation to which any particular State is entitled.")

The same is disagreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 104, line 18, at the end to insert (" It would also, we suggest, contribute to the selection of " better qualified States' representatives in the Federal Legislature if adjacent " States, at any rate those not entitled under the scheme proposed to " continuous individual representation, were grouped together regionally " for the selection of joint representatives in the Federal Legislature who " would retain their seats throughout its full term.")

The same is agreed to.

Paragraph 207 is again read as amended.

The further consideration of paragraph 207 is postponed.

Paragraph 208 is again read.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 104, lines 25 to 39, to leave out from (" unfilled ") in line 25 to the end of the paragraph and to insert (" We agree with this and are opposed to the " suggestion that weightage should be given to the States' representatives if " the full number of States has not joined the Federation. We think that " by allowing only such representation to the States side as is proportionate " to the number and population of the States acceding there will be an " incentive on the part of those in the Federation to work for the inclusion " of others.")

The same is disagreed to.

Paragraph 208 is again read.

The further consideration of paragraph 208 is postponed.

Paragraphs 209 to 213 are again read and postponed.

Ordered, that the Committee be adjourned to Monday next at half-past Four o'clock.

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Die Lunae 9° Julii 1934.

Present:

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

Paragraph 214 is again read.

It is moved by Mr. Cocks, and Mr. Morgan Jones. Page 106, lines 15 to 37, to leave out from ("Assemblies.") in line 15 to the end of the paragraph and to insert (" and we see no reason why the same principle should not be applied " to the Federal Legislature, as in the case of the United Kingdom.")

Objected to.

On Question:—

Contents (3)	Not Contents (17)
Lord Ker (M. Lothian).	Lord Archbishop of Canterbury.
Mr. Cocks.	Marquess of Salisbury.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Earl of Derby.
	Earl Peel.
	Viscount Halifax.
	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The amendment is disagreed to.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 106, lines 23 to 27 to leave out from (" Session.[1]"), in line 23 to the end of the paragraph.

Objected to.

[1] White Paper, Proposals 38, 41 and 48.

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491; and *vide supra*, paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. 1, Part I.)

A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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On Question:—

Contents (6)	Not Contents (16)
Lord Archbishop of Canterbury.	Marquess of Salisbury.
Lord Ker (M. Lothian).	Marquess of Linlithgow.
Lord Snell.	Earl of Derby.
Mr. Cocks.	Earl Peel.
Mr. Foot.	Viscount Halifax.
Mr. Morgan Jones.	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The amendment is disagreed to.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 106, lines 35 to 37, to leave out from (" forthwith ") in line 35 to the end of the paragraph.

The same is agreed to.

Paragraph 214 is again read as amended.

The further consideration of paragraph 214 is postponed.

Paragraph 215 is again read.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 107, lines 5 to 9, to leave out from the beginning of line 5 to the end of the sentence in line 9.

The same is disagreed to.

Paragraph 215 is again read.

The further consideration of paragraph 215 is postponed.

Paragraph 216 is again read.

It is moved by Sir John Wardlaw-Milne. Page 108, lines 2 and 3, to leave out from (" is ") in line 2 to (" be ") in line 3 and to insert (" that there should be no such prohibition, but that the matter should ").

The same is agreed to.

Paragraph 216 is again read as amended.

The further consideration of paragraph 216 is postponed.

Paragraph 217 is again read.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 108, line 31, to leave out (" though ") and to insert (" now that ").

The same is agreed to.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 108, lines 34 to 36, leave out from (" other,") to the end of the sentence and to insert ("a nexus of a new kind must be established between the " Federation and its constituent units.")

The same is agreed to.

It is moved by the Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones, Page 108, after the above amendment to insert (" We are impressed by " the possible dangers of a too strict adherence to the principles of what

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" is known as Provincial Autonomy. The Indian Statutory Commission in " its recommendations for Provincial Autonomy was, we think, not unaffected " by the desire to give the largest possible ambit to autonomy in the Provincial " sphere, owing to their inability at that time to recommend responsibility at " the Centre. The larger measure of Indian self-government which has " obtained in the Provinces during the past twelve years has also, we think, " tended to develop, and perhaps over-develop, a desire for complete freedom " of control from the Centre.")

The same is agreed to.

Paragraph 217 is again read as amended.

The further consideration of paragraph 217 is postponed.

Paragraph 218 is again read.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 109, line 2, after (" officers ") to insert (" subject, in the case of the " States, to the terms of the Ruler's Instrument of Accession ").

The same is agreed to.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 109, lines 4 to 11, to leave out from (" Government") in line 4 to the second (" The ") in line 11.

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 109, lines 20 to 24, to leave out from (" part ") in line 20 to the first (" to ") in line 24, and to insert (" but in addition to this general statement of a moral obligation, the White " Paper proposes to empower the Federal Government ").

The same is agreed to.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 109, line 29, at the end to insert (" In the case of the States, it is " proposed that the Ruler should accept the same general moral obligation, " which, as we have said, will rest upon the Provincial Governments, to " secure that due effect is given within the territory of his State to every " Federal Act which applies to that territory. But we think that the White " Paper rightly proposes that any general instructions to the Government " of a State for the purpose of ensuring that the federal obligations of the " State are duly fulfilled shall come directly from the Governor-General " himself.")

The same is agreed to.

Paragraph 218 is again read as amended.

The further consideration of paragraph 218 is postponed.

Paragraph 219 is again read.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 109, leave out paragraph 219 and to insert the following new paragraph :—

Distinction between legislation in the Exclusive and Concurrent fields.

(" 219. We are of opinion that the proposals in the White Paper on this subject require modification in two directions. In the first place, the White Paper draws no distinction between the administration and execution of Federal Acts with respect to subjects on which the Federal Legislature is alone competent to legislate (List 1) and the administration and execution of Federal Acts in the concurrent field (List 3). It is evident that in its exclusive field the Federal Government ought to have power to give directions to a Provincial Government as proposed in the White Paper ; but it is much more doubtful whether it should have such power in the concurrent field. The objects of legislation in this field will be predominantly matters of Provincial

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concern. The Federal Legislature will be generally used as an instrument of legislation in this field merely from considerations of practical convenience, and, if this procedure were to carry with it automatically an extension of the scope of Federal administration, the Provinces might feel that they were exposed to dangerous encroachment. On the other hand, the consideration of practical convenience which will prompt the use of the Federal Legislature in this field will often be the need for securing uniformity in matters of social legislation, and uniformity of legislation will be useless if there is no means of enforcing reasonable uniformity of administration. While, therefore, we think that the Federal Government should have no general power of giving directions to the Provincial Governments in regard to the administration of Federal Acts in the concurrent field, it is important that the Constitution should not impose an absolute bar to the exercise of such power by the Federal Government in cases where it is recognised to be necessary ".)

The same is agreed to.

New Paragraph 219 is again read.

The further consideration of paragraph 219 is postponed.

Paragraph 220 is again read.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 110, line 1, at the beginning to insert (" In " the second place ") and to leave out (" however ").

The same is agreed to.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 110, line 4, after (" Government ") to insert (" Under the White "Paper proposals.")

The same is agreed to.

Paragraph 220 is again read as amended.

The further consideration of paragraph 220 is postponed.

It is moved by the Lord Rankeillour. Page 110, after paragraph 220, to insert the following new paragraph :—

(" 220A. What, however, is the ultimate remedy in the event of inveterate contumacy on the part of the Province ? If it be considered to amount to a breakdown of the Constitution the Governor could be bidden by the Governor-General to use his reserve powers accordingly. It is, however, easy to imagine that the quarrel, however obstinate, might be confined to a sphere of no great importance and that the application of the ultimate weapon of authority would be disproportionate, if not grotesque. We suggest that in such a situation power should be given to withhold revenue which would otherwise be due to the Province. In the case of a State there appears to be no remedy under the proposals of the Government except such influence as the Viceroy might exercise in the sphere of paramountcy.")

The same is disagreed to.

Paragraph 221 is again read.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 110, to leave out paragraph 221.

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 110, line 40, after (" fit.") to insert (" The same principle should apply to matters in which " action or inaction by a Provincial Government within its own exclusive " sphere affects the administration of an exclusively federal subject—that " is to say, it should be open to the Federal Government to give directions to " a provincial Government which is so carrying on the administration of a

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" provincial subject as to affect prejudicially the efficiency of a federal " subject, with a discretionary power in the Governor-General in the last " resort to secure the carrying out of such directions through orders issued " by him to the Governor.")

The same is agreed to.

Paragraph 221 is again read as amended.

The further consideration of paragraph 221 is postponed.

Paragraph 222 is again read and postponed.

Paragraph 223 is again read.

It is moved by the Lord Eustace Percy. Page 111, line 40, to leave out (" extra-constitutional ") and to insert (" supplementary.")

The same is agreed to.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 111, lines 44 to 46, to leave out from (" we ") in line 44 to the end of the sentence and to insert (" consider that every effort should be made " to develop a system of inter-Provincial conferences, at which administrative " problems common to adjacent areas as well as points of difference may be " discussed and adjusted.")

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 111, line 47, to page 112, line 5, to leave out from (" us,") in line 47, page 111, to the end of the paragraph on page 112 and to insert (" and we draw attention in later paragraphs of our Report (for instance, paragraphs 227, 294 and 296) to a number of matters " on which it is, in our view, important that the Provinces should co-ordinate " their policy, in addition to the financial problem which we discuss in " paragraph 259. It is obvious that, if departments or institutions of co- " ordination and research are to be maintained at the Centre in such matters " as agriculture, forestry, irrigation, education and public health, and if such " institutions are to be able to rely on appropriations of public funds sufficient " to enable them to carry on their work, the joint interest of the Provincial " Governments in them must be expressed in some regular and recognised " machinery of inter-Governmental consultation. Moreover, we think that " it will be of vital importance to establish some such machinery at the very " outset of the working of the new constitution, since it is precisely at that " moment that institutions of this kind may be in most danger of falling " between two stools through failing to enlist the active interest either of the " Federal or the Provincial Governments, both of whom will have many " other more immediate preoccupations. There is, however, much to be said " for the view that, though some such machinery may be established at the " outset, it cannot be expected to take its final form at that time, and that " Indian opinion will be better able to form a considered judgment as to the " final form which it should take after some experience in the working of the " new constitution. For this reason we doubt whether it would be desirable " to fix the constitution of an inter-Provincial Council by statutory provisions " in the Constitution Act, but we feel strongly the desirability of taking " definite action on the lines we have suggested as soon as the Provincial " Autonomy provisions of the Constitution come into operation. We think " further that, although the Constitution Act should not itself prescribe " the machinery for this purpose, it should empower His Majesty's Government " to regulate the working of such co-ordinating machinery as it may have " been found desirable to establish, in order that at the appropriate time " means may thus be available for placing these matters upon a more formal " basis.")

The same is agreed to.

Paragraph 223 is again read as amended..

The further consideration of paragraph 223 is postponed.

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Paragraphs 224 to 227 are again read and postponed.

The Appendix (II) is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Pages 114–116, to leave out from the beginning of the Appendix, page 114, to the end of line 11, page 116.

The amendment, by leave of the Committee, is withdrawn.

The Appendix (II) is again read.

The further consideration of Appendix (II) is postponed.

The A pendix (III) is again read and postponed.

Para aphs 228 and 229 are again read and postponed.

Paragraph 230 is again read.

It is moved by Sir Reginald Craddock. Page 130, line 24, at the end to insert :—(" On the other hand there are certain laws which come within the " description of the great Indian Codes and have all been enacted by the " Central Legislature. They have been in force throughout India for long " periods, in one case extending to seventy-five years. Some of these Acts " have scarcely been amended at all ; others have been substantially revised, " but in all cases after the fullest consultation with the Provincial Governments, " High Courts, Judicial and Executive Authorities and various Associations " most concerned with their subject matter. In this category may be " included—

" The Indian Penal Code.

" The Codes of Criminal and Civil Procedure.

" The Indian Evidence Act.

" The Indian Contract Act.

" The Indian Limitation Act.

" The Indian Registration Act.

" The Land Acquisition Act.

" The Negotiable Instruments Act.

" Some of these Acts confer rule-making powers upon Local Governments, " where it is considered advisable to provide for local differences, but in all " essential particulars they lay down principles applicable to the whole of " India. We would therefore reserve these Acts to the Centre with the proviso " that the Provincial Governments may only introduce amending legislation " with the prior approval of the Governor-General. The interpretation of all " these enactments has formed the subject of rulings of the various High " Courts which are followed throughout India and constitute throughout the " country the well-defined rights and obligations which are accepted and " understood by large sections of the people, not excluding the more intelligent " of the rural population.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 230 is again read.

The further consideration of paragraph 230 is postponed.

Paragraph 231 is again read and postponed.

Paragraph 232 is again read.

It is moved by the Lord Eustace Percy. Page 130, lines 44 and 45, to leave out from (" residue ") in line 44 to the end of the sentence.

The same is agreed to.

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It is moved by the Lord Eustace Percy. Page 131, lines 1 to 5, to leave out from ("elsewhere,") in line 1 to the end of the sentence, and to insert ("the method adopted in the White Paper has one definite constitutional "advantage, apart from its virtues as a compromise between two sharply "opposing schools of thought in India.")

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 131, line 29, to leave out ("involves") and to insert ("would involve not only the reservation to the "Federal Legislature of a generally defined overriding power, but also").

The same is agreed to.

Paragraph 232 is again read as amended.

The further consideration of paragraph 232 is postponed.

Paragraph 233 is again read and postponed.

Paragraph 234 is again read.

It is moved by the Lord Eustace Percy. Page 133, lines 11 to 21, leave out from ("concerned.") in line 11 to ("At") in line 21.

The same is agreed to.

Paragraph 234 is again read as amended.

The further consideration of paragraph 234 is postponed.

Paragraphs 235 to 238 are again read and postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 135, after paragraph 238 to insert the following new paragraph :—

The Railway Police.

("238A. We think it right to take this opportunity of drawing attention to the control of Railway Police as settled by the distribution of subjects. Railway Police in India is at present classified as a provincial subject, but the Central Government retains, under the existing Devolution Rules, the power to determine conditions as regards limits of jurisdiction and contributions by the Railways to the cost of maintenance. We are informed that for many years past the question of the allocation of the cost of the Railway Police between the provincial Governments on the one hand and the Railways on the other has been a subject of controversy, and we have considered the best means of avoiding, or at all events mitigating, such controversies under the new Constitution. One course, which has the obvious attractions of theoretical simplicity, would be to make the policing of the Railways, along with the general control of Railways, an exclusively federal subject, thereby making the Federal Government solely responsible for the control of the administration, and for the financing of the whole of the Railway Police. We are satisfied, however, that such an arrangement, which would reverse a practice of many years standing, would gravely prejudice the efficiency not merely of the Railway Police but of the Provincial Police as well. It is essential that the regular Police Force of a Province should act in close co-operation with the separately organised Railway Police and that both should be subordinate to the same Inspector-General. This result could not be secured if the control of the two bodies were in separate hands. We feel no doubt, therefore, that the right solution is to classify Railway Police as an exclusively provincial subject, that the Railway Police Force of each Province should be financed in the main from provincial revenues, but that there should be as at present a contribution from the Federal Government to the Provinces, which would, in fact, consist of the appropriate contribution from the Railways, and the amount of which would necessarily have

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to be determined by the Federal Government. But, although the administration of the Railway Police Force itself would thus remain an exclusive responsibility of the Provinces, it is clear that inefficiency or inadequacy of strength in the Railway Police would at once affect the administration of the federal subject of Railways, and we are satisfied that the recommendations which we have made elsewhere[1] would secure to the Federal Government adequate means of ensuring that the effective administration of the federal subject of Railways did not suffer through inadequacy or inefficiency on the part of the Railway Police. The Federal Government would be entitled, if it felt called upon to do so, to direct any or all of the provincial Governments so to order its Railway Police as to bring them up to the requisite standard of efficiency, and there would be an ultimate right residing in the Governor-General, at his discretion, in case directions from his Government to any or all of the Provincial Governments on the subject of the administration, the efficiency or the strength of the Railway Police were not complied with, to give the necessary orders to the Governor, which the latter in virtue of his special responsibility to secure the execution of orders lawfully issued by the Governor-General, would be in a position to get executed both administratively and so far as supply was concerned. The position is different in the States, where for the most part jurisdiction over railway lands has been ceded to the Crown and is exercised either through Police specially appointed for that purpose or through the agency of Provincial Railway Police. In cases where railway jurisdiction has been retained and is exercised by the State the proposals in the White Paper[2] defining the administrative relations between the Federal Government and the States provide the Governor-General with an appropriate corresponding power to secure the same result as that to be secured under our proposal in the Provinces.")

The same is agreed to.

New Paragraph 238A is again read.

The further consideration of paragraph 238A is postponed.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 135, after paragraph 238A, to insert the following new paragraph :—

("238B. It is proposed in the White Paper that such subjects as Health Insurance and Invalid and Old Age Pensions should be subjects of Provincial Legislation. We see serious objection to this, and consider that they should be included in the Concurrent List. While it is necessary that the more industrialized Provinces should be able to legislate on these subjects in the interests of the urban workers and should not have to wait for the concurrence of those which are predominantly rural, it is undesirable to exclude the possibility of All-India legislation which may well become necessary in order that there should be uniformity of treatment of the workers as between Province and Province and that industry in one Province should be burdened with obligations not imposed in another. Mr. N. M. Joshi, in the Memorandum submitted by him, argued that social insurance should also be included in the list of Federal subjects, but here, again, we consider it would be better that it should be in the concurrent list. We consider that in order to obtain an All-India Code of Labour and social legislation it is necessary that the Federal Legislature should have power to pass legislation imposing financial liabilities on the Provincial Governments, but that where this is done grants-in-aid from Federal revenues should be paid to the Provinces and also to such Indian States as are prepared to put in force such legislation. It should, in our view, follow that there should be a central inspection and a measure of control, wherever

Labour Legislation.

[1] *Supra*, paras. 218-221.
[2] White Paper proposal, para. 129.

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such grants are made. We consider that there seems much to be said for utilizing the machinery of adoptive Acts as used in Great Britain in connection with Local Government legislation. We have to endeavour to steer a course between delay caused by the difficulty of getting less advanced Provinces to agree to such legislation, and the possibility of friction in such matters as factory legislation as between Province and Province or the Provinces and the States. The mechanism of the adoptive Act supported by grants-in-aid in return for inspection seems to us unobjectionable in theory and useful in practice.")

Objected to.

On Question:—

Contents (3).	Not Contents (18).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Cocks.	Marquess of Salisbury.
Mr. Morgan Jones.	Marquess of Zetland.
	Marquess of Linlithgow.
	Marquess of Reading.
	Earl Peel.
	Viscount Halifax.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Sir John Wardlaw-Milne.

The Lord Eustace Percy did not vote.

The said amendment is disagreed to.

Paragraphs 239 and 240 are again read and postponed.

The Revised lists are again read and postponed.

Paragraphs 241 and 242 are again read and postponed.

Paragraph 243 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 146, line 32, at end to insert ("But the resources of the Centre comprise those which should "prove most capable of expansion in a period of normal progress.")

The same is agreed to.

Paragraph 243 is again read as amended.

The further consideration of paragraph 243 is postponed.

Paragraph 244 is again read.

It is moved by the Lord Eustace Percy. Page 147, lines 2 to 6, to leave out from the beginning of line 2 to the end of the paragraph.

The same is agreed to.

Paragraph 244 is again read as amended.

The further consideration of paragraph 244 is postponed.

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Paragraph 245 is again read.

It is moved by the Lord Eustace Percy. Page 147, line 7, to leave out from the beginning of line 7 to the end of line 13 and to insert (" The Provincial " claim to income tax has been given added impetus by the attitude of the " States in the matter of direct taxation. They have made it plain that, " while they are prepared to concede to the Federal Government the same " rights of indirect taxation in the States as it will possess in British India, " they are not prepared to concede to it the right to impose taxes on income " within their territories. This is an obvious anomaly. Its practical effect " on Federal finances is not, indeed, at the present moment very great. " Indirect taxation constitutes some four-fifths of the Central revenues, and " the yield of an income tax imposed on the States would, in all probability, " be low. It does, however, create an obvious theoretical difficulty in treating " income tax imposed on British India alone as predominantly a Federal tax. " While we are on this subject, however, it is only right to recognise that, " if the entry of the States creates one anomaly, it removes another very " serious one .")

The further consideration of the said amendment is postponed till to-morrow.

The further consideration of Paragraph 245 is postponed till to-morrow.

Ordered that the Committee be adjourned till to-morrow at half-past Ten o'clock.

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Die Martis 10° Julii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD RANKEILLOUR.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraph 245 is again considered.

The motion of the Lord Eustace Percy. Page 147, line 7, to leave out from the beginning of line 7 to the end of line 13 and to insert ("The "Provincial claim to income tax has been given added impetus by the "attitude of the States in the matter of direct taxation. They have "made it plain that, while they are prepared to concede to the Federal "Government the same rights of indirect taxation in the States as it will "possess in British India, they are not prepared to concede to it the right to "impose taxes on income within their territories. This is an obvious anomaly. "Its practical effect on Federal finances is not, indeed, at the present moment "very great. Indirect taxation constitutes some four-fifths of the Central "revenues, and the yield of an income tax imposed on the States would, in "all probability, be low. It does, however, create an obvious theoretical "difficulty in treating income tax imposed on British India alone as pre-"dominantly a Federal tax. While we are on this subject, however, it is "only right to recognise that, if the entry of the States creates one anomaly, "it removes another very serious one.") is again considered.

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 147, lines 27 to 39, leave out from (" disappears.") in line 27 to the end of the paragraph.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 245 is again read.

The further consideration of paragraph 245 is postponed.

Paragraph 246 is again read and postponed.

Paragraph 247 is again read.

It is moved by the Lord Eustace Percy. Page 148, lines 22 to 25, to leave out from (" alone : ") in line 22 to the end of the sentence.

The amendment, by leave of the Committee, is withdrawn.

All amendments are to the Draft Report (*vide infra* paras. 1–42B, pp. 470–491 ; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part 1). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Paragraph 247 is again read.

The further consideration of paragraph 247 is postponed.

Paragraphs 248 and 249 are again read and postponed.

Paragraph 250 is again read.

It is moved by the Earl Peel. Page 149, line 41, to leave out (" even as an " ultimate objective ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 150, line 6, at the end to insert: (" If a lower and an upper limit is to be fixed in the constitution for " the proportion of income tax to be allocated to the Provinces, we suggest " that the lower limit should be 50 per cent., including the subsidies to the " deficit Provinces, while the upper limit should be 50 per cent., excluding " those subsidies.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 250 is again read as amended.

The further consideration of paragraph 250 is postponed.

Paragraphs 251 and 252 are again read and postponed.

Paragraph 253 is again read.

It is moved by the Lord Eustace Percy. Page 150, line 29, after (" complexity ") to insert: (" and we do not think that it is part of our duty to suggest a detailed scheme,").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. After the said amendment to insert (" beyond commending for consideration the general " principle that the share of each Province should be determined primarily " by the proportionate amount contributed by its taxpayers in respect of " income-tax.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 150, lines 30 and 31, to leave out from (" approach,") in line 30 to the end of the paragraph and to insert: (" on the assumption that an automatic basis of distribution can be fixed. " The validity of this assumption will largely depend upon the amount of " income tax which can be allocated to the Provinces at any given time.")

The same is agreed to.

Paragraph 253 is again read as amended.

The further consideration of paragraph 253 is postponed.

Paragraph 254 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 150, lines 42 and 43, to leave out from (" contribution ") in line 42 to the end of the paragraph and to insert (" We appreciate the desire of the States for this " measure of elasticity and feel bound to accept it, though we must observe " that the details of the arrangement with the States seem likely to be " complex and that the adoption of the alternative procedure is economically " undesirable.")

The same is agreed to.

It is moved by the Lord Eustace Percy. After the said amendment to insert: (" The question of the corporation tax is a difficult one, not only " because of the complexity of these arrangements with the States, but also " because commercial opinion, both Indian and English is, we understand, " strongly opposed to the tax in principle. We do not, however, feel that it

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" is our duty to express an opinion on the taxation policy of the Government " of India. We, therefore, confine ourselves to the remark that, if a tax of " this kind is to be levied at all, it is obviously most desirable that it should " be levied generally on all companies, both in British India and in the " States.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 254 is again read as amended.

The further consideration of paragraph 254 is postponed.

Paragraph 255 is again read.

The Lord Eustace Percy. Page 151, lines 16 to 18, to leave out from (" completed.") in line 16 to the end of the paragraph.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 255 is again read.

The further consideration of paragraph 255 is postponed.

It is moved by the Lord Eustace Percy. Page 151, after paragraph 255 to insert the following new paragraph :

Taxes on agricultural incomes.

(" 255A. The White Paper proposes that the Provinces should have exclusive power to impose taxes on agricultural incomes, which are not at present subject to income tax. We approve this proposal.")

The same is agreed to.

New Paragraph 255A is read.

The further consideration of paragraph 255A is postponed.

Paragraph 256 is again read and postponed.

Paragraph 257 is again read.

It is moved by the Lord Eustace Percy. Page 152, line 20, at the end to insert (" A claim has also been made by Assam to a share in the proceeds of " the excise duty on petroleum. It is certain that Assam urgently needs an " assured increase in its revenue, but the question in what form this need is " to be met, whether by fixed subvention or by assignment of revenues, is a " matter of fiscal administration on which we do not feel called upon to " express an opinion.")

The same is agreed to.

Paragraph 257 is again read as amended.

The further consideration of paragraph 257 is postponed.

Paragraph 258 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 152, lines 21 - 23, to leave out from (" taxes ") in line 21 to (" in ") in line 23 and to insert (" (of which Stamp Duties are the only ones at present imposed, though " there may be a limited scope in the near future for Railway terminal " taxes)").

The same is agreed to.

Paragraph 258 is again read as amended.

The further consideration of paragraph 258 is postponed

Paragraph 259 is again read.

It is moved by the Lord Eustace Percy. Page 153, lines 7 to 13, to leave out from (" governments,") in line 7 to the end of the paragraph, and to insert

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(" We have already given our reasons for thinking that it is undesirable to " include in the Constitution Act statutory provisions in regard to an inter- " Provincial Council. Clearly, if it should prove impossible, at any rate in the " early years of the Federation, to devise an automatic basis for the distribu- " tion of income tax to the Provinces, some form of consultation between the " Governor-General and the Provincial Governments as to the methods of " distribution will have to be devised; but in that event the point can, if " necessary, be met by the Order-in-Council procedure which we have already " suggested.")

The same is agreed to.

Paragraph 259 is again read as amended.

The further consideration of paragraph 259 is postponed.

Paragraph 260 is again read and postponed.

It is moved by Mr. Butler and Sir Samuel Hoare. After paragraph 260 to insert the following new paragraph :—

Land customs duties imposed by Indian States.

(" 260A. It will be convenient to refer here to the power which the States already possess to impose customs duties on their land frontiers. It is greatly to be desired that States adhering to the Federation like the Provinces, should accept the principle of internal freedom for trade in India and that the Federal Government alone should have the power to impose tariffs and other restrictions on trade. Many States, however, derive substantial revenues from customs duties levied at their frontiers on goods entering the State from other parts of India. These duties are usually referred to as internal customs duties, but in many of the smaller States are often more akin to octroi and terminal taxes than to customs. In some of the larger States the right to impose these duties is specifically limited by treaty. We recognise that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed federation and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The charge must, of course, be left to the discretion of the States concerned as alternative sources of revenue become available. We have no reason for thinking that the States contemplate any enlargement of the general scope of their " tariffs " and we do not believe that it would be in their interest to enlarge it. But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation; and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion in Paragraph 129 of the White Paper would have to be brought to bear upon the States.")

The same is agreed to.

New Paragraph 260A is again read.

The further consideration of paragraph 260A is postponed.

Paragraphs 261 to 264 are again read and postponed.

Paragraph 265 is again read.

It is moved by the Lord Eustace Percy. Page 155, lines 14 to 20, to leave out from the beginning of line 14 to (" the ") in line 20, and to insert (" Similar considerations arise in.")

The same is agreed to.

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Paragraph 265 is again read, as amended.

The further consideration of paragraph 265 is postponed.

It is moved by the Lord Eustace Percy. Page 155, after paragraph 265, to insert the following new paragraph :—

Other deficit Provinces.

(" 265A. The subventions to other deficit Provinces also react on federal finance, but these would have been necessary before long under the existing Constitution, since it is clearly impossible to allow the continued accumulation of deficits by a Province, if over a number of years it is beyond its power within the resources assigned to it to balance its expenditure and revenue. The subvention to the North-West Frontier Province has already been granted, and the claim of Assam to an increase in its revenues has for some time been recognised as one which the Central Government must meet in some form.")

The same is agreed to.

New Paragraph 265A is read.

The further consideration of paragraph 265A is postponed.

Paragraph 266 is again read and postponed.

Paragraph 267 is again read.

It is moved by Mr. Morgan Jones, Mr. Attlee, and Mr. Cocks. Page 156, line 4, after (" Centre ") to insert (" It is a vital necessity that the strictest " economy should be observed wherever it is possible, without detracting from " the nation-building services. We would suggest that the most fruitful " fields for the practice of this economy would be (*a*) in the Army expenditure; " (*b*) in the transfer at as early a date as possible of the terms of future recruit- " ment, pay, etc., of the services to the Governments in India; and (*c*) in " having single-Chamber Government, both for the Federation and the " Provinces.")

Objected to.

On Question :—

Contents (3).	Not Contents (19).
Mr. Attlee.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Marquess of Reading.
	Earl of Lytton.
	Earl Peel.
	Viscount Halifax.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Rankeillour.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The said amendment is disagreed to.

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Paragraph 267 is again read.

The further consideration of paragraph 267 is postponed.

Paragraph 268 is again read and postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Two o'clock.

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Die Mercurii 11° Julii 1934

Present :

MARQUESS OF SALISBURY.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Yesterday are read.

Paragraph 269 is again read.

It is moved by the Lord Ker (M. Lothian). Page 157, line 4, after (" consideration ") to insert (" The system of responsible government, to be " successful in practical working, requires the existence of a competent and " independent Civil Service staffed by persons capable of giving advice to " successive ministries, based on long administrative experience, secure in " their positions during good behaviour, but required to carry out the policy " upon which the Government and the legislatures eventually decide.")

The same is agreed to.

Paragraph 269 is again read as amended.

The further consideration of paragraph 269 is postponed.

Paragraph 270 is again read.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 157, lines 30 to 32, to leave out from (" man ") in line 30 to (" not ") in line 32 and to insert (" whether British or Indian. Parliament may, therefore, rightly " require, in the interests of India as well as of this country,")

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 157, line 34, at the end to insert (" It is, indeed, the interests of India that must " be considered above all. The difficulties of the new Constitution will be " aggravated in every respect if the administrative machinery is not " thoroughly sound. One of the strongest supports of the new Governments " and their new Ministers that we can recommend, and that the Constitution " can provide for, will be impartial, efficient and upright Services in every " grade and department. It has been impressed on us from various responsible " sources, mainly Indian, that the success of the transfer of local self-governing " bodies to non-official hands has been jeopardised by the lack of the strong " and adequate staff, both inspecting and administrative, required by the " new heads of such bodies, when they took over their duties from experienced " officials. Whether or not these criticisms are justified, they indicate the " obvious danger, in the larger sphere of provincial government, which would " follow from any deterioration in the Services ").

The same is agreed to.

All amendments are to the Draft Report (*vide infra* paras. 1–42B, pp. 470–491; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part 1). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Paragraph 270 is again read as amended.

The further consideration of paragraph 270 is postponed.

Paragraphs 271 to 278 are again read and postponed.

Paragraph 279 is again read.

The following amendment is laid before the Committee.

Sir Samuel Hoare and Mr. Butler to move. Page 160, line 7, after (" the ") to insert (" principal ").

The consideration of the said amendment is postponed.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, lines 1–8, to leave out from the beginning of the paragraph to (" are ") in line 8 and to insert, (" In addition, the White Paper proposes that there " should be secured to every person in the Public Services at the commence- " ment of the Constitution Act all service rights possessed by him at that " date.[1] The principal existing service rights of officers appointed by the " Secretary of State and of persons appointed by authority other than the " Secretary of State are set out in Parts 1 and 2 respectively of Appendix VII " of the White Paper. Officers appointed by the Secretary of State are also to " have a special right to such compensation for the loss of any existing right " as the Secretary of State may consider just and equitable. It may be " observed that some of the existing service rights of officers appointed by the " Secretary of State set out in Part 1 of Appendix VII ").

The same is agreed to.

Paragraph 279 is again read, as amended.

The further consideration of paragraph 279 is postponed.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, after paragraph 279 to insert the following new paragraph :—

" (279A. In addition to these rights and safeguards common to all members of the Public Services, it is proposed that, after the commencement of the Act, the Secretary of State, who will continue to make appointments to the Indian Civil Service, the Indian Police and the Ecclesiastical Department, shall regulate the conditions of service of all persons so appointed, and it is intended that the conditions of service thus laid down shall in substance be the same as at present. The power to regulate the conditions of service of officers not appointed by the Secretary of State, on the other hand, has, since 1926, been delegated to the Government of India in the case of the Central Services and to Provincial Governments in the case of Provincial Services, and the White Paper contains no provision as to the conditions of service to be applied to officers of these Services appointed after the commencement of the Constitution Act.")

The same is agreed to.

New Paragraph 279A is again read.

The further consideration of paragraph 279A is postponed.

Paragraph 280 is again read.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, line 21, at the beginning of the paragraph to insert (" Further,").

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, line 23, after (" compensation ") to insert (" to any officer appointed by him").

The same is agreed to.

Paragraph 280 is again read, as amended.

The further consideration of paragraph 280 is postponed.

[1] White Paper, Proposal 182.

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Paragraphs 281 and 282 are again read and postponed.

Paragraph 283 is again read.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 161, to leave out paragraph 283 and to insert the following new paragraphs :—

(" 283. While we consider that the White Paper provides adequately for the special protection of members of the Secretary of State's Services, we are not fully saisfied that the status of other members of the Public Services, and of those Services as a whole, has been made sufficiently clear either in the White Paper or in any of the investigations and discussions which have led up to its preparation. We have already discussed in paragraph 89 the measures necessary to safeguard the *moral* and efficiency of the Police Service, including its subordinate ranks. In paragraphs 321–325 we shall make certain special proposals in regard to judicial appointments. In addition, however, to these special recommendations, we think it our duty to make certain general observations on the future of the Public Services as a whole.

" 283A. It is natural that the process by which, during recent years, the power to appoint officers in the Provincial Transferred Services and to regulate their conditions of service has been transferred to the Provincial Governments, should have tended to create a false distinction between the status of the All-India Services and that of the Provincial Services. The tendency has almost inevitably been to regard the Provincial Services as having ceased to be Crown Services, and as having become Services of the Provincial Governments. This tendency has been emphasised by the argument, frequently advanced and accepted in the past both by Indians and Englishmen, that Provincial self-government necessarily entails control by the Provincial Government over the appointment of its servants. This argument has, no doubt, great logical force, but it runs the risk of distorting one of the accepted principles of the British Constitution, namely, that Civil Servants are the servants of the Crown, and that the Legislature should have no control over their appointment or promotion and only a very general control over their conditions of service. Indeed, even the British Cabinet has come to exercise only a very limited control over the Services, control being left very largely to the Prime Minister as, so to speak, the personal adviser of the Crown in regard to all service matters. The same principle applies, of course, equally to the Services recruited by the Secretary of State for India, though this fact has been sometimes obscured by inaccurate references to the control of Parliament over the All-India services. But whatever misunderstandings may have arisen in the past as to the real status of the Provincial services, there ought to be no doubt as to their status under the new Constitution. We have already pointed out that, under that Constitution, all the powers of the Provincial Governments, including the power to recruit public servants and to regulate their conditions of service, will be derived, no longer by devolution from the Government of India, but directly by delegation from the Crown, *i.e.*, directly from the same source as that from which the Secretary of State derives his powers of recruitment. The Provincial Services, no less than the Central Services and the Secretary of State's services, will, therefore, be essentially Crown Services, and the efficiency and *moral* of those services will largely depend in the future on the development in India of the same conventions as have grown up in England.

" 283B. But, if such conventions are to develop in India as in England, they must develop from the same starting point—from a recognition that the Governor, as the personal representative of the Crown and the head of the executive government, has a special relation to all the Crown Services. He will, indeed, be generally bound to act in

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that relation on the advice of his Ministers, subject to his special responsibility for the rights and legitimate interests of the Services, but his Ministers will be no less bound to remember that advice on matters affecting the organisation of the permanent executive services is a very different thing from advice on matters of legislative policy, and that the difference may well affect the circumstances and the form in which such advice is tendered. We think, therefore, that the Constitution should contain in its wording a definite recognition of the Governor-General and the Governors respectively as, under the Crown, the heads of the Central (as distinct from the All-India) and Provincial Services and as the appointing authorities for those services. It will follow (*see* paragraph 277 above) that no public servant will be subject to dismissal, save by order of the Governor-General or Governor.

" 283C. But, further than this, it will, in our view, be essential that the Central and Provincial Legislatures respectively should give general legal sanction to the status and rights of the Central and Provincial Services. Their status and rights should not be, in substance, inferior to those set out in List 1 of Appendix VII of the White Paper. The rights of persons appointed by the Secretary of State, enumerated in that List, are not peculiar or exceptional; they are simply the rights generally recognised to be essential to the *moral* of any administrative service. They are rights, in the first place, to protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion; and, in the second place, to protection against such alterations in the organisation of the services themselves as might damage the professional prospects of their members generally. The special responsibility of the Governor-General and Governors would, in any case, in our judgment, extend to all these points; but it is on all grounds desirable that the Executive Government as a whole should be authorised and required by law to give the Services the necessary security. Provincial Civil Service Acts, passed for this purpose, could not, indeed, determine in detail the rates of pay, allowances and pensions, and the conditions of retirement of all Civil Servants, nor the procedure to be followed in considering their promotion on the one hand, or, on the other, their dismissal, removal, reduction or formal censure. Such Acts could, however, confer general powers and duties for these purposes on the Government, and in regard to promotions, they could provide definitely that " canvassing " for promotion or appointments shall disqualify the candidate, and that orders of posting or promotion in the higher grades shall require the personal concurrence of the Governor. It is admittedly more difficult to give security to the Services as a whole in respect of their general organisation; yet the *moral* of any service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognised cadre of higher-paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance. A Legislature does nothing derogatory to its own rights and powers if it confers upon the Executive by law the duty of fixing such cadres and of reporting to the Legislature if any post in these cadres is at any time held in abeyance.

" 283D. There is, however, one existing right of officers appointed by the Secretary of State, the application of which, as it stands, to civil servants in general would be impossible, namely, the right to non-votability of salaries and pensions. There is, indeed, nothing derogatory, again, to the rights and powers of a Legislature in the adoption of a special procedure, similar to the Consolidated Fund procedure of the British Parliament, under which certain expenditures of the Government are authorised *en bloc* by bill instead of being voted in detail on estimates of supply, and this is, in fact, generally recognised to be a desirable

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procedure in certain circumstances. But, as we point out below in paragraph 304, in a slightly different connection, this procedure could not, in practice, be applied to the salaries of all public servants. We think, however, that it might well be applied by the Provincial Legislatures to certain classes of officers, including officers exercising judicial functions and the higher grades of all the services. We make this proposal without prejudice to the proposals in the White Paper which provide that certain heads of expenditure shall not be submitted to the vote of the Provincial Legislatures at all.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 283 is again read.

The further consideration of paragraph 283 is postponed.

Paragraph 284 is again read and postponed.

Paragraph 285 is again read.

It is moved by Lord Eustace Percy and Major Cadogan. Page 162, line 23, after (" powers ") to insert (" over the officers who are working under it ").

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 162, lines 23 and 24, to leave out from (" autonomous ") in line 23 to the end of the sentence and to insert (" Provincial Government might expect that the Crown " should delegate to it.")

The same is agreed to.

Paragraph 285 is again read as amended.

The further consideration of paragraph 285 is postponed.

Paragraph 286 is again read.

It is moved by Sir Reginald Craddock. Page 162, lines 34 to 38, to leave out from the beginning of line 34 to (" are ") in line 38 and to insert (" We appreciate the force of this line of argument, though we have already " pointed out the dangerous conclusions which might be drawn from it. " But the loyalty with which officers of the All-India Services have served " the Local Governments under whom they work, notwithstanding that these " Services are under the control of the Government of India and the Secretary " of State, has a long tradition behind it: nor has any Local Government felt " difficulty in regard to maintaining discipline and securing full obedience of " the Services on account of that control. Moreover, the evidence given " before us confirmed the earlier conclusions of the Lee Commission and of " the Statutory Commission that, with negligible exceptions, the officers of " these Services have maintained excellent relations with the Indian Ministers " under whom they have been working. Subject to certain qualifications to " which we refer hereafter, we are of opinion that recruitment by the Secretary " of State, for the All-India Services, where it still continues, should come to " an end except in the case of the Indian Civil Service and the Indian Police; " the functions performed by members of these two services ")

The same is agreed to.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 162, line 36, to page 163, line 15, to leave out from (" hereafter.") in line 36, page 162, to the end of the paragraph, and to insert (" We fully recognise the " fact that the functions performed by members of the Indian Civil Service " and the Indian Police are essential to the general administration of the " country and the vital need of maintaining a supply of recruits of the " highest quality. But we feel that Indianisation of these services should " proceed at a more rapid pace. Meanwhile recruitment to these services " should be by the Governor-General in his discretion, and the control of " conditions of service should be in his hands. We are aware that this " modification of the present practice will be one of form rather than of " substance, since the Governor-General will be acting under the direction of " the Secretary of State, but Indian public opinion attaches considerable

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" importance to this formal change, and we are satisfied that the psychological " effect at this juncture upon the Indian people will be of great value.")

Objected to.

On Question :—

Contents (3)	Not Contents (18)
Lord Snell.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Linlithgow.
Mr. Morgan Jones.	Marquess of Reading.
	Earl of Derby.
	Earl of Lytton.
	Earl Peel.
	Viscount Halifax.
	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by Sir Reginald Craddock. Page 162, line 40, after (" vital ") to insert (" to the stability of the new Constitution itself.")

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 162, line 42, after (" recruitment ") to insert (" for these two Services ")

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 163, lines 12 to 15, to leave out from (" but ") to the end of the paragraph and to insert (" for that very reason we are reluctant to make a merely formal " change which might at this juncture have an unfortunate effect upon poten- " tial recruits.")

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 163, line 15, at the end to insert (" We believe, however, that there is much to be " said for the recruitment in India of the prescribed proportion of Indians " for the Indian Civil Service as well as for the Indian Police[1] and recommend " this as a subject for consideration by His Majesty's Government.")

The same is agreed to.

Paragraph 286 is again read, as amended.

The further consideration of paragraph 286 is postponed.

Paragraph 287 is again read.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 163, to leave out paragraph 287 and to insert the following new paragraph :—

(" 287 The White Paper makes it clear that these proposals are not intended to be a permanent and final solution of this difficult question. It proposes, indeed, that, at the expiration of five years from the commencement of the Constitution Act, an enquiry should be held into the question of future recruitment for these two services, the decision on the

[1] Officers required for the Indian Medical Service (Civil) will continue to be obtained from the Indian Medical Service, which will still be recruited under military regulations by the Secretary of State.

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results of the enquiry (with which it is intended that the Governments in India shall be associated) resting with His Majesty's Government subject to the approval of both Houses of Parliament. We agree with the principle of this proposal. Our aim, as we have already said, is to ensure that the new constitutional machinery shall not be exposed during a critical period to the risks implicit in a change of system : we recognise that the whole matter must be made the subject of a further enquiry in due time. We cannot, however, endorse the proposal to fix a definite date for such an enquiry, or even a date after which the desirability of holding such an enquiry shall be considered. Past experience shows the doubtful wisdom of such a fixing of dates, and we think that no provision of this kind should be inserted in the Constitution. In our view, a change in the method of recruitment of the All-India services will depend less upon the lapse of any given period of time than upon the extent to which the Provincial Governments find it possible to organise and regulate the Public Services under their control on the lines which we have ventured to suggest above.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Reginald Craddock. Page 163, line 17, to leave out the second (" to ") and to insert (" in some circles of ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, and Mr. Morgan Jones. Page 163, line 29, to page 164, line 1, to leave out from the beginning of line 29, page 163, to (" It ") in line 1, page 164.

Objected to.

On Question :—

Contents (3)	Not Contents (16)
Mr. Attlee.	Marquess of Linlithgow.
Mr. Cocks.	Marquess of Reading.
Mr. Morgan Jones.	Earl of Derby.
	Earl Peel.
	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by Sir Austen Chamberlain. Page 163, line 39, to leave out (" within ") and to insert (" in ") and after (" years ") to insert (" time ")

The same is agreed to.

It is moved by Sir Austen Chamberlain. Page 164, to leave out lines 3 to 10 inclusive.

The same was agreed to.

Paragraph 287 is again read as amended.

The further consideration of paragraph 287 is postponed.

Paragraphs 288 to 294 are again read and postponed.

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Paragraph 295 is again read.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 166, line 42, after (" Provinces ") to insert (" should lay down jointly the conditions " of service of Forest officers ").

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 166, line 45, to leave out (" and entrust ") and to insert (" entrusting ").

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 166, line 48, to page 167, line 1, to leave out from (" serve ") in line 48, page 166, to (" service ") in line 1, page 167.

The same is agreed to.

Paragraph 295 is again read as amended.

The further consideration of paragraph 295 is postponed.

Paragraphs 296 and 297 are again read and postponed.

Paragraph 298 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 168, line 11, after (" officers ") to insert (" both European and Indian ").

The same is agreed to.

Paragraph 298 is again read as amended.

The further consideration of paragraph 298 is postponed.

Paragraph 299 is again read and postponed.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 168, after paragraph 299 to insert the following new paragraph :—

(" 299A Our recommendation that the Forest and Irrigation Services should in future be recruited in India does not, of course, imply that the Federal Public Service Commission, in the case of Forests, and the Provincial Commissions, in the case of Irrigation, should abandon the recruitment of necessary personnel from England. The High Commissioner for India in London already recruits specialist and expert officers of various kinds in England, as the agent of the competent authorities in India, and the Public Services Commissions in India will doubtless continue this practice, or may, for certain purposes, make use of the Civil Service Commission.")

The amendment, by leave of the Committee, is withdrawn.

Paragraphs 300 to 304 are read and postponed.

Paragraph 305 is again read.

It is moved by the Lord Rankeillour. Page 170, line 14, at the end to insert (" He should, however, have a reserve power of borrowing at his " discretion for the purpose of the punctual discharge of statutory obligations.")

The amendment, by leave of the Committee, is withdrawn.

The further consideration of paragraph 305 is postponed to Friday next.

Ordered, that the Committee be adjourned to Friday next at half-past Ten o'clock.

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Die Veneris 13° Julii 1934

Present :

Lord Archbishop of Canterbury.	Mr. Butler.
Marquess of Salisbury.	Major Cadogan.
Marquess of Zetland.	Sir Austen Chamberlain.
Marquess of Linlithgow.	Mr. Cocks.
Marquess of Reading.	Sir Reginald Craddock.
Earl of Derby.	Mr. Davidson.
Earl Peel.	Mr. Foot.
Viscount Halifax.	Sir Samuel Hoare.
Lord Middleton.	Mr. Morgan Jones.
Lord Ker (M. Lothian).	Sir Joseph Nall.
Lord Snell.	Lord Eustace Percy.
Lord Rankeillour.	Sir John Wardlaw-Milne.
Lord Hutchison of Montrose.	Earl Winterton.

The Marquess of Linlithgow in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

Paragraph 305 is again considered.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 170, line 14, at the end to insert (" If need arose for the Governor to take special steps for the " purpose, in virtue of his special responsibilities, it would, of course, be open " to him to adopt whatever means were most appropriate in the circumstances, " and, if necessary to meet the situation by borrowing, the powers available " to him personally in this respect would be identical with those available to " the provincial Government. If he should seek assistance from the Federal " Government in the form of a loan, his application would be governed by " the provision relating to provincial borrowing which we have already " advocated.")[1]

The same is agreed to.

Paragraph 305 is again read as amended.

The further consideration of paragraph 305 is postponed.

Paragraph 306 is again read.

It is moved by Sir Reginald Craddock. Page 170, to leave out paragraph 306 and to insert the following new paragraph :—

(" 306. Although as we have said a Governor is equally interested that all classes of officers should receive the emoluments and pensions to which they are entitled, yet his ' special responsibility ' is limited to the emoluments and pensions of officers appointed by the Secretary of State. We approve the proposal in the White Paper that these pensions should be a charge against the Federal Government direct, the necessary adjustments being subsequently made between the Federal Government and Province or Provinces concerned, but the pensioner's method of redress would be by suit against the Secretary of State in London and not against the Federal Government. There is, however, one particular feature about the pensions of the Indian Civil Service which it seems right to mention. While in other All-India Services and in the Indian Army pensions are non-contributory, this was not the case in the Indian Civil Service up to April, 1919. Until that date every member of that Service

[1] *Supra*, para. 262.

All amendments are to the Draft Report (*vide infra* paras. 1–42B, pp. 470–491 ; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part 1). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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had to make a compulsory contribution of 4 per cent. of his pay towards the cost of his pension of £1,000 sterling per annum. No separate account of these contributions was ever kept, and they merged in the general revenues of India. The change was made in April, 1919, upon the recommendation of the Islington Commission, and from that time the deduction of 4 per cent. in the case of every officer is credited to his account in a Provident Fund, and the amount standing to his credit is paid to him on the date of his retirement, in rupees, so that officers who entered the Service in or after April, 1919, have not contributed towards their pensions, but the oldest pensioners who retired at or before that time contributed during the whole of their service, while even among officers now serving, those of over 15 years' service were on the contributory system for service prior to 1919. In the absence of any accounts it is impossible to estimate what proportion of an officer's pension was contributed either by himself or by the Service at large. It is also proper to mention that the pensions paid to officers of all the Services, unless they continue an Indian domicile, are not subject to any deduction on account of Indian Income Tax. We think it right that these facts should be mentioned as a reassurance to pensioners.")

The amendment by leave of the Committee is withdrawn.

Paragraph 306 is again read.

The further consideration of paragraph 306 is postponed.

Paragraph 307 is again read.

It is moved by Sir Reginald Craddock. Page 170, to leave out paragraph 307 and to insert the following new paragraph :—

(" 307. The various Family Pension Funds stand on a different footing from other pensionary obligations of the Government of India. The funds of the Indian Civil Service and the Indian Army have a long history behind them. The Family Pension Funds of the other Services are of recent institution, but all are alike in their nature, viz., that they consist entirely of contributions of the Services to cover provisions for their widows, minor sons and unmarried daughters. The Civil funds were started in the days of the East India Company and were three in number, Madras, Bombay and Bengal. They were managed by special Committees of the Services and invested by them in various Government of India Securities, some of which in those days used to pay as much as 8 per cent. Between the years 1874 and 1882, as a result of long negotiations between the Secretary of State and the Committees administering the funds, the whole of the accumulated funds were handed over to the Secretary of State, the transaction receiving effect by Acts of Parliament. The Secretary of State under these Acts undertook the obligation of paying pensions to widows and orphans at fixed rates which varied according to the amount of the funds accumulated by the three Presidencies in question. The subscribers to those Funds continued to pay the appointed contributions for the remainder of their services; indeed, for a long time contributions were contributed by officers even after their retirement. With effect from 1882, all officers who joined the Service became compulsory contributors to a new I.C.S. Family Pension Fund which took the place of the three Funds which the Secretary of State had taken over. At the time that all these contracts were made and legalised by Acts of Parliament the guarantees were ample, for there was then no question of any relaxation by the Secretary of State over the finances of India. Since the Montagu Announcement there has arisen alarm and anxiety regarding the security of these pensions, for the recipients may still be dependent upon them for a period which in some cases may extend to the end of this century.

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" We understand that as regards the old Madras, Bombay and Bengal funds, not even *pro forma* accounts have been kept. The obligations of the Government of India and of the Secretary of State being absolute, since the accumulations of those funds were made over to the Government of India on the condition that the Government and the Secretary of State would pay pensions at the agreed rates up to the last survivor.

" In the case of the I.C.S. Family Pension Fund created in 1882, *pro forma* accounts have been kept up, and the position of these funds is periodically reviewed by an Actuary appointed by the Secretary of State, and with reference to the assets available, pensions to widows and orphans have been raised permanently to some extent and with temporary additions which are conditional on the assets available being sufficient. These pensioners now desire that the assets of the I.C.S. Family Pension Fund should be remitted to this country and invested in sterling securities. The Secretary of State has, we understand, addressed all those interested either as contributors to the Funds or as recipients of pension from it, asking their approval for a scheme under which the remittance to this country of these funds would be effected over a period of 15 years. The Secretary of State has informed us that His Majesty's Government will undertake no guarantee in the matter on the ground that under the new Constitution payment of these obligations by the Government of India will be secured by the Secretary of State and that therefore there is no case for a guarantee by His Majesty's Government. We cannot overlook, however, the fact that the whole of these contributions have been absorbed in the Indian Revenue, and that the interest on these contributions has never been included in the interest charges of the financial statements of the Indian Government. It is not known now exactly what form the new Constitution will take, much less can the future developments be foretold. The anxiety felt by the beneficiaries is very genuine, and we suggest that His Majesty's Government might at least guarantee the payment each year of the pensions due pending their collection by the Secretary of State from the Indian Revenues. This guarantee would naturally cease to have effect as soon as the assets of the Fund have been remitted to this country and invested in sterling securities. If His Majesty's Government and the Secretary of State are correct in their view that the control retained by the Secretary of State over Indian finances will suffice to secure this money, then the contingent liability incurred by His Majesty's Government will be comparatively small and merely temporary.")

The following amendment is laid before the Committee.

The Lord Hutchison of Montrose on behalf of the Lord Hardinge of Penshurst to move as an amendment to the above amendment, to leave out the last sentence of the amendment and to insert (" We are strongly " of opinion that in any case the period of 15 years proposed by the " Secretary of State for the remittance to this country of the Family " Pension Funds should be reduced to a term of 10 years.")

The consideration of the said amendment is postponed.

The original amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Hutchison of Montrose on behalf of the Lord Hardinge of Penshurst. Page 170, line 39, after (" made ") to insert (" and " that steps should be taken to meet their views and to complete the transfer " of the funds from India within a period of twelve years from the passage of " the Constitution into law.")

The same is agreed to.

Paragraph 307 is again read as amended.

The further consideration of paragraph 307 is postponed.

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Paragraph 308 is again read.

It is moved by the Lord Hutchison of Montrose. Page 171, lines 8 to 23, to leave out from (" Services ; ") in line 8 to the end of the paragraph, and to insert (" and we have noted with satisfaction the resolution of the Home " Department of the Government of India, dated July 4, announcing new rules " for the determination and improvement of the representation of minorities " in the Public Services. In accordance with this resolution the claims of " Anglo-Indians and domiciled Europeans who at present obtain rather more " than 9 per cent. of the Indian vacancies in the gazetted railway posts, for " which recruitment is made on an all-India basis, will be considered when " and if their share falls below 9 per cent., while 8 per cent. of the railway " subordinate posts filled by direct recruitment will be reserved for Anglo- " Indians and domiciled Europeans. We are of opinion that a reference should " be included in the Instruments of Instructions of the Governor-General and " Governors to the fact that the legitimate interests of minorities include " their due representation in the Public Services, and that no change should " be made in the percentages prescribed in the above-mentioned resolution " without the previous sanction of the Governor-General and the Secretary " of State.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 308 is again read.

The further consideration of paragraph 308 is postponed.

Paragraph 309 is again read and postponed.

Paragraph 310 is again read.

The following amendment is laid before the Committee.

Sir John Wardlaw-Milne to move, page 172, lines 34 to 37, to leave out from (" another,") in line 34 to the end of the paragraph.

The consideration of the said amendment is postponed.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian) and Mr. Foot. Page 172, lines 31 to 37, to leave out from (" State.") in line 31 to the end of the paragraph.

The same is agreed to.

Paragraph 310 is again read as amended.

The further consideration of paragraph 310 is postponed.

Paragraphs 311 to 315 are again read and postponed.

Paragraph 316 is again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian) and Mr. Foot. Page 175, line 38, after (" would ") to insert (" have power to ").

The same is disagreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian) and Mr. Foot. Page 175, lines 43 and 44, to leave out from (" provide ") in line 43 to the end of the paragraph.

Objected to.

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On Question :—

Contents (8)	Not Contents (13)
Marquess of Salisbury.	Lord Archbishop of Canterbury.
Marquess of Reading.	Marquess of Zetland.
Earl of Derby.	Marquess of Linlithgow.
Lord Middleton.	Earl Peel.
Lord Ker (M. Lothian).	Viscount Halifax.
Lord Rankeillour.	Lord Hutchison of Montrose.
Sir Reginald Craddock.	Mr. Butler.
Sir Joseph Nall.	Major Cadogan.
	Mr. Davidson.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

Mr. Cocks did not vote.

The said amendment is disagreed to.

Paragraph 316 is again read.

The further consideration of paragraph 316 is postponed.

Paragraph 317 is again read and postponed.

Paragraph 318 is again read.

It is moved by the Lord Rankeillour. Page 176, line 22, at the beginning of the paragraph to insert (" The constitution of ")

The same is agreed to.

It is moved by the Lord Rankeillour. Page 176, line 23, to leave out (" are scarcely ") and to insert (" is hardly directly ").

The same is agreed to.

It is moved by the Lord Hutchison of Montrose. Page 176, lines 38 and 39, to leave out from (" Judges,") in line 38 to (" we ") in line 39, and to insert (" but we urge the desirability, in the interests of the maintenance of British " legal traditions, of continuing for some time the recruitment of a certain " number of High Court Judges from the United Kingdom,") ; and line 40, after the first (" are ") to insert (" also ").

The amendments, by leave of the Committee, are withdrawn.

Paragraph 318 is again read, as amended.

The further consideration of paragraph 318 is postponed.

Paragraph 319 is again read.

It is moved by the Lord Rankeillour. Page 177, to leave out Paragraph 319 and to insert the following new paragraph :—

(" 319. We are at one with the Statutory Commission in thinking that the administrative control of the High Courts should be placed in the hands of the Central Government and that the expenditure required from them, and the receipts from Court fees, should be included in the Central Government's Budget. The expenditure should be certified by the Governor-General after consultation with his Ministers and should not be submitted to the vote of the Legislature. We also think that the Governor-General should be directed in his Instrument of Instruction to reserve any Bill which in his opinion would unduly derogate from the powers of the High Court.")

Objected to.

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On question :—

Contents (4).	Not Contents (15).
Marquess of Salisbury.	Lord Archbishop of Canterbury.
Lord Rankeillour.	Marquess of Zetland
Sir Joseph Nall.	Marquess of Linlithgow.
Lord Eustace Percy.	Marquess of Reading.
	Earl of Derby.
	Earl Peel.
	Viscount Halifax.
	Lord Ker (M. Lothian).
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Mr. Cocks.
	Mr. Davidson.
	Sir Samuel Hoare.
	Sir John Wardlaw-Milne.

Sir Reginald Craddock did not vote.

The said amendment is disagreed to.

It is moved by the Lord Eustace Percy. Page 177, line 15, after (" Courts.") to insert (" It is largely for this reason that strong representations have been " made to us to the effect that control over the High Courts should be vested " in the Federal Government. After careful consideration, we are unable to " accept this view, since we think it might tend to prejudice the close relations " between the High Courts and the Provincial Governments which, as will " appear from the recommendations we are about to make, it is of the utmost " importance to maintain.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 177, line 15, after (" pro- " poses ") to insert (" however ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 319 is again read.

The further consideration of paragraph 319 is postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 177, after paragraph 319 to insert the following new paragraph :—

Administrative control of High Courts should remain with provincial Government.

(" 319A. It follows from this recommendation that we are not at one with the Statutory Commission in thinking[1] that the administrative control of the High Courts should be placed in the hands of the Central Government and that the expenditure required for them, and the receipts from court fees, should be included in the Central Government's budget. We agree entirely with the Commission that the arrangement whereby in consequence of the historical connexion for certain purposes between the Calcutta High Court and the Government of India, decisions as to the strength of that Court and its establishment and as to its financial requirements for buildings or other purposes rest with the Central Government, though the extra expenditure involved by such decisions falls upon the Bengal Government, is an anomaly which ought to be terminated ; but, in our view, it should be terminated not by placing financial responsibility for the Calcutta High Court (and incidentally for all other High Courts) upon the shoulders of the Federal Government, but by bringing the Calcutta Court into the same relationship with the Bengal Government as that obtaining between all other High Courts and their respective Provincial Governments. We agree, moreover, most fully with the Commission's view as to the importance of securing for the High Courts a position of independence and the largest possible measure of freedom from pressure exerted for political ends. This object should, we think, be

[1] Report, Vol. II, paragraphs 341–349.

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fully secured by the recommendation which we made in the last paragraph. But, subject to the fulfilment of this requirement, the High Court is, in our view, essentially a provincial institution : indeed, as subsequent paragraphs show, we seek to secure for each High Court an administrative connexion with the Subordinate Judiciary of the Province which we regard as of the highest importance, and which we think could not be maintained—or only in an atmosphere of mistrust and suspicion which would gravely detract from its advantages—if the Court were an outside body, regarded (as it would probably be) as an appanage of the Federal Government. Apart from these reasons, which we regard as conclusive, in favour of maintaining the present relationship between the High Courts and the Provincial Governments (subject only to the modification required to bring the Calcutta High Court into the same position as that of the others) we are satisfied that the financial adjustments which would be involved in any attempt to centralise the administration and financing of the High Courts would be of a far more complicated nature than the Commission appear to have supposed.")

The same is agreed to.

New Paragraph 319A is again read.

The further consideration of new paragraph 319A is postponed.

Paragraph 320 is again read.

It is moved by the Lord Rankeillour. Page 177, lines 35 to 44, to leave out from the beginning of line 35 to (" in ") in line 44 and to insert (" and ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Rankeillour. Page 177, line 45, to leave out from (" safeguarded ") to (" the ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Rankeillour. Page 177, line 46, to leave out (" not ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Rankeillour. Page 177, line 50, at the end to insert : (" We think that it is also of great importance that the powers of the " High Courts referred to in Record III of our proceedings (Paragraphs 12 " and 13) should be defined and confirmed by the Constitution Act even " where at present they rest on the authority of the Provincial Government ").

The same is agreed to.

Paragraph 320 is again read, as amended.

The further consideration of paragraph 320 is postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 177, after paragraph 320 to insert the following new paragraph :—

Future constitutional position of High Courts.

(" 320A. We think it desirable to explain the general effect of our recommendations upon the provincial High Courts. Their constitution will, as at present, be laid down in the Constitution Act and the appointments to them will remain with the Crown : the Constitution Act will, moreover, itself regulate more precisely than at present the nature and extent of the superintendence to be exercised by a High Court over the Subordinate Courts of the Province—the nature and extent, in fact, of what may be described as their administrative jurisdiction. No change will be made in their relations with the Provinces in regard to the administrative questions affecting their establishment and buildings, except that the Calcutta High Court will henceforth have relations in these respects with the Bengal Government direct, and not, as at present, with the Central Government (which, even as matters stand, naturally consults the Bengal Government upon any proposals made before it by the Court) :

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but the supply required by the High Court will be determined by the Governor after consultation with his Ministers, and will not be subject to the vote of the provincial Legislature. As regards the juridical jurisdiction of the High Courts, insofar as this depends—as it mainly does depend—upon provisions of Indian enactments, it will henceforth be determined by enactments of that Legislature which is competent to regulate the subject in respect of which questions of the High Court's jurisdiction arise: that is to say, it will be for the Federal Legislature alone to determine the jurisdiction of the High Court in respect of any matter upon which that Legislature has exclusive power to legislate, for the provincial Legislature to determine the jurisdiction of its High Court in respect of any exclusively Provincial Subject, and for both to determine (subject to the principles governing legislation in the concurrent field) in respect of any matter on which both Legislatures are competent to legislate. It will thus be seen that the High Courts, under our proposals, will be institutions which will not accurately be describable as either federalised or provincialised. They will form an integral part of the constitutional machinery and the various aspects of their activities as such will be regulated by the authority appropriate for the purpose.")

The same is agreed to.

New paragraph 320A is again read.

The further consideration of paragraph 320A is postponed.

Paragraphs 321 and 322 are again read and postponed.

Paragraph 323 is again read.

It is moved by the Lord Rankeillour. Page 179, lines 2 to 4. Leave out from (" Court ") in line 2 to the end of the sentence.

The same is disagreed to.

Paragraph 323 is again read.

The further consideration of paragraph 323 is postponed.

Ordered, That the Committee be adjourned to Monday next at half-past Four o'clock.

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Die Lunae 16° Julii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

Paragraphs 324 to 453 are again postponed.

Paragraphs 1 to 86 are again postponed.

Paragraph 87 is again read as amended.

It is moved by the Marquess of Linlithgow. Paragraph 87, page 41, line 20, to leave out from (" Minister.") in line 20 to the end of the paragraph (*i.e.*, to leave out amendment inserted on the 25th June) and to insert (" If, " therefore, the transfer is to be made, as we think it should, it is essential " that the Force should be protected so far as possible against these risks, " and in the following paragraphs we make recommendations designed to " secure this protection.").

The same is agreed to.

Paragraph 87 is again read as amended.

The further consideration of paragraph 87 is postponed.

Paragraphs 88 to 92 are again considered.

The motion of the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, Sir Austen Chamberlain, and the Lord Eustace Percy. Paragraph 90, page 43, line 11, after (" reconstitute.") to insert (" The " problem is a difficult one and, though, at the moment, it is perhaps " only of immediate importance in the Province of Bengal and to a " lesser extent in the provinces which border on Bengal, terrorism and " revolutionary conspiracy have not been confined to those territories, " nor consequently is the necessity for efficient counter-revolutionary " measures limited to them. Bengal, however, as has been proved " to us by the evidence we have received, has a particularly long and " disquieting record of murder and outrage, of which Indians and " Europeans have equally been the victims. It has also shown in a " marked degree a rise or fall in such terrorist crime according as the " hands of the authorities have been weakened or strengthened, and " as precautionary and special measures have been relaxed or " enforced ") is again considered.

The further consideration of the said amendment is postponed.

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491; and *vide supra*, paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part I). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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The following amendments to paragraphs 90 to 92 are again laid before the Committee :—

The Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, Sir Austen Chamberlain, and the Lord Eustace Percy to move. Paragraph 91, page 43, lines 12 and 13, to leave out lines 12 and 13 inclusive.

The Lord Hutchison of Montrose and Sir Austen Chamberlain to move. Paragraph 91, page 43, lines 28 and 29, to leave out from (" that ") in line 28 to (" and ") in line 29 and to insert (" the practice " is that in a secret service case the names of agents are not disclosed to " Ministers ").

Sir John Wardlaw-Milne to move. Paragraph 91, page 43, Line 33, to leave out from (" order,") to the end of the line and to insert (" must be understood as themselves adopting ").

The Earl of Lytton to move. Paragraph 91, page 43, lines 36 to 38, to leave out from the second (" agents ") in line 36 to the end of the sentence and to insert (" themselves would not feel secure that their identity might not be revealed ").

The Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, Sir Austen Chamberlain, and the Lord Eustace Percy to move. Paragraph 92, pages 43 and 44, leave out paragraph 92 and to insert the following new paragraph :—

(" 92. In the circumstances set out above we are convinced that it should be made plain that the control of the organisation which exists, or may hereafter exist, for the purpose of combating the terrorist movement, is in the hands of the Governor-General at the centre and of the Governors in the provinces. To secure the object which we have in view, we recommend that the Central Intelligence Bureau be placed under the control of the Governor-General, as part of the Political and Foreign Department, and that in any province in which a special branch of the Police force exists or may hereafter be brought into being, the Inspector-General shall take his orders direct from the Governor as the agent of the Governor-General in all matters affecting the work of the special branch in whatever branch of police administration such matters may arise. We realise that in such circumstances, the Minister in charge of the portfolio of Law and Order might be unwilling to answer in the Legislature for action taken on the initiative of the Governor, and in that event we recommend that it shall be open to the Governor to appoint some person selected at his discretion to act as his spokesman in the Legislature ").

The Earl of Lytton to move. Paragraph 92, pages 43 and 44, to leave out paragraph 92 and to insert the following new paragraph.

(" 92. The existence of terrorist crime is a special disease which calls for special treatment. It necessitates departures from the ordinary law and the enactment of special legislation such as the Bengal Criminal Law Amendment Act. The Special Branch is an essential feature of the machinery for combating terrorist activities, and as such we consider that it requires special treatment. We therefore recommend that this small and exceptional service where it exists should be a reserved service responsible to the Governor alone.")

Sir John Wardlaw-Milne to move. Paragraph 92, page 43, line 45, after (" Province ") to insert (" (who should continue to have direct access to him) ")

Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell to move. Paragraph 92, page 44, lines 10 to 13, to leave out from (" enforced.") in line 10 to (" We ") in line 13.

The consideration of the said amendments is postponed.

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Paragraphs 88 to 91 are again read as amended.

It is moved by the Marquess of Linlithgow. Paragraphs 88 to 91, pages 41 to 44, to leave out paragraphs 88 to 91 as amended and to insert the following new paragraphs :—

The Governor's special responsibility.

(" 88. First, there are the proposals already made in the White Paper. The Governor is to have a special responsibility for ' the prevention of any grave menace to the peace or tranquillity of the Province, or any part thereof '. The effect of this, as of all other special responsibilities, is to enable the Governor, if he thinks that the due discharge of his special responsibility so requires, to reject any proposals of his Ministers or himself to initiate action which his Ministers decline to take. Further, there flows from this special responsibility, not only the right to overrule his Ministers, but also special powers—legislative and financial—to enable him to carry into execution any course of action which requires legislative provision or the provision of supply. If, therefore, the Governor should be of opinion that the action or inaction of Ministers is jeopardising the peace or tranquillity of the Province, it will be his duty to take action to meet the situation. If the situation is one requiring immediate action, he will issue any executive order which he may consider necessary. If the situation is one which cannot be dealt with by an isolated executive order—if the Minister in charge of the Department appears unable to administer his charge on lines which the Governor regards as consistent with the due discharge of his special responsibility—the Governor will dismiss and replace the Minister (and, if necessary, the Ministers as a body, with or without resort to a dissolution of the Legislature). If he fails to find an alternative Government capable of administering Law and Order on lines consistent with the discharge of his special responsibility, he will be obliged to declare a breakdown of the constitution, and to assume to himself all such powers as he judges requisite to retrieve the situation. We are not contemplating such a course of events as probable; but, if it occurs, provision is made to meet it.

The Police Rules.

" 89. We turn now to our own further recommendations for the specific protection of the Police Force itself. Of course, the due discharge of his special responsibility for peace and tranquillity will, in itself, entitle the Governor to intervene immediately if, by reason of ill-timed measures of economy or the attempted exertion of political influence on the Police Force or from any other cause, the *morale* or the efficiency of that Force is endangered. Further, the Governor has another special responsibility: it is his duty to secure to the members of the Police, as of other Public Services, any rights provided for them by the Constitution Act and to safeguard their legitimate interests. These are important safeguards, but there is a special factor in police administration which requires to be specially protected. We refer to the body of Regulations known as the " Police Rules ", promulgated from time to time under powers given by the various Police Acts. A large number of the Rules deal with matters of quite minor importance and are constantly amended, in practice, on the responsibility of the Inspector-General of Police himself. It would be unnecessary to require the Governor's consent to every amendment of this kind. But the subject-matter of some of the Rules is so vital to the well-being of the Police Force that they ought not, in our opinion, to be amended without the Governor's consent; and the same consideration applies *a fortiori* to the Acts themselves, which form the statutory basis of the Rules. Our aim should be to ensure that the internal organisation and discipline of the Police continue to be regulated by the Inspector-General, and to protect both him and the Ministers themselves from political pressure in this vital field. We, therefore, recommend that the consent of the Governor, given in his discretion,

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should be required to any legislation which would amend or repeal the General Police Act in force in the Province or any other Police Acts (such as the Bombay City Police Act, the Calcutta Police Act, the Madras City Police Act, and Acts regulating Military Police in Provinces where such forces exist). We further recommend that any requirement in any of these Acts that Rules made under them shall be made or approved by the local Government is to be construed as involving the consent of the Governor, given in his discretion, to the making or amendment of any Rules which, in his opinion, relate to, or affect, the organisation or discipline of the Police.

The Special Branch.

" 90. But there is another vital department of Police administration to which we must draw attention. It has been represented to us very forcibly that, whatever may be the decision with regard to the transfer of Law and Order generally, special provision ought to be made with regard to that branch of the Police which is concerned with the suppression of terrorism. We do not here refer to those members of the Police who are occupied in combating terrorism as part of their regular functions in the prevention of crime and the maintenance of order, nor again to the Criminal Investigation Department which exists in every Province to assist the ordinary police in the detection of ordinary crime : we have in mind that organisation which is sometimes known as the Special Branch, a body of carefully selected officers whose duty is the collection and sifting of information on which executive police action against terrorism is taken. Their work necessarily involves the employment of confidential informants and agents and it is obvious that these sources of information would at once dry up if their identity became known, or were liable to become known, outside the particular circle of Police officers concerned. Though, at the moment, this problem is perhaps of immediate importance only in the Province of Bengal and, to a lesser extent, in the Provinces which border on Bengal, terrorism and revolutionary conspiracy have not been confined to those territories, nor consequently is the necessity for efficient counter-revolutionary measures limited to them. Bengal, however, as has been proved to us by the evidence we have received, has a particularly long and disquieting record of murder and outrage, of which Indians and Europeans have both been the victims. It has also shown, in a marked degree, a rise or fall in such terrorist crime according as the hands of the authorities have been weakened or strengthened, and as precautionary and special measures have been relaxed or intensified.

Secret intelligence reports.

" 91. For these reasons, it is, in our view, essential that the records of any such Intelligence Department should be protected from even the slightest danger of leakage. Experience in every country shows how strict this protection must be. It has been argued that an Indian Minister, who may have to defend subsequently before the Legislature an arrest or prosecution made or begun by his orders, must have the right to satisfy himself that the information on which he is invited to act is in all respects trustworthy, and that the names of the informants or agents from whom it has been obtained could not in the last resort be withheld from him. We think that those who argue thus are not acquainted with the general practice in matters of this kind. We are informed by those who have experience of such matters in this country that the practice is that in a Secret Service case the names are not disclosed even to the Minister most immediately concerned. We have no reason to suppose that Indian Ministers will not adopt the same convention; but the difficulty arises not because Indian Ministers are likely to demand or disclose the names of informants or agents, but because the informants or agents themselves would not feel secure that their identity might not be revealed. So long as this doubt exists, the consequences are the same,

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whether it is ill-founded or not. We, therefore, recommend that the Instrument of Instructions of the Governors should specifically require them to give directions that no records relating to intelligence affecting terrorism should be disclosed to anyone other than such persons within the provincial Police Force as the Inspector-General may direct, or such other public officers outside that Force as the Governor may direct. We further recommend that the Constitution Act should contain provisions giving legal sanction for directions to this effect in the Instrument of Instructions")

It is moved by the Lord Rankeillour. As an amendment to the above amendment, to insert at the end of paragraph 89 :—

(" Lastly, we think that the Governor-General should be instructed to inform the Provincial Governors of any Rules which in his opinion should not be cancelled or altered without his consent.")

The amendment by leave of the Committee is withdrawn.

The original amendment is again moved.

The same is agreed to.

New paragraphs 88 to 91 are again read.

The further consideration of paragraphs 88 to 91 is postponed.

Paragraph 92 is again read.

It is moved by the Marquess of Linlithgow. Pages 43 and 44, to leave out paragraph 92 and to insert the following new paragraph :—

Special powers required for combating terrorism.

(" 92. But, even so, the circumstances set out above render it imperative to arm the Governor with powers which will ensure that the measures taken to deal with terrorism and other activities of revolutionary conspirators are not less efficient and unhesitating than they have been in the past. We are, indeed, particularly anxious not to absolve Indian Ministers, in Bengal or elsewhere, from the responsibility for combating terrorism, and we think that such executive duty should be clearly laid upon them. But the issues at stake are so important, and the consequences of inaction, or even of half-hearted action, for even a short period of time, may be so disastrous, that the Governor of any Province must, in our opinion, have a sp ial power over and above his special responsibility ' for the preventio of any grave menace to peace and tranquillity ' to take into his own hands the discharge of this duty, even from the outset of the new Constitution. This purpose would not be adequately served by placing the Special Branch of the Provincial Police alone in the personal charge of the Governor. That course has been urged upon us, but we are convinced that it falls short of what is required. Instead, we recommend that the Constitution Act should specifically empower the Governor, at his discretion, if he regards the peace and tranquillity of the Province as endangered by the activities, overt or secret, of persons committing or conspiring to commit crimes of violence intended to overthrow the Government by law established, and if he considers that the situation cannot otherwise be effectively handled, to assume charge, to such extent as he may judge requisite, of any branch of the government which he thinks it necessary to employ to combat such activities, or if necessary to create new machinery for the purpose. If the Governor exercises this power, he should be further authorised, at his discretion, to appoint an official as a temporary member of the Legislature, to act as his mouthpiece in that body, and any official so appointed should have the same powers and rights, other than the right to vote, as an elected member. The powers which we have just described would be discretionary powers, and the Governor would, therefore, be subject to the superintendence and control of the Governor-General, and ultimately of the Secretary of State, in all matters connected with

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them. We should add that if conditions in Bengal at the time of the inauguration of Provincial Autonomy have not materially improved, it would, in our judgment, be essential that the Governor of that Province should exercise the powers we have just described forthwith and should be directed to do so in his Instrument of Instructions, which, in this as in other respects, would remain in force until amended with the consent of Parliament.[1]")

Objected to.

On Question :—

Contents (23)	Not Contents (3)
Marquess of Salisbury.	Lord Snell.
Marquess of Zetland.	Mr. Attlee.
Marquess of Linlithgow.	Mr. Morgan Jones.
Marquess of Reading.	
Earl of Lytton.	
Earl Peel.	
Viscount Halifax.	
Lord Middleton.	
Lord Ker (M. Lothian).	
Lord Hardinge of Penshurst.	
Lord Rankeillour.	
Lord Hutchison of Montrose.	
Mr. Butler.	
Major Cadogan.	
Sir Austen Chamberlain.	
Sir Reginald Craddock.	
Mr. Davidson.	
Mr. Foot.	
Sir Samuel Hoare.	
Sir Joseph Nall.	
Lord Eustace Percy.	
Sir John Wardlaw-Milne.	
Earl Winterton.	

The said amendment is agreed to.

New paragraph 92 is again read.

The further consideration of paragraph 92 is postponed.

It is moved by the Marquess of Linlithgow. After new paragraph 92 to insert the following new paragraph :—

(" 92A. We have only to add that we have considered in this connexion a proposal made to us that the Intelligence Departments—or at all events the Special Branch where such exists—of the provincial Police Forces should be placed under the control of the Governor-General, who should utilise them, through the agency of the Governor, as local offshoots of the Central Intelligence Bureau. We agree with the ideas underlying this proposal to this extent, that it is essential that the close touch which has hitherto obtained between the Intelligence Departments of the Provinces and the Central Intelligence Bureau should continue. But to place the provincial Intelligence Departments under the departmental control of the Central Intelligence Bureau would, we think, be undesirable, as tending to break up the organic unity of the provincial Police Force. We recommend, therefore, that the Central Bureau should, under the new Constitution, be assigned to one of the Governor-General's Reserved Departments as part of its normal activities, and that the change in the form of government, whether at the Centre or in the Provinces, should not involve any change in the relationship which at

Central Intelligence Bureau.

[1] *Supra*, para. 73.

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present exists between the Central Bureau and the provincial Intelligence Departments. Should the Governor-General find that the information at his disposal, whether received through the channel of the Governors or from the provincial Intelligence Departments through the Central Intelligence Bureau, is inadequate, he will, in virtue of recommendations which we make later[1] possess complete authority to secure through the Governor the correction of any deficiencies, and indeed to point out to the Governor, and require him to set right, any shortcomings which he may have noticed in the organisation or activities of the provincial Intelligence Branch.")

The same is agreed to.

New paragraph 92A is again read.

The further consideration of paragraph 92A is postponed.

Paragraphs 93 to 346 are again read and postponed.

Paragraph 347 is read.

It is moved by the Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones. Pages 190 and 191, to leave out paragraph 347 and to insert the following new paragraph :—

(" 347. We are impressed with the insistence with which Indians of all sorts of opinion ask that a statement of their ' fundamental rights ' should find a place in the new Constitution Act. The Report of the Indian All-Parties Conference also made a strong point of this. The authors of the White Paper ' see serious objections ' to giving statutory expression to a declaration of this character, and suggest that in connection with the inauguration of the new Constitution a pronouncement on the matter might be made by the Sovereign. We cannot forget that such a pronouncement was made by her late Majesty Queen Victoria in these words :

' We declare it to be our Royal will and pleasure that none be in any wise favoured, none elected, or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law, and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.

' And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability and integrity to discharge.

' We know and respect the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State, and we will see that generally in framing and administering the law, due regard be paid to the ancient rights, usages, and customs, of India.'

" We cannot pretend to believe that full effect has been given to the terms of that Royal Proclamation in India. In view of the fact that it has been impressed on the Indian delegates that no pledges or declarations are binding save such as are embodied in Acts of Parliament, we think the Indian plea is sound, that whenever possible their fundamental rights should be embodied in the Constitution Act and so be secured to them beyond the possibility of doubt. A proposed list of these " fundamental rights " is given in Chapter 7 of the Indian All-Parties Conference. In reference to these they say :—

' Our first care should be to have our fundamental rights guaranteed

[1] *Infra*, para. 122.

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in a manner which will not admit their withdrawal under any circumstances. With perhaps less reason than we have, most of the modern constitutions of Europe have specific provisions to secure such rights to the people.'

" They go on very pertinently to say that :—

' Another reason why great importance attaches to a declaration of rights is the unfortunate existence of communal differences in the country. Certain safeguards and guarantees are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment of religious and communal rights to all communities than by including them among the basic principles of the constitution.' ")

The same is disagreed to.

Paragraph 347 is again read.

The further consideration of paragraph 347 is postponed.

Paragraph 348 is again read.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 191, line 40, after (" his ") to insert (" sex,").

The same is disagreed to.

It is moved by the Lord Ker (M. Lothian). Page 191, line 42, at the end to insert (" The proposal in the White Paper, however, goes on to say that ' no " ' law will be deemed to be discriminatory for this purpose on the ground only " ' that it prohibits either absolutely or with exceptions the sale or mortgage " ' of agricultural land in any area or to any person not belonging to some " ' class recognised as being a class of persons engaged in, or connected with, " ' agriculture in that area, or which recognises the existence of some right, " ' privilege or disability attaching to members of a community by virtue of " ' some privilege, law or custom having the form of law.' This proviso is " intended to cover legislation such as the Punjab Land Alienation Act which " is designed to protect the cultivator against the money lender. This is no " doubt a desirable object. Inasmuch, however, as the full effect of the " proviso cannot be foreseen and may have the result that the legitimate " interests of minorities may be impaired while they are denied the right of " appeal to the Courts for redress, we think that in cases where the legitimate " interests of minorities may be adversely affected and access to the courts is " barred by this proviso in the constitution the Governor should consider " whether his special responsibility for the protection of minorities necessitates " action on his part.")

The same is agreed to.

Paragraph 348 is again read as amended.

The further consideration of paragraph 348 is postponed.

Paragraph 349 is again read.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 191, to leave out paragraph 349.

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 191, lines 44 and 45, to leave out from (" purposes ") in line 44 to (" should ") in line 45.

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 191, line 45, to leave out from (" Compensation ") to (" should ").

The amendment, by leave of the Committee, is withdrawn.

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It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 191, lines 46 to 49, to leave out from (" prohibited ") to the end of the paragraph.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 349 is again read.

The further consideration of paragraph 349 is postponed.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 191, after paragraph 349 to insert the following new paragraph :—

Special case of grants of land or of tenure of land free of land revenue.

(" 349A. But there is another form of private property—perhaps more accurately described as ' vested interest '—common in India which we think requires more specific protection. We refer to grants of land or of tenure of land free of land revenue, or subject to partial remissions of land revenue, held under various names (of which Taluk, Inam, Watan, Jagir and Muafi are examples) throughout British India by various individuals or classes of individuals. Some of these grants date from Moghul or Sikh times and have been confirmed by the British Government : others have been granted by the British Government for services rendered. Many of the older grants are enjoyed by religious bodies and are held in the names of the managers for the time being. The terms of these grants differ : older grants are mostly perpetual, modern grants are mostly for three, or even two, generations. But, whatever their terms, a grant of this kind is always held in virtue of a specific undertaking given by, or on the authority of, the British Government that, subject in some cases to the due observance by the grantee of specified conditions, the rights of himself and his successors will be respected either for all time or, as the case may be, for the duration of the grant. A well-known instance of such rights is to be found in those enjoyed by the present Talukdars of Oudh, who owe their origin to the grant to their predecessors in 1858, after the Oudh Rebellion and the consequent confiscation of talukdari rights previously claimed in Oudh, of sanads by Lord Canning, the then Governor-General, conferring proprietary rights upon all those who engaged to pay the *jumma* which might then or might from time to time subsequently, be fixed subject to loyalty and good behaviour, and the rights thus conferred were declared to be permanent, hereditary and transferable.")

The same is agreed to.

New paragraph 349A is again read as amended.

The further consideration of paragraph 349A is postponed.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 191. After paragraph 349A, to insert the following new paragraphs :—

Prior consent of Governor-General or Governor should be required to legislation affecting such grants.

(" 349B. It is not unnatural that the holders of privileges such as we have described should be apprehensive lest the grant of responsible government, and the consequent handing over to the control of Ministers and Legislatures of all matters connected with land revenue administration, should result in a failure to observe the promises which have been extended by Governments in the past to themselves or their predecessors in interest. Some of the claims to protection which have been urged upon us in this connexion would be satisfied by little less than a statutory declaration which would have the effect of maintaining unaltered and unalterable for all time, however strong the justification for its modification might prove to be in the light of changed circumstances, every promise or undertaking of the kind made by the British Government in the past. We could not contemplate so far-reaching a limitation upon the natural consequences of the change to responsible government. We recommend, however, that the Constitution Act should contain an appropriate provision requiring the prior consent of the Governor-General or the Governor, as the case may be, to any proposal, legislative or executive, which would alter or prejudice the rights of the possessor of any privilege of the kind to which we have referred.

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The Permanent Settlement.

349C. We have considered whether similar provision should be made to protect the rights of Zamindars and others who are the successors in interest of those in whose favour the Permanent Settlement of Bengal, Bihar and Orissa and parts of the United Provinces and Madras was made at the end of the 18th century. Briefly, the effect of this Settlement was to give a proprietary right in land to the class described as Zamindars, on the understanding that they collected and paid to Government the revenue assessed on that land which was fixed at rates declared at the time to be intended to stand unaltered in perpetuity. It is apparent that the position of Zamindars under the Permanent Settlement is very different from that of the individual holders of grants or privileges of the kind we have just described; for, while the privileges of the latter might, but for a protection such as we suggest, be swept away by a stroke of the pen with little or no injury to any but the holder of the vested interest himself, the alteration of the character of land revenue settlement in Bengal, for instance, would involve directly or indirectly the interests of vast numbers of the population in addition to those of the comparatively small number of Zamindars proper, and might indeed produce an economic revolution of a most far-reaching character. Consequently, no Ministry or Legislature in Bengal could, in fact, embark upon, or at all events carry to a conclusion, legislative proposals which would have such results unless they had behind them an overwhelming volume of public support. Moreover, while we do not dispute the fact that the Permanent Settlement is an arrangement which is binding upon the British Government as one of the parties to it, we could not regard this fact as involving the conclusion that it must be placed beyond the legal competence of an Indian Ministry responsible to an Indian Legislature which is to be charged *inter alia* with the duty of regulating the land revenue system of the Province to alter the enactments embodying the Permanent Settlement, which enactments, despite the promises of permanence they contain, are legally subject (like any other Indian enactment) to repeal or alteration. At the same time, we feel that the Permanent Settlement is not a matter for which, as the result of the introduction of Provincial Autonomy, His Majesty's Government can properly disclaim all responsibility; and we think that the Governor should be enabled on their behalf to intervene at the earliest stage if proposals are made for the modification of the Settlement which, in his opinion, would be prejudicial to any of the interests involved. We recommend, therefore, that in this case also the Constitution Act should require that the previous sanction of the Governor given in his discretion should be the condition precedent to the introduction of any Bill which would alter the character of the Permanent Settlement.

The English language.

"349D. In concluding this chapter of our Report, we take the opportunity of mentioning a topic which can conveniently be dealt with here, though it has no very direct connexion with the question of discrimination or of fundamental rights. It has been urged on us that provision should be made requiring the English language to be the official language of the Federation, or, more particularly, that English should receive legal status as the official language of the Constitution and of the superior Courts, and as one of the official languages of the Provincial Governments. In our judgment, no useful purpose would be served by a general declaration in the sense just indicated, and any such declaration would at once give rise to questions of great difficulty and complexity in relation to education. Our recommendations set out in this chapter include language amongst the grounds upon which, in certain cases, discrimination is to be inadmissible, and these recommendations will accordingly prevent any individual who falls within the scope of the protection of these provisions from being discriminated against on the ground that his mother tongue is English. Apart from this, we recommend that the Letters Patent issued to the High Courts should prescribe English as the language of these Courts, and we think that the Constitution Act might

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well provide, as do the Statutory Rules made under the existing Government of India Act at the present moment, that the business of all the Legislatures is to be conducted in English, subject to appropriate provision ensuring the right of any member unacquainted with English to address the Council in the vernacular. At the present moment the language of the Subordinate Courts is laid down by each provincial Government under provisions in the Codes of Civil and Criminal Procedure. We see no reason to suppose that the Provincial Governments will cease to exercise this power under the new Constitution or that they will exercise it in an unreasonable manner.")

New paragraphs 349B and 349C are, by leave of the Committee, withdrawn.

New paragraph 349D is agreed to.

New paragraph 349D is again read.

The further consideration of paragraph 349D is postponed.

Paragraph 350 is read and postponed.

Paragraph 351 is read.

It is moved by the Lord Rankeillour. Page 192, line 37, leave out from (" period,") to (" in ").

The same is agreed to.

Paragraph 351 is again read as amended.

The further consideration of paragraph 351 is postponed.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 192, after paragraph 351 to insert the following new paragraph :—

(" 351A. Whilst however we are unable to recommend at the moment the specific grant of Constituent Powers we consider that the new Constitution must have within itself provisions whereby developments may take place. We would point out that in our own country constitutional development has taken place not so much by specific enactments as by usage, custom and the falling into desuetude of certain rights. We consider therefore, that the instrument of instructions to the Governor-General and the Provincial Governors should be so drafted as to allow of such modifications and developments taking place and further that a variation from time to time of the instrument of instructions will provide the means of a steady transfer of responsibility to Ministers and the elected representatives of the Indian people. Thus India will be enabled to follow the same path towards greater responsibility as has been trodden by other parts of the British Empire.")

The amendment, by leave of the Committee, is withdrawn.

Paragraphs 352 to 356 are again read and postponed.

Paragraph 357 is again read.

It is moved by the Lord Ker (M. Lothian). Page 195, line 20, after (" Federation ") to insert (" except that any Provincial legislature should " have power to propose the removal of the ' application ' requirement and " the lowering of the educational standard to literacy in the case of women " voters, as set forth in paragraph 134, at any time after the first election in " the province under the new constitution.")

The same is agreed to.

Paragraph 357 is again read as amended.

The further consideration of paragraph 357 is postponed.

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Paragraphs 358 to 360 are again read and postponed.

Paragraph 361 is read.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 197, lines 30 to 33, to leave out from ("Ministers") in line 3 to the end of the paragraph and to insert ("We should like to see Indian affairs "brought at once under the Dominions Office. Failing this, and as a step "in that direction, we recommend the merging of the India Office into a new "office with a Secretary of State for the self-governing parts of the British "Commonwealth of Nations in the East. This would include not only India "but Ceylon, Burma, if separated, and other portions of the British Empire "in the East as and when they become self-governing.")

The same is disagreed to.

Paragraph 361 is again read.

The further consideration of paragraph 361 is postponed.

Ordered, that the Committee be adjourned till tomorrow at half-past Ten o'clock.

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Die Martis 17° Julii 1934

Present:

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraph 362 is read.

It is moved by Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 197, line 35, to leave out (" less ") and to insert (" more ").

The same is disagreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 198, line 4, to leave out (" two ") and to insert (" three ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 198, line 10, at the end to insert (" ; and, thirdly, in order to secure that, in matters where the " concurrence of the majority of his advisers will be required, the Secretary " of State shall be an effective participant in their deliberations, it seems " desirable to us that the Secretary of State shall, in case of equality of votes, " have a second or casting vote.")

The same is agreed to.

Paragraph 362 is again read as amended.

The further consideration of paragraph 362 is postponed.

Paragraph 363 is again read and postponed.

Paragraph 364 is again read.

It is moved by Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 198, lines 40 to 42, to leave out from (" that ") in line 40 to (" any ") in line 42.

The same is disagreed to.

It is moved by Mr. Attlee. Page 198, line 44, after (" changes ") to insert (" should be granted compensation out of British revenues.")

Objected to.

All amendments are to the Draft Report (*vide infra* paras. 1–42B, pp. 470–491; and *vide supra* paras. 43–453, pp. 64–254) and NOT to the Report as published. (Vol. I, Part I).
A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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On Question :—

Content (1).	Not Contents (18).
Mr. Attlee.	Lord Archbishop of Canterbury. Marquess of Salisbury. Marquess of Zetland. Marquess of Linlithgow. Marquess of Reading. Earl Peel. Lord Middleton. Lord Ker (M. Lothian). Lord Hardinge of Penshurst. Lord Rankeillour. Mr. Butler. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Foot. Sir Samuel Hoare. Sir Joseph Nall. Lord Eustace Percy. Earl Winterton.

The said amendment is disagreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 198, line 44, at the end to insert ("and we intend that the expression 'India Office Staff' in this "connexion should be interpreted as including members of the Audit Office "and former members of the India Office now serving in the Office of the "High Commissioner for India.")

The same is agreed to.

Paragraph 364 is again read, as amended.

The further consideration of paragraph 364 is postponed.

Paragraph 365 is again read and postponed.

Paragraph 366 is again read.

It is moved by Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 200, to leave out paragraph 366 and to insert the following new paragraph :—

("366. The White Paper proposes, in paragraph 32, that a Reserve Bank, 'free from political influence, will have been set up by Indian legislation,' before the first Federal Ministry comes into being. If it should be proved impossible successfully to start the Reserve Bank, His Majesty's Government 'are pledged to call into conference representatives of Indian opinion.' We note that neither at the first nor at the second Round Table Conference was the establishment of the Reserve Bank treated as a condition precedent to the inauguration of the Federation. It was an entirely new proposal brought forward at the third Round Table Conference. We understand that the Indian Legislature has already passed a Reserve Bank of India Act, and we venture to hope that the date of its inauguration may be speedily decided, since we understand that the beginning of the Indian Federation depends upon it. Assuming the establishment of the Bank, we suggest that the Governor and Deputy Governor should be selected by the Governor-General in consultation with his Ministers.

"We are not in agreement with the underlying conception of the establishment of the Reserve Bank, namely, that it should be entirely free from political influence.

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" We consider that decision of policy in respect of credit and currency are vital interests of the community. They should not be made by shareholders whose private interests may not coincide with the welfare of the State, but should be influenced by the Government.

" In any event it should be made clear that India's currency and credit policy will be decided in accordance with her own needs and not by the influence of external financial interests or foreign creditors.")

The same is disagreed to.

Paragraph 366 is again read.

The further consideration of paragraph 366 is postponed.

Paragraphs 367 and 368 are again read and postponed.

Paragraph 369 is again read.

It is moved by the Lord Eustace Percy. Page 201, line 23, after (" basis.") to insert (" We think also that it is unwise absolutely to prohibit the Governor-" General from appointing a servant of the Crown in India as a member of " the Authority ".)

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 201, line 23, after (" basis.") and to insert :—

(" The Minister who is responsible to the Legislature for the Indian Railways and for the Railway Budget should be *ex officio* Chairman of the Railway Board, but we consider that it is undesirable that he should be subject to interpellation on details of administration, particularly on those relating to appointments and promotions ").

The same is disagreed to.

Paragraph 369 is again read.

The further consideration of paragraph 369 is postponed.

Paragraph 370 is read.

It is moved by Sir John Wardlaw-Milne. Page 202, line 5, at the end to insert the following new sub-paragraph :—

(" (*e*) The continuance in full force of the contracts at present existing with the Indian Railway Companies and the security of the payments periodically due to them in respect of guaranteed interest, share of earnings and surplus profits, as well as their right in accordance with their contracts to have access to the Secretary of State in regard to disputed points and, if desired, to proceed to arbitration. (Para. 4).")

The same is agreed to.

Paragraph 370 is again read, as amended.

The further consideration of paragraph 370 is postponed.

The Appendix (IV) is again read and postponed.

Paragraphs 371 to 373 are again read and postponed.

Paragraph 374 is again read.

It is moved by the Lord Rankeillour. Page 208, line 15, at the end to insert (" and his salary should not be votable ").

The same is agreed to.

Paragraph 374 is again read as amended.

The further consideration of paragraph 374 is postponed.

Paragraphs 375 to 379 are again read and postponed.

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Paragraph 380 is again read.

It is moved by Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 212, lines 11 to 15, to leave out from the beginning of the paragraph to the end of the first sentence and to insert :—

("The present practice in the case of the Dominions is that the Dominion Governments appoint their own High Commissioners as a matter of right without any provision being necessary in their constitutions. We think that India in this matter should stand in the same position and that the High Commissioner for India should have full power to act on the instructions of the Government of India without there being any necessity for reference to Whitehall. The High Commissioner will no doubt continue to serve Provincial Governments as well as the Federal Government.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 380 is again read.

The further consideration of paragraph 380 is postponed.

Paragraphs 381 to 386 are read and postponed.

Paragraph 387 is again read.

It is moved by the Marquess of Linlithgow. Page 216, line 13, to leave out ("unlike the Indian White Paper").

The same is agreed to.

Paragraph 387 is again read, as amended.

The further consideration of paragraph 387 is postponed.

Paragraph 388 is again read and postponed.

Paragraph 389 is again read.

It is moved by the Marquess of Linlithgow. Page 216, line 34, to leave out ("Bengal") and to insert ("Burma").

The same is agreed to.

Paragraph 389 is again read, as amended.

The further consideration of paragraph 389 is postponed.

Paragraph 390 is again read and postponed.

Paragraph 391 is again read.

It is moved by the Marquess of Linlithgow. Page 217, lines 32 and 33, to leave out ("of India upon Burma has been") and to insert ("which Burma "can exert on Indian political influence and the interest which India generally "feels in Burma's affairs are").

The same is agreed to.

Paragraph 391 is again read, as amended.

The further consideration of paragraph 391 is postponed.

Paragraphs 392 and 393 are again read and postponed.

Paragraph 394 is again read.

It is moved by the Marquess of Linlithgow. Page 219, line 8, after ("Burma") to insert ("unlike all other Provinces except Bombay").

The same is agreed to.

Paragraph 394 is again read as amended.

The further consideration of paragraph 394 is postponed.

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Paragraph 395 is read and postponed.

Paragraph 396 is read.

It is moved by the Earl Peel. Page 220, lines 12 and 13, to leave out from (" which ") in line 12 to (" would ") in line 13 and to insert (" in our " judgment ").

The same is agreed to.

Paragraph 396 is again read, as amended.

The further consideration of paragraph 396 is postponed.

Paragraph 397 is again read.

It is moved by the Marquess of Linlithgow. Page 221, lines 10 and 11, to leave out from (" reinforced.") in line 10 to (" but ") in line 11 and to insert (" Federation would not come into being simultaneously with Provincial Autonomy ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 221, line 12, to leave out (" It ") and to insert (" Federation ").

The same is agreed to.

It is moved by the Lord Rankeillour. Page 221, line 17, after (" all ") to insert (" and if approved by the Burmese Legislature or a majority of the " electors in a referendum,").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 397 is again read as amended.

The further consideration of paragraph 397 is postponed.

Paragraphs 398 to 402 are again read and postponed.

Paragraph 403 is again read.

It is moved by the Marquess of Linlithgow. Page 224, line 18, to leave out from (" imposed ") to the second (" to ") and to insert (" within limits " sufficiently low ").

The same is agreed to.

Paragraph 403 is again read as amended.

The further consideration of paragraph 403 is postponed.

Paragraphs 404 and 405 are again read and postponed.

Paragraph 406 is again read.

It is moved by the Lord Rankeillour. Page 225, line 36, to leave out (" for a prescribed period ").

The same is disagreed to.

Paragraph 406 is again read.

The further consideration of paragraph 406 is postponed.

Paragraph 407 is again read.

It is moved by the Marquess of Linlithgow. Page 226, line 4, to leave out (" desirability ") and to insert (" necessity ").

The same is agreed to.

Paragraph 407 is again read, as amended.

The further consideration of paragraph 407 is postponed.

Paragraphs 408 to 414 are again read and postponed.

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Paragraph 415 is again read.

It is moved by the Marquess of Linlithgow. Page 229, line 31, after (" the ") to insert (" comparative ").

The same is agreed to.

Paragraph 415 is again read, as amended.

The further consideration of paragraph 415 is postponed.

Paragraphs 416 to 419 are again read and postponed.

Paragraph 420 is again read.

It is moved by the Marquess of Linlithgow. Page 232, line 6, after (" Burma ") to insert (" though we assume that there would continue to be a " General Officer in command of the regular military forces ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 232, lines 19 to 21, to leave out from (" kind ") in line 19 to the end of the sentence.

The same is agreed to.

Paragraph 420 is again read, as amended.

The further consideration of paragraph 420 is postponed.

Paragraph 421 is again read.

It is moved by the Marquess of Linlithgow. Page 232, line 22, after (" comment ") to insert (" except, in regard to the latter, to state beyond the " possibility of misunderstanding that they have no concern with the " Buddhist religion or any other religion of the population at large ").

The same is agreed to.

Paragraph 421 is again read, as amended.

The further consideration of paragraph 421 is postponed.

Paragraph 422 is again read.

It is moved by the Marquess of Linlithgow. Page 232, lines 37 to 39, to leave out from (" Federation ") in line 37 to the end of the sentence and to insert (" A Reserve Bank of India has now been authorised by Act of the " Indian Legislature and measures are therefore in train for the fulfilment of " the condition precedent ".)

The same is agreed to.

Paragraph 422 is again read, as amended.

The further consideration of paragraph 422 is postponed.

Paragraph 423 is again read.

It is moved by Sir John Wardlaw-Milne. Page 233, lines 19 and 20, to leave out from (" Department ") in line 19 to the end of the sentence.

The same is agreed to.

Paragraph 423 is again read, as amended.

The further consideration of paragraph 423 is postponed.

Paragraphs 424 to 428 are again read and postponed.

Paragraph 429 is again read.

It is moved by the Lord Ker (M. Lothian). Page 236, line 8, to leave out (" very striking ") and to insert (" considerable ").

The same is agreed to.

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It is moved by the Lord Ker (M. Lothian). Page 236, lines 14 to 15, to leave out from the second (" 5 ; ") to the end of line 15, and to insert (" if all women " eligible to vote apply to be put on the register. The proportionate increase " in the Burmese electorate is thus somewhat less than that in the case of " India, both in the case of men and women. The reason for this is that the " number of voters on the register in Burma is already considerably higher " in proportion to population than in India and ").

The same is agreed to.

It is moved by the Lord Ker (M. Lothian). Page 236, line 17, to leave out from (" India ") to the end of the sentence and to insert (" which means that " a property qualification results in a larger proportion of the population " being placed on the roll ").

The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 236, line 31, to leave out (" a means ") and to insert (" for the purpose ").

The same is agreed to.

Paragraph 429 is again read, as amended.

The further consideration of paragraph 429 is postponed.

Paragraph 430 is again read.

It is moved by the Marquess of Linlithgow. Page 236, line 44, after (" also ") to insert (" as in British India ").

The same is agreed to.

Paragraph 430 is again read, as amended.

The further consideration of paragraph 430 is postponed.

Paragraphs 431 to 435 are again read and postponed.

Paragraph 436 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 241, line 14, at the end to insert (" We think that the restrictions on the powers of the Legislature " both in regard to the application of enactments passed by it and in regard to " questions and resolutions which we have recommended elsewhere in regard " to similar areas in British India, should apply in regard to the Excluded " Areas and Partially Excluded Areas of Burma.")

The same is agreed to.

Paragraph 436 is again read, as amended.

The further consideration of paragraph 436 is postponed.

Paragraph 437 is again read and postponed.

Paragraph 438 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 241, lines 36 and 37, to leave out from the first (" to ") in line 36 to the end of the sentence, and to insert (" remain members of the Indian Civil Service, seconded for service under " the Government of Burma and to retain all the rights and privileges of that " service. If we correctly understand this request to mean that the officers " in question desire that though no longer subordinate in any degree to the " Governor-General of India in Council, they should still be entitled to describe " themselves as members of the Indian Civil Service, to which they were in " fact recruited, we see no objection to acceding to their desire.")

The same is agreed to.

Paragraph 438 is again read, as amended.

The further consideration of paragraph 438 is postponed.

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Paragraph 439 is again read.

It is moved by the Marquess of Linlithgow. Page 242, lines 3–5, to leave out from (" it ") in line 3 to (" enjoy ") in line 5 and to insert (" includes " certain appointments the incumbents of which ").

The same is agreed to.

Paragraph 439 is again read, as amended.

The further consideration of paragraph 439 is postponed.

Paragraph 440 is again read.

It is moved by the Marquess of Linlithgow. Page 242, lines 24 and 25, to leave out from (" being ") in line 24 to the end of the paragraph and to insert (" some recruitment by the Secretary of State of European medical officers " must continue ").

The same is agreed to.

Paragraph 440 is again read, as amended.

The further consideration of paragraph 440 is postponed.

Paragraphs 441 to 444 are again read and postponed.

Paragraph 445 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 244, line 7, at the end to insert (" But the separation of Burma from India will create a special " category of persons in Burma of United Kingdom domicile for whose " protection in India provision will, we think, require to be made in the " Constitution Act for India rather than that for Burma. We refer to the " case of Companies established already in Burma with United Kingdom " personnel and United Kingdom capital. Such Companies have established " themselves in Burma as a Province of British India and we think that it " would evidently be inequitable if, after the separation of Burma, they are " in a less favourable position in respect of their operations in British India " than a Company established at the same time and under the same conditions " in, say, Bombay or Bengal.")

The same is agreed to.

Paragraph 445 is again read, as amended.

The further consideration of paragraph 445 is postponed.

Paragraphs 446 to 449 are again read and postponed.

Paragraph 450 is again read.

It is moved by the Marquess of Linlithgow. Page 246, line 8, after (" Burma.") to insert (" But as Burma after separation will be a unitary State " and will not be within the jurisdiction of the Indian Federal Court, we think " that an appeal should lie as of right to the Privy Council from the High " Court in any case involving the interpretation of the Constitution Act. " We take this opportunity to record our opinion that the recommendations " which we have made elsewhere for the prescription of English for the conduct " of business in the Indian Legislatures should apply equally to the case of " the High Court and the Legislature in Burma. As regards audit arrange- " ments, it is evident that Burma will require after separation her own audit " system.")

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 246, line 14, at the end to insert (" We think that liberty should be afforded in the Act for the " new Burma Government to establish a High Commissioner of its own in " London if it finds it necessary to do so ; but we foresee the possibility that " the amount of business requiring to be transacted in London on behalf of " the Government of Burma may be so small as not to justify, at the outset,

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" the expense of establishing such an office; and we think that it might be " well to examine the possibility of the functions of such an official being " undertaken by some other authority on an agency basis for the time being.")

The same is agreed to.

Paragraph 450 is again read, as amended.

The further consideration of paragraph 450 is postponed.

Paragraph 451 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 246, line 20, after (" Burma.") to insert (" It follows that there should be a transference of the " rights, liabilities and obligations incurred by the Secretary of State in " Council in respect of Burma to the appropriate authority to be established " in Burma, corresponding to the transference to the Federal or Provincial " Governments in India which in an earlier passage we have suggested should " be provided for in the Indian Constitution.")

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 246, line 30, after (" person.") to insert (" There is, we are convinced, no real danger that the " interests of Burma would be unfairly subordinated to those of India in the " hands of a Secretary of State holding the double office.")

The same is agreed to.

Paragraph 451 is again read, as amended.

The further consideration of paragraph 451 is postponed.

Paragraph 452 is again read.

It is moved by the Marquess of Linlithgow. Page 246, line 33, to leave out (" on service matters ") and to insert (" on questions concerning Burma ").

The same is agreed to.

It is moved by the Marquess of Linlithgow.

Page 246, line 35, to leave out (" certain ") and to insert (" Service ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 246, line 38, after (" con- " cerned ") to insert (" which are and will continue to be " *ejusdem generis* " " in India and Burma ").

The same is agreed to.

Paragraph 452 is again read, as amended.

The further consideration of paragraph 452 is postponed.

Paragraph 453 is again read and postponed.

Ordered, that the Committee be adjourned to Friday next at half-past Ten o'clock.

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Die Veneris 20° Julii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The proceedings of Tuesday last are read.

Paragraphs 1 to 45 are again postponed.

Paragraph 46 is again read.

It is moved by the Marquess of Linlithgow. Page 22, lines 6 and 7, to leave out from (" that ") in line 6 to (" by ") in line 7, and to insert (" exclu- "sively provincial sphere practically free from control ").

It is moved by the Marquess of Salisbury. As an amendment to the above amendment, to leave out ("practically") and to insert (" broadly").

The same is agreed to.

The original amendment is again moved.

The same is agreed to, as amended.

It is moved by the Marquess of Linlithgow. Page 22, line 23, after (" sphere ") to insert (" though, as we shall explain later, the Governor- "General in virtue of his power of supervising the Governors will have "authority to secure compliance in certain respects with directions which "he may find it necessary to give ").

The same is agreed to.

Paragraph 46 is again read, as amended.

The further consideration of paragraph 46 is postponed.

Paragraphs 47 to 57 are again postponed.

Paragraph 58 is again read.

It is moved by the Marquess of Linlithgow. Page 28, lines 12 to 14, to leave out from (" and ") in line 12 to the end of the sentence and to insert (" it appears to us that any financial difficulties likely to be caused thereby "are not serious enough to outweigh the advantages which will accrue from "the separation ").

The same is agreed to.

Paragraph 58 is again read, as amended.

The further consideration of Paragraph 58 is postponed.

Paragraph 59 is again postponed.

All amendments are to the Draft Report (*vide infra* paras. 1–42B, pp. 470–491; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part I). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Paragraph 60 is again read.

It is moved by the Marquess of Linlithgow. Page 29, line 14, at the end to insert (" We make recommendations later in this Report with regard to " changes to be effected in the Act by Order in Council and the parliamentary " control to be exercised over them ").

It is moved by the Marquess of Salisbury. As an amendment to the above amendment, at the beginning of the amendment to insert (" of course subject to the sanction of Parliament.")

The amendment to the amendment, by leave of the Committee, is withdrawn.

The original amendment is again moved.

The same is agreed to.

Paragraph 60 is again read, as amended.

The further consideration of paragraph 60 is postponed.

Paragraph 61 is again read.

It is moved by the Marquess of Linlithgow. Page 29, lines 19 to 21, to leave out from (" that ") in line 19 to the end of the paragraph and to insert (" appropriate provision should be made in the Constitution Act to ensure " that the Provinces affected and the Central Government are given adequate " opportunities for expressing their views.")

The same is agreed to.

Paragraph 61 is again read as amended.

The further consideration of paragraph 61 is postponed.

Paragraphs 62 to 67 are again postponed.

Paragraph 68 is again read.

It is moved by the Marquess of Linlithgow. Page 32, line 20, to leave out (" unqualified ")

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 32, line 21, after (" rule ") to insert (" as it is understood in this country ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 32, line 25, to leave out (" the ") and to insert (" a ").

The same is agreed to.

Paragraph 68 is again read, as amended.

The further consideration of paragraph 68 is postponed.

Paragraphs 69 to 72 are again postponed.

Paragraph 73 is again read.

It is moved by the Marquess of Linlithgow. Page 34, line 36, after (" deny ") to insert (" the two Houses of ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Linlithgow. Page 34, line 46, at the end, to insert (" We suggest the appropriate procedure should be that the Crown " should communicate to Parliament a draft of the proposed Instrument or " of any subsequent amendments and that Parliament will then present an " Address praying that the Instrument should issue in the form of the draft " or with such modifications as are agreed by both Houses, as the case may " be ").

It is moved by the Marquess of Salisbury. As an amendment to the above amendment, line 4 of the amendment to leave out (" then ") and to insert (" if it sees fit ").

The same is agreed to.

The original amendment is again moved.

The same is agreed to as amended.

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Paragraph 73 is again read, as amended.

The further consideration of paragraph 73 is postponed.

Paragraphs 74 to 95 are again postponed.

Paragraph 96 is again read.

It is moved by the Marquess of Linlithgow. Page 46, lines 34 and 35, to leave out from (" contemplate ") in line 34 to (" as ") in line 35.

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 46, lines 37 to 41, to leave out from (" Deputy Governor ") in line 37 to (" There ") in line 41.

The same is agreed to.

Paragraph 96 is again read, as amended.

The further consideration of paragraph 96 is postponed.

Paragraphs 97 to 115 are again postponed.

Paragraph 116 is again read.

It is moved by the Marquess of Linlithgow. Page 57 to leave out paragraph 116.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 116 is again read.

The further consideration of paragraph 116 is postponed.

Paragraphs 117 to 120 are again postponed.

Paragraph 121 is again read, as amended, and is as follows :—

The White Paper proposals accepted.

121. The Communal Award was criticised by more than one witness who appeared before us on the ground that it operates inequitably in the case of Bengal, and even more inequitably with the modifications resulting from the Poona Pact. There was also criticism of the Award from other Provinces in which the Hindus are in a minority; but elsewhere the Award appears to have met with acceptance, and we entertain no doubt that if any attempt were now made to alter or modify it, the consequences would be disastrous. The arrangement which it embodies appears to us to be well thought out and balanced, and to disturb any part of it would be to run the risk of upsetting the whole. It accepts indeed the principle of separate electorates for the Muhammadan, Sikh, Indian Christian, Anglo-Indian, and European communities, but we recognize that this is an essential and inevitable condition of any new constitutional scheme. We may deplore the mutual distrust of which the insistence on this demand by the minorities is so ominous a symptom, but it is unhappily a factor in the situation which cannot be left out of account, nor do we think that we can usefully add anything to what we have already said on the subject. We accept therefore the proposals in the White Paper for the composition of the Legislative Assemblies. We feel somewhat differently, however, about the Poona Pact. We consider that the original proposals of His Majesty's Government constitute a more equitable settlement of the general communal question and one which is more advantageous to the Depressed Classes themselves in their present stage of development. They united the two sections of the Hindu Community by making them vote together in the general constituencies, thereby compelling candidates to consider the well-being of both sections of his constituents when appealing for their support, while they secured to the Depressed Classes themselves sufficient spokesmen in the legislature, elected wholly by depressed class votes, to ensure their case being heard and to influence voting, but not so numerous that the Depressed Classes will probably be unable to find representatives of adequate calibre with results unfortunate both to themselves and the legislatures. That solution was altered, in a great hurry, under pressure of Mr. Gandhi's ' fast unto death.' In view of the fact that His Majesty's Government felt satisfied that the agreement come to at Poona fell within

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the terms of their original announcement and accepted it as a valid modification of the communal award, we do not feel able to recommend them now to reject it. But subsequently to the arrangement of the Pact objections to it, in relation to Bengal, have been strongly urged by caste Hindus from that Province. We should welcome an agreement between the caste Hindus and Depressed Classes to reduce the number of seats reserved to the latter in Bengal, possibly with some compensatory increase in such seats in some other Provinces, where a small addition in favour of the Depressed Classes would not be likely materially to affect the balance of communities in the Legislature.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), Mr. Foot, Sir. Samuel Hoare, and Mr. Butler. Lines 19 and 20 to leave out from (" Assemblies ") in line 19 to (" consider ") in line 20 and to insert (" As " regards the Poona Pact we are bound to say that we ").

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), Mr. Foot, Sir Samuel Hoare, and Mr. Butler. Line 21 to leave out (" constitute ") and to insert (" constituted ").

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), Mr. Foot, Sir Samuel Hoare, and Mr. Butler. Line 23 to leave out (" is ") and to insert (" was ").

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), Mr. Foot, Sir Samuel Hoare, and Mr. Butler. Line 31 to leave out (" will probably ") and to insert (" would ").

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), Mr. Foot, Sir Samuel Hoare, and Mr. Butler. Lines 32 to 43 to leave out from (" calibre ") in line 32 to (" where ") in line 43 and to insert (" Under " the pressure of Mr. Gandhi's fast these proposals were precipitally modified; " but in view of the fact that His Majesty's Government felt satisfied that " the agreement come to at Poona fell within the terms of their original " announcement and accepted it as an authoritative modification of the " Communal Award, we are clear that it cannot now be rejected. Nevertheless, " as we have said, objections to the Pact in relation to Bengal have since been " strongly urged by caste Hindus from that Province; and if by agreement " between the communities concerned some reduction were made in the " number of seats reserved to the Depressed Classes in Bengal possibly with " compensatory increase in the number of their seats in other Provinces ").

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), Mr. Foot, Sir Samuel Hoare, and Mr. Butler. Line 45 at end to insert (" we are disposed to think that the working of the new Constitution " in Bengal would be facilitated.")

The same is agreed to.

Paragraph 121 is again read, as amended.

The further consideration of paragraph 121 is postponed.

Paragraphs 122 to 131 are again postponed.

Paragraph 132 is again read.

It is moved by the Marquess of Linlithgow. Page 65, lines 14 to 18, to leave out from (" and ") in line 14 to (" the ") in line 18, and to insert (" we " have reason to believe that there is for example even now a large body of " opinion in India which would condone ").

The same is agreed to.

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Paragraph 132 is again read, as amended.

The further consideration of paragraph 132 is postponed.

Paragraph 133 is again postponed.

Paragraph 134 is again read.

It is moved by the Marquess of Linlithgow. Page 66, line 27, to leave out (" women ") and to insert (" wives or widows ").

The same is agreed to.

Paragraph 134 is again read, as amended.

The further consideration of paragraph 134 is postponed.

Paragraphs 135 to 137 are again postponed.

Paragraph 138 is again read.

It is moved by the Marquess of Linlithgow. Page 68, line 10, at the end to insert (" or (2) which affects religion or religious rites and usages ")

The same is agreed to.

Paragraph 138 is again read as amended.

The further consideration of paragraph 138 is postponed.

Paragraph 139 is again read.

Page 68, lines 11 to 19, to leave out from the beginning of the paragraph to (" We ") in line 19 and to insert (" We do not think that the consent of the " Governor should any longer be required to the introduction of legislation " which affects religion or religious rites and usages. We take this view, " not because we think that the necessity for such consent might prejudice " attempts to promote valuable social reforms, which has been suggested " as a reason for dispensing with it, but because in our judgment legislation " of this kind is above all other such as ought to be introduced on the responsi- " bility of Indian Ministers. We have given our reasons elsewhere for holding " that matters of social reform which may touch, directly or indirectly, " Indian religious beliefs can only be undertaken with any prospect of success " by Indian Ministers themselves; and, that being so, we think it undesirable " that their responsibility in this most important field should be shared with a " Governor. It has been objected that the mere introduction of legislation 13 " affecting religion or religious rites and usages might be dangerous at times " of religious or communal disturbance, and might indeed itself produce such " disturbance. We observe, however, a Proposal in the White Paper[1] whereby " the Governor would be empowered, in any case in which he considers that " a Bill introduced or proposed for introduction, or any clause thereof, or any " amendment to a Bill moved or proposed, would affect the discharge " of his special responsibility for the prevention of any grave menace to the " peace or tranquillity of the Province, to direct that the Bill, clause or " amendment shall not be further proceeded with. This appears to us an " ample safeguard against the danger to which we have referred; and in " addition it would of course always be open to the Governor, in his discretion, " to refuse his assent to any Bill which has been passed by the Legislature, " if in his opinion it is undesirable on any ground that it should become " law.")

It is moved by the Lord Rankeillour. As an amendment to the above amendment, line 13 of the amendment, after (" Governor.") to insert (" It must be remembered that the Governor has the right of veto in respect of all legislation, and in this case it would be open to him, if he " thought it right, to exercise this power in protection of the inerests of " minorities in accordance with his special responsibility.")

The amendment, to the amendment, by leave of the Committee, is withdrawn.

The original amendment is again moved.

The same is agreed to.

[1] White Paper, Proposal 94.

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Paragraph 139 is again read, as amended.

The further consideration of paragraph 139 is postponed.

Paragraphs 140 to 154 are again postponed.

Paragraph 155 is again read.

It is moved by the Marquess of Linlithgow. Page 78, lines 39 and 40, to leave out from (" that ") in line 39, to the first (" the ") in line 40.

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 78, line 41, to leave out (" so long as this is so ") and to insert (" this being so ").

The same is agreed to.

Paragraph 155 is again read, as amended.

The further consideration of paragraph 155 is postponed.

Paragraphs 156 to 163 are again postponed.

Paragraph 164 is again read.

It is moved by the Marquess of Linlithgow. Page 83, line 35, to leave out (" (ii) the Governor-General's selection of Ministers ; ").

The same is agreed to.

Paragraph 164 is again read as amended.

The further consideration of paragraph 164 is postponed.

Paragraphs 165 to 313 are again postponed.

Paragraph 314 is again read.

It is moved by the Marquess of Linlithgow. Page 174, lines 37 to 43, to leave out from the beginning of line 37 to the end of the paragraph.

The same is agreed to.

Paragraph 314 is again read, as amended.

The further consideration of paragraph 314 is postponed.

Paragraphs 315 to 317 are again postponed.

Paragraph 318 is again read.

It is moved by the Marquess of Linlithgow. Page 176, line 47, to leave out (" town-bred ") and to insert after (" pleaders ") (" from the towns ").

The same is agreed to.

Paragraph 318 is again read, as amended.

The further consideration of paragraph 318 is postponed.

Paragraphs 319 to 453 and 1 to 516 are again postponed.

Paragraph 56 is again read.

It is moved by Sir Reginald Craddock. Page 26, line 40, to page 27, line 11, to leave out from (" taken."[1]) in line 40, page 26, to the end of the paragraph on page 27.

The same is disagreed to.

It is moved by Sir Reginald Craddock. Page 27, after paragraph 56 to insert the following new paragraph :—

(" 56A. The separation of Sind from Bombay is an old controversy but its constitution as a separate Governor's Province is a problem which has arisen out of the constitutional reform and has now become a focus of communal strife. Long before its creation into a separate Province came into prominence, the question whether it should be detached from Bombay and attached to the Punjab was at one time a serious issue. The Bombay Government was opposed to this step, but in the event of its separation demanded territorial compensation which would have dismembered other Provinces, and on account of their opposition the matter was dropped. The construction of the Sukkur Barrage, while bringing the creation of Sind into a separate Province into greater prominence, necessarily revives the issue as to whether a better alternative might not be found by its amalgamation with the Punjab. For the adoption of this latter alternative there are two important reasons. First because this amalgamation would bring the Indus River within the confines and

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under the jurisdiction of a single Province and a single staff of engineering experts instead of leaving the utilisation of the Upper Indus under one Government and the area commanded by the Sukkur system under another. This would provoke acute controversy between the two Provinces and between the interests of the upper riparian people in the Punjab and the lower riparian people in Sind. Once this question of the Indus supply was put under the control of a single administration, then the interests of both sets of people would weigh equally with the single Government responsible for both alike. Also incidentally the cost of the supervising staff might be considerably cheapened. The second reason is that the Punjab would be equally interested with Sind in the rapid colonisation of the large areas which are awaiting colonists and irrigation. We are informed that Sikh farmers of good class have already been attracted to the new areas in Sind. The last census of 1931, shows that there are now 18,000 Sikhs in Sind, and the influx of sturdy farmers of this description would be a very helpful asset to the progress of that territory. This aspect of the Sind question has been strongly advanced by Sir Henry Lawrence, who has served for 18 years in that Province and was Commissioner in Sind before he became an Executive Councillor of the Bombay Government. We regard it as an alternative proposal deserving the attention of the several Governments concerned before a final decision has been made in favour of the creation of a Sind Province. It has the further advantage that the railway connection between the Punjab and Karachi is more developed than that between Sind and Bombay, and it would give the Punjab a port of its own at Karachi. It would also ease the feeling amongst Hindus in a separated Sind of hopeless numerical inferiority to the Moslems. There can be no doubt about the genuineness of Hindu anxiety at finding themselves as they would describe it, at the mercy of a large fanatical Moslem population. Under impartial British rule they have, by superior education and wealth, obtained a prominence in public affairs which would not otherwise have been possible, and they fear that under the new Constitution, especially if Law and Order be transferred, they will become victims of Moslem lawlessness and will steadily be ousted from their present position. These risks are by no means imaginary, for while in the towns they may be sufficiently numerous to protect themselves, it is otherwise in the villages, and even in the past the scattered Hindus in the rural areas have been the victims of dacoities, kidnapping and murder. In Bombay including Sind the ratio of Hindus to Moslems is nearly 4 to 1; in a separated Sind the ratio drops to but a little over 1 to 4. Hitherto, on the existing franchise, Hindus being wealthier, have had higher voting strength than their numerical proportion. With the lowering of the franchise they fear that Moslems will gain the ascendancy. There are only 230,000 persons who are literate in Sind, of whom the greater proportion consists of Hindus. It is believed everywhere that the decision to create the new Sind Province was a concession to Moslem sentiment, and Moslems in other Provinces have espoused the cause of their Sind brethren by means of a division of territory which would secure them a large permanent majority over the Hindu. It is in our judgment open to much doubt whether we should be justified in making territorial adjustments which have the effect of turning a large majority into a small minority, and on this ground alone we think that the creation of Sind into a separate Province is inexpedient and likely to provoke violence and even bloodshed, which might have grave repercussions in many other parts of India. Apart, however, from these considerations, we regard the financial prospects as definitely unfavourable to the creation of Sind as a new Province at the present time. This argument was stressed by the Statutory Commission. Several estimates have been framed at different times of the probable deficit in the finances of a separated Sind, the extra expenditure entailed by the reformed Constitution there, and the probable duration of the period before Sind may

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be expected to pay its way. The development of irrigation under the Barrage in the first two or three years since it has been completed does not necessarily prove that its further development will continue with equal rapidity. Account must be taken of the reduced credit of the rural population under the effect of the calamitous fall in prices of agricultural produce, and even if the overhead charges of making Sind a Governor's Province are kept within the narrowest limits the fact remains that the taxpayers of India generally have to bear additional burdens in order to gratify Moslem pride. Financial considerations, therefore, strongly indicate the advisability of postponing this change until the actual results of the Barrage, rather than estimates made now which may prove too optimistic, have rendered it certain that Sind has become self-supporting. The fact that the Sukkur Barrage is proposed by the White Paper to constitute a special responsibility of the Governor, though valuable in securing in some measure the impartial administration of the colonisation rules or the appointment of suitable experts, has little bearing on the rapidity with which the land is taken up, for no Governor is able by the exercise of his authority to secure the influx of new colonists if the supply of such falls short of the capacity of the land. For all these reasons the better course appears to us that Sind should continue as a sub-Province included in Bombay at least for ten years, during which time the advisability of attaching it to the Punjab can be thoroughly examined and the financial future of Sind, if constituted a new Province, can be ascertained with reasonable accuracy.")

Objected to.

On Question :—

Contents (3)	Not Contents (18)
Marquess of Salisbury.	Lord Chancellor.
Lord Rankeillour.	Marquess of Zetland.
Sir Reginald Craddock.	Marquess of Linlithgow.
	Marquess of Reading.
	Earl of Lytton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Hutchison of Montrose.
	Mr. Attlee.
	Mr. Butler.
	Sir Austen Chamberlain.
	Mr. Cocks.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw Milne.
	Earl Winterton.

The said amendment is disagreed to.

Paragraph 57 is again postponed.

Paragraph 58 is again read.

It is moved by Sir Reginald Craddock. Page 28, to leave out paragraph 58 and to insert the following new paragraph :—

(" 58. The problem of Orissa differs from that of Sind. Long before the people of Orissa thought of themselves as a separate Province their anxiety was concentrated on the inclusion into Orissa of adjacent Oriya-speaking areas from the Madras Presidency and the Oriya States under the political administration of the Central Provinces, in addition to the

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Sambalpur District which is divided from the rest of Orissa by a number of these States. The changes then effected were part of the Partition of Bengal, whereby Bengal proper was bereft of Eastern Bengal and thus consisted of Western Bengal, Bihar, Chota Nagpur and Orissa. In exchange for the Oriya-speaking States, Bengal gave to the Central Provinces five Hindi-speaking States. Upon the revocation of the Partition at the end of 1911, Bengal received back the Eastern Bengal Provinces and the non-Bengali-speaking territories of Bihar and Chota Nagpur, to which also was added Orissa, were made the new Province of Bihar and Orissa. No attempt was made, however, to separate the Oriya-speaking part of Ganjam from the Madras Presidency in order to include it in Orissa proper. This has really been the standing grievance of Orissa, and it can be rectified by the addition of this territory whether Orissa is made into a separate Province or not. We consider that this grievance should be met by revision of the boundary between Orissa and the Madras Presidency, but the question of constituting a separate Province of Orissa by itself is an entirely separate one. Orissa, even with the territory now proposed to be added, is nothing but a Commissioner's Division in area and population, as well as in importance. The decision to take away the Oriya-speaking and the adjacent Hindi-speaking States of the C.P. from the Governments now responsible for them and placing them under the Central Government has greatly reduced the charge which the Commissioner of Orissa has hitherto had in his keeping. The Sambalpur District and the Khariar Zamindari, (which is now to be added to Orissa), are no longer so convenient a portion of that Province now that the States have been transferred to the control of the Governor-General. Orissa is for the most part backward; it contains a large number of aboriginal tribes and it has not really the making of a full-fledged Governor's Province. It had much better be treated, if it is to be separated, as a Chief Commissioner's Province, in which case it might be allowed the privilege of a small Legislature, similar to that granted to the small Province of Coorg, but the better alternative in our opinion would be to leave it for ten years as a part of Bihar and Orissa, and during that period to examine at leisure whether it might not be more appropriately restored to Bengal. Financially, it is likely to be a deficit Province for an unknown period of time, and the extent of the deficit will be increased by the overhead charges of constituting it a separate Governor's Province. In addition to the reasons which we have mentioned, the constitution of this small linguistic Province will create a most inconvenient precedent, for next door to it is a large Telegu-speaking area. There are said to be six million people only in Orissa, of whom only about five million are Oriya-speaking; but the Telegu area, which has already been given the name of the Andhra Province, contains no less than eighteen million Telegu speakers who are anxious to separate themselves from the Tamils of Madras. There are no more reasons for keeping the Oriyas outside Bengal than there are for refusing a similar claim made by the Telegu speakers of the Madras Presidency. Further than that, any movement towards creating linguistic areas, if encouraged now, would lead to linguistic claims which would entail the dismemberment of various Provinces. It would have the further very serious effect of running counter to the unity of India as a whole, for if different languages cannot compose their differences within the limits of a single Province, it can scarcely be expected of the infinitely greater number of linguistic divisions over India as a whole to compose their much greater differences in a joint Central Government. In other words, the distribution of India by linguistic Provinces would increase greatly those centrifugal tendencies which militate against the success of the whole Federal Scheme. Lastly, whatever may have been the motives of those who framed the constitution of the White Paper, the whole of India considers that the proposal to create a new Province of Sind is intended to placate Moslem sentiment, and similarly the creation of a new Province of

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Orissa is intended as a counterpoise to gratify Hindu sentiment. It is in our opinion undersirable that the creation of small areas into new Provinces should be effected with any other consideration than the intrinsic merits of changes that are so expansive and place a burden on the whole of the taxpayers of India for the sake of only ten million out of a total population (excluding Burma) of 338 million.")

The same is disagreed to.

Paragraph 58 is again read.

The further consideration of paragraph 58 is postponed.

Paragraphs 59 to 92 are again postponed.

Paragraph 93 is again read.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, Sir Austen Chamberlain, and the Lord Eustace Percy. Page 44, lines 40 to 42, to leave out from (" notice.") in line 40 to the end of the paragraph.

The same is agreed to.

Paragraph 93 is again read, as amended.

The further consideration of paragraph 93 is postponed.

Paragraphs 94 to 162 are again postponed.

Paragraph 163 is again read.

It is moved by Sir Reginald Craddock. Page 83, line 29, at the end to insert (" A point of difficulty arises with regard to the Royal Prerogative of mercy " in the case of death sentences. Under the Code of Criminal Procedure a " condemned prisoner, whose petition has been rejected by the Local Govern- " ment, can petition the Governor-General in Council, and under the procedure " laid down in the rules of business the member in charge of the Home Depart- " ment of the Government of India deals with the case and can reject such a " petition without reference to the Viceroy, but if the Home Member wishes " to commute a death sentence he must refer the case to the Viceroy. It is " open to the Viceroy then either to concur with the Home Member or to " consult the Law Member before passing his own orders, or to circulate the " case to the Council, but Constitutionally the Viceroy, as Governor-General, " cannot overrule the majority of the Council, if in disagreement with him. " Since 1916, however, the Royal Prerogative of mercy has been definitely " delegated to the Viceroy himself, thereby conferring upon him the power of " overruling the Council in the matter of commuting a death sentence. Under " the proposed New Constitution, the Minister in charge of the Home Depart- " ment will presumably exercise the same right of advising the Governor- " General as to the commutation or otherwise of a death sentence, and the " question arises whether the exercise of the Royal Prerogative by the " Governor-General in his capacity of Viceroy will override the Constitutional " power of the Minister in the direction of enabling the Viceroy to refuse " to commute the death sentence which the Minister advises should be " commuted. We consider that the ultimate decision, whether to exercise " this prerogative or to let the law take its course, should rest with the " Viceroy alone ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 163 is again read.

The further consideration of paragraph 163 is postponed.

Paragraphs 164 to 201 are again postponed.

Paragraph 202 is again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 101, line 12, after (" them ") to insert (" as being impracticable at the present time,").

The same is agreed to.

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It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 101 line 17, after (" that ") to insert (" in present circumstances ").

The same is agreed to.

Paragraph 202 is again read as amended.

The further consideration of Paragraph 202 is postponed.

New Paragraph 202A is again read.

It is moved by The Marquess of Reading, The Lord Ker (M. Lothian), and Mr. Foot. To leave out new paragraph 202A and to insert the following new paragraph :—

Indirect election to be regarded in the nature of an experiment.

(" 202A. We feel strongly, however, that it is not possible for Parliament to lay down to-day the exact method of constituting the central legislature for any long period of time. The question has been repeatedly examined both before the passage of the present Government of India Act by the Statutory Commission and by the Round Table Conferences and the Indian Franchise Committee in connection with the present proposals for reform. Throughout this whole period opinions have been deeply divided and no clear cut solution has emerged, as indeed was to be expected when an attempt is being made to create a federation on a scale and of a character hitherto without precedent. We have chosen the system of indirect election by the provincial legislatures, not because we do not feel the force of the arguments which can be brought against it, but because we think that it is the arrangement which will give the most practical system at the outset of the Federation. Moreover, while it will be possible in future to pass from the indirect to the direct system of election should experience show that step to be advisable, the maintenance and still more the extension of the system of direct election to-day would be to commit India to a system which logically leads to adult suffrage before any way has been discovered of overcoming the insuperable objections to the gigantic constituencies containing hundreds of thousands of voters which are inevitable with adult franchise in India under the ordinary system of direct election. We feel that the ultimate solution may well be found in some variant either of the system whereby groups of primary voters elect secondary electors who vote directly for members of the federal assembly or of the system whereby those already elected to local bodies, such as village panchayats, are the voters who vote directly for members of that assembly. Systems of this kind apparently work with considerable success in many countries where conditions are not dissimilar to those in India. But the discovery of the best method of adapting those ideas to India's needs and of removing the obstacles which now stand in the way of their adoption is clearly one which should be made by Indians themselves in the light of their experience of the practical working of representative institutions under the new Constitution. We consider, therefore, that our proposals should be regarded as being in the nature of an experiment and that further consideration should be given to the question of the method of composing the central legislature in the light of practical working of the constitution. We do not propose that there should be any formal examination of the problem by a statutory Commission after any specific date, for we think that experience has shown that there are strong objections to automatic provisions of this kind. But we consider that Parliament should recognise that after sufficient time has elapsed to enable clear judgments to be formed of the way in which the constitution works and of the new political forces it has brought into being, it may be necessary to make amendments in the method of composing the central legislature, and we hope that if Indian opinion thinks modification is required the Indian federal legislature will lay its own proposals before Parliament in the form recommended in paragraphs 356 and 357 of this Report.")

The same is agreed to.

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New paragraph 202A is again read.

The further consideration of paragraph 202A is postponed.

Paragraphs 203 to 316 are again postponed.

Paragraph 317 is again read.

It is moved by Sir Reginald Craddock. Page 176, lines 15 and 16, to leave out (" ultimately to the Central Government ") and to insert (" after that to " the Governor-General in Council ".)

The same is agreed to.

Paragraph 317 is again read as amended.

The further consideration of paragraph 317 is postponed.

Paragraph 318 is again read.

It is moved by Sir Reginald Craddock. Page 177, line 3, after (" for ") to insert (" permanent ").

The same is agreed to.

Paragraph 318 is again read as amended.

The further consideration of paragraph 318 is postponed.

Paragraphs 319 to 453 are again postponed.

Ordered, that the Committee be adjourned to Monday next at half-past Four o'clock.

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Die Lunae 23° Julii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

Paragraphs 1 to 325 are again postponed.

Paragraphs 326 to 329 are again read.

The following amendments are laid before the Committee.

Sir John Wardlaw-Milne to move. Paragraph 327, page 181, lines 7 to 15, to leave out from (" responsibility.") in line 7 to the end of the paragraph.

Sir John Wardlaw-Milne to move. Paragraph 328, page 181, line 21, after (" enjoyed ") to insert (", as an integral part of the British Empire,"); lines 23 and 30, to leave out (" Autonomy ") in lines 23 and 30; line 34, to leave out (" unrestricted "); line 35, to leave out (" of the basis "); line 36, after (" proceed ") to insert (" and which forms the basis of the delegation of powers set out in the Convention itself.")

Sir John Wardlaw-Milne to move. Paragraph 329, page 182, lines 13 to 16, to leave out from (" countries.") in line 13 to " that " in line 16 and insert (" and ".)

The consideration of the said amendments is postponed.

It is moved by Sir Joseph Nall and the Earl of Derby. Pages 180 to 182, to leave out paragraphs 326 to 329 inclusive, and to insert the following new paragraphs :—

Reasons why statutory provision is necessary.

(" 326. The importance attached in this country to this part of the Indian Constitutional problem has been very much misunderstood in India. We believe our first duty is to define the problem with which we are dealing in such a way as to remove the grounds for much, if not all, of the misunderstanding.

" The Second Round Table Conference in 1931 adopted a resolution to the effect that there should be no discrimination between the rights of the British mercantile community, firms and companies, trading in India, and the rights of Indian born subjects; witnesses who appeared before us spoke in the same sense; and the British-Indian Delegation in their Joint Memorandum state that on the question of principle there has always been a substantial measure of agreement in India. On the other hand, we have been assured no less strongly by those who

All amendments are to the Draft Report (*vide infra* paras. 1–42B, pp. 470–491; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published. (Vol. I, Part I). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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represent British commercial interests that they ask for no exceptional or preferential treatment of British trade as against Indian trade, and on this aspect of the matter their policy is one of a fair field and no favour. The question therefore resolves itself to a consideration of the best method of giving practical effect to the avowed policy and intentions of all concerned.

" It may be asked why, in view of this evidence of common agreement, it should be necessary to deal with the matter at all in the Constitution Act. There are, we believe, two very good and powerful reasons for doing so—one of a general juridical character and the other political. The juridical reason arises from the fact that the relations between India and the United Kingdom, after the passing of the Act, will be in every way exceptional. There will be no background of common usage or international law such as exists between two foreign countries, and by mutual consent influences both parties in their dealing with one another apart from any treaty engagements they may have exchanged.

" The second reason is political in the sense that it arises from the necessity of coping with deep-seated and widely held beliefs, which must be satisfied if the reforms as a whole are to succeed. In India it has been freely suggested that H.M. Government are seeking to impose unreasonable fetters upon the future Indian legislature for the purpose of securing exceptional advantage to British at the expense of Indian commerce. The suggestion is without foundation, and can only be countered by clear proposals which will show how false it is. On the other hand, there have been statements of a very disturbing character made from time to time by influential persons in India which could not fail to give rise to suspicions and doubts in this country, thus making statutory provision by way of reassurance an evident necessity, without at all implying a belief on our part that it really is the accepted policy of any Indian political leaders to destroy or injure British commercial interests by unfair or discriminatory legislation or otherwise.

Administrative Discrimination.

" 327. Discrimination may be of two kinds, administrative or legislative, and we propose in the first place to consider the administrative form.

" We agree with the proposal in the White Paper that the Governor-General and Governors in their respective spheres should have imposed upon them a special responsibility for the prevention of discrimination, thus enabling them, if action is proposed by their Ministers which would have discriminatory effect, to intervene, and, if necessary, either to decline to accept their advice or (as the case may require) to exercise the special powers which flow from the possession of special responsibility.")

The Fiscal Convention.

" 328. Before considering the scope which should be given to provisions in restraint of legislative discrimination generally in matters other than tariffs and other regulations directly affecting imports of merchandise, we think it is essential to deal quite separately with that particular problem which quite obviously calls for treatment very different from that which is necesary or appropriate in such matters as company law, or internal taxation affecting British companies, persons, or property actually within the frontiers of India at the material time. In the case of tariffs or other regulations affecting imports, the problem is one of policy as well as practice.

" We think it right to observe that it is not our intention that any of the provisions which we contemplate for the purpose of preventing discrimination, whether administrative or legislative, should be so utilised as to interfere with the recommendations made by the Joint Committee on the Bill of 1919 commonly called the Fiscal Convention.

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"At the same time, fears have been expressed lest the unrestricted operation of this Convention might result, with no remedy available, in the impostition of penal tariffs upon British goods or the application on British goods of penally restrictive regulations, with the object, not of fostering Indian trade in a manner and to a degree which would be recognised as reasonable, but rather and primarily with the object of injuring and excluding British trade, possibly in order to put pressure on this country for political purposes, possibly to give expression to extreme political sentiments or for reasons of that general character.

"We are satisfied that it was not in the minds of the authors of the Fiscal Convention, and has never during the period of its operation been in the mind of His Majesty's Government, that the Convention should be invoked in aid of such a policy; and we have been assured by the Indian Delegates that there would be no desire in India that such freedom as they enjoy under the Convention should be utilised in future for a purpose so destructive of the basis of that conception of partnership upon which the whole of our recommendations proceed. In these circumstances we shall, in fact, be making no change in the existing fiscal relations between India and this country if we seek to make plain on the face of the Statute that it is not a legitimate or permissible use of the Fiscal Convention to discriminate against British trade as such. We think it essential that on this matter there should be no ground for misapprehension in future.

"It is the more desirable that something of this nature should be done when it is borne in mind that a statutory definition of the position is often of itself sufficient to prevent disputes arising and that, apart from the terms of the Act, the relations between India and the United Kingdom in his particular respect will be nowhere expressly defined or even broadly indicated, as will be the case between India and foreign countries where treaty law and the accepted canons of international law and usage will apply.

"We, therefore, recommend that to the special responsibilities of the Governor-General enumerated in the White Paper there should be added a further special responsibility defined in some such terms as follows:—

"The prevention, in connection with fiscal measures or measures for the control or regulation of import trade, or with the administration of such measures, of the subjection of British goods imported into India from the United Kingdom to any form of discriminatory treatment, whether such discrimination should take the form of:—

"(*a*) discrimination against U.K. products as compared with imports from other countries directly by means of differential rates of tariff, or indirectly by means of differential treatment of various types of products;

or (*g*) discrimination against U.K. interests as compared with Indian interests by the attempted establishment on goods of U.K. origin of levels of import duty or other restrictions of a prohibitory or penal character in excess of the equitable requirements of the economic situation in India;

or (*c*) discrimination such as would arise by action in violation of any agreement subsisting at the time between the Governments of India and the U.K. as regards rates of tariff and margins of preference;

or (*d*) commercial or trade agreements with countries other than the United Kingdom which would place India under an obligation to treat the goods and merchandise of the U.K. less favourably than those of another country or other countries;

or (*e*) any other action having a discriminatory effect."

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The Governor-General's Instrument of Instructions.

" 329. But in making this recommendation we further recommend that the Governor-General should be given clear directions in his Instrument of Instructions as to the scope of the special responsibility in question.

" The instructions we contemplate would indicate that this special responsibility is not intended to affect the competence of the Indian Legislature and of his Government to develop their own fiscal and economic policy; that the duty imposed upon him by this provision is that of preventing imports from the United Kingdom from being subjected to specially unfavourable treatment in respect of such matters as customs duties, prohibitions, or restrictions (other than measures concerned with the preservation of Health); that he should understand that the Federal Government naturally enjoys complete freedom to negotiate with other countries for the securing of mutual tariff concessions, and that he has no functions in connection therewith unless and until tariff legislation is proposed which embodies discrimination against U.K. imports within the limits defined in our recommendations: and finally that he should be enjoined that it is his duty under this special responsibility not only to prevent discriminatory action, legislative or administrative, but also action which though not in form discriminatory is so in fact.")

The proposed new paragraphs are, by leave of the Committee, withdrawn.

It is moved by the Lord Eustace Percy. Pages 180 and 181, to leave out paragraphs 326 and 327, and to insert the following new paragraphs :—

Definition of problem.

(" 326. The importance attached in this country to this part of the Indian constitutional problem has been much misunderstood in India. We believe that our first duty is to define it in such a way as to remove this misunderstanding. In our view the problem is divisible into two entirely separate issues. The only one of these issues dealt with in the White Paper is the question of administrative and legislative discrimination against British commerical interests and British trade in India. With this issue we deal in detail in later paragraphs.[1]

The Fiscal Convention.

" 327. The other issue, which we now proceed to consider, is that of discrimination against British imports. As is well known, the fiscal relations between the United Kingdom and India have now been regulated for some thirteen years by the recommendations of the Joint Committee on the Bill of 1919—commonly known as the Fiscal Convention. It is a commonplace that the exact scope and effects of this Convention have afforded much ground for discussion, and that the Convention has not—as indeed could hardly have been expected—succeeded in placing beyond controversy the rights and duties of the two parties to it. But, with the passing of a new Constitution Act on the lines of the recommendations which we make in this Report, the Convention, in its present form at all events, will necessarily lapse; and unless the Constitution Act otherwise provides, the Federal Legislature will enjoy complete fiscal freedom, with little in the nature of settled tradition to guide its relationship in fiscal matters with this country. The difficulties which would be likely to arise from this uncertainty would, moreover, find a fruitful source of increase in that atmosphere of misunderstanding to which we have alluded. It is suggested in India that, in seeking to clarify the fiscal relations between India and themselves, His Majesty's Government are seeking to impose unreasonable fetters upon the future Indian Legislature for the purpose of securing exceptional advantages for British, at the expense of Indian, trade. The suggestion is without foundation but can be countered only by clear proposals which will show how false it is. On the other hand, statements of a very disturbing character have been made from time to time by influential persons in India which have aroused suspicions

[1] *Infra*, paragraphs 329B to 346.

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and doubts in the United Kingdom. In these circumstances, appropriate provisions in the Constitution Act may serve the double purpose of facilitating the transition from the old to new conditions, and of reassuring sensitive opinion in both countries. Certainly, such provisions would in no way imply a belief that there is real ground for the apprehensions entertained on either side.")

The same are agreed to.

New paragraphs 326 and 327 are again read.

The further consideration of paragraphs 326 and 327 is postponed.

Paragraphs 328 to 330 are again read.

It is moved by Mr. Cocks and Mr. Morgan Jones. Page 181, line 22, to page 182, line 38, to leave out from the beginning of line 22, page 181, to the end of paragraph 330 on page 182 and to insert :—

("without any interference from Whitehall on any matters on which "the Government of India and the Indian Legislature are in agreement— "since the inauguration of the present Constitution in 1921.

"This followed on the Report of the Joint Committee of both Houses "of Parliament of 17th November, 1919. Paragraph 33 of that Report "said *inter alia* that :

'Nothing is more likely to endanger the good relations between 'India and Great Britain than a belief that India's fiscal policy is 'dictated from Whitehall in the interests of the trade and commerce 'of Great Britain. That such a belief exists at the moment there can be 'no doubt. That there ought to be no room for it in the future is 'equally clear . . .

'Whatever be the right fiscal policy for India, for the needs of her 'consumers as well as for her manufacturers, it is quite clear that she 'should have the same liberty to consider her interests as Great Britain, 'Australia, New Zealand, Canada and South Africa.'

"His Majesty's Government accepted this recommendation and it "was intimated to the Government of India by the Secretary of State on "30th June, 1921. The Statutory Commission in their Report quote the "statement made by the Secretary of State in March, 1921, that :—

'After the Report by an authoritative Committee of both Houses 'and Lord Curzon's promise in the House of Lords, it was absolutely 'impossible for me to interfere with the right which I believe was wisely 'given and which I am determined to maintain—to give to the Govern- 'ment of India the right to consider the interests of India first just as 'we, without any complaint from any other parts of the Empire, and 'the other parts of the Empire, without any complaint from us, have 'always chosen the tariff arrangements which they think best fitted for 'their needs, thinking of their own citizens first.[1]'

"In the course of his evidence before us, Sir Charles Innes, who, "before taking up his duties as Governor of Burma, was on the Council "of the Governor-General of India as Commerce Member, said in regard "to India's attitude to the Ottawa agreements :

'I think it was mainly due to the fact that the Indians realized 'that it was for themselves to decide whether or not they would ratify 'that agreement. In the old days, before we introduced this principle 'of discriminating protection, every Indian thought that Britain kept 'India a free-trade country in the interest of her own trade. When the 'Fiscal Convention was introduced and when we passed a Resolution 'in favour of discriminating protection, and the first Steel Bill was 'passed, we at once transferred all that from the political sphere to 'the economic sphere, and in recent years in the Indian Legislative 'Assembly more and more we have been creating a strong Free Trade 'Party. It was getting more and more difficult for me to pass Protection 'Bills. I think that is all to the good ; it shows the value of responsi- 'bility, and I am perfectly sure that if we had not taken that action,

[1] Vol. I, p. 356, para. 402.

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'you would never have got the Indian to agree to the British preference 'on steel, or to the Ottawa agreement, and it seems to me a very good 'example of the stimulating effect of responsibility.'

"We realize the importance of giving full weight to this evidence on "the value of placing responsibility on the Indian Legislature, coming, as "it does, from one who is in a position to speak with authority.

"The Statutory Commission further point out that :—

'An understanding analogous to the fiscal convention has been 'arrived at in one other region. The Secretary of State has relinquished 'his control of policy in the matter of the purchase of Government 'stores for India, other than military stores. The Governments in 'India, in agreement with the legislatures, are now free to buy stores 'in India, in this country, or abroad, as seems best to them, and the 'Secretary of State, though he is by statute responsible to Parliament, 'has undertaken not to intervene."

"There is much force in Mr. Baldwin's words :—

'All the safeguards are being examined by the Joint Select Com- 'mittee, but whatever safeguards we have the real safeguard is the 'maintenance of goodwill. If there is not a basis of goodwill, your 'trade will eventually wither away, and I regret to say that some of the 'measures which have been suggested and which Lancashire people 'have been asked to support, have, in my judgment, been calculated to 'destroy rather than to further any possibility of that goodwill between 'Lancashire and India which we can get, which we ought to get, and 'which we cannot do without. . . .

'The boycott has died away . . . by a conviction in the minds of the Indians themselves that we were going to deal honourably with them and keep our word about getting on with the reforms.[1]"

"The same idea is expressed in the Memorandum submitted to us by "Sir Tej Bahadur Sapru :—

'The best safeguard that Lancashire, or for the matter of that 'England, can have for trade and commerce in India, is the goodwill 'of the people of India.[2]'

"We think, therefore, that the time has now come to recognize in the "Constitution Act the right and the responsibility of India to settle her "own fiscal affairs as freely as and on a basis of equality with Great Britain "and the Dominions.

"We agree with the British Indian delegates in their Memorandum "submitted to us, that the question of Commercial Discrimination might "be left to the commercial interests in India and England who would "doubtless be able to evolve a friendly settlement by negotiation. Failing "that, we agree that it might be provided in the Constitution Act that "anything of the nature of discriminatory legislation should require the "previous assent of the Governor-General given in his discretion. We "think that the formula proposed by the Indian Delegates should be "adopted, namely, that the Governor-General should not be entitled to "refuse his assent unless he is assured that the object of the legislation is, "in the words of the Montagu-Chelmsford Report, 'not so much to promote "Indian commerce as to injure British commerce,' or, as proposed by the "Statutory Commission, 'in order to prevent serious prejudice to one or "more sections of the community as compared with other sections.")

Objected to.

[1] Vol. I, p. 356, para. 402.
[2] Record No. 10, p. 256, para. 42 (Vol. III, Session 1932–33).

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On Question :—

Contents (2).

Mr. Cocks.
Mr. Morgan Jones.

Not Contents (23).

Lord Archbishop of Canterbury.
Marquess of Salisbury.
Marquess of Zetland.
Marquess of Linlithgow.
Earl of Derby.
Earl of Lytton.
Earl Peel.
Viscount Halifax.
Lord Middleton.
Lord Hardinge of Penshurst.
Lord Rankeillour.
Lord Hutchison of Montrose.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Sir Reginald Craddock.
Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Sir Joseph Nall.
Lord Eustace Percy.
Sir John Wardlaw-Milne.
Earl Winterton.

The said amendment is disagreed to.

It is moved by the Lord Eustace Percy. Pages 181 and 182 to leave out paragraphs 328 and 329 and to insert the following new paragraphs :—

(" 328. But in making our recommendations to this end, we wish to make it clear at the outset that we contemplate no measure which would interfere with the position attained by India as an integral part of the British Empire, through the Fiscal Convention. Fears have, indeed, been expressed lest the exercise of powers by the Indian Legislature which the Convention contemplated might result in the imposition of penal tariffs on British goods or in the application to them of penalty restrictive regulations with the object not of fostering Indian trade, but of injuring and excluding British trade. The answer to these fears is that the Convention could never, in fact, have been applied in aid of such a policy ; and we have been assured by the Indian Delegates that there will be no desire in India to utilise any powers they may enjoy under the new Constitution for a purpose so destructive of the conception of partnership upon which all our recommendations are based. But, if this be so, it would be clearly of great advantage to allay the fears of which we have spoken by a declaration through and under the Constitution Act of the principles governing the relations between the two countries. The machinery of the Governor-General's special responsibilities, supplemented by his Instrument of Instructions, offers India and the United Kingdom the opportunity of making such a declaration of principles, while at the same time ensuring the necessary flexibility in their interpretation and application.

The Fiscal Convention and the new Constitution.

" 329. We therefore recommend that to the special responsibilities of the Governor-General enumerated in the White Paper there should be added a further special responsibility defined in some such terms as follows :—' The prevention of measures, legislative or administrative, which would subject British goods, imported into India from the United Kingdom, to discriminatory or penal treatment '. But, as it is important

Governor General should have a special responsibility to prevent penal discrimination against British imports.

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that the scope which we intend to be attached to the special responsibility so defined should be explained more exactly than could conveniently be expressed in statutory language, we further recommend that the Governor-General's Instrument of Instructions should give him full and clear guidance. It should be made clear that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian Legislature to develop their own fiscal and economic policy; that they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions; and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if, in his opinion, the intention of the policy contemplated is to subject trade between the United Kingdom and India to restrictions conceived not in the economic interests of India but with the object of injuring the interest of the United Kingdom. It should further be made clear that the 'discriminatory or penal treatment' covered by this special responsibility includes both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products; and that the Governor-General's special responsibility could also be used to prevent the imposition of prohibitory tariffs or restrictions, if he were satisfied that such measures were proposed with the intention already described. In all these respects, the words would cover measures which, though not discriminatory or penal in form, would be so in fact.

Principles of future trade relations between India and United Kingdom.

"329A. But although the Instrument of Instructions affords the means of defining more fully than would be possible in the Act itself the scope and purpose of the special responsibility which the Act should confer, even this document cannot conveniently be utilised as the means of explaining the broad principles upon which in our view, the future trade relations between India and the United Kingdom should be based. We wish therefore to express our own conception of these principles. We think that the United Kingdom and India must approach their trade problems in a spirit of reciprocity, which views the trade between the two countries as a whole. Both countries have a wide range of needs and interests; in some of these each country is complementary to the other, while in some each has inevitably to look rather to a third country for satisfactory arrangements of mutual advantage. The reciprocity which, as partners, they have a right to expect from each other consists in a deliberate effort to expand the whole range of their trade with each other to the fullest possible extent compatible with the interests of their own people. The conception of reciprocity does not preclude either partner from entering into special agreements with third countries for the exchange of particular commodities where such agreements offer it advantages which it cannot obtain from the other; but the conception does imply that, when either partner is considering to what extent it can offer special advantages of this kind to a third country without injustice to the other partner it will have regard to the general range of benefits secured to it by the partnership, and not merely to the usefulness of the partnership in relation to the particular commodity under consideration at the moment.

Discrimination against British trade in India.

"329B. We turn now to the other issue presented by this section of our Report, namely, the prevention of discrimination against British trade in India. The Second Round Table Conference in 1931 adopted a resolution to the effect that there should be no discrimination between the rights of the British mercantile community, firms and companies, trading in India and the rights of Indian-born subjects. Witnesses who appeared before us spoke in the same sense and the British Indian Delegation, in their joint memorandum, state that on the question of principle there has

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always been a substantial measure of agreement in India. On the other hand, we have been assured no less strongly by those who represent British commercial interests that they ask for no exceptional or preferential treatment for British trade as against Indian trade. Their policy is, in fact, one of a fair field and no favour. The question, therefore, resolves itself into a consideration of the best method of giving practical effect to the avowed policy and intentions of all concerned. It may, indeed, be asked why, in view of the assurances of which we have spoken, it is necessary to deal with this matter at all in the Constitution Act; and to this our answer must be that here again utterances have been made which could not fail to give rise to suspicions and doubts, and that statutory provision by way of re-assurance is an evident necessity.

Administrative discrimination.

"329C. Discrimination may be of two kinds, administrative or legislative. We are satisfied that, with regard to administrative discrimination, a statutory prohibition would be not only impracticable, but useless, for it would be impossible to regulate by any statute the exercise of its discretion by the Executive. We agree, however, with the proposal in the White Paper[1] that the Governor-General and Governors in their respective spheres should have imposed upon them a special responsibility for the prevention of discrimination, thus enabling them, if action is proposed by their Ministers which would have a discriminatory effect, to intervene and, if necessary, either to decline to accept their advice or (as the case may require) to exercise the special powers which flow from the possession of a special responsibility. But, if our subsequent recommendations on the subject of legislative discrimination are accepted, we think it should be made clear in the Constitution Act that this special responsibility extends to the prevention of administrative discrimination in any of the makers in respect of which provision against legislative discrimination is made under the Act.")

The same is agreed to.

New Paragraphs 328 and 329 are again read as amended.

The further consideration of paragraphs 328 and 329 is postponed.

Paragraph 330 is again read and postponed.

Paragraph 331 is again read.

It is moved by Sir John Wardlaw-Milne. Page 183, line 2, after ("dominions.") to insert ("These must be settled by mutual agreement, when the position of those persons and companies of Dominion origin already engaged in professions or trade in India will no doubt be specially considered.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 331 is again read.

The further consideration of paragraph 331 is postponed.

Paragraph 332 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks and Mr. Attlee. Page 183, lines 10 to 12, to leave out from ("(1)") in line 10 to ("; but") in line 12, and to insert ("that the consent of the Governor-General given in his discretion "should be required to the introduction in the Federal Legislature and the "Provincial Legislature of any measure of the discriminatory nature set "out in Proposals 122 and 123 of the White Paper").

The same is disagreed to.

It is moved by Mr. Morgan Jones, Mr. Cocks and Mr. Attlee. Page 183, lines 15 to 21, to leave out from ("elsewhere") in line 15 to the end of the paragraph.

The same is disagreed to.

Paragraph 332 is again read.

The further consideration of paragraph 332 is postponed.

[1] White Paper Proposals 18 and 70.

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Paragraph 333 is again read.

It is moved by Mr. Morgan Jones, Mr. Attlee and Mr. Cocks. Page 183, to leave out paragraph 333.

The same is disagreed to.

Paragraph 333 is again read.

The further consideration of paragraph 333 is postponed.

Paragraph 334 is again read and postponed.

Paragraph 335 is again read.

It is moved by Sir John Wardlaw-Milne. Page 184, line 2, to leave out (" might ") and to insert (" should ").

The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 184, line 3, to leave out (" should not ") and to insert (" are not to ").

The same is agreed to.

It is moved by Mr. Cocks and Mr. Morgan Jones. Page 184, line 6, at the end to insert (" except in the case of coastal trade where we feel that it would " be a sufficient safeguard against unfair discrimination if the previous " consent of the Governor-General were required to any such legislation ").

Objected to.

On Question :—

Contents (2).	Not Contents (21).
Mr. Cocks.	Lord Archbishop of Canterbury.
Mr. Morgan Jones.	Marquess of Salisbury.
	Marquess of Zetland.
	Marquess of Linlithgow.
	Earl of Derby.
	Earl Peel.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

Paragraph 335 is again read as amended.

The further consideration of paragraph 335 is postponed.

Paragraph 336 is again read.

It is moved by Sir Joseph Nall and the Earl of Derby. Page 184, paragraph 336, lines 11 to 19, to leave out from (" India ; ") in line 11 to the end of the paragraph.

The same is agreed to.

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Paragraph 336 is again read, as amended.

The further consideration of paragraph 336 is postponed.

Paragraph 337 is again read.

It is moved by Sir John Wardlaw-Milne. Page 184, lines 31 to 34, to leave out from (" drawn ") in line 31 to (" subsequently ") in line 34 and to insert (" on the one hand, between firms or companies, whether domiciled or registered in India or in the United Kingdom, which at the date of the Act authorising the grant are already engaged in India in the branch of trade or industry which it is sought to encourage or which subsequent to the passing of the Act acquire a business in India previously so engaged and, on the other hand, those firms or companies which desire to engage in that branch of trade or industry ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir John Wardlaw-Milne. Page 184, line 39, after (" as ") to insert (" the character of the enterprise will allow and ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir John Wardlaw-Milne. Lines 39 to 41, to leave out from (" former ") in line 39 to (" the ") in line 41.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 337 is again read.

The further consideration of paragraph 337 is postponed.

Paragraph 338 is again read.

It is moved by Mr. Cocks, Mr. Attlee, and Mr. Morgan Jones. Pages 184 and 185, to leave out paragraph 338.

Objected to.

On Question.

Contents (3).	Not Contents (17).
Mr. Attlee.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Earl of Derby.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The Earl Winterton did not vote.

The said amendment is disagreed to.

Paragraph 338 is again read.

The further consideration of paragraph 338 is postponed.

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Paragraphs 339 to 345 are again read and postponed.

Paragraph 346 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 190, line 32, at the end to insert (" The same principle should apply to members of the " R.A.M.C. and of the R.A.F. Medical Service.")

The same is agreed to.

Paragraph 346 is again read as amended.

The further consideration of paragraph 346 is postponed.

Paragraphs 347 to 453 are again postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Ten o'clock.

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Die Martis 24° Julii, 1934.

Present:

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraphs 1 to 56 are again postponed.

Paragraph 57 is again read.

It is moved by the Lord Eustace Percy. Page 27, lines 38 and 39, to leave out from (" Province.[1]") in line 38 to (" In ") in line 39 and to insert (" The " alternative of a union between Sind and the Punjab has long been discussed, " and there are very strong arguments in favour of it, especially in view of the " joint interest of the two territories in the waters of the Indus. Unfortu- " nately, this alternative now seems to be opposed by practically all sections " of opinion concerned. On a review of all the factors in the problem, we have " reached the conclusion that the constitution of Sind as a separate Governor's " Province is the best solution possible in present circumstances.")

The same is agreed to.

Paragraph 57 is again read, as amended.

The further consideration of paragraph 57 is postponed.

Paragraphs 58 to 75 are again postponed.

Paragraph 76 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 36, line 25, after (" word.") to insert (" Nevertheless to prevent misunderstanding, we recom- " mend that the Instruments of Instructions should make this plain, and " further that this special responsibility is not intended to enable the Governor " to stand in the way of social or economic reform merely because it is resisted " by a group of persons who might claim to be regarded as a minority ").

The same is agreed to.

Paragraph 76 is again read as amended.

The further consideration of paragraph 76 is postponed.

Paragraphs 77 to 121 are again postponed.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 60, after paragraph 121 to insert the following new paragraph :—

(" 121A. We have given careful consideration in this connexion to the number of seats to be allotted to special interests and in particular to representations submitted to us in favour of a substantial increase in the number of seats to be allotted to Labour in the new Provincial Legislatures. Any material alteration in the number of seats allotted to special

Special interests seats.

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published. (Vol. I, Part I.) A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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interests would inevitably involve a reopening of the Communal Award, and we have indicated above the objections to be seen to this. But we are in any case of opinion that the representation proposed in the White Paper for landlords, commerce and industry, universities and labour may be regarded as striking a just balance between the claims of the various interests, and as affording an adequate representation for them. We observe in particular that the representation of labour has been increased from 9 seats in the present Provincial Legislative Councils to a total of 38, the present marked difference between the representation of labour and of commerce and industry being thus very substantially reduced. Having regard to this, to the large number of seats set aside for the Depressed Classes (whose representatives will to some extent at any rate represent labour interests), and to the extension of the franchise, which will bring on the electoral roll large numbers of the poorer and of the labouring classes, we are of opinion that the position of labour, the importance of which we fully recognise, is adequately safeguarded under the proposals embodied in the White Paper.")

The same is agreed to.

New paragraph 121A is again read.

The further consideration of paragraph 121A is postponed.

Paragraphs 122 to 173 are again postponed.

Paragraph 174 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 88, line 15, to leave out (" —Federal or Provincial—").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 88, lines 23–25, to leave out from (" suggests ") in line 23 to (" but ") in line 25 and to insert (" ' a statutory Committee of Indian Defence constituted on the lines of the " Committee of Imperial Defence ' ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 88, line 27, to leave out (" that very fact ") and to insert (" the elasticity of its constitution ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 88, line 30, to leave out (" A consultative body established ") and to insert (" An advisory body " constituted ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 88, line 30, after (" body ") to insert (" similar to the Committee of Imperial Defence ").

The same is agreed to.

Paragraph 174 is again read, as amended.

The further consideration of paragraph 174 is postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 88, after paragraph 174, to insert the following new paragraph :—

(" 174A. In this connexion the question has also been raised of establishing a Standing Defence Committee of the Legislature. While we are not unmindful of the advantage of taking steps in this way to build up an informed opinion on Defence matters in the Legislature, we consider that the question is pre-eminently one to be settled by the Federal Legislature itself ; and this principle should, in our view, apply generally to all proposals for establishing Standing Committees in connexion with various fields of administration.")

The amendment, by leave of the Committee, is withdrawn.

Paragraphs 175 to 187 are again postponed.

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Paragraphs 188 to 193 are again considered.

It is moved by the Lord Eustace Percy. Pages 94 to 98, to leave out paragraphs 188–193 inclusive and to insert the following new paragraphs :—

(" 188. We have considered in an earlier part of our Report the problem of the relations between the Executive and the Legislature of a Province, and those remarks apply *mutatis mutandis* to the relations between the Federal Executive and Legislature. It is only necessary here to refer briefly to two special complications which are introduced into the Federal problem; the existence of the Governor-General's Reserved Departments and the question of the representation of the States in the Ministry. On the first point, we have already spoken frankly of the difficulties presented by a system of dyarchy. We can only repeat that, faced by a choice in which every conceivable alternative involves some division of responsibility and some danger of friction, we recommend the alternative which draws the line of division at Defence and Foreign Affairs as corresponding most nearly with the realities of the situation; that, of these, the crucial question, so far as the Legislature is concerned, is Defence; and that on this question we regard an All-India Federation as the best means of ensuring that the Central Legislature, while discharging its legitimate function of discussion and criticism, will not (in the phrase of the Statutory Commission) seek ' to magnify its functions in the reserved field '.

The difficulties of Dyarchy at the Centre,

" 189. On the second point, it will be observed that, under the White Paper proposals, the Governor-General is to be directed by his Instrument of Instructions to include, ' so far as possible ', in his Ministry, not only members of important minority communities, but also representatives of the States which accede to the Federation. It may be thought that this proposal runs the risk of adding to the possible dangers of communal representation in the Ministry, to which we have referred in speaking of the Provinces, the further dangers of territorial representation. We can scarcely doubt that State representation will always be regarded by the States themselves as an essential element in every Administration, and this fact may be thought likely to retard the growth of political parties, in the true sense, even more at the Centre than in the Provinces; for the Federal Legislature, though intended to be representative of India as a whole, will itself be largely based, in any case, on communal representation. In these circumstances, we do not overlook the possibility that, in place of an executive which propounds, and a legislature which deliberates upon, a national policy, there may be found two bodies each tending to become, in a classic phrase, ' a congress of ambassadors from different and hostile interests, which interests each must maintain as an advocate and agent against other agents and advocates.' This, however, is a common feature of all Federations. Few, if any, have in practice found it possible to constitute an Executive into which an element of territorial representation does not in some sense enter, and in the Swiss Constitution the principle of such representation is explicitly laid down; so that to advance this as an argument against the White Paper proposals would be, in effect, to reject an All-India Federation even as an ultimate ideal. Moreover, the limitation of the functions of the Federal Executive to matters of essentially All-India interest is calculated to minimise the dangers of both communal and territorial representation. Tariffs and excise duties, currency and transport are national, not communal questions; and it is not unreasonable to assume that any clash of interest with regard to them will tend in future to have an economic rather than a communal origin. There will, therefore, be centripetal as well as centrifugal forces; and it seems to us indeed conceivable that, until the advent of a new and hitherto unknown alignment of parties, a central Executive such as we have described may even come to function, as we

and of composite nature of executive.

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believe that the Executive of the Swiss Confederation functions, as a kind of business committee of the Legislature.")

Objected to.

On Question :—

Contents (18).	Not Contents (4).
Lord Archbishop of Canterbury.	Marquess of Salisbury.
Marquess of Zetland.	Lord Middleton.
Marquess of Linlithgow.	Lord Rankeillour.
Marquess of Reading.	Sir Reginald Craddock.
Earl of Derby.	
Earl Peel.	
Viscount Halifax.	
Lord Ker (M. Lothian).	
Lord Hardinge of Penshurst.	
Lord Hutchison of Montrose.	
Mr. Butler.	
Major Cadogan.	
Sir Austen Chamberlain.	
Mr. Davidson.	
Sir Samuel Hoare.	
Lord Eustace Percy.	
Sir John Wardlaw-Milne.	
Earl Winterton.	

Mr. Morgan Jones did not vote.

The said amendment is agreed to.

New paragraphs 188 and 189 are again read.

The further consideration of paragraphs 188 and 189 is postponed.

Paragraphs 194 to 206 are again postponed.

Paragraph 207 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 104, line 10, after (" population.") to insert (" We have been given to understand that, while " susceptible of minor adjustment in a few particulars, the scheme has met " with a large measure of support among the States.")

The same is agreed to.

Paragraph 207 is again read, as amended.

The further consideration of paragraph 207 is postponed.

Paragraphs 208 to 214 are again postponed.

Paragraph 215 is again read.

It is moved by the Marquess of Linlithgow. Page 107, line 13, to leave out (" Money Bills ") ; line 15, after (" responsibilities,") to insert (" or would " affect the financing of the Federal Government's requirements ").

The same are agreed to.

Paragraph 215 is again read, as amended.

The further consideration of paragraph 215 is postponed.

Paragraphs 216 to 218 are again postponed.

Paragraph 219 is again read.

It is moved by the Lord Eustace Percy. Page 109, to leave out paragraph 219 as amended and to insert the following new paragraph :—

Distinction between legislation in the exclusive and concurrent fields.

(" 219. We are of opinion that the proposals in the White Paper on this subject require modification in two directions. In the first place, the White Paper draws no distinction between the execution of Federal Acts with respect to subjects on which the Federal Legislature is alone competent to legislate (List I) and the execution of Federal Acts in the

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concurrent field (List III). It is evident that in its exclusive field the Federal Government ought to have power to give directions—detailed and specific if need be—to a provincial Government as proposed in the White Paper. But it is much more doubtful whether it should have such power in the concurrent field. The objects of legislation in this field will be predominantly matters of provincial concern, and the agency by which such legislation will be adminstered will be almost exclusively a provincial agency. The Federal Legislature will be generally used as an instrument of legislation in this field merely from considerations of practical convenience, and, if this procedure were to carry with it automatically an extension of the scope of federal administration, the Provinces might feel that they were exposed to dangerous encroachment. On the other hand, the considerations of practical convenience which would prompt the use of the Federal Legislature in this field will often be the need for securing uniformity in matters of social legislation, and uniformity of legislation will be useless if there is no means of enforcing reasonable uniformity of administration. We think the solution is to be found in drawing a distinction between subjects in the concurrent list which, on the one hand, relate, broadly speaking, to matters of social and economic legislation, and those which, on the other hand, relate mainly to matters of law and order, and personal rights and status. The latter form the larger class, and the enforcement of legislation on these subjects would, for the most part, be in the hands of the Courts or of the provincial authorities responsible for public prosecutions. There can clearly be no question of Federal directions being issued to the Courts, nor could such directions properly be issued to prosecuting authorities in the Provinces. In these matters, therefore, we think that the Federal Government should have in law, as they could have in practice, no powers of administrative control. The other class of concurrent subjects consists mainly of the regulation of mines, factories, employers' liability and workmen's compensation, trade unions, welfare of labour, industrial disputes, infectious diseases, electricity, and cinematograph films. In respect of this class, we think that the Federal Government should, where necessary, have the power to issue general directions for the enforcement of the law, but only to the extent provided by the Federal Act in question. In view of the manner in which we propose to constitute the Federal Legislature, it is improbable that a body so representative of provincial opinion will sanction any unreasonable encroachment upon the provincial field of action; but, as a further safeguard against such encroachment, we think that any clause in a statute conferring such powers should require the previous sanction of the Governor-General.")

The same is agreed to.

New paragraph 219 is again read.

The further consideration of paragraph 219 is postponed.

Paragraphs 220 to 244 are again postponed.

Paragraph 245 is again read.

It is moved by the Lord Eustace Percy. Page 147, lines 7 to 13, to leave out from the beginning of the paragraph to the end of line 13, and to insert ("The Provincial claim to income tax has been given added impetus by the "attitude of the States in the matter of direct taxation. The entry of the "States into the Federation removes, indeed, one very serious problem.")

The same is agreed to.

Paragraph 245 is again read, as amended.

The further consideration of paragraph 245 is postponed.

Paragraphs 246 to 280 are again postponed.

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Paragraph 281 is again read.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, line 35, after (" further ") to insert (" special "), and after (" required ") to insert (" for members of the Secretary of State's services ").

The same are agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, line 36, after (" in ") to insert (" the insertion of a special provision ").

The same is agreed to.

Paragraph 281 is again read, as amended.

The further consideration of paragraph 281 is postponed.

Paragraph 283 is again read.

It is moved by The Lord Eustace Percy and Major Cadogan. Page 161, to leave out paragraph 283 and to insert the following new paragraphs :—

Status of Public Services.

(" 283. While we consider that the White Paper provides adequately for the special protection of members of the Secretary of State's Services, we are not fully satisfied that the status of other members of the Public Services, and of those Services as a whole, has been made sufficiently clear either in the White Paper or in any of the investigations and discussions which have led up to its preparation. We have already discussed in paragraph 89 the measures necessary to safeguard the *moral* and efficiency of the Police Service, including its subordinate ranks. In paragraphs 321–325 we shall make certain special proposals in regard to judicial appointments. In addition, however, to these special recommendations, we think it our duty to make certain general observations on the future of the Public Services as a whole.

All India, Central and Provincial Services are all Crown Services.

" 283A. It is natural that the process by which, during recent years, provincial service officers have been gradually substituted for All-India officers in the transferred departments and greater powers of control have been delegated to the Provincial Governments should have tended to create a false distinction between the status of the All-India Services and that of the Provincial Services. The tendency has almost inevitably been to regard the Provincial Services as having ceased to be Crown Services, and as having become Services of the Provincial Governments. This tendency has been emphasised by the argument, frequently advanced and accepted in the past both by Indians and Englishmen, that Provincial self-government necessarily entails control by the Provincial Government over the appointment of its servants. This argument has, no doubt, great logical force, but it runs the risk of distorting one of the accepted principles of the British Constitution, namely, that civil servants are the servants of the Crown, and that the Legislature should have no control over their appointment or promotion and only a very general control over their conditions of service. Indeed even the British Cabinet has come to exercise only a very limited control over the Services, control being left very largely to the Prime Minister as, so to speak, the personal adviser of the Crown in regard to all service matters. The same principle applies, of course, equally to the Services recruited by the Secretary of State for India, though this fact has been sometimes obscured by inaccurate references to the control of Parliament over the All-India Services. But whatever misunderstandings may have arisen in the past as to the real status of the Provincial Services, there ought to be no doubt as to their status under the new Constitution. We have already pointed out that, under that Constitution, all the powers of the Provincial Governments, including the power to recruit public servants and to regulate their conditions of service, will be derived, no longer by devolution from the Government of India, but directly by delegation from the Crown, *i.e.*, directly from the same source as that from which the Secretary of State derives his powers of recruitment. The Provincial Services, no

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less than the Central Services and the Secretary of State's Services will, therefore, be essentially Crown Services, and the efficiency and moral of those Services will largely depend in the future on the development in India of the same conventions as have grown up in England.

Governor-General and Governors should be under the Crown, recognised as heads of Central and Provincial Services respectively.

" 283B. But, if such conventions are to develop in India as in England, they must develop from the same starting-point, from a recognition that the Governor, as the personal representative of the Crown and the head of the executive government, has a special relation to all the Crown Services. He will, indeed, be generally bound to act in that relation on the advice of his Ministers, subject to his special responsibility for the rights and legitimate interests of the Services, but his Ministers will be no less bound to remember that advice on matters affecting the organisation of the permanent executive services is a very different thing from advice on matters of legislative policy, and that the difference may well affect both the circumstances and the form in which such advice is tendered. We think, therefore, that the Constitution should contain in its wording a definite recognition of the Governor-General and the Governors respectively as, under the Crown, the heads of the Central (as distinct from the All-India) and Provincial Services. Appointments to these Services would accordingly run in the name of the Governor-General and Governor respectively, and it would, therefore, follow (*see* paragraph 277 above) that no public servant appointed by the Governor-General or Governor will be subject to dimissal, save by order of the Governor-General or Governor.

Status and rights of Central and Provincial Services not to be inferior to those All-India Services.

" 283C. But, further than this, it will, in our view, be essential that the Central and Provincial Legislatures respectively should give general legal sanction to the status and rights of the Central and Provincial Services. The Special responsibility of the Governor-General and Governors would, of course, in any case, extend to securing the legitimate interests as well as the rights of members of these Services ; but it is on all grounds desirable that the Executive Government as a whole should be authorised and required by law to give these Services the necessary security. The principal existing rights of members of these Services are set out in List II of Appendix VII of the White Paper. We think that the Legislatures, in passing Provincial Civil Service Acts authorising and requiring the Executive Government to give these Services the necessary security, would be well advised to consider whether, to meet the new conditions, List II of Appendix VII of the White Paper should be enlarged by appropriate additions from List I of the same Appendix, wherein are set out the principal existing rights of officers appointed by the Secretary of State. In our view the status and rights of the Central and Provincial Services should not be, in substance, inferior to the status and rights of persons appointed by the Secretary of State in regard to the two main points covered by List I. These two points are, protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion ; and, secondly, protection against such arbitrary alterations in the organisation of the Services themselves as might damage the professional prospects of their members generally. On the first point, these Provincial Civil Service Acts could not, indeed, determine in detail the rates of pay, allowances and pensions, and the conditions of retirement of all Civil Servants, nor the procedure to be followed in considering their promotion on the one hand, or, on the other, their dismissal, removal, reduction or formal censure. Such Acts could, however, confer general powers and duties for these purposes on the Government, and in regard to promotions, they could provide definitely that " canvassing " for promotion or appointments shall disqualify the candidate, and that orders of posting or promotion in the higher grades shall require the personal concurrence of the Governor. On the second point, it is admittedly more difficult to give security to the Services as a whole in respect of their

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general organisation; yet the *moral* of any Service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognised cadre of higher-paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance. A Legislature does nothing derogatory to its own rights and powers if it confers upon the Executive by law the duty of fixing such cadres and of reporting to the Legislature if any post in these cadres is at any time held in abeyance.

Votability of salaries, etc., of Central and Provincial Services.

"283D. There is, however, one existing right of officers appointed by the Secretary of State, the application of which, as it stands, to civil servants in general would be impossible, namely, the right to non-votability of salaries and pensions. There is, indeed, nothing derogatory again, to the rights and powers of the Legislature in the adoption of a special procedure similar to the Consolidated Fund Charges procedure of the British Parliament, under which certain salaries are authorised by permanent statute instead of being voted annually on estimates of supply, and this is, in fact, generally recognised to be a desirable procedure in certain circumstances. But, as we point out below,[1] in a slightly different connection, this procedure could not, in practice, be applied to the salaries of all public servants. We think, however, that it might well be applied by the Provincial Legislatures to certain classes of officers, and, in particular, to the higher grades of all the services. We make this proposal without prejudice to the proposals in the White Paper which provide that certain heads of expenditure shall not be submitted to the vote of the Provincial Legislatures at all.")

The same is agreed to.

New paragraphs 283, 283A, 283B, 283C, and 283D are again read.

The further consideration of paragraphs 283, 283A, 283B, 283C, and 283D is postponed.

Paragraphs 284 to 286 are again postponed.

Paragraph 287 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 163, line 40, to leave out ("the establishment of Provincial Autonomy") and to insert ("the date when the new provincial Governments first take office").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 163, line 41, to leave out ("but where") and to insert ("though it is unlikely that a revision "of the question of recruitment by the Secretary of State of officers employed "under the Federal Government will be appropriate until a later date. "Where").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 164, line 2, after ("experts,") to insert ("The Constitution Act should, in our view, make "provision for enabling the present arrangements for recruitment and control "of the Indian Civil Service and Indian Police to be varied without an "amending Act; probably procedure by Order in Council, the draft of "which had been approved by both Houses of Parliament, would be most "convenient.").

The same is agreed to.

Paragraph 287 is again read, as amended.

The further consideration of paragraph 287 is postponed.

Paragraphs 288 to 299 are again postponed.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 168, after Paragraph 299 to insert the following new paragraph:—

English personnel in Forest and Irrigation Services.

("299A. Our recommendation that the Forest and Irrigation Services should in future be recruited in India does not, of course, imply that the Governments in India should abandon the recruitment of necessary personnel from England. The High Commissioner for India in London

[1] *Infra*, para. 304.

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already recruits specialist and expert officers of various kinds in England, as the agent of the competent authorities in India, and the Governments in India will doubtless continue this practice, or may, for certain purposes, make use of the Civil Service Commission.")

The same is agreed to.

New paragraph 299A is again read.

The further consideration of paragraph 299A is postponed.

Paragraphs 300 to 305 are again postponed.

Paragraph 306 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 170, line 27, to leave out (" only ") and to insert (" direct ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 170, line 32, at the end to insert (" Existing rights of suit against the Secretary of State will be " preserved ").

The same is agreed to.

Paragraph 306 is again read, as amended.

The further consideration of paragraph 306 is postponed.

Paragraph 307 is again postponed.

Paragraph 308 is again read.

It is moved by the Marquess of Linlithgow. Page 171, lines 8 to 23, to leave out from (" Services ; ") in line 8 to the end of the paragraph and to insert (" and we have noted with satisfaction the resolution of the Home Department " of the Government of India, dated July 4th, announcing new rules for the " determination and improvement of the representation of minorities in the " Public Services. In accordance with this resolution the claims of Anglo- " Indians and domiciled Europeans who at present obtain rather more than " 9 per cent. of the Indian vacancies in the gazetted railway posts, for which " recruitment is made on an All-India basis will be considered when and if " their share falls below 9 per cent., while 8 per cent. of the railway subordinate " posts filled by direct recruitment will be reserved for Anglo-Indians and " domiciled Europeans. We are of opinion that a reference should be included " in the Instruments of Instructions of the Governor-General and Governors " to the fact that the legitimate interests of minorities include their due " representation in the Public Services. It would, of course, be incumbent " on the Governor-General and Governors in the discharge of their special " responsibility for the legitimate interests of minorities to see that no change " was made in the percentages prescribed in the above-mentioned resolution " without their approval.")

The same is agreed to.

Paragraph 308 is again read, as amended.

The further consideration of paragraph 308 is postponed.

Paragraphs 309 to 317 are again postponed.

Paragraph 318 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 177, line 7, after (" fettered.") to insert (" We need hardly add that our acceptance of the " proposal to abrogate the statutory proportion so far as barristers are " are concerned implies no doubt as to the necessity of continuing, in the " interests of the maintenance of British legal traditions, to recruit a reasonable " proportion of barristers or advocates from the United Kingdom as Judges " of the High Courts.")

The same is agreed to.

Paragraph 318 is again read, as amended.

The further consideration of paragraph 318 is postponed.

Paragraph 319 is again postponed.

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Paragraph 320 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 177, line 45, to leave out (" it is for consideration whether ") and to insert (" We recommend that ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 177, line 46, to leave out (" not ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 177, line 50, at the end of the paragraph asamended, to insert (" We should add that in later " paragraphs we make recommendations which are designed to confirm and " strengthen the arrangements existing in many Provinces whereby the High " Courts are given a large measure of control over the personnel of the " Subordinate Judiciary ; but we also think that provisions, settling definitely " the nature of the administrative superintendence to be exercised by the " High Courts over the Subordinate Courts in a Province, should find a place " in the new Constitution.")

The same is agreed to.

Paragraph 320 is again read, as amended.

The further consideration of paragraph 320 is postponed.

Paragraphs 321 to 349 are again postponed.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 191, after paragraph 349B, to insert the following new paragraphs :—

Prior consent of Governor-General or Governor should be required to legislation affecting such grants.

(" 349B. It is not unnatural that the holders of privileges such as we have described should be apprehensive lest the grant of responsible government, and the consequent handing over to the control of Ministers and Legislatures of all matters connected with land revenue administration should result in a failure to observe the promises which have been extended by Governments in the past to themselves or their predecessors in interest. Some of the claims to protection which have been urged upon us in this connexion would be satisfied by little less than a statutory declaration which would have the effect of maintaining unaltered and unalterable for all time, however strong the justification for its modification might prove to be in the light of changed circumstances, every promise or undertaking of the kind made by the British Government in the past. We could not contemplate so far-reaching a limitation upon the natural consequences of the change to responsible government. We recommend, however, that the Constitution Act should contain an appropriate provision requiring the prior consent of the Governor-General or the Governor, as the case may be, to any proposal, legislative or executive, which would alter or prejudice the rights of the possessor of any privilege of the kind to which we have referred.")

The Permanent Settlement.

(" 349C. We have considered whether similar provision should be made to protect the rights of Zamindars and others who are the successors in interest of those in whose favour the Permanent Settlement of Bengal, Bihar and Orissa and parts of the United Provinces and Madras was made at the end of the 18th century. Briefly, the effect of this Settlement was to give a proprietary right in land to the class described as Zamindars, on the understanding that they collected and paid to Government the revenue assessed on that land which was fixed at rates declared at the time to be intended to stand unaltered in perpetuity. It is apparent that the position of Zamindars under the Permanent Settlement is very different from that of the individual holders of grants or privileges of the kind we have just described ; for, while the privileges of the latter might, but for a protection such as we suggest, be swept away by a stroke of the pen with little or no injury to any but the holder of the vested interest himself, the alteration of the character of land revenue settlement in Bengal, for instance, would involve directly or indirectly the interests of vast numbers of the population in addition to those of the comparatively small number of Zamindars proper, and might indeed produce an

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economic revolution of a most far-reaching character. Consequently, no Ministry or Legislature in Bengal could, in fact, embark upon, or at all events carry to a conclusion legislative proposals which would have such results unless they had behind them an overwhelming volume of public support. We do not dispute the fact that the declarations as to the permanence of the Settlement contained in the Regulations under which it was enacted could not have been departed from by the British Government so long as that Government was in effective control of land revenue. But we could not regard this fact as involving the conclusion that it must be placed beyond the legal competence of an Indian Ministry responsible to an Indian Legislature which is to be charged *inter alia* with the duty of regulating the land revenue system of the Province to alter the enactments embodying the Permanent Settlement, which enactments, despite the promises of permanence they contain, are legally subject (like any other Indian enactment) to repeal or alteration. Nevertheless, we feel that the Permanent Settlement is not a matter for which, as the result of the introduction of Provincial Autonomy, His Majesty's Government can properly disclaim all responsibility. We recommend therefore that the Governor should be instructed to reserve for the signification of His Majesty's pleasure any Bill passed by the Legislature which would alter the character of the Permanent Settlement.")

The same are agreed to.

New paragraphs 349B and 349C are again read.

The further consideration of paragraphs 349B and 349C is postponed.

Paragraphs 350 to 368 are again postponed.

Paragraph 369 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 201, line 23, after (" basis.") to insert (" One point of importance does not seem to have been "made sufficiently clear by the Report of the Committee. The powers "which the Governor-General will possess of taking action in virtue of his "special responsibilities (including, of course, that relating to any matter "which affects the Reserved Departments) must extend to the giving of "directions to the Railway Authority. Also his right in the event of a "breakdown of the Constitution to assume to himself the powers vested in "any Federal Authority must extend to the powers vested in the Railway "Authority.")

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 201, line 24, to leave out (" also ").

The same is agreed to.

Paragraph 369 is again read, as amended.

The further consideration of paragraph 369 is postponed.

Paragraph 370 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 201, lines 41 to 43, to leave out from (" (2)[2]. ") to the end of the sub-paragraph and to insert at the end of the sub-paragraph as amended (" and the powers of the Governor-"General referred to above.")

The same is agreed to.

Paragraph 370 is again read, as amended.

The further consideration of paragraph 370 is postponed.

Paragraph 371 is again postponed.

Paragraph 372 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 207, lines 26–33, to leave out from (" Council.") in line 26 to (" be ") in line 33 and to insert

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(" It is desirable both on grounds of economy and for other reasons that the " present centralised system of Audit and Accounts should be maintained, " and it is to be hoped that the Provinces will realise the advantages of such " a course. Nevertheless it would be difficult to withhold from an autonomous " Province the power of taking over its own Audit and Accounts if it desires " to do so, and we think that the Constitution must allow a Province to take " this step subject to the following conditions. Long notice should be given " of the change; a Provincial Chief Auditor should be appointed whose " position would be no less independent of the Executive than that of the " Auditor-General; a general form of accounts framed on the common basis " for all the Provinces should continue to ").

The same is agreed to.

Paragraph 372 is again read, as amended.

The further consideration of paragraph 372 is postponed.

Paragraphs 373 to 379 are again postponed.

Paragraph 380 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 212, lines 13 to 15, to leave out from (" us ") in line 13 to (" It ") in line 15, and to insert (" inap- " propriate that the appointment should be made by the Governor-General " acting solely on the advice of Federal Ministers. We recommend accordingly " that the appointment of High Commissioner should be made by the Governor " General in his discretion after consultation with his Ministers.")

The same is agreed to.

Paragraph 380 is again read, as amended.

The further consideration of paragraph 380 is postponed.

Paragraphs 381 to 453 are again postponed.

Paragraphs 1 to 42 are again read.

It is moved by the Marquess of Linlithgow. Pages 1 to 20, that the original paragraphs 1 to 42 be left out and that the following new paragraphs be considered in lieu of them. The new paragraphs are laid before the Committee and are read and are as follows :—

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PART I

INTRODUCTION

The Statutory Commission's survey.

1. The conditions of the problem with the examination of which we have been entrusted are brilliantly described in the comprehensive survey which forms Volume I of the Report of the Statutory Commission. We are not aware that the accuracy of this survey has been impeached, and we are content to take it both as the starting point and the text book of our own investigation. Nor, indeed, could we do otherwise; for it would have been impossible for us in the time at our disposal to have accumulated and digested so vast a mass of fact and detail. We desire to place on record our deep obligation to the work of the Commission and our conviction that, if we had not had before us the fruits of their patient and exhaustive enquiries, we should scarcely have been able to enter upon, much less to complete within any measurable space of time, the task which Parliament has imposed upon us. Nevertheless, if the labours of the Commission have happily relieved us of the task of restating by way of introduction the conditions of the Indian problem, there are certain elements in it which must so sensibly affect the judgment which we are invited to form and the recommendations which it will be our duty to make that we may be permitted briefly to refer to them.

The peoples of India.

2. The sub-continent of India,[1] lying between the Himalayas and Cape Comorin, comprises an area of 1,570,000 square miles with a population now approaching 340,000,000. Of this area British India

[1] *i.e.*, excluding Burma : *see infra*, para. 45.

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comprises about 820,000, and the Indian States 700,000, square miles, with populations of about 260,000,000 and 80,000,000 respectively. It is inhabited by many races and tribes, speaking over two hundred different languages or dialects, and often as distinct from one another in origin, tradition, and manner of life, as are the nations of Europe. Two-thirds of its inhabitants profess Hinduism in one form or another as their religion; over 77,000,000 are followers of Islam; and the difference between the two is not only one of religion in the stricter sense, but also of race, of law, and of culture. They may be said indeed to represent two distinct and separate civilisations. Hinduism is distinguished by the singular phenomenon of caste, which is the basis of its religious and social system and which, save in a very restricted field, remains impervious to the more liberal philosophies of the West; the religion of Islam on the other hand is based upon the conception of the equality of man. In addition to these two great communities, there is also to be found an infinite variety of other religions and sects, ranging from

[1] *i.e.*, excluding Burma: *see infra*, para. 45.

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the simple beliefs of Animism to the mystical speculations of the Buddhist. The great majority of the people of India derive their living from the soil and practise for the most part a traditional and self-sufficing type of agriculture. The gross wealth of the country is very considerable, but owing to the vast number of its inhabitants the average standard of living is low and can scarcely be compared even with that of the more backward countries of Europe. Literacy is rare outside urban areas, and even in these the number of literates bears but a small proportion to the total population.

The Indian States.

3. In its political structure India is divided between British India and the Indian States. The latter are nearly 600 in number. They include 109 States, among them great States like Hyderabad, Mysore, Baroda, Kashmir, Gwalior and Travancore, the Rulers of which are entitled to a seat in the Chamber of Princes; 128 which are represented in the Chamber by 12 of their own order elected by themselves; and 327 Estates, Jagirs, and others which are only States in the sense that their territory, often consisting only of a few acres, does not form part of British India. The more important States within their own territories enjoy all the principal attributes of sovereignty, but their external relations are in the hands of the Paramount Power. The sovereignty of others is of a more restricted kind, and over others again the Paramount Power exercises in varying degrees an administrative control.

British India.

4. British India consists of nine Governors' Provinces (excluding Burma), together with certain other areas administered under the Government of India itself. The Governors' Provinces possess a considerable measure of executive and legislative independence; but over all of them the Government of India and the Central Legislature can exercise executive and legislative authority. In respect of certain matters, known as transferred subjects the Provincial Executives are responsible to their Legislatures; but the Governor-General in Council is independent of the Central Legislature and responsible only to the Secretary of State and through him to Parliament. An official *bloc* forms part of both the Central and Provincial Legislatures and in general acts in accordance with the wishes of the Governor-General and Provincial Governors respectively. British India is administered through a number of services, some of them all-India services, and some provincial. Of the former the most important is the Indian Civil Service, recruited by the Secretary of State.

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Features of present constitution.

5. Such in the barest outline is the present constitutional structure of British India, into the details of which we shall have occasion to enter with more particularity when we deal with the specific proposals of the White Paper in their order. It will be seen that its main features are a Central Executive, responsible only to the Secretary of State and through him to Parliament; Provincial Executives exercising powers over a wide field, responsible in certain

matters but not in others to the Provincial Legislatures; and Central and Provincial Legislatures exercising the law-making power, but with no control over the Executive in one case and with only a limited control in the other. Yet notwithstanding the measure of devolution on the Provincial authorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralised Government, with the Governor-General in Council as the keystone of the whole constitutional edifice; and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their responsibilities for the peace, order and good government of India.

The British achievement.

6. British rule in India stands in no need of apologetics, but it is well to remember what its specific achievement has been. It has given to India that which throughout the centuries she has never possessed, a Government whose authority is unquestioned in any part of the sub-Continent; it has barred the way against the foreign invader and has maintained tranquility at home; it has established the rule of law, and, by the creation of a just administration and an incorruptible magistracy, it has secured to every subject of His Majesty in British India the right to go in peace about his daily work and to retain for his own use the fruit of his labours. It is well, also, to remember how small is the British element in the administrative and judicial services which have been the chief agents of this work. The total European population of British India to-day including some 60,000 British troops, is only 135,000. The total British element in the Superior Services is about 3,150, and of these there are approximately 800 in the Indian Civil Service and 500 in the Indian Police.

The Mogul Empire.

7. The success of British Rule cannot be justly estimated without reference to the condition of things which preceded it. The arts of government and administration were not indeed unknown to Moguls, the and the strong hand of the Emperors who reigned between 1525 and 1707 maintained a State which ultimately embraced the larger part of India and did not suffer by comparison with, if it did not even surpass in splendour, the contemporary monarchies of Europe. But the strength of the Mogul Empire, depended essentially upon the personal qualities of its ruling House, and when the succession of great Emperors failed, its collapse inevitably followed; nor during its most magnificent period was its authority unchallenged either within or without its borders. Its system of government resembled that of other Asiatic despotisms. The interests of the subject races were made subservient to the ambitions, and often to the caprices, of the monarch; for the politic toleration of Akbar found no imitator among his successors. The imperial splendour became the measure of the people's poverty, and their sufferings are said by a French observer, long resident at the Court of Aurungzeb, to have been beyond the power of words to describe.

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The post Mogul period.

8. There are pages in the history of India, between the collapse of the Mogul Empire and the final establishment of British supremacy, which even to-day cannot be read without horror. With but brief intervals of relief, vast tracts were given over to the internecine struggles of the princes, the guerilla warfare of petty chiefs, and the exactions of Indian and European adventurers; and to townsmen and peasants alike, the helpless victims of malice domestic, foreign levy, and (the whole apparatus of) anarchy, it might have seemed that the sum of human misery was complete. It is in the improvement which has taken place in Indian agriculture since the establishment of peace and security, that the Royal Commission in 1928 found a measure of the extent to which husbandry had been injured and its progress delayed by the long period of disorder and unrest that preceded the British occupation.

Restoration of peace and order.

9. Such were the conditions out of which British rule created a new and stable polity, not without the support and co-operation of Indians themselves. Peace and order were re-established, the relations of the Indian States with one another and with the Crown were finally determined, and the rule of law made effective throughout the whole of British India. On this solid foundation the majestic structure of the Government of India rests, and it can be claimed with certainty that in the period which has elapsed since 1858, when the Crown assumed supremacy over all the territories of the East India Company, the intellectual and material progress of India has been greater than it was ever within her power to achieve during any other period of her long and chequered history.

Influence of British constitutional ideas.

10. We have emphasised the magnitude of the British achievement in India because it is this very achievement that has created the problem which we have been commissioned by Parliament to consider. By transforming British India into a single unitary State, it has engendered among Indians a sense of political unity. By giving that State a Government disinterested enough to play the part of an impartial arbiter, and powerful enough to control the disruptive forces generated by religious, racial and linguistic divisions, it has fostered the first beginnings, at least, of a sense of nationality, transcending those divisions. By establishing conditions in which the performance of the fundamental functions of government, the enforcement of law and order and the maintenance of an upright administration, have come to be too easily accepted as a matter of course, it has freed the mind of an acute and ingenious race to turn to other things—and, in particular, to speculation upon the forms of government. Finally, by directing this speculation towards the object lessons of British constitutional history and by accustoming the Indian student of government to express his political ideas in the English language, it has favoured the growth of a body of opinion inspired by two familiar British conceptions; that good government is not enough without self-government, and that the only form of self-government worthy of the name is

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government by Ministers responsible to an elected Legislature. Indians, so trained and influenced, have not been slow to observe that the Government of India has itself been one of the most significant examples of this principle of responsibility; for its accountability to Parliament, so constantly insisted on by Englishmen of all schools of political thought, has given it a quality of

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stability and permanence impossible of attainment otherwise under a system of personal rule.

Reality of Indian political aspirations.

11. The Indian problem cannot be understood unless the reality of these political aspirations is frankly recognised at the outset. There is ample evidence that enlightened Indian opinion has a very just appreciation of the benefits derived from the British connection, but the attachment of a people to its government is not always determined by a dispassionate calculation of material interest, still less by sentiments of mere gratitude. The subtle ferments of education, the impact of the War, and the beginnings of that sense of nationality to which we have referred, have combined to create a public opinion in India which it would be a profound error for Parliament to ignore. It is true, of course, that those who entertain these aspirations constitute but a small fraction of the vast population of India and that, in these circumstances, alleged manifestations of public opinion are often of doubtful value. Nevertheless, a public opinion does exist, strong enough to affect what has been the main strength of the Government of India for many generations —its instinctive acceptance by the mass of the Indian people. To the cultivators who make up nine-tenths of the population, an equitable land revenue settlement and the timely advent of the monsoon may be of more importance than any projects of constitutional reform ; but, when they find that neither just administration nor good monsoons can ensure a remunerative price for their produce, their lack of political ideas may make them more, rather than less, receptive of political arguments. History has repeatedly shown the unwisdom of judging the political consciousness of a people by the standard of its least instructed class, and the creation of the British Empire, as we know it to-day, has been mainly due to the fact that, for the last hundred and fifty years, British policy has been guided by a more generous appreciation of the value, and a juster estimate of the influence, of what is sometimes called a politically-minded class.

The Preamble of the Act of 1919.

12. British policy has certainly been so guided in India during recent years. It has conferred on the people of India, by the Act of 1919, wide powers of self-government and, during the last six or seven years, from the appointment of the Statutory Commission onwards, it has been consistently directed to working out, in free collaboration with Indians themselves, the lines of a new and more permanent constitution. In particular, for the first time in the history of India representatives of her Princes and peoples have sat

for many months in council with representatives of His Majesty's Government and of the great political Parties of the United Kingdom ; and, for the first time in the history of Parliament, Indian delegates have taken part in the proceedings of a Joint Select Committee and have illuminated our discussions, even if circumstances forbade them to share our responsibilities. But, above all, in the Preamble to the Act of 1919, Parliament has set out, finally and definitely, the ultimate aims of British rule in India. Subsequent statements of policy have added nothing to the substance of this declaration, and we think it well to quote it here in full, as settling once and for all the attitude of the British Parliament and people towards the political aspirations of which we have spoken :—

> " Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of

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self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the empire :

" And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :

" And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples :

" And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility :

" And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities : "

Constitutional theory in practice.

13. But a recognition of Indian aspirations, while it is the necessary preface to any study of Indian constitutional problems, is an insufficient guide to their solution. Responsible government, to which those aspirations are mainly directed to-day, is not an automatic device which can be manufactured to specification. It is not even a machine which will run on a motive power of its own. The student of government who assumes that British constitutional theory can be applied at will in any country, misses the fact that it could not be sucessfully applied even in Great Britain if it were not modified in a hundred ways by unwritten laws and tacit conventions. It is not unnatural that, in the words of the Statutory Commission, most of the constitutional schemes propounded by

Indians should closely follow the British model, but the successful working of that model postulates the existence of certain conditions, which are as essential as they are difficult to define. As Lord Bryce has remarked, " the English constitution, which we admire as a masterpiece of delicate equipoises and complicated mechanism, would anywhere but in England be full of difficulties and dangers . . . It works by a body of understanding which no writer can formulate and of habits which centuries have been needed to instil ". It is superfluous to adduce examples, but two of the most important may be cited ; the powers of the Prime Minister and the position of the Civil Service. Of the first Mr. Gladstone said that " nowhere in the world does so great a substance cast so small a shadow " ; of the second Professor Lowell has pointed out that both the civil servant's " abstinence from politics " and his " permanence of tenure " have been " secured by the force of public opinion hardening into tradition, and not by the sanction of law." Above all, the understanding and habits of which Lord Bryce speaks are in the main the creation of, as they have in their turn helped to promote, the growth of mutual confidence between the great parties in the State, a confidence based on the fundamental beliefs, transcending the political differences of the hour, which each has come to repose in the good faith and motives of the other. Experience has shown only too clearly that a technique which the British people have thus painfully developed in the course of many generations is not to be acquired by other communities in the twinkling of an eye ; nor,

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when acquired, is it likely to take the same form as in Great Britain, but rather to be moulded in its course of development by social conditions and national aptitudes.

Difference between the letter and spirit of British constitutional doctrine.

14. Experience has shown, too, how easily the framers of written constitutions may be misled by deceptive analogies, succeeding only in reproducing what they suppose to be the letter of British constitutional theory, while ignoring the spirit and the living growth of British constitutional practice. The classic instance of such misconceptions is offered by the constitution of the United States whose authors decided "to keep the legislative branch absolutely distinct from the executive branch," largely because "they believed such a separation to exist in the English, which the wisest of them thought the best constitution."* That error may seem absurd enough to modern students of politics, but the mere copyist of British institutions would fall into even more dangerous errors to-day if he were to assume that an Act of Parliament can establish similar institutions in India merely by reproducting such provisions as are to be found in the constitutional law of the United Kingdom. It is certain, on the contrary, as we shall show, that such an Act must seek to give statutory form to many "safeguards" which are essential to the proper working of parliamentary government, but which in Great Britain have no sanction save that of established custom; and, when this is done, it will remain true that parliamentary government in India may well develop on lines different from those of government at Westminster.

* Bagehot: *The British Constitution.*

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Constitutional development should be evolutionary.

15. If, then, the long collaboration of Englishmen and Indians during recent years is to result in the enactment of a constitution which will work successfully under Indian conditions, we shall do well to discard theories and analogies and, instead, to base our scheme on the government of India as it exists to-day. That was the line of approach which was adopted by the Statutory Commission and which has increasingly been followed in the deliberations of the Round Table Conferences and in our own consultations with the Indian delegates. It is also the line which Parliament has followed in the past in framing the constitutions of the self-governing Dominions. If the constitutions of Canada, Australia, New Zealand and South Africa were framed on the British model, it was not because Parliament decided on theoretical grounds to reproduce that model in those countries, but because government in those countries had been long conducted on British principles and had already grown into general conformity with British practice. If these constitutions, enacted over a period of more than forty years, differ from one another in certain points, those differences are not to be attributed to change in British constitutional theory, so much as to variations in the experience and practice of the particular communities themselves. In India, too, there is already a system of government which, while possessing many special characteristics, is no less based on British principles, and is no less a living organism. Already, long before either the Morley-Minto or the Montagu-Chelmsford reforms, that government had shown a marked tendency to develop on certain lines. The safest hypothesis on which we can proceed, and the one most in accordance with our constitutional history, is that the future government of India will be successful in proportion as it represents, not a new creation substituted for an old one, but the natural evolution of an existing government and the natural extension of its past tendencies.

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Provincial Autonomy as natural development.

16. It is from this point of view that Parliament may well approach the first and basic proposal which has been submitted to us, the proposal to found the new constitutional system in India, on the principle of Provincial Autonomy. That proposal has been so fully considered and so precisely formulated by the Statutory Commission that we do not propose to discuss its details in this introductory part of our Report. It is, however, important to observe that, far-reaching as is this constitutional change, it is not a break with the past. Every student of Indian problems, whatever his prepossessions, from the Joint Select Committee of 1919 to the Statutory Commission, and from the Statutory Commission onwards, has been driven in the direction of Provincial Autonomy, not by any abstract love of decentralisation, but by the inexorable force of facts. Moreover, the same facts had already set the Government of India moving in the same direction, long before the emergence of the constitutional problem in its present form. When that problem did emerge, a long and steady process of

administrative devolution from the Government of India to the Provincial Governments had already profoundly affected the whole structure of Indian administration. In particular, this gradual course of devolution had produced three important results. It had tended to remove Provincial administration from the immediate purview of His Majesty's Government and, by thus weakening the direct accountability of Indian administrators to Parliament, it had, perhaps, rendered inevitable the introduction, in some degree, of local responsible government. At the same time, it had tended to make the Provinces the centres of the development of social services and it had also tended to transfer to the Provincial Executives the prime responsibility for the preservation of law and order. From these three changes the three main features of Provincial Autonomy are directly derived.

Abolition of dyarchy approved.

17. In the first place, the Act of 1919 introduced a large measure of responsible government in the Provinces, and the governments thus established have now been in operation for more than a decade. Opinions may differ widely as to the success of this experiment, but we agree with the conclusion reached by the Statutory Commission, that its development has now reached a stage when it has outgrown the limits imposed upon it by the Act of 1919. The present dyarchic system in the Provinces, as the Commission pointed out, though designed to develop a sense of responsibility, has sometimes tended to encourage a wholly different attitude. A sense of responsibility is an attribute of character, not a garment to be put on or discarded at will, according to the particular social function which the wearer may be attending at the moment. The Statutory Commission rightly observes that it can only be acquired by making men responsible politically for the effects of their own actions; and their sense of responsibility must be enormously weakened if the action of government is split up into watertight compartments, partitioned off by the clauses of a constitution. Hence, the recommendation of the Statutory Commission, which we endorse, that the dyarchic system should be abolished, and that Provincial Ministers should be made generally responsible over the whole field of Provincial government.

Responsible government and social legislation.

18. Secondly, in the sphere of social administration, it is evident that a point has been reached where further progress depends upon the assumption by Indians of real responsibility for Indian social conditions. Englishmen may legitimately claim that, for the greater

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part of her material and intellectual progress, India has been mainly indebted to British rule. But from one aspect of Indian life British rule has tended to stand aside : it has followed a policy of neutrality and non-interference in all matters which touch the religions of India. It is not difficult to justify that policy : but so closely are the habits and customs of the people bound up with their religious beliefs that the effect has been to put grave obstacles in the way of social legislation by the Government of India in such matters (to name

only two obvious instances) as child marriage and the problem of the untouchables. These obstacles can only be removed by Indian hands. We are under no illusion as to the difficulty of that task, but we are clear that under responsible government alone can it be attempted with any prospect of success.

Essence of responsible government.

19. But the third aspect of Provincial Autonomy is still, as it has been from time immemorial, the most difficult and the most important. Among the many problems arising out of the process of devolution, the most vital one is how best to ensure the continuity of the Provincial executives in the performance of what, in an earlier paragraph, we referred to as the fundamental functions of government : the enforcement of law and order, and the maintenance of an upright administration. Because these are the fundamental functions of government and because there is no greater danger to good government than the tendency to take their performance for granted, we have come, as will later appear, to the same conclusion as the Statutory Commission, that Provincial Ministers must be made responsible for their performance. But it is well to remember what, according to British constitutional practice, is the nature of that responsibility. It is a responsibility which no executive can share with any legislature, however answerable it may be to that legislature for the manner of its discharge. That has been true of the relationship of the Government of India to Parliament in the past ; it must remain true of the relationship of Provincial Ministers to Provincial Legislatures in the future. It is appropriate that this principle of executive independence should be expressed in the Constitution by the conferment of special powers and responsibilities on the Governor as the head of the Provincial executive. This raises a wider question on which a further word must be said.

British conception of Parliamentary government.

20. In establishing, or extending, parliamentary government in the Provinces, Parliament must take into account the facts of Indian life. Parliamentary government, as it is understood in the United Kingdom, works by the interaction of four essential factors : the principle of majority rule ; the willingness of the minority for the time being to accept the decisions of the majority ; the existence of two organised political parties differing on questions of policy, but each confident (in the other's good faith and public spirit) ; and, finally the existence of a mobile body of political opinion, owing no permanent allegiance to either Party and therefore able, by its instinctive reaction against extravagant movements on one side or the other, to keep the vessel on an even keel. In India none of these factors can be said to exist to-day. There are no parties, as we understand them, and no mobile body of political opinion. In their place we are confronted with the age-old antagonism of Hindu and Muhammedan, representatives not only of two religions but of two civilisations, with numerous self-contained and exclusive minorities, all a prey to anxiety for their future and profoundly

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suspicious of the majority and of one another; and with the rigid divisions of caste (itself a denial of every democratic principle). In these circumstances, communal representation must be accepted as inevitable at the present time, but it is a strange commentary on some of the democratic professions to which we have listened. We lay stress on these facts because in truth they are of the essence of the problem and we should be doing no good service to India by glazing them over. These difficulties must be faced, not only by Parliament, but by Indians themselves. It is impossible to predict whether, or how soon, a new sense of provincial citizenship, combined with the growth of parties representing divergent economic and social interests, may prove strong enough to absorb and obliterate the religious and racial cleavages which thus dominate Indian political life. Meanwhile it must be recognised that, if free play were given to the powerful forces which would be set in motion by an unqualified system of parliamentary government, the consequences would be disastrous to India, and perhaps irreparable. In these circumstances, the successful working of parliamentary government in the Provinces must depend, in a special degree, on the extent to which Parliament can translate the customs of the British constitution into statutory "safeguards."

Safeguards not inconsistent with responsible government.

21. That word, like other words repeatedly used in recent discussions, has become a focus of misunderstandings both in England and India. To many Englishmen it conveys the idea of an ineffective rearguard action, masking a position already evacuated; to many Indians it seems to imply a selfish reservation of powers inconsistent with any real measure of responsible government. Since it is too late to invent a new terminology, we must make it clear that we use the word in a more precise and quite different sense. On the one hand, the safeguards we contemplate have nothing in common with those mere paper declarations which have been sometimes inserted in constitutional documents, and which are dependent for their validity on the goodwill or the timidity of the men or the institutions to whom the real substance of power has been transferred. They represent, on the contrary (to quote a very imperfect but significant analogy) a retention of power as substantial and as fully endorsed by the laws, as that vested by the Constitution of the United States in the President as Commander-in-Chief of the Army—but more extensive both in respect of their scope and in respect of the circumstances in which they can be brought into play. On the other hand, they are not only not inconsistent with some form of responsible government, but in the present circumstances of India it is no paradox to say that they are the necessary complement to any form of it, without which it could have little or no hope of success. It is in exact proportion as Indians show themselves to be not only capable of taking and exercising responsibility but able to supply the missing factors in Indian political life of which we have spoken, that both the need for safeguards and their use will disappear. We propose to

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examine later in this Report the nature of the safeguards required, but we think it right to formulate here what seem to us to be the essential elements in the new constitutional settlement which these safeguards should be designed to supply.

Need for flexibility

22. The first is flexibility, so that opportunity may be afforded for the natural processes of evolution with a minimum of alteration

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in the constitutional framework itself. The deplorable and paralysing effect of prescribing a fixed period for constitutional revision requires no comment in the light of events since 1919; but we are also impressed with the advantage of giving full scope for the development in India of that indefinable body of understanding, of political instinct and of tradition, which Lord Bryce, in the passage which we have quoted, postulates as essential to the working of our own constitution. The success of a constitution depends, indeed, far more upon the manner and spirit in which it is worked than upon its formal provisions. It is impossible to foresee, so strange and perplexing are the conditions of the problem, the exact lines which constitutional development will eventually follow, and it is, therefore, the more desirable that those upon whom responsibility will rest should have all reasonable scope for working out their own salvation by the method of trial and error. In other words, as the Statutory Commission emphasised in their Report, the new Indian Constitution must contain within itself the seeds of growth.

for a strong executive;

23. Next, there is the necessity for securing strong Executives in the Provinces. We have little to add to what the Statutory Commission have written on this point, and in our judgment they do not exaggerate when they say that nowhere in the world is there such frequent need for courageous and prompt action as in India and that nowhere is the penalty for hesitation and weakness greater. We do not doubt that Indian Ministers, like others before them, will realise this truth, but, in view of the parliamentary weaknesses which we have pointed out, the risk of divided counsels and therefore of feebleness in action is not one which can be ignored. We have no wish to underrate the legislative function; but in India the executive function is, in our judgment, of overriding importance. In the absence of disciplined political parties, the sense of responsibility may well be of slower growth in the Legislatures, and the threat of a dissolution can scarcely be the same potent instrument in a country where, by the operation of a system of communal representation, a newly elected Legislature will often have the same complexion as the old. We touch here the core of the problem of responsible government in the new Indian Constitution, and we shall examine it in greater detail in the body of our Report. Here, we content ourselves with saying that there must be (to quote again the Statutory Commission) an executive power in each Province which can step in and save the situation before it is too late, and this power must be vested in the Governor.

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for an efficient administration;

24. But, further, a strong Executive is impossible and the power thus vested in the Governor would be useless, in the absence of a pure and efficient administration the backbone of all good government. The establishment of a public service, at once disinterested and incorruptible, is not the least of the benefits which British rule has given to India, and it is perhaps the most prized. But the efficiency of a service is no less vital than its honesty. In no country perhaps does the whole fabric of government depend to a greater degree than in India upon its administration; and it is indeed literally true, as the Statutory Commission observe, that the life of millions of the population depends on the existence of a thoroughly efficient administrative system. But no service can be efficient if it has cause for anxiety or discontent. It is therefore essential that those whose duty it is to work this system should be freed from anxiety as to their status and prospects under the new constitution,

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and that new entrants should not be discouraged by any apprehension of inequitable treatment. We have every hope that such anxieties or apprehensions will prove unfounded, but they may be none the less real on that account; and, so long as they exist, it is necessary that all reasonable measures should be taken to quiet them.

and for an impartial authority to hold scales evenly between conflicting interests.

25. Lastly, there must be an authority in India, armed with adequate powers, able to hold the scales evenly between conflicting interests and to protect those who have neither the influence nor the ability to protect themselves. Such an authority will be as necessary in the future as experience has proved it to be in the past. It must, generally speaking, be vested primarily in the Provincial Governors, but their authority must be closely linked with, and must be focussed in, a similar authority vested in the Governor-General, as responsible to the Crown and Parliament for the peace and tranquillity of India as a whole, (and for the protection of all the weak and helpless among her people). This leads us naturally to a consideration of the next point in the Indian constitutional problem--the form and character of the Central Government.

Provincial Autonomy requires a readjustment at Centre.

26. If the establishment of Provincial autonomy marks, not so much a new departure, as the next stage in a path which India has long been treading, it is the more necessary that, on entering this stage, we should pause to take stock of the direction in which we have been moving. We have spoken of unity as perhaps the greatest gift which British rule has conferred on India; but, in transferring so many of the powers of government to the Provinces and in encouraging them to develop a vigorous and independent political life of their own, we have been running the inevitable risk of weakening or even destroying that unity. Provincial Autonomy is, in fact, an inconceivable policy unless it is accompanied by such an adaptation of the structure of the Central Legislature as will bind these autonomous units together. In other words, the necessary consequence of Provincial Autonomy in British India is a British-India Federal Assembly. In recent discussions,

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the word "federation" has become identified with the proposals for an All-India Federation and for the establishment, in the common phrase, of "responsibility at the Centre," both of which proposals we shall have to discuss in a moment. But federation is, of course, simply the method by which a number of governments, autonomous in their own sphere, are combined in a single State. A Federal Legislature capable of performing this function need not necessarily control the Federal Executive through responsible Ministers chosen from among its members; indeed, as we shall show later, the central government of a purely British-India Federation could not, in our opinion, be appropriately framed on this model. But a Federal Legislature must be constituted on different lines from the central legislature of a unitary State. The Statutory Commission realised this truth and proposed a new form of legislature at the Centre specifically designed to secure the essential unity of British India. As will later appear, we agree in general with the Commission's recommendations on this point, and we prefer them to the proposals contained in the White Paper.

Necessity for guarding against centrifugal tendencies.

27. Of course, in thus converting a unitary State into a Federation we are taking a step for which there is no exact historical precedent. Federations have commonly resulted from an agreement between independent or, at least, autonomous governments, surrendering a defined part of their sovereignty or autonomy to a new central

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organism. At the present moment, the British-India Provinces are not even autonomous, for they are subject to both the administrative and the legislative control of the Government of India, and such authority as they exercise has in the main been devolved upon them under a statutory rule-making power by the Governor General in Council. We are faced, therefore, with the necessity of creating autonomous units and combining them into a federation by one and the same act. But it is obvious that we have no alternative To create autonomous units without any corresponding adaptation of the existing Central Legislature would be, as the Statutory Commission saw, to give full play to the powerful centrifugal forces of Provincial Autonomy without any attempt to counteract them and to ensure the continued unity of India. We obviously could not take the responsibility of recommending to Parliament a course fraught with such serious risks. The actual establishment of the new central legislature may, without danger, be deferred for so long as may be necessary to complete arrangements for an All-India Federation, if Parliament should decide to adopt that policy, but its form must be defined in the Constitution Act itself.

The Indian States and an All-India Federation.

28. The same reasoning does not, however, apply to the further proposal laid before us, that the Constitution Act should also determine the form and conditions of an All-India Federation, including the Indian States. This is a separate operation, which

may proceed simultaneously with the introduction of Provincial Autonomy and the reconstitution of the Central Legislature, but which must be carried out by different methods and raises quite distinct issues of policy. We will leave questions of method to be considered in the body of our Report, but the issues of policy must be briefly discussed here.

Difficulties of a Federation composed of disparate units.

29. The Statutory Commission looked forward to the ultimate establishment of a Federation of Indian States and Provinces, and they recommended that, until this ideal could be realised, policies affecting British India and the States should be discussed between the parties in a consultative but not legislative council of Greater India, consisting of representatives drawn from the States and the British India Legislature. The Commission did not anticipate that the Princes would be willing to enter an All-India Federation without some preliminary experience of the joint deliberation which they had suggested on matters of common concern, and no doubt the Commission saw in this procedure the means of overcoming, by a process of trial and error, the difficulties of establishing an All-India Federation. These difficulties are obvious and, again, they are quite distinct from the difficulties involved in the constitution of a British-India Federation. The main difficulties are two : that the Indian States are wholly different in status and character from the Provinces of British India and that they are not prepared to federate on the same terms as it is proposed to apply to the Provinces. On the first point, the Indian States, unlike the British-India Provinces, possess sovereignty in various degrees and they are, broadly speaking, under a system of personal government. Their accession to a Federation cannot, therefore, take place otherwise than by the voluntary act of the Ruler of each State and, after accession, the representatives of the acceding State in the Federal Legislature will be nominated by the Ruler and its subjects will continue to owe allegiance to him. On the second point, the Rulers have made it clear that, while they are willing to consider federation now with the

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Provinces of British India on certain terms, they could not, as sovereign States, agree to the exercise by a Federal Government in relation to them of a range of powers indentical in all respects with those which that Government will exercise in relation to the Provinces on whom autonomy has yet to be conferred. We have here an obvious anomaly: a Federation composed of disparate constituent units, in which the powers and authority of the Central Government will differ as between one constituent unit and another.

Unity of India endangered without a constitutional relationship between States and British India.

30. Against these undoubted difficulties, we have to place one great consideration of substance, which appears to us to outweigh the disadvantages of any formal anomalies. The unity of India on which we have laid so much stress is dangerously imperfect so long as the Indian States have no constitutional relationship with British India. It is this fact, surely, that has influenced the Rulers

of the Indian States in their recent policy. They remain perfectly free to continue, if they so choose, in the political isolation which has characterized their history since the establishment of the British connexion. But they have, it appears, become keenly conscious of the imperfections of the Indian policy as it exists to-day. A completely united Indian polity cannot, it is true, be established either now or, so far as human foresight can extend, at any time. In most respects, the anomalies to which we have referred are the necessary incidents, not merely of the introduction of an All-India Federation at this moment, but of its introduction at any time in the future. So far as we are aware, no section of opinion in this country or in British India is prepared to forego an All-India Federation as an ultimate aim of British policy. Certainly, the Statutory Commission was not prepared to do so, and it is the ideal which they indicated in their report which has since won so much support among the Indian Princes. The question for decision is whether the measure of unity which can be achieved by an All-India Federation, imperfect though it may be, is likely to confer added strength, stability, and prosperity on India as a whole—that is to say, both on the States and on British India. To this question, there can, we think, be only one answer, an affirmative one; and that answer does not rest only, or even chiefly, on the kind of general considerations which naturally appeal most strongly to Englishmen. From the point of view of Englishmen, it is, indeed, evident enough that Ruling Princes who have been in the past the firmest friends of British rule, but who have sometime felt their friendship tried by decisions of the Government of India running counter to what they believed to be the interests of their States and peoples, may be expected, as members of a Federation, to strengthen it precisely in those directions in which Englishmen fear that it may prove weak, and to become helpful collaborators in policies which they are at presen tinclined to criticise or even to obstruct. But an even stronger, and a much more concrete, argument is to be found in the existing economic condition of India.

Economic ties between States and British India.

31. The existing arrangements under which economic policies, vitally affecting the interests of India as a whole have to be formulated and carried out are being daily put to an ever-increasing strain, as the economic life of India develops. For instance, any imposition of internal indirect taxation in British India involves, with few exceptions, the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or, in default of such agreement, the establishment of some system of internal customs duties—an impossible alternative, even if it were not

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precluded by the terms of the Crown's treaties with some States. Worse than this, India may be said even to lack a general customs system uniformly applied throughout the sub-Continent. On the one hand, with certain exceptions, the States are free themselves to impose internal customs policies, which cannot but obstruct

the flow of trade. Even at the maritime ports situated in the States, the administration of the tariffs is imperfectly co-ordinated with that of the British India ports, while the separate rights of the States in these respects are safeguarded by long-standing treaties or usage acknowledged by the Crown. On the other hand, tariff policies, in which every part of India is interested, are laid down by a Government of India and British-India legislature in which no Indian State has a voice; though the States constitute somewhat less than half the area and one-sixth of the population of India. Even where the Government of India has adequate powers to impose internal indirect taxation or to control economic development, as in the cases of salt and opium, the use of those powers has caused much friction, and has often left behind it, in the States, a sense of injustice. Moreover, a common company law for India, a common banking law, a common body of legislation on copyright and trade-marks, a common system of communications, are alike impossible. Conditions such as these, which have caused trouble and uneasiness in the past, are already becoming, and must in the future increasingly become, intolerable as industrial and commercial development spreads from British India to the States. On all these points the Federation now contemplated would have power to adopt a common policy. That common policy would be subject, no doubt, to some reservation of special treaty rights by certain States and, in the States generally, its enforcement would, in many respects, rest with officers appointed by the State Rulers; but, even so modified, it would mark a long step from incoherence towards order. In these times, when experience is daily proving the need for the close co-ordination of policies, we cannot believe that Parliament, while introducing a new measure of decentralisation in British India, would be wise to neglect the opportunity now offered to it of establishing a new centre of common action for India as a whole.

The States and responsibility at the Centre.

32. An All-India Federation thus presents solid advantages from the point of view alike of His Majesty's Government, of British India and of the Indian States. But the attraction of the idea to the States clearly depends on the fulfilment of one condition: that, in acceding to the Federation, they should be assured of a real voice in the determination of its policy. The Princes have, therefore, stated clearly in their declaration that they are willing now to enter an All-India Federation, but only if the Federal Government is a responsible and not an irresponsible government. This brings us to the last of the main issues which have been submitted to our consideration, the issue whether, in the common phrase, there shall or shall not be any degree of "responsibility at the Centre."

Responsibility without the States not a solution of the problem.

33. It is obvious, at the outset, that the very ground on which the Princes advocate responsibility at the Centre in an All-India Federation constitutes the strongest possible argument against responsibility at the Centre in a purely British India Federation; for

a British India Centre would have to deal, as now, with matters intimately affecting the States, yet would, as now, be unable to give the States any effective voice in its deliberations. If the States

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are irked by the exercise of such powers by the present Government of India, their exercise by Ministers responsible to a purely British Indian electorate could hardly fail to lead to serious friction. Indeed, the position of the Governor-General in such circumstances, as the sole representative of the Crown in its treaty relations with the States and, therefore, as the sole mediator between a British Indian electorate and the State Rulers, would be an almost impossible one. We agree, therefore, with the Statutory Commission in thinking that a responsible British Indian Centre is not a possible solution of the constitutional problem, or would, at most, only be possible at the price of very large deductions from the scope of its responsibility.

The statutory commission and responsibility at the Centre.

34. But the Statutory Commission went further than this. They considered the question of responsibility at the Centre from another angle also. It is unnecessary to repeat all that they said on the subject, but they realised, as every student of the problem must realise, that responsible government at the Centre could not in any case, extend to all departments of the Central Government, and that, in any case, it would be necessary to reserve Defence and Foreign Affairs from the sphere of Ministerial responsibility. Hence any measure of responsible government at the Centre must involve a system of dyarchy, and the Commission held strongly the view that a unitary Government at the Centre was essential and should be preserved at all costs. "It must be a Government," they wrote, "able to bear the vast responsibilities which are cast upon it as the central executive organ of a sub-continent, presenting complicated and diverse features which it has been our business to describe"; and they expressed the opinion that a plan based on dyarchy was unworkable and would, indeed, constitute no real advance in the direction of developing central responsibility. In this connection we may usefully quote one passage from the Report of the Statutory Commission on the working of dyarchy in the Provinces. "The practical difficulty in the way of achieving the objective of dyarchy and of obtaining a clear demarcation of responsibility arises not so much in the inner counsels of government as in the eyes of the Legislature, the electorate and the public. Provincial Legislatures were by the nature of the Constitution set the difficult task of discharging two different functions at the same time. In the one sphere, they were to exercise control over policy; in the other, while free to criticise and vote or withhold supply, they were to have no responsibility. The inherent difficulty of keeping this distinction in mind has been intensified by the circumstances under which the Councils have worked to such an extent that perhaps the most important feature of the working of dyarchy in the Provincial Councils, when looked at from the constitutional aspect, is the

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marked tendency of the Councils to regard the Government as a whole, to think of Ministers as on a footing not very different from that of Executive Councillors, to forget the extent of the opportunities of the Legislatures on the transferred side, and to magnify their functions in the reserved field."

Possible divisions of responsibility

35. These are undoubtedly formidable objections, but they do not, we think, exhause the question. It is impossible adequately to discuss the real issues involved in a decision for or against the introduction of some measure of responsibility at the Centre if the discussion is confined to the Centre itself and is conducted in terms of "dyarchy." Like so many other words used in political controversy, "dyarchy"

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has collected round it associations which tend to obscure issues rather than to clarify them. The truth is that, in any constitution, and above all in a Federal constitution, there must be a division of responsibility at some point, and at that point there will always be a danger of friction. In framing a constitution, the problem is to draw the line at a point where these necessary evils will be minimised and the line will be drawn at different points according to the character and problems of the particular country concerned. It may be drawn at a point where the powers which are reserved from the normal operation of the constitution have, in ordinary times, little or no practical effect on the formulation and execution of policy—as, for instance, the line drawn in the British North America Act, between the powers of the Governor-General and the powers of the Governor-General in Council. But in India no easy solution of this kind is possible. There the line drawn must reserve to the Governor-General large powers which will have an important effect upon the policy of the government as a whole. Broadly speaking, three possible lines of division have been suggested to us, each of which deserves to be briefly discussed.

(1) in the provincial sphere;

36. One is a line drawn within the sphere of the Provincial Governments in such a way as to reserve to the Provincial Governors the responsibility for the maintenance of law and order, and to the Governor-General the responsibility for all Central subjects. This solution eliminates dyarchy at the Centre, but perpetuates it in the Provinces; and we have already indicated our reasons for rejecting it. We shall discuss these reasons more fully in the body of our Report.

(2) between Centre and Provinces:

37. The second line suggested to us is one coinciding with the line of division between the Provincial Governments and the Central Government, the former being wholly responsible governments and the latter wholly irresponsible. This was the immediate (though not, as we shall suggest in a moment, the ultimate) line of division recommended by the Statutory Commission, and it is the one which we should probably have felt constrained to recommend if we had been considering a purely British Indian Federation. But it is, we think, open to very serious objections which could not be fully

present to the mind of the Statutory Commission. Though it might appear at first sight to eliminate altogether the evils of dyarchy, its real effect is rather to conceal dyarchy than to eliminate it. Its actual effect would be to reserve to the Governor-General the unpopular duty of taxation while allotting to responsible Provincial Ministers the agreeable task of spending the money so raised. It must be remembered that the Statutory Commission based their financial recommendations on an estimate of the future revenues of India far more sanguine than would now be accepted by any expert. They, therefore, felt able to recommend the establishment of a Provincial Fund, fed by automatic allocations from Central revenues which in turn would be automatically distributed among the Provinces. In a State so happily provided with ample revenues that their division between two distinct sets of public authorities could be fixed in advance by the Constitution for all time, the existence of an irresponsible government at the Centre side by side with responsible governments in the Provinces might no doubt have been expected to work reasonably well. It is, however, impossible for Parliament to-day to base its policy on any such assumption. The Central and Provincial Governments must

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as we shall show when we come to our financial recommendations, be financed from year to year largely out of the same purse. That purse, for some time to come at least, will be at best barely adequate for the needs of both, and it must, in effect, be under the sole control of the Central authorites. In these circumstances, Central policies of taxation and Central economic policies, on which the wealth of India and the volume of her public revenue will depend, must be of the most immediate and fundamental interest to the Government of every Province. A line of division which withheld this whole range of policy from the consideration of responsible Ministers could hardly fail to become the frontier across which the bitterest conflicts would be waged; and its existence would afford to Provincial Ministers a constant opportunity to disclaim responsibility for the non-fulfilment of their election promises and programmes.

(3) in the Central Government itself.

38. Lastly, the line can be drawn within the Central Government itself, in such a way as to reserve the Departments of Defence and Foreign Affairs to the Governor-General, while committing all other Central subjects to the care of responsible Ministers, subject always to the special responsibilities and powers of the Governor-General outside his Reserved Departments. It is, we think, a fair conclusion from the Report of the Statutory Commission that this was the line at which they contemplated that the division of responsibility would ultimately be made. They contemplated an eventual All-India Federation. They believed that the constitution which they recommended for the Central Government would contain in itself the seeds of growth and development. It was, no doubt, for that reason, and foreseeing the course of that development, that they suggested that the protection of India's frontiers should not, at any

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rate for a long time to come, be regarded as a function of an Indian Government in relation with an Indian Legislature at all, but as a responsibility to be assumed by the Imperial Government. Apart from the difficulties of this suggestion, to which we shall have to return in the body of our Report, it obviously involves a dyarchy of much the same kind as would result from a frank reservation to the Governor-General of the Department of Defence. In fact, the reservation of Defence, with the reservation of Foreign Affairs as intimately connected with Defence, is the line of division which corresponds most nearly with the realities of the situation. It is also the line of division which, on the whole, creates the least danger of friction. As the Statutory Commission pointed out in the passage we have already quoted, dyarchy has not, even in the Provinces, raised any insuperable difficulties "in the inner counsels of the government"; and the danger of friction in the inner counsels of the Central Government will be even smaller, for the administration of Defence and Foreign Affairs will normally, at any rate, have few contacts with other fields of Central administration under the new constitution. The one real danger of friction, and that a serious one, lies in the very large proportion of Central revenues which is, and must continue to be, absorbed by the Army Budget. That Budget will be removed from the control of the Central Legislature, which will be able to discuss, but not to modify or reject it, and it may be argued with much force that the existence of a standing charge of this magnitude will deprive Ministers chosen from the Legislature of any real responsibility for the financial policy of the Federation.

The Central Legislature and the Army Budget.

39. It is true that this difficulty is inherent in the facts of the situation. It exists at the present day. Ever since the Act of 1919, the Central Legislature has constantly sought to "magnify its

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functions in the reserved field" of the Army Budget. The serious friction thus caused would be likely to manifest itself in an even stronger form in the future in a Central Legislature such as was proposed by the Statutory Commission—a Legislature largely representative of Provincial Legislatures, yet denied all effective control over any branch of Central finance. It is also true that the Statutory Commission's own scheme for a reservation of Defence to the Imperial Parliament would raise the same difficulty in an even more acute form. It is even true that the friction which now exists over Army expenditure could hardly be intensified and might be substantially mitigated by the existence of a Ministry generally responsible to the Legislature for finance. Yet in spite of these weighty considerations, the danger of friction between the Governor-General and the Legislature over the Army Budget undoubtedly furnishes an additional argument against responsibility at the Centre in a purely British Indian Federation. But that is not the proposition we are now discussing. We have already made it clear that, in such a Federation, we should have felt constrained to draw our line of division at another point, notwithstanding the disadvantages of the alternatives to which we have drawn attention

above. What we are now discussing is an All-India Federation, and in regard to the Army Budget, as in regard to the broader issues of the relations between British India and the States, the declaration of the Princes, indicating their willingness to enter an All-India Federation, has introduced a new and, in our judgment, a determining factor. It is reasonable to expect that the presence in the Central Executive and Legislature of representatives of the State Rulers who have always taken so keen an interest in all matters relating to Defence will afford a guarantee that these grave matters will be weighed and considered with a full appreciation of the issues at stake. It is, indeed, one of the main advantages of an All-Indian Federation that it will enable Parliament to draw the line of division between responsibility and reservation at the point which, on other grounds, is most likely to provide a workable solution.

Relations between autonomous Provinces and an irresponsible Central Government.

40. Before leaving this subject we ought, perhaps, to refer to one argument which has been urged upon us in favour of a wholly irresponsible Central Government, and also to one particular danger which we think Parliament should be careful to avoid. The argument to which we refer is that an irresponsible Centre would constitute a reserve of power which could be used at any moment by the Governor-General to redress the situation in any Province, if responsible government in that Province should break down. This argument seems to us to rest on a misapprehension. The Governor-General in an irresponsible Centre would have no more and no less power of intervention in the Provinces, either to forestall a constitutional breakdown or to restore the situation after such a breakdown, than he would possess under our recommendations. Our recommendations do, in fact, reserve to him such power through the interaction of his own and the Provincial Governors' special powers and responsibilities; but, in so far as his opportunities of intervention are limited, they are limited, not by the constitution of the Central Government, but by the establishment of autonomous Provincial Governments. The danger which we think Parliament should avoid, lies in the fact, on which we have already insisted, that Ministerial responsibility is not itself a form of government which can be created or prevented at will by the clauses of a statute,

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so much as a state of relationships which tends to grow up in certain circumstances and under certain forms of government. It follows that a Constitution Act cannot legislate against Ministerial responsibility at the Centre, if its other provisions, or the facts of the case, are such as to encourage the development of such responsibility. It has been suggested to us that, while the Central Government should be declared by the Constitution to be an irresponsible Government, the Governor-General should be free to select any of his Executive Council from among the members of the Central Legislature, and that a member of the Legislature assuming Ministerial office should not be obliged to resign his seat in the Legislature. There is much to be said for such a proposal, but it is,

in fact, a proposal, not for the perpetuation of an irresponsible Government, but for the gradual introduction of a responsible one. It would tend (as the Statutory Commission saw) to introduce responsible government at the Centre by insensible degrees without any statutory limitation of the scope of Ministerial power and responsibility. That is, indeed, broadly speaking, the way in which responsible government actually grew up in Canada. It may be difficult to draw any satisfactory line of division between reserve powers and responsible government, but, under the conditions of the problem that we are examining, Parliament should be careful not to draw a definite line in principle, only to blur it in practice.

Weakness of present Central Government.

41. We cannot leave this subject without asking the vital question which Parliament will have to answer: whether a Central Government of India constituted as we propose would fulfil the condition we have already laid down—whether it would provide a Central authority strong enough to maintain the unity of India and to protect all classes of her citizens. That question cannot be answered apart from a consideration of the strength or weakness of the Central Government as it now exists. As our enquiries have proceeded, we have been increasingly impressed, not by the strength of the Central Government as at present constituted, but by its weakness. It is confronted by a Legislature which can be nothing but (in Bagehot's words) "a debating society adhering to an executive." The members of that Legislature are unrestrained by the knowledge that they themselves may be required to provide an alternative government, whose opinions are uninformed by the experience of power, and who are prone to regard support of government policy as a betrayal of the national cause. It is no wonder that the criticism offered by the members of such a Legislature should have been mainly destructive; yet it is abundantly clear from the political history of the last twelve years that criticism by the Assembly has constantly influenced the policy of Government. As a result, the prestige of the Central Government has been lowered and disharmony between Government and Legislature has tended to sap the efficiency of both. Indeed, the main problem which, in this sphere, Parliament has now to consider is how to strengthen an already weakening Central Executive. We believe that the Central Government which we recommend will be stronger than the existing Government and we see no other way in which it could be strengthened.

Emergency of body of central opinion in United Kingdom and in India.

42. We would close this introductory part of our Report with one final word. At its outset we recorded our recognition of Indian aspirations and our sense of the weight to be attached to them. Having done so, we have examined the problem from another angle, concentrating our attention on the facts of Indian government and of

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Indian social conditions. Our study of these facts, has led us to certain concrete conclusions which in the body of our Report we shall have further to elaborate and justify. But, having thus reached our

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conclusions by the exercise of our judgment on the facts of the case, we may be permitted to urge their acceptance as embodying, in their broad lines, a policy on which responsible public opinion both in this country and in India may unite. We have already referred to the long process of collaboration through which successive Governments in this country have sought to ascertain whether any substantial measure of agreement was possible upon the principles which should inform a new constitutional settlement in India. It can scarcely have been expected by the members of the Statutory Commission, or by the participants in the Round Table Conferences, that free and unfettered discussion of issues so formidable and complex would succeed in achieving so substantial a measure of common agreement as that which has emerged in the course of the last two years. No scheme for the future government of India is, of course, at present in existence which can be said to have been agreed even unofficially between representatives of the two countries. Indeed, we recognize that even moderate opinion in India has advocated and hoped for a simpler and more sweeping transfer of power, in form if not in substance, than we have felt able to recommend. Moreover, it must not be forgotten that there is a party in India with whom the prospect of agreement of any kind must be remote. But, from the discussions and personal contacts of recent years, there has emerged in each country what may fairly be described as a body of central opinion which has at least reached a juster appreciation both of the difficulties which impress and the motives which inspire a similar body of opinion in the other country. It is now possible to discern much common ground where previously the dividing gulf might have seemed to be unbridgeable. Not only has this movement of opinion been observable both in this country and in British India, but the Indian States also, in making their contributions to recent discussions, have at least indicated possibilities of agreement with His Majesty's Government and with representatives of public opinion in British India, on a new and far-reaching policy of Federation, which only a few years ago would have been thought to be outside the range of practical politics. On the common ground thus marked out we believe that the foundations of a firm and enduring structure can be laid.

Issues with which Parliament is faced.

42A. Parliament is, indeed, confronted with grave problems, but it is also offered a great opportunity. There are moments in the history of nations when a way seems to be opened for the establishment between people and people of new relations more in harmony with the circumstances of the time, but when that way is beset by all the dangers inherent in any transfer of political power. Such moments are a sharp test of political sagacity, of the statesman's instinct for the time and manner of the change. If that instinct fails, either from rashness or from over-caution, there is small chance of recovery. In the present issue, the dangers of rashness are obvious enough. They have been urged upon us by some to

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whom the majestic spectacle of an Indian Empire makes so powerful an appeal that every concession appears to them almost as the betrayal of a trust; but they have been urged on us also by others

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whose arguments are based on the undeniable facts of the situation. Those arguments are, for instance, that no self-governing nation of the British Empire has ever been faced within its borders at one and the same time by all the problems with which India has to deal: by the ever present risk of hostilities on her frontier, by the cleavage between communal interests, by innumerable differences of race and speech, by a financial system largely dependent for its credit on centres outside India, and by a vast population in every stage of civilisation. Against all this, the dangers of over-caution are no less plain. No one has suggested that any retrograde step should be taken, very few that the existing state of things should be maintained unaltered. The necessity for constitutional advance, at least within the limits of the Statutory Commission's report, may be regarded as common ground. We have given our reasons for believing that the constitutional arrangements which we recommend, including a measure of responsibility at the Centre, follow almost inevitably from these accepted premises. If this conclusion is rejected, two consequences at least must be faced: the propsect of an All-India Federation will disappear, perhaps for ever, but certainly for many years to come, and the co-operative efforts of the last few years, together with that body of central opinion which we have described, will be irretrievably destroyed.

Parliament's choice must be resolute and decisive.

42B. These are grave issues, and if we do not enlarge further upon the consequences of a failure to make the right use of the present opportunity, it is because we believe that the choice that is now to be made must be made without fear and without favour, on a just estimat · of the facts of a situation and the feelings of a people, on a cool calculation of the risks involved in any of the alternative courses open to us, but without hesitations born of timidity. We have recommended the course which appears to us to be the right one, but whatever course Parliament may eventually choose, it is above all necessary that its choice should be resolute and decisive. By general admission, the time has come for Parliament to share its power with those whom for generations it has sought to train in the arts of government; and, whatever may be the measure of the power thus to be transferred, we are confident that Parliament, in consonance with its own dignity and with the traditions of the British people, will make the transfer generously and in no grudging spirit.

The same is agreed to.

New paragraphs 1 to 42B are again read.

The further consideration of paragraphs 1 to 42B is postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Two o'clock.

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Die Mercurii 25° Julii 1934

Present :

Lord Archbishop of Canterbury.	Mr. Attlee.
Marquess of Salisbury.	Mr. Butler.
Marquess of Zetland.	Major Cadogan.
Marquess of Linlithgow.	Sir Austen Chamberlain.
Marquess of Reading.	Sir Reginald Craddock.
Earl of Derby.	Mr. Davidson.
Earl Peel.	Mr. Foot.
Viscount Halifax.	Sir Samuel Hoare.
Lord Middleton.	Mr. Morgan Jones.
Lord Ker (M. Lothian).	Sir Joseph Nall.
Lord Hardinge of Penshurst.	Lord Eustace Percy.
Lord Rankeillour.	Sir John Wardlaw-Milne
Lord Hutchison of Montrose.	Earl Winterton.

The Marquess of Linlithgow in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraphs 43 to 389 are again postponed.

Paragraph 390 is again read.

It is moved by Sir Reginald Craddock. Page 217, line 8, to leave out (" and which ").

The same is agreed to.

It is moved by Sir Reginald Craddock. Page 217, line 9, to leave out from (" capital ") to the end of the sentence and to insert : (" These two " sub-Provinces, Arakan and Tenasserim, constituted the nucleus of British " territorial dominion in Burma and were administered as distant appanages " of Bengal.")

The same is agreed to.

Paragraph 390 is again read, as amended.

The further consideration of paragraph 390 is postponed.

Paragraph 391 is again postponed.

Paragraph 392 is again read.

It is moved by Sir Reginald Craddock. Page 218, line 6, after (" of ") to insert (" Arakan and ") and to leave out (" and Martaban ").

The same are agreed to.

It is moved by Sir Reginald Craddock. Page 218, line 7, after (" Province ") to insert : (" known as Lower Burma or British Burma ").

The same is agreed to.

Paragraph 392 is again read, as amended.

The further consideration of paragraph 392 is postponed.

Paragraph 393 is again postponed.

Paragraph 394 is again read.

It is moved by Sir Reginald Craddock. Page 218, line 46, to page 219, line 1, to leave out from (" demanded ") in line 46, page 218, to (" and ") in line 1, page 219, and to insert (" complete Home Rule ").

The same is agreed to.

Paragraph 394 is again read, as amended.

The further consideration of paragraph 394 is postponed.

Paragraphs 395 and 396 are again postponed.

All amendments are to the Draft Report (*vide infra* paras. 1–42B, pp. 470–491 ; and *vide supra* paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part I). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Paragraph 397 is again read.

It is moved by Sir Reginald Craddock. Page 220, line 47, after (" entails ") to insert (", and the fact that the indigenous peoples of Burma belong to the "Mongolian group of races and are distinct from the Indian races in origins, "in languages and by temperament and traditions ").

The same is agreed to.

Paragraph 397 is again read, as amended.

The further consideration of paragraph 397 is postponed.

Paragraph 398 is again postponed.

Paragraph 399.

It is moved by Sir Reginald Craddock. Page 222, line 18, to leave out ("Burma was fully annexed to India ") and to insert (" the whole of Burma "became part of the Indian Empire ").

The same is agreed to.

Paragraph 399 is again read, as amended.

The further consideration of paragraph 399 is postponed.

Paragraphs 400 to 404 are again postponed.

Paragraph 405 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 225, lines 27 to 30, to leave out from (" opinion,") in line 27, to (" should ") in line 30, and to insert (" the two Constitution Acts should state the minimum period for "which the Agreement is to be binding on India and Burma and also make it "clear that after the termination of that period it should be open to, but not "incumbent on, either side to give notice of its intention to determine it; "the period of notice, which might conveniently perhaps be twelve months, "should also be stated in the Act. We do not ourselves make any more "precise recommendation as to what the minimum period of the Agreement's "validity should be than that it should not be less than one year, for we "think it would be far best that the actual period should, like the content "of the Agreement, be fixed by mutual accommodation between India and "Burma in the course of the negotiations. If, however, they should fail to "reach agreement on this point we think that His Majesty's Government, "who would no doubt be apprised of the differing views held, should insert "a specific period in the Bills laid before Parliament. We think also that the "agreement ").

The same is agreed to.

Paragraph 405 is again read, as amended.

The further consideration of paragraph 405 is postponed.

Paragraph 406 is again postponed.

It is moved by Sir Samuel Hoard and Mr. Butler. Page 225. After paragraph 406 to insert the following new paragraph :—

Relief from double income tax.

(" 406A. There is a cognate matter which it is important should be settled before separation comes into effect, namely, the means of affording relief to persons, firms and companies who might otherwise be exposed by the act of separation to a double liability to income-tax. We regard it as important that such relief should be afforded, and we understand that the question of the means best adapted to achieve the purpose is now under examination. Pending the result of this examination we make no specific recommendation as to the statutory provision required, but we think that this matter should be dealt with on similar lines to those which we have recommended in the case of the Trade Agreement.")

The same is agreed to.

New paragraph 406A is again read, as amended.

The further consideration of paragraph 406A is postponed.

Paragraphs 407 to 414 are again postponed.

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Paragraph 415 is again read.

It is moved by Sir Reginald Craddock. Page 229, lines 27 to 41, to leave out from (" accepted.") in line 27, to the end of the paragraph, and to insert:—

(" *Prima facie* the same considerations would apply in Burma as would apply if she were not separated from India but continued to constitute a Province of British India. But it is necessary to take into account the factors which differentiate conditions in Burma from those of Provinces in India.")

The further consideration of the said amendment is postponed.

It is moved by Sir Reginald Craddock. Page 229, after paragraph 415, to insert the following new paragraph :—

(" 415A. The communal question so far as it arises from strong religious antagonisms is comparatively unimportant in Burma, though Hindu-Moslem conflicts are not unknown even there. But its place is taken by racial rivalries between Indian and Burman, Burman and Chinese, and sometimes between Karen and Burman, which upon occasions have flared up into acts of violence or persecution. Again, serious crime—especially crimes of violence—appears to be more rife in Burma than in India. In proportion to population the percentage of murders, dacoities and cattle thefts exceeds (and often greatly exceeds) the percentage in almost every other Province in British India. It has been frequently necessary to adopt special measures to deal with dacoities accompanied by murder, and waves of crime are apt to develop into rebellions and guerilla warfare, as was shown by the recent grave rebellion and other similar revolts in the history of the country. Moreover, peace has frequently been disturbed by conspiracies, sometimes originating across the border, led by exile pretenders claiming royal descent, or by persons supposed to be reincarnated national heroes who play on the superstitions of the ignorant people. All these movements, if not properly handled from the outset, may throw a countryside into disorder and panic and cause loss of life and property.

" The recent tendency of the ' Yellow Robe ' to encourage and stir up political animosities is a disquieting feature of recent years, for the influence of the monks is very great, especially over the women, and is far more extensive than is the case in India. It has also to be remembered that the agency for dealing effectively with subversive movements or incipient rebellion is almost entirely Indian and that there is a large Indian contingent in the civil police of Rangoon, in which city (population 400,000) the Burmese are outnumbered by Indians, constituting only 30 per cent. of the population of Rangoon as against 53 per cent. Indian ; while Chinese, who have largely increased in numbers, amount to over 30,000, or 8 per cent. of the population. Terrorism, as an indigenous movement, is practically unknown so far as Burmans are concerned, though emissaries of the Terrorist Movement are not wanting among the Bengalis in Rangoon, some among whom were believed to be privy to the late rebellion. We have also to consider the safety of the Indian population in the richer tracts of the Province, the Delta and Coastal Districts. These men have in their hands a predominant share of the trade, commerce and money-lending of these areas, and in the event of any anti-Indian movement among their Burman neighbours taking violent form, will be in a very precarious position. Taking all these special features into consideration, we feel that if the department of Law and Order be transferred to the charge of a Minister, it will be necessary for the Governor to be invested with the same power of resuming control as we have recommended in the case of Indian Provinces wherever Bengal terrorism has penetrated.")

The further consideration of the said amendment is postponed.

Paragraphs 416 to 418 are again postponed.

Paragraph 419 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 231, lines 22 to 24, to leave out from (" Provinces ") in line 22 to the end of the sentence, and

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to insert (" We have already recorded our views in relation to the first of them " and subject to the governing factor that in the unitary government of " Burma the special and discretionary responsibilities and special powers of " the Governor-General and of the provincial Governors in India, respectively, " will be combined in the hands of the Governor, we are of opinion that the " recommendations which we have made elsewhere[1] in regard to these matters, " and in regard to arrangements for apprising the Governor of any question " affecting them in India should apply with some necessary adjustments of " form, in the case of Burma.")

The same is agreed to.

Paragraph 419 is again read, as amended.

The further consideration of paragraph 419 is postponed.

Paragraphs 420 to 425 are again postponed.

Paragraph 426 is again read.

It is moved by the Lord Rankeillour. Page 234, line 29, to leave out (" unless it is sooner dissolved ")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 426 is again read.

The further consideration of paragraph 426 is postponed.

Paragraphs 427 to 437 are again postponed.

Paragraph 438 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 241, line 37, after the amendment inserted after (" objection ") at the first stage to insert: (" As regards the request to retain the rights and privileges of that Service, " we note that the Burma White Paper proposes, rightly in our opinion, " that officers serving in Burma who were appointed by the Secretary of State " shall be protected in existing rights and that the Secretary of State shall " be empowered to award such compensation as he may consider just and equitable for the loss of any of them.")

The same is agreed to.

Paragraph 438 is again read, as amended .

The further consideration of paragraph 438 is postponed.

It is moved by Sir Reginald Craddock. Page 241, after paragraph 438, to insert the following new paragraph :—

(" 438A. There is, however, one point of importance to which we must refer. The Statutory Commission while considering that the new Constitution of a separated Burma would, like that of India, be a stage on the journey to more complete self-government, added that it would not be assumed that detailed provisions would not vary:

'In particular the provisions of the Lee Report, which fixed a date by which a certain proportion of British to Indians in the Services should be reached, was based on a general average for the whole of India—greater in some Provinces, less in others. These proportions must not, therefore, be taken as automatically applicable to a separated Burma. Recruitment on a basis corresponding to the basis of All-India Services will be required and it will be of the greatest importance to preserve and build up the traditions of these Services. The pace of Burmanisation must be decided on its merits. The ultimate advancement of Burma will depend more than anything else on the efficiency of a suitable administration during the years now coming; and premature efforts on its part to dispense with help from Britain would only lead to disaster.'

Having regard to these remarks of the Statutory Commission bearing on recruitment for the Security Services, it is not possible to ignore the fact that no Burman succeeded in entering the Indian Civil Service before 1922, when two Burmans were nominated, whereas Indians

[1] *Supra*, paras. 75–77, 88–96 (so far as applicable) 167 and 168.

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had won places in an open competition for that Service over a period extending back 65 years. The ratio of Burmanisation must depend upon qualified candidates being available in sufficient numbers, otherwise the standard of the Service cannot but fall, and the higher salaries attaching to it be wasted, to the great discontent of experienced Burmese officers in the Provincial Civil Service who have been performing their duties satisfactorily on much lower pay. The table in the footnote below compares the composition of the Burma Commission on the Executive side in 1924 and 1934 respectively. The British Members of that Commission have in 10 years' interval fallen from 138 to 96, while the Burmans in the I.C.S. have risen from 4 to 20. Of these, only 4 have reached 8 years of Service, 6 were appointed in the current year, and the remaining 10 have from 3–5 years' service only.

The Burma Commission (Executive Side)

	British Officers.			Burmans in the I.C.S.	Total.
	Military Officers.	I.C.S.	Total.		
1924	21	117	138	4	142
1934	9	87	96	20	116

The most senior Burman in the I.C.S. has 12 years' service. Only 1 out of the 20 entered by open competition in London. The decline in the strength of the Burma Commission proper has been partly compensated for by promotion, permanent and officiating, of Burman officers drawn from the Provincial Service. Having regard to the caution of the Statutory Commission and the facts which we have just described, it seems to us advisable that the Secretary of State might conveniently discuss this question further with the Government of Burma before the Constitution Act comes into force, and that the projected enquiry which is proposed in paragraph 287 in the case of the All-India Services in India should not be extended to Burma until the appropriate ratio between British and Burmans in the I.C.S. and Police has been further investigated.")

The amendment, by leave of the Committee, is withdrawn.

Paragraphs 439 to 442 are again postponed.

It is moved by Sir Reginald Craddock. Page 242, after paragraph 442, to insert the following new paragraph :—

(" 442A. This is a convenient point at which we may refer to questions connected with the domiciled community, including Anglo-Indians and Anglo-Burmans in respect both to education and to their fitness for appointments in the various Services—the latter depending very greatly on the efficiency of the former.

" Owing to the fact that the progress of English education among the Burmese was far slower than in India, Anglo-Indians are still to be found in some of the higher posts in the Provincial and Subordinate Services in Burma, in the Teaching Profession, in the higher clerical posts, as well as in the Central Services still under control by the Government of India. Over the whole Province the recent census shows that there are altogether 19,200 Anglo-Indians, of whom just over half are concentrated in Rangoon. Hitherto their chief competitors have been Indians imported from India, and not Burmese at all, and it is obvious that any rapid

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drop in the number of Anglo-Indians employed in the Land Records and Excise Departments, as well as in the Present Central Services which will be transferred to the control of the Government of Burma, would inflict an unmerited blow on this community, for they would not merely lose these posts but also the means which have enabled them to pay for the education of their children. It is important, therefore, for this, among other reasons, that the standard of European education should be maintained. In India, few Indian parents wish to send their children to Christian schools for European and Anglo-Indian children but for some years past Burmese parents have shown an increasing liking for schools of this kind, and the percentage of children of other races who have been admitted into these schools has increased considerably in the last ten years. The teachers in these schools have to be paid higher salaries, and they fulfil the natural wish of European and Anglo-Indian parents that their children should be brought up in a Christian school and taught by teachers whose mother-tongue is English. If, therefore, pupils of other races and creeds should, under the new Constitution, be further increased, the whole character of these Institutions will be practically destroyed. It was represented to us that the Anglo-Indians felt that the tests imposed upon Anglo-Indian children in the matter of proficiency in Burmese tended to be too severe upon children whose mother-tongue was English, and that they were thereby prejudiced in the matter of becoming qualified for employment in the public services. These are matters in which it is not possible for us to enter upon any detail, but we consider that both the education and the employment of Anglo-Indians should engage the special attention of the Governor in order that this deserving class should not be subjected to any handicaps either in the quality of their education or their eligibility for posts in the Government service. It would further be necessary for regulations to be made laying down the percentage of appointments in railways, posts and telegraphs, and the customs' service, which could fittingly be reserved for members of the Anglo-Indian community.")

The amendment, by leave of the Committee, is withdrawn.

Paragraphs 443 to 453 are again postponed.

Ordered, that the Committee be adjourned to Monday next at half-past Four o'clock.

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Die Lunae 30° Julii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

Paragraph 1 is again postponed.

Paragraph 2 is again read.

It is moved by the Lord Ker (M. Lothian). Page 3, lines 27 and 28, to leave out from (" and ") in line 27 to (" dialects ") in line 28 and to insert (" peoples, speaking about 12 main languages and over two hundred minor ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Linlithgow. Page 3, lines 27 and 28, to leave out (" over two hundred different languages or dialects ") and to insert (" a dozen main languages and over two hundred minor dialects ").

The same is agreed to.

It is moved by the Earl Peel. Page 3, line 33, to leave out (" of race ").

The same is agreed to.

It is moved by the Lord Ker (M. Lothian) and the Marquess of Linlithgow. Page 3, line 35, to leave out (" singular ").

The same is agreed to.

It is moved by the Lord Ker (M. Lothian) and the Marquess of Linlithgow. Page 4, line 5, after (" vast ") to insert (" and still rapidly growing ").

The same is agreed to.

Paragraph 2 is again read, as amended.

The further consideration of paragraph 2 is postponed.

Paragraph 3 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 4, line 14, to leave out (" 128 ") and to insert (" 126 ").

The same is agreed to.

All amendments are to the Draft Report (*vide supra*, paras. 1–42B, pp. 470–491 ; and *vide supra*, paras. 43–453, pp. 64–253) and NOT to the Report as published (Vol. I, Part I). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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It is moved by Sir John Wardlaw-Milne. Page 4, line 17, to leave out (" often ") and to insert (" sometimes ").

The same is agreed to.

Paragraph 3 is again read, as amended.

The further consideration of paragraph 3 is postponed.

Paragraph 4 is again postponed.

Paragraph 5 is again read.

It is moved by the Earl Peel. Page 5, line 3, after (" no ") to insert (" constitutional ").

The same is agreed to.

Paragraph 5 is again read, as amended.

The further consideration of paragraph 5 is postponed.

Paragraph 6 is again read.

It is moved by the Earl Winterton. Page 5, lines 12 and 13, leave out from the beginning of the paragraph to (" It ") in line 13 and to insert—(" The " record of the British rule in India is well-known. Though we claim for it " neither infallibility nor perfection, since, like all systems of Government, " it has, at times, fallen into error, it is well to remember the greatness of its " achievement.")

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 5, line 19, to leave out (" incorruptible magistracy ") and to insert (" upright judiciary ").

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian) and Mr. Foot. Page 5, lines 21 to 24, to leave out from (" labours.") in line 21 to (" The ") in line 24, and to insert (" The ultimate agency in achieving these " results has been the power wielded by Parliament. The British element in " the administrative and judicial services has always been numerically " small ".)

The same is agreed to.

Paragraph 6 is again read, as amended.

The further consideration of paragraph 6 is postponed.

Paragraph 7 is again read.

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Page 5, line 32, to leave out (" Moguls ") and to insert (" earlier Hindu kings like Asoka "), and after the third (" the ") to insert (" Mogul ").

The same are agreed to.

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Line 44, to leave out from (" Akbar ") to the end of the sentence and to insert (" and his immediate successors disappeared with Aurungzeb.")

The same is agreed to.

Paragraph 7 is again read, as amended.

The further consideration of paragraph 7 is postponed.

Paragraph 8 is again read.

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Page 6, line 8, to leave out (" the whole apparatus of ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 6, line 14, to leave out (" British occupation ") and to insert (" establishment of the unity of India " under the British Crown ").

The same is agreed to.

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Paragraph 8 is again read, as amended.

The further consideration of paragraph 8 is postponed.

Paragraph 9 is again read.

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Page 6, line 15, after (" rule ") to insert (" gradually ").

The same is agreed to.

It is moved by the Earl Winterton. Page 6, lines 15 to 17, to leave out from (" rule ") in line 15 to the end of the sentence and to insert (" and with " the aid and co-operation of many Indians, created a new and stable polity.")

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 6, line 18, to leave out (" with one another and ").

The same is agreed to.

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Page 6, line 24, to leave out (" intellectual ") and to insert (" educational ").

The same is agreed to.

Paragraph 9 is again read, as amended.

The further consideration of paragraph is postponed.

Paragraphs 10 to 42B are again read.

It is moved by the Marquess of Salisbury, the Lord Middleton, the Lord Rankeillour, Sir Reginald Craddock, and Sir Joseph Nall. Pages 6 to 20g, to leave out paragraphs 10 to 42B inclusive, and to insert the following new paragraphs :—

(" 10. We have emphasized the magnitude of the British achievement in India because it is this very achievement that has created the problem which we have been commissioned by Parliament to consider. Opinions differ profoundly as to the proper solution of this problem and as to the extent to which self-government should go and the conditions under which it should be approached. We would emphasise the necessity of a gradual and cautious advance. We do not underrate the aspirations represented by the members of the Indian Delegation who assisted us, but beyond a vague spirit of unrest, little more than a stiffening of Asiatic opinion against the hitherto unchallenged domination of the West, we doubt whether these Constitutional desires exist in India except amongst a small politically-minded intelligentsia. Amongst these it is natural enough, being the result of a European education which this Country has given them. But education is not the same thing as experience and even this small element of the Indian population has never had the opportunity of acquiring the political experience which is our own inheritance. It was bearing in mind these circumstances that Parliament passed the Act of 1919. According to the language of the preamble of that Act the advance to self-government, the ultimate objective, was to be tentative, and by Section 41 it was indeed provided that according as experience might teach us, that advance might proceed further, or be checked, or even retraced, in the future. Perhaps the greatest danger in the way of this spirit of caution, as all students of this problem would we think agree, lies in relying upon a false analogy with Parliamentary evolution in this Country. It has even been suggested that because the form of the particular government which has been successful in conferring upon India the great benefits above described—that is the government of England—is essentially a responsible government, this constitutes an argument for trusting the future of India to an Indian responsible government. This argument is wholly misleading, because the true source of these benefits was the experience and inherited

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capacity of the British people. Neither is it profitable to suggest that if India be denied full self-government the uninstructed mass of her people, as in certain Western nations, will attribute any lack of prosperity that the future may have in store to this denial. It would be at least as true to say that when after the granting of these reforms the Indian cultivators note the agitation which will ensue and mark the change which in greater or less degree is too likely to follow, from justice to injustice, from economy to extravagance, from efficiency to inefficiency, they may question the wisdom which has produced these results. These analogies are most unsafe. The success of our own form of government depends in the first place upon the British temperament. As Lord Bryce remarked, " the English constitution which we admire as a masterpiece of delicate equipoises and complicated mechanism would anywhere but in England be full of difficulties and dangers . . . It works by a body of understanding which no writer can formulate and on habits which centuries have been needed to instill." It could not work without this understanding, this established custom of our people, or as we should prefer to call it in this connection, their general consent. Safeguards are no doubt necessary in India, but they are in startling contrast to this general consent, and there is in reality no analogy between a government which depends upon the use of safeguards and a government which depends upon established custom. It follows, as the Statutory Commission has indicated, that our model, the Westminster model, for Indian reform should be avoided. And in particular we should be on our guard against a feature in the Westminster model, specially noted in their Report as inappropriate for India; ——we mean the feature in our system " that the government is liable to be brought to an end at any moment by the vote of the legislature." For how can a Governor-General in the discharge of his reserved functions and his special responsibilities resist such a form of pressure by the legislature ? There is another feature which removes the case of India poles asunder from the British model. We work with political parties. There are no such things in India. These parties in Great Britain are organised, but between them there is a large unorganised mobile body of political opinion owing no allegiance to any party and therefore able by its instinctive reaction against extravagant movements on one side or the other to keep the vessel on an even keel. Not only is this mobile body absent in India but under the scheme before the Committee there would almost be an impossibility that it should be formed. With the method of indirect election, subject to the compelling force of the Communal Award, the electors will be actually prevented from being mobile and from voting for anybody outside their own creed.

" 11. But let us turn from these contrasts with British experience to the teaching which even Indian experience can give us. The present dyarchic system in the Provinces, as the Commission has pointed out, though designed to develop a sense of responsibility has tended to encourage a wholly different attitude. It has been universally condemned and as will be seen in the body of our Report we are recommending its abolition in the new Provincial Constitutions. It is therefore a grave question whether we should re-create it in the Centre, involved as it must be in the reservation of the defence services to the Viceroy and outside the authority of a responsible Ministry. As the Statutory Commission pointed out it is not in the counsels of government that the practical difficulty in the way of achieving the objective of dyarchy and a clear demarcation of responsibility arise. It is the legislature which tends to be demoralised by dyarchy.

" As long as dyarchy continues, it is inevitable that the elected members of the legislature should tend to show an exaggerated hostility to the work of the reserved half of the Government, which they may

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criticise but cannot control. If money is wanted for " nation-building " services, the temptation to blame reserved departments for spending too much is far more attractive than the alternative course of imposing new taxes. And if new taxes were imposed, where is the guarantee that the proceeds would be devoted to the purpose intended? A legislature with Ministers responsible to it for certain departments of government naturally looks across the boundary to the forbidden territory reserved for a different system of administration, and loses much of the value of its control over ministerial policy by indulging in bouts of criticism of departments which are not in the hands of Ministers." (Pages 32 and 33 of Vol. II of the Stat. Comn. Report.)

" 12. These things must be weighed before we form our conclusions in this Report. Again, in framing our proposals we must bear in mind anomalies which face us in the problem of an All-India federation. The Indian States are wholly different in status and character from the Provinces of British India and they are not prepared to federate on the same terms as it is proposed to apply to the Provinces. The subjects of the Prince will continue to owe allegiance to him and only a limited obedience to the federal responsible government. Moreover, the representatives of the States would have to be empowered to vote upon interests which are purely British-Indian, whereas the British-India representatives can have no corresponding power as to the States. These anomalies are not formal. In India they lie at the root of the federal problem. Unequal powers are the breeding-ground of temptation to intrigue, since units which have got powers which others do not possess may be induced to exercise them or not to exercise them for a *quid pro quo* which could not be justified on merit.

" 13. Federal finance presents more than one example of anomalies which in a federal scheme must be encountered. In the first place Income Tax legislation would be an instance of the unequal powers to which we have just referred. It is to be paid by British India, but, so far as powers go, can be voted upon by the representatives of the States who will not pay it. In the second place in the contemplated scheme Income Tax is to be shared between the Federation and the Provinces. The division between them is to be according to a numerical proportion; evidently a most unsatisfactory method, because it would not follow that when the Federation require an increase of revenue the Provinces will also require one; or conversely when the Federation could afford a reduction that the Provinces could reasonably follow its example. But after prolonged consideration we have been unable to find any better plan in a federal scheme. Of course it is true that as Indian finance stands at present this division ought to be suspended, since the federation will require all the revenue from Income Tax it can get. But though it ought to be suspended there is some doubt whether this suspension will in fact take place, especially if as is suggested the States were not to use their power to vote upon British-India issues. Upon the position of the Income Tax the method of electing the British-India representatives in the central legislature must have a remarkable reaction. We have been obliged to discard the method of direct election which is proposed in the White Paper. We found it to be physically impossible and have been obliged to fall back upon indirect election. And the form we have found it necessary to entertain is that the British-India representatives shall be the nominees of the majorities of the Provincial Assemblies, that is to say, they will practically act under a mandate from these majorities. It follows that in the Central Legislature the British-India representatives in deciding upon the Income Tax will look upon it with Provincial eyes and will determine the issues largely, if not mainly, according to Provincial

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interests. This danger was foreseen when we adopted indirect election : though we had no other choice. But the inter-action of indirect election upon Income Tax legislation involves another anomaly which predicates the most cautious advance in federal self-government.

" 14. These are not the only reasons why we repeat that the advance of self-government should be, as the Act of 1919 intended it to be, gradual and cautious. The communal difficulty stands in the middle of the path. We are confronted with the age-old antagonism of Hindu and Mohammedan, representatives not only of two religions but of two civilisations, with numerous self-contained and exclusive minorities all a prey to anxiety for their future and profoundly suspicious of the majority and of one another, and with the rigid divisions of caste, itself a denial of every democratic principle. In these circumstances though communal representation must be accepted as inevitable at the present time, it is a strange commentary on some of the democratic provisions to which we have listened. We lay stress on these facts because in truth they are in the essence of the problem and we should be doing no good service to India by glazing them over. In the face of these difficulties those upon whom responsibility will rest, whether they be in India or this Country, should have all reasonable scope for overcoming them by the method of trial and error. But for this purpose it is necessary to constitute adequate machinery for redress. For this reason we are recommending the provision of full authority in the Governor-General to give directions in all matters over which the Provincial Governors have a discretion. Undoubtedly he may be hampered in correcting Provincial mistakes by Ministers who are supported by members representing Provincial Assemblies. That is inevitable with a Central responsible government and with indirect election of the legislature. But we think it very important to secure what power we can for the Governor-General, though we recognize that the burden thrown upon him by our proposals requires an almost unexampled degree of ability and versatility both of himself and his personal staff. Nevertheless, we are not sure that it might not be requisite to add still further to the load, and it may well be that in the new Constitution he ought to be furnished with over-riding ordinance powers in the case of the Provinces, as we are proposing that he should possess in the case of the Centre, to use when necessity requires. These ordinance powers, in the case of the Centre if not in the Provinces, are certainly necessary. We agree, as has been contended, that under the present constitution the central government is unduly weak. The ordinance power would we hope serve to protect the future central power from any loss of prestige such as it is said with some truth that the present government of India may be incurring. But what is much more to be feared in any future constitution than the loss of prestige by the Government is the loss of prestige by the Governor-General. We are not without anxiety that with a responsible government he would be exposed naked to the pressure not only of the legislature but even of his own Ministers where he differs from them, in the whole field of the reserved services, in his relations with the Princes, and in the discharge of his special responsibilities when he feels called upon to use them.

" 15. It is necessary to add that in considering the reforms which we are about to recommend to Parliament we should find a British-India Federation to present even greater difficulties than a federation which embraces the States as well. Indeed, we believe that the feeling amongst our colleagues against a purely British-India Federal Government is overwhelming, and for these reasons. There is no question that the States have some grounds for complaining of the want of attention paid to their views by the Government of India in the past. A British-India Federal Centre would have to deal, as now, with matters intimately

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affecting the States without giving them any effective voice in its deliberations. If the States have reason to complain of the treatment of their interests by the present Government of India, the treatment of these by Ministers responsible to a purely British-India electorate could hardly fail to lead to serious friction. Yet the very fact of this inevitable conclusion reacts upon the whole problem. We are bound to contemplate the position that would ensue if the full conditions of an All-India Federal Constitution should have been enacted and thereupon the Princes, or a sufficient number of them, decline to accede. It is evident that in these circumstances the demand of the politically-minded classes in British India to enter into the federation which the Princes had declined, but which in all its detail would be already on the Statute book, would be very difficult to resist. This reflection adds a final reason for cautious advance in prescribing, as we now proceed to do, the extent of self-government in India which it would be right to recommend.")

Objected to.

On Question :—

Contents (5).	Not Contents (19).
Marquess of Salisbury.	Lord Archbishop of Canterbury.
Lord Middleton.	Marquess of Zetland.
Lord Rankeillour.	Marquess of Linlithgow.
Sir Reginald Craddock.	Marquess of Reading.
Sir Joseph Nall.	Earl of Derby.
	Earl Peel.
	Viscount Halifax.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Snell.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

Paragraph 10 is again read.

It is moved by the Earl Winterton. Page 6, lines 40 to 42, to leave out from (" has ") in line 40 to the end of the sentence and to insert :—(" enabled " Indians, who take an interest in politics and public affairs, to turn their " attention to a subject which has ever possessed a particular fascination for " persons of quick and ingenious mind—what should be the ideal form of " Government for their country.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 6, lines 40 to 42, to leave out from (" has ") in line 40 to the end of line 42 and to insert (" set Indians " free to turn their minds to other things, and in particular to the broader " political and economic interests of their country. Finally by directing " their attention ").

The same is agreed to.

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It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Line 47, after (" self-government,") to insert (" inasmuch as it is the mark of a self-respecting " and self-reliant people to shoulder the burdens and responsibilities of their " own government ; ").

The amendment by leave of the Committee is withdrawn.

Paragraph 10 is again read, as amended.

The further consideration of paragraph 10 is postponed.

Paragraph 11 is again read.

It is moved by Sir Reginald Craddock. Page 7, line 32, to leave out (" receptive of political arguments ") and to insert (" susceptible to political " agitation.")

The same is agreed to.

Paragraph 11 is again read, as amended.

The further consideration of paragraph 11 is postponed.

Paragraph 12 is again read.

It is moved by the Marquess of Linlithgow. Page 8, line 1, to leave out (" council ") and to insert (" counsel ").

The same is agreed to.

Paragraph 12 is again read, as amended.

The further consideration of paragraph 12 is postponed.

Paragraph 13 is again read.

It is moved by the Marquess of Linlithgow. Page 9, line 20, to leave out (" beliefs ") and to insert (" belief ").

The same is agreed to.

Paragraph 13 is again read, as amended.

The further consideration of paragraph 13 is postponed.

Paragraphs 15 and 16 are again postponed.

Paragraph 17 is again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian) and Mr. Foot. Page 11, lines 22 and 23, to leave out from (" Provinces ") in line 22 to (" has ") in line 23 and to insert (" was designed to develop a sense " of responsibility and it has in fact given a considerable number of public " men experience of the responsibilities of government either as Ministers or " executive Councillors or as members of the majority on which Ministers " have relied for support in the Legislatures. On the other hand the dyarchic " system ").

The same is agreed to.

It is moved by the Lord Ker (M. Lothian) the Marquess of Reading, and Mr. Foot. Page 11, line 25, after (" character ") to insert (" born of " experience ").

The same is agreed to.

Paragraph 17 is again read, as amended.

The further consideration of paragraph 17 is postponed.

Paragraph 18 is again read.

It is moved by the Marquess of Linlithgow. Page 11, line 40, to leave out (" material and intellectual ").

The same is agreed to.

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It is moved by the Lord Eustace Percy. Page 11, line 44, to page 12, line 2, to leave out from the beginning of line 44 on page 11 to (" can ") in line 2 on page 12 and to insert (" This attitude of non-interference has not, " indeed, prevented the Government of India from introducing reforms in " many matters, to use Lord Lansdowne's words, ' where demands preferred " ' in the name of religion would lead to practices inconsistent with individual " ' safety and the public peace, and condemned by every system of law and " ' morality in the world.' Yet it must be recognised that, in a country where " the habits and customs of the people are so closely bound up with their " religious beliefs, this attitude, however justifiable it may have been, has " sometimes had the result of making it difficult for the Government to carry " into effect social legislation in such matters (to name only two obvious " instances) as child marriage and the problem of the untouchables. It has " become increasingly evident in recent years that the obstacles to such " legislation ").

The same is agreed to.

Paragraph 18 is again read, as amended.

The further consideration of paragraph 18 is postponed.

Paragraph 19 is again read.

It is moved by the Viscount Halifax. Page 12, line 25, after (" future ") to insert (" In the special circumstances of India ").

The same is agreed to.

It is moved by the Viscount Halifax. Page 12, line 26, to leave out (" expressed ") and to insert (" reinforced ").

The same is agreed to.

Paragraph 19 is again read, as amended.

The further consideration of paragraph 19 is postponed.

Paragraph 20 is again read.

Paragraph 20 is again read.

It is moved by the Lord Eustace Percy. Page 12, line 32, after (" life.") to insert :—

> (" It must give full weight, indeed, to the testimony of the Statutory Commission that, in spite of the disadvantages of dyarchy on which the Commission laid such stress, Indians have shown, since 1921, a marked capacity for the orderly conduct of Parliamentary business, a capacity which has grown steadily with the growth of their experience. We cannot doubt that this apprenticeship in Parliamentary methods has profoundly affected the whole character of Indian public life, both by widening the circle of those who have had practical contact with the affairs of government and by stimulating the growth of a public conscience amongst the educated classes as a whole. But other facts must also be frankly recognized.")

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 12, line 36, to leave out (" two organized ") and to insert (" great ").

The same is agreed to.

It is moved by the Lord Snell. Page 12, line 37, to leave out from (" each ") to the second (" and ") and to insert (" desiring to act with public spirit " and in good faith ; ")

The same is agreed to.

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It is moved by the Lord Ker (M. Lothian). Page 13, line 2, to leave out from (" caste ") to (" In ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Austen Chamberlain. Page 13, line 2, to leave out from (" itself ") to (" democratic ") and to insert (" inconsistent with.")

The same is agreed to.

Paragraph 20 is again read, as amended.

The further consideration of paragraph 20 is postponed.

Paragraphs 21 to 23 are again postponed.

Paragraph 24 is again read.

It is moved by the Lord Eustace Percy. Page 15, lines 4 and 5 after (" a ") in line 4 to insert (" strong and impartial ") and to leave out (" at once dis- " interested and incorruptible.") in lines 4 and 5.

The same are agreed to.

It is moved by the Lord Eustace Percy. Page 15, lines 6 and 7, to leave out from (" prized ") in line 6 to (" In ") in line 7.

The same is agreed to.

Paragraph 24 is again read, as amended.

The further consideration of paragraph 24 is postponed.

Paragraph 25 is again read.

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Page 15, lines 30 and 31, to leave out from (" whole,") in line 30 to the end of the sentence and to insert (" and for intervention should the responsible Ministries and " legislatures fail in their duty ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 25 is again read.

The further consideration of paragraph 25 is postponed.

Paragraph 26 is again read.

It is moved by the Lord Eustace Percy. Page 16, lines 16 to 18, to leave out from (" India ") in line 16 to the end of the paragraph.

The same is agreed to.

Paragraph 26 is again read.

The further consideration of paragraph 26 is postponed.

Paragraphs 27 to 29 are again postponed.

Paragraph 30 is again read.

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Page 18, lines 29 and 30, to leave out from (" to ") in line 29 to the end of line 30 and to insert (" give steadfast support to strong and stable central government ").

The same is agreed to.

Paragraph 30 is again read, as amended.

The further consideration of paragraph 30 is postponed.

Paragraph 31 is again read.

It is moved by Sir John Wardlaw-Milne. Page 19, line 26, to leave out (" incoherence ") and to insert (" confusion ").

The same is agreed to.

Paragraph 31 is again read, as amended.

The further consideration of paragraph 31 is postponed.

Paragraphs 32 to 36 are again read and postponed.

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Paragraph 37 is again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 20*b*, lines 24 and 25, to leave out from (" both ") to the end of the sentence.

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 20b, line 34, at the end to insert (" Nor do we think that the " political life of India can safely be divided into watertight compartments. " Important problems in the field of social reform will have to be dealt with " by the central as well as by the provincial legislatures. The control of the " economic life of India will depend more upon the federal legislature than " upon the provinces. To place full responsibility for these subjects upon " Indian Ministers and legislatures in the provinces, while imposing the " responsibility for them in the centre on the Governor-General subject to " constant criticism by a legislature which is not responsible seems to us " likely to produce the maximum of friction if it did not lead to deadlock.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 37 is again read, as amended.

The further consideration of paragraph 37 is postponed.

Paragraph 38 is again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 20*b*, line 35, to leave out (" Lastly, the line can ") and to insert (" We think therefore that the third of the three possible lines of " division is by far the best, namely that the line should ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 20*b*, line 40, after (" Departments ") to insert (" This would be, " in effect, to make Indians responsible for policy over the whole field of " internal government while reserving to the Governor-General responsibility " for defence and foreign policy and imposing upon the Governor-General and " the Governors a special responsibility for safeguarding law and order, the " rights of minorities, the ultimate stability of the finances, the legitimate " interests of the Services and a number of other matters over the whole field " of government, if, and only if, the responsible Ministries and legislatures " fail to discharge the responsibility placed on them under the new " constitution.")

The amendment by leave of the Committee, is withdrawn.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 20*c*, line 24, to leave out (" with much force ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 38 is again read.

The further consideration of paragraph 38 is postponed.

Paragraph 39 is again read.

It is moved by the Lord Ker (M. Lothian), the Marquess of Reading, and Mr. Foot. Page 20*c*, line 41, after (" finance ") to insert (" The existence of a " large standing charge for defence does not lessen the financial responsibility " of Ministers. Far the greater part of most national budgets are, in effect, " unalterable because they are the results of commitments arising out of " the past in the field of foreign relations or of social reform. The margin of " discretion which is available to Ministers anywhere in increasing or re- " ducing taxation or altering expenditure is usually small and this margin, " in India, will be within the control of Ministers, subject to the Governor- " General's special responsibility in the financial sphere. Ministers will " naturally wish to save money on defence in order that they may spend it

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" on ' nation building ' departments under their own charge. But in point " of fact the cost of Indian defence, though a large proportion of the Central " budget is, compared with the whole of the resources of India, central " and provincial, considerably less than the cost of defence in some other " countries containing a smaller population than that of India. We believe " that responsible Indian Ministers will be not less anxious for adequate " defence that the Governor-General and will usually after discussion with " him, support his view of what is necessary and will be able to convince their " following in the legislature that it is sound.")

The same is agreed to.

Paragraph 39 is again read, as amended.

The further consideration of paragraph 39 is postponed.

Paragraph 40 is again postponed.

Paragraph 41 is again read.

It is moved by the Marquess of Linlithgow. Page 20*e*, line 26, to leave out (" Whose opinions are ") and to insert (" their opinions have been ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 20*e*, lines 26 and 27, to leave out (" who are ") and to insert (" they have shown themselves ").

The same is agreed to.

Paragraph 41 is again read, as amended.

The further consideration of paragraph 41 is postponed.

Paragraph 42 is again postponed.

Paragraph 42A is again read.

It is moved by the Lord Eustace Percy. Page 20*g*, line 13, after (" plain ") to insert (" The plea put forward by Indian public men on behalf of India is " essentially a plea to be allowed the opportunity of applying principles and " doctrines which England herself has taught; and all sections of public " opinion in this country are agreed in principle that this plea should be " admitted.")

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 20*g*, line 21, after ("rejected,") to insert (" the rejection will be generally regarded in India as a denial of the " whole plea and ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 20*g*, line 23, after the first (" the ") to insert (" measure of harmony achieved in British India by the ")

The same is agreed to.

Paragraph 42A is again read, as amended.

The further consideration of paragraph 42A is postponed.

Paragraph 42B is again postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Ten o'clock.

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Die Martis 31° Julii 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.
The Proceedings of yesterday are read.

Paragraphs 43 to 63 are again postponed.

Paragraph 64 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 30, line 23, to leave out from (" in ") in line 23 to (" to ") in line 24 and to insert (" the " exercise of any powers conferred on him by the Constitution Act, except " in relation to such matters as will be left by that Act ").

The same is agreed to.

It is moved by the Lord Hardinge of Penshurst. Page 30, line 39, after (" practice.") to insert (" It follows from what we have said above that the " Ministers will not be concerned with the appointment of the Governor " himself ").

The same is agreed to.

Paragraph 64 is again read, as amended.
The further consideration of paragraph 64 is postponed.

Paragraphs 65 to 132 are again postponed.

Paragraph 133 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 66, line 6, after (" e.g.") to insert (" by allowing women to make application by letter " (responsibility for satisfying the registering officer of their eligibility for " enrolment resting with the applicant) ").

The same is agreed to.

Paragraph 133 is again read, as amended.
The further consideration of paragraph 133 is postponed.

Paragraphs 134 to 161 are again postponed.

Paragraph 162 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 83, line 4, at the end to insert (" It is hardly necessary to add that Ministers will not be concerned with the appointment of the Governor-General himself.")

The same is agreed to.

Paragraph 162 is again read, as amended.
The further consideration of paragraph 162 is postponed.

Paragraphs 163 to 173 are again postponed.

All amendments are to the Draft Report (*vide infra*, paras. 1–42B, pp. 470–491; and *vide supra*, paras. 43–453, pp. 64–253) and NOT to the Report as published. (Vol. I, Part I). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Paragraph 174 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 88, line 32, at the end to insert (" It has been urged upon us that, in order to build up an "informed opinion upon Defence questions, a statutory Committee of the "Legislature should be established. We understand that, outside the formal "opportunities of discussing Defence questions on such occasions as the "Defence Budget, opportunities are already given to members of the Legis- "lature to inform themselves upon Army questions; and, provided that the "extent and methods of consultation are clearly understood to rest in the "discretion of the Governor-General, we see no objection to the formation "of any Committee or Committees that the Federal Government and "Legislature may consider useful. We feel, however, that this is essentially a "question to be settled by the Legislature and not by the Constitution Act.")

The same is agreed to.

Paragraph 174 is again read as amended.

The further consideration of paragraph 174 is postponed.

Paragraphs 175 to 203 are again postponed.

Paragraph 204 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 102, line 24, to leave out (" nine ") and to insert (" six ").

Objected to.

On Question :—

Contents (4).	Not Contents (21).
Earl Peel.	Lord Archbishop of Canterbury.
Mr. Butler.	Marquess of Salisbury.
Sir Samuel Hoare.	Marquess of Zetland.
Earl Winterton.	Marquess of Linlithgow.
	Marquess of Reading.
	Earl of Derby.
	Viscount Halifax.
	Lord Middleton.
	Lord Ker (M. Lothian).
	Lord Hardinge of Penshurst.
	Lord Snell.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Attlee.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The said amendment is disagreed to.

Paragraph 204 is again read.

The further consideration of paragraph 204 is postponed.

Paragraphs 205 to 227 are again postponed.

The Appendix (II) is again read.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 115, line 15, after (" House.") to insert (" The question of special provision for the Depressed Classes among the General seats requires consideration especially in relation to the Central Provinces ").

The same is agreed to.

The Appendix (II) is again read, as amended.

The further consideration of Appendix (II) is postponed.

The Appendix (III) is again postponed.

Paragraphs 228 to 330 are again postponed.

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Paragraph 331 is again read.

It is moved by the Lord Eustace Percy. Page 183, lines 2 to 6, to leave out from (" dominion ") in line 2 to (" Lastly ") in line 6.

The same is agreed to.

Paragraph 331 is again read, as amended.

The further consideration of paragraph 331 is postponed.

Paragraph 332 is again read.

It is moved by the Marquess of Linlithgow. Page 183, in the footnote after (" etc. ") to insert (" by whomsoever made ").

The same is agreed to.

Paragraph 332 is again read, as amended.

The further consideration of paragraph 332 is postponed.

Paragraphs 333 to 336 are again postponed.

Paragraph 337 is again read.

It is moved by the Marquess of Linlithgow. Page 184, line 37, to leave out from (" that ") to (" shall ") and to insert (" a proportion of the directors " (which should, we think, not exceed one-half of the total number).")

The same is agreed to.

Paragraph 337 is again read, as amended.

The further consideration of paragraph 337 is postponed.

Paragraph 338 is again read.

It is moved by the Marquess of Linlithgow. Page 184, line 43, to page 185, line 1, to leave out from the beginning of the paragraph to (" But ") in line 1, page 185.

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, line 2, to leave out (" clearly ") and to insert (" still ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, lines 3 and 4, to leave out (" in accordance with these statutory prohibitions ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, line 28, to leave out (" found themselves strictly bound ") and to insert (" regarded the exercise " of their discretion as restricted ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, line 29, after (" that ") to insert (" the Instrument of Instructions of the Governor-" General and the Governor should require him,").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, line 30, to leave out (" the Governor-General or a Governor ") and to insert (" he ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, lines 32 and 33, to leave out (" he should be instructed ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, line 34, at the end to insert (" We need hardly add that the effect of our recommendations " for the statutory prohibition of certain specified forms of discrimination " would lay open to challenge in the Courts as being *ultra vires* any legislative " enactment which is inconsistent with these prohibitions, even if the Governor-" General or the Governor has assented to it ").

The same is agreed to.

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Paragraph 338 is again read, as amended.

The further consideration of paragraph 338 is postponed.

Paragraph 339 is again read.

It is moved by Sir John Wardlaw-Milne. Page 185, line 42, to page 186, line 5, to leave out from (" suggestion.") in line 42, page 185, to (" But ") in line 5, page 186, and to insert (" Except in certain cases in which a qualification " has been specially recognised by or under some Indian law as giving a title " to practice, persons holding United Kingdom qualifications at present follow " their professions in India without restraint but have always been subject " to such restrictions as the present Indian Legislatures might have imposed. " We think that the Indian Legislatures of the future should equally be free " to prescribe the conditions under which the practice of professions generally " is to be carried on.")

The same is agreed to.

Paragraph 339 is again read, as amended.

The further consideration of paragraph 339 is postponed.

Paragraphs 340 to 348 are again postponed.

Paragraph 349 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 191, line 45, to leave out (" assessed ") and to insert (" determined, either in the first instance " or on appeal,").

The same is agreed to.

Paragraph 349 is again read, as amended.

The further consideration of paragraph 349 is postponed.

Paragraph 350 to 370 are again postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 202, line 17, after paragraph 370 (and before the appendix) to insert the following new paragraph :—

(" 370A. We attach special importance to the arbitration procedure mentioned above as a means of settling disputes on administrative issues between the Railway Authority and the Administrations of railways owned and worked by an Indian State. The Constitution Act should contain adequate provision to ensure reasonable facilities for the State's railway traffic and to protect its system against unfair or uneconomic competition or discrimination in the Federal Legislature. We consider that States owning and working a considerable railway system should be able to look to the arbitration machinery which we recommend for adequate protection in such matters. On the other hand, if any State is allowed to reserve, as a condition of accession, the right to construct railways in its territory notwithstanding Item (9) of the revised exclusive Federal List, their right to do so should be subject to appeal by the Railway Authority to the same tribunal.")

Disputes between Railway Authority and Indian States Railways.

The same is agreed to.

New paragraph 370A is again read.

The further consideration of paragraph 370A is postponed.

The Appendix (IV) is again postponed.

Paragraphs 371 to 413 are again postponed.

Paragraph 414 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 229, lines 7 to 9, to leave out from (" Ministers.") in line 7 to (" but ") in line 9, and to insert (" To avoid repeating at length what we have already said in earlier parts of " our Report, we think it desirable to make clear at this point our intention " that the modifications which we have recommended in the proposals in the " Indian White Paper should *mutatis mutandis* be applied to the corresponding " proposals in the Burma White Paper.")

The same is agreed to.

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Paragraph 414 is again read, as amended.

The further consideration of paragraph 414 is postponed.

Paragraph 415 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 229, lines 27 to 41, to leave out from ("accepted") in line 27, to the end of the paragraph and to insert ("*Prima facie* the same considerations apply in Burma as would "apply if she were not separated from India but continued to constitute a "Province of British India. But it is necessary to take into account the special "factors which characterise conditions in Burma.")

The same is agreed to.

Paragraph 415 is again read, as amended.

The further consideration of paragraph 415 is postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 229, after paragraph 415, to insert the following new paragraph :—

("415A. Terrorism of the Bengal type is, we are informed, practically unknown as an indigenous movement among Burmans, though the Indian population in Rangoon does, we believe, from time to time include emissaries of the Bengal movement and the communal question, so far as it arises from strong religious antagonisms is comparatively unimportant in Burma though even there, within the resident Indian community, Hindu-Moslem conflicts are not unknown. But the place of these menaces to ordered Government is taken by racial rivalries between Indian and Burman, Burman and Chinese, and sometimes between Karen and Burman, which upon occasions have flared up into acts of violence or persecution; not many years ago the racial rivalry between the Burmans and the Indian community developed into a serious menace to the safety of the latter in the Delta and Coastal Districts, in which richer tracts it holds an increasingly important share in commerce, trade and labour supply. Again, serious crime—especially crimes of violence—appears to be more rife in Burma than in India. In proportion to population the percentage of murders, dacoities and cattle thefts exceeds (often greatly exceeds) the percentage in almost every other Province in British India. It has frequently been necessary to adopt special measures to deal with large-scale dacoities accompanied by murder, and waves of this type of crime are apt to develop into rebellions and guerilla warfare, as was shown by the recent grave rebellion and other similar revolts in the history of the country. The peace of the Province has at intervals been disturbed by conspiracies, sometimes originating across the border, led by exile pretenders claiming royal descent, or by persons supposed to be reincarnated national heroes, who play on the superstitions of the ignorant people. All these movements, if not properly handled from the outset, may throw a countryside into disorder and panic, and cause loss of life and property.

Nevertheless, we are of opinion that the responsibility for Law and Order ought in future to rest on Ministers in Burma no less than in India, and for substantially the same reasons. But, at the same time, taking into consideration the special features which we have described, of the situation in Burma, we think it essential that not only should the Governor of Burma have a special responsibility for the prevention of any grave menace to the peace and tranquillity of Burma and the powers that flow from this responsibility, but also that he, no less than the Governors of Indian Provinces, should be invested with the statutory powers which we have recommended in their case to equip them against attempts to overthrow by violence the Government established by law.

Further, the conditions which we have depicted manifestly necessitate the maintenance of an efficient and highly disciplined Police Force in Burma; and we are strongly of opinion that the recommendations

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which we have made in an earlier passage for the protection of the Police Force in Indian Provinces by protecting the statutes and rules which govern its internal organisation and discipline, should be adopted in Burma also.")

The amendment, by leave of the Committee, is withdrawn.

Paragraphs 416 to 425 are again postponed.

Paragraph 426 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 234, line 29, after (" dissolved.") to insert a reference to the following footnote :—

(" [2]The power of dissolution rests, of course, with the Governor in his discretion : *see* paragraph *supra*.")

The same is agreed to.

Paragraph 426 is again read, as amended.

The further consideration of paragraph 426 is postponed.

Paragraphs 427 to 430 are again postponed.

Paragraph 431 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 237, lines 19 to 26, to leave out from (" State.") in line 19 to (" conflicts ") in line 26.

The same is agreed to.

Paragraph 431 is again read, as amended.

The further consideration of paragraph 431 is postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 241, after paragraph 438, to insert the following new paragraph :—

Ratios of European and Burman recruitment.

(" 438A. There is a matter of importance to which it will be convenient to refer at this point, namely, the principles on which recruitment to the Services which in Burma after separation will correspond to the All-India Services, should be based. The Statutory Commission[1] when recording in general terms its views as to the Government of a separated Burma laid great stress on the importance of building up these Services in the tradition of the All-India Services which they will replace, and said 'The pace of Burmanisation must be decided on its merits.' The ratios of European and Indian recruitment to the Indian Civil Service and Indian Police which were approved in 1924 on the recommendation of the Lee Commission were designed to produce an equality of Europeans and Indians (in which term Burmans are included for this purpose) for India, including Burma, regarded as a whole, by 1939 in the Indian Civil Service and by 1949 in the Indian Police. The basis of calculation was an All-India average, and it has always been recognised that whereas, by the dates mentioned, there will be more Indians than Europeans in those Services, in some Provinces, in others there will be fewer. Burma falls in the latter category. From figures which have been laid before us showing the change in ratio in the Indian Civil Service in Burma during the last decade, it is clear that an equality of Europeans and Burmans is unlikely to be attained by 1939 ; nor, we are informed, is equality likely to be attained in the Indian Police in Burma by 1949. Any attempt to expedite the attainment of such equality by sacrificing the standard required of recruits would be destructive of the principle on which the Statutory Commission laid such emphasis, and might well be disastrous to Burma. We are of opinion that the proportion of Europeans and Burmans in the Services which in a separated Burma will take the place of the Indian Civil Service and the Indian Police will be a relevant consideration in deciding when the projected enquiry into the question of future recruitment should take place for Burma ; and we wish to endorse the opinion held by the Statutory Commission in the passage cited that, in the meantime, the important thing in Burma's interests is to preserve the standard of recruitment without too close a

[1] Report, Vol. II, para. 225.

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consideration for the early attainment in Burma of what was no more than an average figure, calculated for the whole of India without strict regard to differing conditions in differing Provinces.")

The same is agreed to.

New paragraph 438A is again read.

The further consideration of paragraph 438A is postponed.

Paragraphs 439 to 442 are postponed.

Paragraph 443 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 243, line 5, after (" and ") to insert (" we approve them subject to the general application " to the case of Burma, *mutatis mutandis*, of the modifications which we have " made in the corresponding proposals originally submitted to us in relation " to India. In particular we recommend that there should be imposed on " the Governor of Burma an additional special responsibility corresponding " to that which[1] we have recommended should be imposed on the Governor-" General of India for the prevention of discriminatory or penal treatment " of imports from the United Kingdom.")

The same is agreed to.

Paragraph 443 is again read, as amended.

The further consideration of paragraph 443 is postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 243, after paragraph 443, to insert the following new paragraph :—

Penal discrimination against imports to and from Burma and India.

(" 443A. The general principle underlying the proposals submitted to us in this regard is that, inasmuch as the association between India and Burma in the last 50 years has been, broadly, of a similar nature to that which has been built up over a longer period between the United Kingdom and India, Indians should be afforded in Burma, generally, the same measure of protection, in regard to their business avocations and commercial undertakings as we have recommended for United Kingdom subjects. We think that this is right. Pursuing this principle, we think that the additional responsibility which, as we have mentioned in the preceding paragraph, should be laid upon the Governor to protect imports into Burma from the United Kingdom from penal or discriminatory treatment, should extend to the protection of imports from India into Burma. And, in order that Burma should not be exposed, or feel that she is exposed by this recommendation to unequal treatment in this respect, we think that, reciprocally, the special responsibility with which the Governor-General of India is to be charged under our recommendation should extend to the case of the products of Burma imported into India.")

The same is agreed to.

New paragraph 443A is again read.

The further consideration of paragraph 443A is postponed.

Paragraph 444 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 243, line 11, after (" referred ") to insert (" deals also with a particular problem affecting the right of entry of Indian subjects into Burma. It")

The same is agreed to.

Paragraph 444 is again read, as amended.

The further consideration of paragraph 444 is postponed.

Paragraphs 445 to 453 are again postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Two o'clock.

[1] *Supra*, para. 329.

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Die Mercurii 1° Augusti 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF READING.
EARL OF DERBY.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE LORD ARCHBISHOP OF CANTERBURY in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraph 1 is again postponed.

Paragraph 2 is again read.

It is moved by the Lord Archbishop of Canterbury on behalf of the Marquess of Linlithgow. Page 3, line 40, after (" communities,") to insert (" and to the Indian Christians now numbering some 6,000,000 ").

The same is agreed to.

Paragraph 2 is again read, as amended.

The further consideration of paragraph 2 is postponed.

Paragraphs 3 to 24 are again postponed.

Paragraph 25 is again read.

It is moved by the Lord Archbishop of Canterbury on behalf of the Marquess of Linlithgow. Page 15, line 26, to leave out (" It ") and to insert (" Under the new system of Provincial Autonomy, it will be an authority " held, as it were, in reserve ; but those upon whom it is conferred must " at all times be ready to intervene, if the responsible Ministers and the " Legislatures should fail in their duty. This power of intervention ").

The same is agreed to.

Paragraph 25 is again read, as amended.

The further consideration of paragraph 25 is postponed.

Paragraph 26 is again postponed.

Paragraph 27 is again read.

It is moved by Sir Austen Chamberlain on behalf of the Lord Eustace Percy. Page 16, line 38, to leave out from (" risks ") to the end of the paragraph and to insert (" If Parliament should decide to create an All-India Federation, " the actual establishment of the new Central Legislature may without " danger be deferred for so long as may be necessary to complete arrangements " for bringing the representatives of the States into it ; but its form must be " defined in the Constitution Act itself.")

The same is agreed to.

Paragraph 27 is again read, as amended.

The further consideration of paragraph 27 is postponed.

All amendments are to the Draft Report (*vide supra*, paras. 1–42B, pp. 470–491 ; and *vide supra*, paras. 43–453, pp. 64–253) and NOT to the Report as published. (Vol. I. Part I.) A Key is attached (*see* pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Paragraph 28 is again read.

It is moved by Sir Austen Chamberlain on behalf of the Lord Eustace Percy. Page 16, lines 43 to 45, to leave out from the beginning of the paragraph to the end of line 45, and to insert (" This brings us to the further proposal " laid before us, that the Constitution Act should also determine the conditions " upon which an All-India Federation is to be established,").

The same is agreed to.

Paragraph 28 is again read, as amended.

The further consideration of paragraph 28 is postponed.

Paragraphs 29 and 30 are again postponed.

Paragraph 31 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 19, line 9, to leave out (" one-sixth ") and to insert (" one-fourth ").

The same is agreed to.

Paragraph 31 is again read, as amended.

The further consideration of paragraph 31 is postponed.

Paragraphs 32 to 37 are again postponed.

Paragraph 38 is again read.

It is moved by the Lord Archbishop of Canterbury on behalf of the Marquess of Linlithgow. Page 20B, lines 38 to 40, to leave out from ("subject") in line 38 to the end of the sentence and to insert (" to the retention by the " Governor-General of the special powers and responsibilities, outside his " Reserved Departments, similar to (though not necessarily in all respect " identical with) those which we contemplate should be conferred on the " Provincial Governors. The nature of the central safeguards which would " in that event be necessary will be discussed, like the provincial safeguards, " in the body of our Report; but, subject to them, the effect of drawing the " line on this point would be to make Indians responsible for policy over the " whole field of government.")

The same is agreed to.

Paragraph 38 is again read, as amended.

The further consideration of paragraph 38 is postponed.

Paragraphs 39 to 43 are again postponed.

Paragraph 44 is again read.

It is moved by the Lord Archbishop of Canterbury on behalf of the Marquess of Linlithgow. Page 21, line 32, at end to insert (" We should add that we " have not thought it necessary to mention in our Report every matter of " detail with which the White Paper deals, but only those which appear to " us of sufficient general importance to warrant discussion. It may be " assumed that we have no comment to offer on the proposals in the White " Paper to which we make no special reference, and we are content to leave " them to be dealt with at the discretion of His Majesty's Government in " the legislative proposals which they will lay before Parliament.")

The same is agreed to.

Paragraph 44 is again read, as amended.

The further consideration of paragraph 44 is postponed.

Paragraphs 45 to 121 are again postponed.

Paragraph 122 is again read.

It is moved by The Lord Rankeillour and the Marquess of Zetland. Page 60, line 25. At the end to insert: (" We have in other respects followed the " scheme already proposed for the United Provinces in preference to that

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" suggested for Bengal and Bihar. We think it inexpedient that so large a " proportion of the Second Chamber should be chosen by the First and " thereby presumably reflect their views.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Rankeillour and the Marquess of Zetland. Page 60, line 25. At the end to insert (" We think that the Legislative Council " should not be dissoluble, but that one-third of its members should retire at " fixed intervals.")

The same is agreed to.

Paragraph 122 is again read as amended.

The further consideration of paragraph 122 is postponed.

Paragraphs 123 to 141 are again postponed.

Paragraph 142 is again read.

It is moved by the Lord Archbishop of Canterbury on behalf of the Marquess of Linlithgow. Page 69, lines 16 and 17, to leave out from the beginning of the paragraph to (" ample ") in line 17, and to insert (" We approve the " proposals in the White Paper that the power to summon and appoint " places for the meeting of the Provincial Legislature, and the power of " prorogation and dissolution shall be vested in the Governor at his dis- " cretion. It is rightly proposed that the Provincial Legislature itself shall " have ")

The same is agreed to.

Paragraph 142 is again read, as amended.

The further consideration of paragraph 142 is postponed.

Paragraphs 143 to 147 are again postponed.

The Appendix (I) is again read.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 73. To omit the column of figures under the heading Madras in order to insert

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The same is agreed to.

The Appendix (I) is again read, as amended.

The further consideration of the Appendix (I) is postponed.

Paragraphs 148 to 306 are again postponed.

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Paragraph 307 is again read, as amended.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 170, to leave out paragraph 307 as amended and to insert the following new paragraph :—

Family pension funds.

(" 307. There is, however, one category of pension payments which stands apart from the rest, namely, the pensions payable to families of officers, civil and military, the cost of which is met not from the revenues of India but from funds accumulated by means of subscriptions paid by the officers themselves. These accumulated funds are in equity the property of the subscribers, and we think it right that the fullest possible consideration should be given to their views as to the disposal of the money. A full account of the nature of the Funds and of the steps already taken to ascertain the views of subscribers is given in a Note by the Secretary of State for India which is printed in the Committee's Records.[1] The Note also contains in some detail proposals for meeting the subscribers' wishes. We recommend that His Majesty's Government should take action on the lines indicated in this Note.")

The same is agreed to.

New Paragraph 307 is again read.

The further consideration of paragraph 307 is postponed.

Paragraphs 308 to 414 are again postponed.

Paragraph 415 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 229, lines 27 to 41, to leave out from (" accepted ") in line 27 to the end of the paragraph and to insert : (" In general the same considerations apply in Burma, if separated, " as apply in the other Provinces of British India. But there are certain " special circumstances which we think it right to mention. On the one hand " Terrorism of the Bengal type is practically unknown among the Burman " people, and communal strife arising from strong religious antagonisms " is rare and unimportant. To this extent the problem is less difficult than " in other Provinces. On the other hand Burma exhibits racial rivalries " which on occasion have developed into violent riots between one com- " munity and another, and serious crime—especially crimes of violence— " appears to be more rife in Burma than in India ; in proportion to popu- " lation the annual record of dacoities, murders and cattle thefts is very high. " This, no doubt, is due, in part, to the fact that barely 50 years have elapsed " since, with the conquest of Upper Burma, British authority was established " throughout the Province, and British ideas of Law and Order began to be " instilled into the whole countryside. To this fact and perhaps also in some " degree to the Burman temperament may, we think, be attributed the " organised resistance to authority, amounting to armed rebellion and " guerilla warfare, which has at times, even within the past few years, affected " a large number of districts and which, owing to the difficult nature of the " country and the lack of good communications, has proved very trouble- " some to put down. Nevertheless we are of opinion that the responsibility " for Law and Order ought in future to rest on Ministers in Burma no less " than in India and for substantially the same reasons. At the same time, " bearing in mind the special features of the problem that we have described, " we think it essential that the Governor of Burma should have powers " additional to the powers flowing from his special responsibility for the " prevention of any grave menace to the peace and tranquillity of Burma " as proposed in the Burma White Paper. He, like the Governors of Indian " Provinces, should be vested with the statutory powers which we have

[1] Records [1932–33], pp. 139–142.

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"recommended in their case to equip them against attempts to overthrow "by violence the Government established by law. Further, conditions in "Burma manifestly necessitate the maintenance of an efficient and highly "disciplined police force; and we are of opinion that the recommendations "which we made in an earlier passage for the protection of the police forces "in Indian Provinces by protecting the statutes and rule which govern its "internal organisation and discipline should be adopted in Burma also.")

The same is agreed to.

Paragraph 415 is again read, as amended.

The further consideration of paragraph 415 is postponed.

Paragraphs 416 to 453 are again postponed.

Paragraphs 1 to 138 are again postponed.

Paragraph 139 is again read, as amended, and is as follows :—

The White Paper proposals approved.

"139. We do not think that the consent of the Governor should any longer be required to the introduction of legislation which affects religion or religious rites and usages. We take this view, not because we think that the necessity for such consent might prejudice attempts to promote valuable social reforms, which has been suggested as a reason for dispensing with it, but because in our judgment legislation of this kind is above all other such as ought to be introduced on the responsibility of Indian Ministers. We have given our reasons elsewhere for holding that matters of social reform which may touch, directly or indirectly, Indian religious beliefs can only be undertaken with any prospect of success by Indian Ministers themselves; and, that being so, we think it undesirable that their responsibility in this most important field should be shared with a Governor. It has been objected that the mere introduction of legislation affecting religion or religious rites and usages might be dangerous at times of religious or communal disturbance, and might indeed itself produce such disturbance. We observe, however, a Proposal in the White Paper[1] whereby the Governor would be empowered, in any case in which he considers that a Bill introduced or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province, to direct that the Bill, clause or amendment
23 shall not be further proceeded with. This appears to us an ample safe-
24 guard against the danger to which we have referred; and in addition it would of course always be open to the Governor, in his discretion, to refuse his assent to any Bill which has been passed by the Legislature, if in his opinion it is undesirable on any ground that it should become law. We had also thought at first that a Provincial Legislature ought not to be empowered (as they are not empowered at present) to pass a law which repeals or is repugnant to an Act of Parliament extending to British India, even though the prior consent of the Governor to its introduction in the Legislature might be required. We understand, however, that the great bulk of the existing law in India is the work of Indian legislative bodies and that there are in fact very few Acts of Parliament (apart from those relating to subjects on which it is proposed that the Legislatures shall have not power to legislate at all) which form part of the Indian statute book, and fewer still dealing with matters which will fall within the provincial sphere. In these circumstances we

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think that the proposal should stand ; but the Governor's Instrument of Instructions might perhaps direct him to reserve bills which appear to him to fall within this category."

It is moved by the Lord Rankeillour. Lines 23 and 24, to leave out from (" with.") in line 23 to (" and ") in line 24 and to insert (" If this " provision were extended to cover the case of the Governor's other " special responsibility for the protection of the legitimate interests of " minorities there would, in our opinion, be ample safeguards against " the dangers both of public disturbance and of possible oppression of " small communities unable or unwilling to give serious trouble.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 139 is again read, as amended.

The further consideration of paragraph 139 is postponed.

Paragraphs 140 to 453 are again postponed.

Ordered, that the Committee be adjourned to Monday the 8th of October next at Three o'clock.

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Die Lunae 8° Octobris 1934

Present :

Lord Archbishop of Canterbury.	Mr. Attlee.
Marquess of Salisbury.	Mr. Butler.
Marquess of Zetland.	Major Cadogan.
Marquess of Linlithgow.	Sir Austen Chamberlain.
Earl of Derby.	Mr. Cocks.
Earl of Lytton.	Sir Reginald Craddock.
Earl Peel.	Mr. Davidson.
Lord Middleton.	Mr. Foot.
Lord Hardinge of Penshurst.	Sir Samuel Hoare.
Lord Snell.	Mr. Morgan Jones.
Lord Rankeillour.	Sir Joseph Nall.
Lord Hutchison of Montrose.	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The Marquess of Linlithgow in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday the 1st of August last are read.

Paragraph 1 is again read.

It is moved by Sir Austen Chamberlain on behalf of the Marquess of Zetland. Page 3, line 14, to leave out (" been able to enter upon, much less ") and to insert (" found it possible ").

The same is agreed to.

Paragraph 1 is again read, as amended.

The further consideration of paragraph 1 is postponed.

Paragraph 2 is again read.

It is moved by Mr. Cocks. Page 3, line 37, to leave out (" which ").

The same is agreed to.

It is moved by the Earl Peel. Page 3, lines 37 and 38 to leave out (" impervious to the more liberal ") and to insert (" unaffected by " contact with the ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 4, line 5, after (" owing ") to insert (" in large part ").

The same is agreed to.

Paragraph 2 is again read, as amended.

The further consideration of paragraph 2 is postponed.

All amendments are to the Draft Report (*vide supra* paras. 1–42B, pp. 470–491 ; and paras. 42–453, pp. 64–258) and NOT to the Report as published (Vol. I. Part 1).

A Key is attached (see p. 627, *et seq.*), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Paragraph 3 is again read.

It is moved by the Marquess of Salisbury. Page 4, line 14, after (" Princes") to insert (" (though in point of fact not all of these six have been continuously " and some have never been represented; and none of them has taken an " active part in the work of the Chamber since 1933) ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 4, line 16, to leave out (" 327 ") and to insert (" some 300 ").

The same is agreed to.

Paragraph 3 is again read, as amended.

The further consideration of paragraph 3 is postponed.

Paragraph 4 is again read.

It is moved by the Marquess of Linlithgow. Page 4, line 34, after (" Parliament ") to insert (" ; and the same is true of the Governors in Council in " relation to the reserved subjects in the Provinces ").

The same is agreed to.

It was moved by the Earl Peel. Page 4, lines 38 to 40, to leave out from (" provincial.") to the end of the paragraph.

The same is agreed to.

Paragraph 4 is again read, as amended.

The further consideration of paragraph 4 is postponed.

Paragraph 5 is again postponed.

Paragraph 6 is read, as amended, and is as follows :—

The British Achievement.

" 6. The record of British rule in India is well known. Though we claim for it neither infallibility not perfection, since, like all systems of Government, it has, at times, fallen into error, it is well to remember the greatness of its achievement. It has given to India that which throughout the centuries she has never possessed, a Government whose authority is unquestioned in any part of the sub-Continent; it has barred the way against the foreign invader and has maintained tranquillity at home; it has established the rule of law, and, by the creation of a just administration and an upright judiciary, it has secured to every subject of His Majesty in British India the right to go in peace about his daily work and to retain for his own use the fruit of his labours. The ultimate agency in achieving these results has been the power wielded by Parliament. The British element in the administrative and judicial services has always been numerically small. The total European population of British India to-day, including some 60,000 British troops, is only 135,000. The total British element in the Superior Services is about 3,150, and of these there are approximately 800 in the Indian Civil Service and 500 in the Indian Police."

It is moved by the Lord Middleton. Line 2, to leave out (" not ") and to insert (" nor ").

The same is agreed to.

It is moved by Mr. Cocks. Line 5, to leave out (" the ") and to insert (" many ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Line 10, after (" right ") to insert (" if not the power ").

The same is disagreed to.

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Paragraph 6 is again read, as amended.

The further consideration of paragraph 6 is postponed.

Paragraph 7 is read, as amended, and is as follows :—

The Mogul Empire.

" 7. The success of British rule cannot be justly estimated without reference to the condition of things which preceded it. The arts of
3 government and administration were not indeed unknown to the earlier
4 Hindu kings like Asoka, and the strong hand of the Mogul Emperors who reigned between 1525 and 1707 maintained a State which ultimately embraced the larger part of India and did not suffer by comparison with, if it did not even surpass in splendour, the contemporary monarchies of Europe. But the strength of the Mogul Empire depended essentially upon the personal qualities of its ruling House, and when the succession of great Emperors failed, its collapse inevitably followed; nor during its most magnificent period was its authority unchallenged either within or without its borders. Its system of government resembled that of other Asiatic despotisms. The interests of the subject races were made subservient to the ambitions, and often to the caprices, of the monarch; for the politic toleration of Akbar and his immediate successors disappeared with Aurungzeb. The imperial splendour became the measure of the people's poverty, and their sufferings are said by a French observer, long resident at the Court of Aurungzeb, to have been beyond the power of words to describe."

It is moved by Mr. Cocks. Lines 3 and 4, to leave out (" the earlier Hindu kings like Asoka ") and to insert (" the Buddhist Emperor Asoka (264–227 B.C.), one of the greatest and most peace-loving rulers the world has ever seen ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by The Lord Hardinge of Penshurst. Line 4, to leave out (" like Asoka ").

The same is agreed to.

Paragraph 7 is again read, as amended.

The further consideration of paragraph 7 is postponed.

Paragraph 8 is again postponed.

Paragraph 9 is again read.

It is moved by Mr. Cocks. Page 6, lines 25 and 26, to leave out from (" than ") in line 25 to the end of the paragraph and to insert (" anything she " has ever been able to achieve in modern, as contrasted with traditional " times.")

The same is disagreed to.

It is moved by Sir Reginald Craddock. Page 6, line 26, after (" history,") to insert (" At the same time the surveys and settlement of the land including " the recognition and determination by law of land tenures, and the just " assessment of the land revenue, together with the preparation and revision " from time to time of the record of rights and customs, have afforded " guarantees of security to the vast agricultural population upon which has " depended the welfare of the whole sub-continent.")

The same is agreed to.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 6, line 26, at the end to insert (" It would be to leave one side " of the picture unpainted, however, if we failed to point out that in spite

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" of this educational and material progress, which we do not seek to under-
" estimate—and in this connection it must be mentioned that at no period
" of its history has India, which possesses an ancient and unique literature
" of its own, been an altogether unenlightened country—the great mass of
" the population still remains in a state of extreme poverty, that perhaps in
" no other part of the world is to be seen so sharp a contrast between the great
" wealth of the comparatively few and the grinding indigence of the many,
" that the toiling peasant is still burdened by the exactions of the money-
" lender and the often absentee landlord and that, according to the Census
" of 1921, only 19,800,000 men and 2,800,000 women, or 122 in every 1,000
" men and 18 in every 1,000 women, roughly 7 per cent. of the population,
" are able to read and write.")

Objected to.

On Question :—

Contents (4).	Not Contents (20).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Linlithgow.
Mr. Morgan Jones.	Earl of Derby.
	Earl Peel.
	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

Paragraph 9 is again read, as amended.

The further consideration of paragraph 9 is postponed.

Paragraph 10 is again read.

It is moved by Sir Austen Chamberlain on behalf of the Marquess of Zetland. Page 6, line 47, to leave out (" enough without ") and to insert (" an acceptable " substitute for ").

The same is agreed to.

It is moved by the Earl Peel. Page 7, lines 2 to 8, to leave out from the beginning of line 2 to the end of the paragraph.

The same is agreed to.

Paragraph 10 is again read, as amended.

The further consideration of paragraph 10 is postponed.

Paragraph 11 is again read.

It is moved by the Lord Eustace Percy. Page 7, line 23, after (" been ") to insert (" for generations ").

The same is agreed to.

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It is moved by the Lord Eustace Percy. Page 7, line 24, to leave out (" for many generations ").

The same is agreed to.

Paragraph 11 is again read, as amended.

The further consideration of paragraph 11 is postponed.

Paragraph 12 is again read.

It is moved by the Marquess of Linlithgow on behalf of Viscount Halifax. Page 7, line 40, after (" India ") to insert (", and notably ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 8, lines 7 to 10, to leave out from the beginning of line 7 to (" we ") in line 10.

Objected to.

On Question :—

Contents (4)	Not Contents (20)
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Linlithgow.
Mr. Morgan Jones.	Earl of Derby.
	Earl Peel.
	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne,
	Earl Winterton.

The said amendment is disagreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 8, after line 35, to insert (" To this we would add the statement " made in the revised Instrument of Instructions from His Majesty the " King Emperor to the Governor-General of India, dated the 15th March, 1921, " which reads :—' For above all things it is our will and pleasure that the " plans laid by our Parliament . . . may come to fruition to the end that " British India may attain its true place among our Dominions.' ")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones and the Lord Snell. Page 8, after line 35, to insert (" To this we would add the concluding " words of the Prime Minister at the Final Session of the first Round Table " Conference in January, 1931 :—' Finally, I hope, and I trust, and I pray " that by our labours together India will come to possess the only thing she " now lacks to give her the status of a Dominion amongst the British Common- " wealth of nations—what she now lacks for that—the responsibilities and " the cares, the burdens and the difficulties, but the pride and the honour of " responsible self-Government.' ")

The amendment, by leave of the Committee, is withdrawn.

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Paragraph 12 is again read.

The further consideration of paragraph 12 is postponed.

Paragraph 13 is again read.

It is moved by the Lord Eustace Percy. Page 9, lines 17 and 18, to leave out from (" are ") in line 17 to the end of line 18 and to insert (" bound up " with ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 9, line 20, to leave out from (" State ") to (" transcending ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 9, lines 21 and 22, to leave out from (" hour ") in line 21 to the end of the sentence.

The same is agreed to.

Paragraph 13 is again read, as amended.

The further consideration of paragraph 13 is postponed.

Paragraph 14 is again postponed.

Paragraph 15 is again read.

It is moved by Mr. Cocks. Page 10, line 7, to leave out (" which ").

The same is agreed to.

Paragraph 15 is again read as amended.

The further consideration of paragraph 15 is postponed.

Paragraph 16 is again postponed.

Paragraph 17 is again read.

It is moved by the Marquess of Linlithgow. Page 11, lines 30 and 31, to leave out (" action of government is split up into ") and to insert (" govern- " ment functions in ").

The same is agreed to.

Paragraph 17 is again read, as amended.

The further consideration of paragraph 17 is postponed.

Paragraph 18 is again postponed.

Paragraph 19 is again read.

It is moved by the Marquess of Salisbury. Page 12, lines 10 to 12, to leave out from the second (" the ") in line 10 to (" enforcement ") in line 12.

The same is disagreed to

It is moved by the Marquess of Salisbury. Page 12, lines 13 to 25, to leave out from (" administration ") in line 13 to (" In ") in line 25.

The same is disagreed to.

Paragraph 19 is read.

The further consideration of paragraph 19 is postponed.

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Paragraph 20 is read, as amended, and is as follows :—

British conception of Parliamentary Government.

" 20. In establishing, or extending, parliamentary government in the Provinces, Parliament must take into account the facts of Indian life. It must give full weight, indeed, to the testimony of the Statutory Commission that, in spite of the disadvantages of dyarchy on which the Commission laid such stress, Indians have shown, since 1921, a marked capacity for the orderly conduct of Parliamentary business, a capacity which has grown steadily with the growth of their experience. We cannot doubt that this apprenticeship in Parliamentary methods has profoundly affected the whole character of Indian public life, both by widening the circle of those who have had practical contact with the affairs of government and by stimulating the growth of a public conscience amongst the educated classes as a whole. But other facts must also be frankly recognized. Parliamentary government, as it is understood in the United Kingdom, works by the interaction of four essential factors : the principle of majority rule ; the willingness of the minority for the time being to accept the decisions of the majority ; the existence of great political parties differing on questions of policy, but each desiring to act with public spirit and in good faith ; and finally the existence of a mobile body of political opinion, owing no permanent allegiance to either Party and therefore able, by its instinctive reaction against extravagant movements on one side or the other, to keep the vessel on an even keel. In India none of these factors can be said to exist to-day. There are no parties, as we understand them, and no mobile body of political opinion. In their place we are confronted with the age-old antagonism of Hindu and Muhammedan, representatives not only of two religions but of two civilisations, with numerous self-contained and exclusive minorities, all a prey to anxiety for their future and profoundly suspicious of the majority and of one another ; and with the rigid divisions of caste, itself inconsistent with democratic principle. In these circumstances, communal representation must be accepted as inevitable at the present time, but it is a strange commentary on some of the democratic professions to which we have listened. We lay stress on these facts because in truth they are of the essence of the problem and we should be doing no good service to India by glozing them over. These difficulties must be faced, not only by Parliament, but by Indians themselves. It is impossible to predict whether, or how soon, a new sense of provincial citizenship, combined with the growth of parties representing divergent economic and social interests, may prove strong enough to absorb and obliterate the religious and racial cleavages which thus dominate Indian political life. Meanwhile it must be recognised that, if free play were given to the powerful forces which would be set in motion by an unqualified system of parliamentary government, the consequences would be disastrous to India, and perhaps irreparable. In these circumstances, the successful working of parliamentary government in the Provinces must depend, in a special degree, on the extent to which Parliament can translate the customs of the British constitution into statutory " safeguards.". "

It is moved by the Lord Eustace Percy. Lines 17 and 18, to leave out from (" parties ") in line 17 to the second (" and ") in line 18 and to insert (" divided by broad issues of policy, rather than by sectional " interests ; ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 12, line 20 to leave out (" either ") and to insert (" any ").

The same is agreed to.

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It is moved by Mr. Cocks. Line 23, after (" and ") to insert (" there " is ").

The same is agreed to.

It is moved by the Lord Archbishop of Canterbury. Lines 23 and 24, to leave out (" no mobile body of political opinion ") and to insert (" no " considerable body of political opinion which can be described as mobile").

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 38, to leave out (" interests ") and to insert (" policies ").

The same is agreed to.

Paragraph 20 is again read as amended.

The further consideration of paragraph 20 is postponed.

Paragraph 21 is again read.

It is moved by Mr. Cocks. Page 13, line 32, to leave out (" which ").

The same is agreed to.

It is moved by the Earl Peel. Page 13, line 33, to leave out from (" of ") to the end of the line and to insert (" those ").

The same is agreed to.

Paragraph 21 is again read as amended.

The further consideration of paragraph 21 is postponed.

Paragraph 22 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 14, line 14, to leave out (" indeed ") and to insert (" very often ").

The same is disagreed to.

Paragraph 22 is again read, as amended.

The further consideration of paragraph 22 is postponed.

Paragraph 23 is again postponed.

Paragraph 24 is again read.

It is moved by the Lord Middleton. Page 15, line 20, to leave out (" quiet ") and to insert (" remove ").

The same is agreed to.

Paragraph 24 is again read, as amended.

The further consideration of paragraph 24 is postponed.

Paragraph 25 is read, as amended, and is as follows :—

and for an impartial authority to hold scales evenly between conflicting interests.

" 25. Lastly, there must be an authority in India, armed with " adequate powers, able to hold the scales evenly between conflicting " interests and to protect those who have neither the influence nor " the ability to protect themselves. Such an authority will be as " necessary in the future as experience has proved it to be in the past. " Under the new system of Provincial Autonomy, it will be an authority " held, as it were, in reserve ; but those upon whom it is conferred " must at all times be ready to intervene, if the responsible Ministers 8 " and the Legislatures should fail in their duty. This power of " intervention must, generally speaking, be vested primarily in the " Provincial Governors, but their authority must be closely linked " with, and must be focussed in, a similar authority vested in the

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" Governor-General, as responsible to the Crown and Parliament for " the peace and tranquillity of India as a whole, and for the protection " of all the weak and helpless among her people. This leads us " naturally to a consideration of the next point in the Indian " constitutional problem—the form and character of the Central " Government."

It is moved by the Lord Archbishop of Canterbury. Line 8, to leave out (" ready to intervene ") and to insert (" able to intervene promptly " and effectively ").

The same is agreed to.

Paragraph 25 is again read, as amended.

The further consideration of paragraph 25 is postponed.

Paragraph 26 is again postponed.

Paragraph 27 is again read.

It is moved by the Marquess of Linlithgow. Page 16, line 20, to leave out (" are ") and to insert (" should be ").

The same is agreed to.

It is moved by the Earl Peel. Page 16, line 42, to leave out (" its form ") and to insert (" the form of that legislature ").

The same is agreed to.

Paragraph 27 is again read, as amended.

The further consideration of paragraph 27 is postponed.

Paragraph 28 is read, as amended, and is as follows :—

The Indian States and an All-India Federation.

" 28. This brings us to the further proposal laid before us, that the " Constitution Act should also determine the conditions upon which " an All-India Federation is to be established, including the Indian " States. This is a separate operation, which may proceed simulta- " neously with the introduction of Provincial Autonomy and the " reconstitution of the Central Legislature, but which must be carried " out by different methods and raises quite distinct issues of policy. " We will leave questions of method to be considered in the body of " our Report, but the issues of policy must be briefly discussed here."

It is moved by the Earl Peel. To leave out paragraph 28.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 28 is again read.

The further consideration of paragraph 28 is postponed.

Paragraph 29 is again read.

It is moved by the Lord Eustace Percy. Page 17, line 15, to leave out (" the ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 17, lines 15 and 16, to leave out (" which they had suggested ").

The same is agreed to.

Paragraph 29 is again read, as amended.

The further consideration of paragraph 29 is postponed.

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Paragraph 30 is again read.

It is moved by the Marquess of Salisbury. Page 17, line 44, to leave out ("any formal ") and to insert (" these ").

The same is agreed to.

It is moved by the Lord Archbishop of Canterbury. Page 18, line 23, to leave out (" Englishmen ") and to insert (" the people of this country ").

The same is agreed to.

It is moved by the Lord Middleton. Page 18, lines 23 to 32, to leave out from (" Englishmen "). in line 23 to (" But ") in line 32 and to insert (" From their point of view it is evident enough that Ruling Princes who " in the past have been the firm friends of British rule, have some- " times felt their friendship tried by decisions of the Government of " India running counter to what they believed to be the interests of their " States and Peoples. Ruling Princes, however, as members of a Federation, " may be expected to give steadfast support to a strong and stable " Central Government, and to become helpful collaborators in policies which " they have sometimes in the past been inclined to criticise or even obstruct ").

The same is agreed to.

Paragraph 30 is again read, as amended.

The further consideration of paragraph 30 is postponed.

Paragraph 31 is again read.

It is moved by, The Lord Eustace Percy. Page 19, line 8, to leave out (" somewhat ") and to insert (" only slightly ").

The same is agreed to.

Paragraph 31 is again read, as amended.

The further consideration of paragraph 31 is postponed.

Paragraphs 32 to 36 are again postponed.

Paragraph 37 is again read.

It is moved by the Lord Archbishop of Canterbury. Page 20a, lines 44 to 46, to leave out from (" Commission ") in line 44 to the end of the sentence.

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 20b, line 4, after (" Governor-General ") to insert (" much of ").

The same is agreed to.

Paragraph 37 is read, as amended.

The further consideration of paragraph 37 is postponed.

Paragraph 38 is read, as amended, and is as follows :—

(3) in the Central Government itself.

" 38. Lastly, the line can be drawn within the Central Government itself, in such a way as to reserve the Departments of Defence and Foreign Affairs to the Governor-General, while committing all other central subjects to the care of responsible Ministers, subject to the

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retention by the Governor-General of the special powers and responsibilities, outside his Reserved Departments, similar to (though not necessarily in all respects identical with) those which we contemplate should be conferred on the Provincial Governors. The nature of the central safeguards which would in that event be necessary will be discussed, like the provincial safeguards, in the body of our Report; but, subject to them, the effect of drawing the line on this point would be to make Indians responsible for policy over the whole field of government. It is, we think, a fair conclusion from the Report of the Statutory Commission that this was the line at which they contemplated that the division of responsibility would ultimately be made. They contemplated an eventual All-India Federation. They believed that the constitution which they recommended for the Central Government would contain in itself the seeds of growth and development. It was, no doubt, for that reason, and foreseeing the course of that development, that they suggested that the protection of India's frontiers should not, at any rate for a long time to come, be regarded as a function of an Indian Government in relation with an Indian Legislature at all, but as a responsibility to be assumed by the Imperial Government. Apart from the difficulties of this suggestion, to which we shall have to return in the body of our Report, it obviously involves a dyarchy of much the same kind as would result from a frank reservation to the Governor-General of the Department of Defence. In fact, the reservation of Defence, with the reservation of Foreign Affairs as intimately connected with Defence, is the line of division which corresponds most nearly with the realities of the situation. It is also the line of division which, on the whole, creates the least danger of friction. As the Statutory Commission pointed out in the passage we have already quoted, dyarchy has not, even in the Provinces, raised any insuperable difficulties " in the inner counsels of the government " ; and the danger of friction in the inner counsels of the Central Government will be even smaller, for the administration of Defence and Foreign Affairs will normally, at any rate, have few contacts with other fields of Central administration under the new constitution. The one real danger of friction, and that a serious one, lies in the very large proportion of Central revenues which is, and must continue to be, absorbed by the Army Budget. That Budget will be removed from the control of the Central Legislature, which will be able to discuss, but not to modify or reject it, and it may be argued with much force that the existence of a standing charge of this magnitude will deprive Ministers chosen from the Legislature of any real responsibility for the financial policy of the Federation."

It is moved by the Lord Eustace Percy. Line 5, to leave out the second (" the ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 11, to leave out (" on ") and to insert (" at ")

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 12, to leave out ("policy") and to insert (" legislation and administration ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 12, to leave out (" government ") and to insert (" social and economic policy ").

The same is agreed to.

It is moved by the Earl Peel and Major Cadogan. Lines 40 to 45, to leave out from the first (" Budget.") in line 40 to the end of the paragraph.

Objected to.

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On Question :—

Contents (20)	Not Contents (4)
Lord Archbishop of Canterbury.	Lord Snell.
Marquess of Salisbury.	Mr. Attlee.
Marquess of Linlithgow.	Mr. Cocks.
Earl of Derby.	Mr. Morgan Jones.
Earl of Lytton.	
Earl Peel.	
Lord Middleton.	
Lord Hardinge of Penshurst.	
Lord Rankeillour.	
Lord Hutchison of Montrose.	
Mr. Butler.	
Major Cadogan.	
Sir Austen Chamberlain.	
Sir Reginald Craddock.	
Mr. Davidson.	
Sir Samuel Hoare.	
Sir Joseph Nall.	
Lord Eustace Percy.	
Sir John Wardlaw-Milne.	
Earl Winterton.	

The said amendment is agreed to.

Paragraph 38 is read, as amended.

The further consideration of paragraph 38 is postponed.

Paragraph 39 is read, as amended, and is as follows :—

The Central Legislature and the Army Budget.

" 39. It is true that this difficulty is inherent in the facts of the situation. It exists at the present day. Ever since the Act of 1919, the Central Legislature has constantly sought to ' magnify its functions in the reserved field ' of the Army Budget. The serious friction thus caused would be likely to manifest itself in an even stronger form in the future in a Central Legislature such as was proposed by the Statutory Commission—a Legislature largely representative of Provincial Legislatures, yet denied all effective control over any branch of Central finance. It is also true that the Statutory Commission's own scheme for a reservation of Defence to the Imperial Parliament would raise the same difficulty in an even more acute form. It is even true that the friction which now exists over Army expenditure could hardly be intensified and might be substantially mitigated by the existence of a Ministry generally responsible to the Legislature for finance. The 14
existence of a large standing charge for Defence does not lessen the 15
financial responsibility of Ministers. Far the greater part of most national budgets are, in effect, unalterable because they are the results of commitments arising out of the past in the field of foreign relations or of social reform. The margin of discretion which is available to Ministers anywhere in increasing or reducing taxation or altering expenditure is usually small and this margin, in India, will be within the control of Ministers, subject to the Governor-General's special responsibility in the financial sphere. Ministers will naturally wish to save 23
money on defence in order that they may spend it on ' nation building ' 25
departments under their own charge. But in point of fact the cost of Indian defence, though a large proportion of the Central budget, is, compared with the whole of the resources of India, central and 27

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provincial, considerably less than the cost of defence in some other countries containing a smaller population than that of India. We believe that responsible Indian Ministers will be not less anxious for adequate defence than the Governor-General and will usually, after discussion with him, support his view of what is necessary and will be able to convince their following in the legislature that it is sound. Yet in spite of these weighty considerations, the danger of friction between the Governor-General and the Legislature over the Army Budget undoubtedly furnishes an additional argument against responsibility at the Centre in a purely British India Federation. But that is not the proposition we are now discussing. We have already made it clear that, in such a Federation, we should have felt constrained to draw our line of division at another point, notwithstanding the disadvantages of the alternatives to which we have drawn attention above. What we are now discussing is an All-India Federation, and in regard to the Army Budget, as in regard to the broader issues of the relations between British India and the States, the declaration of the Princes, indicating their willingness to enter an All-India Federation, has introduced a new and, in our judgment, a determining factor. It is reasonable to expect that the presence in the Central Executive and Legislature of representatives of the State Rulers who have always taken so keen an interest in all matters relating to Defence will afford a guarantee that these grave matters will be weighed and considered with a full appreciation of the issues at stake. It is, indeed, one of the main advantages of an All-India Federation that it will enable Parliament to draw the line of division between responsibility and reservation at the point which, on other grounds, is most likely to provide a workable solution."

It is moved by the Marquess of Salisbury. Lines 14 to 23, to leave out from (" finance.") in line 14 to (" Ministers ") in line 23.

Objected to.

On Question :—

Contents (7).	Not Contents (18).
Marquess of Salisbury.	Lord Archbishop of Canterbury.
Lord Middleton.	Marquess of Linlithgow.
Lord Rankeillour.	Earl of Derby.
Major Cadogan.	Earl of Lytton.
Sir Reginald Craddock.	Earl Peel.
Sir Joseph Nall.	Lord Hardinge of Penshurst.
Lord Eustace Percy.	Lord Snell.
	Lord Hutchison of Montrose.
	Mr. Attlee.
	Mr. Butler.
	Sir Austen Chamberlain.
	Mr. Cocks.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Mr. Morgan Jones.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

It is moved by the Lord Rankeillour. Line 15 to leave out (" standing").

Objected to.

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On Question :—

Contents (11).	Not Contents (13).
Marquess of Salisbury.	Lord Archbishop of Canterbury.
Earl of Derby.	Marquess of Linlithgow.
Earl of Lytton.	Earl Peel.
Lord Middleton.	Mr. Attlee.
Lord Hardinge of Penshurst.	Mr. Butler.
Lord Rankeillour.	Mr. Cocks.
Lord Hutchison of Montrose.	Mr. Davidson.
Major Cadogan.	Mr. Foot.
Sir Austen Chamberlain.	Sir Samuel Hoare.
Sir Reginald Craddock.	Mr. Morgan Jones.
Sir John Wardlaw-Milne.	Sir Joseph Nall.
	Lord Eustace Percy.
	Earl Winterton.

The said amendment is disagreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Line 15 to leave out (" does not lessen ") and to insert (" circumscribes but by no means destroys ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Lines 25 to 29, to leave out from (" charge.") in line 25 to the end of line 29 and to insert (" but we ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 48, to leave out (" State Rulers ") and to insert (" Princes ").

The same is agreed to.

Paragraph 39 is again read, as amended.

The further consideration of paragraph 39 is postponed.

Paragraph 40 is again read.

It is moved by the Marquess of Salisbury. Page 20e, line 3, to leave out (" (as the Statutory Commission saw) ").

The same is agreed to.

Paragraph 40 is again read, as amended.

The further consideration of paragraph 40 is postponed.

Paragraph 41 is again postponed.

Paragraph 42 is again read.

It is moved by the Marquess of Salisbury. Page 20f, lines 18 and 19, to leave out (" in form if not in substance ").

The same is agreed to.

It is moved by the Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones. Lines 19 to 21, to leave out from (" recommend.") in line 19 to (" But ") in line 21.

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 20f, line 20, to leave out (" party ") and to insert (" section of opinion ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 20f, line 21, to leave out (" of any kind must ") and to insert (" appears to ").

The same is agreed to.

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It is moved by Sir Samuel Hoare and Mr. Butler. Page 20f, line 31, to leave out (" at least indicated possibilities ") and to insert (" shown their " willingness to go much further than seemed possible at the time of the " Statutory Commission's Report in the direction ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 20f, lines 33 to 35, to leave out from (" Federation ") in line 33 to the end of the sentence.

The same is agreed to.

Paragraph 42 is again read, as amended.

The further consideration of paragraph 42 is postponed.

Paragraph 42A is again postponed.

Paragraph 42B is again read.

It is moved by Sir Samuel Hoare on behalf of the Viscount Halifax. Page 20g, line 30, to leave out (" of a people ") and to insert (" that are engaged ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 42B is again read.

The further consideration of paragraph 42B is postponed.

Paragraph 43 is again postponed.

Paragraph 44 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 21, line 18, to leave out (" is well enough ") and to insert (" will serve ").

The same is agreed to.

Paragraph 44 is again read, as amended.

The further consideration of paragraph 44 is postponed.

Paragraph 45 is again postponed.

Paragraph 46 is again read.

It is moved by the Marquess of Linlithgow. Page 22, line 4, to leave out (" a Governor ") and to insert (" an Executive ").

The same is agreed to.

Paragraph 46 is again read, as postponed.

The further consideration of paragraph 46 is again postponed.

Paragraphs 47 to 51 are again postponed.

Paragraph 52 is again read.

It is moved by the Lord Rankeillour. Page 25, line 20, at the end to insert (" It will be necessary under this plan to make provision for the formal record " of the Governor-General's decisions as having statutory force ").

The same is agreed to.

Paragraph 52 is again read, as amended.

The further consideration of paragraph 52 is postponed.

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Paragraphs 53 and 54 is again postponed.

Paragraph 55 is again read.

It is moved by the Marquess of Linlithgow. Page 26, line 23 after (" conclusion ") to insert (", as we have already indicated ").

The same is agreed to.

Paragraph 55 is again read, as amended.

The further consideration of paragraph 55 is postponed.

Paragraph 56 is again postponed.

Paragraph 57 is again read.

It is moved by the Marquess of Linlithgow, the Marquess of Zetland and Mr. Cocks. Page 27, line 17, to leave out (" over ").

The same is agreed to.

Paragraph 57 is again read, as amended.

The further consideration of paragraph 57 is postponed.

Paragraphs 58 and 59 are again postponed.

Paragraph 60 is again read.

It is moved by Mr. Attlee. Page 29, lines 5 to 9, to leave out from (" controversy ; ") in line 5 to the end of the sentence and to insert (" the question has been re-examined by the Secretary of State for India with the " assistance of several of our members and we recommend that the boundaries " should be in accordance with the conclusions[2] thus reached, namely that " there should be added to the Province as defined in the White Paper.[3]

(*a*) that portion of the Jeypore Estate which the Orissa Committee of 1932 recommended should be transferred to Orissa ;

(*b*) the Parlakimedi and Jalantra Maliahs,

(*c*) a small portion of the Parlakimedi Estate, including Parlakimedi Town.")

The same is agreed to.

Paragraph 60 is again read, as amended.

The further consideration of paragraph 60 is postponed.

Paragraphs 61 to 67 are again postponed.

Paragraph 68 is again read. It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 32, lines 18 to 25, to leave out from (" otherwise ") in line 18 to the end of the paragraph.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 68 is again read as amended.

The further consideration of paragraph 68 is postponed.

[2] *Vide* Record No.
[3] Proposal 61, second paragraph.

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Paragraphs 69 and 70 are again postponed.

Paragraph 71 is again read.

It is moved by the Lord Middleton. Page 33, line 37, to leave out (" public ").

The same is agreed to.

Paragraph 71 is again read, as amended.

The further consideration of paragraph 71 is postponed.

Paragraph 72 is again read.

It is moved by Sir Samuel Hoare on behalf of the Viscount Halifax. Page 34, line 14, to leave out (" readily admit ") and to insert (" consider ").

The same is agreed to.

Paragraph 72 is again read, as amended.

The further consideration of paragraph 72 is postponed.

Paragraph 73 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 34, lines 28 and 29, to leave out from (" Governor ") in line 28 to (" consult ") in line 29, and to insert (" should as a general rule ").

The same is disagreed to.

It is moved by the Lord Eustace Percy. Page 34, lines 34 and 35, to leave out (" Indian constitutional problem ") and to insert (" evolution of the " Indian Constitution ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 34, line 35, to leave out (" in the case of India ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 34, line 36, to leave out the second (" the ") and to insert (" its ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 34, line 37, to leave out (" of that evolution ").

The same is agreed to.

Paragraph 73 is again read, as amended.

The further consideration of paragraph 73 is again postponed.

Paragraph 74 and 75 are again postponed.

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Paragraph 76 is again read.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 35, lines 36 to 42, to leave out from (" Order.") in line 36 to (" justification ") in line 42, and to insert (" We accept the first of these " suggestions as we feel that in view of the importance of doing nothing to " weaken the sense of responsibility in Ministers and Legislatures the powers " of intervention given to the Governor under this sub-section should be more " strictly defined and should not be drawn in terms which would enable him " to step in and overrule his ministers in a very wide field. We see, however, " no ")

Objected to.

On Question :—

Contents (5).	Not Contents (19).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Foot.	Marquess of Linlithgow.
Mr. Morgan Jones.	Earl of Derby.
	Earl of Lytton.
	Earl Peel.
	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

Paragraph 76 is again read, as amended.

The further consideration of paragraph 76 is postponed.

Paragraphs 77 and 78 are again postponed.

Paragraph 79 is read, as amended, and is as follows :—

Special circumstances of North-West Frontier Province and Sind.

" 79. With regard to (*h*), it is apparent that the close connection between the Governor's responsibilities within the administered districts of his Province and the responsibilities of the Governor-General exercised through the person of the Governor in his other capacity as Agent-General for the Tribal Tracts on the borders of the Province makes a provision of this kind necessary. With regard to (*i*), we agree that this special responisbility is necessary in the case of Sind, in view of the vital influence upon the future finances of the Province of the successful operation of the Sukkur irrigation scheme and of the large financial interest which the Central Government has in it.

" But, in our opinion, the two proposals in the White Paper which have reference to special circumstances in particular Provinces do not exhaust the requirements of this kind. It has come to our notice that, under the system of joint administration of the Districts known as the Berars with the Central Provinces which has obtained for many years,

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and which, as we have already pointed out[1] will continue under the new Constitution, there has been a tendency on the part of the inhabitants of the Berars, and of their representatives in the Legislature, to criticise
19 the apportionment between the two areas forming the joint Province as favouring unduly the Central Provinces area to the disadvantage of the Berars. We express no option as to the justification for such criticisms, but it is evident that, under a system of responsible government, the scope for grievances on this account may well be increased. We think, therefore, that the Governor of the joint Province should have imposed upon him a special responsibility and should thus be enabled to counteract any proposals of his Ministry which he regards as likely to give justifiable ground for complaint on this account. Without attempting to usurp the functions of the draftsman, we suggest that the purpose we have in view would be adequately expressed in defining the special responsibility in some such terms as :—

> 'The expenditure in the Berars of a reasonable share of the revenues raised for the joint purposes of the Berars and the Central Provinces.'

"We think, moreover, that the Governor might appropriately be directed in his Instrument of Instructions to constitute some impartial body to advise him on the principles which should be followed in the distribution of revenues if he is not satisfied that past practice affords an adequate guide for his Ministers and himself for the discharge of the special responsibility imposed upon him in respect of them.

We also think that the special position of the Berars should be recognised by requiring the Governor, through his Instrument of Instructions, to interpret his special responsibility for "the protection of the rights of any Indian State" as involving *inter alia* an obligation upon him, in the administration of the Berars, to have due regard to the commercial and economic interests of the State of Hyderabad."

It is moved by the Marquess of Linlithgow. Line 19, after ("apportionment") to insert ("of expenditure").

The same is agreed to.

Paragraph 79 is again read as amended.

The further consideration of paragraph 79 is postponed.

Paragraph 79A is read, as amended, and is as follows :—

A special responsibility for safeguarding financial stability of Province not recommended.

"79A. We think it desirable to make some reference to the suggestion that among the special responsibilities of the Governor should be included the safeguarding of the financial stability and credit of the Province following the analogy of the special responsibility of this kind which, as we shall explain later, we recommend should be imposed on the Governor-General in relation to the Federation.[1] A similar proposal was examined and rejected by the Statutory Commission[2] on the ground that a power of intervention over so wide a field would hinder the growth of responsi-
9 bility. We agree with this view. The other special responsibilities which
10 we recommend will give the Governor adequate powers in relation to
11 supply and taxation to ensure that their due discharge is not impeded
12 by lack of financial resources; we refer specially to one aspect of this
13 matter below.[3] But the addition of a special financial responsibility would increase enormously the range of his special powers. There is no real parallel with the situation at the Centre where there is paramount

[1] *Infra*, paras. 165 and 167.
[2] Report, Vol. II, para. 189.
[3] *Infra*, paras. 303–307, 99 and 103.

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necessity to avoid action which might prejudice the credit of India as a whole in the money markets of the world, and where so considerable a proportion of the revenues are needed for the expenditure of the reserved departments.[4] The Statutory Commission point out[2] that the Central Government, through their powers of control over Provincial Borrowing, should be able to exercise a salutary influence over Provinces. We also attach importance to this method of checking improvidence on the part of a Province, and, as we explain below,[5] we approve, subject to one modification, the proposals in the White Paper for the regulation of provincial borrowing.

It is moved by The Lord Eustace Percy. Lines 9 and 10, to leave out from (" view.") in line 9 to (" will ") in line 10 and to insert (" We shall " have certain recommendations to make below which ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 11, to leave out (" their ") and to insert (" the ") and after (" discharge ") to insert (" of his special responsibilities ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Lines 12 and 13 to leave out from (" resources ") in line 13 to the end of the sentence.

The same is agreed to.

Paragraph 79A is again read.

The further consideration of paragraph 79A is postponed.

Paragraphs 80 and 81 are again postponed.

Paragraph 82 is again read.

Paragraph 82 is again read.

It is moved by the Marquess of Linlithgow. Page 38, lines 16 and 17, to leave out (" constitutional ").

The same is agreed to.

Paragraph 82 is again read, as amended.

The further consideration of paragraph 82 is postponed.

Paragraph 83 is again read, as amended, and is as follows :—

Suggested methods for meeting difficulty.

" 83. We have considered various suggestions to meet this difficulty: (1) that the Governor should be empowered, if he thought fit, to appoint a Minister from outside the Legislature, the Minister so appointed having precisely the same status as other Ministers and sharing their policy and political fortunes, with the right to take part in all proceedings of the Legislature, though not entitled to vote; (2) that in addition to the elected members, there should be one or two members nominated by the Governor, who would be eligible for appointment as Ministers, though not necessarily so appointed; (3) that the Governor should be empowered, if he desired to have an outside Minister, to nominate the person whom he selected as a member *ad hoc* of the Legislature; and (4) that the Ministers themselves should be empowered,

[4] *Infra*, para. 170.
[5] *Infra*, para. 262.

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if so requested by the Governor, to co-opt someone from outside and present him to the Governor for appointment. We can see no advantage, and many disadvantages, in the second and third of these suggestions, and the fourth is open to the grave objection that it would infringe the Governor's prerogative. The only plan, therefore, which, in our opinion, merits consideration is the first. We have, however, come to the conclusion that such advantages as might be anticipated from a provision in the Constitution Act enabling the Governor to appoint to his Ministry one or more persons who are not members of the Legislature would weigh little in the balance against the dislike and suspicion with which such a provision would undoubtedly be viewed almost universally in India—a dislike and suspicion so strong that we think it unlikely that any Governor
25 would, in fact, find it possible to exercise such a power. We recommend, therefore, that the proposal in the White Paper to which we have alluded[1] should remain unchanged."

It is moved by Sir John Wardlaw-Milne. Line 25, to leave out (" possible ") and to insert (" desirable ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 83 is again read.

The further consideration of paragraph 83 is postponed.

Paragraph 85 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 40, line 13, to leave out from (" he ") to (" consult ") and to insert (" should as a general rule ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 85 is again read, as amended.

The further consideration of paragraph 85 is postponed.

Paragraph 86 is again read.

It is moved by the Marquess of Zetland. Page 40, line 32, to leave out (" depends ") and to insert (" depend ").

The same is agreed to.

Paragraph 86 is again read, as amended.

The further consideration of paragraph 86 is postponed.

Paragraph 87 is read as amended, and is as follows :—

" 87. We find ourselves unable to conceive a government to which the
2 quality of responsibility could be attributed, if it had no responsibility for order. In no other sphere has the word " responsiblility " so profound and significant a meaning; and nothing will afford Indians the

Control of law and order an essential attribute of responsible government.

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opportunity of demonstrating more conclusively their fitness to govern themselves than their action in this sphere. From one point of view indeed the transfer of these functions to an Indian Minister may be in the interest of the police themselves, whom it will no longer be possible to attack, as they have been attacked in the past, as agents of oppression acting on behalf of an alien power ; but we prefer to base our conclusion upon the broader grounds indicated above. Nevertheless, it must not be supposed that we are blind to the risks implicit in the course which we advocate ; for these, in our opinion, cannot be regarded lightly or as the phantoms of a reactionary imagination. The qualities most essential in a police force, discipline, impartiality, and confidence in its officers, are precisely those which would be most quickly undermined by any suspicion of political influence or pressure exercised from above ; and it would indeed be disastrous if in any Province the police force, to whose constancy and discipline in most difficult circumstances India owes a debt not easily to be repaid, were to be sacrificed to the exigencies of a party or to appease the political supporters of a Minister. If, therefore, the transfer is to be made, as we think it should, it is essential that the Force should be protected so far as possible against these risks, and in the following paragraphs we make recommendations designed to secure this protection."

It is moved by the Lord Eustace Percy. Line 2, after (" for ") to insert (" public ").

The same is agreed to.

Paragraph 87 is again read, as amended.

The further consideration of paragraph 87 is postponed.

Paragraph 88 is read, as amended, and is as follows :—

The Governor's special responsibility.

" 88. First, there are the proposals already made in the White Paper. The Governor is to have a special responsibility for ' the prevention of any grave menace to the peace or tranquillity of the Province, or any part thereof '. The effect of this, as of all other special responsibilities, is to enable the Governor, if he thinks that the due discharge of his special responsibility so requires, to reject any proposals of his Ministers, or himself to initiate action which his Ministers decline to take. Further, there flows from this special responsibility, not only the right to overrule his Ministers, but also special powers—legislative and financial—to enable him to carry into execution any course of action which requires legislative provision or the provision of supply. If, therefore, the Governor should be of opinion that the action or inaction of Ministers is jeopardising the peace or tranquillity of the Province, it will be his duty to take action to meet the situation. It the situation is one requiring immediate action, he will issue any executive order which he may consider necessary. If the situation is one which cannot be dealt with by an isolated executive order—if the Minister in charge of the Department appears unable to administer his charge on lines which the Governor regards as consistent with the due discharge of his special responsibility—the Governor will dismiss and replace the Minister (and, if necessary, 20
the Ministers as a body, with or without resort to a dissolution of the Legislature). If he fails to find an alternative Government capable 22
of administering Law and Order on lines consistent with the discharge of his special responsibility, he will be obliged to declare a breakdown of the constitution, and to assume to himself all such powers as he judges requisite to retrieve the situation. We are not contemplating such a course of events as probable ; but, if it occurs, provision is made to meet it." 27

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It is moved by the Marquess of Zetland. Lines 20 and 22, to leave out the brackets, and to leave out the second (" and ") in line 20 and to insert (" or ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 27 after (" occurs,") to insert (" we point out that ").

The same is agreed to.

Paragraph 88 is again read, as amended.

The further consideration of paragraph 88 is postponed.

Paragraph 89 is read, as amended, and is as follows :—

The Police Rules.

" 89. We turn now to our own further recommendations for the specific protection of the Police Force itself. Of course, the due discharge of his special responsibility for peace and tranquillity will, in itself, entitle the Governor to intervene immediately if, by reason of ill-timed measures of economy or the attempted exertion of political influence on the Police Force or from any other cause, the morale or the efficiency of that Force is endangered. Further, the Governor has another special responsibility : it is his duty to secure to the members of the Police, as of other Public Services, any rights provided for them by the Constitution Act and to safeguard their legitimate interests. These are important
11 safeguards, but there is a special factor in police administration which requires to be specially protected. We refer to the body of Regulations known as the " Police Rules ", promulgated from time to time under powers given by the various Police Acts. A large number of the Rules deal with matters of quite minor importance and are constantly amended, in practice, on the responsibility of the Inspector-General of Police himself. It would be unnecessary to require the Governor's consent to every amendment of this kind. But the subject matter of some of the Rules is so vital to the well-being of the Police Force that they ought not, in our opinion, to be amended without the Governor's consent ; and the same consideration applies *a fortiori* to the Acts themselves, which
22 form the statutory basis of the Rules. Our aim should be to ensure that the internal organisation and discipline of the Police continue to be regulated by the Inspector-General, and to protect both him and the Ministers themselves from political pressure in this vital field. We,
26 therefore, recommend that the consent of the Governor, given in his discretion, should be required to any legislation which would amend or repeal the General Police Act in force in the Province or any other Police Acts (such as the Bombay City Police Act, the Calcutta Police Act, the Madras City Police Act, and Acts regulating Military Police in Provinces where such forces exist). We further recommend that any requirement in any of these Acts that Rules made under them shall be made or approved by the local Government is to be construed as involving the consent of the Governor, given in his discretion, to the making or amendment of any Rules, which, in his opinion, relate to, or
36 affect, the organisation or discipline of the Police."

It is moved by the Marquess of Linlithgow. Line 11, to leave out (" a "special factor ") and to insert (" one element ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 22, to leave out (" should "be ") and to insert (" is ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 26, after the first (" the ") to insert (" prior ").

The same is agreed to.

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It is moved by the Lord Rankeillour. Line 36, at the end to insert ("It "will of course be open to the Governor-General in his discretion to give "directions to the Provincial Governor as to the making, maintenance, "abrogation, or amendment of all such rules.").

The same is agreed to.

Paragraph 89 is again read, as amended.

The further consideration of paragraph 89 is postponed.

Paragraphs 90 and 91 are again postponed.

Paragraph 92 is read, as amended, and is as follows :—

Special powers required for combating terrorism.

'92. But, even so, the circumstances set out above render it imperative 1
to arm the Governor with powers which will ensure that the measures taken to deal with terrorism and other activities of revolutionary conspirators are not less efficient and unhesitating than they have been in the past. We are, indeed, particularly anxious not to absolve Indian Ministers, in Bengal or elsewhere, from the responsibility for combating terrorism, and we think that such executive duty should be clearly laid upon them. But the issues at stake are so important, and the consequences of inaction, or even of half-hearted action, for even a short period of time, may be so disastrous, that the Governor of any Province must, in our opinion, have a special power over and above his special responsibility 'for the prevention of any grave menace to peace and tranquillity,' to take into his own hands the discharge of this duty, even from the outset of the new Constitution. This purpose would not be adequately served by placing the Special Branch of the Provincial Police alone in the personal charge of the Governor. That course has been urged upon us, but we are convinced that it falls short of what is required. Instead, we recommend that the Constitution Act should specifically empower the Governor, at his discretion, if he regards the peace and tranquillity of the Province as endangered by the activities, overt or secret, of persons committing or conspiring to commit crimes of violence intended to overthrow the Government by law established, and if he considers that the situation cannot otherwise be effectively handled, to assume charge, to such extent as he may judge requisite, of any branch of the government which he thinks it necessary to employ to combat such activities, or if necessary to create new machinery for the purpose. If the Governor exercises this power, he should be further authorised, at his 26
discretion, to appoint an official as a temporary member of the Legislature, to act as his mouthpiece in that body, and any official so appointed should have the same powers and rights, other than the right to vote, as an elected member. The powers which we have just described would be discretionary powers, and the Governor would, therefore, be subject 31
to the superintendence and control of the Governor-General, and ultimately of the Secretary of State, in all matters connected with them. We should add that if conditions in Bengal at the time of the inauguration of Provincial Autonomy have not materially improved, it would, in our judgment, be essential that the Governor of that Province should exercise 36
the powers we have just described forthwith and should be directed to do so in his Instrument of Instructions, which, in this as in other respects, would remain in force until amended with the consent of Parliament."[1] 40

It is moved by the Marquess of Linlithgow. Line 1, to leave out (" even "so ") and to insert (" in addition ").

The same is agreed to.

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It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Lines 26 to 31, to leave out from (" purpose.") in line 26 to (" The ") in line 31.

Objected to.

On Question :—

Contents (4).	Not Contents (19).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Earl of Derby.
	Earl Peel.
	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

It is moved by the Lord Rankeillour. Line 36, after (" improved ") to insert (" or if similar conditions should unfortunately have arisen in any " other province ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Rankeillour. Line 40, at the end, to insert (" We think further that like powers should be exercisable by the Governor " of the North-West Frontier Province if in his opinion the security of the " Frontier is endangered ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 92 is again read, as amended.

The further consideration of paragraph 92 is postponed.

Paragraph 92A is again read, as amended, and is as follows :—

Central Intelligence Bureau.

" 92A. We have only to add that we have considered in this con- " nexion a proposal made to us that the Intelligence Departments " —or at all events the Special Branch where such exists—of the pro- " vincial Police Forces should be placed under the control of the " Governor-General, who should utilise them, through the agency of " the Governor, as local offshoots of the Central Intelligence Bureau. " We agree with the ideas underlying this proposal to this extent, " that it is essential that the close touch which has hitherto obtained " between the Intelligence Departments of the Provinces and the " Central Intelligence Bureau should continue. But to place the " Provincial Intelligence Departments under the departmental control " of the Central Intelligence Bureau would, we think, be undesirable, " as tending to break up the organic unity of the provincial Police
14 " Force. We recommend, therefore, that the Central Bureau should, " under the new Constitution, be assigned to one of the Governor- " General's Reserved Departments as part of its normal activities,

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" and that the change in the form of government, whether at the 17
" Centre or in the Provinces, should not involve any change in the
" relationship which at present exists between the Central Bureau
" and the provincial Intelligence Departments. Should the Governor-
" General find that the information at his disposal, whether received
" through the channel of the Governors or from the provincial Intelli-
" gence Departments through the Central Intelligence Bureau, is
" inadequate, he will, in virtue of recommendations which we make
" later[2] possess complete authority to secure through the Governor
" the correction of any deficiencies, and indeed to point out to the
" Governor, and require him to set right, any shortcomings which he
" may have noticed in the organisation or activities of the provincial
" Intelligence Branch.

It is moved by the Lord Archbishop of Canterbury. Lines 14 to 17, to leave out from (" therefore ") in line 14 to (" that ") in line 17.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 92A is again read.

The further consideration of paragraph 92A is postponed.

Paragraph 93 is again postponed.

Paragraph 94 is again read.

It is moved by the Lord Eustace Percy. Page 45, line 15, to leave out (" ; and ") and to insert a full stop.

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 45, line 16, to leave out (" will ") and to insert (" must continue to ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 45, line 17, to leave out (" time. No ") and to insert (" time, though no ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 45, line 18, to leave out (" a different ") and to insert (" the new ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 45, line 25, to leave out (" Nevertheless ") and to insert (" Beyond this however ").

The same is agreed to.

Paragraph 94 is again read, as amended.

The further consideration of paragraph 94 is postponed.

Paragraph 95 is again postponed.

Paragraph 96 is again read.

It is moved by Sir John Wardlaw-Milne. Page 46, line 46, to leave out (" we ") and to insert (" with duties of a wider and more responsible character, " We ").

The same is agreed to.

Paragraph 96 is again read, as amended.

The further consideration of paragraph 96 is postponed.

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Paragraph 97 is again read.

It is moved by Sir John Wardlaw-Milne and the Lord Middleton. Page 47, line 20, to leave out (" elsewhere ").

The same is agreed to.

Paragraph 97 is again read, as amended.

The further consideration of paragraph 97 is postponed.

Paragraph 98 is again read.

It is moved by the Lord Eustace Percy. Page 47, lines 22 to 24, to leave out from (" that ") in line 22 to (" in ") in line 24 and to insert (" purely " executive action may not always suffice for the due discharge of the " Governor's special responsibilities ").

The same is agreed to.

Paragraph 98 is again read as amended.

The further consideration of paragraph 98 is postponed.

Paragraph 99 is again postponed.

Paragraph 101 is read, as amended, and is as follows :—

Modification of White Paper proposal suggested.

101. We observe that the White Paper proposes that whereas temporary Ordinances, if extended beyond six months, are to be laid before Parliament,[1] there is no similar proposal in the case of Governor's Acts. We consider that all Governor's Acts should be laid before Parliament and that the Governor before legislating should have the concurrence of the Governor-General.

It is moved by the Lord Archbishop of Canterbury. Line 5, after (" legislating ") to insert (" or notifying his intention to legislate ").

The same is agreed to.

Paragraph 101 is again read, as amended.

The further consideration of paragraph 101 is postponed.

Paragraph 102 is read, as amended, and is as follows :—

Ordinances.

102. The next special power which is it is proposed to give the Governor is the power (for use in emergencies) of issuing temporary Ordinances, to be valid for not more than six months in the first instance, but renewable once for a similar period. At the present time, this power is only exercisable whether for a single Province or for the whole of British India by the Governor-General; but we cannot doubt that in an autonomous Province it should in future be vested in the Governor himself. It was urged by the British India Delegation that the power should continue to be vested in the Governor-General; and we agree that his concurrence should be obtained.

It is moved by the Marquess of Zetland. Line 9, after (" and ") to insert (" although we are unable to accept this proposal in its entirety ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Lines 9 and 10, to leave out from (" agree ") in line 9 to (" should ") in line 10, and to insert (" that all temporary ordinances if extended beyond " six months should be laid before Parliament and that the concurrence of the " Governor-General ").

The same is agreed to.

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Paragraph 102 is again read, as amended.

The further consideration of paragraph 102 is postponed.

Paragraph 103 and 104 are again postponed.

Paragraph 105 is again read.

It is moved by Sir Reginald Craddock. Page 51, line 43, after (" require ") to insert (" for example the nomination of a Legislature to function until the " ordinary Constitution is restored.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 105 is again read, as amended.

The further consideration of paragraph 105 is postponed.

Paragraph 106 is again read.

It is moved by Sir Austen Chamberlain. Page 51, line 47, after (" Governor-General ") to insert (" acting in his discretion ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 52, lines 2 and 3, to leave out from (" and ") to the end of the paragraph and to insert (" its importance, " particularly in the event, or the danger, of a complete or partial breakdown " in the working of the Constitution in a Province, has already been indicated " in the first section of our Report,[1] where we speak of the interaction of the " Governor-General's and the Governors' special powers and responsibilities. " We shall have to consider another aspect of this subject in a later part " of our Report.[2] It is unnecessary for us to comment on it further here.")

The same is agreed to.

Paragraph 106 is again read, as amended.

The further consideration of paragraph 106 is postponed.

Paragraph 107 is again read, as amended, and is as follows :—

Vital importance of Executive in India.

" 107. In the preceding paragraphs we have approved the proposal of the White Paper to entrust certain wide discretionary powers to the Governor, and we have recommended that, in certain respects, those powers should be strengthened and extended. We should not wish to pass from this subject without some general review of the broad considerations which have led us to these conclusions. The dominant consideration is the one which we have already emphasised : the vital importance in India of a strong Executive. It has seemed to us in the course of our discussions with the British India delegates that in their anxiety to increase the prerogatives of the Legislature, they have been apt to overlook the functions of the Executive, an attitude not perhaps surprising in those to whom at the present time the Legislature offers the main field of political activity. But if the responsibility for government is henceforward to be borne by Indians themselves they will do well to remember that to magnify the Legislature at the expense of the Executive is to diminish the authority of the latter and to weaken the sense of responsibility of both. The function of the executive is to govern and to administer ; that of the Legislature to vote supply, to criticize, to educate public opinion, and to legislate ; and great mischief may result from attempts by the latter to invade the executive sphere. The belief that parliamentary government is incompatible with a strong

[1] *Supra,* paragraph 40.
[2] *Infra,* paragraphs 220-222. *See* also *supra,* paragraph 92A.

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Executive is no doubt responsible for the distrust with which parliamentary institutions have come to be regarded in many parts of the world. The United Kingdom affords a sufficient proof that a strong Executive may co-exist even with an omnipotent Parliament if the necessary conditions are present; and the strength of the Executive in this country may, we think, be attributed with not more justice to the support of a disciplined party than to the inveterate and cherished tradition of Parliament that
29 the prerogatives of the Legislature are not jealously or factiously asserted in such a way as to prevent the King's Government from being carried on. 'His Majesty's Opposition' is not an idle phrase, but embodies a constitutional doctrine of great significance."

It is moved by The Marquess of Linlithgow, Line 29, after ("not") to insert ("to be").

The same is agreed to.

Paragraph 107 is again read, as amended.

The further consideration of paragraph 107 is postponed.

Paragraph 108 is again read, and is as follows:—

"108. It is a commonplace that this tradition is as yet unknown in India and that Indian Ministries have not hitherto been able to rely on the support of a disciplined party. The Statutory Commission, in surveying the work of the existing Provincial Constitution, observed that Governors, in choosing their Ministers have had an exceptionally
6 difficult task. It could seldom be predicted what following a Minister would have in the Legislature, quite apart from the fact that his acceptance of office was often followed, owing to personal rivalries, by the detachment of some of his previous adherents. It has been urged upon us by the members of the British-India Delegation that these difficulties will tend to disappear under responsible government. We hope that it will be so, and neither we nor the Statutory Commission would have recommended that the experiment should be made if we were not satisfied that under no other system can Indians come to appreciate the value of the tradition of which we have spoken. But it must be remembered that in two respects the difficulties of Provincial Ministries in the future may be greater than in the past. In the first place, they will not in future be able to rely upon the official bloc which, in the words of the Statutory Commission 'has helped to decrease the instability of the balance of existing groups in the Legislature and has made the tenure of office of Ministers far less precarious.' In the second place, each
22 Ministry will, as we have already pointed out, be a composite one.
23 The Legislatures will be based on a system of communal representation, and the Governor will be directed by his Instrument of Instructions to include in his Ministry, so far as possible, members of important minority communities. A Ministry thus formed must tend to be the representative, not, as in the United Kingdom, of a single majority
28 Party or even of a coalition of Parties, but of minorities as such. More-
29 over, the system of communal representation may also tend to render less effective the weapon to which, under most parliamentary constitutions, the executive resorts when confronted by an obstructive legislature, the weapon of dissolution; for under such a system even a general election may well produce a legislature with the same complexion as its predecessor."

Difficulties created by communal representation in Ministries.

It is moved by the Marquess of Linlithgow. Line 6, after ("task."), to insert ("and that").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Line 22, to leave out ("will") and to insert ("may").

The same is agreed to.

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It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Lines 23 to 29, to leave out from the beginning of line 23 to (" Moreover ") in lines 28 and 29.

The same is disagreed to.

It is moved by the Marquess of Linlithgow. Line 28, after (" but ") to insert (" also ").

The same is agreed to.

Paragraph 108 is again read, as amended.

The further consideration of paragraph 108 is postponed.

Paragraphs 109 and 110 are again postponed.

Ordered that the Committee be adjourned till to-morrow at Three o'clock.

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Die Martis 9° Octobris 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraph 116 is again read.

It is moved by the Lord Eustace Percy. Page 57, to leave out paragraph 116.

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Linlithgow. Page 57, lines 13 to 15, to leave out from (" government ") in line 13 to (" postulates ") in line 15.

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 57, lines 16 to 18, to leave out from (" create ") in line 16 to the end of the sentence.

The same is agreed to.

Paragraph 116 is again read, as amended.

The further consideration of paragraph 116 is postponed.

Paragraph 117 is again postponed.

Paragraph 118 is again read, and is as follows :—

" 118. We are of opinion that Legislative Councils should also be " established in Bombay and Madras, where the conditions are sub- " stantially the same as in Bengal and the United Provinces. We see " no reason for giving an exceptional power to the Provincial " Legislatures to amend the Constitution in this one respect, and we " think that the abolition or creation of a Legislative Council should, " instead, be included among the questions on which, as we shall " later propose in our Report,[2] a Provincial Legislature shall have a " special right to present an address to the Governor for submission " to His Majesty and to Parliament. Apart from these alterations we " concur in the proposals of the White Paper, subject to certain

Second Chambers suggested for Bombay and Madras.

[2] *Infra*, paras. 356 and 357.

All amendments are to the Draft Report (see this volume, paras. 1–42B, pp. 470–491 ; and paras. 43–453, pp. 64–254) and NOT to the Report as published.
A Key is attached (*see* p. 627 *et seq.*), showing on which pages of the Proceedings amendments to each paragraph can be found.

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" small changes in the composition of the Legislative Councils in " Bengal, the United Provinces, and Bihar; and our recommendations 13
" for all five Councils are set out in an Appendix to this part of our " Report.[3]"

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Lines 1 to 3, to leave out from the beginning of the paragraph to (" We ") in line 3.

Objected to.

On Question :—

Contents (4).	Not Contents (18).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Zetland.
Mr. Cocks.	Marquess of Linlithgow.
Mr. Morgan Jones.	Earl of Derby.
	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Mr. Foot.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Line 1, after (" that ") to insert (" subject to a request to " that effect being received from the Provincial legislatures of Bombay " or Madras ").

The same is disagreed to.

It is moved by Mr. Cocks, Mr. Attlee, and the Lord Snell. Line 2, to leave out (" Bombay and Madras ") and to insert (" those Provinces ").

The same is disagreed to.

It is moved by the Lord Rankeillour. Lines 10 to 13, to leave out from (" Parliament ") in line 10 to (" our ") in line 13.

The same is agreed to.

Paragraph 118 is again read, as amended.
The further consideration of paragraph 118 is postponed.

Paragraphs 119 and 120 are again postponed.

Paragraph 121 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 59, lines 28 and 29 to leave out from (" minority ; ") in line 28 to (" we ") in line 29 and to insert (" and we understand that recently there has been a growing tendency in " some influential sections of the Hindu community to attack the foundation " of the Award. Nevertheless, it is clear to us that there is among almost all

[3] *Infra*, page 73.

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" the communities in India (not excepting the Hindu) a very considerable " degree of acquiescence in the Award in the absence of any solution agreed " between the communities ; in fact,").

The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 59, lines 29 and 30, to leave out from (" acceptance ") in line 29 to the end of the sentence.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 121 is again read as amended.

The further consideration of paragraph 121 is postponed.

Paragraph 121A is again read and is as follows :—

Special interests seats.

" 121A. We have given careful consideration in this connexion to the number of seats to be allotted to special interests and in particular to representations submitted to us in favour of a substantial increase in the number of seats to be allotted to Labour in the new Provincial Legislatures. Any material alteration in the number of seats allotted to special interests would inevitably involve a reopening of the Communal Award, and we
7 have indicated above the objections to this. But we are in any case of opinion that the representation proposed in the White Paper for landlords, commerce and industry, universities and labour, may be regarded as striking a just balance between the claims of the various interests, and as affording an adequate representation for them. We observe in particular that the representation of labour has been increased from 9 seats in the present Provincial Legislative Councils to a total of 38, the present marked difference between the representation of labour and of commerce and industry being thus very substantially reduced. Having regard to this, to the large number of seats set aside for the Depressed Classes (whose representatives will to some extent at any rate represent labour interests), and to the extension of the franchise, which will bring on the electoral roll large numbers of the poorer and of the labouring classes, we are of opinion that the position of labour, the importance of which we fully recognise, is adequately safeguarded under the proposals
22 embodied in the White Paper."

It is moved by the Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones. Lines 7 to 22, to leave out from (" this.") in line 7 to the end of the paragraph and to insert (" We notice, however, that it is proposed in the White Paper to allot 56 of these special seats to Commerce and " Industry, 37 to Landholders, and 38 to Labour, a total of 131, and " bearing in mind the view of the Indian Franchise Committee that ' if " ' special constituencies are retained, it should be recognised that Labour " ' has not less claim to representation than employers ' we are of the " opinion that at least half of these seats should be given to Labour. We " therefore recommend that the representation of Labour should be " increased to 66 seats, which would still leave 65 special seats for Land- " holders and Commerce and Industry.")

Objected to.

On Question :—

Contents (4).	Not Contents (19).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Zetland.
Mr. Cocks.	Marquess of Linlithgow.
Mr. Morgan Jones.	Earl of Derby.
	Earl Peel.
	Lord Middleton.

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Contents (4)—*contd.*

Not Contents (19)—*contd.*

Lord Hardinge of Penshurst.
Lord Rankeillour.
Lord Hutchison of Montrose.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Sir Reginald Craddock.
Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Sir Joseph Nall.
Lord Eustace Percy.
Sir John Wardlaw-Milne.

The said amendment is disagreed to.

Paragraph 121A is again read.

The further consideration of paragraph 121A is postponed.

Paragraph 122 is read, as amended, and is as follows :—

Composition of Second Chambers.

" 122. The Communal Award did not extend to the Legislative Council of any Province. The composition of these Councils which is set out in the White Paper is however based upon the same principles as the Communal Award ; but, since the Legislative Councils are much smaller bodies than the Legislative Assemblies and it would be impossible therefore to provide in them for the exact equivalent of all the interests represented in the Lower House, it is proposed to include a certain number of seats to be filled by nomination to be filled by the Governor at his discretion and accordingly available for the purpose of redressing any possible inequality. We think that this is a reasonable arrangement, and we have included provision for it in the detailed recommendations which are set out in the Appendix above referred to. We think that the Legislative Council should not be dissoluble, but that one-third of its members should retire at fixed intervals.

It is moved by the Marquess of Zetland. Line 8 to leave out (" to be " filled ").

The same is agreed to.

It is moved by Mr. Isaac Foot. Line 10, after (" inequality ") to insert (" or to secure some representation to women in the Upper House").

It is moved by Mr. Cocks as an amendment to the above amendment. After (" women ") to insert (" and for labour ").

Objected to.

On Question :—

Contents (6).

Lord Archbishop of Canterbury.
Lord Snell.
Mr. Attlee.
Mr. Cocks.
Mr. Foot.
Mr. Morgan Jones.

Not Contents (16)

Marquess of Zetland.
Marquess of Linlithgow
Earl of Derby.
Earl Peel.
Lord Middleton.
Lord Hardinge of Penshurst.
Lord Rankeillour.
Lord Hutchison of Montrose.
Mr. Butler.

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Contents (6)—*contd.*

Not Contents (16)—*contd.*

Major Cadogan.
Sir Reginald Craddock
Mr. Davidson.
Sir Samuel Hoare.
Sir Joseph Nall.
Lord Eustace Percy.
Sir John Wardlaw-Milne.

Sir Austen Chamberlain did not vote.

The said amendment is disagreed to.

The original amendment is again moved.

The same is agreed to.

It is moved by the Lord Hardinge of Penshurst. Line 14, at the end to insert (" of three years ").

The same is agreed to.

Paragraph 122 is again read, as amended.

The further consideration of paragraph 122 is postponed.

Paragraph 123 is again read.

It is moved by the Marquess of Linlithgow. Page 60, line 37, after (" Province ") to insert (" except the North-West Frontier Province ").

The same is agreed to.

Paragraph 123 is again read, as amended.

The further consideration of paragraph 123 is postponed.

Paragraph 124 is again read.

It is moved by the Lord Middleton. Page 61, line 12, to leave out ("public")

The same is agreed to.

Paragraph 124 is again read, as amended.

The further consideration of paragraph 124 is postponed.

Paragraph 125 is read, as amended, and is as follows :—

The proposals in the White Paper.

" 125. The proposals of His Majesty's Government for the Provincial Franchise are set out in Appendix V to the White Paper, and are essentially based, with certain modifications of minor importance only, save in the case of the women's franchise, on the Report of the Franchise Committee. We are informed that the proposals have the general support of the Government of India and of the Provincial Governments. The basis of the franchise proposed is essentially, as at present, a property qualification (that is to say, payment of land revenue or of rent in towns, tenancy, or assessment to income tax), to which are added an educational qualification and certain special qualifications designed to secure an adequate representation of women and to enfranchise approximately 10 per cent of the Depressed Classes (called in Appendix V Scheduled Castes) by the enfranchisement of retired, pensioned and discharged officers, non-commissioned officers and men of His Majesty's Regular Forces, and by the provision of a special electorate for the seats reserved for special interests, such as labour, landlords and commerce. The individual qualifications vary according to the circumstances of the different Provinces : but the general effect of the proposals is to enfranchise approximately the same classes and categories of the population in all Provinces alike."

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It is moved by the Lord Eustace Percy. Line 9, to leave out (" to which are added ") in line 9 and to insert (" supplemented by "), and to leave out (" and ") in line 10 and to insert (", by ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Linlithgow. Line 9, to leave out (" to which ") and to insert (" to this ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 13, to leave out (" by the enfranchisement of ") and to insert (" ; it is also proposed to " enfranchise ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 15, to leave out (" by the provision of ") and to insert (" to provide ").

The same is agreed to.

It is moved by the Marquess of Zetland. Line 15, to leave out (" a ") and to leave out (" electorate ") and to insert (" electorates ").

The same is agreed to.

Paragraph 125 is again read, as amended.

The further consideration of paragraph 125 is postponed.

Paragraphs 126 and 127 are again postponed.

Paragraph 128 is again read.

It is moved by the Lord Middleton. Page 62, line 29, to leave out ("public").

The same is agreed to.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 62, line 35, to leave out (" method of election to the seats reserved for ") and to insert (" nature of the constituencies which are to return ").

The same is agreed to.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 62, line 39, at the end, to insert (" We would at this stage record, however, our acceptance of " the proposal that the seats allocated to Labour should be allocated in part " to Trade Unions and in part to special Labour constituencies. As regards " the women's seats, we are provisionally, subject to consideration of special " local difficulties, in favour of the reservation of seats in constituencies " formed for the purpose and containing both men and women. We are " inclined to think it desirable that those constituencies should be both " urban and rural, and we should see no objection to their area being varied " by rotation should this prove to be desirable and practicable.")

The same is agreed to.

Paragraph 128 is again read, as amended.

The further consideration of paragraph 128 is postponed.

Paragraph 129 is read, as amended, and is as follows :—

Suggestions for group system of election considered.

" 129. We have carefully examined a suggestion to substitute for direct election in territorial constituencies an indirect system of election by means of local groups. At first sight an arrangement of this nature would appear to have the advantage of widening the basis of the franchise, of giving an equal vote at the primary stage to every adult, of facilitating voting by the primary elector, and of securing a more experienced and intelligent secondary elector; and having

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regard to these considerations, we felt it our duty, despite the fact that discussion and experiment in India had led the Indian Franchise Committee to reject it, again to consider its practicability. The effect of the evidence given before us by witnesses of great experience has however been to show that, superficially attractive as a system of group election may be, the objections to it in existing conditions in India are decisive. We have been especially impressed by the administrative difficulties involved in constituting electoral groups, given the existence of caste and the reality of the communal problem, and by the argument that faction runs so high in many Indian villages that group elections would inevitably become highly contested and that it would be necessary to provide for them all the machinery of an ordinary election. We were informed not only that conditions in the villages had changed so materially of late that the circumstances which some six or seven years ago made it justifiable to put forward a proposal for the use of the group system no longer existed, but that there was no real support for the
24 introduction of such a system either from public or from official opinion in India. In the light of our further investigation of this question we are satisfied that in the case of the Provincial Legislatures the balance of advantage at the present moment clearly lies in retaining the system of direct election. We do not, however, desire to be understood as reporting against the introduction of some system of indirect election in the future. The considerations which we have advanced against its adoption at the present moment may lose much of their force as social conditions change, and as institutions of local self-government develop in the Provinces. The problem is essentially one which Indians must consider for themselves, and on which we feel sure that Parliament will be ready to listen with the utmost attention to any
36 recommendations which may be made to it by Provincial Legislatures."

It is moved by the Lord Middleton. Line 24, to leave out (" either from public or from official opinion ") and insert (" from any quarter ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 36, after (" it ") to insert (" hereafter ").

The same is agreed to.

Paragraph 129 is again read, as amended.

The further consideration of paragraph 129 is postponed.

It is moved by the Lord Archbishop of Canterbury. Page 63, after paragraph 129, to insert the following new paragraph :—

(" 129A. We have alluded above to the development of institutions of local self-government in the Provinces. This allusion may furnish an opportunity of saying that though this subject did not come directly within the scope of our enquiry we are fully conscious of its great importance. Indeed, the progress of self-government in the Provinces of India will depend on the growth not only of responsible Governments at the top, but also of local self-governing institutions from the bottom—from the village community or *panchayat* upwards. It is thus that the great mass of the Indian peasantry, constituting a vast majority of the people, whose welfare has been constantly in our minds during the whole course of our discussions can be trained in those qualities of responsible citizenship which may hereafter entitle

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them to the full Provincial franchise. These are matters upon which Indians must form their own conclusions; but we venture to express the hope that they will, from the first, give full attention to them.")

The same is agreed to.

New paragraph 129A is again read.

The further consideration of paragraph 129A is postponed.

Paragraph 130 is again postponed.

Paragraph 131 is again read.

It is moved by the Marquess of Linlithgow. Page 64, lines 10 and 11, to leave out from (" voter).") in line 10 to the end of line 11.

The same is agreed to.

Paragraph 131 is again read, as amended.

The further consideration of paragraph 131 is postponed.

Paragraph 132 is again read, as amended.

It is moved by the Lord Hardinge of Penshurst. Page 65, line 6, to leave out (" voters.")

The same is agreed to.

Paragraph 132 is again read, as amended.

The further consideration of paragraph 132 is postponed.

Paragraph 133 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones and the Lord Snell. Page 65, line 44, after (" in ") to insert (" Bengal, Bihar and Orissa ").

Objected to.

On question :—

Contents (6).	Not Contents (17).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Zetland.
Sir Austen Chamberlain.	Marquess of Linlithgow.
Mr. Cocks.	Earl of Derby.
Mr. Foot.	Earl Peel.
Mr. Morgan Jones.	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The said amendment is disagreed to.

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It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 65, lines 46 and 47, to leave out from (" in ") in line 46 to (" the ") in line 47, and to insert (" every Province, subject, however, to further " consideration in the case of the North-West Frontier Province,").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 66, line 4, to leave out (" such ") and to leave out (" as are possible ").

The same is agreed to.

Paragraph 133 is again read as amended.

The further consideration of paragraph 133 is postponed.

Paragraph 134 is again read

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 66, line 29, after (" practicable ") to insert (" and we express our hope " that this should be before the second election under the new constitution ").

The same is disagreed to.

Paragraph 134 is again read, as amended.

The further consideration of paragraph 134 is postponed.

Paragraphs 135 to 136 are again postponed.

It is moved by Sir Reginald Craddock. Page 67, after paragraph 136, to insert the following new paragraph :—

(" 136A. There is a further point in connection with the disqualification of candidates which may conveniently be mentioned here. Proposal 84 of the White Paper recites the disqualifications to be prescribed for the membership of a Provincial Legislature. Among these are included conviction for the offence of corrupt practices or other election offences, and in the case of a legal practitioner, suspension from practice by order of a competent court. We observe, however, that in the election rules under the Montagu Reforms, as well as in the Morley-Minto Reforms before them, the conviction of a person of certain criminal offences was a disqualification for the membership of the Legislature. On this particular point the rule ran as follows :—

'A person against whom a conviction by a Criminal Court involving a sentence of transportation or imprisonment for a period of more than one year is subsisting shall, unless the offence of which he was convicted has been pardoned, not be eligible for election for five years from the date of expiration of the sentence.

' Provided that on application made by a person disqualified the Local Government with the previous approval of the Governor-General in Council may remove the disqualification.'

" We are not clear why this rule, which has the sanction of nearly 25 years' usage behind it, should have been eliminated from the disqualifications contained in Proposal 84 of the White Paper, and we recommend its retention.")

Objected to.

On Question :—

Contents (16).	Not Contents (7).
Marquess of Zetland.	Lord Archbishop of Canterbury.
Marquess of Linlithgow.	Lord Snell.
Earl of Derby.	Lord Hutchison of Montrose.
Earl Peel.	Mr. Attlee.
Lord Middleton.	Mr. Cocks.

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Contents (16)—*contd.*

Lord Hardinge of Penshurst.
Lord Rankeillour.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Sir Reginald Craddock.
Mr. Davidson.
Sir Samuel Hoare.
Sir Joseph Nall.
Lord Eustace Percy.
Sir John Wardlaw-Milne.

Not Contents (7)—*contd.*

Mr. Foot.
Mr. Morgan Jones.

The Earl of Lytton did not vote.

The said amendment is agreed to.

Paragraphs 137 and 138 are again postponed.

Paragraph 139 is read, as amended, and is as follows :—

" 139. We do not think that the consent of the Governor should any longer be required to the introduction of legislation which affects religion or religious rites and usages. We take this view, not because we think that in practice the necessity for such consent might prejudice attempts to promote valuable social reforms, which has been suggested as a reason for dispensing with it, but because in our judgment legislation of this kind is above all other such as ought to be introduced on the responsibility of Indian Ministers. We have given our reasons elsewhere for holding that matters of social reform which may touch, directly or indirectly, Indian religious beliefs can only be undertaken with any prospect of success by Indian Ministers themselves ; and, that being so, we think it undesirable that their responsibility in this most important field should be shared with a Governor. It has been objected that the mere introduction of legislation affecting religion or religious rites and usages might be dangerous at times of religious or communal disturbance, and might indeed itself produce such disturbance. We observe, however, a Proposal in the White Paper[3] whereby the Governor would be empowered, in any case in which he considers that a Bill introduced or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province, to direct that the Bill, clause or amendment shall not be further proceeded with. This appears to us an ample safeguard against the danger to which we have referred ; and in addition it would of course always be open to the Governor, in his discretion, to refuse his assent to any Bill which has been passed by the Legislature, if in his opinion it is undesirable on any ground that it should become law. We had also thought at first that a Provincial Legislature ought not to be empowered (as they are not empowered at present) to pass a law which repeals or is repugnant to an Act of Parliament extending to British India, even though the prior consent of the Governor to its introduction in the Legislature might be required. We understand, however, that the great bulk of the existing law of India is the work of Indian legislative bodies and that there are in fact very few Acts of Parliament (apart from those relating to subjects on which it is proposed that the Legislatures shall have no power to legislate at all) which form part of the Indian statute book, and fewer still dealing with matters which will fall within the provincial sphere. In these circumstances we think that the

The White Paper proposals approved.

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proposal should stand; but the Governor's Instrument of Instructions might perhaps direct him to reserve bills which appear to him to fall within this category."

It is moved by the Lord Hardinge of Penshurst. Line 10, to leave out (" only ") and to insert (" best ") and to leave out (" any ").

The same is agreed to.

It is moved by the Lord Rankeillour. Lines 13 to 28, to leave out from (" Governor.") in line 13 to (" We ") in line 28 and to insert (" In " saying this, however, we must guard ourselves against the implication " that the Governor's special responsibility for the protection of the " legitimate interests of minorities does not extend to legislation as well as " administration. On the contrary it will clearly be his duty to protect " all minorities from unjust proposals in the Legislature. In the case of " measures introduced by ministers we understand that it is intended that " he shall have the power of directing the withdrawal or amendment of " any Bill, and we think that this power should be made explicit in the " Constitution Act. In the case of other Bills it will be open to him by " formal Message or otherwise to intimate that he will be unable to give " his assent to the proposals either in any form or without amendment; " and we note that it is already provided that he may stop the progress " of any Bill which is of so provocative a nature as to involve his other " special responsibility for the peace and tranquillity of the Province. " We should add that suitable machinery should be devised to ensure that " complaints of minorities shall be brought to the notice of the Governor").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Samuel Hoare and Mr. Butler. Line 13, after (" has ") to insert (" been represented to us that the removal of the " safeguard of the Governor's previous sanction may operate to the " disadvantage of small minorities such as the Indian Christians who " would not be in a position to make effective their objections to " legislation which they regarded as prejudicial. But we do not think " that the recommendation we have just made is, in fact, open to this " criticism. The Governor could always prevent the introduction or " secure the withdrawal of any legislative proposal by his Ministers " which he regarded as inconsistent with the discharge of his special " responsibility for the protection of minorities, and he would, in " addition, be free, as indicated in the next paragraph, to refuse his " assent to any Bill which had been passed by the Legislature if, in his " opinion, it were undesirable on any ground that it should become law. " It would also be open to him to intimate to the Legislature by Message " or otherwise the attitude which he felt bound to take to any proposal " under discussion, to the extent even of making it clear that he would " be unable to accord his assent to the proposal if the Legislature were " to pass it. It has further ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Lines 22 and 23, " to leave out from (" with.") in line 23 to (" We ") in line 27 and to " insert (" We understand that this proposal is, in fact, intended to meet " precisely such a situation as that just indicated—namely a situation in " which the *mere* discussion of a question in the Legislature might itself " so disturb public opinion as to give rise to disorder. We entirely " concur that the Governor should possess such a power, but we think " that his Instrument of Instructions should make quite clear the purpose " for which it is designed, namely, that it is not primarily intended as " a safeguard against the passing into law of a measure which the " Governor considered dangerous to peace and tranquillity. For this " purpose the safeguard is the power of withholding assent.").

The same is agreed to.

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It is moved by Sir Samuel Hoare and Mr. Butler. Line 31, to leave out (" Governor ") and to insert (" Governor-General ").

The same is agreed to.

It is moved by The Lord Middleton. Line 40, to leave out (" might " perhaps ") and to insert (" should ").

The same is agreed to.

Paragraph 139 is again read, as amended.

The further consideration of paragraph 139 is postponed.

Paragraph 140 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 68, line 39, after (" pleasure ") to insert (" , we regard this discretionary power as a real one to " be used whenever necessary.")

The same is agreed to.

Paragraph 140 is again read, as amended.

The further consideration of paragraph 140 is postponed.

Paragraph 141 is read, as amended, and is as follows :—

Excluded Areas.

" 141. It is proposed that the powers of a Provincial Legislature shall not extend to any part of the Province which is declared to be an " Excluded Area " or a " Partially Excluded Area." In relation to the former, the Governor will himself direct and control the administration ; in the case of the latter he is declared to have a special responsibility. In neither case will any Act of the Provincial Legislature apply to the Area, unless by direction of the Governor given at his discretion, with any exceptions or modifications which he may think fit. The Governor will also be empowered at his discretion to make regulations having the force of law for the peace and good government of any Excluded or Partially Excluded Area, but subject in this case to the prior consent of the Governor-General. We have already expressed our approval of the principle of Excluded Areas, and we accept the above proposals as both necessary and reasonable,[1] so far as the Excluded Areas proper are concerned. We think, however, that a distinction might well be drawn in this respect between Excluded Areas and Partially Excluded Areas, and that the application of Acts to, or the framing of Regulations for, Partially Excluded Areas is an operation which might appropriately be performed by the Governor acting on the advice of his Ministers the decisions taken in each case being, of course, subject to the Governor's special responsibility for Excluded Areas, that is to say, being subject to his right to differ from the proposals of his Ministers if he thinks fit."

It is moved by Sir Samuel Hoare on behalf of the Viscount Halifax, line 20, after (" for ") to insert (" Partially ").

The same is agreed to.

Paragraph 141 is again read, as amended.

The further consideration of paragraph 141 is postponed.

Paragraph 142 is again postponed.

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Paragraph 143 is again read.

It is moved by the Lord Eustace Percy. Page 69, lines 29 to 31, to leave out from (" proposal ") in line 29 to (" without ") in line 31 and to insert (" for the " imposition of taxation or for the appropriation of public revenues, nor any " proposal affecting or imposing any charge upon those revenues, can be " made ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 69, line 37, after (" revenue ") to insert (" which require a vote of the Legislature ").

The same is agreed to.

Paragraph 143 is again read.

The further consideration of paragraph 143 is postponed.

Paragraph 144 is again postponed.

Paragraph 145 is again read.

It is moved by the Lord Rankeillour. Page 71, line 1, after (" Paper,") to insert (" except that we think that the salaries and pensions of the Judges, " in accordance with English precedent, should not be open to discussion ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 71, line 8, at the end to insert (" In one respect, however, we think the list is defective. The " administration of Excluded Areas is a matter which will be the exclusive " responsibility of the Governor and, following the analogy of the Governor-" General's reserved departments, we think that the expenditure required for " these areas, whether derived from provincial or central revenues, should not " be subject to the vote of the provincial Legislature.")

The same is agreed to.

Paragraph 145 is again read, as amended.

The further consideration of paragraph 145 is postponed.

Paragraph 146 is again postponed.

Paragraph 147 is again read.

It is moved by the Lord Rankeillour on behalf of the Marquess of Salisbury. Page 71, line 35, after (" that ") to insert (" both in respect to Financial " Powers and generally ").

The same is agreed to.

Paragraph 147 is again read, as amended.

The further consideration of paragraph 147 is postponed.

Appendix I is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 73, line 5, in the first column after (" discretion ") to insert (" in the proportion of 50 per cent. women and 50 per cent. representatives of Labour ").

The same is disagreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 73, line 20, to leave out (" combined with ") and to insert (" or ").

The same is agreed to.

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Appendix I is again read as amended.
The further consideration of Appendix I is postponed.

Paragraphs 148 to 150 are again postponed.

Paragraph 150A is read, as amended, and is as follows :—

Accession of States to Federation a voluntary act.

" 150A. The rights, authority and jurisdiction which will thus be " conferred by the Crown on the new Central Government will not " extend to any Indian State. It follows that the accession of an " Indian State to the Federation cannot take place otherwise " than by the voluntary act of its Ruler. The Constitution Act " cannot itself make any Indian State a member of the Federation; " it will only prescribe a method whereby the State may accede " and the legal consequences which will flow from the accession. " There can be no question of compulsion so far as the States " are concerned. Their Rulers can enter or stand aside from the " Federation as they think fit. They have announced their willing- " ness to consider federation with the Provinces of British India " on certain terms; but whereas the powers of the new Central " Government in relation to the Provinces will cover a wide field " and will be identical in the case of each Province, the Princes have " intimated that they are not prepared to agree to the exercise by " a Federal Government for the purpose of the Federation of a similar 17 " range of powers in relation to themselves."

It is moved by the Marquess of Linlithgow. Line 17, to leave out (" a similar ") and to insert (" an identical ").

The same is agreed to.

Paragraph 150A is again read, as amended.
The further consideration of paragraph 150A is postponed.

Paragraph 152 to 154 are again postponed.

Paragraph 155 is again read.

It is moved by the Marquess of Zetland. Page 78, lines 42 to 45, to leave out from (" capacity ") in line 42 to the end of line 45 and to insert (" this " suggestion ").

The same is agreed to.

Paragraph 155 is again read, as amended.
The further consideration of paragraph 155 is postponed.

Paragraphs 156 to 158 are again postponed.

Paragraph 159 is again read.

It is moved by the Lord Middleton. Page 80, line 1, to leave out (" public").

The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 80, lines 32 and 33, to leave out (" not merely ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir John Wardlaw-Milne. Page 80, lines 33 to 35, to leave out from (" contribution ") in line 33 to (" to ") in line 35.

The amendment, by leave of the Committee, is withdrawn.

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It is moved by Sir Samuel Hoare and Mr. Butler. Page 80, line 37, to leave out (" leave nothing undone ") and to insert (" do their utmost ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 80, line 39, to leave out (" quite inevitable ") and to insert (" absolutely necessary ").

The same is agreed to.

Paragraph 159 is again read, as amended.

The further consideration of paragraph 159 is postponed.

Paragraph 160 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 81, line 7, after the first (" the ") to insert (" main ").

The same is agreed to.

Paragraph 160 is again read, as amended.

The further consideration of paragraph 160 is postponed.

Paragraph 161 is again read.

It is moved by Sir Reginald Craddock. Page 81, line 39, after (" are ") to insert (" almost ").

The same is agreed to.

Paragraph 161 is again read, as amended.

The further consideration of paragraph 161 is postponed.

Paragraphs 162 to 166 are again postponed.

Paragraph 167 is again read.

It is moved by Mr. Butler on behalf of the Viscount Halifax. Page 85, lines 18 and 19, to leave out from (" the ") in line 18 to the end of the paragraph and to insert (" necessity arising for the exercise by the Governor-General " of his special power in the financial field.")

The same is agreed to.

Paragraph 167 is again read, as amended.

The further consideration of paragraph 167 is postponed.

Paragraph 168 in again postponed.

Paragraph 170 is again read.

It is moved by the Lord Middleton. Page 86, line 23, to leave out (" assume ") and to insert (" think ").

The same is agreed to.

It is moved by the Lord Middleton. Page 86, line 24, to leave out (" will ") and to insert (" should ").

The same is agreed to.

Paragraph 170 is again read, as amended.

The further consideration of paragraph 170 is postponed.

Paragraphs 171 and 172 are again postponed.

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Paragraph 173 is again read.

It is moved by the Lord Rankeillour. Page 88, line 1, after (" reserved.") to insert (" It might even conceivably be necessary for him to take into his " own hands or to direct the Governor to assume in his discretion any depart- " ment of the Provincial Government.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Reginald Craddock. Page 88, line 10, after (" areas.") " to insert (" There may also be cases in which at the time of an emergency " not connected with any Constitutional crisis it may be necessary for the " Federal Government or the Governor-General to issue instructions to a " Provincial Government in connection with the co-operation of the police, " such as arose at the outbreak of the War, especially in connection with " the guarding of railways and bridges or the influx of returning revolution- " aries from abroad.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 88, line 10, after (" areas,") to insert (" or, in times of emergency, with regard to the guarding of railways " and bridges and the like. In frontier areas, and especially in the North- " West Frontier Province special measures may have to be taken in certain " circumstances to control the movement of persons or goods.")

The same is agreed to.

Paragraph 173 is again read, as amended.

The further consideration of paragraph 173 is postponed.

Paragraph 174 is read, as amended, and is as follows :—

Co-operation essential.

" 174. It may be assumed that in practice the willing co-operation of the other departments of Government will render unnecessary any recourse to these special powers ; and we should view with dismay the prospects of any new Constitution, if the relations between the ministerial and the reserved Departments were conducted in an atmosphere of jealousy or antagonism. The influence of the Governor-General will no 6
doubt always be exerted to secure co-ordination and harmony : but it 7
may well be that some permanent co-ordinating machinery will be desirable. The British-India Joint Memorandum suggests a statutory Committee of Indian Defence constituted on the lines of the Committee of Imperial Defence ; but we are not sure that its authors fully appreciate the position and functions of the latter, since it is not a statutory body and its value is perhaps increased by the elasticity of its constitution. We are disposed to think that a body with statutory powers and duties might embarrass the Governor-General and even be tempted to encroach upon his functions. An advisory body, similar to the Committee of Imperial Defence, constituted at the Governor-General's discretion would not be open to that criticism and might, we think, have many advantages. It has been urged upon us that, in order to build up an informed opinion upon Defence questions, a statutory Committee of the Legislature should be established. We understand that, outside the formal opportunities of discussing Defence questions on such occasions as the Defence Budget, opportunities are already given to members of the Legislature to inform themselves upon Army questions ; and, provided that the extent and methods of consultation are clearly understood to rest in the discretion of the Governor-General, we see no objection to the formation of any Committee or Committees that the Federal Government and Legislature may consider useful. We feel, however, that this is essentially a question 29
to be settled by the Legislature and not by the Constitution Act."

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It is moved by the Lord Eustace Percy. Line 6, after (" antagonism ") to insert (" But, though ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 7, to leave out (" but ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 29, to leave out (" the Legislature ") and to insert (" them ").

The same is agreed to.

Paragraph 174 is again read, as amended.

The further consideration of paragraph 174 is postponed.

Paragraph 175 is again postponed.

Paragraph 175A is read, as amended, and is as follows :—

Employment of Indian troops outside India.

" 175A. In illustration of the principle that the Governor-General should invite the collaboration of the Federal Ministry to the widest extent compatible with the preservation of his own responsibility, we would refer to the question of lending Indian personnel of the Defence forces for service outside India. There have been many occasions on which the Government of India have found themselves able to spare contingents for operations overseas in which considerations of Indian defence have not been involved ; and we may presume that such occasions will recur. There appears to be some misconception in India on this point, which it would be desirable to remove. It is not the case that, because a Government can in particular circumstances afford a temporary reduction of this kind in its standing forces, the size of those forces is thereby proved to be excessive ; or conversely, that if it is not excessive troops cannot be spared for service elsewhere. These standing forces are in the nature of an insurance against perils which may not always be insistent but which nevertheless must be provided for. There is thus no ground for assuming a *prima facie* objection to the loan of contingents on particular occasions. If on such occasions the Governor-General is asked whether he can lend a contingent, he must decide, first, whether the occasion involves the defence of India in the widest sense, and secondly, whether he can spare the troops having regard to all the circumstances at the time. Both these decisions would fall within the exclusive sphere of his responsibility. If he decided that troops could be spared, the only remaining constitutional issue would be narrowed down to one of broad principle, namely, that Indian leaders as represented in the Federal Ministry should be consulted before their fellow-countrymen were exposed to the risks of operations in a cause that was not their own. In view, however, of the complexities that may arise, we do not feel able to recommend that the ultimate authority of the Governor-General should be limited in this matter. Our proposal is that when the question arises of lending Indian personnel of the Defence Forces for service outside India on occasions which in the Governor-General's decision do not involve the defence of India in the broadest sense, he should not agree to lend such personnel without consultation with the Federal Ministry. We have little doubt that in practice he will give the greatest weight to the advice of the Federal Ministry before reaching his final decision. The financial aspect has also to be considered. Although in the circumstances we are discussing the defence of India would not be involved, it might on occasions be in India's general interests to make a contribution towards the cost of external operations. A proposal in the White Paper[1] reproduces the provision of s. 20 (1) of the Government of India Act that

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" the revenues of India shall be applied for the purposes of the government of India alone " ; and a contribution in the general interests of India would come within the scope of that provision. Under the new Constitution, however, the recognition of interests of this nature would fall within the province of the Federal Ministry and Legislature, since, *ex hypothesi*, they would not be defence interests. If, therefore, the question should arise of offering a contribution from India's revenues in the circumstances we are discussing (and the interests in question did not fall under the other reserved department of External Affairs) we are of opinion that it would need to be ratified by the Federal Legislature."

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Lines 27 to 30, to leave out from (" own ") in line 27, to (" Our ") in line 30, and to insert (" We think that this should be done and we have " little doubt that in practice the Governor-General will give the greatest " weight to the advice of the Ministry before taking his final decision.")

Objected to.

On Question :—

Contents (5).	Not Contents (20).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Zetland.
Mr. Cocks.	Marquess of Linlithgow.
Mr. Foot.	Earl of Derby.
Mr. Morgan Jones.	Earl of Lytton.
	Earl Peel.
	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Line 30, to leave out (" Our proposal is that ") and to insert (" Further ").

The same is disagreed to.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Line 34, to leave out (" consultation with ") and to insert (" the consent of ").

The same is disagreed to.

It is moved by the Lord Rankeillour. Line 36, after (" Ministry ") to insert (" except in case of extreme emergency where such consultation is " impossible ").

The same is disagreed to.

Paragraph 175A is again read,

The further consideration of paragraph 175A is postponed.

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Paragraphs 176 to 180 are again postponed.

Paragraph 181 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 91, line 15, after (" countries ") to insert (" or the frontier tracts of India ").

The same is agreed to.

Paragraph 181 is again read, as amended.

The further consideration of paragraph 181, is postponed.

Paragraph 182 is again postponed.

Paragraph 183 is again read.

It is moved by Mr. Butler on behalf of the Viscount Halifax. Page 92, line 19, to leave out (" is ") and to insert (" has for some time been ").

The same is agreed to.

Paragraph 183, is again read, as amended.

The further consideration of paragraph 183 is postponed.

Paragraph 184 is again postponed.

Paragraph 185 is again read.

It is moved by the Marquess of Zetland. Page 94, line 23, to leave out (" administration ") and to insert (" administrative ").

The same is agreed to.

Paragraph 185 is again read, as amended.

The further consideration of paragraph 185 is postponed.

Paragraph 186 to 189 are again postponed.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 96, after paragraph 189, to insert the following new paragraphs :—

(" 190. In fact we go further and we suggest that any attempt to create at the Centre an exact reproduction of the machinery which functions at Westminster would be doomed to failure. In this country the system of responsible government depends on stable divisions on Party lines and, generally speaking, functions most satisfactorily when there are only two main Parties. These parties are not the creation of groups formed by members of the legislature subsequent to their election, but represent real divisions of opinion which extend back to the constituencies. In the Federal legislature, which we are now discussing, apart from the communal cleavages which already make the working of the Westminster system difficult in many provinces, there will be two distinct categories of members, the elected representatives from British India and the nominees of the Rulers of States. It seems difficult, therefore, to envisage the emergence of Parties on lines familiar to this country. Two further obstacles present themselves. The first is that, owing to the nature of the Federation, the members of the legislature, will not be equally concerned in its territory, and that the jurisdiction of the Federation will not extend as to all subjects equally over that territory. The second is that the subject-matter of Central administration and legislation provides a somewhat slender basis for a full parliamentary system. Ninety per cent. of everything that concerns the ordinary citizen will come within the ambit

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of Provincial administration. For these reasons we believe that responsibility at the Centre will be developed on lines very different from those at Westminster. It is not, perhaps, always realised in India that the British Cabinet is in fact the master of the legislature. This is a result if the Party system, for the Cabinet, although formally chosen by the Crown, is in fact composed of the leading members of the Party in a majority. It maintains its control largely through the discipline of the Party machine backed by the power of Dissolution. We do not think that this power of the Ministry to control the Legislature will be reproduced at Delhi; indeed we think it probable that the Ministry will be far more the servant than the master of the legislature; in other words, the members of the legislature will have to take full responsibility for their actions, and we do not think that the practice, whereby a ministry is dependent from day to day on the Vote of the Legislature will be workable in India. We, therefore, suggest certain proposals for giving—what is essential—greater stability to the administration.

"191. The Federal Executive, in our view, should consist of the Governor-General, the Counsellor in charge of Defence, and Ministers, the number of whom we think it undesirable to specify. We consider that when the Legislature has been constituted the Governor-General should consult with leading members in order to find out what combination of persons would be likely to command the confidence of the legislature. He should then submit these Ministers and the Counsellor in charge of Defence as a Ministry to the Legislature for a Vote of Confidence. If this vote is carried the Ministry should remain in office for a definite term during which period it could only be removed by a definite Vote of No Confidence carried by a two-thirds majority. As already stated the position of the Ministry will be something like that of the Swiss Executive. Formal joint responsibility will not be explicitly laid down, as indeed, it is not in most constitutions, but the actions of the Government would be the actions of all its members, and, although the Ministry would be composed of heterogenous elements it would be subjected to those powerful influences which tend to create solidarity in any body of persons holding positions of responsibility. We think that in the early stages of the working of the new Constitution the Governor-General will preside at meetings of his Cabinet and that only as time goes on will this practice fall into desuetude. There should, however, be a First Minister who will preside in the absence of the Governor-General and lead in the Legislature. He should hold a portfolio without too heavy an administrative content. For the working of the Legislative machine we suggest the setting up of a number of standing committees, some of which Defence, Finance, Foreign Affairs, should be statutory. These committees should correspond with the functions of the Central Government. They would meet from time to time during the Session. The Minister should preside, while in the case of the Committee of Defence, the official Member would do so. We conceive of these committees working somewhat on the lines of those of municipal bodies or in the Ceylon Constitution. The object should be to bring the members of the Legislature into real contact with administration. We think that the Committee stage of a Bill should, wherever possible, be remitted to the standing committee dealing with the particular function of government concerned. We think that in this way, through a developed committee system, much of the difficulty which has been brought to our notice of State Members voting on purely British India questions would be avoided as it would be natural to remit Bills dealing solely with British India to committees of members drawn only from British India. The Defence Committee would have less power of control than would be possessed by the other committees, but in spite of this would, we think, form a valuable

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field of experience for members. We consider that at all these committees it should be the usual practice for officials to be present, not for influencing policy, but for providing information. In our view, owing to the subject-matter which would be dealt with at the Centre and to the position of the Federation, it is unlikely that governments will be formed with definite legislative programmes, as in this country. We think that much legislation will come forward in the way of private members' Bills. We have made this general sketch of the way in which we might expect responsibility to be exercised at the Centre, because it is important to realize that the British system is not the only possible system and that it itself is susceptible of reform in some directions. It is a question as to what provisions can be included in the Constitution Act itself. We would prefer to leave the development of the Constitution at the Centre to the elected Members to work out the forms and methods which seem appropriate. We attach importance, however, to the provision which will give to the Ministry some degree of stability, for we have seen in many countries where there has been no stable Party system in Legislatures, but only a number of groups, the danger and weakness entailed by constant changes of Ministry; and we should desire that at the Centre, from the start, it should not be assumed that because the Legislature takes a different view from the Ministry on a particular point that therefore the Ministry should resign. It is for this reason that we have suggested that changes of Ministry should only take place as the result of a direct Vote of No Confidence carried by a two-thirds majority.")

The same are disagreed to.

Paragraph 194 is read, as amended, and is as follows:—

Difficulty of the subject.

" 194. There is no part of the subject of our enquiry which has seemed to us to present greater difficulties than the question of the method of election to a Central Legislature for India. It is one on which there has always been a marked difference of opinion; and we recall that the Joint Select Committee which considered the Government of India Bill in 1919 did not accept the recommendations of the Southborough Committee which had been embodied in the Bill, and that there is a similar divergence between the recommendations of the Statutory Commission and the proposals in the White Paper. It should be recognized that to attempt to provide a legislative body which shall be
11 representative of a population of over 350 millions is without precedent. We are met at the outset by the difficulty of applying the representative system on a basis of direct representation to a unit of such magnitude. On the one hand, if the constituencies were of a reasonable size the resultant Chamber would be unmanageably large; if, on the other hand, the Chamber were of a reasonable size the constituencies on which it was based would necessarily be enormous. In these circumstances our task has been an anxious one, and we have only arrived at our conclusions after a careful and prolonged examination of the matter in all its aspects."

It is moved by the Marquess of Linlithgow. Line 11, to leave out (" over ") and to insert (" nearly ").

The same is agreed to.

Paragraph 194 is again read, as amended.

The further consideration of paragraph 194 is postponed.

Paragraph 195 is again read.

It is moved by the Marquess of Linlithgow. Page 98, line 37, to leave out (" is to ") and to insert (" would "); line 39, to leave out (" will ") and to insert (" would "). Page 98, line 40, to leave out (" will ") and to insert

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(" would ") ; line 42, to leave out (" will ") and to insert (" would ") ; line 44, to leave out (" provided ") and to insert (" proposed ") ; line 45, to leave out (" shall ") and to insert (" should ") ; line 46, to leave out (" will ") and to insert (" would ") ; page 99, line 1, to leave out (" will ") in two places and to insert (" would ").

The same are agreed to.

Paragraph 195 is again read, as amended.

The further consideration of paragraph 195 is postponed.

Paragraph 196 is again read.

It is moved by the Marquess of Linlithgow. Page 99, line 5, to leave out (" will ") and to insert (" would "), line 9 to leave out (" will ") and to insert (" would ") ; line 15, to leave out (" will ") and to insert (" would ") ; line 16, to leave out (" will ") and to insert (" would ").

The same are agreed to.

Paragraph 196 is again read, as amended.

The further consideration of paragraph 196 is postponed.

Paragraph 197 is again read.

It is moved by the Marquess of Linlithgow. Page 99, line 20, to leave out (" will ") and to insert (" would ") ; line 25, to leave out (" will ") and to insert (" would ") ; line 27, to leave out (" will ") and to insert (" would ") ; line 29, to leave out (" will ") and to insert (" would ") ; line 31, to leave out (" will ") and to insert (" would ") ; line 34, to leave out (" will ") and to insert (" would ") ; line 36, to leave out (" will ") and to insert (" would ").

The same are agreed to.

Paragraph 197 is again read, as amended.

The further consideration of paragraph 197 is postponed.

Paragraph 198 is again postponed.

Paragraph 199 is read, as amended, and is as follows :—

Direct or indirect election.

" 199. Direct election has the support of Indian opinion and is strongly advocated by the British-India Delegation in their Joint Memorandum. It has been the system in India for the last twelve years, and has worked on the whole reasonably well, though, it should be remembered, with a much more limited franchise than that now proposed. The Southborough Committee which visited India in 1919 for the purpose of settling the composition of, and the method of election to, the Legislatures set up by the Government of India Bill of that year, did, it is true, recommend the indirect system ; but the Joint Select Committee which examined the Bill were of a contrary view, and Parliament accepted the opinion of the Committee. It may also be argued that, with the increase in the size of the Legislatures now proposed, it will be possible to effect so appreciable a reduction in the size of the existing constituencies as to diminish the objections based on that feature of the present system. But even the reduction in the 15
size of constituencies which would follow from the White Paper proposals will still leave them unwieldy and unmanageable, unless the number of seats is increased beyond all reasonable limits. Where a single constituency may be greater in extent than the whole of Wales, a 19
candidate for election could not in any event commend or even present his views to the whole body of electors, even if the means of communication were not, as in India, difficult and often non-existent, and quite apart from obstacles presented by differences in language and a widespread illiteracy ; nor could a member after election hope to guide or

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inform opinion in his constituency. These difficulties would be serious enough with the comparatively limited franchise proposed in the White Paper; but future extensions of that franchise would be inevitable, and it is obvious that with every increase in the electorate these difficulties are enhanced. Indeed, any considerable extension of the franchise under a system of direct election would cause an inevitable breakdown. We do not believe that constituencies both of large size and containing an electorate of between 200 000 and 300,000 people can be made the basis of a healthy parliamentary system. We think that Parliament
34 and Indian public opinion should face these facts and should recognise that direct election, apart from its immediate merits or demerits at the present time, cannot provide a sound basis for Indian constitutional development in the future. We cannot believe that it would be wise to commit India at the outset of her constitutional development to a line
39 which must prove to be a blind alley."

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Lines 15 to 39, to leave out from (" system.") in line 15 to the end of the paragraph and to insert (" Bearing in mind the strength of Indian opinion " in this matter we have come to the conclusion, notwithstanding the " objections which can be urged against it, that there is no alternative to " the adoption of a system of direct election ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Zetland. Line 19, to leave out (" greater in extent than ") and to insert (" more than twice as large in area as ").

The same is agreed to.

It is moved by the Lord Middleton. Line 34, to leave out (" public ")

The same is agreed to.

Paragraph 199 is again read, as amended.

The further consideration of paragraph 199 is postponed.

Paragraphs 200 and 201 are again postponed.

Paragraph 202 is again read.

It is moved by the Lord Rankeillour. Page 101, line 15, after (" by ") to insert (" past and present members of ")

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 101, lines 15 to 18, to leave out from (" bodies,") in line 15 to the end of the sentence and to insert (" but " the general tenor of the evidence before us indicates that Indian opinion " is strongly opposed to this system, largely owing to its association with the " procedure under the Morley-Minto Constitution, which does not seem to " have worked well; and we cannot recommend it in present circumstances ").

The same is agreed to.

It is moved by Sir Reginald Craddock. Page 101, line 40, to leave out (" and ") and after (" Europeans ") to insert (" and Anglo-Indians ").

The same is agreed to.

Paragraph 202 is again read, as amended.

The further consideration of paragraph 202 is postponed.

Paragraph 202A is read, as amended, and is as follows :—

Indirect election to be regarded in the nature of an experiment.

" 202A. We feel strongly, however, that it is not possible for Parliament to lay down to-day the exact method of constituting the Central Legislature for any long period of time. The question has been repeatedly
4 examined, before the passage of the present Government of India Act, by the Statutory Commission, and by the Round Table Conferences

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and the Indian Franchise Committee in connection with the present proposals for reform. Throughout this whole period opinions have been deeply divided and no clear-cut solution has emerged, as indeed was to be expected when an attempt is being made to create a Federation on a scale and of a character hitherto without precedent. We have chosen the system of indirect election by the Provincial Legislatures, not because we do not feel the force of the arguments which can be brought against it, but because we think that it is the arrangement which will give the most practical system at the outset of the Federation. Moreover, while it will be possible in future to pass from the indirect to the direct system of election should experience show that step to be advisable, the maintenance and still more the extension of the system of direct election to-day would be to commit India to a system which logically leads to adult suffrage before any way has been discovered of overcoming the insuperable objections to the gigantic constituencies containing hundreds of thousands of voters which are inevitable with adult franchise in India under the ordinary system of direct election. We feel that the ultimate solution may well be found in some variant either of the system whereby groups of primary voters elect secondary electors, who vote directly for members of the federal assembly or of the system whereby those already elected to local bodies, such as village panchayats, are the voters who vote directly for members of that assembly. Systems of this kind apparently work with considerable success in many countries where conditions are not dissimilar to those in India. But the discovery of the best method of adapting those ideas to India's needs and of removing the obstacles which now stand in the way of their adoption is clearly one which should be made by Indians themselves in the light of their experience of the practical working of representative institutions under the new Constitution. We consider, therefore, that our proposals should be regarded as being in the nature of an experiment and that 35
further consideration should be given to the question of the method of composing the Central Legislature in the light of practical working of the Constitution. We do not propose that there should be any formal examination of the problem by a Statutory Commission after any specific date, for we think that experience has shown that there are strong objections to automatic provisions of this kind. But we consider that Parliament should recognise that after sufficient time has elapsed to enable clear judgments to be formed of the way in which the Constitution works and of the new political forces it has brought into being, it may be necessary to make amendments in the method of composing the Central Legislature, and we hope that if Indian opinion thinks modification is required the Federal Legislature will lay its own proposals before Parliament in the form recommended elsewhere[1] in this report."

It is moved by the Marquess of Zetland. Line 4, after (" examined ") to insert (" both ").

The same is agreed to.

It is moved by the Marquess of Zetland. Line 4, after (" Act ") to insert (" and subsequently ") and to leave out the second (" by ").

The same is agreed to.

It is moved by the Lord Hardinge of Penshurst. Line 35, to leave out (" in the nature of an experiment ") and to insert (" open to future review ; ").

The same is agreed to.

Paragraph 202A is again read, as amended.

The further consideration of paragraph 202A is postponed.

Paragraph 203 is again postponed.

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Paragraph 204 is again read.

It is moved by the Marquess of Zetland. Page 102, lines 26 and 27, after ("year") in line 26, to insert a full stop and to leave out the brackets in lines 26 and 27.

The same is agreed to.

Paragraph 204 is again read, as amended.

The further consideration of paragraph 204 is postponed.

Paragraphs 205 to 206 are again postponed.

Paragraph 207 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 103, line 44, to leave out (" nearly six hundred States ") and to insert (" over 600 States, " Estates and Jagirs which constitute the non-British portion of India.")

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr Butler. Page 104, line 14, to leave out (" by ") and to insert (" within ").

The same is agreed to.

Paragraph 207 is again read, as amended.

The further consideration of paragraph 207 is postponed.

Paragraph 208 is again postponed.

Paragraph 209 is again read.

It is moved by the Marquess of Linlithgow. Page 104, line 45, to leave out (" by ") and to insert (" on ").

The same is agreed to.

Paragraph 209 is again read as amended.

The further consideration of paragraph 209 is postponed.

Paragraphs 210 to 213 are again postponed.

Paragraph 214 is again read.

It is moved by the Lord Rankeillour. Page 106, line 30, to leave out (" a ") and to insert (" any Bill, clause or ").

The same is agreed to.

Paragraph 214 is again read, as amended.

The further consideration of paragraph 214 is postponed.

Paragraph 215 is again postponed.

Paragraph 216 is read, as amended, and is as follows :—

States' representatives and British-India legislation.

" 216. The question was much discussed before us whether any special provision ought to be included in the Constitution Act prohibiting States' representatives from voting on matters of exclusively British-India concern. The British-India Delegation in their Joint Memorandum urge that this should be done, and their suggestions are briefly as follows :—(1) that in a division on a matter concerning solely a British-India subject, the States' representatives should not be entitled to vote ; (2) that the question whether a matter relates solely to a British-India subject or not should be left to the decision of the Speaker of the House, which should be final ; but (3) that if a substantive vote of no confidence is proposed on a matter relating solely to a British-India subject, the States' representatives should be entitled to vote, since the decision might vitally affect the position of a Ministry formed on a basis of collective responsibility ; (4) that if the Ministry is defeated on a subject of exclusively British-India interest, it should not necessarily resign. We do not think that these suggestions would in any way meet the case. Circumstances may make any vote of a Legislature, even on a matter intrinsically unimportant, an unmistakable vote of no confidence ; the distinction between formal votes of no confidence and other votes

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is an artificial and conventional one, and it would be impossible to base any statutory enactment upon it. On the other hand, the States have made it clear that they have no desire to interfere in matters of exclusively British-India concern, nor could we suppose that it would be in their interests to do so; but they are anxious, for reasons which we appreciate, that their representatives should not be prevented by any rigid statutory provisions from exercising their own judgment, from supporting a Ministry with whose general policy they are fully in agreement, or from withholding their support from a Ministry whose policy they disapprove. In these circumstances we think that the true solution is that there should be no such prohibition but that the matter should be 30
regulated by the common sense of both sides and by the growth of constitutional practice and usage, and indeed we have no doubt that 32
both parties will find it in their mutual interest to come to some suitable working arrangement at an early stage. We have, however, one sugges- 34
tion to make which we think may be worth consideration. Under the Standing Orders of the House of Commons all Bills which relate exclusively to Scotland and have been committed to a Standing Committee are referred to a Committee consisting of all the members representing the Scottish constituencies, together with not less than ten nor more than fifteen other members. We think that a provision on these lines might very possibly be found useful, and that the Constitution Act might require that any Bill on a subject included in List III should, if extending only to British India, be referred to a Committee consisting either of all the British-India representatives or a specified number of them, to whom two or three States' representatives could, if it should be thought desirable, be added."

The Marquess of Linlithgow. Line 30, to leave out (" such ") and to insert (" statutory ").

The same is agreed to.

It is moved by the Lord Eustace Percy on behalf of the Marquess of Salisbury. Line 32 to 34, to leave out from (" usage ") in line 32 to the end of the sentence.

The same is agreed to.

Paragraph 216 is again read, as amended.

The further consideration of paragraph 216 is postponed.

Paragraph 217 is read, as amended, and is as follows :—

Administrative nexus between the Federation and its constituent units.

" 217. The transformation of British India from a unitary into a Federal State necessitates a complete readjustment of the relations between the Federal and Provincial Governments. The Provincial Governments are at the present time subordinate to the Central Government and under a statutory obligation to obey its orders and directions though the Central Government, and indeed, the Secretary of State himself, is bound by statutory rules not to interfere with the provincial administration save for certain limited purposes in matters which under the devolution rules now fall within the transferred provincial sphere. But now that the respective spheres of the Centre and of the Provinces will in future be strictly delimited and the jurisdiction of each (except in the concurrent field which we have described elsewhere) will exclude the jurisdiction of the other, a nexus of a new kind must be established between the Federation and it constituent units. We are impressed by the possible dangers of a too strict adherence to the principles of what is known as Provincial Autonomy. The Statutory Commission in their recommendations for Provincial Autonomy were, we think, not unaffected by the desire to give the largest possible ambit to autonomy in the

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provincial sphere, owing to their inability at that time to recommend responsibility at the Centre. The larger measure of Indian self-government which has obtained in the Provinces during the past twelve years has also, we think, tended to develop and perhaps overdevelop a desire for complete freedom of control from the Centre. We have discussed elsewhere in our Report both the legislative and the financial nexus which the White Paper proposes to create; and we confine our observations here to the administrative relations between the Federal Government as such on the one hand and the Provincial Governments and the Rulers or Governments of the Indian States on the other.

It is moved by the Marquess of Linlithgow. Lines 15 and 16, to leave out (" adherence to the principles of what is known as ") and to insert (" interpretation of the principle of ").

The same is agreed to.

Paragraph 217 is again read, as amended.

The further consideration of paragraph 217 is postponed.

Paragraph 218 is again read.

It is moved by the Marquess of Linlithgow. Page 108, line 45, to leave out (" any ") and to leave out (" limitations ") and to insert (" reservations ").

The same is agreed to.

Paragraph 218 is again read, as amended.

The further consideration of paragraph 218 is postponed.

Paragraph 219 is read as amended and is as follows :—

Distinction between legislation in the exclusive and concurrent fields.

" 219. We are of opinion that the proposals in the White Paper on this subject require modification in two directions. In the first place, the White Paper draws no distinction between the execution of Federal Acts with respect to subjects on which the Federal Legislature is alone competent to legislate (List I) and the execution of Federal Acts in the concurrent field (List III). It is evident that in its exclusive field the the Federal Government ought to have power to give directions—detailed and specific if need be—to a Provincial Government as proposed in the White Paper. But it is much more doubtful whether it should have such power in the concurrent field. The objects of legislation in this field will be predominantly matters of provincial concern, and the agency by which such legislation will be administered will be almost exclusively a provincial agency. The Federal Legislature will be generally used as an instrument of legislation in this field merely from considerations of practical convenience and, if this procedure were to carry with it automatically an extension of the scope of federal administration, the Provinces might feel that they were exposed to dangerous encroachment. On the other hand, the considerations of practical convenience which would prompt the use of the Federal Legislature in this field will often be the need for securing uniformity in matters of social legislation, and uniformity of legislation will be useless if there is no means of enforcing reasonable uniformity of administration. We think the solution is to be found in drawing a distinction between subjects in the Concurrent List which on the one hand relate, broadly speaking, to matters of social and economic legislation, and those which on the other hand relate mainly to matters of law and order, and personal rights and status. The latter form the larger class, and the enforcement of legislation on these subjects would, for the most part, be in the hands of the Courts or of the provincial authorities responsible for public prosecutions. There can clearly be no

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question of Federal directions being issued to the Courts, nor could such directions properly be issued to prosecuting authorities in the Provinces. In these matters, therefore, we think that the Federal Government should have in law, as they could have in practice, no powers of administrative control. The other class of concurrent subjects consists mainly of the regulation of mines, factories, employers' liability and workmen's compensation, trade unions, welfare of labour, industrial disputes, infectious diseases, electricity, and cinematograph films. In respect of this class, we think that the Federal Government should, where necessary, have the power to issue general directions for the enforcement of the law, but 39
only to the extent provided by the Federal Act in question. In view of the manner in which we propose to constitute the Federal Legislature, it is improbable that a body so representative of provincial opinion will sanction any unreasonable encroachment upon the provincial field of action; but, as a further safeguard against such encroachment, we think that any clause in a statute conferring such powers should require the previous sanction of the Governor-General."

It is moved by the Marquess of Linlithgow. Line 9, after ("Paper.") to insert ("The same principle should apply to matters in which action or "inaction by a provincial Government within its own exclusive sphere "affects the administration of an exclusively Federal Subject—that is to "say, it should be open to the Federal Government to give directions to "a provincial Government which is so carrying on the administration of "a Provincial Subject as to affect prejudicially the efficiency of a "Federal Subject.").

The same is agreed to.

It is moved by the Lord Rankeillour on behalf of the Marquess of Salisbury. Line 39, to leave out ("general").

The same is agreed to.

Paragraph 219 is again read, as amended.

The further consideration of paragraph 219 is postponed.

Paragraph 220 is again postponed.

Paragraph 221 is again read.

The following amendments are laid before the Committee and are as follows:—

The Lord Eustace Percy to move. Page 110, lines 32 to 40, to leave out from the beginning of the paragraph to ("A") in line 40.

The Marquess of Salisbury to move. Page 110, line 37, after ("legislate") to insert ("and of social and economic legislation in the "Concurrent List").

The consideration of the said amendments is postponed.

It is moved by the Marquess of Linlithgow. Page 110, to leave out paragraph 221.

The same is agreed to.

Paragraph 222 is again postponed.

Paragraph 223 is read, as amended, and is as follows:—

Inter-provincial relations.

"223. We do not observe any proposals in the White Paper dealing with disputes or differences between one Province and another, other than disputes involving legal issues, for the determination of which the Federal Court is the obvious and necessary forum. Yet it cannot be supposed that inter-provincial disputes will never arise, and we have

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considered whether it would not be desirable to provide some constitutional machinery for disposing of them. At the present time the Governor-General in Council has the power to decide questions arising between two Provinces in cases where the Provinces concerned fail to arrive at an agreement, in relation to both transferred and reserved subjects; but plainly it would be impossible to vest such a power in the Governor-General or Federal Ministry after the establishment of Provincial Autonomy, though we do not doubt that the good offices of both will always be available for the purpose. But after careful consideration we have come to the conclusion that it would be unwise to include in the new Constitution any permanent machinery for the settlement of disputes of the sort which we have in mind, and in our opinion the more prudent course will be to leave the Provinces free to develop such supplementary machinery as the future course of events may show to be desirable. There will be necessarily many subjects on which inter-provincial consultation will be necessary, as indeed has proved to be the case even at the present time; and we consider that every effort should be made to develop a system of inter-Provincial conferences, at which administrative problems common to adjacent areas as well as points of difference may be discussed and adjusted. Suggestions for a formal Inter-Provincial Council have been made to us, and we draw attention in later paragraphs of our Report[1] to a number of matters on which it is, in our view, important that the Provinces should co-ordinate their policy, in addition to the financial problem which we discuss hereafter.[2] It is obvious that, if departments or institutions of co-ordination and research are to be maintained at the Centre in such matters as agriculture, forestry, irrigation, education, and public health, and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work, the joint interest of the Provincial Governments in them must be expressed in some regular and recognised machinery of inter-Governmental consultation. Moreover, we think that it will be of vital importance to establish some such machinery at the very outset of the working of the new constitution, since it is precisely at that moment that institutions of this kind may be in most danger of falling between two stools through failing to enlist the active interest either of the Federal or the Provincial Governments, both of whom will have many other more immediate pre-occupations. There is, however, much to be said for the view that, though some such machinery may be established at the outset, it cannot be expected to take its final form at that time, and that Indian opinion will be better able to form a considered judgment as to the final form which it should take after some experience in the working of the new constitution. For this reason we doubt whether it would be desirable to fix the constitution of an inter-Provincial Council by statutory provisions in the Constitution Act, but we feel strongly the desirability of taking definite action on the lines we have suggested as soon as the Provincial Autonomy provisions of the Constitution come into operation. We think further that, although the Constitution Act should not itself prescribe the machinery for this purpose, it should empower His Majesty's
54 Government to regulate the working of such co-ordinating machinery as it may have been found desirable to establish, in order that at the appropriate time means may thus be available for placing these matters upon a more formal basis."

It is moved by the Lord Eustace Percy. Line 54, to leave out ("regulate the working of") and to insert ("give sanction by "Order-in-Council to").

The same is agreed to.

Paragraph 223 is again read, as amended.

The further consideration of paragraph 223 is postponed.

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Paragraphs 224 and 225 are again postponed.

Paragraph 226 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 113, line 25, after (" Autonomy ") to insert (" or with the principle that outside the federal " sphere the States' relations will be exclusively with the Crown ").

The same is agreed to.

Paragraph 226 is again read, as amended.

The further consideration of paragraph 226 is postponed.

Paragraph 227 is again postponed.

Appendix (II) is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 114, line 6, after (" members ") to insert (" three of whom must " be women and three representatives of Labour ").

Objected to.

On Question :—

Contents (6).	Not Contents (16).
Lord Archbishop of Canterbury.	Marquess of Linlithgow.
Lord Snell.	Earl Peel.
Mr. Attlee.	Lord Middleton.
Mr. Cocks.	Lord Hardinge of Penshurst.
Mr. Foot.	Lord Rankeillour.
Mr. Morgan Jones.	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

It is moved by Mr. Isaac Foot. Page 116, line 19, to leave out (" women ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 116, line 20, after (" Paper."), to insert (" The number of special " seats assigned to Labour should be at least equal to the total number " assigned to Landholders, Commerce and Industry.")

Objected to.

On Question :—

Contents (4).	Not Contents (17).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Linlithgow.
Mr. Cocks.	Earl Peel.
Mr. Morgan Jones.	Lord Middleton.
	Lord Rankeillour.
	Lord Hutchison of Montrose.

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Contents (4)—*contd.*

Not Contents (17)—*contd.*

Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Sir Reginald Craddock.
Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Sir Joseph Nall.
Lord Eustace Percy.
Sir John Wardlaw-Milne.
Earl Winterton.

The said amendment is disagreed to.

It is moved by Mr. Isaac Foot. Page 117, line 5, after (" Anglo-Indians "), to insert (" women ").

The same is agreed to.

It is moved by Mr. Isaac Foot. Page 117, line 7, after (" Anglo-Indian "), to insert (" women's ").

The same is agreed to.

It is moved by Mr. Isaac Foot. Page 117, line 8, after (" Houses.") to insert (" In the case of the electoral college " composed of the women " members of the provincial Lower Houses, three seats shall be reserved " for Mohammedan women and one seat for an Indian Christian woman.")

The same is agreed to.

Appendix (II) is again read, as amended.

The further consideration of Appendix (II) is postponed.

Appendix (III) is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. In the entry in List I (*b*) relating to " Rajputana Agency (List II)," to leave out (" 11,180,826 ") in the population column and to insert (" 11,214,400 ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. In the " Lower House " column of List II against the entry " Banswara " to leave out (" 225,106 ") and to insert (" 258,670 "), and in the following line to leave out (" 452,650 ") and to insert (" 486,214 ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. In the " Lower House " column of List X to leave out (" Central India States and Rajputana States " (Kushalgarh and Lawa) 319,089 ") and to insert (" Central India States " and Lawa (Rajputana) 285,525 ").

The same is agreed to.

Appendix (III) is again read, as amended.

The further consideration of Appendix (III) is postponed.

Paragraphs 228 to 231 are postponed.

Paragraph 232 is again read.

It is moved by the Lord Eustace Percy. Page 131, lines 5 to 15, to leave out from (" India.") in line 5 to the end of line 15 and to insert (" We are " therefore prepared to accept the proposal embodied in the White Paper that " the Governor-General, acting in his discretion, should be empowered to ").

The same is disagreed to.

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It is moved by Sir Samuel Hoare and Mr. Butler. Page 131, line 12, to leave out (" however ").

The same is agreed to.

It is moved by the Marquess of Linlithgow and the Marquess of Zetland. Page 131, line 16, after (" allocate ") to insert (" to ").

The same is agreed to.

Paragraph 232 is again read, as amended.

The further consideration of paragraph 232 is postponed.

Paragraph 233 is again read.

It is moved by Mr. Butler on behalf of the Viscount Halifax. Page 131, line 46, to leave out (" explained elsewhere ") and to insert (" already explained ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 132, lines 21 to 23, to leave out from (" Commission.") in line 21 to the end of line 23 and to insert (" and we think that ").

The same is agreed to.

Paragraph 233 is again read, as amended.

The further consideration of paragraph 233 is postponed.

Paragraphs 234 to 238 are again postponed.

Ordered that the Committee be adjourned till to-morrow at Three o'clock.

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Die Mercurii 10° Octobris 1934

Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. After paragraph 238A to insert the following new paragraph :—

("238B. It is proposed in the White Paper that such subjects as Health Insurance and Invalid and Old Age Pensions should be subjects of Provincial Legislation. We see serious objection to this, and consider that they should be included in the Concurrent List. Wliile it is necessary that the more industrialized Provinces should be able to legislate on these subjects in the interests of the urban workers and should not have to wait for the concurrence of those which are predominantly rural, it is undesirable to exclude the possibility of All-India legislation which may well become necessary in order that there should be uniformity of treatment of the workers as between Province and Province and that industry in one Province should not be burdened with obligations not imposed in another. Mr. N. M. Joshi, in the Memorandum submitted by him, argued that social insurance should also be included in the list of Federal subjects, but here, again, we consider it would be better that it should be in the concurrent list.

Objected to.

All amendments are to the Draft Report (*vide supra* paras. 1–42B, pp. 470–491; and paras. 42–453, pp. 64–258) and NOT to the Report as published (Vol. I. Part I).

A Key is attached (see p. 627 *et seq.*), showing on which pages of the Proceedings amendments to each paragraph can be found.

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On Question :—

Contents (14).	Not Contents (12).
Marquess of Salisbury.	Marquess of Linlithgow.
Marquess of Zetland.	Earl of Derby.
Lord Middleton.	Earl of Lytton.
Lord Hardinge of Penshurst.	Earl Peel.
Lord Snell.	Viscount Halifax.
Lord Rankeillour.	Mr. Butler.
Lord Hutchison of Montrose.	Major Cadogan.
Mr. Attlee.	Sir Austen Chamberlain.
Mr. Cocks.	Mr. Davidson.
Sir Reginald Craddock.	Sir Samuel Hoare.
Mr. Foot.	Sir John Wardlaw-Milne.
Mr. Morgan Jones.	Earl Winterton.
Sir Joseph Nall.	
Lord Eustace Percy.	

The said amendment is agreed to.

New paragraph 238B is again read.

The further consideration of paragraph 238B is postponed.

Paragraphs 239 and 240 are again postponed.

The Revised Lists are again considered.

Revised List (II) is again read.

It is moved by Sir Reginald Craddock. Page 140, item 7 (7), to leave out (" Compulsory acquisition of land ") and to insert (" Transferred to List " III.").

The same is disagreed to.

It is moved by Sir Austen Chamberlain. Page 140, line 19, at the end, to insert (" not specified in List (I) ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 142, line 8, to leave out (" Prevention of cruelty to animals ").

The same is agreed to.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 142, to leave out line 36.

The same is agreed to.

Revised List (II) is again read, as amended.

The further consideration of Revised List (II) is postponed.

Revised List (III) is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 144, after line 45, to insert (" Health insurance, and invalid and old-age pensions ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 144, after line 45, to insert the following new item (" Prevention of cruelty to animals ").

The same is agreed to.

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Revised List (III) is again read, as amended.

The further consideration of Revised List (III) is postponed.

Paragraphs 241 to 244 are again postponed.

Paragraph 245 is again read.

It is moved by the Marquess of Linlithgow. Page 147, line 15, after (" alike ; ") to insert (" but ").

The same is agreed to.

Paragraph 245 is again read, as amended.

The further consideration of paragraph 245 is postponed.

Paragraph 246 is again read.

It is moved by the Marquess of Linlithgow. Page 148, line 9, to leave out (" the ") and to insert (" His Majesty's ").

The same is agreed to.

Paragraph 246 is again read, as amended.

The further consideration of paragraph 246 is postponed.

Paragraphs 247 to 249 are again postponed.

Paragraph 250 is again read.

It is moved by the Marquess of Linlithgow. Page 150, lines 3 to 5, to leave out from (" be ") in line 3 to (" (the ") in line 5 and to insert (" preferable " to leave the actual periods indicated above, which the White Paper proposes " should be 3 and 7 years, to be determined by Order in Council, in the light " of circumstances at the time, rather than to fix them by Statute ").

The same is agreed to.

Paragraph 250 is again read, as amended.

The further consideration of paragraph 250 is postponed.

Paragraphs 251 to 258 are again postponed.

Paragraph 259 is again read.

It is moved by the Marquess of Linlithgow. Page 152, line 39, after (" Federal ") to insert (" Ministry ").

The same is agreed to.

Paragraph 259 is again read, as amended.

The further consideration of paragraph 259 is postponed.

Paragraph 260 is again read.

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It is moved by the Marquess of Linlithgow. Page 153, line 25, to leave out (" proposed for the ") and to insert (" during which it is proposed to defer " the full ").

The same is agreed to.

Paragraph 260 is again read, as amended.

The further consideration of paragraph 260 is postponed.

Land customs duties imposed by Indian States.

Paragraph 260A is read as amended and is as follows :—

" 260A. It will be convenient to refer here to the power which the States already possess to impose customs duties on their land Frontiers. It is greatly to be desired that States adhering to the Federation should, like the Provinces, accept the principle of internal freedom for trade in India and that the Federal Government alone should have the power to impose tariffs and other restrictions on trade. Many States, however, derive substantial revenues from customs duties at their frontiers on goods entering the State from other parts of India. These duties are usually referred to as internal customs duties, but in many of the smaller States are often more akin to octroi and terminal taxes than to customs. In some of the larger States the right to impose these duties is specifically 11 limited by treaty. We recognise that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed federation and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The charge must, of course, be left to the discretion of the States concerned as alternative sources of revenue become available. We have no reason for thinking that the States contemplate any enlargement of the general scope of their tariffs and we do not believe that it would be in their interest to enlarge it. But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation ; and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion[1] would have to be brought to bear upon the States."

It is moved by the Marquess of Linlithgow. Line 11, to leave out (" these duties ") and to insert (" them ").

The same is agreed to.

Paragraph 260A is again read, as amended.

The further consideration of paragraph 260A is postponed.

Paragraphs 261 to 267 are again postponed.

Paragraph 268 is again read.

It is moved by the Lord Rankeillour. Page 156, lines 26 and 27, to leave out from (" enquiry ") in line 26 to the end of the sentence in line 27.

The same is agreed to.

It is moved by the Lord Rankeillour. Page 156, line 29, to leave out (" such ").

The same is agreed to.

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Paragraph 268 is again read, as amended.

The further consideration of paragraph 268 is postponed.

Paragraph 269 and 270 are again postponed.

Paragraph 271 is again read.

It is moved by the Marquess of Zetland. Page 157, line 40, to leave out (" Government ") and to insert (" Governments ").

The same is agreed to.

Paragraph 271 is again read, as amended.

The further consideration of paragraph 271 is postponed.

Paragraphs 272 to 278 are again postponed.

Paragraph 279 is again read.

It is moved by the Lord Eustace Percy. Page 160, line 8, after (" Paper ") to insert (" 279A. In addition to these rights and safeguards common to all " members of the Public Services,").

The same is agreed to.

Paragraph 279 is again read, as amended.

The further consideration of paragraph 279 is postponed.

Paragraph 279A is read, as amended, and is as follows :—

Conditions of service of officers appointed by the Secretary of State.

" 279A. In addition to these rights and safeguards common to all members of the Public Services, it is proposed that, after the commencement of the Act, the Secretary of State, who will continue to make appointments to the Indian Civil Service, the Indian Police and the Ecclesiastical Department, shall regulate the conditions of service of all persons so appointed, and it is intended that the conditions of service thus laid down shall in substance be the same as at present. The power to regulate the conditions of service of officers not appointed by the Secretary of State, on the other hand, has, since 1926, been delegated to the Government of India in the case of the Central Services and to Provincial Governments in the case of Provincial Services, and the White Paper contains no provisions as to the conditions of service to be applied to officers of these Services appointed after the commencement of the Constitution Act."

It is moved by the Marquess of Linlithgow and the Lord Eustace Percy. To leave out paragraph 279A.

The same is agreed to.

Paragraphs 280 and 282 are again postponed.

It is moved by the Marquess of Linlithgow. Page 161, after paragraph 282, to insert the following new paragraph :—

(" 282A. It is proposed that, after the commencement of the Act, the Secretary of State, who will continue[1] to make appointments to the Indian Civil Service, the Indian Police and the Ecclesiastical Department shall regulate the conditions of service of all persons so appointed, and it is intended that the conditions of service thus laid down shall in substance be the same as at present. The power to regulate the conditions of service of officers not appointed by the Secretary of State,

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on the other hand, has, since 1926, been delegated to the Government of India in the case of the Central Services and to Provincial Governments in the case of Provincial Services, and the White Paper contains no provision as to the conditions of service to be applied to officers of these Services appointed after the commencement of the Constitution Act.")

The same is agreed to.

New paragraph 282A is again read.

The further consideration of paragraph 282A is postponed.

Paragraphs 283 to 283B are again postponed.

Paragraph 283C is read, as amended, and is as follows :—

States and rights of Central and Provincial Services not to be inferior to those All-India Services.

(" 283C. But, further than this, it will in our view be essential that the Central and Provincial Legislatures respectively should give general legal sanction to the status and rights of the Central and Provincial Services. The special responsibility of the Governor-General and Governors would of course in any case extend to securing the legitimate interests as well as the rights of members of these Services ; but it is on all grounds desirable that the Executive Government as a whole should be authorised and required by law to give these Services the necessary security The principal existing rights of members of these Services are set out in List II of Appendix VII of the White Paper. We 10
think that the Legislatures, in passing Provincial Civil Service Acts authorising and requiring the Executive Government to give these Services the necessary security, would be well advised to consider whether, to meet the new conditions, List II of Appendix VII of the White Paper should be enlarged by appropriate additions from List I of the same Appendix, wherein are set out the principal existing rights of officers appointed by the Secretary of State. In our view the status and rights of the Central and Provincial Services should not be, in substance, inferior to the status and rights of persons appointed by the Secretary of State in regard to the two main points covered by List I. These two points are firstly, protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion ; and, secondly, protection against such arbitrary alterations in the organisation of the Services themselves as might damage the professional prospects of their members generally. On the first point, these Provincial Civil Service Acts could not, indeed, determine in detail the rates of pay, allowances and pensions, and the conditions of retirement of all civil servants, nor the procedure to be followed in considering their promotion on the one hand, or, on the other, their dismissal, removal, reduction or formal censure. Such Acts could, however, confer general powers and duties for these purposes on the Government, and in regard to promotions, they could provide definitely that canvassing for promotion or appointments shall disqualify the candidate, and that orders of posting or promotion in the higher grades shall require the personal concurrence of the Governor. On the second point, it is admittedly more difficult to give security to the Services as a whole in respect of their general organisation ; yet the morale of any Service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognised cadre of higher-paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance. A Legislature does nothing derogatory to its own rights and powers if it confers upon

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the Executive by law the duty of fixing such cadres and of reporting to the Legislature if any post in these cadres is at any time held in
45 abeyance.")

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Lines 10 to 45, to leave out from (" Paper.") in line 10, to the end of the paragraph and to insert (" The continuance in full of these rights is " secured under the White Paper proposals ").

The same is disagreed to.

Paragraph 283C is again read.

The further consideration of paragraph 283C is postponed.

Paragraphs 283D to 292 are again postponed.

Paragraph 293 is again read.

It is moved by the Viscount Halifax. Page 166, lines 7 and 8, to leave out (" the political side of the Department ") and to insert (" both ").

The same is agreed to.

It is moved by the Viscount Halifax. Page 166, lines 9 and 10, to leave out (" in that Department ") and to insert (" on the internal side ").

The same is agreed to.

Paragraph 293 is again read, as amended.

The further consideration of paragraph 293 is postponed.

Paragraphs 294 to 304 are again postponed.

Paragraph 305 is again read, as amended, and is as follows :—

" 305. In so far as the apprehension may be that a temporary deficiency in the cash required to meet such current obligations as the issue of monthly pay might occur, not through any failure in the annual revenues, but through excessive commitments in other directions, the good sense of the Government, and the advice of a strong Finance Department, must in our opinion be relied on as the real safeguard. Nor must it be forgotten that, although a Governor will not have a special responsibility for safeguarding the financial stability and credit of the Province, it will most certainly be his duty to see that he has information furnished to him which would enable him to secure such financial provision as may be required for the discharge of his other special responsibilities, including of course his special responsibility for safeguarding the legitimate interests of the Services. If need arose for the Governor to take special steps for the purpose, in virtue of his special responsibilities, it would, of course, be open to him to adopt whatever means were most appropriate in the circumstances, and, if necessary, to meet the situation by borrowing. The powers available to him personally in this respect would be identical with those available to the provincial Government. It he should seek assistance from the Federal Government in the form of a loan, his application would be governed by the provision relating to provincial
21 borrowing which we have already advocated.[1]

No special provision required.

It is moved by the Lord Rankeillour. Line 21, at the end to insert (" the Governor-General will of course be responsible for securing the interest of officers serving at the centre ").

The same is agreed to.

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Paragraph 305 is again read, as amended.

The further consideration of paragraph 305 is postponed.

Paragraph 306 is again read, as amended, and is as follows :—

Claims for pensions by officers appointed by the Secretary of State.

" 306. We have said that no distinction can, or ought to be, drawn between the claim of the various classes of officers serving in a Province for the due payment of their emoluments, but to this general statement of principle we think that there should be one qualification. If difficulties should unfortunately arise in regard to a claim to pension by an officer appointed by the Secreatry of State who has served from time to time in different Provinces, we think that it would be unreasonable that he should have to make his claim against a number of authorities in respect of different portions of his pension. We therefore approve the proposal in the White Paper that the claims of all officers appointed by the Secretary of State for their pensions should be against the Federal Government direct, the necessary adjustments being made subsequently between the Federal Government in the Province or Provinces concerned[2]; and, if that recommendation is adopted, we think that officers appointed by the Secretary of State need have no anxiety regarding the regular and punctual payment of their own pensions and those of their dependents. 16 Existing rights of suit against the Secretary of State will be preserved."

It is moved by Sir Reginald Craddock. Line 16, after (" dependents.") to insert (" Pensions of retired officers, if appointed before the commence- " ment of the Constitution Act, and the pensions of their dependents " will be exempt from Indian taxation if the pensioner is residing per- " manently outside India. The pensions of officers, appointed by the " Secretary of State, or by the Crown after that date, and the pensions " of their dependents will also be exempt from Indian taxation if the " pensioner is residing permanently outside India ").

The same is agreed to.

Paragraph 306 is again read, as amended.

The further consideration of paragraph 306 is postponed.

It is moved by the Lord Eustace Percy. Page 170, after paragraph 306, to insert the following new paragraph :—

(" 306A. We should not, however, wish to leave this subject without making a general statement in regard to the pensions of these officers. These pensions, like the pensions of all retired members of the Public Services of India, are a charge upon the revenues of India, and there can be no more binding obligation resting upon the Government of India than to meet this charge in full and ungrudgingly. But, though we do not doubt that it will be so met, the obligation rests not only upon the Government of India to meet it, but also upon His Majesty's Government to see that it is so met. His Majesty's Government have, in fact, pledged the revenues of India for this purpose, and it is their duty to see that that pledge is made effective. The Governor-General must, therefore, be armed with full powers to meet the liabilities thus secured upon the revenues of India, and our approval of the proposals of the White Paper is based on the understanding that the Constitution Act will, in fact, arm him with such powers.")

The same is agreed to.

New paparagraph 306A is again read.

The further consideration of paragraph 306A is postponed.

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Paragraph 307 is again read, as amended, and is as follows :—

" 307. There is, however, one category of pension payments which stands apart from the rest, namely, the pensions payable to families of officers, civil and military, the cost of which is met not from the revenues of India but from funds accumulated by means of subscriptions paid by the officers themselves. These accumulated funds are in equity the property of the subscribers, and we think it right that the fullest possible consideration should be given to their views as to the disposal of the money. A full account of the nature of the Funds and of the steps taken to ascertain the views of subscribers is given in a Note by the Secretary of State for India which is printed in the Committee's Records.[4] The Note also contains in some detail proposals for meeting the subscribers' wishes. We recommend that His Majesty's Government should take action on the lines indicated in this Note." Family Pension Funds.

It is moved by the Lord Hardinge of Penshurst. Lines 5 to 8, to leave out from (" themselves.") in line 5 to (" A ") in line 8 and to insert (" These accumulated funds are in equity the property of the subscribers " of which the British Government are, from the nature of the history of " the case, quasi-trustees, and constitute an equitable charge on the " revenues of the Government of India. We think it right that the fullest " possible consideration should be given to the views of the contributors " as to the disposal of their money.")

The consideration of the above amendment is postponed.

The further consideration of paragraph 307 is postponed till to-morrow.

Paragraph 308 to 310 are again postponed.

Paragraph 311 is again read.

It is moved by the Marquess of Zetland. Page 173, lines 3 and 4, to leave out from the first (" a ") in line 3 to the end of line 4 and to insert (" Federal " Unit or between Federal Units ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 173, line 9, to leave out (" But ") and to insert (" For that reason,") and after (" that ") to insert (", where the parties are Units of the Federation or the Federation itself,").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 173, lines 12 to 15, to leave out from (" Legislature ") in line 12 to the end of the paragraph.

The same is agreed to.

Paragraph 311 is again read, as amended.

The further consideration of paragraph 311 is postponed.

Paragraph 312 is again read.

It is moved by the Lord Eustace Percy. Page 173, line 24, after (" laws.") to insert (" It is essential that there should be some authoritative tribunal in " India which can secure a uniform interpretation of federal laws throughout " the whole of the Federation ".)

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 173, lines 39 and 40, to leave out from (" kind ") in line 39 to the end of the sentence.

The same is agreed to.

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It is moved by Sir Samuel Hoare and Mr. Butler. Page 173, lines 41 and 42, to leave out (" can only arise ") and to insert (" arises ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 173, line 44, to leave out (" It is, however ") and to insert (" This being so, and since it is ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 173, line 46, to page 174, line 3, to leave out from (" from ") in line 46, page 173, to the end of the paragraph and to insert (" We think the position of the States would be " appropriately safeguarded if it were provided that the granting of leave " to appeal by the Federal Court were in the form of Letters of Request, " directed to the Ruler of the State to be transmitted by him to the Court " concerned.")

The same is agreed to.

Paragraph 312 is again read, as amended.

The further consideration of paragraph 312 is postponed.

Paragraphs 313 to 315 are again postponed.

Paragraph 316 is again read.

It is moved by the Lord Eustace Percy. Page 175, line 38, after (" Federal ") to insert (" cases,").

The same is agreed to.

Paragraph 316 is again read, as amended.

The further consideration of paragraph 316 is postponed.

Paragraph 317 is again read, as amended, and is as follows :—

A Court of Criminal Appeal not recommended.

" 317. The Supreme Court under the White Paper proposals would, however, as we have said, have jurisdiction to hear certain criminal appeals from British India. We are satisfied that these would be so numerous that, if the Federal Court were given the extended jurisdiction which we have suggested, an increase in the number of Judges would be required in excess of anything which we should be willing to contemplate. The question then arises whether the Federal Legislature should be empowered, if and when they thought fit, to set up a separate Court of Criminal Appeal for British India, sub-ordinate to the Federal Court. After careful consideration we have come to the conclusion that a Court of Criminal Appeal is not required in India. Nearly every case involving a death sentence is tried in a District Court, from which an appeal lies to the High Court, and, apart from this, no death sentence can be carried out until it has been confirmed by the High Court. Only three of the High Courts (excluding Rangoon) exercise an original criminal jurisdiction, and though there is no further appeal from these Courts, every prisoner under sentence of death can appeal for remission or commutation of sentence to the Provincial Government and after that to the Governor- 18
General in Council or, if he wishes, can ask for special leave to appeal 19
to the Privy Council. In these circumstances, the rights of a condemned man seem to be very fully safeguarded, and we think that no good purpose would be served by adding yet another Court to which appeals can be brought." 23

It is moved by Sir Samuel Hoare and Mr. Butler. Lines 18 and 19, to leave out (" and after that to the Governor-General in Council ").

The same is agreed to.

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It is moved by Sir Samuel Hoare and Mr. Butler. Line 23, at the end to insert (" We should add that at present under the Criminal Procedure " Code, a condemned prisoner can apply for commutation of his sentence " not only to the provincial Government but also to the Governor-General " in Council. We think that under the new Constitution the determination " of applications for commutation or remission of sentence under s. 401 of " the Code should rest with the authority primarily responsible for the " preservation of Law and Order, namely, the provincial Government, and " that the Federal Government, that is to say the Governor-General acting " on the advice of his Ministers, as the successor of the Governor-General " in Council should no longer possess this statutory power or commuting " or remitting sentences. At the same time, we are reluctant to diminish " the opportunities for appeal which are at present enjoyed under the " Indian Law, and we recommend that the power now exercisable in this " respect by the Governor-General in Council should henceforth vest in " the Governor-General acting in his discretion, to whom, in addition, " there will, we assume, be delegated as at present the prerogative power " of pardon.")

The same is agreed to.

Paragraph 317 is again read, as amended.

The further consideration of paragraph 317 is postponed.

Paragraph 318 is again read.

It is moved by the Marquess of Linlithgow. Page 176, line 40, after " that ") to insert (" this ").

The same is agreed to.

Paragraph 318 is again read, as amended.

The further consideration of paragraph 318 is postponed.

Paragraphs 319 and 319A are again postponed.

Paragraph 320 is again read.

It is moved by the Marquess of Zetland. Page 177, line 47, after ("reserve") to insert (" for the signification of His Majesty's pleasure ").

The same is agreed to.

Paragraph 320 is again read, as amended.

The further consideration of paragraph 320 is postponed.

Paragraph 320A is read, as amended, and is as follows :—

Future constitutional position of High Courts.

" 320A. We think it desirable to explain the general effect of our recommendations upon the High Courts. Their constitution will, as at present, be laid down in the Constitution Act and the appointments to them will remain with the Crown : the Constitution Act will, moreover, itself regulate more precisely than at present the nature and extent of the superintendence to be exercised by a High Court over the Subordinate Courts of the Province—the nature and extent, in fact, of what may be described as their administrative jurisdiction. No change will be made in their relations with the Provinces in regard to the administrative questions affecting their establishment and buildings, except that the Calcutta High Court will henceforth have relations in these respects with the Bengal Government direct and not, as at present, with the Central Government (which, even as matters stand, naturally consults the Bengal Government upon any proposals

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made before it by the Court) : but the supply required by the High Court will be determined by the Governor after consultation with his Ministers, and will not be subject to the vote of the Provincial Legislature. As regards the juridical jurisdiction of the High Courts, in so far as this depends—as it mainly does depend—upon provisions of Indian enactments, it will henceforth be determined by enactments of that Legislature which is competent to regulate the subject in respect of which questions of the High Court's jurisdiction arise : that is to say, it will be for the Federal Legislature alone to determine the jurisdiction of the High Court in respect of any matter upon which that Legislature has exclusive power to legislate, for the Provincial Legislature to determine the jurisdiction of its High Court in respect of any exclusively provincial subject, and for both to determine (subject to the principles governing legislation in the concurrent field) in respect of any matter on which both Legislatures are competent to legislate. It will thus be seen that the High Courts, under our proposals, will be institutions which will not accurately be described as either federalised or provincialised. They will form an integral part of the constitutional machinery and 32
the various aspects of their activities as such will be regulated by the authority appropriate for the purpose." 34

It is moved by the Lord Rankeillour. Lines 32 to 34, to leave out from the beginning of line 32 to the end of the paragraph.

The same is agreed to.

Paragraph 320A is again read, as amended.

The further consideration of paragraph 320A is postponed.

It is moved by the Lord Rankeillour. After paragraph 320A to insert the following new paragraph :—

(" 320B. In concluding this portion of our Report, we desire to call attention to the importance of safeguarding the judiciary, from criticism in the legislatures of their conduct, in the discharge of their duties. The rule and practice of Parliament protect the judiciary from such criticism in this country, and, we recommend that adequate provision should be made to safeguard judges in India.")

The same is agreed to.

New Paragraph 320B is again read.

The further consideration of paragraph 320B is postponed.

Paragraph 321 to 323 are again postponed.

Paragraph 324 is again read.

It is moved by the Lord Rankeillour. Page 179, lines 26 and 27, to leave out (" after consultation with ") and to insert (" with the assent of ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 324 is again read.

The further consideration of paragraph 324 is postponed.

Paragraphs 325 to 327 are again read.

Paragraph 328 is again read, as amended, and is as follows :—

The Fiscal Convention and the new Constitution.

" 328. But in making our recommendations to this end, we wish to make it clear at the outset that we contemplate no measure which would interfere with the position attained by India as an integral part of the British Empire through the Fiscal Convention. Fears have, indeed,

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been expressed lest the exercise of powers by the Indian Legislature which the Convention contemplated might result in the impcsition of penal tariffs on British goods or in the application to them of penally restrictive regulations with the object not of fostering Indian trade, but of injuring and excluding British trade. The answer to these fears is that the Convention could never, in fact, have been applied in aid of such a policy; and we have been assured by the Indian Delegates that there will be no desire in India to utilise any powers they may enjoy under the new Constitution for a purpose so destructive of the conception of partnership upon which all our recommendations are based. But, if this be so, it would be clearly of great advantage to allay the fears of which we have spoken by a declaration through and under the Constitution Act of the principles governing the relations between the two countries. The machinery of the Governor-General's special responsibilities, supplemented by his Instrument of Instructions, offers India and the United Kingdom the opportunity of making such a declaration of principles, while at the same time ensuring the necessary flexibility in their interpretation and application."

It is moved by the Lord Eustace Percy. Lines 5 and 6, to leave out from (" exercise ") in line 5 to (" might ") in line 6 and to insert (" by the Indian " Legislature of the powers contemplated in the Convention ").

The same is agreed to.

Paragraph 328 is again read, as amended.

The further consideration of paragraph 328 is postponed.

Paragraph 329 is read, as amended, and is as follows :—

" 329. We therefore recommend that to the special responsibilities of the Governor-General enumerated in the White Paper there should be added a further special responsibility defined in some such terms as follows :—" The prevention of measures, legislative or administrative, which would subject British goods, imported into India from the United Kingdom, to discriminatory or penal treatment ". But, as it is important that the scope which we intend to be attached to the special responsibility so defined should be explained more exactly than could conveniently be expressed in statutory language, we further recommend that the Governor-General's Instrument of Instructions should give him full and clear guidance. It should be made clear that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian Legislature to develop their own fiscal and economic policy; that they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions; and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if in his opinion the intention of the policy contemplated is to subject trade between the United Kingdom and India to restrictions conceived not in the economic interests of India but with the object of injuring the interests of the United Kingdom. It should further be made clear that the " discriminatory or penal treatment " covered by this special responsibility includes both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products; and that the Governor-General's special responsibility could also be used to prevent the imposition of prohibitory tariffs or restrictions, if he were satisfied that such measures were proposed with the intention already described. In all these respects, the words would cover measures which, though not discriminatory or penal in form, would be so in fact."

Governor-General should have a special responsibility to prevent penal discrimination against British imports.

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It is moved by Sir Samuel Hoare and Mr. Butler. Line 6, after ("treatment") to insert reference to a footnote and to insert as the footnote ("[1] See also *infra* Paragraph 443A.")

The same is agreed to.

Paragraph 329 is again read, as amended.

The further consideration of paragraph 329 is postponed.

Paragraphs 329A to 330 are again postponed.

Paragraph 331 is again read.

It is moved by Sir John Wardlaw-Milne. Page 182, line 45, to page 183, line 6, to leave out from ("it.") in line 45, page 182, to ("Lastly") in line 6, page 183, and to insert ("Secondly we are of opinion that these arrangements "can only be extended to include the relations between India and other "parts of His Majesty's Dominions by mutual agreement.")

The same is agreed to.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 183, lines 6 and 7, to leave out from ("that") in line 6 to ("any") in line 7.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 331 is again read, as amended.

The further consideration of paragraph 331 is postponed.

Paragraph 332 is again read.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 183, lines 10 to 21, to leave out from ("opinion") in line 10 to the end of the paragraph and to insert ("that the consent of the Governor-General "given in his discretion should be required to the introduction in the Federal "or Provincial Legislatures of any measure of the discriminatory nature "referred to in Proposals 122 and 123 of the White Paper.").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 332 is again read.

The further consideration of paragraph 332 is postponed.

Paragraphs 333 to 337 are again postponed.

Paragraph 338 is read, as amended and is as follows :—

Bills discriminatory in fact though not in form.

"338. But it will be the duty of the Governor-General and of the Governors to exercise their discretion in giving or withholding their assent to Bills. And we think that the Instrument of Instructions should make it plain, as we have already indicated in connexion with the Governor-General's special responsibility in relation to tariffs, that it is the duty of the Governor-General and of the Governors in exercising their discretion in the matter of assent to Bills not to feel themselves bound by the terms of the statutory prohibitions in relation to discrimination but to withhold their assent from any measure which, though not in form discriminatory, would in their judgment have a discriminatory effect. We have made, we hope, sufficiently plain the scope and the nature of the discrimination which we regard it as necessary to prohibit, and we have expressed our belief that statutory prohibitions should be capable of being so framed as generally to secure what we have

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in view. We are conscious, however, of the difficulty of framing com-
16 pletely watertight prohibitions and of the scope which ingenuity may find for complying with the letter of the law in a matter of this kind while violating its spirit. It is, in our view, an essential concomitant of the stage of responsible government which our proposals are designed to secure that the discretion of the Governor-General and of the Governors in the granting or withholding of assent to all Bills of their Legislature should be free and unfettered ; and in this difficult matter of discrimination in particular we should not regard this condition as fulfilled if the Governor-General and Governors regarded the exercise of their discretion as restricted by the terms of the statutory prohibitions. We further recommend that the Instrument of Instructions of the Governor-General and the Governor should require him, if in any case he feels doubt whether a particular Bill does or does not offend against the intentions of the Constitution Act in the matter of discrimination, to reserve the Bill for the signification of His Majesty's pleasure. We need hardly add that the effect of our recommendations for the statutory prohibition of certain specified forms of discrimination would lay open to challenge in the Courts as being *ultra vires* any legislative enactment which is inconsistent with these prohibitions, even if the Governor-General or
35 the Governor has assented to it.

It is moved by the Viscount Halifax. Line 16, to leave out (" may ") and to insert (" might ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Line 35, after (" it ") to insert (" except in a case where the Governor-" General or Governor has declared in his discretion that the enactment is " necessary in the interests of the peace and tranquillity of India (or a Province, " as the case may be) or any part thereof.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 338 is again read, as amended.

The further consideration of paragraph 338 is postponed.

Paragraphs 339 to 342 are again postponed.

Paragraph 343 is again read.

It is moved by Sir Samuel Hoare on behalf of the Marquess of Zetland. Page 188, lines 46 and 47, to leave out (" themselves ") and to insert " (" himself ").

The same is agreed to.

Paragraph 343 is again read, as amended.

The further consideration of paragraph 343 is postponed.

Paragraphs 344 to 347 are again postponed.

Paragraph 348 is again read, as amended, and is as follows :—

Eligibility for holding public office, etc.

" 348. Among the proposals in the White Paper is one which would put it beyond the power of any Legislature in British India to make laws (with certain exceptions) subjecting any British subject to any disability or discrimination in respect of a variety of specified matters, if based upon religion, descent, caste, colour or place of birth.[2] This
6 proposal seems to us too wide and likely to fetter unduly the powers of
7 the Indian Legislatures ; and we understand that His Majesty's Government have, after consultation with the Government of India, arrived at the same conclusion. We agree that some declaration of the general rights of British subjects in India is required, but we think that it would

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be preferable to base it upon the existing section of the Government of India Act. We think that this declaration should provide that no British subject, Indian or otherwise, domiciled in India shall be disabled from holding public office or from practising any trade, profession or calling by reason only of his religion, descent, caste, colour or place of birth; and it should be extended, as regards the holding of office under the Federal Government, to subjects of Indian States. 15

"The proposal in the White Paper, however, goes on to say that 18 'no law will be deemed to be discriminatory for this purpose on the ground only that it prohibits either absolutely or with exceptions the sale or mortgage of agricultural land in any area or to any person not belonging to some class recognised as being a class of persons engaged in, or connected with, agriculture in that area, or which recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some privilege, law or custom having the form of law.' This proviso is intended to cover legislation such as the Punjab Land Alienation Act, which is designed to protect the cultivator against the money lender. This is no doubt a desirable object. Inasmuch, however, as the full effect of the proviso cannot be foreseen and may have the result that the legitimate interests of minorities may be impaired while they are denied the right of appeal to the Courts for redress, we think that in cases where the legitimate interests of minorities may be adversely affected and access to the courts is barred by this proviso in the constitution, the Governor should consider whether his special responsibility for the protection of minorities necessitates action on his part."

It is moved by the Lord Eustace Percy. Lines 6 and 7, to leave out from ("wide") in line 6 to ("and") in line 7.

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Line 15, after ("his") to insert ("sex").

The same is disagreed to.

It is moved by the Lord Eustace Percy. Line 18, to leave out ("goes on to say") and to insert ("contains a proviso which would, in one "respect, still further limit the effect of this narrower declaration of "rights, namely").

The same is agreed to.

Paragraph 348 is again read, as amended.

The further consideration of paragraph 348 is postponed.

Paragraph 349 is again read.

It is moved by Sir Samuel Hoare and the Lord Eustace Percy. Page 191, to leave out paragraph 349 and to insert the following new paragraph :—

("349. We think that some general provision should be inserted in the Constitution Act safeguarding private property against expropriation, in order to quiet doubts which have been aroused in recent years by certain Indian utterances. It is obviously difficult to frame any general provision with this object without unduly restricting the powers of the Legislature in relation particularly to taxation ; in fact, much the same difficulties would be presented as those which we have discussed in an earlier paragraph in relation to fundamental rights. We do not attempt to define with precision the scope of the provision we have in mind, the drafting of which will require careful consideration for the reasons we have indicated: but we think that it should secure that legislation expropriating, or authorising the expropriation of, the property of particular individuals should be lawful only if confined to expropriation

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for public purposes and if compensation is determined, either in the first instance or on appeal, by some independent authority. General legislation, on the other hand, the effect of which would be to transfer to public ownership some particular class of property or to extinguish or modify the rights of individuals in it, ought, we think, to require the previous sanction of the Governor or Governor-General (as the case may be) to its introduction ; and in that event he should be directed by his Instrument of Instructions to take into account as a relevant factor the nature of the provisions proposed for compensating those whose interests will be adversely affected by the legislation.")

Objected to.

On Question :—

Contents (18).	Not Contents (3).
Marquess of Salisbury.	Lord Snell.
Marquess of Linlithgow.	Mr. Cocks.
Earl Peel.	Mr. Morgan Jones.
Viscount Halifax.	
Lord Middleton.	
Lord Rankeillour.	
Lord Hutchison of Montrose.	
Mr. Butler.	
Major Cadogan.	
Sir Austen Chamberlain.	
Sir Reginald Craddock.	
Mr. Davidson.	
Mr. Foot.	
Sir Samuel Hoare.	
Sir Joseph Nall.	
Lord Eustace Percy.	
Sir John Wardlaw-Milne.	
Earl Winterton.	

The same is agreed to.

New Paragraph 349 is again read.

The further consideration of paragraph 349 is postponed.

Paragraph 349A is again read, as amended, and is as follows :—

1 "349A. But there is another form of private property—perhaps more accurately described as "vested interest"—common in India which we think requires more specific protection. We refer to grants of land or of tenure of land free of land revenue, or subject to partial remissions of land revenue, held under various names (of which Taluk, Inam, Watan, Jagir and Moafi are examples) throughout British India by various individuals or classes of individuals. Some of these grants date from Moghul or Sikh times and have been confirmed by the British Government: others have been granted by the British Government for services rendered. Many of the older grants are enjoyed by religious bodies and are held in the names of the managers for the time being. The terms of these grants differ: older grants are mostly perpetual, modern grants are mostly for three, or even two, generations. But, whatever their terms, a grant of this kind is always held in virtue of a specific undertaking given by, or on the authority of, the British Government that, subject in some cases to the due observance by the grantee of specified conditions, the rights of himself and his successors will be respected either for all time or, as the case may be, for the duration of the grant. A well-known instance of such rights is to be found in

Special case of grants of land or of tenure of land free of land revenue.

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those enjoyed by the present Talukdars of Oudh, who owe their origin to the grant to their predecessors of sanads by Lord Canning, the then Governor-General, conferring proprietary rights upon all those who engaged to pay the *jumma* which might then, or might from time to time subsequently, be fixed subject to loyalty and good behaviour, and the rights thus conferred were declared to be permanent, hereditary and transferable."

It is moved by Sir Samuel Hoare and Mr. Butler. Line 1 to leave out (" another ") and to insert (" a ").

The same is agreed to.

Paragraph 349A is again read, as amended.

The further consideration of paragraph 349A is postponed.

Paragraphs 349B to 350 are again postponed.

Paragraph 351 is again read.

It is moved by the Marquess of Linlithgow. Page 192, line 24, after (" Federation ") to insert (" , States ") and to leave out (" of Province and " Province ").

The same is agreed to.

Paragraph 351 is again read, as amended.

The further consideration of paragraph 351 is postponed.

Paragraph 352 is again postponed.

Paragraph 353 is again read.

It is moved by the Marquess of Linlithgow. Page 193, line 19, to leave out (" three ") and to insert (" two ").

The same is agreed to.

Paragraph 353 is again read, as amended.

The further consideration of paragraph 353 is postponed.

Paragraph 354 is again read.

It is moved by the Marquess of Salisbury. Page 194, after line 14, at the end, to insert (" We think that the same method should be applied to the " revision or adjustment of provincial boundaries.").

The same is agreed to.

Paragraph 354 is again read, as amended.

The further consideration of paragraph 354 is postponed.

Paragraph 355 is again read.

It is moved by the Marquess of Salisbury. Page 194, lines 19 to 25, to leave out from (" Parliament ") in line 19 to the end of line 25.

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 194, lines 28 to 30, to leave out from (" matters,") in line 28 to the end of the paragraph.

The same is agreed to.

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Paragraph 355 is again read, as amended.

The further consideration of paragraph 355 is postponed.

Paragraphs 356 to 363 are again postponed.

Paragraph 364 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 198, lines 40 to 42, to leave out from (" that ") in line 40 to (" any ") in line 42.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 364 is again read.

The further consideration of paragraph 364 is postponed.

Paragraph 365 is again postponed.

Paragraph 366 is again read.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 200, line 16, to leave out from (" foundation ") to the end of the line.

The consideration of the said amendment is postponed till to-morrow.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 200, lines 21 to 26, to leave out from (" Constitution ") in line 21 to (" Reliance ") in line 26, and to insert (" We understand that it is expected that, in the absence of " unforeseen developments, it will be possible for the Bank to be constituted " and to start its operations during the course of next year.")

The same is agreed to.

The further consideration of paragraph 366 is postponed till to-morrow.

Ordered that the Committee be adjourned till to-morrow at Three o'clock.

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Die Jovis 11° Octobris 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.	MR. ATTLEE.
MARQUESS OF SALISBURY.	MR. BUTLER.
MARQUESS OF ZETLAND.	MAJOR CADOGAN.
MARQUESS OF LINLITHGOW.	SIR AUSTEN CHAMBERLAIN.
MARQUESS OF READING.	MR. COCKS.
EARL OF DERBY.	SIR REGINALD CRADDOCK.
EARL PEEL.	MR. DAVIDSON.
VISCOUNT HALIFAX.	SIR SAMUEL HOARE.
LORD MIDDLETON.	MR. MORGAN JONES.
LORD HARDINGE OF PENSHURST.	SIR JOSEPH NALL.
LORD SNELL.	LORD EUSTACE PERCY.
LORD RANKEILLOUR.	SIR JOHN WARDLAW-MILNE.
LORD HUTCHISON OF MONTROSE.	EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraphs 367 to 453 are again postponed.

Paragraphs 1 to 22 are again postponed.

Paragraph 23 is again read.

It is moved by the Lord Eustace Percy. Page 14, line 46, to leave out the second (" and ") and to insert a full stop.

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 14, line 47, after (" Governor ") to insert (" and so strongly have we been impressed by the need for this power, " and by the importance of ensuring that the Governor shall be able to exercise " it promptly and effectively, that, among other alterations in the White " Paper, we have felt obliged to make a number of additional recommendations " in regard to the Governor's sources of information, the protection of the " police and the enforcement of law and order ").

The same is agreed to.

Paragraph 23 is again read, as amended.

The further consideration of paragraph 23 is postponed.

Paragraphs 24 and 25 are again postponed.

All amendments are to the Draft Report (*vide supra* paras. 1–42B, pp. 470–491; and paras. 42–453, pp. 64–258) and NOT to the Report as published (Vol. I, Part I).

A Key is attached (see p. 627 *et seq.*), showing on which pages of the Proceedings amendments to each paragraph can be found.

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Paragraph 26 is again read.

It is moved by the Lord Eustace Percy. Page 16, line 16, after (" India ") to insert (" We have devoted particular attention to the form of the Central " Legislature and shall have to recommend the substitution of an alternative " scheme for the White Paper proposals ").

The same is agreed to.

Paragraph 26 is again read, as amended.

The further consideration of paragraph 26 is postponed.

Paragraphs 27 to 30 are again postponed.

Paragraph 31 is again read.

It is moved by the Lord Eustace Percy. Page 19, line 1, after (" trade "). to insert (" The rights of the States in this respect cannot be abolished, but, " as we shall indicate in paragraph 262, moderation in the use of them can " be made a condition of federation ".)

The same is agreed to.

Paragraph 31 is again read, as amended.

The further consideration of paragraph 31 is postponed.

Paragraphs 32 to 70 are again postponed.

Paragraph 71 is read, as amended, and is as follows :—

Relations between Governor and Ministers.

" 71. We have already pointed out that, in the present Government of India Act, there is a provision which requires the Governor to be ' guided by ' the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion. The White Paper, as we read it, does not propose that the Constitution Act itself shall contain any provisions on this subject. The Act will commit certain matters to the Governor's sole discretion, such, for instance, as his power of veto over legislation and the regulation of matters relating to the administration of excluded areas. It will also contain a declaration that certain special responsibilities are to rest upon the Governor. For the rest, it will provide that the Governor shall have a Council of Ministers to aid and advise him, but his relations with his Ministers are left to be determined wholly by the Instrument of Instructions. We agree that it is desirable that the Governor's special responsibilities, over and above the matters which are committed to his sole discretion, should be laid down in the Act itself rather than that they should be left to be enumerated thereafter in the Instrument of Instructions. In the first place, Indian public opinion will thereby be assured that the discretionary powers of the Governor to dissent from his Ministers' advice is not intended to be unlimited ; and, secondly, the right will thereby be secured to Parliament to consider and debate the scope of the Governor's powers before the Constitution Bill passes

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finally from their control. On the other hand, we agree that it would be 23
undesirable to seek to define the Governor's relations with his Ministers by imposing a statutory obligation upon him to be guided by their advice, since to do so would be to convert a constitutional convention into a rule of law and thus, perhaps, to bring it within the cognisance of the courts." 28

It is moved by the Lord Eustace Percy. Lines 22 and 23, to leave out from (" powers ") in line 22, to (" On ") in line 23, and to insert (" during the " passage of the Constitution Bill itself ")

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 28, at end to insert (" We do not, however, think that the inherent legal power of the " Governor (to which we have referred in paragraph 72) to act upon his " own responsibility is set forth with sufficient clearness in proposals " 70–73 of the White Paper, and we recommend that it should be more " explicity defined ").

The same is agreed to.

Paragraph 71 is again read, as amended.

The further consideration of paragraph 71 is postponed.

Paragraphs 72 to 135 are again postponed.

Paragraph 136 is again read.

It is moved by Sir Reginald Craddock. Page 67, line 17, at the end to insert (" We desire to add in this connection that it would, in our opinion, be " unwise to abandon, as the White Paper proposes, the disqualification for " candidature for a legislative body which under existing Rules follows (subject " to a dispensing power) upon conviction for a criminal offence involving a " sentence of imprisonment exceeding one year.")

The same is agreed to.

Paragraph 136 is again read, as amended.

The further consideration of paragraph 136 is postponed.

New Paragraph 136A is again read. It is moved by Sir Reginald Craddock to leave out paragraph 136A.

The same is agreed to.

Paragraphs 137 to 306 are again postponed.

Paragraph 307 is again considered.

It is moved by the Lord Hardinge of Penshurst. Page 170, to leave out paragraph 307 and to insert the following new paragraph :—

(" 307. One category of pension payment stands in so special a position as to demand separate consideration. We refer to the pensions payable to families of officers, civil and military, the cost of which is met not from the revenues of India but from credits accumulating in the balances of the Government of India from subscriptions paid by the officers themselves. The Government of India are trustees of these credits and the fullest possible consideration should be given to the views of the subscribers and beneficiaries as to the future administration of the trust. A note by the Secretary of State for India which is printed in the Committee's records contains full particulars of these credits and the steps already taken to ascertain the views of subscribers. The note also contains in outline proposals for the consideration of subscribers and pensioners. The matters to be decided are technical and complicated ; and we hope therefore in consulting subscribers that every effort will be made to put the issues before them in the clearest possible way. We are glad to observe from paragraph 8 of the Note that the Secretary of State hopes that, unless the present financial situation unexpectedly

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deteriorates, it will be possible to convert existing rupee credits in India into sterling funds held in this country within quite a short period after the Constitution Act is passed and the wishes of subscribers and pensioners are known. We recommend that this should be done and that action should be taken generally on the lines indicated in the Note.")

The same is agreed to.

New paragraph 307 is again read.

The further consideration of paragraph 307 is postponed.

Paragraphs 308 to 340 are again postponed.

Paragraph 341 is again read.

It is moved by Mr. Butler. Page 187, lines 6 and 7, to leave out (" provision " be made enabling ").

The same is agreed to.

Paragraph 341 is again read, as amended.

The further consideration of paragraph 341 is postponed.

Paragraphs 342 to 365 are again postponed.

Paragraph 366 is again considered.

The motion of Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 200, line 16, to leave out from (" foundation ") to the end of the line is again considered.

Objected to.

On Question :—

Contents (4).	Not Contents (16).
Lord Snell.	Lord Archbishop of Canterbury.
Mr. Attlee.	Marquess of Salisbury.
Mr. Cocks.	Marquess of Zetland.
Mr. Morgan Jones.	Marquess of Linlithgow.
	Marquess of Reading.
	Viscount Halifax.
	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Sir Samuel Hoare.
	Sir John Wardlaw-Milne.

The Earl of Derby and the Earl Winterton did not vote.

The said amendment is disagreed to.

Paragraph 366 is again read.

The further consideration of paragraph 366 is postponed.

Paragraph 367 is again read.

Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 200, line 45, after (" discretion.") to insert (" The Governor, Deputy Governor and " four Directors of the Bank should be selected by the Governor-General " in consultation with his Ministers.")

The same is disagreed to.

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Paragraph 367 is again read.

The further consideration of paragraph 367 is postponed.

Paragraph 368 and 369 are again postponed.

Paragraph 370 is again read.

It is moved by the Marquess of Linlithgow, the Lord Eustace Percy, and Sir John Wardlaw-Milne. Page 202, lines 10 to 14, to leave out sub section (*f*).

The same is agreed to.

Paragraph 370 is again read, as amended.

The further consideration of paragraph 370 is postponed.

Paragraph 370A is read, as amended and is as follows :—

Disputes between Railway Authority and Indian States Railways.

" 370A. We attach special importance to the arbitration procedure mentioned above as a means of settling disputes on administrative issues between the Railway Authority and the Administrations of railways owned and worked by an Indian State. The Constitution Act should contain adequate provision to ensure reasonable facilities for the State's railway traffic and to protect its system against unfair or uneconomic competition or discrimination in the Federal Legislature. We consider that States owning and working a considerable railway system should be able to look to the arbitration machinery which we recommend for adequate protection in such matters. On the other hand, if any State is allowed to reserve, as a condition of accession, the right to construct railways in its territory notwithstanding Item (9) of the revised exclusive Federal List, their right to do so should be subject to appeal by the 13 Railway Authority to the same tribunal."

It is moved by the Marquess of Linlithgow. Line 13, to leave out (" their ") and to insert (" its ").

The same is agreed to.

Paragraph 370A is again read, as amended.

The further consideration of paragraph 370A is postponed.

Appendix (iv) is again postponed.

Paragraphs 371 to 375 are again postponed.

Paragraph 376 is again read.

It is moved by the Lord Rankeillour. Page 210, line 36, after (" associations ") to insert (" whose salary would not be votable and ").

The same is agreed to.

Paragraph 376 is again read, as amended.

The further consideration of paragraph 376 is postponed.

Paragraphs 377 to 379 are again postponed.

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Paragraph 380 is read, as amended and is as follows :—

" 380. As the High Commissioner will no doubt continue to serve Provincial Governments as well as the Federal Government it seems to us inappropriate that the appointment should be made by the Governor-General acting solely on the advice of Federal Ministers. We recommend accordingly that the appointment of High Commissioner should be made by the Governor-General in his discretion after consultation with his Ministers. It may be that some of the States which accede to the Federation would also find it useful to employ the agency of the High Commissioner for some purposes, and we consider that it should be open to them to do so."

Appointment should be made by Governor-General in his discretion.

It is moved by Sir Samuel Hoare and Mr. Butler. Line 2, after (" Government ") to insert (" , and as in any case he will be acting " under the orders of the Governor-General in matters arising out of " the Reserved Departments,").

The same is agreed to.

Paragraph 380 is again read, as amended.

The further consideration of paragraph 380 is postponed.

Paragraph 381 is again postponed.

Paragraph 382 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 213, line 6, after (" Federation ") to add (" although we consider " that this interval should not be longer than is necessitated by administrative " considerations.")

The same is agreed to.

Paragraph 382 is again read, as amended.

The further consideration of paragraph 382 is postponed.

Paragraphs 383 and 384 are again postponed.

Paragraph 385 is again read.

It is moved by the Lord Rankeillour. Page 214, line 22, to leave out (" Federal ") and after (" Court ") to insert (" with the same powers in this " sphere as it is proposed to confer on the Federal Court ").

The same is agreed to.

Paragraph 385 is again read, as amended.

The further consideration of paragraph 385 is postponed.

Paragraph 386 and 387 are again postponed.

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Paragraph 388 is again read.

It is moved by Sir John Wardlaw-Milne on behalf of the Lord Eustace Percy. Page 216, line 23, to leave out (" part ") and insert (" section ").

The same is agreed to

Paragraph 388 is again read, as amended.

The further consideration of paragraph 388 is postponed.

Paragraph 389 is again read.

It is moved by the Marquess of Linlithgow. Page 216, line 39, to leave out (" 142,000 ") and to insert (" 136,000 ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 216, line 40, after (" other ") to insert (" existing ")

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 216, line 42, to leave out (" 49,000 ") and to insert (" 55,000 ") and to leave out (" 13,000 ") and to insert (" 14,000 ").

The same is agreed to.

Paragraph 389 is again read, as amended.

The further consideration of paragraph 389 is postponed.

Paragraph 390 is again postponed.

Paragraph 391 is read as amended, and is as follows :—

Its isolation.

" 391. The steep and densely wooded mountains on the north and north-west of Burma, where it marches with Assam, Manipur, and Bengal, cut off access from India, and on the east, where its neighbours are the Chinese province of Yunnan in the north, and French Indo-China and Siam in the south, effectively prevent intercourse with adjacent countries save by a few difficult caravan routes. Between continental India and Burma intercourse is and must be wholly by sea ; and Rangoon is 700 miles by sea, a forty-eight hours' voyage, from Calcutta, and 1,000 from Madras. In these circumstances it is not surprising that the influence which Burma can exert on Indian political influence and the interest which India generally feels in Burma's affairs are of the slightest ; and to this we should add that, Buddhism being the prevailing religion, caste and communalism are unknown, though there are certain racial cleavages, and that the women of Burma are regarded socially and politically as on an equality with men. The Burmese language is spoken by the great majority of the inhabitants, though there are numerous local dialects. Of the total population some 10,000,000 are Burmans, 1,250,000 Karens, and 1,000,000 Shans inhabiting for the most part the frontier tracts ; and of the non-indigenous races the most numerous are Indians, who number approximately 1,000,000."

It is moved by Sir John Wardlaw-Milne. Lines 3 to 6, to leave out from (" and ") in line 3, to the end of the sentence in line 6, and to insert (" while on the east, where its neighbours are the Chinese province " of Yunnan in the north and French Indo-China and Siam in the " south, intercourse with adjacent countries is only possible by means " of a few difficult caravan routes.")

The same is agreed to.

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It is moved by the Marquess of Zetland. Line 10, to leave out (" influence ") and to insert (" tendencies ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Lines 11 to 14, to leave out from (" slightest ") in line 11 to the end of the sentence and to insert (" conditions in the two countries are in many respects markedly " different ; Buddhism being the prevailing religion in Burma the " difficulties created in India by caste and the potential clash of religious " forces are hardly existent in Burma ; but against this must be set the " factor of another form of communalism based on racial cleavages. " Another notable point of difference is that the women of Burma are " regarded, socially and politically, as on an equality with men, to an " extent as yet rarely found in any part of India.")

The same is agreed to.

Paragraph 391 is again read, as amended.

The further consideration of pargaph 391 is postponed.

Paragraphs 392 to 399 are again postponed.

Paragraph 400 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 222, line 38, to leave out (" 18 ") and to insert (" 20 ").

The same is agreed to.

Paragraph 400 is again read, as amended.

The further consideration of paragraph 400 is postponed.

Paragraphs 401 and 404 are again postponed.

Paragraph 405 is read, as amended, and is as follows :—

Period during which a Trade Convention should continue in force

" 405. An agreement of this kind embodied in the Constitution Act, even though mutually advantageous to the two countries, must necessarily constitute to some extent an encroachment upon the fiscal liberty which Burma after separation is to enjoy, and which India already enjoys. The encroachment would be less, if the agreement provided full opportunity to both parties to vary details by mutual consent during its currency ; but it is in any event desirable that the agreement itself should continue for the shortest period which is compatible with the securing to those concerned in the India-Burma trade of a reasonable measure of certainty as to the immediate future. One possible course would be to impose the agreement for an undefined period subject to denunciation by either country at reasonable notice, say twelve months. If the agreement proved to be congenial to the needs of both, such an arrangement might promise the greatest prospect of stability ; but there is a risk that national *amour propre* might lead one or both of the new Governments to denounce it as soon as it had the power to do so, with the result that the agreement might last for little more than the period of notice. Another course, advocated by the Burma Chamber of Commerce, would be to enact that the agreement should continue until replaced by another concluded between the two new Governments. This, however, would give one Government, if it found that it enjoyed an advantage at the expense of the other, the option of retaining that advantage indefinitely ; nor do we think that it would be fair to impose upon the future Government of Burma in the period immediately following

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separation the heavy burden of negotiating an intricate Trade Agreement. In our opinion, the two Constitution Acts should state the minimum period for which the Agreement is to be binding on India and Burma and also make it clear that after the termination of that period it should be open to, but not incumbent on, either side to give notice of its intention to determine it; the period of notice, which might conveniently perhaps be twelve months, should also be stated in the Act. We do not ourselves make any more precise recommendation as to what the minimum period of the Agreement's validity should be than that it should be less than one year, for we think it would be far best that the actual period should, like the content of the Agreement, be fixed by mutual accommodation between India and Burma in the course of the negotiations. If, however, they should fail to reach agreement on this point we think that His Majesty's Government who would no doubt be apprised of the differing views held, should insert a specific period in the Bills laid before Parliament. We think also that the agreement should contain provisions for the mutual adjustment of details from time to time during its currency, where both parties desired such adjustments to be made."

It is moved by Sir Samuel Hoare and Mr. Butler. Line 26, to leave out (" two Constitution Acts ") and to insert (" legislative provisions " for both India and Burma ").

The same is agreed to.

It is moved by Sir Austen Chamberlain on behalf of the Lord Eustace Percy. Lines 28 to 30, to leave out from (" period ") in line 28 to (" the ") in line 30 and to insert (" which must elapse before either party " to the agreement can give notice to terminate it, and also the length " of ").

The same is agreed to.

It is moved by Sir Austen Chamberlain on behalf of the Lord Eustace Percy. Line 31, to leave out (" should also be stated in the Act.").

The same is agr ed to.

It is moved by the Lord Rankeillour. Line 31, after (" months ") to insert (" they should also provide for the replacement of the agreement " by an award to be made by an Imperial Commissioner should the two " Governments differ as to the terms on which the agreement should be " renewed ").

The same is disagreed to.

It is moved by the Lord Eustace Percy. Lines 32 and 33, to leave out (" minimum period of the Agreement's validity ") and to insert (" first " period ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 34, after (" should ") to insert (" not ").

The same is agreed to.

Paragraph 405 is again read, as amended.

The further consideration of paragraph 405 is postponed.

Paragraph 406 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 225, lines 34 and 35, to leave out from (" the ") in line 34 to (" in ") in line 35 and to insert (" Act " should contain provision for an Order in Council empowering the Governor-" General of India and the Governor of Burma respectively ").

The same is agreed to.

Paragraph 406 is again read, as amended.

The further consideration of paragraph 406 is postponed.

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Paragraph 407 is again read.

It is moved by the Marquess of Linlithgow. Page 226, lines 22 to 24, to leave out from (" be ") in line 22 to (" for ") in line 24 and to insert (" made " statutorily binding on both Governments ").

The same is agreed to.

Paragraph 407 is again read, as amended.

The further consideration of paragraph 407 is postponed.

Paragraphs 408 to 414 are again postponed.

Paragraph 415 is read, as amended, and is as follows :—

" 415. The Council of Ministers will have a constitutional right to tender advice to the Governor in the exercise of the powers conferred upon him by the Constitution Act, other than powers connected with certain Departments which will be reserved for the Governor's own direction and control and matters left by the Constitution Act to the Governor's own discretion ; but the Governor will be declared to have a special responsibility in respect of certain matters and where they are involved will be free to act according to his own judgment. The matters which it is proposed shall be reserved to the Governor's own direction and control, are Defence, External Affairs, Ecclesiastical Affairs, the affairs of certain Excluded Areas, and monetary policy, currency and coinage. With these we deal later, but we point out that they do not include law and order, which will, therefore, fall within the ministerial sphere, as it will in the Indian Provinces, if our recommendations are accepted. In general the same considerations apply in Burma, if separated, as apply in the other Provinces of British India. But there are certain special circumstances which we think it right to mention. On the one hand Terrorism of the Bengal type is practically unknown among the Burman people, and communal strife arising from strong religious antagonisms is rare and unimportant. To this extent the problem is less difficult than in other Provinces. On the other hand Burma exhibits racial rivalries which on occasion have developed into violent riots between one community and another, and serious crime—especially crimes of violence—appears to be more rife in Burma than in India ; in proportion to population the annual record of dacoities, murders and cattle thefts is very high. This, no doubt, is due, in part, to the fact that barely 50 years have elapsed since, with the conquest of Upper Burma, British authority was established throughout the Province and British ideas of Law and Order began to be instilled into the whole countryside. To this fact and perhaps also in some degree to the Burman temperament may, we think, be attributed the organised resistance to authority, amounting to armed rebellion and guerilla warfare, which has at times, even within the past few years, affected a large number of districts and which, owing to the difficult nature of the country and the lack of good communications, has proved very troublesome to put down. Nevertheless we are of opinion that the responsibility for law and order ought in future to rest on Ministers in Burma no less than in India and for substantially the same reasons. At the same time, bearing in mind the special features of the problem that we have described, we think it essential that the Governor of Burma should have powers additional to the powers flowing from his special responsibility for the prevention of any grave menace to the peace and tranquillity of Burma as proposed in the Burma White Paper. 43 He, like the Governors of Indian Provinces, should be vested with the statutory powers which we have recommended in their case[1] to equip

Law and Order.

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them against attempts to overthrow by violence the Government established by law. Further, conditions in Burma manifestly necessitate the maintenance of an efficient and highly disciplined police force; and we are of opinion that the recommendations which we made in an earlier passage[2] for the protection of the police forces in Indian Provinces by protecting the statutes and rules which govern their internal organisation and discipline should be adopted in Burma also."

It is moved by the Lord Eustace Percy. Lines 43 to 46, to leave out from the beginning of line 43 to the end of the sentence and to insert (" He should be given the same statutory powers against attempts to " overthrow by violence the Government established by law as we have " recommended should be vested in the Governors of Indian Provinces ".)

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 50, to leave out (" protecting ") and to insert (" safeguarding ").

The same is agreed to.

Paragraph 415 is again read, as amended.

The further consideration of paragraph 415 is postponed.

Paragraph 416 is again read.

It is moved by the Marquess of Linlithgow. Page 230, line 12, to leave out (" The latter service requires ") and to insert (" These services require ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 230, line 13, to leave out (" is ") and to insert (" are ").

The same is agreed to.

Paragraph 416 is again read, as amended.

The further consideration of paragraph 416 is postponed.

Paragraphs 417 to 421 are again postponed.

Paragraph 422 is again read.

It is moved by the Marquess of Linlithgow. Page 232, line 41, after (" that ") to insert (" the control of ").

The same is agreed to.

Paragraph 422 is again read, as amended.

The further consideration of paragraph 422 is postponed.

Paragraphs 423 to 425 are again postponed.

Paragraph 426 is again read.

It is moved by the Lord Rankeillour. Page 234, line 29, to leave out (" unless it is sooner dissolved ")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 426 is again read.

The further consideration of paragraph 426 is postponed.

Paragraph 427 is again read.

It is moved by the Marquess of Linlithgow. Page 235, line 5, to leave out (" European ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 235, line 6, after the first (" Commerce ") to insert (" (European) ").

The same is agreed to.

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It is moved by the Marquess of Linlithgow. Page 235, line 15, after (" that ") to insert (" , as we have already observed,")

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 235, line 16, to leave out (" , as we have already observed,").

The same is agreed to.

Paragraph 427 is again read as amended.

The further consideration of paragraph 427 is postponed.

Paragraph 428 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 235, lines 46 to 49, to leave out after (" opinion ") in line 46, to the end of the paragraph and to insert (" that as the Chambers of Commerce " and Trades Association are to be represented by nine special seats, and " bearing in mind the statement in the Secretary of State's Memorandum " that ' four Labour constituencies only may appear short measure ' two " of these seats should be assigned to Labour, one to Burman labour and one " to Indian, thus bringing up the Labour representation to six. The total " number of the House of Representatives should therefore be 132 instead " of 133 ").

Objected to.

On Question :—

Contents (6).	Not Contents (18).
Lord Archbishop of Canterbury.	Marquess of Salisbury.
Marquess of Reading.	Marquess of Zetland.
Lord Snell.	Marquess of Linlithgow.
Mr. Attlee.	Earl of Derby.
Mr. Cocks.	Earl Peel.
Mr. Morgan Jones.	Viscount Halifax.
	Lord Middleton.
	Lord Hardinge of Penshurst.
	Lord Rankeillour.
	Lord Hutchison of Montrose.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Sir Samuel Hoare.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.
	Earl Winterton.

The said amendment is disagreed to.

Paragraph 428 is again read.

The further consideration of paragraph 428 is postponed.

Paragraph 429 is again read.

It is moved by Mr Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 236, line 23, after (" the ") to insert (" exceptional ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 236, lines 24 to 34, to leave out from (" Burma ") in line 23 to the end of the paragraph and to insert (" and to the fact that they own

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" property jointly with their husbands and are regarded as equal partners " in domestic, economic, and political matters, we are glad to give favourable " consideration to this suggestion. We are informed that the inclusion of " a wifehood franchise will increase the number of women voters to a figure " approximating to 2,000,000 and we have no doubt that this will present " considerable administrative difficulties. Nevertheless, we feel that special " efforts should be made to overcome these difficulties and that in no case " should they be accepted as a reason for denying to the women of Burma " in the matter of the franchise that equal status with men which they have " enjoyed in other respects for many centuries.")

Objected to.

On Question :—

Contents (8).	Not Contents (18).
Lord Archbishop of Canterbury.	Marquess of Salisbury.
Lord Hardinge of Penshurst.	Marquess of Zetland.
Lord Snell.	Marquess of Linlithgow.
Lord Hutchison of Montrose.	Marquess of Reading.
Mr. Attlee.	Earl of Derby.
Mr. Cocks.	Earl Peel.
Mr. Morgan Jones.	Viscount Halifax.
Earl Winterton.	Lord Middleton.
	Lord Rankeillour.
	Mr. Butler.
	Major Cadogan.
	Sir Austen Chamberlain.
	Sir Reginald Craddock.
	Mr. Davidson.
	Sir Samuel Hoare.
	Sir Joseph Nall.
	Lord Eustace Percy.
	Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by the Lord Eustace Percy. Page 236, lines 26 to 34, to leave out from (" the ") in line 26 to the end of the paragraph and to insert (" total " electorate by over 40 per cent. and we hesitate to recommend so near an " approach to adult franchise at present.")

Objected to.

On Question :—

Contents (10).	Not Contents (9).
Marquess of Linlithgow.	Lord Archbishop of Canterbury.
Earl Peel.	Marquess of Salisbury.
Viscount Halifax.	Marquess of Zetland.
Lord Hardinge of Penshurst.	Marquess of Reading.
Lord Hutchison of Montrose.	Earl of Derby.
Mr. Butler.	Lord Middleton.
Sir Austen Chamberlain.	Major Cadogan.
Mr. Davidson.	Sir Reginald Craddock.
Lord Eustace Percy.	Sir Joseph Nall.
Sir John Wardlaw-Milne.	

The Lord Snell, The Lord Rankeillour, Mr. Attlee, Mr. Cocks, Sir Samuel Hoare, and Mr. Morgan Jones did not vote.

The said amendment is agreed to.

Paragraph 429 is again read, as amended.

The further consideration of paragraph 429 is postponed.

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Paragraphs 430 to 437 are again postponed.

Paragraph 438 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 241, line 31, after ("and") to insert ("we consider that the recommendations which we have made in respect of the Public Services in India should similarly apply *mutatis mutandis* in respect of Burma. In the following paragraphs, therefore,")

The same is agreed to.

Paragraph 438 is again read, as amended.

The further consideration of paragraph 438 is postponed.

Paragraphs 438A and 439 are again postponed.

Paragraph 440 is again read.

It is moved by the Marquess of Linlithgow. Page 241, line 14, after ("that") to insert ("as regards the Railway Services").

The same is agreed to.

Paragraph 440 is again read, as amended.

The further consideration of paragraph 440 is postponed.

Paragraphs 441 to 442A are again postponed.

Paragraph 443 is read, as amended, and is as follows :—

Discrimination as between Burma and India. Existing restrictions.

"443. In so far as this is a matter between the United Kingdom and Burma, the proposals in the Burma White Paper, supplemented by a subsequent Memorandum submitted to us by the Secretary of State,[1] are the same as those in the case of India, and we approve them subject to the general application to the case of Burma, *mutatis mutandis*, of the modifications which we have made in the corresponding proposals originally submitted to us in relation to India. In particular we recommend that there should be imposed on the Governor of Burma an additional responsibility corresponding to that which[2] we have recommended should be imposed on the Governor-General of India for the prevention of discriminatory or penal treatment of imports from the United Kingdom, we may refer to what we have said upon the subject in an earlier part of our Report. The Burma White Paper and the Secretary of State's Memorandum, however, deal also with the question of discrimination as between India and Burma after the separation of the two countries, and this raises certain problems of its own."

It is moved by the Marquess of Linlithgow. Lines 11 to 13, to leave out from ("Kingdom") in line 11 to the end of the sentence.

The same is agreed to.

Paragraph 443 is again read, as amended.

The further consideration of paragraph 443 is postponed.

Paragraph 444 is again postponed.

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Paragraph 445 is read, as amended, and is as follows :—

" 445. There are certain legal restrictions in force at present on the right of persons of non-Burman birth or domicile to compete for certain public appointments or to qualify for the exercise of certain professions ; and it is right that these should be retained. As regards the future, the power of the Burma Legislature to impose conditions or restrictions on entry into Burma should prove a sufficient safeguard. Subject to the above modifications, we are of opinion that the question of discrimination as between India and Burma should be dealt with on the same lines as that of discrimination between India and the United Kingdom. But the separation of Burma from India will create a special category of persons in Burma of United Kingdom domicile for whose protection in India provision will, we think, require to be made in the Constitution Act for India rather than that for 12
Burma. We refer to the case of Companies established already in Burma with United Kingdom personnel and United Kingdom capital. Such Companies have established themselves in Burma as a Province of British India and we think that it would evidently be inequitable if, after the separation of Burma, they are in a less favourable position in respect of their operations in British India than a Company established at the same time and under the same conditions in, say, Bombay or Bengal.

It is moved by the Marquess of Linlithgow. Line 12, to leave out (" Act for ") and to insert (" of ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 12, to leave out the second (" for ") and to insert (" of ").

The same is agreed to.

Paragraph 445 is again read, as amended.

The further consideration of paragraph 445 is postponed.

Paragraph 446 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 244, line 12, to leave out (" practise ") and to insert (" be enrolled on the Medical Register ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 244, line 29, to leave out (" unlikely that ") and to insert (" uncertain when ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 244, line 30, to leave out (" in the near future ").

The same is agreed to.

Paragraph 446 is again read, as amended.

The further consideration of paragraph 446 is postponed.

Paragraph 447 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 244, line 41, to page 245, line 7, to leave out from (" that ") in line 41, page 245, to the end of the paragraph and to insert (" statutory provision should be made to secure " to holders of United Kingdom and Indian Medical qualifications which are " recognised by the General Medical Council the right to be enrolled on the " Medical Register in Burma. The precise form which the provision should

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"take will require examination, but we think that reciprocal arrangements "should be made by which the medical degrees granted by Rangoon "University, if and when recognised by the Indian Medical Council and the "General Medical Council, would receive a similar measure of protection in "India and in the United Kingdom to that which we think suitable for "United Kingdom and Indian qualifications in Burma.").

The same is agreed to.

Paragraph 447 is again read, as amended.

The further consideration of paragraph 447 is postponed.

Paragraphs 448 and 449 are again postponed.

Paragraph 450 is read, as amended, and is as follows :—

Constituent powers, etc.

"450. The recommendations which we have made on these four subjects in the case of India will, we think, be equally appropriate, *mutatis mutandis*, in the case of Burma. But as Burma after separation will be a unitary State, and will not be within the jurisdiction of the Indian Federal Court, we think that an appeal should lie as of right to the Privy Council from the High Court in any case involving the interpretation of the Constitution Act. We take this opportunity to record our opinion that the recommendations which we have made elsewhere for the prescription of English as the language of the High Courts in India and the use of English for the conduct of business in the Indian Legislatures should apply equally to the case of the High Court and the Legislature in Burma. As regards audit arrangements, it is evident that
13 Burma will require after separation her own audit system. As regards Home Audit, however, it may well be found that the amount of Burma business transacted in London will not be sufficient to justify the appointment of a separate officer as Home Auditor, and in that event we think that some arrangement should be made whereby the Auditor for Indian Home Accounts should also act in an agency capacity for Burma. We think that liberty should be afforded in the Act for the new Burma Government to establish a High Commissioner of its own in London if it finds it necessary to do so; but we foresee the possibility that the amount of business requiring to be transacted in London on behalf of the Government of Burma may be so small as not to justify, at the outset, the expense of establishing such an office; and we think that it might be well to examine the possibility of the functions of such an official being undertaken by some other authority on an agency basis for the time being."

It is moved by the Lord Rankeillour. Line 13, after ("system") to insert ("similar to that in India").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 450 is again read.

The further consideration of paragraph is postponed.

Paragraph 451 is read, as amended, and is as follows :—

The Secretary of State.

1 ("451. We have recommended that the corporation known as the Secretary of State in Council should cease to exist after the establishment of Provincial Autonomy in India, and in that event the Secretary of State in Council would equally cease to exercise any functions in relation
5 to Burma. It follows that there should be a transference of the rights, liabilities and obligations incurred by the Secretary of State in Council

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in respect of Burma to the appropriate authority to be established in Burma, corresponding to the transference to the Federal or Provincial Governments in India which in an earlier passage we have suggested should be provided for in the Indian Constitution. The question has been raised whether the Secretary of State for India should become in future the Secretary of State for India and Burma. The Joint Memorandum of the Burman Delegates suggests that there should be a separate Secretary of State for Burma, or else that the Secretary of State for the Dominions should hold the office. We are disposed to think that the Secretary of State for India should in future hold two separate portfolios, one as Secretary of State for India and one as Secretary of State for Burma; and we are of opinion that, though the two offices would be legally distinct, it is most desirable on practical grounds that they should be held by the same person. There is, we are convinced, no real danger that the interests of Burma would be unfairly subordinated to those of India in the hands of a Secretary of State holding the double office.")

It is moved by Sir Samuel Hoare and Mr. Butler. Lines 1 to 5, to leave out from the beginning of the paragraph to (" It ") in line 5 and to insert (" The establishment of responsible government in Burma " necessarily implies, as in the case of India, the disappearance in relation " to Burma of the corporation known as the Secretary of State in Council.")

The same is agreed to.

Paragraph 451 is again read, as amended.

The further consideration of paragraph 451 is postponed.

Paragraphs 452 and 453 are again postponed.

Ordered that the Committee be adjourned till to-morrow at Eleven o'clock.

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Die Veneris 12° Octobris 1934

Present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.
MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.
The Proceedings of yesterday are read.

The Course of Proceedings is again considered.

The Report, as amended, is again considered.

It is moved by the Marquess of Linlithgow that paragraphs 1 to 119[1] inclusive, as amended, be agreed to.

The same are agreed to.

It is moved by the Marquess of Linlithgow that paragraph 120[2], as amended, be agreed to.

Objected to.

On Question :—

Contents (17).	Not Contents (7).
Lord Archbishop of Canterbury.	Marquess of Salisbury.
Lord Chancellor.	Marquess of Zetland.
Marquess of Linlithgow.	Earl of Lytton.
Marquess of Reading.	Lord Rankeillour.
Earl of Derby.	Lord Middleton.
Earl Peel.	Sir Reginald Craddock.
Viscount Halifax.	Sir Joseph Nall.

[1] Paragraphs 1 to 119 in the Report as amended correspond to 1–120 in the Draft Report.
[2] Paragraph 120 in the Report as amended corresponds to 121 in the Draft Report.

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Contents (17)—*contd.*

Lord Hardinge of Penshurst.
Lord Hutchison of Montrose.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Lord Eustace Percy.
Sir John Wardlaw-Milne.

Not Contents (7)—*contd.*

The Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones did not vote.

The same is agreed to.

It is moved by the Marquess of Linlithgow that paragraphs 121[1] to 150[2] inclusive, as amended, be agreed to :—

The same are agreed to.

It is moved by the Marquess of Linlithgow that the Appendix (1) as amended, be agreed to :—

The same is agreed to.

It is moved by the Marquess of Linlithgow that paragraphs 151 to 199[3] inclusive, as amended, be agreed to :—

Objected to.

On Question :—

Contents (19).

Lord Archbishop of Canterbury.
Lord Chancellor.
Marquess of Zetland.
Marquess of Linlithgow.
Marquess of Reading.
Earl of Derby.
Earl of Lytton.
Earl Peel.
Viscount Halifax.
Lord Hardinge of Penshurst.
Lord Hutchison of Montrose.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Lord Eustace Percy.
Sir John Wardlaw-Milne.

Not Contents (5).

Marquess of Salisbury.
Lord Rankeillour.
Lord Middleton.
Sir Reginald Craddock.
Sir Joseph Nall.

The Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones did not vote.

The same are agreed to.

[1] Paragraph 121 in the published Report as amended was inserted after paragraph 121 in the Draft Report (*vide* Vol. 1, Part II. Proceedings, pp. 459–460).

[2] Paragraphs 122 to 150 in the Report as amended correspond to 122–147 in the Draft Report.

[3] Paragraphs 151 to 199 in the Report as amended correspond to 148–200 in the Draft Report.

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It is moved by the Marquess of Linlithgow that paragraph 200[1], as amended, be agreed to.

Objected to.

On Question :—

Contents (21).	Not Contents (6).
Lord Chancellor.	Lord Archbishop of Canterbury.
Marquess of Salisbury.	Marquess of Reading.
Marquess of Zetland.	Lord Snell.
Marquess of Linlithgow.	Mr. Cocks.
Earl of Derby.	Mr. Foot.
Earl of Lytton.	Mr. Morgan Jones.
Viscount Halifax.	
Lord Middleton.	
Lord Hardinge of Penshurst.	
Lord Rankeillour.	
Lord Hutchison of Montrose.	
Mr. Attlee.	
Mr. Butler.	
Major Cadogan.	
Sir Austen Chamberlain.	
Sir Reginald Craddock.	
Mr. Davidson.	
Sir Samuel Hoare.	
Sir Joseph Nall.	
Lord Eustace Percy.	
Sir John Wardlaw-Milne.	

The Earl Peel did not vote.

The same is agreed to.

It is moved by the Marquess of Linlithgow that paragraphs 201 to 273[1] inclusive as amended, be agreed to.

Objected to.

On Question :—

Contents (19).	Not Contents (5).
Lord Archbishop of Canterbury.	Marquess of Salisbury.
Lord Chancellor.	Lord Rankeillour.
Marquess of Zetland.	Lord Middleton.
Marquess of Linlithgow.	Sir Reginald Craddock.
Marquess of Reading.	Sir Joseph Nall.
Earl of Derby.	
Earl of Lytton.	
Earl Peel.	
Viscount Halifax.	
Lord Hardinge of Penshurst.	
Lord Hutchison of Montrose.	
Mr. Butler.	
Major Cadogan.	
Sir Austen Chamberlain.	
Mr. Davidson.	
Mr. Foot.	
Sir Samuel Hoare.	
Lord Eustace Percy.	
Sir John Wardlaw-Milne.	

The Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones did not vote.

The same are agreed to.

Paragraphs 200–273 in the Report as amended correspond to 201–268 in the Draft Report.

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It is moved by the Marquess of Linlithgow that paragraphs 274 to 482[1] inclusive, as amended, be agreed to.

The same is agreed to.

It is moved by the Marquess of Linlithgow that the Report, as amended, be agreed to.

Objected to.

On Question:—

Contents (19)	Not Contents (9)
Lord Archbishop of Canterbury.	Marquess of Salisbury.
Lord Chancellor.	Lord Snell.
Marquess of Zetland.	Lord Rankeillour.
Marquess of Linlithgow.	Lord Middleton.
Marquess of Reading.	Mr. Attlee.
Earl of Derby.	Mr. Cocks.
Earl of Lytton.	Sir Reginald Craddock.
Earl Peel.	Mr. Morgan Jones.
Viscount Halifax.	Sir Joseph Nall.
Lord Hardinge of Penshurst.	
Lord Hutchison of Montrose.	
Mr. Butler.	
Major Cadogan.	
Sir Austen Chamberlain.	
Mr. Davidson.	
Mr. Foot.	
Sir Samuel Hoare.	
Lord Eustace Percy.	
Sir John Wardlaw-Milne.	

The same is agreed to.

The Secretary of State for India is heard to request that the following papers be printed and be laid before both Houses of Parliament as Record C 1.[2]:—

I.—Memorandum by the Secretary of State for India on the Action contemplated in relation to Family Pension Funds.

II.—Government of India, Home Department, Resolution, dated 4th July, 1934.

III.—A Note by the Secretary of State for India on Terrorism in India.

IV.—Questions asked by the Marquess of Salisbury on the position of the States in the Federal Finance Scheme of the White Paper, and replies thereto by the Secretary of State for India.

V.—Memorandum by the Secretary of State for India on the Federal Legislature.

VI.—Letter from the Secretary of State for India to the Chairman on the proposed boundaries for Orissa.

[1] Paragraphs 274–482 in the Report, as amended, correspond to 269–453 in the Draft Report.

[2] *Vide* Volume II (Session 1933–34), Records.

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The following members of the Committee are heard to request that their memoranda be printed and be laid before both Houses of Parliament as Record C 2.[1]

I.—The Earl of Derby, the Marquess of Zetland and Sir Austen Chamberlain.
Memorandum on direct *versus* indirect election.

II.—The Lord Rankeillour—

(*a*) Memorandum on the relations of the two Houses of the Federal Legislature in regard to Supply.

(*b*) Memorandum on the Courts in India.

(*c*) Memorandum on special powers in relation to Defence.

III.—The Earl of Derby and Sir Joseph Nall.
Memorandum on Commercial Discrimination.

IV.—Mr. C. R. Attlee.
Memorandum on Responsibility at the Centre.

V.—The Lord Hardinge of Penshurst.
Memorandum on the Anglo-Indian Community.

The Secretary of State for India is heard to request that the following papers be printed and be laid before both Houses of Parliament as Record C 3.[1]:—

Consultations on Irrigation and Forestry.

1. Irrigation—

I.—Memorandum by Sir Raymond Hadow, C.I.E., A.M.Inst.C.E.

II.—Notes for consultation with Committee by Mr. (now Sir) C. T. Mullings, C.S.I.

III.—Consultation between the Committee and Sir Raymond Hadow and Mr. (now Sir) C. T. Mullings.

2. Forestry—

I.—Memorandum by Sir Alexander Rodger, O.B.E.

II.—Consultation between the Committee and Sir Alexander Rodger.

Ordered that the decision whether or not to publish the above papers as Records be postponed until Wednesday, the 31st October.

It is moved that the Lord in the Chair and Sir Austen Chamberlain do move the following Resolution in the House of Lords and in the House of Commons respectively:—

"That it is desirable that the publication of the Report and Proceedings of the Joint Select Committee on Indian Constitutional Reform, and of such further Records as the Committee shall lay upon the Tables of both Houses, shall take place simultaneously in Great Britain and in India and that copies printed by His Majesty's Stationery Office be published in India at the same time that they are published in this country."

The same is agreed to, and ordered accordingly.

Vide Volume II (Session 1933–34) Records.

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Ordered, that the Committee be adjourned until Wednesday, the 31st October at midday, in order that they may meet again to direct that the Lord in the Chair do make the Report to the House of Lords and that he do lay the Proceedings and certain further Records upon the Table of the House of Lords, and that Sir Austen Chamberlain be directed to do likewise in the House of Commons.

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KEY TO AMENDMENTS AND TO NEW PARAGRAPHS ADDED TO THE ORIGINAL DRAFT REPORT

Number of paragraph in original Draft Report. (Vol. I, Part II.)	Number of new or alternative paragraph inserted into original Draft Report during consideration.	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Pages of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of paragraph in Report as finally published. (Vol. I, Part I.)
1 to 42 were read but never considered.	—	———	470.	—
		Note.—Alternative paragraphs 1 to 42B were considered in lieu of the original paragraphs 1 to 42, and will be found printed *in extenso* on pp. 470 to 491 of the Proceedings.		
—	1	The Statutory Commission's survey.	523.	1
—	2	The peoples of India.. ..	498, 517, 523. *498.*	2
—	3	The Indian States	498–9, 524.	3
—	4	British India	524.	4
—	5	Features of present constitution.	499.	5
—	6	The British achievement ..	499, 524. *524.*	6
—	7	The Mogul Empire	499, 525. *525.*	7
—	8	The post-Mogul period ..	499.	8
—	9	Restoration of peace and order	500, 525. *525, 526.*[1]	9

[1] The Committee divided.

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures.

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italic* figures.

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—	10	Influence of British constitutional ideas.	504, 526. *504–5.*	10
—	10–42B	————	*500–504.*[1 2]	—
—	11	Reality of Indian political aspirations.	505, 526–7.	11
—	12	The preamble to the Act of 1919.	505, 527. *527.*[1]	12
—	13	Constitutional theory and practice.	505, 528.	—
15	—	Constitutional development should be evolutionary.	528.	15
—	17	Abolition of dyarchy approved	505, 528.	17
—	18	Responsible government and social legislation.	505–6.	18
—	19	Responsible government and the enforcement of law and order.[3]	506. *528.*	19
—	20	British conception of parliamentary government.	506–7, 529–30. *507.*	20
—	21	Nature and objects of safeguards.[3]	530.	21
22	—	Need for flexibility ..	*530.*	22
23	—	for a strong Executive ..	604.	23
—	24	for an efficient administration;	507, 530.	24

[1] The Committee divided.

[2] These paragraphs were not inserted.

[3] This marginal note has been changed since the paragraph was first laid before the Joint Committee.

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—	25	and for an impartial authority to hold scales evenly between conflicting interests.	517, 531. *507.*	25
—	26	Provincial Autonomy requires a re-adjustment at centre.	507, 605.	26
—	27	Necessity for guarding against centrifugal tendencies.	517, 531.	27
—	28	The Indian States and an All-India Federation.	517. *531.*	28
29	—	Difficulties of a Federation composed of disparate units.	531.	29
—	30	Unity of India endangered without a constitutional relationship between States and British India.	507, 532.	30
—	31	Economic ties between States and British India.	507, 518, 532, 605.	31
	37	(2) between Centre and Provinces;	508, 532. *508.*	37
—	38	(3) in the Central Government itself.	518, 533–4.[1] *508.*	38
—	39	The Central Legislature and the Army Budget.	508–9, 536. *535,*[1] *536.*[1]	39
40	—	Governor-General's power of intervention, and the dangers of a gradual introduction of responsibility at the centre.[2]	536.	40

[1] The Committee divided.

[2] This marginal note has been changed since the paragraph was first laid before the Joint Committee.

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—	41	Weakness of present Central Government.	509.	41
42	—	Emergency of body of central opinion in United Kingdom and in India.	536–7 *536.*	42
—	42A	Issues with which Parliament is faced.	509.	43
—	42B	Parliament's choice must be resolute and decisive.	*537.*	44
		Note.—Paragraphs 43 to 453 will be found *in extenso* in these Proceedings, *vide* pp. 64 to 254.		
43	—	The Committee's terms of reference.	309.	45
44	—	Arrangement of White Paper	518, 537. *289–301.*[1]	46
45	—	Burma..	*289–301.*[1]	47
46	—	Definition of Provincial Autonomy.	435, 537. *309.*	48
51	—	Conflicts of law in concurrent field.	309.	53
52	—	The residuary legislative power.	537.	54
—	53	Difficulty of White Paper proposal.[2]	310–11. *310.*[3]	55
—	54	Cleavage of opinion in India.[2]	311.	56

[1] The Committee divided.

[2] This marginal note has been changed since the paragraph was first laid before the Joint Committee.

[3] Amendments laid before Joint Committee and postponed.

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55	—	The present Governors' Provinces.	538.	57
—	56A	Separation of Sind from Bombay.	*440–2.*[1] [2]	—
57	—	Case for separation from Bombay.	459, 538.	59
58	—	Orissa.	435. *311, 442–4.*	60
60	—	Provincial boundaries ..	312, 436, 538. *312, 436.*	62
61	—	Constitution of future Gover-nor's Provinces.	436. *313.*	63
—	61A	Constitutional advance in the provincial field.	313.	64
64	—	Executive power and authority to be vested in Governor.	510.	67
68	—	Adaptation to different stages of constitutional develop-ment.	313, 436. *313, 538.*	71
—	71	Relations between Governor and Ministers.	313–14, 539, 606.	74
72	—	Constitutional implications of Governor's " special respon-sibilities ".	314, 539. *314.*	75
73	—	Parliament and the Instru-ment of Instructions.	436, 539. *314, 539.*	76

[1] The Committee divided.

[2] This paragraph was not inserted.

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76	—	Peace and tranquility of the Province, Minorities, Public Services.	459. *315, 540.*[1]	79
77	—	Rights of States, Partially Excluded Areas.	316.	80
79	—	Special circumstances of North-West Frontier Province and Sind.	316, 541.	82
—	79A	A special responsibility for safeguarding financial stability of Province not recommended.	317, 542.	84
82	—	Difficulties of proposal that Ministers should be elected Members of Legislature.	542.	87
83	—	Suggested methods for meeting difficulty.	318–19.[1] *318, 543.*	88
84	—	The Governor's choice should not be fettered.	319.[2] *319.*[3]	—
85	—	Law and Order	*319–23.*[1] *543.*	89
86	—	Arguments for and against transfer.	323, 543. *319–23.*[1]	90
87	—	Control of law and order an essential attribute of responsible Government.	323, 414, 544. *319–23.*[1]	91
—	88	The Governor's special responsibility.	323, 416, 545. *319–23.*[1]	92
—	89	The Police Rules	325–26, 416–17, 545–6. *418.*	93

[1] The Committee divided.
[2] This paragraph has been left out.
[3] Amendments laid before Committee and postponed.

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—	90	The Special Branch	326, 417. *326–7,*[1] *414.*[2]	94
—	91	Secret intelligence reports ..	417–18. *327–8,*[3] *415.*[3]	95
—	92	Special powers required for combating terrorism.[4]	418–19,[5] 546. *328,*[3] *415,*[3] *547.*[5]	96
—	92A	Central Intelligence Bureau..	419–20. *548.*	97
93	—	Relations between Governor and Provincial Administration.	444. *328.*	98
94	—	Importance of the office of Governor.	329, 548.	99
95	—	Rules of Executive business..	329.	100
96	—	The Governor's staff ..	437, 548. *329.*	101
97	—	Influence of Governor on working of responsible government.	549.	102
98	—	Governor's special powers ..	549.	103
99	—	Legislative powers	329–30.	104

[1] Amendment moved and postponed.

[2] Amendment again considered and postponed.

[3] Amendments laid before Joint Committee and postponed.

[4] This marginal note has been changed since the paragraph was first laid before the Joint Committee.

[5] The Committee divided.

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100	—	Governor's powers should be exercised independently of Legislature.	330.[1]	—
101	—	Modification of White Paper proposal suggested.	330, 549. *330.*	105
102	—	Ordinances	330, 549.	106
104	—	Ordinances made on Ministers' advice.	330, 331.	108
105	—	Governor's powers in event of breakdown of constitution.	331. *550.*	109
106	—	Responsibility of Governor to Secretary of State and Parliament.	550.	110
—	107	Vital importance of Executive in India.[2]	331–2, 551. *331.*[3]	111
—	108	Difficulties created by communal representation in Ministries.[2]	332, 551–2. *331,*[3] *551–2.*	112
—	109	A statutory permanence of tenure for Ministry inconsistent with Parliamentary Government.[2]	333. *331.*[3]	113
—	110	Governor's reserve powers a guarantee for development of responsible Government.	333–4.	114
111 and 112	—	———	331–4.[3] [1]	—

[1] This paragraph has been left out.

[2] This marginal note has been changed since the paragraph was first laid before the Joint Committee.

[3] Amendment laid before Joint Committee and postponed.

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113 to 115	—	————	331–4.[1]	—
116	—	Solution of the problem lies in Indian hands.	335, 553. *437, 553.*	115
118	—	Second Chambers suggested for Bombay and Madras.	336–7, 554. *335–6,[2] 554.[2]*	117
119	—	The Communal Award and the Poona Pact.	337. *337.*	118
120	—	Effect of the Poona Pact ..	337.	119
121	—	The White Paper proposals accepted.	345–6, 437–8,[3] 554–5. *338–46,[2] 555.*	120
—	121A	Special interests seats ..	459–60. *346–7, 555–6.[2]*	121
122	—	Composition of Second Chambers.	348, 519, 556–7. *347–8,[2] 556–7.[2]* *518–9.*	122
—	122A–D	————	*348–50.[2 4]*	—
123	—	The existing franchise ..	557.	123
124	—	The proposals of the Statutory Commission and the Franchise Committee.	557.	124
125	—	The proposals in the White Paper.	350, 558. *558.*	125

[1] This paragraph has been left out.

[2] The Committee divided.

[3] Amended paragraph further amended.

[4] These paragraphs were not inserted.

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128	—	The proposals administratively practicable.	350, 558.	128
129	—	Suggestions for group system of election considered.	351, 559.	129
—	129A	Importance of development of local self-governing institutions.	559–60.	130
130	—	The White Paper proposals approved with certain modifications.	*351–2.*[1]	131
131	—	Women's franchise proposals compared with Franchise Committee's recommendations.	560.	132
132	—	Vital importance of women's franchise.	352, 438, 560. *352.*	134
133	—	Modifications in White Paper proposals recommended.	510, 561. *353–5,*[1] *560.*[1]	135
134	—	Recommendations with regard to women's franchise.	355, 439. *355,*[1] *561.*	136
135	—	The educational qualification for men.	355–6. *355.*[2]	137
136	—	Election expenses and corrupt practices, &c.	606.	138
—	136A	Disqualification of candidates for Provincial Legislature.	561–2,[1] 606.[3]	—
138	—	Powers of Provincial Legislatures.	356, 439.	140
139	—	{Modification of the White Paper proposals recommended. / Acts of Parliament extending to India.}[4]	439, 563–4. *439, 522, 563.*	141 and 142

[1] The Committee divided.
[2] Amendment laid before Joint Committee and postponed.
[3] This paragraph has been left out.
[4] This marginal note has been changed since the paragraph was first laid before the Joint Committee.

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140	—	Governor's Assent to Bills ..	564.	143
141	—	Excluded Areas	356, 564.	144
142	—	Ordinary procedure	519.	145
143	—	Financial procedure	356, 565. *356.*	146
145	—	Non-votable heads of expen-diture.	565. *565.*	148
147	—	Powers of Legislative Councils and conflicts between the two Chambers.	357, 565. *357.*[1]	150
Appendix (I).	—	Composition of Provincial Legislative Councils.	519, 565. *565.*	Appendix (I)
148	—	Federal Union of States and Provinces.	357.	151
150	—	Legal basis of new Federal Constitution.	358.	153
—	150A	Accession of States to Federa-tion a voluntary act.	358, 566.	154
151	—	Proposed Scheme a practicable one.	358.[2]	—
153	—	Instruments should, so far as possible, follow a standard form.	*358–9.*	156
154	—	Accession of sufficient number of States a condition prece-dent to Federation.	*359.*	157
155	—	Differentiation of functions of Governor-General and Viceroy.	440, 566. *359–60.*	158

[1] The Committee divided.
[2] This paragraph has been left out.

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159	—	Its separation from British India recommended.	360, 566–7. *360, 566.*	162
160	—	Nature of the Federal Government.[4]	360, 567. *360–1.*	163
161	—	The present Executive in India.	567.	164
—	*160–227*	————	*302–8.*[1]	—
162	—	Executive power and authority of Federation to be vested in Governor-General.	361, 510.	165
163	—	Introduction of responsible government.	*444.*	166
164	—	Special questions in connection with the Federal Executive.	440.	167
166	—	Responsibility for peace and tranquillity of India.	362. *362.*[2]	169
167	—	Responsibility for safeguarding financial stability and credit of the Federation.	567. *362.*	170
168	—	Responsibility for protecting the rights of Indian States.	363.	171
169	—	Selection of Ministers ..	363.[3]	—
170	—	The Reserved Departments and the Governor-General's Counsellors.	567. *363–4.*	172

[1] These alternative paragraphs were not inserted.

[2] The Committee divided.

[3] This paragraph has been left out.

[4] This marginal note has been changed since the paragraph was first laid before the Joint Committee.

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171	—	The Statutory Commission on the Army in India.	*364–5.*[1]	173
172	—	The Commission's recommendation.	365–6.	174
173	—	Relations between Department of Defence and other Departments.	366, 568. *568.*	175
174	—	Co-operation essential ..	460, 511, 569. *366.*	176
—	174A	———	*460.*[2]	—
175	—	Suggestions of British-Indian delegation.	569. *366.*	177
—	175A	Employment of Indian troops outside India.	366–8.[1] *570.*[1]	178
176	—	Indianization	*369.*	179
177	—	The practical difficulties ..	*369.*	180
178	—	Further development of Indianization necessary, but a time-limit impracticable.	*369.*	181
180	—	The Commander-in-Chief ..	369–70.	183
181	—	External Affairs	571. *370.*	184
183	—	Limit for future ecclesiastical expenditure suggested.	571. *370–1.*	186
184	—	Ministers and Counsellors ..	371.	187

[1] The Committee divided.

[2] Paragraph not inserted.

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185	—	Misapprehensions as to position and functions of Counsellors.	571.	188
186	—	The Governor-General's staff	371. *371.*	189
—	188	The difficulties of Dyarchy at the Centre ;[2]	461–2.[1] *371–2.*[4]	191
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[1] The Committee divided.
[2] This marginal note has been changed since the paragraph was first laid before the Joint Committee.
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[1] The Committee divided.
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ON INDIAN CONSTITUTIONAL REFORM
[SESSION 1933–34]

VOLUME II

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RECORD A.1.

[20TH DECEMBER, 1933.]

I.—Notes by the Secretary of State for India on the Points of Difference between the Proposals for Constitutional Reform in Burma and in India.

The matters in respect of which the Constitutional proposals for Burma, if separated from India, differ otherwise than verbally from those contained in the Indian White Paper have been indicated by the use of italics in the Constitutional memorandum on Burma already circulated—(Joint Committee on Indian Constitutional Reform [Session 1932-33] Volume III p. 535).

The following commentary explains these italicised points of difference, and also one or two matters in which, though the form of the proposal corresponds to that of the analogous proposal in the Indian White Paper, the underlying conditions in which the proposal is to be applied are substantially different.

Proposal 1.

Like the corresponding proposal in the Indian White Paper, this proposal deals with two categories of jurisdiction, that exercisable in territory belonging to the King—that is, that part of Burma which is British Indian territory—and that exercisable in those parts which, though embraced in the geographical limits of Burma as generally understood, are part of India, but not of British India. The Province of Burma, including the Shan States and the Chin and Kachin and other tribal territory, some of it almost unexplored and hitherto not brought under regular administration, which lies on the Burma side of the Indo-China and Indo-Siamese frontier, or of the provincial frontier (partly undefined) between Burma and Assam, is part of British India, and is British territory ("belonging" to the King). But the Indo-Siamese frontier leaves also on the Burma side the territory known as the Karenni States, the independence of which was guaranteed by a treaty with the former Burmese kingdom in 1875, and which, though not part of British India or the Province of Burma, are part of "India", since that term includes the "territory of any native Chief under the suzerainty of His Majesty exercised through the Governor-General (of India)." Actually, these tracts are "in the political control of the Government of Burma", and the jurisdiction exercised in them is exercised by the Governor (and his subordinate officers) on behalf of the Governor-General by virtue of notifications, etc., issued by the Foreign and Political Department of the Government of India under the Indian (Foreign Jurisdiction) Order in Council, 1902. Though the Karenni States are extremely backward and of little economic or political importance, their position seems constitutionally to be precisely that of the States in India, and it seems necessary therefore to vest in His Majesty in Burma authority in relation to them equivalent to and expressed in terms identical with those used to express the position of the Crown in relation to the Indian States.

For practical reasons it is evidently necessary that the jurisdiction exercised heretofore, in this regard, by the Crown through the Governor-General of India and, on the latter's behalf, through the Governor of Burma, shall be exercised in future by the Crown through the Governor of Burma direct, without the intervention of the Governor-General of India. For this purpose, it will be necessary to issue a new Foreign Jurisdiction Order in Council authorising the Governor of Burma to act for the Crown under the Foreign Jurisdiction Act.

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Proposal 2

It seems necessary to define the territories to which the new Constitution Act is to apply. But it does not seem necessary to include in the Act a categorical statement that these territories have been separated from India. If the fact of separation is to be recorded in some formal manner, this could be done by other means, e.g., in the Proclamation bringing the Constitution Act into effect.

Proposal 3.

The reasons underlying this proposal are explained shortly in paragraph 9 of the Introduction to the Burma Constitutional Memorandum.

There are a number of Imperial Acts which at present extend to Burma as part of British India; on the other hand, Acts extending to "the Colonies" as such, do not apply to British India, or consequently to Burma.

Imperial Acts extend to British India either because they are so extended in terms or else because they are declared to extend "throughout His Majesty's Dominions" or "to all British Possessions" or in some other phrase which includes British India.

Acts which are applied to British India *eo nomine* would (unless specially saved in the Constitution, as Proposal 4 suggests should be done) automatically cease to apply to Burma when she ceases to be part of British India, but she would still remain a "British Possession" and part of "His Majesty's Dominions," so that Acts, the extent of which is declared by such formula, will continue to apply to Burma.

On the other hand, the moment Burma ceased to be part of British India all Acts which are declared to extend to "Colonies" would, having regard to the definition of "Colony" in the Interpretation Act, 1889, as "any part of His Majesty's Dominions exclusive of the British Islands and of British India", automatically apply to Burma (or, at any rate, such of them as were passed after the Interpretation Act). Of such Acts the most important is probably the Colonial Laws Validity Act, 1865. Some of the provisions of this Act, and notably those which confer extensive powers of Constitutional Amendment and of establishing, abolishing, and reconstituting Courts of Judicature, are, however, not appropriate to the Constitution of Burma outlined in the Constitutional Memorandum, and it is necessary for this reason (as well as to avoid the implication that Burma is reduced to the status of a "Colony", which might be interpreted as meaning "Crown Colony") to prevent its application. Should it on further examination be found desirable in the interests of Burma to apply to her any Acts at present expressly applied to "Colonies", this could be done by means of an appropriate provision in the Constitution Act. It is doubtful whether there are more than one or two Acts of this kind, e.g., Colonial Boundaries Act, 1895, Colonial Naval Defence Act, 1931.

Put shortly, the objects to be achieved are (i) to ensure that Acts which previously applied to Burma because she was part of British India should continue to do so, and (ii) to rule out the possibility of Burma's change of status bringing her within the ambit of any Acts (possibly with certain specified exceptions) which previously did not apply to her. As the definition of "Colony" in the Interpretation Act, 1889, applied only to Acts passed after that Act, and in view of the extremely vague language employed with reference to "colonies", "colonial possessions," etc., in earlier Acts, and also for the removal of doubts, it seems advisable to draft the necessary clause in the Burma Constitution in the widest and most comprehensive terms.

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Proposal 4.

It will be necessary to make provision for the continued application to Burma of laws of the British Parliament applying to British India and of existing Indian laws and the rules, regulations, notifications, etc., made thereunder by means of which the laws are interpreted and administered. This can perhaps best be done by means of a general clause empowering His Majesty by Order in Council to adapt the form of Indian laws, etc., to meet the situation, though Indian laws in which it is desired to make more than formal amendments (e.g., the Indian Railways Act and the Indian Tariff Act) will require to be specially dealt with.

Proposal 5.

See footnote to proposal 5 of the Burma Constitutional Memorandum. [Joint Committee on Indian Constitutional Reform (Session 1932-33) Volume III page 67.]

Proposal 6.

See footnote to proposal 6 of the Burma Constitutional Memorandum. [Joint Committee on Indian Constitutional Reform (Session 1932-33) Volume III page 68.]

Proposal 10.

As regards the reservation to the Governor of the control of monetary policy, currency and coinage, the proposal is that as laid down in the Prime Minister's statement at the end of the Burma Conference, this side of finance, of which Burma has no experience, should be reserved to the Governor as a department in his sole charge (assisted by a Financial Adviser).

Proposal 11.—(*The Financial Adviser.*)

The Prime Minister, in his announcement at the conclusion of the Burma Round Table Conference, made the following statement on this subject:—

> "In view of the wider range of finance which would devolve on the Government of Burma as the result of separation, His Majesty's Government are of opinion that the Statute should provide for the appointment by the Secretary of State of a Financial Adviser to the Government. In respect of matters reserved to the personal administration of the Governor, the Financial Adviser would be the Governor's Adviser. Outside this field, all proposals having an important financial significance should be referred to him, and provision should be made to ensure that any objections that he may have to measures proposed should be made known to the Ministry and the Governor."

As the Burma Memorandum [Joint Committee on Indian Constitutional Reform (Session 1932-33) Volume III page 53] now stands, it is proposed, in conformity with the Indian White Paper, that the Financial Adviser shall be appointed by the Governor in his discretion after consultation with Ministers (proposal 16), in exactly the same way as the Financial Adviser in India. It is further provided (proposal 11) that one of the Governor's Counsellors may be appointed Financial Adviser. This provision is not found in the Indian White Paper.

The position of the Financial Adviser is further dealt with in proposals 15 and 47 (ii). Proposal 15 authorises the Governor to make rules for the transmission of information to the Financial Adviser, and proposal 47 (ii) makes the salary and allowances of the Financial Adviser and his staff non-votable charges on the revenue.

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It will be noted that proposal 16 in the Burma Memorandum, drafted to follow proposal 17 of the Indian White Paper, diverges from the lines of the Prime Minister's statement inasmuch as it proposes that the Financial Adviser should be appointed by the Governor in his discretion after consultation with Ministers instead of by a Secretary of State.

This is consequential upon the proposal in the Indian White Paper that in India the Financial Adviser should be appointed by the Governor-General in his discretion after consultation with Ministers. There would seem to be no grounds for differentiating in this respect in the case of Burma. Appointment by the Governor instead of by the Crown or a Secretary of State should not render it any more difficult to obtain an expert from outside Burma.

The provision that the Financial Adviser should be consulted by Ministers on matters in respect of which *they may ask for his advice,* might on account of its permissive nature appear to conflict with the last sentence of the passage quoted from the Prime Minister's statement. This provision, however, refers to matters on the transferred side of Government in which the Governor's special responsibility for the financial stability and credit of Burma is not involved. It is not intended to prevent the Governor in making rules of executive business under the provision in proposal 15, from requiring Ministers and Departments to submit to him through the Financial Adviser adequate advance information upon specified categories of proposals (e.g., borrowing and taxation) originating in the transferred side of Government, which might affect the reserved departments or involve the exercise of his special responsibilities.

In addition to advising the Governor in connection with the reserved subject of Currency and Coinage, the Financial Adviser would (*a*) advise the Governor in respect of the financial aspect of his reserved departments; (*b*) advise him upon any matters on the transferred side of Government upon which he desired to be kept informed; and (*c*) be available to advise Ministers upon any matters on the transferred side on which they chose to seek his advice. It is difficult to determine at present whether it will be found possible in the case of an officer entrusted with these varying responsibilities to take advantage of the permission afforded by proposal 11 to double the appointment of Financial Adviser with that of Counsellor. The intention of this proposal, should it be found practicable, is to avoid saddling Burma with the expense of both a Financial Adviser and a Financial Counsellor, who will be required in an executive capacity on the reserved side of Government, and for the purpose of expounding the Governor's policy in the Legislature.

It will be remembered that no provision is made in the Indian White Paper for the appointment of Financial Advisers in the Provinces. The Financial Adviser to the Government of Burma may therefore be required to advise the Governor on matters that in India would be Provincial as well as on those that would be Federal in India, and the field in which his counsel may be required will be more comprehensive than that of the Financial Adviser to the Federal Government of India.

Proposal 17.

Except that there is no provision making it a special responsibility of the Governor to safeguard the rights of the States (which, with the unimportant exception of the Karenni States, are non-existent in the Burma case), this list of special responsibilities corresponds to that in the Indian White Paper.

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Proposals 21-29.

See Memorandum on page 9 of this Volume on the composition of the Legislature and the franchise, and also the footnote to proposal 21 of Burma Constitutional Memorandum. [Joint Committee on Indian Constitutional Reform (Session 1932-33) Volume III page 71.]

Proposal 37.

This proposal merely states that Bills may be introduced in either Chamber of the Legislature. But in the footnote on page 18 of the Memorandum it is stated that it is proposed in the case of Burma to differ from the proposals for the Indian Federal Legislature to the extent of enabling Money Bills to be initiated in the Upper Chamber as well as in the Lower, instead of in the Lower Chamber alone, and it is also pointed out that the Burma Memorandum makes no provision similar to proposal 48 of the Indian White Paper, which allows a power to the Upper Chamber, if a motion to that effect is moved on behalf of Government, of requiring a Joint Session to be called if it disapproves of a reduction or rejection of any Demand by the Lower Chamber.

The reason for proposing, save in the case of Supply, equal powers for the two Chambers in Burma, is the desirability of imposing the check of a senatorial body upon an inexperienced Lower Chamber entrusted with a range of responsibilities wider than that to be accorded to any single Lower Chamber, Federal or Provincial, in India.

The same argument is not, of course, applicable to the question of Supply, which should normally vest in the Lower Chamber.

Proposal 38.

Erratum.—The reference to proposal 40 should be to proposal 41.

Proposals 54 *and* 55.

These taken together follow generally proposals 110-118 of the Indian White Paper so far as they are applicable to the case of Burma, where the complications attending the relative powers of Federal and Provincial Legislatures do not arise.

There are, however, certain points of divergence:—

(1) Sub-clause (*d*) of proposal 54 and the second sentence of proposal 55, differ somewhat from the corresponding Indian provisions owing to the mixed nature of the forces likely to be maintained in Burma at the outset. The "Burma Defence Force" will, it is contemplated, comprise the frontier battalions of the Burma Military Police, put on a definitely military basis, and internal security battalions of indigenous troops. For these troops a Burma Army Act will need to be passed by the Burma Legislature. In addition to these units there will be serving in Burma, at any rate for some years to come, one or two British and Indian Army battalions. The position of the former will be secured by the restriction on the Burma Legislature against legislation conflicting with the Army Act; a similar restriction will be required in respect of Indian units for the Indian Army Act. Similarly, just as the Air Force must be safeguarded, as in the present Act, so the Indian Air Force Act should be safeguarded against the event of any personnel of the Indian Air Force being lent for service in Burma.

Corresponding provision needs also to be made in respect of naval personnel or of Indian personnel of the Marine Service serving in

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Burma. At present, personnel of the Royal Indian Marine are amenable to the Indian Marine Service Act; but it is not unlikely that this may be replaced (as has already been attempted) by an "Indian Navy (or Naval Discipline) Act".

The separation of Burma from India and her suggested position in the British Commonwealth as something not in terms a "Colony" would necessitate amendments of a verbal nature in the sections of the Army Act referring to His Majesty's Forces in India and His Majesty's Indian Forces, and, no doubt, corresponding amendments of the Air Force Act.

(2) The power of the new Burma Legislature not only to make new laws, but also to repeal and amend existing laws made by the pre-separation Indian or Local Legislatures, which otherwise would continue with unabated force in the new regime, should presumably be given in the Act, whether in the place shown (end of proposal 54) or elsewhere. The intention is to perpetuate *mutatis mutandis* the power accorded by section 80A (2) of the present Government of India Act.

(3) The object of the italicised third sentence of Proposal 55 is to ensure co-operation between the civil power in Burma and the military authorities responsible for personnel subject to the Indian Army Act.

Proposals 58-62.

A separate Memorandum on Discrimination will be submitted. [RECORD A2, page 103 of this Volume.]

Proposal 64.

The Constitution Act will need to contain a provision giving statutory effect to the award of the Arbitral Body which it is proposed to set up to determine the shares to be borne by Burma and India respectively of assets and liabilities existing at the time of separation. Of the latter the most important are the debt and pension charges.

As regards the second sub-paragraph of this proposal, it may be anticipated that difficulties will arise in defining the partition between India and Burma of liability in respect of rights now existing against the Secretary of State in Council. How such partition should be effected in any particular case may depend very much on the terms of the financial settlement to be made between India and Burma. It seems not unlikely that, in addition to questions of the respective liabilities of the two Governments in respect of matters done before separation, there will be many other matters arising out of the settlement and requiring adjustment between the two Governments. It may prove desirable, in order to meet such cases, to provide for a body somewhat like the Joint Exchequer Board set up by section 32 of the Government of Ireland Act, 1920. It does not seem possible at this stage to make definite provision for the establishment of such a body; but assuming that such a body if set up should have statutory authority for its actions, it might be as well to include in the Constitution Act a permissive sub-clause under which it might be set up hereafter if the need arises. It is possible, however, that the same end could be achieved, if and when the need arises, by simultaneous legislation in India and Burma.

Proposal 65.

A provision of this nature is obviously necessary to enable the Executive charged with the responsibilities of the Crown in Burma to perform its functions.

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Proposal 66.

Erratum.—The reference to proposal 64 should be to proposals 64 and 65.

Proposal 68.

A separate Memorandum on a Statutory Railway Board in Burma will be submitted.

Proposals 69 *and* 70.

These proposals closely follow Proposals 146 and 147 in the Indian White Paper, and therefore have not been printed in italics; the following remarks are, however, offered as the conditions of the two cases are not the same.

At present the Government of Burma, like all other Provincial Governments, may raise loans on the security of provincial revenues in accordance with the Local Government (Borrowing) Rules, which derive their authority from Section 30 (1A) of the present Act. Under these Rules a Local Government requires the prior sanction of the Governor-General in Council for raising a loan in India and of the Secretary of State in Council for raising one outside India, and in either case, under the governing section of the Act, the loan is raised " on behalf of and in the name of the Secretary of State in Council ".

Future borrowing operations will be subject to the special responsibility of the Governor, who will have available the expert advice of the Financial Adviser.

The Treasury have agreed that arrangements should be made to secure that Burma sterling loans shall be eligible for Trustee status on appropriate conditions.

Proposal 79.

In the absence from Burma of a Federal or Supreme Court to which appeals could be carried, it seems clearly necessary to preserve all existing rights of appeal to the Privy Council and, in addition, to secure access to the Privy Council in cases involving the interpretation of the Constitution.

Proposals 80 *and* 83.

The question of the future of the Council of India, in relation to Burma, was not touched upon at the Burma Round Table Conference. The Burma Constitutional Memorandum follows the Indian White Paper in proposing that the Council as at present constituted should be replaced by a small body of advisers. These advisers would not retain the power over finance possessed by the existing Council, and the only matters in respect of which it would be obligatory for the Secretary of State to seek and follow their advice, would be rules made by the Secretary of State regulating conditions of service of those members of the Public Services who are under his control, and the passing of orders upon appeals from members of the Services.

The advantage of providing an additional safeguard of this kind for the Services, and of enabling the Secretary of State to have at hand advisers with expert and recent knowledge of local conditions, is as obvious in the case of Burma as of India. The difficulty to be met in the case of Burma is that, while it would be unwarrantable to appoint a larger number than one or two Advisers, such a body would be too small to hold in its hands a

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final power of decision in important Service matters. Proposal 83 seeks to overcome this difficulty by providing that in the decision of Service questions the Advisers for Burma shall be augmented by the Advisers for India. If the portfolio for Burma is held in the hands of the Secretary of State responsible for India, whether separate secretaryships are created or not, this arrangement should work conveniently in practice.

Proposals 84-99.

The principal effects of the proposed constitutional changes upon the Public Services are set out in paragraphs 19-25 of the Introduction to the Constitutional Memorandum [Joint Committee on Indian Constitutional Reform (Session 1932-33) Volume III pages 64 to 66]. Put shortly, the intention is to duplicate the position contemplated in India under the White Paper proposals, i.e., while preserving existing rights of all the Services, to confine recruitment by the Secretary of State in future to the Services which will replace the Indian Civil Service and Indian Police in Burma, and possibly to the Medical and Railway Services. At the same time it is obvious that the separation of Burma from India must involve the severance of a large number of All-India and Central Service Officers from the main bodies of their Services, and a diminution of some of the existing rights of such officers, e.g., eligibility for certain high appointments under the Government of India. Such diminution is, however, believed to be more theoretical than real; and in practice is likely to be offset by the future exclusive eligibility of Burma officers for new posts in Burma and for posts to which appointments are now frequently made from among officers serving in other Provinces or under the Government of India.

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RECORD A.1 (*continued*).

II.—Memorandum by the Secretary of State for India on the Franchise, Composition of the Legislature, and Representation of Minorities and Special Interests in Burma.

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BURMA.

Franchise, Composition of the Legislature and Representation of Minorities and Special Interests.

INTRODUCTORY.

1. The Statutory Commission, after recommending in Volume II, Part 6, paragraph 225, that Burma should be separated from India, assumed that the framing of the details of the Constitution to be adopted in that event would be preceded by further enquiry into local conditions and opinions. Such a further enquiry, if it had taken place, would, no doubt, have investigated and made recommendations on the subjects of composition of the Legislature, franchise, representation of minorities and so forth. For a variety of reasons, however, among which the principal one perhaps was the extremely disturbed state of Burma during the period in which a commission of enquiry might conceivably have visited the country, no further investigation of the kind did take place, and, for reasons into which it is not necessary to go now, the Indian Franchise Committee, under the Marquess of Lothian, did not include Burma within the field of its enquiries. The resulting position is that the questions of franchise and cognate matters in Burma have not been the object of investigation and recommendation by any outside authority as has been the case in respect of the other Provinces of British India.

2. At the Burma Round Table Conference in December 1931 and January 1932 these questions were discussed, and the fruits of the discussion in the Conference itself are to be found in the Report of the Committee of the Conference, Cmd. 4004/1932. A perusal of the relevant paragraphs (6–43) of the Report will show that whereas there was a general consensus of opinion that in the event of separation a Second Chamber would be essential, no very great measure of agreement was reached at the Conference on the questions of extending the present franchise for the Lower House, the nature of the franchise for the Upper House, the qualification for membership of either House of the Legislature, or in regard to the representation of minority communities and special interests in the Legislature. The question of such representation in the Lower House was discussed informally in a sub-Committee over which Lord Lothian presided, but no means was found of reconciling the conflicting views of the various parties and special interests represented on the Committee.

3. The Statement delivered by the Prime Minister at the conclusion of the Burma Conference gave an outline of the

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features of the Constitution which His Majesty's Government would recommend to Parliament for Burma in the event of that country being separated from India. The Statement recommended the establishment of two Houses, of which the Lower would contain about 120 or 130 members directly elected, and the Upper would be about one-third the size of the Lower and would consist partly of members elected and partly of members nominated. It was pointed out that two such Houses together would contain almost double the number of non-official members in the existing Legislature. The Statement insisted on the necessity of making provision to ensure adequate representation of minority communities and special interests in the Lower House, and, after expressing regret that the Conference had not been able itself to reach agreement on the question of the representation of minority communities and special interests in the future Legislature, intimated that should such agreement still fail to be achieved as a result of further efforts, His Majesty's Government would regard it as necessary to include in any constitutional scheme that they put forward provision for meeting the claims of minorities and special interests for representation by separate electorates. As regards any extension of the present franchise for the Lower House the Prime Minister's Statement remarked that His Majesty's Government were not satisfied that the practical administrative difficulties involved in considerable extension of the franchise could, in the present conditions, be overcome.

4. During the period succeeding the Burma Conference public attention was riveted on the controversy between the advocates and opponents of separation from India, and no suitable opportunity presented itself to pursue, in concert with leaders of public opinion in Burma, the examination of the questions of the composition of the Legislature, franchise, &c. which would be suitable in the event either of Burma being separated or of being included in the Indian Federation as a Province of British India. But when, last summer, it became evident that a clear decision on this dominant issue could no longer be expected of the Burma Legislative Council and that a decision of the issue between separation and federation must await the recommendations of the Joint Select Committee and the verdict of Parliament on them, the Government of Burma proceeded to formulate and to sound local political opinion on proposals to be incorporated in a revised Constitution for Burma, whether separated or not, in respect of franchise and the connected matters. The suggestions of the Government of Burma will be found in the Memorandum printed as Appendix II, which was circulated to leading members of the political parties in Burma and representatives of special interests, such as the various Chambers of Commerce; and in Appendix III will be found the comments on and criticisms of these proposals by the parties and the special interests consulted. A perusal of

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this Appendix will show to what extent agreement between the representatives of the various communities and interests in Burma is likely to be found possible in respect of these questions and it will reveal in what respects they are divergent one from the other.

Put in tabular form the position in respect of communal representation is :—

Community	Present Elected Seats (in House of 103)	Future Elected Seats in House of 132	
		Proposed by Government of Burma (App. II)	Demanded by the Community concerned (App. III)
Karens - -	5	12	12
Indians - -	9	10 + 2 for Labour	15 or 16 excluding Labour *plus* increase in Commerce Seats
Anglo-Indians -	1	2	3
Europeans -	4	7	12 or 13
Chinese - -	1	1	2

5. Most careful consideration has been given to the opinions expressed by the party leaders and representatives of communities and special interests; and in Appendix I will be found set out for consideration, suggestions for the composition of both Houses of the Legislature and the allocation of seats to the various communities and special interests that seem to require special representation. For facility of reference, statements of the composition of and allocation of seats in the present Legislative Council are included alongside these suggestions. The basis of the suggestions in Appendix I is afforded by the following prefatory and explanatory observations.

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PART I.

Franchise for the Lower House.

(See footnote on page 19 of Joint Select Committee [Session 1932–33] Records, No. 4.)

6. *Literacy.*—Literacy, in the sense used in Census reports (i.e. ability to read or write a letter in any one language) is very much more widely diffused in Burma than in any other Province or indeed any State in India. Taking only the areas of Burma out of which it is proposed to constitute the elective area, there are 600 per thousand males and 182 per thousand females, affording, with children, a total figure of over 390 per thousand, who satisfy the Census test of literacy. These remarkably high figures are due to the fact that the great bulk of the population are Buddhists, which secures that practically every boy passes through at least a monastic school and receives the elements of education. But the test is merely that of ability to write and read a letter in any one language. When more exacting tests, such as that of "literate in English," are applied, it is found that Burma takes a much lower place in the list of Provinces. From this and other facts the Census reporters infer that, were the standard of literacy made a little more severe than the present elementary test, Burma would not maintain her high position.

7. The foregoing remarks are designed simply as a caution against the inference which is sometimes drawn that the wide dissemination in Burma of literacy in the sense used for Census purposes, indicates a high degree of education in the population generally.

8. *The existing Franchise.*—The qualifications for electors to the present Legislative Council are shown in detail in the extract from the Burma Electoral Rules annexed to Appendix II. Apart from the qualification of community in the case of certain seats, the qualification on which in the main the present franchise is based (apart from such minor qualifications as past military service) is essentially property (assessment to income-tax, *thathameda*, capitation tax, payment of land revenue occupation of or possession of immovable property). In addition separate representation is provided for special interests such as Rangoon University and Chambers of Commerce, the qualification in these cases being, generally, membership of the organisation represented.

9. This franchise for the Legislative Council produces a present electorate (substantially larger than in any other Province of India) of 2·08 million persons, including 124,000 women, in a total population in the elective area of 12·3 millions.

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10. The percentage of—

Electors to population is - - -	16·9
Male electors to adult male population -	57·4
Female electors to adult female population	4·0

and the proportion of female electors to male electors is 1 : 14·3.

11. This franchise, regarded as a whole, may appear to be already sufficiently wide; but it produces certain inequalities and contains certain defects (explained below) which it is desirable to take this opportunity to correct. The modifications necessary for this purpose, and also for the purpose of improving the ratio of women electors to men, will inevitably extend the existing franchise, relatively wide though it is. But at the same time it is proposed to take measures which will in effect meet the Burmans' demand for a period of residence as a qualification for the vote. This proposal will to some extent counteract the too wide extension which would otherwise result from the proposed lowering of the property qualification which is entailed by the modification of existing defects.

12. The defects in the present system to which particular attention was drawn at the Burma Round Table Conference result in an extensive disfranchisement, in Lower Burma, of bachelors and widowers. The most general form of qualification, particularly in the rural areas, is assessment in Upper Burma to *thathameda** or in Lower Burma to capitation tax† of not less than Rs. 5 per annum. This latter qualification is derived from the recommendation of the Burma Reforms Committee, 1921 (Whyte Committee). That Committee recommended adoption of the married rate of capitation tax (which is generally Rs. 5) rather than the unmarried rate (which is generally Rs. 2 as. 8) on the ground that it would enfranchise in Lower Burma much the same class of man as would be enfranchised in Upper Burma by the qualification of assessment to *thathameda*. But the rate of Rs. 5 is not the universal married rate, though mentioned as such by the Whyte Committee, and as a result some 90,000 married males who are assessed to capitation tax at a lower rate than Rs. 5, have been excluded from the franchise, contrary to the intention of the Whyte Committee.

13. The second reason why the Whyte Committee recommended adoption of the married instead of the unmarried rate for qualifi-

* A household tax levied in Upper Burma by which the average rate per household is fixed for each village at a periodical settlement, and the actual incidence in each year is fixed by village assessors for each household. It is payable by the head of the household, whether male or female, and the individual householder becomes liable to the tax at the age of 18.

† Virtually a poll tax levied in Lower Burma on all males between the ages of 18 and 60.

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cation by assessment to capitation tax was to exclude the least responsible classes in the community, including the migratory coolie class. But, while it has to some extent achieved this object, the qualification has in fact also resulted in the exclusion from the franchise in Lower Burma of the bulk of unmarried men and widowers.

14. *Correction of these Defects.*—It is proposed now (vide paragraph 34 of Appendix II), for the correction of these defects, to abandon the *married* rate of capitation tax and to substitute assessment to *any* rate of capitation tax, thus bringing on to the franchise the adult bachelors and widowers, and also the 90,000 married men mentioned above. An additional minor change is proposed in paragraph 34 of Appendix II to ensure that a man qualified by assessment to capitation tax does not cease to be eligible on attaining the age of 60, when he ceases to be liable to assessment to that tax.

15. These modifications by themselves would produce a widening of the franchise which might prove excessive. But it is proposed now (vide paragraph 33 of Appendix II) that voters qualifying by assessment to capitation tax and similar low grades of property qualification should qualify not simply by inclusion in the applicable tax-assessment roll but by inclusion for three years previous to the exercise of the vote. This provision will (*a*) in the case of the great majority of indigenous voters who qualify under assessment to such taxes at the age of 18 at present, have the effect of putting up the age for the franchise to 21 years and thus excluding the youngest and presumably the least responsible categories; (*b*) ensure also that the great majority of the non-indigenous population will not have the vote till they have resided in Burma for at least three years, so that when the time comes for them to exercise the vote they will have had the opportunity afforded by three years' residence to acquire an interest in local affairs and exercise their vote intelligently.

16. *Women Voters.*—It is proposed also to increase the female electorate. It is generally recognised that the women of Burma occupy a position of freedom and independence not attained in other Provinces. Socially there is practical equality between the sexes; purdah is unknown; women take their full share with men in the economic life of the country, and, as mentioned above, the percentage of literates among women is far higher than elsewhere. Adopting the literacy test recommended in paragraph 215 of its Report by the Indian Franchise Committee, and combining with it an *age qualification* for women of 21, it is proposed (paragraph 37 of Appendix II) to raise the number of women voters from 124,000 to about 700,000, including those who, apart from the literacy test, would be enfranchised by property

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qualifications. The resulting ratio of women to men voters will be approximately 1 to 3·5. It seems unnecessary therefore to adopt in Burma the wifehood qualification which was recommended by the Indian Franchise Committee in paragraph 215 of their Report as an additional means for adoption in India of bringing the ratio up to 1 : 4.

17. All the women who qualify for the vote on a property test will be registered as such; and as recommended by the Indian Franchise Committee (paragraph 215), all women whose names are included in authoritative educational rolls will be registered by this means. For the remainder, who are not already registered by one of these means and qualify by literacy alone, it will, as proposed by the Indian Franchise Committee, be necessary to apply for registration for the vote, and to prove their literacy.

18. *The Electorate resulting from these Proposals.*—The total electorate—male and female—will thus, on these proposals, rise from about 2·08 millions (1,956,000 male and 124,000 female voters) in a population of 12·3 millions to about 3 millions (2·3 million males and 700,000 females) in a population of 12·9 million, i.e. 23·26 per cent.

19. Under these proposals the percentage of—

male electors to adult male population would rise from 57·4 per cent. to about 70 per cent.;

female electors to adult female population would rise from 4 per cent. to about 21 per cent.; and

the proportion of female to male voters would rise from 1 : 14·3 to about 1 : 3·5.

Further, the present franchise, which favours rural constituencies as against urban in respect of proportion of electors to total population, will be corrected. In urban constituencies the percentage will increase, it is estimated, from 12·7 per cent. to 23·7 cent. and will be brought into closer agreement with the percentage in rural constituencies. For the whole of the elective area the future percentage is, as stated above, estimated at 23·26.

20. The Government of Burma anticipate no insuperable difficulty in arranging (by means, for example, of increasing voting stations and, if necessary, allotting more than one day for the poll and holding the poll on succeeding days in neighbouring constituencies) to deal with the additional numbers of potential voters brought on to the franchise. They assume that not more than 60 per cent. of the total new electorate will exercise the vote. This assumption seems to be a safe one, for, at previous elections, in 1922 of the registered voters 6·9 per cent. voted, in 1925 16·2 per cent., in 1928 15 per cent. and in 1932 38·8 per cent. The remarkable increase in 1932 is ascribable to the fact that the

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main issue at this election was whether Burma should be separated from India, and that, with so important an issue at stake, great numbers of the electorate who under the influence of their political associations had hitherto boycotted the elections were on this occasion urged to vote. In some urban constituencies over 70 per cent. of the registered voters exercised the vote; but in no rural constituency was the percentage of 60 approached.

21. *Summary.*—In Appendix I–C, the revised qualifications resulting from the adoption of the suggestions described above are set out in general terms. They produce an electorate of reasonable size, with a substantial proportion of female voters; they remove certain admitted anomalies in the existing qualifications; they are fair as between urban and rural interests; and they are administratively practicable.

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PART II.

REPRESENTATION OF MINORITY COMMUNITIES, SPECIAL INTERESTS AND WOMEN.

(a) *Communities.*

22. In its comments on the Local Government's proposals the People's Party (Appendix III (III)) strongly deprecate the perpetuation of separate communal electorates; the representatives of this Party argued this point of view at length in the Burma Round Table Conference; and the Hlaing-Myat-Paw Party (Appendix III (II)) develop a similar line in respect of separate electorates for the Karens.

23. It is stated that the communal question is less acute in Burma than in India. That may be so, though there have been occasions, some quite recent, when the animosity displayed between different communities in Burma has been no less marked than in India; but certainly the basis of communal division is different in the two countries. In India the division rests, in the main, on religious rather than racial differences; in Burma, where there is far greater uniformity of religion, the division is almost entirely racial. Religious differences seem to be an unimportant factor, for both among the Burmese and among Karens one finds an impartial acceptance of the individual, whether Buddhist or Christian, to represent their interests, and similarly acceptance by the Indian community of Hindu, Parsee or Muslim to represent it. Whatever the case may be for or against the continuance of the present arrangements there will be general agreement that it is highly undesirable either to extend the system of communal division or to introduce a second, the religious, line of cleavage which would cut across the racial divisions and create small and scattered sub-divisions of existing divisions. It is accordingly recommended that claims for separate representation which have been presented by Burma Muslims and Burmese Christians should be rejected, and also that made by the Southern Chins, some 98,000 of whom are scattered through a dozen or more separate districts. It would be administratively difficult, if not impossible, to arrange for separate representation of this small and scattered community, and unnecessary, since its needs and interests do not seem to differ materially from those of the other inhabitants of the areas in which these former hillmen are settled. For different reasons, it is also proposed not to accede to the request which was made at the Burma Round Table Conference for the separate representation of landowners and landlords. Burma is essentially a land of small peasant cultivators, and though there are a number, possibly a growing number, of landowners other than peasant proprietors, there is in Burma no class corresponding to the great landholders

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of India. In actual fact such landowning interests as there are have, since 1922, succeeded in obtaining representation in the Legislative Council in adequate numbers by election in the ordinary way, and no case for a special form of representation in future has been made out.

24. Extension of the system of separate electorates may therefore be excluded from consideration. As regards the maintenance of the existing separate electorates, it has been the experience in Burma, as in India, that, however undesirable in theory the system may be, in fact it cannot be denied to substantial minorities who already have it and demand the continuance of it as a means of protecting their particular interests. These communities regard separate representation as the foremost of the means available of making public their point of view and of influencing the opinion of the majority. A great step forward is to be taken whether Burma becomes simply an autonomous Province in the Indian Federation or a separate political entity, and the feelings of uncertainty and anxiety as to their future which inevitably excite the minority communities would be intolerably increased if at this moment their power to secure their own representation in the popularly elected Chamber of the Legislature were taken from them. Moreover, the minorities in Burma can reinforce their claim to separate representation by reference to the measures proposed in the other Provinces of India for the separate communities to be found there.

25. In present circumstances, therefore, it appears essential to preserve the existing separate representation for certain minorities in Burma. But in order to provide a means of preventing the permanent stereotyping of communal divisions, it might be thought desirable to amend the electoral rule requiring that in the case of a Karen, Indian, European or Anglo-Indian general constituency the candidate must himself be a Karen, Indian, European or Anglo-Indian respectively. It would then become permissible for persons not members of the community concerned to stand as candidates for communal constituencies; this suggestion is evidently preferable to the alternative suggestion that an individual belonging to a minority community should no longer be eligible, as now, to stand as a candidate in a general constituency. Reciprocity in this regard, though it might not have much practical effect at first, is sound in principle in that it would tend to eliminate in course of time the need for strictly communal representation.

26. But whether this suggestion is adopted or not, it is assumed, as the basis of consideration, that for the present the existing system of representation through separate electorates should be preserved to the Karen, Indian, Anglo-Indian and European

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communities. The question whether, after a certain period, revision of this arrangement should be made possible by the Constitution, and, if so, by what method and under what conditions, must depend on the consideration of the constituent powers to be accorded to the Legislature.

27. As to the communities now afforded separate communal representation, (i) the interests of the *Karens* settled in the plains are mainly agricultural like those of their Burmese neighbours, and do not by themselves constitute a cause for political differentiation; and in practice Karen members tend not to form a solid bloc but to vote in the lobbies with varying groups according to the matter in debate. But the Karens, though belonging to the same main branch of the human family, are a different race from the Burmese proper, speaking a different language, and holding aloof from the Burmese in many ways, both socially and politically. In the present Legislative Council of 103 the Karens have five seats out of 80 *elected*. Their population in the area made into constituencies amounted to 1,100,200 at the 1931 Census, and having regard to all the factors relevant to their case it is proposed to allot to them not less representation than could be accorded on the population ratio, i.e. 9 per cent. or 12 seats in a House of 133.

(ii) The *Indians* in Burma are largely temporary residents, remaining in the country as a rule for two or three years, though many stay for four or five; there are also considerable numbers who cross from India for harvest work only and return at the end of the season.

The Census for 1931 showed a total Indian population of 1,018,000 for all Burma (an increase in the decade of $15\frac{1}{2}$ per cent.) and for the area made into constituencies a total of 955,300 out of 12,358,000 or 7·7 per cent. The sex-ratio among the Indians is very low, 39 women for 100 males in all Burma and in the urban areas only 25 to 100, as against the general ratio of 96 for the whole population and 103 for the indigenous races. This is a clear indication that the Indian residents generally, and particularly in the large towns where the bulk of them is to be found, comprise a large proportion of temporary sojourners, i.e. the migrant labourers. It is computed that more than one-third and probably as much as a half are temporary residents.

Another characteristic of the Indian community as a whole, tending also to prove the temporary residence of its members, is that the percentage of adults of over 20 years of age in the community is high, 63 per cent. as against 52 per cent. for the whole population.

Having regard to the conflicting considerations to be taken into account in regard to the Indian community, it is proposed to allot to it a general representation proportionate to its population ratio

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of 7·7 per cent., i.e. 10 seats, these to include the two constituencies to be created for Indian Labour. This may be regarded as ample representation for a community of which at least half consists of migratory labour.

(iii) The *Anglo-Indian* community in Burma includes Anglo-Burmans as well as Anglo-Indian families, some of which are long established in the country. It is stated that recently there has been a growing tendency among some Anglo-Burmans to adopt Burmese dress and modes of life and to merge their interests in those of the indigenous races. However this may be the Anglo-Indian community as a whole numbering 18,600 claims a continuance of the protection of its separate identity which is afforded by communal representation ; and it is proposed to grant two seats to this community.

(iv) The *European* community amounted at the 1931 Census to 11,650, of whom 9,860 were of the "non-official" class. They are distributed through Upper and Lower Burma, though naturally tending to be congregated in the larger towns. At present the community has one seat out of 80 elected members. Having regard to the special position of the European community which is pointed out in paragraphs 81 and 82 of Volume II of the Statutory Commission's Report and to the disappearance of the nominated non-officials (who in the Burma Legislative Council have hitherto included almost invariably since 1922 three European members) it is proposed to allot three general seats to the European community. This is a higher proportion in general seats than is accorded in any other Province in India except Bengal ; but the position and importance of the European non-official community in Burma is more nearly comparable to that in Bengal (or, Bombay where there is nearly as high a proportion of general seats allotted) than to that in any other Province.

(v) The *Chinese* community has not hitherto had a communal electorate. Its members are widely dispersed through the different districts and it is difficult to ascertain what proportion of the total number of 121,750 are British subjects. It would be administratively no less difficult to create a separate electorate for a community so scattered through the villages as the Chinese are. It is proposed, therefore, that such separate representation of its particular interests as it is necessary to secure to it should be provided not by the creation of a new communal general electorate, but by representation through the Chinese Chamber of Commerce. It may be remarked, however, that though the Chinese community is scattered through the length and breadth of Burma, so considerable a number are congregated in one part of Rangoon as to have been able since 1922 consistently to return a Chinese candidate for one of the seats of the West Rangoon general constituency.

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(b) *Special Interests.*

28. It is the case that, as is pointed out by the People's Party, the special interests in Burma which require separate representation are largely identifiable with the minority communities—though not exclusively so. Burma is predominantly an agricultural country, and Commerce, Industry, Banking and organised trade are largely in the hands of non-indigenous minority communities; industrial labour in the rice mills and in the oil-fields and in urban centres generally is at least as much Indian as Burman. Representation through special interests therefore tends to supplement the representation accorded to minority communities as such.

29. The special interests to which it is proposed to accord separate representation in the new Lower House as in the existing Council are Commerce and Industry, Labour, and Rangoon University.

(i) As regards the *University* it is proposed, adopting the principle applied in India, to preserve the allocation of one seat to the Rangoon University. Regarded from the communal point of view, this seat would ordinarily be an addition to the strength of the "majority" or Burmese community.

(ii) For *Commerce and Industry* there are in the present Legislative Council six special seats. Of these one is held by the Burmese Chamber of Commerce and must therefore be reckoned as an addition to the strength of the "majority" community. Of the remaining five, the Burma Indian Chamber of Commerce has one, the Chinese Chamber one, the Burma (European) Chamber of Commerce two, and the Rangoon Trades Association one. The last-named is the retail traders' organisation, which since 1916 has had an elected representation in the Legislative Council; it has hitherto always returned a European representative.

In a country which, like Burma, is predominantly agricultural, and the overwhelming majority of whose indigenous inhabitants are peasant proprietors and cultivators, but in which, nevertheless, a considerable proportion of the wealth of the country is derived from the enterprises of a comparatively few, but highly important, commercial and industrial organisations, it is evidently important that these interests should be given adequate representation. It is not enough that they should merely be able to give expert advice to the majority on matters in which their constituents at least will have little or no experience and no conscious concern; the representatives of commerce and industry in such conditions need to be given sufficient voting strength to ensure that their advice is, at any rate, listened to with attention. Otherwise there is a risk that measures may in ignorance be adopted by the majority representing agricultural interests and themselves largely

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agriculturists, which would seriously damage the commercial and industrial enterprises on which the prosperity of the country so largely depends.

An increase in the number of Commerce and Industry seats seems to be required. If they were increased to nine, one of the additional seats might be allotted to the Burma Indian Chamber of Commerce and two to the Burma (European) Chamber, the present allocation of the remainder being left unchanged.

If this suggestion were adopted, the total number of the Lower Chamber would be 133 instead of 132, the number recommended in the proposals of the Burma Government (Appendix II).

(iii) *Labour.*—Industrial labour in Burma is to be found, broadly speaking, in the rice-mills (of which the very great majority are in Rangoon and the neighbourhood), in the oil-fields, and in the docks of Rangoon. Much of the labour employed is of a shifting type. The greater part of it consists of Indians temporarily resident in the country; this is the case in Rangoon (population 400,415, of which 212,929 is Indian and 30,626 Chinese), and Indians probably supply most of the industrial labour also in the "up-country" towns of Lower Burma in which rice-milling is carried on or in which, as at Akyab, there is shipping to be dealt with; but in these centres the actual numbers of industrial labour are relatively small. The labour supplied by the Indian temporary resident has of late years tended to be supplemented by that of Burmans, who are mainly of the agricultural worker class, driven from the land by a combination of economic causes as the supply of fresh cultivable land becomes more restricted. With the exception perhaps of the oil-fields this Burman labour is largely seasonal and casual.

The labour so composed is little organised; in most places the greater part of it consists of gangs, holding together only for short periods, which are recruited and paid, not by the employers, but by "maistries" or labour contractors. Trades Unions are non-existent; there is, indeed, reported this year to be one registered Union—but it has a membership of no more than 56. Such unregistered Unions as are formed from time to time are ephemeral, and as a rule are associations not of labour in the strict sense, but of such persons as bus-owners, who are actual or potential employers.

In these circumstances the means of securing representation for Labour is a difficult problem.

In the past, recourse has been had to nomination, but it has not proved a satisfactory device in Burma, and in any case is, for the reasons given in paragraph 243 of the Indian Franchise Report, not recommended.

The formation of Trades Union constituencies of a character even remotely resembling that described in paragraph 247 of the

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Indian Franchise Report, is not at present a practical suggestion; the only practicable course in the circumstances is the creation of special industrial Labour constituencies in selected areas.

It is proposed to create four such constituencies, two in the oil-fields and two in Rangoon or in Rangoon combined with Syriam (an industrial area on the opposite side of the Rangoon River). In these areas both Indian and Burman labour is employed; but there is so much risk of racial friction between Indian and Burman labour where the two are in close contact that it is proposed that of the two constituencies in either area one should be Indian and one Burman.

Four Labour constituencies only may appear short measure. A certain weightage would, however, be given to Labour in that it is proposed that the voter in each of these four special constituencies would be permitted also to vote in any general constituency for which he may be qualified.

In Burma the wide measure of enfranchisement now proposed, falling as it does little short of adult male suffrage, will bring on the electoral roll all but the most temporary sojourners in urban no less than in rural areas. In the Labour constituencies the temporarily resident Indian labourer also, and the labourer of under 21, whether male or female, Indian, Burman or Chinese, will, under these proposals, be given an opportunity to send their representative to the Legislature.

30. *Summary of Proposals for Representation of Communities and Special Interests.*—The arrangements suggested for consideration in regard to communal representation and special interests are shown in the tables set out in Appendix I. The broad result is that the Burmese parties (without the Karen members) might expect to command 98 seats (or 73·7 per cent. in a House of 133), against 35 (or 26·3 per cent.) held by the minority communities (including Karens) and non-indigenous special interests.

(c) *Representation of Women.*

31. Pursuant to the recommendations of the Statutory Commission and the Minorities Committee of the Indian Round Table Conference, and following the general lines of the allocation of seats in the Indian Legislatures, the Government of Burma have suggested that in three of the plural member general urban constituencies a seat should be reserved for women, and that, if that Karen community so desires, one of the seats allotted to the community might similarly be reserved for a woman member. A reservation of three or four seats in a House of 133 would correspond to the proportion proposed to be reserved for women in the Indian Provincial Legislatures.

32. The People's Party are opposed to the reservation of seats for women and cite the opinion expressed by the women's delegate

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at the Burma Round Table Conference, who disclaimed any requirement by the women of Burma for special means of representation as a "special interest" or a "minority community." But she was postulating adult suffrage for both sexes, or failing that the same qualifications for the franchise for women as for men. Neither of these is practicable, and in the absence of equal franchise for the sexes it may be that women would wish for reservation of seats. If they do not, however, it is not proposed to press the suggestion. But if it is adopted the three reserved seats which it is proposed to create for that purpose should be three new urban seats and should be open to the candidature of a woman of any race or community, as are the rest of general constituencies.

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PART III.

COMPOSITION OF THE LOWER HOUSE.

(a) *General Non-Communal Constituencies.*

33. Appendix II contains the Burma Government's proposals for the formation of constituencies which would be suitable on the franchise suggested to return members to a House so composed. The final definition of the constituencies will need further enquiry locally; but, broadly, the Burma Government's proposals, subject to such further detailed local enquiry as may be necessary, appear appropriate to the purpose in view. In particular, they will have the effect of materially reducing the present disparity between rural and urban constituencies in respect of the ratio of representation to electors.

34. It is evident from the statistics given in paragraphs 20 and 21 of Appendix II that rural interests are at present much under-represented so far as *seats* in the Legislative Council are concerned, although, as has been remarked in paragraph 19 *supra*, the proportion of *electors* to total population is much greater in rural than in urban areas. At present there are 14 general urban constituencies and 44 general rural, representing respectively an average population of 35,300 and 246,100 persons.

35. It is now proposed that the new Lower House of 133 should contain 94 general seats, an increase of 36; and the Local Government has recommended, in order to correct the disparity between rural and urban representation, that after allowing for the creation of three additional general urban seats to be reserved for women the whole of the remaining 33 seats should be divided among rural constituencies.

36. This proposed allocation of 33 additional seats to rural constituencies will have the effect of reducing the ratio of member to rural population represented from 246,100 to 140,600.

37. The number of new voters which will be added by the lowering of the franchise in rural districts and by the creation of three new rural constituencies in Upper Burma (Appendix II, paragraph 24) cannot yet be estimated with any accuracy; but it is probable that the ratio of member to rural electorate will be reduced, correspondingly, from the present average of 42,220.

38. In urban areas the lowering of the franchise qualifications will add materially to the number of voters except, for the reasons stated in paragraph 36 of Appendix II, in Rangoon. The estimated number of future electors in general urban constituencies is 185,600 (as against 99,900 now); this would give, for 17 seats (14 plus three newly created, to be reserved to

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women) an average of 10,900 electors per member, as against 7,130 now.

39. In addition the new Labour constituencies will bring a number of the urban population on to the franchise.

(b) *Karen General Constituencies.*

40. A further improvement of the present under-representation of rural interests will also be effected by the increase of the Karen rural seats from 5 to 12, reducing the ratio of member to Karen population represented from the present figure of 149,940 in the five districts in which Karen seats now exist to about 74,700 in the seven districts in which it is proposed that they should be established.

41. It is not possible to arrange that these seats shall cover every district where a considerable number of Karens is to be found without giving under-representation in the districts where the greatest number of Karens is to be found. It is preferable to give additional representation to separate communities in the districts where the communal preponderance is great rather than to expand the area in which communal electorates are formed. The course suggested is therefore to give two seats in each of the five districts in which a Karen communal electorate now exists, and to create two new Karen constituencies in areas in both of which there is a Karen population of over 60,000.

(c) *Indian General Constituencies.*

42. For the reasons stated in paragraph 16 of Appendix II, it is proposed that there should be no change in the allotment of eight general seats proposed for the Indian community, that they should be, as now, all urban, and that the boundaries of the present Indian urban constituencies should remain unchanged.

43. Indians in rural areas, including such Indian labour as is employed in agriculture, will vote in the general non-communal rural constituencies.

(d) *Special Constituencies.*

44.—(i) *Labour.*—The four seats proposed for Labour, two Indian and two Burman, will have the effect of increasing the urban representation.

(ii) *Commerce and Industry, and University.*—The Local Government do not suggest any variation of the franchise for these special constituencies; but a final decision in this respect will also be a matter for further enquiry.

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PART IV.

THE UPPER HOUSE.

(*Cf. Proposals* 25–28 *in Joint Committee on Indian Constitutional Reform* [*Session* 1932–33], *Volume III, p.* 53.

45. There was general agreement at the Burma Round Table Conference that in the event of Burma being separated it would be necessary, in view of the very much widened field of legislation and administration, to have an Upper House vested with power to revise and delay the proceedings of the Lower House, so as to ensure deliberation in the measures proposed.

46. There was general agreement also that the Upper House should be in size about one-third or one-quarter of the Lower House, that it should be styled the Senate and that its composition should be such that its opinions and judgments should carry weight.

47. *Size.*—It is proposed that the Upper House should consist of 36 members, i.e. between one-quarter and one-third of the Lower House of 133.

48. *Qualifications of Members.*—(1) Senators must be British subjects (see proposal 26 of the Burma Constitutional Scheme [Joint Committee on Indian Constitutional Reform (Session 1932–33), Volume III, p. 72]).

(2) There was general agreement at the Burma Round Table Conference that the minimum age for a Senator should be 35. The Indian White Paper proposes 30 as the low age limit for members of the Federal and Provincial Upper Houses and the point has been left open in the Burma Constitutional Scheme (proposal 26 [Joint Committee on Indian Constitutional Reform (Session 1932–33), Volume III, p. 72]). For the purpose of securing experience and sobriety of judgment in a small house the higher age is preferable.

(3) The questions what qualifications should be prescribed for candidates for election and whether any should be prescribed as conditions of nomination will require further examination. But the alternatives of a high property qualification *or* service in distinguished public appointments have been proposed as means of securing that the persons elected to the Senate are persons of sober judgment and experience.

The specific suggestion has been made to adopt the property qualifications of the present electorate for the Council of State, somewhat modified in a restrictive sense. The qualifications of the electorate to the Council of State are in Burma much lower than elsewhere, affording an electorate of some 15,000, and the field of selection so afforded seems too wide. The Government of Burma made certain suggestions, recorded in Appendix II, paragraph 46, both for property qualifications and for qualification by tenure of certain public offices, but the property

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qualifications are considered to be too high by the People's Party and others, who also wish to increase the list of qualifying offices.

49. *Method of Composition.*—The proposal 25 in the Burma Constitutional Scheme [Joint Committee on Indian Constitutional Reform (Session 1932–33), Volume III, p. 73] is that one-half the members of the Senate should be indirectly elected by the Lower House and one-half nominated by the Governor in his discretion.

50. The People's Party recommend that at least one-third should be directly elected by an electorate formed on the basis of either that for the present Council of State or that for the Legislative Assembly. The existing method of election to the Council of State and Legislative Assembly has, in point of fact, not worked well in Burma, and as the Burma Government's Memorandum points out (Appendix II, paragraph 44), if half the proposed Upper House were elected directly by the Council of State electorate the average constituency would be of nearly 7,000 square miles with only 830 electors. If one-third were so elected the average constituency would contain 1,250 voters, but would average 10,250 square miles. Some of the constituencies would naturally be considerably larger, for a considerable proportion of the electorate would be concentrated in the large towns, particularly Rangoon. If the electorate for the Legislative Assembly were adopted, the number of electors in each constituency would, of course, be greater, but the constituencies would still be of the same unmanageable size.

51. Direct election therefore, whether of one-half or of one-third, appears impracticable.

52. Indirect election by the Lower House corresponds to the method proposed for election to the Indian Federal Upper Chamber.

53. If half the proposed Upper House (i.e. 18 seats) were filled by indirect election by a Lower House of 133 by the single transferable vote, the quota required to secure a seat would be seven votes—on which basis it would be possible for each of the minority communities (except the Anglo-Indians and Chinese) to return at least one member to the Upper House.

54. But if, as is proposed, the Upper House is to have a continuous life (subject to dissolution only in emergency), and the rotational system of retirement is adopted (proposal 28) [Joint Committee on Indian Constitutional Reform (Session 1932–33), Volume III, p. 74] this low quota would only apply at the first election (and any election following the dissolution of the House—a rare contingency). At the elections following the four-yearly retirement of half the elected members the quota of votes required to secure the return of a candidate would be 13,

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a figure barely within the compass of either the Karen or the Indian bloc in the Lower House, and quite beyond the scope of the other minorities and special interests. (This difficulty would of course be enhanced if only one-third of the Upper House were elected indirectly.)

55. In the circumstances it is necessary to leave ample room for the redress of deficiencies in representation by election; and nomination by the Governor in his discretion of one-half of the Upper House is proposed for this purpose and also for the purpose of securing the service of individuals particularly qualified for membership of a revisory Upper House.

56. *Rotational Retirement.*—The system of rotational retirements proposed in Proposal 28 [Joint Committee on Indian Constitutional Reform (Session 1932–33), Volume III, p. 73] was advocated by the Federal Structure Committee, but the proposal has not been adopted in the Indian White Paper, and instead a fixed life of seven years has been proposed to provide for the necessary new blood in the Federal Second Chamber. The communal difficulties which have been held to render the rotational system undesirable in India hardly exist in Burma, and the system was generally supported at the Burma Conference.

57. It has been suggested that nominated members should be exempt from the rotational retirement rule, on the ground that they would, as a rule, be nominated for a further term. But a term of eight years seems a long enough period for any member to serve without the question of his continued suitability coming under review; and it appears best that nominated members should retire in rotation, but be eligible for re-nomination.

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APPENDIX I.

A.—Composition of Burma Legislative Council (Lower House).

	Present Legislative Council (103 members)		*Proposed Lower House*
Elected:			
General Constituencies:			
Non-Communal { Urban 14 / Rural 44 }	58		17* / 77 } 94
Karen - - Rural -	5		12
Indian - - Urban -	8		8
Anglo-Indian - (All-Burma)	1		2
European - (All-Burma)	1		3
Special Constituencies:			
University of Rangoon -	1		1
Burmese Chamber of Commerce - - -	1		1
Burma Indian Chamber of Commerce - -	1		2
Burma Chamber of Commerce (European) -	2		4
Chinese Chamber of Commerce - - -	1		1
Rangoon Trades Association (European) - -	1		1
Labour - - -	†	Indian 2 / Burman 2 }	4
	— 80		
Nominated:			
Officials - - - -	14		—
Non-Officials‡ - - -	7		—
Ex-officio Members of Executive Council - - -	2		—
	— 23§		
	103		133

* Including three seats reserved for women.

† Labour representative in present Council included in nominated non-officials.

‡ Including Government advocate, representative of Rangoon Port Trust and representative of Labour interests.

§ The Burma Electoral Rules lay down that the Legislative Council of the Governor of Burma shall consist of ". . . (3) such number of members nominated by the Governor as, with the addition of the Members of the Executive Council, shall amount to twenty-three . . ."

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B.—Analysis of Representation in the Burma Legislative Council and Proposed Lower House.

—	Present House (103 Members)											Proposed House (133 Members)									
	Constituencies						Nominated	Minorities Representation		Total	Per cent.	Constituencies						Minorities		Total	Per cent.
	General		General Communal			Special						General		General Communal			Special				
	R.	U.	R.	U.	All Burma			Total	Per cent.			R.	U.	R.	U.	All Burma		Total	Per cent.		
Non-Communal*	44	14	—	—	—	2(*a*)	2	—	—	62	60·2	77	17‡	—	—	—	2(*a*) 2(*b*)	—	—	98	73·7
Karen	—	—	5	—	—	—	—	5	4·8			—	—	12	—	—	—	12	9·0		
Indian	—	—	—	8	—	1(*c*)	2(*d*)	11	10·7			—	—	—	8	—	2(*c*) 2(*b*)	12	9·0		
European	—	—	—	—	1	2(*e*) 1(*f*)	3	7†	6·8			—	—	—	—	3	4(*e*) 1(*f*)	8	6·0		
Anglo-Indian	—	—	—	—	1	—	—	1	1·0			—	—	—	—	2	—	2	1·5		
Chinese	—	—	—	—	—	1(*g*)	—	1	1·0			—	—	—	—	—	1(*g*)	1	·8		
										25	24·3									35	26·3
Executive Councillors and other officials	—	—	—	—	—	—	16			16	15·5										
										103	100·0									133	100·0

* I.e. seats normally filled by Burmans.
† Excluding official bloc.
‡ Including three seats reserved for women.
(*a*) Rangoon University and Burmese Chamber of Commerce.
(*b*) Labour.
(*c*) Burma Indian Chamber of Commerce.
(*d*) Including representative of labour interests.
(*e*) Burma Chamber of Commerce.
(*f*) Rangoon Trades Association.
(*g*) Chinese Chamber of Commerce.

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C.—Summary of Proposed Qualifications for the Franchise for the Lower House.

Note.—It should be emphasised that pending preparation of a new electoral roll the qualifications stated below are to some extent provisional, and modifications of detail may be found necessary when the preparation of the roll is taken in hand.

General Qualifications.

Voters must be British subjects.

(A)—*Qualifications of Electors in General Constituencies.*

Residence in the constituency.

No person shall be qualified as an elector—

(*a*) for a Karen constituency unless he is a Karen;
(*b*) for a European constituency unless he is a European;
(*c*) for an Anglo-Indian constituency unless he is an Anglo-Indian;
(*d*) for an Indian constituency unless he is an Indian.

(1) *Urban Constituencies.*

(*a*) Possession of immovable property in the constituency of the value of not less than Rs. 100; *or*
(*b*) Payment for the three previous years of municipal or cantonment taxes; *or*
(*c*)—(i) Payment for the three previous years of house rent at a rate of not less than Rs. 48 per annum; *or*
(ii) Occupation rent free during the three previous years in a house or part of a house owned or hired by his employer of which the rental value is not less than Rs. 48 per annum; *or*
(*d*) Possession of any of the qualifications of an elector in a rural constituency.

(2) *Rural Constituencies.*

(*a*) Persons included in the capitation tax assessment roll or in the *thathameda* assessment roll for the three previous years who have not been exempted from payment of such tax on the ground of poverty or of being an immigrant from outside Burma, provided that an elector of over 60 years of age who, during the year preceding that in which he attained the age of 60, has either paid capitation tax or been assessed thereto and exempted on grounds other than that of poverty shall continue to be eligible as a voter though no longer liable to the tax; *or*
(*b*) Payment for the three previous years, of tax to a District Council; *or*

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(*c*) Payment for the three previous years, of land revenue of not less than Rs. 5; *or*

(*d*) Assessment in the previous year to income-tax; *or*

(*e*) For residents within the municipalities of Toungoo, Kyaukpyu or Thayetmyo, possession of qualifications (*a*), (*b*) or (*c*) for urban constituencies; *or*

(*f*) Being a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

(3) *Women electors in urban and rural constituencies not qualified under either* (1) *or* (2).

Proof of attainment of 21 years of age *and* of literacy as required by the Census test.

(B)—*Qualifications for Special Constituencies* (subject to further enquiry).

Residence in Burma; and in the case of—

(*a*) the University constituency, a voter must be a Fellow or Honorary Fellow or registered graduate of the University.

(*b*) the Commerce constituencies:—

Burma Chamber of Commerce, a voter must be a Chamber member or a member.

Burma Indian Chamber of Commerce
Burmese Chamber of Commerce
Chinese Chamber of Commerce
Rangoon Trades Association
} a voter must be a member.

(*c*) The question of the franchise for Labour constituencies is still under consideration.

D.—Upper House.

N.B.—It should be emphasised that the following proposals are to some extent tentative and provisional.

Number of members.—36.

Composition.—18 elected by the Lower House; 18 nominated by the Governor in his discretion to secure the senatorial quality of the House and to provide for the due representation of minorities or special interests that may not achieve it by election.

Qualification for membership.—The proposed qualifications for candidates for election have not been finally formulated, but,

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generally, will include an age qualification, which it is suggested should be 35, and a high property qualification or distinguished public service. Members of the Lower House would be eligible for election, but membership would not itself be a qualification.

No restriction on the Governor's selection of persons for nomination is contemplated, but serving officials would not be eligible for nomination.

Tenure of seat (as proposed in Proposal 28 of the Memorandum of Proposals for a Constitution for Burma) for eight years, in normal conditions, terminable by a process of rotational retirement.

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APPENDIX II.

MEMORANDUM BY THE GOVERNMENT OF BURMA ON THE REPRESENTATION OF MINORITIES AND ON THE CONSTITUENCIES AND FRANCHISE FOR THE LOWER HOUSE, AND PROPOSALS FOR THE UPPER HOUSE.

Minorities.

1. The proposals under this head are based in large measure on the communal award for India. Although the communal question is less acute in Burma than in India, it appears sound that similar methods of treatment should be adopted in both cases.

2. *Population and Size of Lower House.*—The racial composition of the population varies somewhat according to the area taken. The figures which might be regarded as relevant to this enquiry are as follows:—

Race	Population in			Percentage of Population in		
	Whole Burma	Elective Area	Area made into Constituencies	Whole Burma	Elective Area	Area made into Constituencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Burma group -	12,037,554	10,474,295	10,151,028	82·21	80·12	82·14
Karens - -	1,367,673	1,146,282	1,100,226	9·32	8·99	8·90
Indians - -	1,017,825	978,705	955,338	6·94	7·67	7·73
Chinese - -	193,594	126,218	121,752	1·32	·99	·99
Anglo-Indians -	19,200	18,583	18,447	·13	·14	·15
Europeans - -	11,651	11,069	10,858	·08	·09	·09
Total - -	14,647,497	12,755,152	12,357,649	100·00	100·00	100·00

The choice of figures does not materially affect any calculations based on population. The minorities form about 17·86 per cent. of the total population.

In the announcement made by the Prime Minister at the close of the Burma Conference, it was stated that the number of the Lower House should be between 120 and 130. The calculations made by this Government suggest that 132 would be an appropriate number. A comparison of this figure with the figures for Provincial Legislatures given in Appendix III (Part I) of the Indian White Paper will show that this is a generous allowance for Burma. The Province whose population is nearest to that of Burma is the Central Provinces (with Berar) with a population of 15,500,000. The total number of members assigned to this Province is 112. Apart from other considerations a great increase of the total number of members would involve Burma in the expense of building a new Council Chamber, and such expense could hardly be justified at the present time.

3. *Separate Electorates already accepted in principle.*—Subject to agreement between the communities themselves, the maintenance of separate electorates as at present must be considered as *res judicata.*

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On this point it is only necessary to quote two extracts from the Prime Minister's speech at the close of the Burma Conference:—

> "The Lower House should be composed of members directly elected, and provision should be made to ensure adequate representation of minority communities and special interests, e.g. Commerce (European, Chinese and Indian as well as Burman)."
>
> "His Majesty's Government regret that the Conference has not been able to reach agreement on the question of the representation of minority communities and special interests in the Legislature. They hope that agreement may still be achieved, for settlement by consent must be far more satisfactory than a decision imposed by any outside authority. Failing agreement, His Majesty's Government would find it very difficult to enforce any scheme which did not recognise the claims of minorities aud special interests to representation by separate electorates."

4. *Minorities and Interests which should have Separate Electorates.*—The minorities and special interests which have separate representation at present are:—

> *Minorities.*—European community; Anglo-Indian community; Karen community; Indian community.
>
> *Special Interests.*—Rangoon University; Burma Chamber of Commerce; Burmese Chamber of Commerce; Burma Indian Chamber of Commerce; Chinese Chamber of Commerce; Rangoon Trades Association.

Except in the case of the last named, to which reference will be made later, it is proposed that special representation should continue to be given to these minorities and special interests. It is not considered necessary to give special representation to any other minorities. It is undesirable to extend the system of giving separate electorates to minorities beyond what is absolutely necessary, and the fact that other minorities do not at present enjoy this privilege is a strong argument against any further extension. The minorities which are not at present represented are widely scattered and it would be impossible to constitute representative constituencies. As regards special interests, the only others which appear to require special representation are women and labour.

5. *Amount of Representation to be given to Minorities.*—(1) *Karens.*—On a population basis the Karens are entitled to about 9 per cent. of the total representation. It is proposed to give them 12 seats, which is approximately 9 per cent. of the total number of seats (132).

(2) *Anglo-Indians.*—As the Anglo-Indians have one seat in the present Council, there is a case for giving them more than one seat in an enlarged Legislature. Having regard to this consideration and to the number of general seats allotted to the community under the communal award, it is proposed to allot two seats to the Anglo-Indian community under the new constitution.

(3) *Europeans.*—It is proposed to allot three seats to this community. The argument in favour of adopting this figure runs as follows:—

> The population of Europeans in the whole of British India, excluding Burma, has remained steady at about 142,000 between 1921 and 1931. If from this total be deducted the number of

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Europeans for the sub-class "Public Force," the balance of the Europeans in British India in 1921 amounted to 85,253. This total is still probably much the same. To the Europeans in India 24 general constituency seats have been awarded, i.e. one seat has been allotted to every 3,552 of the European population other than the "Public Force." In the whole of Burma the European population at the 1931 census amounted to 11,651. If from this be deducted the 1,793 in the "Public Force" the balance amounts to 9,858. On the basis of one seat to every 3,552 of this population, three general constituency seats would be allotted to the European community in Burma.

(4) *Indians.*—From the figures given in paragraph 2 it will be seen that Indians number 7·73 of the total population in the area made into constituencies. There are arguments for and against the basing of representation of Indians on the population figure. On the one hand, many of them are only temporarily resident in Burma, and that might be regarded as justifying a representation ratio less than the population ratio. On the other hand, there is a marked disparity between the numbers of males and females; whereas to the population of Burma as a whole males and females contribute in very nearly equal proportions, among the Indian population 72 per cent. are males and 28 per cent. are females. Again, of the Indians in Burma 63 per cent. are 20 years of age and over, while for the population as a whole the proportion is 52 per cent. The higher proportion of males and adults in the Indian population of Burma might be urged in support of the grant of representation in excess of the population ratio. The appropriate representation ratio for Indians, therefore, cannot be determined precisely, but no great error would, it is thought, be made if they were given general representation in accordance with the population ratio (7·73). This ratio would give Indians just over 10 general seats in a house of 132. It is proposed that the two Indian Labour seats for which provision is made below should be included in this total.

6. *Representation for Special Interests.*—(1) *Rangoon University.*—The communal settlement for India provides for the existing number of University seats, and it is accordingly suggested that one seat in the Lower House should be allotted to the University of Rangoon.

(2) *Chinese Representation.*—The Chinese population in the area made into constituencies at the last census amounted to 121,752, of whom 82,979 were males and 38,773 females. About 13 out of every 30 classified themselves as temporarily resident in Burma, and about 51 per cent. were born outside Burma. No information is available as to the number of Chinese who are British subjects. It is not possible to compute accurately what the Chinese representation in general constituencies should be, but it could hardly amount to 1 per cent. Further, the distribution of the Chinese is so scattered that it would be difficult to constitute a constituency for them, and if representation on the usual lines were proposed it would probably be necessary to confine representation to a small area such as Rangoon. It is, therefore, proposed to continue the present arrangement and give representation to the Chinese community by allotting one seat to the Chinese Chamber of Commerce.

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(3) *Representation for Women.*—In making the communal settlement His Majesty's Government stated that they attached great importance to securing that the new Legislatures should contain at least a small number of women members, and that they felt that this object could not be achieved at the outset without creating a certain number of seats specially allotted to women. They proceeded to state that it is essential that women members should not be drawn disproportionately from one community, and that for this reason communal electorates are necessary for the election of women.

In the provinces of India, 37 seats are to be reserved for women out of a total of 1,463 seats, i.e. about 2·5 per cent. If this percentage be adopted for Burma, the number of seats to be reserved in a House of 132 would be either three or four. At present it is suggested that one seat be reserved for women in each of the following constituencies :—

Rangoon East. Rangoon West. Mandalay Town.

If seats are reserved for women of any community other than the majority community, that community should probably be the Karen community. Government is, however, prepared to leave the matter to the Karens themselves, and if the Karens wish to have a seat so reserved would be prepared to support such a proposal on the understanding that this seat would count against the Karen quota.

(4) *Representation for Labour.*—It is proposed to allocate four seats to Labour, one for Burman and one for Indian Labour in Rangoon or Rangoon *cum* Syriam, and one for Burman and one for Indian Labour in the oilfields. The qualifications for the franchise present some difficulty and are still under investigation, and considerations as to the numbers who can be brought on to the rolls may affect the exact extent of the constituencies. Trade unions in Burma are almost non-existent, and it is not considered practicable to constitute a trade union constituency at present. It is intended that the two seats for Indian Labour should count against the quota allotted to the Indian community.

(5) *Representation for Commerce and Industry.*—At present the Burma Chamber of Commerce has two members, while the Burmese Chamber of Commerce, the Burma Indian Chamber of Commerce, the Chinese Chamber of Commerce and the Rangoon Trades Association have one each. Commerce and Industry have, therefore, six seats in a House of 103, and in order to give them equivalent representation in a House of 132 it will be necessary to increase the number of seats allotted to this special interest to eight. It is no longer considered necessary to grant separate representation to the Rangoon Trades Association as their interests can be looked after by the representatives of the Burma Chamber of Commerce, and it is proposed to allot the eight seats as follows :—

Burmese Chamber of Commerce - - -	1
Chinese Chamber of Commerce - - -	1
Burma Indian Chamber of Commerce - -	2
Burma Chamber of Commerce - - -	4

It will be observed that the two additional seats are allotted to European and Indian Commerce. This follows the proposals in respect of India, where such increased representation as is allotted to Commerce is allotted to European Commerce, that is, to a minority interest.

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7. *Summary.*—The above proposals may now be summarised as follows :—

Community (1)	Number of Seats		
	General (2)	Special (3)	Total (4)
Burmese - - -	94	4*	98
Karens - - -	12	—	12
Indians - - -	8	4†	12
Europeans - - -	3	4‡	7
Anglo-Indians - -	2	—	2
Chinese - - -	—	1	1
Total - - -	119	13	132

* Rangoon University - - 1
Burmese Chamber of Commerce 1
Burman Labour - - 2

† Burma Indian Chamber of Commerce 2
Labour - - - - - 2

‡ Burma Chamber of Commerce - 4

In a House of 132—

Total minority representation - -	34
Percentage of minority representation - -	26
Number of Burmese - - - -	98
Preponderance of Burmese - - - -	64

Constituencies.

8. *Anglo-Indian Constituencies.*—It is proposed that there should be one constituency, with two members, covering the whole of Burma. If two constituencies were created the natural areas would be Upper and Lower Burma respectively. But the Anglo-Indian population of Lower Burma is 15,179, whereas that of Upper Burma is 3,268. This disparity in numbers alone is sufficient to determine the issue in favour of a single constituency covering the whole of Burma. It is proposed that election should be by postal ballot.

9. *European Constituencies.*—As in the case of Anglo-Indians, Europeans are concentrated in Lower Burma, for 7,700 reside there, compared with 3,100 in Upper Burma. It is proposed to have one constituency covering the whole of Burma with three members. In this case also postal ballot would be a suitable method of election.

10. *Karen Constituencies.*—The Karens now have five rural seats covering the following districts:—

Amherst
Bassein
Maubin
Myaungmya
Thatôn.

It is proposed above that they should be allotted 12 seats.

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The distribution of the Karen population by districts is as follows:—

Division	District	Karens			Order in population
		Males	Females	Total	
(1)	(2)	(3)	(4)	(5)	(6)
Pegu	Rangoon Town	1,600	1,600	3,200	17
	Pegu	18,600	18,700	37,300	10
	Tharrawaddy	13,000	13,700	26,700	12
	Hanthawaddy	14,600	15,200	29,800	11
	Insein	18,600	19,100	37,700	9
	Prome	2,200	2,400	4,600	16
Irrawaddy	Bassein	63,100	66,000	129,100	2
	Henzada	29,000	31,200	60,200	7
	Myaungmya	59,100	59,400	118,500	3
	Maubin	56,000	57,800	113,800	4
	Pyapôn	10,700	11,000	21,700	14
Tenasserim	Salween	23,500	22,300	45,800	8
	Thatôn	141,300	140,000	281,300	1
	Amherst	54,500	52,500	107,000	5
	Tavoy	6,800	6,600	13,400	15
	Mergui	11,200	10,800	22,000	13
	Toungoo	44,700	43,400	88,100	6
	Total	568,500	571,700	1,140,200	—

In India, paragraph 6 of the communal award prescribes that the electorates for Muhammadans, Europeans and Sikhs shall cover between them the whole area of the Province. This would not be in order for the Karens, for there are very few of them in Upper Burma. Thus in Magwe Division there are 300 only, in Mandalay Division 5,600, and in Sagaing Division 700. There are also less than 100 Karens in the Arakan Division.

11. The main question which arises in connection with the determination of Karen constituencies is whether the representation should be spread over a large area or concentrated over a comparatively small area.

It seems preferable to give additional representation to existing communal electorates where the figures warrant it and to restrict the area in which separate electorates are conceded. There are two good reasons for this :—

(*a*) It is sound not to expand more than is necessary the areas in which communal electorates exist.

(*b*) Within limits it is sound to endeavour to equalise the population in the various constituencies.

12. A suggestion was put forward at the Burma Conference that, in order to obviate the need for separate electorates for the Karens, certain areas which would contain a majority of Karens should be carved out as constituencies. It was asserted that in this way the Karens would be enabled to elect Karens if they desired to do so. The prospects of

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manipulating areas so as to get the desired result seem remote, as the following figures of population show :—

District	Karens	Burmans	District	Karens	Burmans
Thatôn - -	281,300	136,500	Toungoo - -	88,000	283,700
Bassein - -	129,100	405,400	Henzada - -	60,200	531,000
Myaungmya -	118,500	289,600	Insein - - -	37,700	232,900
Maubin - -	113,800	238,700	Pegu - - -	37,300	366,800
Amherst - -	107,000	74,200	Hanthawaddy - -	29,800	297,200

It is quite clear that it would not be possible so to arrange general constituencies containing both Burmese and Karens as to guarantee to the Karens the amount of representation to which they are fairly entitled, although it might be possible in Thatôn and Amherst.

13. In the light of all these considerations it seems best that the 12 seats recommended for this community should be distributed as follows :—

Thatôn District - -	2	Amherst District - -	2
Bassein District - -	2	Toungoo District - -	1
Myaungmya District -	2	Henzada District - -	1
Maubin District - -	2		

In districts to which two seats are allotted, it is suggested that the question of dividing the district into two single member constituencies should be considered, and that, following Burma Electoral Rule 4, the electoral rules should authorise such action. But it may not be possible to complete these arrangements before the first elections under the new constitution are held.

14. In an earlier paragraph reference has been made to the possibility that seats should be reserved to Karen women. It is suggested that the following conditions should apply to any representation given to them :—

(*a*) Not more than one seat should be reserved for Karen women.
(*b*) The seat should count against the Karen quota.
(*c*) The seat should be located in Thatôn District, which should then become a three-seat Karen constituency, of which one would be reserved for Karen women.
(*d*) The number of seats allotted to Amherst District should be reduced to one, so as to retain unaltered the total amount of Karen representation.

15. *Indian.*—The Indian community now have eight representatives in the Legislative Council. The constituencies, which are entirely urban, and the number of members are as follows :—

Akyab Indian Urban -	1	Moulmein Indian Urban -	1
Bassein Indian Urban -	1	West Rangoon Indian Urban -	2
Mandalay Indian Urban -	1	East Rangoon Indian Urban -	2

It has been recommended above that the Indians should be given 10 General seats in a Lower House of 132 members. But this total representation should, in order not to disturb the communal balance, also cover any representation of Labour. As it is proposed that two seats should be allotted to Labour, the number of General seats which should be allotted to the Indians is eight. It is now for consideration through what constituencies this representation should be secured.

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16. A general question arises at the outset. The present Indian constituencies are entirely urban, and it is for consideration whether this arrangement should continue or whether the constituencies should be expanded so as to cover rural areas as well. Any extension of the areas of Indian constituencies would add appreciably to the difficulties of conducting elections. With the extension of the general franchise, those difficulties are bound to be considerable. But the trouble will be disproportionately great in the case of the Indian community as special polling booths may be required for Indian women. Special arrangements of this kind could be made much easier in towns than rural areas. The difficulty of concerting suitable electoral arrangements will be particularly felt in areas in which separate electorates are being provided for both Indians and Karens, for it is precisely in these areas that the additions to the general electorate are likely to be greatest. The expansion of the Indian constituencies would also add to the difficulty of drawing up the electoral rolls. The primary object is to see that the Indian community is adequately represented and the precise areas of constituencies is less important. Further, it is wise not to expand more than is necessary the areas in which the system of communal electorates operates. Again, the maintenance of the extent of Indian representation at its present figure suggests that no change should be made in existing constituencies. In these circumstances the proper course seems to be to confine Indian representation to towns as at present.

17. The distribution of the Indian population by districts is as follows :—

Division	District	Indians (in thousands)			Order
		Males	Females	Total	
(1)	(2)	(3)	(4)	(5)	(6)
Arakan	Akyab	124	87	211	2
	Kyaukpyu	3	1	4	21
	Sandoway	2	—	2	22
Pegu	Rangoon	172	41	213	1
	Pegu	35	16	51	4
	Tharrawaddy	11	3	14	15
	Hanthawaddy	46	20	66	3
	Insein	31	13	44	5
	Prome	9	3	12	17
Irrawaddy	Bassein	20	4	24	12
	Henzada	9	3	12	18
	Myaungmya	24	4	28	11
	Manbin	11	2	13	16
	Pyapôn	26	8	34	8
Tenasserim	Salween	1	—	1	—
	Thatôn	23	11	34	9
	Amherst	29	11	40	6
	Tavoy	5	1	6	20
	Mergui	7	2	9	19
	Toungoo	20	10	30	10
Magwe	Magwe	14	3	17	13
	Rest of division	9	3	12	—
Mandalay	Mandalay	27	11	38	7
	Rest of division	17	7	24	—
Sagaing	Myitkyina	11	6	17	14
	Rest of division	20	7	27	—
	Total	706	277	983	—

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Having regard to these figures, this Government considers that, if Indian constituencies are to be expanded so as to embrace both urban and rural areas, the eight General seats for the Indian community should be apportioned as follows :—

Rangoon Town District	4	Hanthawaddy District	1
Akyab District	2	Pegu District	1

Any expansion of Indian constituencies would therefore necessitate the withdrawal of representation from Bassein, Amherst and Mandalay, which have separate (Indian urban) representation at present. This is an additional reason for making no change in the existing arrangements.

18. The towns in which the Indian population is heavy are as follows :—

Town	Indians (in thousands)				Order
	Hindu	Muslim	Other Indians	Total	
(1)	(2)	(3)	4)	(5)	(6)
Akyab	11	10	—	21	3
Rangoon	140	58	15	213	1
Insein	7	2	1	10	6
Bassein	11	4	—	15	5
Moulmein	16	6	1	23	2
Mandalay	10	5	2	17	4
Pegu	4	1	—	5	10
Syriam	6	2	—	8	8
Toungoo	4	2	1	7	9
Maymyo	6	2	2	10	7
Pyinmana	3	1	—	4	11

In the light of these figures, the eight seats recommended for this community might suitably be allotted as follows :—

Rangoon Town	4	Akyab Town	1
Moulmein Town	1	Bassein Town	1
Mandalay Town	1		

It will be observed that this allotment is in accordance with the existing representation, and this is a strong point in its favour.

19. It would now be convenient to summarise the proposals regarding the representation of the Indian community. They are as follows :—

(*a*) There should be eight Indian General constituency seats.
(*b*) There should be two Labour seats allocated to Indians.
(*c*) All the general Indian representation should be urban.
(*d*) The present Indian urban constituencies should be maintained unaltered.

20. *General Constituencies.*—There are at present the following General non-communal constituencies :—

Urban	14	Rural	44

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Particulars of these are as follows:—

General Urban Constituencies.

Town	Population	Voters
Akyab Town	16,793	4,921
Bassein Town	30,239	2,575
Henzada	28,542	2,166
Mandalay (3)	130,828	17,733
Moulmein (2)	42,634	6,631
Prome	28,295	4,259
Rangoon Town East (2)	187,486	8,950
Rangoon Town West (2)		14,499
Tavoy	29,018	4,423
14 Seats	493,835	66,157

General Rural Constituencies.

Constituency (1)	Population (2)	Voters (3)
Amherst	344,769	51,100
Akyab District East	231,852	69,358
Akyab District West	367,634	49,965
South Arakan	349,537	23,023
Bassein District	398,352	73,313
Hanthawaddy East	223,980	27,191
Hanthawaddy West	184,851	23,962
Henzada District North	288,067	51,314
Henzada District South	296,671	42,967
Insein	331,452	39,489
Katha	253,311	40,262
Kyauksè	151,320	30,766
Lower Chindwin East	203,884	38,145
Lower Chindwin West	179,550	43,217
Magwe East	243,227	55,840
Magwe West	256,346	65,017
Mandalay District	223,704	44,804
Maubin	257,751	37,699
Meiktila East	138,058	26,930
Meiktila West	171,941	36,160
Mergui	161,987	16,538
Minbu	277,876	60,071
Myaungmya	326,359	37,902
Myingyan North	277,599	61,998
Myingyan South	194,958	37,608
Pakôkku East	313,459	62,957
Pakôkku West	185,722	35,864
Pegu North	199,830	29,621
Pegu South	290,139	43,092
Prome District	382,356	57,036
Pyapôn	334,158	37,361
Sagaing East	155,192	32,453
Sagaing West	180,773	36,929
Shwebo East	201,107	46,265
Shwebo West	245,683	56,345
Tavoy District	150,946	28,019
Tharrawaddy North	250,210	40,491
Tharrawaddy South	258,109	32,670
Thatôn	251,396	42,984
Thayetmyo	274,177	44,330
Toungoo North	204,641	34,090
Toungoo South	224,029	36,223
Yamèthin North	206,502	41,640
Yamèthin South	184,318	34,656
Total	10,827,783	1,857,665

21. The statistics concerning these general constituencies can be summarised as follows:—

Population in general urban constituencies	493,835
Voters in general urban constituencies	66,157
Population per general urban constituency	35,272
Voters per general urban constituency	4,725
Population in general rural constituencies	10,827,783
Voters in general rural constituencies	1,857,665
Population per general rural constituency	246,086
Voters per general rural constituency	42,220

It is clear from these figures that urban interests are at present over-represented and that, if additional seats are available, they should be given to rural areas.

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22. It will be observed from paragraph 7 above that, in future, the number of general seats is to be 94. As stated in paragraph 20 the present number is 58. There will thus be an increase of 36 seats. But for the reasons given in paragraph 21 none of these additional seats (other than the three seats to be reserved for women, *vide* paragraph 25) should be allotted to urban areas.

23. At present Kyaukpyu and Sandoway districts are combined together in the South Arakan constituency. The district is usually taken as the unit. It is therefore proposed that this constituency should be dissolved and two constituencies created. On a population basis Kyaukpyu will in future be entitled to two members. This change will therefore account for two of the available seats.

24. It is further proposed that portions of the—

Upper Chindwin,
Myitkyina,
Bhamo

districts which are included in the elective area, but which have not yet been included in constituencies, should now be made into constituencies and given one representative each.

25. If these changes are accepted 31 seats will still be available for general constituencies. But it is proposed to reserve one seat for women in each of the following general urban constituencies :—

Rangoon East,
Rangoon West,
Mandalay.

26. There are still 28 seats available for allotment to general rural constituencies. These seats could be distributed according to—

(*a*) population ; or
(*b*) voters.

This Government favours a population basis. Under the proposals now put forward Upper and Lower Burma will compare as follows :—

Class of Seat	Present		Future	
	Upper	Lower	Upper	Lower
(1)	(2)	(3)	(4)	(5)
Indian Urban - - -	1	7	1	7
Burman Labour - - -	—	—	1	1
Indian Labour - - -	—	—	1	1
General Urban - - -	3	11	3	11
Seats reserved for women -	—	—	1	2
Karen General -	—	5	—	12
General - -	20	24	32	45
Total -	24	47	39	79

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27. *General Rural Constituencies.*—On a population basis the general seats should be allocated as shown below:—

Constituency (1)	Population (2)	Seats Proposed (3)
Amherst - - -	344,769	2
Akyab District East	231,852	2
Akyab District West	367,634	2
Bhamo - - -	66,531	1
Bassein District -	398,352	2
Hanthawaddy East	223,980	2
Hanthawaddy West	184,851	1
Henzada District North - - -	288,067	2
Henzada District South - - -	296,671	2
Insein - - -	331,452	2
Katha - - -	253,311	2
Kyauksè - - -	151,320	1
Kyaukpyu - -	220,292	2
Lower Chindwin East - - -	203,884	1
Lower Chindwin West - - -	179,550	1
Magwe East - -	243,227	2
Magwe West - -	256,346	2
Mandalay District -	223,704	2
Maubin - - -	257,751	2
Meiktila East - -	138,058	1
Meiktila West - -	171,941	1
Mergui - - -	161,987	1
Minbu - - -	277,876	2
Myaungmya - -	326,359	2
Myingyan North -	277,599	2
Myingyan South -	194,958	1
Myitkyina - -	89,298	1
Pakôkku East - -	313,459	2
Pakôkku West - -	185,722	1
Pegu North - -	199,330	1
Pegu South - -	290,139	2
Prome District -	382,356	2
Pyapôn - - -	334,158	2
Sagaing East - -	155,192	1
Sagaing West - -	180,773	1
Sandoway - -	129,245	1
Shwebo East - -	201,107	1
Shwebo West - -	245,683	2
Tavoy District -	150,946	1
Tharrawaddy North	250,210	2
Tharrawaddy South	258,109	2
Thatôn - - -	251,396	2
Thayetmyo - -	274,177	2
Toungoo North -	204,641	2
Toungoo South -	224,029	2
Upper Chindwin -	187,605	1
Yamèthin North -	206,502	2
Yamèthin South -	184,318	1
Total - -	11,171,217	77

Power should be taken, as is conferred by Burma Electoral Rule 4, to subdivide areas to which it is proposed to allot two members into two single-member constituencies. But it is doubtful whether this task can be undertaken in time for the new constituencies to be delimited for the first election under the new constitution.

28. *Special Constituencies.*—As stated above, it is proposed that the representation now enjoyed by the Rangoon Trades Association be withdrawn. No change is suggested in the constituencies to which it is proposed to continue to give representation.

Franchise for the Lower House.

29. *Franchise for the Lower House.*—The subject of the franchise was discussed at the Burma Conference, and proposals for the franchise in India have recently been made by the Indian Franchise Committee. The views of the Burma Conference are recorded in paragraphs 35 to 37 and in paragraph 43 of the Report of the Committee of the whole Conference. The opinion was widely held that a case existed for the extension of the franchise. It was also pointed out that the position of women and unmarried men under the present system is illogical and requires examination. In India a very wide extension of the franchise to males has been proposed, while women have been recommended for enfranchisement roughly in the ratio of one woman to four men. The Government of Burma has kept in view the recommendations of the Burma Conference and the proposals of the Indian Franchise Committee

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in formulating the proposals which follow. Its object is to make such an extension of the male electorate as is reasonably practicable, and to effect a very considerable increase in the ratio of female to male voters.

30. *Present Electorate.*—The population of the portion of Burma now made into constituencies is 12·3 millions. The number of electors, male and female, is 2·08 millions. The number of female voters is about 124,000. The percentages of electors to population, of male electors to the adult male population and of female electors to the adult female population are 16·9, 57·4 and 4·0 respectively.

31. *Present Qualifications.*—The basis of the present franchise in general constituencies is defined in Burma Electoral Rule 8 (1), which reads as follows :—

Qualifications of Electors

"8.—(1) The qualifications of an elector for a general constituency shall be such qualifications based on—

(i) community ;
(ii) residence ; and
(iii).—(*a*) occupation of a building, or
(*b*) payment of municipal or cantonment taxes or capitation-tax or land-rate in lieu of capitation-tax, or
(*c*) payment of land revenue, or of a tax on circumstances and property under the Burma Rural Self-Government Act, 1921, or
(*d*) entry in the capitation-tax or the *thathameda*-tax assessment-roll, or
(*e*) assessment to income-tax, or
(*f*) military service, or
(*g*) the possession of immovable property, as are specified in Schedule II in the case of that constituency."

The qualifications which, under these powers, have been prescribed in respect of community, residence and property are defined in clauses 2, 3 and 4 of Schedule II to the Burma Electoral Rules, which are reproduced in the Annexure to this Memorandum.

32. *Qualificaiion based on Community.*—Separate representation is proposed above for the Karen, Indian, Anglo-Indian and European communities. For so long as separate electorates are maintained it will be necessary to base a qualification on community. The existing qualifications based on community are specified in the Annexure to this Memorandum, and no modification seems necessary.

33. *Residential and Age Qualification.*—At the Burma Round Table Conference stress was laid on the point that a period of residence in Burma should be an essential qualification for the vote. In the Indian White Paper an age qualification of 21 is prescribed for the franchise for the Lower Houses of both the Provincial and the Federal Legislatures. It is possible and convenient to combine these qualifications in the case of Burma by requiring proof of payment of, or assessment to, the qualifying tax for a period of three years, and it is proposed to amend the qualifications based on payment of or assessment to taxes accordingly, except in the case of income-tax. In the case of the latter tax the nature of the qualification required involves residence for a minimum

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period of 12 to 18 months and this seems adequate in the case of a person of some standing and education. The three years' period would be applied also to the qualification based on payment of rent or the supply of rent-free quarters of a certain annual rental value, but it is not considered necessary to apply it to the qualification based on the possession of property (Rule 3 (*a*) of the Annexure to this Memorandum) which will in any case take some time to acquire. The names of persons on the present electoral rolls would, however, be allowed to remain and such persons would not be disfranchised.

34. *Qualification based on Capitation-tax.*—At present the qualification based on capitation-tax requires that the voter should be entered in the assessment roll as liable to pay capitation-tax of not less than Rs. 5. The present qualification therefore excludes all married males who are assessed to capitation-tax of less than Rs. 5 and these number some 90,000. It excludes also males over the age of 60 and all unmarried men. The latter defect is probably the most serious. It is proposed to prescribe simply assessment to capitation-tax as the qualification subject to the limitations at present imposed as regards exemption from payment on certain grounds; and to provide also that a person above 60 years of age who during the financial year preceding that in which he attained the age of 60 years has either paid capitation-tax or has been assessed to capitation-tax and exempted from payment otherwise than on the ground of poverty shall continue to be so eligible although capitation-tax is no longer payable by him.

35. *Other Qualifications in Rural Areas.*—It is proposed to modify Rule 4 (*b*) by prescribing merely payment of tax to a District Council without specifying any particular tax or any amount of tax. It is not proposed to make any change in the qualifications specified in items (*c*), (*d*), (*e*) and (*f*) of Rule 4.

36. *Qualifications in Urban Areas.*—Most of the voters in towns obtain the vote under one or other of the following qualifications :—

(1) The occupation of a building.
(2) The payment of municipal or cantonment taxes.
(3) The possession of immovable property.

The percentage of the population enfranchised in urban areas is less than that in rural areas in Lower Burma and substantially less than that in rural areas in Upper Burma. The most recent electoral rolls show that these percentages are 12·7, 14·6 and 20·5 respectively. It is considered necessary to bring these percentages more into agreement with each other. The proposals which follow regarding the enfranchisement of women will tend in that direction, but that will not be enough and it is therefore proposed to revise the qualifications based on property as follows :—

(*a*) The value of immovable property which will entitle the possessor to a vote should be reduced from Rs. 200 to Rs. 100.

(*b*) Any person who pays any amount of municipal taxes or cantonment taxes should be enfranchised.

(*c*) In the existing house rent qualifications Rs. 48 should be substituted for Rs. 60.

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In the circumstances in which this Memorandum has been written it is impossible to estimate exactly the effect of the changes we propose. But it is anticipated that, if these proposals are adopted, the electorates in the various urban constituencies will be approximately as follows :—

Urban Constituency	Population	Voters	Percentage of Voters to Population	Estimated future No. of Voters with Property Qualification	Number of Literate Women	Estimated future Total Number of Voters	Percentage of Voters to Population
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Akyab (General) - -	16,793	4,921	29·3	5,221	2,413	12,398	32·5
Akyab (Indian) - -	21,301	3,164	14·9	4,764			
Bassein (General) - -	30,239	2,575	8·5	3,865	4,357	9,490	20·8
Bassein (Indian) - -	15,423	1,020	6·7	1,268			
Henzada (General) - -	28,542	2,166	7·6	3,809	3,100	6,909	24·2
Mandalay (General) -	130,828	17,733	13·6	26,733	15,524	42,257	32·3
Mandalay (Indian) - -	17,104	5,014	29·3	6,294	1,505	7,799	45·6
Moulmein (General) - -	42,634	6,631	15·6	6,969	5,861	15,330	23·4
Moulmein (Indian) - -	22,872	2,070	9·1	2,500			
Prome (General) - -	28,295	4,259	15·1	5,359	2,908	8,267	29·2
Rangoon East (General) -	187,486	8,950	12·5	8,950	24,000	47,449	25·3
Rangoon West (General) -		14,499		14,499			
Rangoon East (Indian) -	212,929	12,625	10·5	12,826	4,815	27,467	12·9
Rangoon West (Indian) -		9,826		9,826			
Tavoy (General) - -	29,018	4,423	15·2	5,423	2,767	8,190	28·2
Total - - -	783,464	99,882	12·7	118,306	67,250	185,556	23·7

The table indicates that the proportions of the populations in the urban constituencies which will be enfranchised by the qualifications proposed will not be uniform. In particular, the modifications proposed in the property qualifications will not effect any appreciable increase in the electorate in Rangoon. The qualification based on the possession of immovable property is practically inoperative in Rangoon, and in any case almost all the houses in that area are worth not less than Rs. 200 each. Further, the minimum amount of municipal taxes assessed is considerably in advance of the sum of Rs. 4 which now appears in Schedule II to the Burma Electoral Rules. Finally, house rents are generally in excess of the Rs. 5 which is the sum which now entitles a person to a vote. In the result it seems inevitable that the electorate in Rangoon should remain practically unaltered to the extent that the number of voters depends on the possession of a property qualification. But the forming of Labour constituencies will add very considerably to the electorate and so redress the balance.

The above proposals will very largely reduce, if they do not altogether eliminate, the disparity between the proportions of the urban and rural populations which obtain the vote.

37. *Enfranchisement of Women.*—In his letter of instructions to the Indian Franchise Committee the Prime Minister stated that "His Majesty's Government attach special importance to the question of securing a more adequate enfranchisement of women than the existing system, which applies to women the same qualifications as to men, and has

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produced a women's electorate numbering less than one-twentieth of the total male electorate." One of the qualifications recommended by the Indian Franchise Committee for women was literacy as defined for census purposes, viz. ability to read and write a letter in any language. It is proposed to adopt this qualification in Burma, and to couple with it an age qualification of 21. The number of literate women over 20 in the future elective area in Burma is 628,000, of whom 474,000 are resident in Lower Burma and 154,000 in Upper Burma. If allowance is made for the reduction in the numbers arising from the raising of the age to 21 and for the women who already possess the franchise through the property qualification, the number of women which will be added to the electorate will be in the neighbourhood of 600,000 and the total number of women voters over 700,000.

The Indian Franchise Committee found that the literacy qualification would not in India go very far to remove the disparity in voting strength between men and women, and they recommended other qualifications. The net result of all their recommendations is to make the ratio of men voters to women voters roughly 4 : 1. In Burma, however, the adoption of the literacy qualification alone will produce one woman voter for every 3·3 male voters, a higher proportion than that secured in India, and no additional qualification is considered necessary. The Indian Franchise Committee recommended that the vote should be given to the wives of all men who possess the property qualifications at present prescribed for the Provincial Councils. The present electorate in Burma numbers about 2·08 millions, of whom only 124,000 are women. Owing to the large proportion of the adult male population which is now enfranchised in Burma, the effect of applying to women in Burma the additional qualification recommended for women in India would almost double the electorate and would bring the number of women voters into practical equality with the number of male voters. At present this course is not practicable.

38. *Special Constituencies:* (1) *The University.*—Any person is now qualified as an elector for this constituency if he has a place of residence in Burma and if he is a Fellow or an Honorary Fellow or a registered graduate of the University. This is in accordance with the views of the majority of the Indian Franchise Committee as expressed in paragraph 335 of their Report. In the communal settlement for India this point has been reserved for further consideration. No change is proposed for the present in the qualifications for this constituency, but there would appear to be no objection to accepting whatever is decided for India.

(2) *Chambers of Commerce.*—No change is suggested in the present qualifications.

(3) *Labour.*—The qualifications to be prescribed for Labour constituencies, which must necessarily differ from those in other constituencies, are at present under consideration. A lengthy investigation will be necessary and it is not possible to include Government's proposals in this Memorandum.

39. *General Results of the Proposals.*—The results of these proposals can be only approximately gauged, but it is estimated that they will enfranchise 3,000,000 or over in the future elective area of Burma out of a total population in that area of 12·9 millions. Of these 3,000,000, about 2·3 millions will be males and about 700,000 women.

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Proposals for an Upper House.

40. *Need for an Upper House.*—The great majority of the democracies of the world, even those which have come recently into being, have been established on a bicameral basis. The Burma Conference was unanimously in favour of the establishment of a Second Chamber, and the Burman representatives were generally anxious that it should be called the Senate. Further, the Indian White Paper proposes a Second Chamber in those Provinces which desire one.

41. *Functions and Character of an Upper House.*—A big advance in self-government in Burma is contemplated and the future Legislature will have to deal with legislation relating to a much wider field of subjects than hitherto. The main power of the Upper House will be to revise and delay and thus to ensure that legislative measures are adequately considered and are supported by public opinion. These considerations have to be borne in mind in examining the proposals set forth below.

42. *Size of the Upper House.*—In his speech at the close of the Burma Round Table Conference, the Prime Minister said that in size the Upper House should be about one-third of the Lower House. In paragraph 380 of its Report the Indian Franchise Committee stated that the prevailing opinion was that the size of the Provincial Second Chambers should be between a quarter and a third of the size of the Lower House. It is proposed that the membership of the Senate in Burma should be 36, which is between a quarter and a third of the membership of the Lower House, viz. 132.

43. *Composition of Upper House.*—It is necessary that a proportion of the members should be nominated in order to secure representation for minorities and special interests which may not secure representation through elected members, and also to secure in the Senate that element which is indispensable in a senatorial body and which may not be secured merely by the qualifications prescribed for candidates. It is proposed that half of the members of Senate should be elected and half nominated by the Governor.

44. *Method of Election.*—The elective area in Burma covers 123,000 square miles. The number of electors in Burma to the Council of State is about 15,000. If the existing franchise and method of election were maintained, there would thus be on the average one member to each 833 electors, and those electors would be spread over an average area of 6,833 square miles. Several of the constituencies would be considerably in excess of this average area, for a substantial proportion of the voters would be concentrated in Rangoon. The difficulty of maintaining contact between the members and constituents would be enhanced by the fact that the population in Burma is predominantly rural and communications are not highly developed. There would also be great difficulty in making suitable polling arrangements for even such a limited electorate spread over so large an area. It is, therefore, impracticable to subdivide Burma into territorial constituencies for the purpose of electing members to the Upper House. It would also be very difficult, under a system of direct election, to give effect to the principle of continuity which should be adopted for the Upper House. In view of these

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considerations the most suitable method is indirect election of members of the Upper House by members of the Lower House voting in accordance with the principle of the single transferable vote.

45. *Term of Office.*—It is proposed that both elected and nominated members should normally hold office for eight years, and, in order to secure continuity, that one quarter should retire every two years, one half of the elected and nominated members retiring alternately. In the first senate after its creation and in the first senate after a dissolution it will not be possible for all the members to serve for their full term. In these cases provision should be made for the retirement of the nominated members at the end of the second and sixth years, and for the retirement of the elected members at the close of the fourth and eighth years.

46. *Qualifications for Members.*—The qualifications proposed are as follows:—

(1) To be a British subject of not less than 35 years of age, and
(2)—(*a*) Payment of not less than Rs. 1,000 land revenue or of income tax assessed on a minimum income of Rs. 12,000, or
(*b*) a qualification based on service in certain distinguished public offices, viz. as a Member of the Governor's Executive Council, or as a Minister, or as a Judge of the High Court, or as a permanent Deputy Commissioner or as a permanent District and Sessions Judge.

47. *Representation of Minorities and Special Interests.*—Representation for these may be secured to a very limited extent through the system of the single transferable vote, but this will have to be supplemented by the Governor's power to nominate.

General.

48. Non-official opinion is being consulted on these proposals, but it must be understood that any recommendations resulting from such consultation will have to be open for further discussion with the Joint Select Committee. Conclusions therefore reached as a result of discussion of the proposals with non-officials cannot be regarded as being in any sense final.

ANNEXURE (paragraph 31 of the Memorandum).

Extract from Schedule II to the Burma Electoral Rules.

"2.—(1) No person shall be qualified as an elector—

Qualifications based upon community.

"(*a*) for a Karen constituency unless he is a Karen;
"(*b*) for a European constituency unless he is a European;
"(*c*) for an Anglo-Indian constituency unless he is an Anglo-Indian;
"(*d*) for an Indian constituency unless he is an Indian;
"(*e*) for any other general constituency if he is a European or an Anglo-Indian.

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"(2) No Karen shall be qualified as an elector for any of the following constituencies, namely, the Amherst, Bassein District, Maubin, Myaungmya and Thatôn general rural constituencies.

"(3) No Indian shall be qualified as an elector for any of the following general urban constituencies, namely, Akyab, Bassein, Mandalay, Moulmein and Rangoon.

"3. Subject to the provisions of paragraph 2 of this Schedule a person shall be qualified as an elector for an urban constituency who has a place of residence in the constituency and who—

Urban Constituencies.

"(*a*) possesses immovable property in the constituency of the value of not less than Rs. 200, or

"(*b*) has paid during and in respect of the previous financial year, municipal taxes or cantonment taxes, which, together with any capitation tax or land rate in lieu of capitation tax paid by him in respect of the previous agricultural year, amount to not less than Rs. 4, or

"(*c*)—(i) has paid during and in respect of the previous financial year rent at a rate of not less than Rs. 60 per annum for a house or part of a house which he has occupied in the constituency, or

"(ii) has lived rent free during the previous financial year in a house or part of a house in the constituency owned by his employer or hired by his employer on his behalf, of which the rental value is not less than Rs. 60 per annum, or

"(*d*) possesses any of the qualifications hereinafter prescribed for an elector of a rural constituency.

"4. Subject to the provisions of paragraph 2 of this Schedule, a person shall be qualified as an elector for a rural constituency who has a place of residence in the constituency and—

Rural Constituencies.

"(*a*) has been entered in the capitation tax assessment roll as liable to pay capitation tax of not less than Rs. 5 or in the thathameda tax assessment roll of the previous agricultural year as head of the household and liable to pay thathameda tax, and has not been exempted from payment of capitation tax or thathameda tax, as the case may be, on the ground of poverty or of being an immigrant from a country outside Burma, or

"(*b*) has paid during and in respect of the previous agricultural or financial year a tax on circumstances and property under section 26 of the Burma Rural Self-Government Act, 1921, or

"(*c*) has paid during and in respect of the previous agricultural year land revenue of not less than Rs. 5, or

"(*d*) was in the previous financial year assessed to income tax, or

"(*e*) in the case of a person possessing a place of residence within the municipalities of Toungoo, Kyaukpyu or Thayetmyo, possesses qualifications prescribed in subclauses (*a*), (*b*) or (*c*) of clause (1) of paragraph 3 of this Schedule, or

"(*f*) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces."

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APPENDIX III.

VIEWS OF PARTIES, MINORITIES AND SPECIAL INTERESTS IN BURMA ON THE GOVERNMENT OF BURMA MEMORANDUM* ON REPRESENTATION OF MINORITIES, FRANCHISE, &c.

I.—Independent Party.

1. Under paragraph 5 (2) of the Memorandum, it is proposed to allot two seats to the Anglo-Indian community. We do not consider that a sufficient case has been made out to justify this allotment. We are inclined to the view that they should have one seat as at present.

2. Under 5 (3) dealing with Europeans, in our view the total number of seats allotted to the European community are far too many, and out of proportion to the size of the European population in Burma. We suggest that 3 general seats should be reduced to 2, and 4 special seats representing the Burma Chamber of Commerce to 3.

3. Under 5 (4), it does not seem wise to accede to the Indians the same number of seats as the Karens, since percentage of Karen population in whole of Burma is 9·32 to 6·94 of the Indians. It is our considered opinion that the number of general representations should be restricted to 8, and Labour 1, and Chamber of Commerce 1, total representations 10.

4. In view of the fact that the Chinese have in Burma considerable vested interests in property and the amount and value of trade they carry on in Burma, and further no communal representation is allowed to them, we consider that their representation on the Chamber of Commerce should be increased to 2.

5. Under 6 (3) we recommend that women representation should be restricted to the Burmese only, and we strongly oppose should women of other nationalities be permitted.

According to our above proposal, seats should be allotted as follows :—

Anglo-Indians -	1	Europeans -	5
Karens - -	12	Chinese -	2
Indians - -	10	Burmans -	102

TUN PE,
Whip and Delegate of the Independent Party

II.—Hlaing-Myat-Paw Anti-Separation Party.

1. After a very careful study and analysis of the Memorandum of the Government of Burma relating to minority representation, &c., my Party is forced to conclude that the Memorandum is based chiefly on the discussions of the Burma Round Table Conference and consequently on the basis of a separate constitution for Burma. Moreover, my Party finds it extremely difficult to give an expression of opinion on the Memorandum, as the matter, as it stands, can only be dealt with on a hypothetical basis and on the basis of two alternatives, namely, Separation or Federation, and this is to be done before we know what

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the actual constitutional position of Burma is at present, that is, before the vital issue of Separation or Federation is finally determined.

2. As a matter of fact my Party not only considers the Memorandum too premature, but also views it with considerable apprehension on the ground that it foreshadows separation of Burma from India, though the ultimate decision yet rests with the Parliamentary Joint Select Committee, who, it is hoped, will not arrive at this momentous decision without considering the views of the accredited Burman representatives on it, and more particularly without taking into account the wishes of the people of Burma and the various events and circumstances relating to the future association of Burma with India.

3. My Party feels confident that the Joint Select Committee would find no difficulty in deciding the issue in favour of Federation, if they took a fair and equitable view of the matter in the light of the views expressed by the people of Burma from time to time both inside and outside the Burma Legislative Council, and all the circumstantial evidence that go to support the case for Federation.

4. Though ordinarily my Party would refrain from making any comment on the Local Government's Memorandum relating to the question of the constitution of the Legislature, the formation of constituencies and on the question of franchise and minority representation at this stage, yet from a deep sense of respect towards the request made by His Excellency the Governor of Burma for a comment on the Memorandum, my Party is willing to give an expression of opinion on the matter, but wishes to do so from the Federationist point of view and also to submit a few of the salient facts and circumstances to indicate to His Excellency the Governor of Burma and the Joint Select Committee why my Party is compelled to oppose Separation and why they cannot view the Memorandum from the Separationist point of view.

5. It is common knowledge that the separationists and their claim for separation were hopelessly defeated on several occasions in the past and it is hardly necessary for me to recapitulate them herein. But at the same time it may not be out of place to recount a few of the outstanding occasions on which the separationists met with their defeats. They are as follows:—

(*a*) On the 20th October 1929, long before the Premier's announcement about the Indian Round Table Conference, a big mass meeting was convened at the Jubilee Hall, Rangoon, by the Separation League headed by U Maung Gyee, M.A., Barrister-at-Law, after a great deal of propaganda in the country by the Separation League, and one of the resolutions before the meeting was to send a delegation to England for the purpose of advocating separation of Burma from India, but when the resolution was put to the meeting it was defeated by a large majority of votes.

(*b*) At the last General Election when the separation issue was before the electorate the separationists were defeated by an overwhelming majority, the proportion being over 5 lakhs to about 2 lakhs and 70,000 votes.

(*c*) At the Burma Legislative Council the separation motion moved by U Ba Pe, the leader of the People's Party during the December session (1932), also met with a clear defeat.

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6. In the face of such consensus of opinion and such clear verdict on the part of the Burmese people against Separation, it seems to us that it would be a political blunder of the worst kind to act in defiance of the wishes of the Burmese people and to thrust Separation upon Burma. Such a false step is likely to create a grave political situation and is apt to lead to serious consequences.

7. In this connection the authorities concerned cannot overlook or disregard the views expressed by the General Councils of Burmese Associations in Burma, whose following constitute by far the greater bulk of the Burmese population and the many resolutions passed by them at their conferences and mass meetings, at which the question of Separation or Federation was discussed and determined upon. In this respect I would like to emphasise upon the resolutions passed at a very important and gigantic Convention of All-Burma General Councils of Burmese Associations and anti-separationists held on the 2nd July 1932 at the Jubilee Hall, Rangoon. This Convention explicitly rejected the proposed constitution offered by the Prime Minister and also rejected separation of Burma on the basis of the said constitution. This Convention also urged upon the people of Burma to vote for anti-separationists at the General Election. It ought, therefore, to be more than clear that this Convention was entirely opposed to separation and was absolutely in favour of Federation—a line of action which was consistent with their previous attitude and former resolutions passed by them.

8. The separationists and their sympathisers have viciously tried to deliberately misconstrue and misrepresent the proceedings of the Convention by endeavouring to make out that this Convention was prepared to accept the proposed constitution for Burma with some modifications and that it was in favour of Federation on a temporary basis. This is far from being true. For, the Convention realised to the fullest extent that the British Government would not make any radical changes in the fundamental principles of the proposed constitution for Burma and therefore rejected the proposed constitution, and with a view to removing any doubt or misgiving that might be created in the minds of the people by any counter-propaganda, the Convention felt it necessary to indicate to the people of Burma that if at any time after the alternative of Federation had been accepted the British Government was prepared to grant them a constitution acceptable to them, they would cease to oppose Separation of Burma. Hence we find that the Convention appealed to the people of Burma to continue to oppose Separation so long as the British Government did not grant a constitution acceptable to them. Again, as a matter of constitutional principle, the Convention passed a resolution deprecating the principle of permanent federation which was being put forward in some quarters as a substantial argument against Federation, pretending to rely on the announcement made by the Premier, though we find that the Prime Minister's remarks on the matter could only be interpreted as meaning that Burma could not separate as and when she liked, but that she could do so by mutual consent and when the parties concerned deemed it fit and proper. In this connection it might safely be stated that the feeling of the Convention against permanent Federation with India was on a par with their feelings against permanent association of Burma with Great Britain, which, however, was irrelevant to the matter under discussion and had no real bearing

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on the separation issue. It is of vital importance to remember that the resolutions passed by this Convention were meant to serve partly as replies to the Premier's announcement and partly as an appeal to the Burmese people and that they were never meant to be propositions or resolutions for the Burma Legislative Council, which would come into existence after the General Election. For, at that time, the Convention did not have the slightest idea that the issue of Separation or Federation would be reviewed by the Burma Legislative Council or that the Council would be competent to do so, especially after the matter of deciding the issue was expressly and explicitly left to the electorate by the Premier's announcement. It was always understood that the British Government would accept the decision of the electorate as final and act accordingly.

9. It is also necessary to scrutinise and see how the separation issue has been confused and complicated from time to time. The confusion and complications are primarily due to—

(*a*) the acceptance of the principle of Separation by the four separationists picked out from an unrepresentative Burma Council by a partisan Executive to represent Burma on the First Indian Round Table Conference, and who did so without considering the wishes of the people as a whole and without giving heed to the opposition of some of the recognised and most important political organisations outside the Council, who had by far the largest following among the masses;

(*b*) the British Government not accepting the clear verdict of the electorate, though the issue was expressly left to them for decision at the last General Election;

(*c*) Government referring the matter to the Burma Legislative Council for a review of the result in spite of the country's verdict;

(*d*) not granting an extension of time to the April—May session of the Burma Legislative Council to determine the issue by voting upon it;

(*e*) not giving Burma an opportunity to have representation on the Indian Federal Structure Committee and on the Second Indian Round Table Conference, where the pros and cons of the Federal Constitution and the basic principles of Federation were discussed;

(*f*) Burma not having an opportunity to discuss the special rights and privileges, which Burma claims, with the representatives of the various Indian Provinces;

(*g*) the authorities being unduly swayed by the false and vicious accusations made by the separationists against the anti-separationists and by being misled by the separationist propaganda through their newspapers, both vernacular and English;

(*h*) Government not giving due weight to the statements and utterances made by the anti-separationists and the various organisations supporting them, from time to time.

10. Hence it is our fervent appeal to the authorities concerned that it would be just and proper to give some credit to those who are

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opposed to Separation that they, too, have the interests of their countrymen at heart and not discredit them because of some wild and sweeping accusations that they have all been bought up by Indian money or that they have been influenced by Indians. It is well-nigh impossible on the face of it; inasmuch as, to secure 5 lakhs of votes, it would be necessary to at least appeal to more than 10 lakhs of voters, and to conceive the idea that all those voters could be bought up would be a most preposterous conception. Then, such an accusation could hardly be made against all the General Councils of Burmese Associations who expressly demonstrated their attitude and opposition to Separation long before the Premier made his announcement to convene a Round Table Conference for India or Burma. In fact it would be a herculean task for anyone or for any body of men to approach and influence thousands of people who constitute the General Councils of Burmese Associations of Burma, unlike the separationist parties who have a scanty following in the rural areas. It is hardly necessary to mention herein that the accusations made against the *phongyis* (Buddhist monks) as to their exercise of undue influence and coercion over the electorate during the last election are most baseless and unwarranted. Unwarranted accusations have also been levelled against the anti-separationists with regard to the contents of leaflets and manifestoes issued by the anti-separationists during the last election. In this connection it may be sufficient to say that allegations with greater force and certainty could also be made against the separationists. I feel confident in submitting that the anti separationist candidates have fought the election on healthy propaganda and against most pernicious tactics on the part of the separationists. The last General Election has demonstrated beyond all reasonable doubt that Burma is opposed to Separation and that she accepts Federation as an alternative.

11. My Party, like the rest of the anti-separationists, feels convinced that even from the economic point of view it would be far more advantageous for Burma to make common cause with India at this juncture and to remain a part of India under the Federal Constitution. For, the Indian connection would go a long way in developing Burma's resources, at least partially to the advantage of the Burmese people. In order to develop Burma's commercial industrial and agricultural resources for the benefit of the Burmese people, Burma needs foreign capital and foreign co-operation, and her only prospect in this direction lies in her alliance with India. Partnership between Burmans and Indians for their mutual benefit has been usual in the past and is not only feasible but also practicable in the future, and more so under the Federal Constitution, whereby the destinies of the two countries would be thrown together and their more effective contact would bring about better relations and better understanding. Whereas separated Burma would be left helpless, and exploitation by foreigners of all kinds would continue and her present precarious position would be rendered far more worse by such exploitation. She would also lose any protection for her cottage and large-scale industries which under the Federation would be safeguarded by the Indian Protective Policy which must play a very important and effective part in promoting and preserving the industries of India. By being federated with India, Burma can hope to promote her textile, sugar, and paper. pulp industries, which would bring substantial pecuniary advantage and

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prosperity to the people of Burma. Moreover, Burma would not be isolated from India and would continue to have the largest market for her export of silver, petroleum, timber and rice. At this period of world-wide depression, when the different countries in the world are endeavouring their utmost to find markets for their exported goods, Burma can ill afford to lose the Indian market or to create any barrier between India and herself. Burma could also influence the Federal Legislature to adopt protective measures if foreign rice threatened competition with Burma rice, to the detriment of Burma's rice trade, for example, by the recent Japanese competition in the rice market of India. There are many other commercial and industrial advantages that may be derived from Burma's connection with India.

12. Even if Burma were separated, my Party realises that she would still be under the Indian control to a considerable extent so far as her financial, military and foreign policy are concerned, and she would only be a small circle of India so far as the Reserve Bank of India goes. Moreover, Burma's isolation from India would provide opportunities for India to create a tariff wall against Burma whenever she deemed it expedient and also for other manner of retaliation whenever Burma acted in a way that might be considered detrimental to Indian interests. Hence the many economic advantages which are likely to accrue to Burma far outweigh the probable and possible gain in the annual revenues of Burma of a few lakhs of rupees as against the exaggerated figure of three crores adumbrated in the Howard-Nixon Report.

13. Under these circumstances I am to submit my comments on the Local Government's memorandum only from the Federation point of view, and in doing so I would make the following observations :—

(1) Paragraph 1 of the Memorandum needs no comment on our part except that the communal question is not so complicated nor so acute in Burma as it is in India. Therefore, it is hardly necessary to apply the same principle in regard to communal representation in Burma.

(2) In regard to the population and size of the Lower House mentioned in paragraph 2 of the Memorandum, my Party is strongly of opinion that the Lower House should be made more fully and effectively representative to voice the interests of the Burmese people. Moreover, as we deem it unnecessary to have an Upper House in case of Federation, the argument in favour of more extensive representation in the Lower House becomes greater and more forceful. The commercial and political importance of Burma also render it necessary to make it as representative as possible. Hence we feel that the Lower House should be composed of at least 150 members and not 132 as it is now proposed by the Government of Burma. The contention that a further increase in the total number of members would involve considerable expense for the building of a new Council Chamber can hardly outweigh the consideration of adequate representation on behalf of the people of Burma.

(3) Paragraph 3 needs no comment on our part inasmuch as we accept the principle under the present circumstances.

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(4) Regarding paragraph 4, I must emphatically protest against counting the Karens as a minority community. For, the Karens are an indigenous race and their interests are identical with those of the Burmans. Therefore, they should not be regarded as a distinct minority community, nor should they have separate representation or constitute a separate electorate. As to the special interests, my Party is definitely opposed to granting special representation to women. They enjoy the same rights and privileges as men in Burma and cannot be regarded as a special body under any circumstance.

(5) *Re* paragraph 5 of the Memorandum, i.e. regarding the amount of representation to be given to minorities, my Party's views are based on the assumption of a House of 150 members and in the light of this number I would make the following comment :—

(i) *Karens.*—In view of what I have already stated no separate representation is necessary for them and, therefore, no seats need be reserved for them.

(ii) *Anglo-Indians.*—In the present Council, where the total number is approximately 100, they have one seat. But as we propose to increase the number to 150 members, we would give them two seats as proposed by the Local Government provided Anglo-Burmans come under the same category.

(iii) *Europeans :*—The Europeans, who, like the Anglo-Indians, have only one general constituency seat in the present House, and applying the same principle to them, we would allot them two seats and not three as recommended by the Local Government. In this connection it must be remembered that the Europeans are going to be adequately represented in so far as their special interests are concerned ; so that they do not require any special consideration in respect of their general constituency.

(iv) *Indians.*—In the present House of about 100 members the Indians have eight representatives, and as we propose to increase the total number to 150, we consider it fair and equitable to give them a proportionate increase in the number of their representatives. We would, therefore, recommend that they be given 12 seats including labour and excluding special interests. In this respect it may be mentioned that the Indians include a large number of men of the labour class and, therefore, it is necessary to make labour a component part of Indian representation.

(6) Regarding paragraph 6, namely, representation for special interests, all that I need submit is that we are against separate representation for women, and that, therefore, no seats need be reserved for them. In other words, we are not prepared to accept the recommendation of the Local Government in regard to separate representation for women. As to the other special interests we are prepared to accept the recommendations, but we would do so only on the basis of the total increased number of 150 members which I have already suggested.

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(7) The summary under paragraph 7 would stand as follows according to the proposals I have made in my aforesaid remarks :—

Community	Number of Seats		
	General	Special	Total
(1)	(2)	(3)	(4)
Burmans, including Karens -	123	4	127
Indians - - -	10	4*	14
Europeans - - -	2	4	6
Anglo-Indians - -	2	Nil	2
Chinese - - -	Nil	1	1
Total - -	137	13	150

* Includes two members allocated to Labour.

CONSTITUENCIES.

(8) As to paragraphs 8 and 9 of the Memorandum, I do not think that they call for any remarks on my part.

(9) As to paragraph 10, my Party is of opinion that it was a mistake to have given separate constituencies to Karens for the reasons I have already given, and it is high time that we rectified the mistake. It is, moreover, imperative in the interests of the Burmese nation as a whole to keep it intact and not disintegrate it by dividing it into small communities. I may, therefore, merely reiterate that no separate seats should be allotted to the Karens.

(10) As to paragraphs 11, 12, 13 and 14, regarding the Karens no further comment is necessary in this connection, in view of what I have already stated in the previous paragraphs.

(11) As to paragraphs 15, 16, 17, 18 and 19 relating to Indians, it is not necessary for me to make any observation. I would rather leave this matter for the consideration of the Indians themselves. They are in the best position to consider and adjust the matter for themselves.

(12) As to paragraph 20 relating to General Constituencies existing at present and particulars relating to them, it is not necessary for me to make any observation.

(13) As to paragraph 21, I regret I am not prepared to accept the view that urban interests are over-represented at present, and that the additional seats available should go to rural areas. Considering the fact that the educated class of Burmans inhabit the urban areas and that property interests are of considerable magnitude in towns, they deserve more adequate representation than at present, and the additional seats should be allocated not only to the rural areas but also to the urban areas in accordance with the importance and the extent of their population.

(14) In regard to paragraph 22 of the Memorandum, our proposal is entirely different from that contained therein. We propose that the Lower House should be composed of a total number of 150 members, and according to the summary I have already given the number of

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General Constituency seats would be 123, so that there would be an increase of 65 seats. Out of these additional seats available, we would allot eight more seats to the urban areas as detailed herein, proceeding on the basis of a population of 15,000 people per seat as far as practicable. The remaining 57 available seats should be allocated to the Rural General Constituencies on a population basis, and we regard that one seat for a population approximately numbering 100,000 people should be a fair estimate and should constitute an adequate constituency; and we propose to allocate accordingly when we come to deal with paragraph 27 of the Local Government's Memorandum.

General Urban Constituencies.

Town	Existing Seats	Seats proposed
Abyab - - -	1	1
Bassein - - -	1	2
Henzada - - -	1	2
Mandalay - - -	3	4
Moulmein - - -	2	3
Prome - - -	1	2
Rangoon Town East -	2	3
Rangoon Town West -	2	3
Tavoy - - -	1	2
Total - -	14	22

(15) With regard to paragraph 23 of the Memorandum, it is necessary to take Kyaukpyu and Sandoway Districts separately, and on the basis of population I have already mentioned in the previous paragraph, Kyaukpyu should be divided into two single constituencies and Sandoway should have a separate seat by itself.

(16) As to paragraph 24 of the Memorandum, we would accept the proposal of the Local Government with one exception, and that is, we would divide Upper Chindwin into two constituencies and allot two seats according to the strength of its population.

(17) Regarding paragraphs 25 and 26 of the Memorandum, it is hardly necessary for me to repeat that after giving the urban areas eight additional seats available according to our proposal, the remaining seats should go to the General Rural Constituencies including the Districts mentioned in paragraphs 23 and 24 of the Memorandum; so that there should be no seats reserved for women as outlined in paragraph 25 of the Local Government's Memorandum. I have already stated that in our opinion the case of women does not warrant special and separate consideration. I do not think it is necessary for me to give a comparative table for Upper and Lower Burma to indicate the extent of representation in those two parts according to our proposal, inasmuch as the detailed statement relating to our proposal for the urban areas and for General Rural Constituencies together with the minority and special representation would give a clear view of the position so far as we are concerned.

(18) Regarding paragraph 27, General Rural Constituencies, we do not agree with the proposals made by the Local Government as to the allocation and increase of seats. In the first place we would include

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the Karens in the General Rural Constituencies and would allot seats as enumerated below on the basis of population, giving one seat for a population of 100,000 people or thereabout. The proposal would therefore stand as follows :—

Constituency	Seats proposed	Constituency	Seats proposed
Amherst	3	Myingyan North	3
Akyab District East	2	Myingyan South	2
Akyab District West	3	Myitkyina	1
Bhamo	1	Pakokku East	3
Bassein District	4	Pakokku West	2
Hanthawaddy East	2	Pegu North	2
Hanthawaddy West	2	Pegu South	3
Henzada District North	3	Prome District	4
Henzada District South	3	Pyapon	3
Insein	3	Sagaing East	1
Katha	2	Sagaing West	1
Kyaukse	1	Sandoway	1
Kyaukpyu	2	Shwebo East	2
Lower Chindwin East	2	Shwebo West	2
Lower Chindwin West	2	Tavoy District	1
Magwe East	2	Tharrawaddy North	2
Magwe West	2	Tharrawaddy South	2
Mandalay District	2	Thaton	2
Maubin	2	Thayetmyo	2
Meiktila East	1	Toungoo North	2
Meiktila West	1	Toungoo South	2
Mergui	1	Upper Chindwin	2
Minbu	3	Yamethin North	2
Myaungmya	3	Yamethin South	2
		Total	101

Power should be taken, as is conferred by Burma Electoral Rule 4, to subdivide areas into a number of single member constituencies in accordance with the number of seats proposed above.

(19) Paragraph 28 of the Memorandum calls for no comment.

FRANCHISE FOR LOWER HOUSE.

(20) As to paragraph 29, no remarks on our part are necessary.

(21) In regard to paragraph 30 of the Memorandum, all that we need say is that experience in the past has shown that electoral rolls which have existed so far are seriously defective, and that a large number of electors who are qualified are not brought on the rolls. It is hoped that in future the Government of Burma will take special pains to make the rolls as complete as possible, and thereby give the people of Burma the full benefit of the franchise that may be extended to them.

(22) Paragraph 31 of the Memorandum needs no comment.

(23) As to paragraph 32, it would be necessary to delete clause (*a*) of Schedule II of the Burma Electoral Rules, which are reproduced in the Annexure to the Local Government's Memorandum; by this I mean that the clause relating to the Karens should be omitted.

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(24) As regards paragraphs 33 to 39, I have no special observations to make in view of what I have already stated above.

Proposal for an Upper House.

(25) Regarding the proposal for an Upper House made by the Government of Burma in paragraphs 40 to 47, my Party is of the opinion that in case of Federation of Burma with India there is no necessity whatever for an Upper House, particularly in view of the fact that the minority and special interests would be adequately represented in the Lower House as suggested by us, and that the qualifications proposed would necessarily preclude Burmans to a very undesirable extent from becoming members in the Upper House, thereby giving the representatives of special and minority interests and the Government nominees a very strong weapon to undo what the Lower House proposes to execute in the interests of the Burmese people as a whole. My Party is also of the opinion that it is not necessary at all to have an Upper House to revise and counteract legislative measures which are passed after due consideration by a fully representative House.

General.

(26) I heartily welcome the statement made by the Local Government in paragraph 48 of the Memorandum, and would certainly like to keep an open door for further discussion on the various tropics contained in the Memorandum in the light of what the Joint Select Committee may have to say and in the light of future developments in the political situation of Burma.

Paw Tun,
Vice-President, Hlaing·Myat-Pau Anti-Separation Party.

7th October 1933.

III.—People's Party.

Provisional Views.

1. We are unable to subscribe to the view that, although the communal question is less acute in Burma, similar methods of treatment should be adopted here as in India. In India the minorities such as the Mahommedans and the Depressed Classes are backward when compared with the more advanced Brahmins and other Hindus. The reverse is the case in Burma. The minority communities, namely, Europeans, Indians and Chinese, hold a superior position in regard to commerce, trade and industry and in the professions and services they are better represented than the indigenous races of Burma. The capitalists nearly all belong to the minority communities and in the field of labour, excepting agricultural, the people of the country are finding it extremely difficult to get a foothold. Some allowance should be made for the goodwill shown by the people of Burma towards other communities which has enabled the latter in the past to achieve the impregnable position which they now hold. Again, proportion of minorities to the majority community in India is large, probably not less than one-third of the total population; whereas in Burma, even including temporary residents, the percentage is only 17·86 and

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this includes the Karens, an indigenous race, who, by themselves, form a group representing 9 per cent. of the population or more than half of the minorities.

2. On the facts and figures placed before the Party, we consider that the size of the Lower House should be determined not only on the population basis, but also by taking into consideration the area of the constituencies and the inaccessibility of various parts of the country through defective communications. The feeling of the Party is that the number of members for the Lower House should be 150. It realises that in view of the present finances of the country the construction of a new Council Chamber may not be justified at the present time and for that reason would agree to fix 150 members as a maximum—any excess of seats beyond 132, the figure suggested in the Memorandum, should be allotted to rural areas. It is desirable to note here that the present accommodation does not provide facilities for private discussion among leaders of parties or quiet reading or study even for the present Council, and greater facilities for such purposes are essential for the creation of an atmosphere in which conventions and traditions may grow. At present the members are restricted to one congested library for all purposes unless, as sometimes happened, the lobbies are utilised to the inconvenience of members in the House.

3. It cannot be admitted that the maintenance of separate electorates as at present must be considered as *res judicata*. The proposals contained in the Secretary of State for India's Memorandum [Joint Committee on Indian Constitutional Reform (Session 1932–33), Volume III, p. 53] were stated to be provisional, and inasmuch as the Joint Select Committee alone can put up definite recommendations to Parliament, which is the final authority to decide, nothing at this stage can be said to be *res judicata*. The Party desires to make it perfectly clear that it is anxious to satisfy all minority communities and special interests as to the safety of their legitimate interests. Communal representation has been universally condemned as a pernicious and evil system, and its introduction without justification in the Lower House, which should be an assembly of popular representatives working together for the general welfare of the whole country regardless of race, colour or creed, must as a matter of principle be opposed. The Governor will have powers to protect the legitimate interests of minorities, and in the event of there being an Upper House constituted *not* as proposed in the Memorandum under discussion but on an acceptable basis, minorities can be adequately represented in that Chamber. In view of the important part that such a Chamber, when established, will play, it is not known why minority interests should require any further and special safeguard by representation in the Lower House. Ceylon has succeeded in ridding itself of this undesirable feature. The Burma Reforms ("Whyte") Committee considered proposals for the constitution of the provincial Legislative Council (Dyarchy) and made the following observations in chapter 4:—

> "19. The Committee set out on its enquiry in the hope that a general electorate unadulterated by any device for the special representation of minorities might satisfy the needs of Burma. We were and still are unanimously of opinion that communal electorates are an undesirable feature in any representative system,

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but theory in this case, as in India, has had to give way to fact; and, in the face of the evidence presented, we have no course but to recommend certain special measures for minority representation."

The Committee went on further to recommend "communal representation for the European and the Anglo-Indian communities, and the reservation of special seats in certain plural member constituencies for the Indian and Karen communities. We propose to create separate communal electorates for Europeans and Anglo-Indians respectively because we see little or no possibility of securing their representation in any other way. The Indian and Karen minorities are more closely linked with the fortunes of the Province as a whole, and, when the present ferment of political nationalism subsides, may be expected to take a normal place in Burmese politics. It is therefore undesirable to segregate them completely from the general electorate. We therefore place them on the ordinary electoral roll; but we do not feel justified in depriving them altogether of some guarantee of representation. Hence our proposal to give them certain reserved seats."

These observations made more than 10 years ago are of great interest and should receive careful consideration before we decide to extend and perpetuate the system of communal representation which has been so strongly condemned everywhere. Although separate electorates for the Indian and Karen communities were not recommended, the British Government provided for them in the reformed Constitution for Burma. The principle is now sought to be extended. The merit of any constitution must be judged by the extent to which it will help to promote the welfare of the people of the country without unduly interfering with the legitimate interests of minorities. If the proposals in the Memorandum are adopted, it will certainly mean that a strong popular Ministry will be entirely out of the question, and the representatives of the majority community will be so hedged and hemmed in on all sides that it is difficult to see how any measure could be brought forward to improve the unenviable lot of the Burmans. As has been stated before, the Party is in favour of providing safeguards for minorities by empowering the Governor with authority to protect their legitimate interests, and also by giving them adequate representation in the Second Chamber. It is not, however, prepared to agree to safeguarding the interests of minority communities to the extent of sacrificing the interests of the majority. Further observations on this point will be made in connection with paragraph 7 of the Memorandum.

4. Without waiving our strong objection to special electorates for minority communities in the Lower House, the following tentative comments are offered :—

The Party recognises the existence of the special interests and the necessity for the presence of representatives in the Lower House to state the case from the point of view of such special interests. Necessarily these cannot be confined to any particular community, minority or otherwise. It agrees with the statement in the Memorandum that the special interests which should be represented in the Lower House are (1) Burmese Chamber of Commerce, (2) Chinese Chamber of Commerce, (3) Burma Indian Chamber of Commerce, (4) Burma Chamber of Commerce, (5) Indian Labour, (6) Burmese Labour, and (7) University. So far as the question of number of seats

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proposed to be allotted to the various interests is concerned, it would appear that in view of the checks and safeguards that have been proposed, the representation proposed for the Burma Chamber of Commerce, namely, four, appears to be one too many. The Party, however, keeps an open mind on this point.

5. Coming to the proposed allocation of seats among minority communities :—

(1) Karens : It is not known to what extent the Buddhist Karens desire a separate electorate. They form the majority of the Karen community. So far as our experience goes Buddhist Karens have always identified themselves with the Burmese and have never asked to be classified as a separate race. However, on the assumption that all desire separate electorates it is to be observed that the proposal to increase the representation of Karens to 12 appears to be out of proportion. The allocation is made on a population basis. No allowance appears to have been made for the number of Karens who will have the right of participating in electing members for general constituencies. Strictly speaking, to be logical, no Karens should be allowed to vote except for a Karen candidate in a Karen constituency. To award 12 seats to this community really means an additional strength for the minority bloc. No case has been made out that Karen interests have suffered because of their inadequate representation in the dyarchy councils for the last 10 years.

(2) No remarks except that the point as to whether plumping of votes should be allowed or not has not been settled.

(3) It is understood that the 24 general constituency seats referred to in this sub-paragraph are provincial seats as proposed some time ago. The position of the European in Burma cannot be said to be as difficult as that in India, and while it may be of primary importance in India to secure full weightage for the community there does not appear to be the same justification in Burma ; perhaps two seats would be ample.

(4) Full allowance must be made for the temporarily resident Indians in Burma and it is estimated that about one-third of the Indian population in Burma are temporary residents. It may be that when the franchise has been decided upon and the electoral roll has been prepared due allowance will be made for those who are only temporary residents. But the number of seats will have already been determined. It appears to be out of proportion to allot eight reserved seats *plus* two labour seats and two to Indian commerce.

The foregoing comments with reference to representation of minorities in the Lower House have been made without prejudice to the strong objection taken by this Party against communal representation. In the opinion of the Party no case has been made out for its introduction in the Lower House. But if this evil system is to be forced on the Burmese people, then the Party would be inclined to oppose the establishment of a Second Chamber.

6. No comments, except that the Party opposes the idea of reserving seats for women. Burmese women claim equality of status with men

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and they would refuse to be treated either as a minority or as a special interest. The Burmese lady delegate at the last Burma Round Table Conference made that perfectly clear. The position of women in India is admittedly quite different from that of women in Burma.

Another point that calls for comment is in regard to representation of Burmese labour. The representatives should be Burmans. This has not been specified in the Memorandum. It is inconceivable that either Europeans or Indians should represent Burmese labour. If there is no special representation for minority or special interests, then there would be no justification for special representation for Burmese labour. But in view of the fact that capitalists are mostly non-Burmans and the Burmese labour movement is in its infancy, it seems highly desirable that Burmese labour representatives should be Burmans for some time.

There is a feeling amongst members of the Party that if the minority communities consider it essential for them to have communal representatives to protect their interests, the members of such communities which are given special representation should not be allowed to stand as candidates in general constituencies.

7. In this summary it has been assumed that the Rangoon University will always return a Burman, and Burmese labour representatives would be also Burmans. So far as the University is concerned, it is estimated that the majority of electors, on the present roll at any rate, are non-Burmans and there could, therefore, be no guarantee that a Burman would always be returned.

It is also to be observed that although the percentage of minority population is given as 17·86 the percentage of representation is 26·6. This is out of proportion and the minority bloc must be looked upon as a very likely obstacle to the formation of a strong and popular Ministry which is highly desirable in the early stages of the life of the new Legislature. A minority of Burmese members combined with the communal groups could easily obstruct the efforts of the others. Moreover, the existence of a Second Chamber will certainly strengthen the hand of the minorities especially as it is proposed to be constituted.

26. The Party is of opinion seats should be distributed not only on a population basis but the number of voters and the area should be taken into account. While a member for a constituency would naturally work for the welfare of the whole population in his constituency it is essential for him particularly to get in touch with his voters. The figures given in paragraph 20 show that Bassein District has a population of nearly 400,000 and an electorate of over 73,000, while South Arracan has very nearly the same population, but only 23,000 voters. It is now proposed to split up the South Arracan constituency into two, namely, Kyaukpyu and Sandoway, and to allot two seats to Kyaukpyu and one to Sandoway. We are of opinion that the distribution of seats should be on a basis of population, number of voters and the area of the constituency.

27. We do not see why the task of subdividing areas to which it is proposed to allot two members into two single-member constituencies should not be capable of completion before the first election under the new constitution.

28. We agree that there is no justification for retaining the representation now given to the Rangoon Trades Association. The Burma

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Reforms Committee (Whyte Committee) recommended the representation of the Rangoon Trades Association, "but the Chairman, U Myin and Mr. Smyth would have preferred to withhold representation on the ground that if the comparatively restricted interests of the retail trade in Rangoon are entitled to representation there are many similar interests such as co-operative societies who ought to receive at least equal, if not prior, treatment."

40. On the assumption that a Second Chamber is necessary (though the Party is not yet convinced that it is) the following observations are offered :—

The Party considers that a proportion of the members should be elected directly. It supports the view put forward by the Burmese delegates at the Burma Round Table Conference, that one-third of the members should be directly elected, another one-third should be indirectly elected by the Lower House, and the remaining one-third nominated by the Governor in consultation with the Ministry.

41. The Burmese delegates at the Burma Round Table Conference discussed the establishment of a Second Chamber on the basis that Burma would be given a constitution analogous to that of a self-governing dominion. Further, the transfer of powers to the new Legislature is conditioned by so many restrictions and reservations that it is difficult to see why a revising body should be necessary at all. On the other hand, composed as it is proposed to be, it is bound to be a reactionary body which could safely ignore public opinion. Moreover, in conjunction with the minority bloc it could easily obstruct measures intended to benefit the indigenous people. The Party is, however, open to conviction and if the transfer of power to the people is in any sense real and if the danger of the Second Chamber becoming obstructive or reactionary is removed then the question could be reconsidered.

42. The proposal to restrict the size of the Upper House to between a quarter and a third of the membership of the Lower House appears reasonable.

43. It is agreed that a certain section of the Upper House should consist of nominated members. Such nomination should, however, as suggested previously, not exceed one-third of the total number and should be made by the Governor in consultation with the Ministry. In addition to securing representation for minorities and special interests it may be necessary for the Ministry to have its spokesman in the Upper Chamber to explain measures introduced by the Ministry or to state Government's position and attitude in regard to other questions.

44. The Party is unable to accept the remarks in this paragraph. It does not see why if members can be returned to the Indian Legislative Assembly and the Council of State by direct election the same method cannot be adopted for the proposed Upper House. As stated previously, it favours one-third of the members to be elected directly and another one-third to be elected indirectly by the Lower House.

46. The Party is strongly opposed to the proposal regarding qualifications for the members. It has no objection to the age limit, but considers that very few of the indigenous population would be

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qualified under sub-paragraph 2 (*a*) and therefore the Second Chamber would consist almost entirely of capitalist elements, minority and special interests. The Party feels that even in its years of prosperity Burma was not placed in the same economic level as India. Qualifications for Burma candidates to the Assembly and to the Council of State were placed on a much lower level than those for Indians in India. In view of the very serious position of the Burma rice trade, the Party feels that qualifications for members of the Upper House should be the same as those for members of the Indian Legislative Assembly.

2 (*b*).—Fellows of the Rangoon University, Barristers of ten years' standing, Presidents and ex-Presidents of Municipalities and others distinguished in public life should be considered for inclusion in this list.

47. This ensures some representation of minority and special interests and if inadequate may have to be supplemented by nomination.

GENERAL.

The above views are provisional and are subject to modification. Within the short time allowed for consideration it has not been found possible to consult all the district members of the Party.

M. OHN GHINE.

13th September 1933.

IV.—Karen Community.

A.—DEMI-OFFICIAL LETTER FROM S'RA SHWE BA, T.P.S., M.L.C., TO R. G. McDOWALL, ESQ., I.C.S., REFORMS SECRETARY TO THE GOVERNMENT OF BURMA, DATED THE 21ST SEPTEMBER 1933.

I am more than sorry to say that your demi-official letter No. 37 Reforms-33, dated 8th September 1933, did not find me until I returned home last night. I have been busy of late in discussing with other leading Karens the proposals contained in the Memorandum. I was in Rangoon from 6th to 11th instant and at Maubin from 12th to 18th instant. During those days I was eagerly expecting your letter, but unfortunately the letter was mislaid in my house. Consequently, I missed both your appointment with me and the meeting on the 14th instant. I have but to tender you my sincere regret and apology for this unfortunate incident.

I enclose herewith my views on the proposals in the Memorandum and also the view expressed at a representative Karen meeting held in Rangoon on the 9th September 1933.

MINORITIES.

1. Numerous reports and many eminent persons have admitted that Burma is not India and that Burma stands quite distinct in the matter of communal question. The Government of Burma has adopted a wise measure on the weighty subject of communal question and communal award.

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Population of Karens.

2. Figures tell and convincingly do so in most cases, but the case of minorities stands on a different category. The figures for Indians, Chinese, Anglo-Indians and Europeans, whose languages, races and physical features are unmistakably distinct and who are to be found mostly in urban areas, may be considered so exact and correct, but many of the Karens, especially in the delta districts, do not differ much from their neighbours, the Burmans in dress, physical features and mode of living, and unless the enumerators take pains, time and care, I am afraid they will be classified as Burmans, hence the number of Karens, as the figures show, appears to us to be below the actual number.

Separate Electorates.

3. It is with deep regret that no agreement has been arrived at between the communities regarding the question of the representation of minority communities and special interests in the Legislature. It is emphatically asserted that the Karens' only chance to have their voice heard through the mouths of their own people is separate electorates. The Karens are true sons of the soil and but for their number have stood up shoulder to shoulder with their countrymen, the Burmans, in all matters embracing the administration, education and welfare of Burma.

Minorities—Karens.

4. The Karens do not form a floating population nor are sojourners in Burma, but they are the indigenous race, the second largest in Burma, and thus have every claim to be adequately represented in the Legislature. The only means to achieve this end is by reservation of special seats for them, as it has been amply proved that they could not and will never get a seat in the Legislature by contest in the general election.

Amount of Representation to be given to Karens.

5. The proposal is that the Karens will be given 12 seats in the Legislature. At the present juncture, in the Legislature of 132 seats, the Karens will have to accept the 12 seats allotted them on the basis of population.

Representation for Women.

6. The proposal that one seat be reserved for Karen women is unanimously approved and greatly appreciated, but the said seat should be termed "Special Seat" like "Labour" and should not be taken out of the Karen quota, as the said quota is so limited that it will not be possible to re-allocate the seats among the different Karen constituencies.

Summary.

7. This summary clearly indicates the majority of the Burmans in the Council and there appears to be no fear when the percentage of the minority representation is only 26. The Burmans and Karens, being true sons of the soil, can easily hold the reins in their hands.

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KAREN CONSTITUENCIES.

10–14.—(*a*) The Karens have cause to complain that the distribution of the seats for them does not appear to be a representative one, e.g. Pegu Division, with a local Karen population of 149,300, is not given a single Karen seat although it occupies a central position and is the most outstanding and conveniently situated division. The only drawback is the wide and almost even distribution of the Karen population in the four districts—Insein, Pegu, Hanthawaddy and Tharrawaddy. Consideration on the basis of population should be waived and the only ground left to maintain in the favour of allotting a seat to this division is to educate the Karen population in political affairs.

(*b*) Assuming that one seat is allotted to Pegu Division the Karen quota of 12 seats may thus be distributed :—

Irrawaddy Division - - - -	7
Tenasserim Division - - - -	4
Pegu Division - - - - -	1
	12

The said distribution might be thus further subdivided :—

Irrawaddy—Bassein - - - -	2
Myaungmya - - - -	2
Maubin - - - -	2
Henzada - - - -	1
Tenasserim—Thatôn - - - -	2
Amherst - - - -	1
Toungoo - - - -	1
Pegu—(—) - - - -	1

The density of population, the easy means of communication, the facilities for education and physical features of the districts as well as the distribution of the Karens in the districts call for the above unequal distribution.

(*c*) The two reasons given in paragraph 11 of the Memorandum neatly answer all arguments in favour of spreading the Karen constituencies all over Burma. The 12 seats allotted are rather a very potent factor, if the 12 Karen members will solidly adhere and firmly stand together. But such solidity and adherence among them seem remote as hardly no two are alike in matters pertaining to political affairs.

(*d*) The reason set forth in paragraph 12 of the Memorandum is unanimously approved by the Karens.

FRANCHISE FOR THE LOWER HOUSE.

Qualifications of Electors.

Paragraph 33.—The existing qualifications based on community are entirely satisfactory.

Paragraph 33.—Residential and age qualifications laid down in the Memorandum are what the Karens expect to safeguard the interests of Burma, where a floating population will jeopardise the stability of the way to responsible government.

Paragraphs 34 *to* 36.—Other qualifications laid down in these paragraphs will ensure a better class of voters.

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PROPOSALS FOR AN UPPER HOUSE.

Paragraphs 40 *to* 45.—There is nothing to be added to these proposals.

Paragraph 46.—The qualification proposed is too high and cannot, therefore, be accepted. One of the qualifications for the Council of the State is payment of not less than Rs. 300 land revenue or of income-tax assessed on a minimum income of Rs. 3,000 and this should be substituted in paragraph 46 (2) (*a*).

B.—REPRESENTATIVE KAREN MEETING.

A representative Karen meeting was held on 9th September 1933 at 10.30 a.m. at No. 7, U Loo-Nee Street, Karen Quarter, Kemmendine, to express Karen opinion on the Government Memorandum on the Representation of Minorities and on the Constituencies and Franchise for the Lower House, and Proposals for the Upper House.

U San Baw, O.B.E., K.I.H., President, Karen National Association, Burma, was voted to the chair, with U Ba Kin, B.A., General Secretary, Karen National Association, as Recording Secretary of the meeting. Delegates from six districts were present in person. Toungoo District represented its opinion by wire as its delegates missed the train. Amherst District represented its opinion by letter.

As the Memorandum is marked "Strictly Confidential," the meeting was of opinion that the Memorandum was laid before them only for general expression of Karen opinion on the principle of the Representation of Minorities, and on the Constituencies and Franchise for the Lower House, and of the Proposals for the Upper House. This meeting was not therefore called upon either to pass or move resolutions for or against the Memorandum. It was just called to get the non-official Karen opinion on the proposals contained in the Memorandum, and the proceedings should not therefore be recorded and published. It was for the leader of the Karen Party to whom copies of the Memorandum were entrusted to take the sense of the meeting to the Reforms Secretary for his information and necessary action personally.

The sense of the meeting is that the Karens generally approve of the proposals to base the amount of representation for the Lower House for the minorities on population basis. Therefore, the 12 seats proposed for the Karens on a population basis of 9 per cent. of the total number of 132 seats are approved. The meeting cannot, however, agree to the proposals to restrict the area of constituencies for the Karens into the two Divisions only, viz. Irrawaddy and Tenasserim, and none is proposed in the Pegu Division, which is a very important Division also. The Karens should have constituencies in such important Division.

The sense of the meeting is that Karen separate constituencies should be so expanded as to have 12 Karen separate constituencies for the 12 Karen seats as follows:—

Thatôn with Karen population of 281,300 - - -	1
Bassein with Karen population of 129,100 - - -	1
Myaungmya with Karen population of 118,500 - -	1
Maubin with Karen population of 113,800 - - -	1
Amherst with Karen population of 107,000 - - -	1
Toungoo with Karen population of 88,000 - - -	1
Henzada with Karen population of 60,200 - - -	1
Insein with Karen population of 27,700 - - -	1
Pegu with Karen population of 37,300 - - -	1
Tavoy and Mergui with Karen population of 35,400 -	1
Rangoon and Hanthawaddy with Karen population of 33,000	1

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The meeting is of opinion that in order to educate the Karens to fi them in future Reforms, it is really necessary to expand the area of Karen constituencies as far as practicable.

Regarding reserved seats for women, the meeting is against the proposal to count the Karen women seat against the Karen quota which is based on Karens' population. This should be taken as Special Interests as in other cases, such as Labour and Commerce. The Karen women seat should not therefore be counted against the Karen quota 12 based on Karen population ; the meeting is of opinion that this reserved Karen women seat should be located in Pyapôn District containing 21,700 Karen population, thereby making all the Karen Districts in Lower Burma Karen separate constituencies for the badly needed political education of the Karens for future Reforms.

BA KIN,
Recording Secretary.

9th September 1933.

V.—The Burma British Association.

1. The Committee of this Association has given anxious consideration to the Memorandum on the Representation of Minorities and on the Constituencies and Franchise for the Lower House and Proposals for the Upper House. The Committee has satisfied itself that the proposals of the Local Government with regard to the future representation of European interests are viewed with grave alarm by the European community as a whole.

2. The total number of seats allotted to minorities in the new Legislature is 34 out of 132, or 26 per cent. In the present House, leaving the official bloc out of account, the minorities hold 26 seats out of 88, or 30 per cent. With the disappearance of the official bloc there are strong grounds for claiming an increase in minority representation, but on the contrary the present Memorandum proposes to reduce the proportion of minority seats by 4 per cent. In the view of the European community there is no justification whatever for this reduction, and this Association holds that the minimum allotment for all minorities should be 30 per cent. of the total House, or not less than 40 seats.

3. In dealing with the question of minority representation it has to be remembered that a large proportion of the Karen community professess the Buddhist religion and identifies itself with the Burmese Buddhists who form the overwhelming majority of the inhabitants of the Province. In these circumstances this Association considers it difficult to regard the Karens as a minority community at all, and if the number of their seats were deducted the representation of the true minority interests, the business and trading communities of Burma, would be reduced to 22 seats out of the total of 132.

4. As regards European representation, the European community have at present, and have generally had in the past, seven out of 88 non-official seats, or 8 per cent. Without any improvement in their present position, therefore, they would be entitled to at least 10 seats out of 132 in the new House. But the elimination of the official bloc makes it essential that the proportion of European seats should be increased. This claim is made not only with a view to protecting European interests, including the interests of Europeans in the Services hitherto cared for by the official bloc, but also in order to ensure an adequate element of stability in the House.

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5. With these considerations in mind it is not surprising that the proposals of the Local Government, which would allot the Europeans a total of seven seats out of 132, or a fraction over 5 per cent., should be received by the community with deep dissatisfaction and concern.

6. At the Burma Round Table Conference the European representatives asked for 10 per cent. of the total seats. Their claim was the first to be stated and the figure named was advanced, not with the idea of manœuvring for position in a game of haggling, but as a moderate and reasonable demand, having regard to the vast European interests in Burma and the inexperience both in politics and business of the indigenous communities. The Indians followed with an obviously exaggerated claim for 18 per cent. and the Karens then held out for not less than the Indians. It is feared that the Europeans' moderate claim has suffered by comparison with the unreasonable claim of these two communities. It has apparently not been realised that the European claim would have been pitched much higher if it had been thought that the Indians and Karens would advance such inflated claims and that these claims would have any influence on the ultimate allotment.

7. It is noted that the only argument advanced for the allocation of no more than three seats to Europeans (exclusive of seats for the Burma Chamber of Commerce) is on the population basis and for this purpose the total European population in British India has been divided by the total number of seats allotted to Europeans in provincial Legislatures. This can hardly be defined as an argument at all and would merely appear to be an attempt to evade the real issue. As far as this Association is aware it is not an argument that has been put forward in the case of any one of the Indian Provinces.

8. In India the position in each Province has been considered separately on its merits and wherever European interests are large the community has been accorded representation on an adequate basis. This is particularly so in Bengal and Assam, where the conditions affecting Europeans approximate most closely to Burma. Furthermore, it must not be overlooked that in the Indian Provinces Hindu-Muslim discord militates against the formation of an overwhelming and unanimous majority. The position is by no means the same in Burma, where Burmans are to occupy 74 per cent. of the total seats. On the other hand, if India is to be taken as a guide at all, the representation given to Europeans in Bengal is obviously more in point than that given in other Provinces, such as the Punjab, Central Provinces and Orissa, where European interests are small.

9. This Association desires to emphasise that it rejects as unsound any allotment of seats to European interests on a population basis. There can be no real analogy between Burma and the majority of the Provinces of India in which the trade of the country is largely carried on by Indians. Trade in Burma is almost entirely in the hands of the minority communities, and it is claimed that the Europeans form the most important of these communities. The progress and development of Burma during the last century have been due almost entirely to the zeal, ability and industry of Europeans, both official and non-official. To-day, the administration, commerce and education of the country are still very largely in European hands and this position must continue to exist for many years to come. European interests in Burma

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are vast and cover every portion of the country, and the withdrawal of European enterprise and capital would undoubtedly result in a complete stagnation of industry and commerce. It is only necessary to point to the rice, oil, timber, mining and planting industries and to the public utility companies like the Irrawaddy Flotilla Company and the Rangoon Electric Tramway and Supply Company. The European community cannot therefore concede that it is relatively of less importance than the Indian or Karen communities and it is astounded that the Local Government should consider it so. It claims to rank as highly in the matter of representation as any other minority in Burma.

10. In support of the claim that the European community occupies a unique position in India reference may be made to two often quoted passages from the Report of the Indian Statutory Commission taken from paragraph 66 of Volume I and paragraph 81 of Volume II :—

> "The true significance of the position of the European in India can only be realised by bearing in mind the course of history and the economic development of the country. It is now more than three hundred years since the first British merchants settled in Surat, North of Bombay, and more than two centuries have passed since British traders established themselves in Bengal. The Indian railway system, designed and carried out by British enterprise, has transformed conditions of Indian commerce. It is British organisation and leadership which have promoted the modern industrial development of India, just as it has been the adoption of political conceptions derived from Britain which has chiefly affected the recent course of Indian politics. There can be few cases in history where so small a body of men has brought about changes so widespread and so fundamental. . . . The noteworthy fact is that, over areas so vast and amid populations so immense and diverse, the importance of the small European community, by whatever standard this may be measured, is out of all proportion with its size."
>
> "As to European representation, this must continue to be secured by means of separate electorates. The number of Europeans in India are no fair measure of the contribution they make to the country, or of the influence which they exert. One of the best features of the operation of the reforms is the way in which European business men of high standing and experience have contributed to the public life of the country by their membership of the legislatures."
>
> "It is clear that it will not be easy in the enlarged councils to find a sufficient number of suitable European business representatives able to devote their time to the work of the legislatures. But we attach great importance to every effort being made, not only to secure the increased number but to maintain the high standard of representation so far achieved."

It is clear that what the authors of the above report had in mind was the necessity of maintaining the stable influence of European representation and that with the removal of the official bloc such representation would need to be increased. So far as Burma is concerned it can be said without hesitation that there will be no difficulty in finding men to fill any seats that may be allotted to the community.

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11. The European population of this Province is the only community with any extensive experience of democratic government. It is European influence and training that has brought the Burmese people to a stage when a reformed constitution can be considered, but if the future Legislature is to function successfully, too much stress cannot be laid upon the necessity of a strong, stable European element in the Lower House. It is also significant that the only minority community which the Burmese in any way recognise as having a strong claim to representation is the European community.

12. This Association can see no good reason for the abolition of the seat heretofore allotted to the Rangoon Trades Association and considers that this body should continue to be represented.

13. The Local Government proposes to reserve three seats for women and to allocate all of these to the Burmese community. This Association agrees that it is important that the new Legislature should contain some women members and desires to put forward the claims of European women in this connection. These women have done and are still doing splendid pioneer work in Burma. In their own sphere they have been responsible, probably even to a greater extent than their menfolk, for the progress and enlightenment of the indigenous people of this country. Much still remains for them to do and they have an unanswerable claim to representation.

14. It is suggested that the 12 European seats should be distributed as follows :—

Burma Chamber of Commerce - - -	4
Rangoon Trades Association - - -	1
Rangoon Town - - - - -	2
Lower Burma (excluding Rangoon) - -	2
Upper Burma - - - - -	2
Women - - - - - -	1

15. The European community have, whilst reserving to themselves the right of independent thought and action, almost invariably given the full weight of their support to the Government in all matters of importance. In times of crisis and in questions concerning the public safety they have always wholeheartedly supported the Government. Of recent years they have been unanimous in their insistence upon guarantees and safeguards in the matter of conditions of service, salaries and pensions for Government servants under the new Constitutions. Attention is drawn to paragraph 86 of the Scheme of Constitutional Reform in Burma if separated from India. This preserves to Government servants their rights and provides for compensation for the loss of any of them. This Association is in entire agreement with these provisions, but feels that the non-official European is equally entitled to consideration and protection and considers that the loyalty and public spirit of the non-official European has counted for little and that the Local Government has made the proposals under review with a cynical disregard for his future interests.

16. At a general meeting of the members of this Association held at Rangoon on the 8th September 1933, at which all classes and

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interests among the European population in Rangoon were fully represented, the following Resolutions were unanimously passed :—

(1) This meeting of the Burma British Association, being fully representative of all classes and interests among the European community in Rangoon, desires to express its deep concern at and emphatic dissatisfaction with the proposals of the Government of Burma for the representation of European interests.

(2) This meeting is unanimously of opinion that it is in the best interests of the country as a whole that Europeans should receive representation no less than that afforded to any other minority community and in any case not less than 12 seats in the Lower House.

W. A. W. DAWN,
President;
E. FOUCAR,
Honorary Secretary.

11th September 1933.

VI.—Burma Chamber of Commerce, Rangoon.

1. This memorandum expresses the views of the Burma Chamber on the proposals for representation of minorities in the Lower House of the new Legislature as contained in the Confidential Memorandum recently issued by the Government of Burma.

The membership of the Chamber includes :—

The Burma Railways,
The Rangoon Port Trust,
The Exchange Banks,
The Irrawaddy Flotilla Co., Ltd.,
The Agents of the British and Foreign Steamship Companies serving Burma and
All the important European Rice, Oil, Mining, Timber, Engineering and Importing Companies.

The Chamber, therefore, may be regarded as representing the entire European business community in Burma, with the exception of those engaged in retail trade, whose interests are represented by the Rangoon Trades Association.

2. It is understood that the present proposals of Government are intended to have effect, irrespective of whether Burma is to be a part of Federated India or is to be a separate State. The arguments in the body of this memorandum are based on the assumption that Burma will be in the Indian Federation, but, as pointed out in a later paragraph, the considerations that will arise in the event of Burma being separated give added weight to the objections raised herein to the proposed allotment of seats to European interests.

3. The opening paragraph of the Local Government's Memorandum reads as follows :—

> "The proposals under this head are based in a large measure on the Communal Award for India. Although the communal question is less acute in Burma than in India, it appears sound that similar methods of treatment should be adopted in both cases."

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We agree that adequate representation of minority interests in Burma should be ensured by means of separate electorates. On the other hand, we entirely reject the assumption, implied in the above paragraph, that in determining the extent of representation to be allowed to minorities, the conditions to be provided for in Burma are similar to those obtaining in India.

4. Communal problems in India arise from the historical antagonism between the two main indigenous communities—Hindu and Muslim. This antagonism, in the words of the Statutory Commission Report, "is a basic opposition manifesting itself at every turn in social custom and economic competition as well as in religious antipathy." The Hindu-Muslim issue in India is primarily based on mutually antagonistic religious creeds, and for that reason is fundamentally different from the communal question in Burma.

5. In Burma such communal friction as does exist has no religious basis. To quote the Report of the Statutory Commission again, "the Burman being a Buddhist recognises none of the social divisions of caste and customs erected by Brahmanism." It is therefore unlikely that communal antagonisms will ever be so deep-seated and permanent as the Hindu-Muslim issue in India. In that sense the communal problem in Burma is less acute than in India, but for reasons stated later it is no less important from a political aspect.

6. The three principal minorities in Burma are the Europeans, the Indians and the Karens, and it would therefore appear that the communal question is based entirely on racial grounds. The case of the Karens, however, is entirely different from that of the other minority communities. The Karens are an indigenous community almost entirely engaged in agricultural pursuits and their economic interests are broadly indistinguishable from those of their Burmese fellow countrymen. A very large number of them are Buddhists and there is no friction between the Christian section and the Burmese on religious grounds. Their need for separate representation, which we have no desire to oppose or minimise, is largely based on a desire to ensure for their community a fair share of educational benefits and appointments in the public services, and they are most likely to try to secure this by aligning themselves with the Burmese majority in the Legislature.

7. In the case of the other minorities there is a marked divergence between their interests and those of the Burmese majority which, in our opinion, sharply differentiates their position from that of the Karens. This difference lies in the fact that the industrial trading and financial interests in Burma are very largely in the hands of these minorities. This is not the result of accident or privilege, but is entirely due to the fact that the indigenous peoples have in the past shown little aptitude or inclination for commercial and industrial pursuits. It may be said without fear of contradiction that the country has been brought to its present stage of development by the enterprise and capital of the European, Indian and Chinese communities under sound administration. The whole economic structure of Burma to-day is based on a framework of an industrial, trading and banking organisation created by these minorities. The interests of these minorities are by no means identical, but broadly speaking when we come to compare the relative representation of majority and minority

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communities in the Legislature, we must regard the Burmese and Karens together as the real majority interest, and the Europeans, Indians, Anglo-Indians and Chinese as the true minorities.

8. It follows that these minorities, and the great commercial interests involved, are politically in a very exposed position, and an alleviation of this situation can only come about by the majority communities taking an increasing interest in commerce and industry. We would welcome a development in this direction, but there is no indication of the question solving itself along these lines in the near future, and the situation can, therefore, only be met by giving adequate weightage to these minorities in the new Legislature.

9. As compared with most of the Indian Provinces, there is ample room for giving weightage to minorities in Burma. Under the proposals before us, the Burmese and Karens between them are allotted 110 seats out of 132, or 83 per cent. This could be considerably reduced without any danger of throwing undue power into the hands of the minorities, while at the same time it would give a much needed addition to the influence of these minorities in the House. The overwhelming voting power in the hands of the indigenous majority communities would remain unassailable. A moderate addition to the strength of minority representation could influence legislation only by the extra weight of reasoning or persuasion which it could contribute and not by the added weight of its vote.

10. The foregoing considerations appear to have been entirely overlooked in the proposals set out in the Franchise Memorandum Minority representation as a whole has been reduced instead of increased and no reasons have been adduced in support of this somewhat surprising rearrangement of voting strength. Another important consideration, to which no weight has apparently been given, is the disappearance of the official bloc which will leave minorities in a more exposed position *contra* the majority representation.

11. In the present Legislative Council, the number of non-official seats totals 88, and of these the minority communities occupy altogether 26 seats, made up as under :—

Europeans - - - -	7
Indians - - - -	12
Karens - - - - -	5
Anglo-Indians - - - -	1
Chinese- - - - -	1
	26

This represents 30 per cent. of the non-official seats. In the new House it is proposed to make the following allotment to minorities out of 132 seats :—

Europeans - - - -	7
Indians - - - -	12
Karens - - - - -	12
Anglo-Indians - - - -	2
Chinese - - - -	1
	34

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This represents 26 per cent. of the House, so that the total minority representation has been reduced from 30 per cent. to 26 per cent.

12. In view of the distinction we have already drawn between the Karens and other minority communities, it is necessary to analyse separately the position of the latter. In the present Council these hold 21 seats out of 88, or 24 per cent. In the proposed new Legislature they are allotted 22 seats out of 132, or 17 per cent. This drastic reduction does not seem to be justified by any line of reasoning. On the contrary, as already pointed out, the arguments are all in favour of a substantial increase in the total representation of these minorities.

13. In the new Lower House it is proposed that there shall be 132 elected seats as against 88 non-official seats in the present House, an increase of 44 non-official seats. These 44 seats are to be distributed among the communities as under :—

Burmese - - - -	36
Karens - - - - -	7
Anglo-Indians - - - -	1
	44

No seats have been allotted to Europeans.

14. In the matter of European representation, although the Chamber is more particularly concerned with representation of commercial interests, we propose to deal with the whole question of the allocation of seats to the European community.

Europeans have been allotted three general seats, and it is stated in the Memorandum that these have been allotted on the basis of the average number of European population per European general constituency seat in India. This method of fixing seats involves acceptance of the theory that conditions in Burma affecting the question of European representation are the same as the *average* of conditions in all the Indian Provinces. We can find no force or logic in this line of reasoning, and in fact no such basis has been adopted in fixing the number of European general seats in any Province in India. The question of European representation in the Indian Provinces has obviously been decided on its merits, having regard to the importance and nature of European interests in each Province.

15. If we are to draw any analogy from the communal settlement in India, we must turn our attention to the award in Bengal, where conditions as regards the need for European representation most closely approximate those in Burma.

In Bengal, with its large European commercial interests, 11 general constituency seats have been allotted to Europeans out of a House of 250, or 4·4 per cent. On the basis of the proposed allotment in Burma, Europeans in Bengal would have received only six general seats. It may be noted also that the proportion of European population to total population in Bengal is only about half the corresponding figure in Burma. The contrast between the treatment of European interests in Bengal and Burma is remarkable and we can find no reason to justify it.

16. As regards "Special Interests," European interests in Bengal have been given 14 seats out of 250, whereas the same interests in

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Burma have been allotted only four out of 132. Here again we can find no reason for the differentiation against Europeans in Burma. The importance of European commercial and industrial interests in Bengal is not to be disputed, but we hold that in Burma the European position is even more predominant. In Bengal, European interests are mainly centred in the jute, coal and tea industries. In Burma we have the counterpart of these in rice, oil and timber. But the capital invested in industries under European management in Burma is to a much greater extent European than in Bengal, where behind a façade of European management under the managing agency system a vast amount of Indian capital is invested, particularly in the jute and coal industries. This fact gives an element of political security to European investment in Bengal which does not exist in Burma.

In this connection, it may be remarked that in Bengal the European "Special Interests" representatives, apart from the one representative elected by the Calcutta Trade Association, consist of six elected by the Bengal Chamber of Commerce and seven elected by a number of Associations representing particular sections of commerce and industry, e.g. the tea, jute and mining industries. In Burma, the whole of the European commercial and industrial interests are represented by the Burma Chamber of Commerce and there are no sectional Associations to claim representation apart from that obtained through the Chamber.

17. Taking General Constituencies and "Special Interests" together, European representation in the new Legislature in Bengal will total 25 seats out of 250, or 10 per cent. We hold that the European community is fully justified in claiming equivalent representation in Burma, say 13 seats out of 132.

18. The position in the present Legislative Council in Burma is that Europeans occupy seven out of 88 non-official seats, or 8 per cent. Of these seats, four are elected and three are nominated non-official seats. It has been suggested that the occupants of these non-official seats have not been nominated to represent European interests, but on account of special qualifications which they possess. The reasons which underlie such nominations are not made known, as these nominations are entirely in the discretion of the Governor. It may be noted, however, that in the Report of the Indian Statutory Commission, the following statement appears (see page 133, Volume I) :—

> "Nomination is resorted to for two purposes. In some cases it is the method adopted for securing a spokesman for a class or community which would otherwise go unrepresented. In other cases, a nominated seat is filled by the Governor in the exercise of his general discretion, to redress inequalities or to fill up an undesirable gap."

In the case of the seats under reference it is reasonable to conclude that the need has been felt to place Europeans in these seats either in the interests of the European community or in the interests of the Legislature as a whole. In either case it is beyond question that, with the elimination of the official bloc, the need for additional strength to the European element in the House will be even more keenly felt, and speculation as to the special reasons for particular nominations in the past is beside the point.

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19. We maintain, therefore, that the effective representation of Europeans in the past has been seven seats or 8 per cent. and that in the Legislature of the future, in view of the disappearance of the official bloc on which the European community have relied for protection, and for reasons we have touched upon in dealing with the question of minority representation in general, the case for an increase in non-official European representation is overwhelming.

20. In the new Legislature we hold that the European community have an unassailable claim to 10 per cent. of the total seats in the Lower House, i.e. 13 seats out of 132, and in no circumstances can we agree to accept a lower representation than any other minority community. In considering the respective representation claims of the Indian and European communities, while we have no wish to minimise the contribution which the Indian community has made to the development of Burma, it should be borne in mind that the Indian stake in commerce and industry is generally of a less permanent nature than the European. Indian business activities are, in a large degree, devoted to trading and banking, which involve little investment of long-term capital, whereas European enterprise has been more generally directed to the development of large-scale industries such as oil, timber and mining, in which vast investments of fixed capital have been made. This fact, as also the fact that Indian commercial interests derive an indirect protection from the comparatively large representation secured on a population basis, requires to be given full consideration in estimating the relative needs of the two communities for weightage in the Legislature.

21. With regard to the apportionment of European seats between General Constituencies and "Special Interests" this is a matter of minor importance, but on the basis of 13 seats we suggest that a suitable allocation would be as under:—

General Constituencies.

Upper Burma	2
Lower Burma	2
Rangoon City	2

Special Interests.

Burma Chamber of Commerce	6
Rangoon Trades Association	1

22. In this connection, we are strongly opposed to the suggestion that the Rangoon Trades Association should be deprived of their present seat. They have held this seat since 1914 and we see no good reason why they should be required to give it up now. The Franchise Committee's Report (paragraph 320) emphasises the importance of securing the presence in the Provincial Legislatures of men qualified to speak with knowledge and authority on subjects connected with trade, commerce and industry, which call for expert consideration from time to time. The members of the Trades Association have special knowledge and experience of the problems of the retail trade in this country, which the members of the Burma Chamber of Commerce do not possess, and in this respect the Trades Association member in the House has a special qualification which is not likely to be possessed by

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any of the elected members of the General Constituencies. It is true as suggested in the Local Government's Memorandum, that one of the members of the Chamber of Commerce or General Constituencies could be briefed to represent the Trades Association's interests when need arose, but, lacking an expert knowledge of the retail trade, he could not be as useful, either to the House or to the interests comprised in the Rangoon Trades Association, as a representative of their own. It may also be pointed out that this suggestion could have been made with greater force in respect of the various subsidiary commercial associations which have representation in the Bengal Legislature, apart from the representation they enjoy through the Bengal Chamber of Commerce. No proposal has been made that because the Bengal Chamber of Commerce could look after their interests, these associations should be deprived of direct representation. Nor, it may be noted, has the Calcutta Trades Association been deprived of its seat in the new Legislature. We can therefore see no grounds, unless a desire to reduce European representation as a whole, for doing away with the Rangoon Trades Association's seat, and we would strongly urge that this seat, which has historical sanction as well as a definite practical value to the Legislature, should be retained.

23. The arguments so far adduced in our opinion constitute an unanswerable case for a much increased European representation in the Lower House if Burma remains within the Indian Federation If, on the other hand, Burma is separated from India, these arguments gain in weight, and the matter becomes of even more vital importance. Under Separation, the Burma Legislature will have control of all the subjects which in India will come within the power of the Federal Legislature, with the sole exception of monetary policy, currency and coinage. These subjects include many of special and direct importance to the interests represented by this Chamber, for example, Railways, Inland Navigation, Mining, Port Administration, Customs, Excise, Income-tax, Posts and Telegraphs. The Burma Legislature, based on a much wider franchise than the Federal Legislature in India, will thus be dealing with subjects vastly more important and more vital to European interests and the general economic welfare of the country than will be the case in any Indian Provincial Legislature.

It is obvious, therefore, that if Burma is separated the need for stability and political moderation in the Lower House will be more keenly felt in Burma than in the Indian Provinces, and these are the very qualities which the European representatives are by experience and tradition best fitted to contribute.

With these considerations in view the need for strong European representation cannot be too strongly emphasised, and, indeed, it may be said that in all probability the successful working of the new Legislature will depend to a considerable extent on the steadying influence of the European element in the Lower House.

C. G. WODEHOUSE,
Chairman.

13th September 1933.

VII.—The Rangoon Trades Association.

The primary object of this Memorandum is to state in as strong a manner as possible the extreme dissatisfaction that is felt by the Rangoon Trades Association with the proposal that is contained in the

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Franchise Memorandum issued confidentially by the Local Government whereby it is intended to deprive this Association of representation in the new Lower House.

2. In the Franchise Memorandum the representation of this Association is referred to in paragraphs dealing with the representation for Special Interests and by joining its representation with that of the Burma Chamber of Commerce the Memorandum has in paragraph 7 classified this Association under the European community. It is desired, therefore, first of all to briefly express the Association's views on the general proposals in relation thereto, that is, the representation of the European community and the representation for Special Interests.

3. By its constitution the membership of the Rangoon Trades Association is not limited to Europeans, but in the meantime the preponderant interest of Europeans in the Association justifies the Government of Burma in classifying it as a European interest.

4. The particular viewpoint of the Association, however, is the trading viewpoint, and, from this angle, the Association views with the greatest concern the inadequacy of the representation that is given in the Government proposals to European interests. The element of stability and the respect for law and order which the European group supplies are the requisites the trader, no matter what his nationality may be, looks for in a sound Government, and this Association therefore gives its fullest support to the representations that are being made on this matter by the Burma Chamber of Commerce and the Burma British Association. It supports the view that the representation of minorities should not be less than 30 per cent. of the total number of seats and that in any case the European representation should not be less than that of any other minority community.

5. In the conditions that obtain in Burma and are likely to obtain for some time to come the Association agrees that in the interests of sound Government, Special Interests should be represented. Its criticism of the allocation of the representation proposed to be given to commercial interests is that it is proposed to give the whole representation, viz., eight seats, to bodies whose preponderant interest is in industry and/or external trade, and no representation is given to the interests dealing with internal distribution.

6. It is now proposed to deal with the proposal to deprive this Association of the representation it has hitherto held in the Legislatures of Burma. In the Franchise Memorandum, paragraph 6 (5), it is stated: "It is no longer considered necessary to grant separate representation to the Rangoon Trades Association, as their interests can be looked after by the representatives of the Burma Chamber of Commerce."

7. If by the statement that separate representation is no longer necessary, it is intended to convey that this Association will still be represented through the Burma Chamber of Commerce, this Association desires to take the strongest possible exception to this distortion of the facts. The members of this Association are not, and are not eligible to be, members of the Burma Chamber of Commerce and theywould have no voice in the choosing of the latter's representatives. Without a voice in the choosing of representatives there can be no representation.

8. In the Franchise Memorandum it is furthur stated that the nterests of the Rangoon Trades Association can be looked after by the

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representatives of the Burma Chamber of Commerce. This statement is entirely fallacious. The interests of the Burma Chamber of Commerce are centred on industrial and commercial matters predominantly on the export side, such as rice, timber and oil. The interest of the Trades Association is centred round imports and the retail distribution of these throughout the Province. There can be no similarity in their interests ; it is in fact, conceivable that matters may be raised in future Legislatures on which there may be a wide difference in the views held by the two bodies. In such circumstances it would be unfair to place the onus of protecting the interests of the Trades Association on the shoulders of this representatives of the Chamber of Commerce and, frankly, the view the Association holds is that, in these circumstances, the interests of this Association would be sacrificed.

9. By the nature of its activities, the interests of the Burma Chamber of Commerce are akin to those of the Indian Chamber of Commerce, the Chinese Chamber of Commerce, and the Burmese Chamber of Commerce, to which bodies it is proposed to give separate representation, and had it been suggested in the Franchise Memorandum that the representatives of the Burma Chamber of Commerce could look after the interests of these bodies, there might have been some justification for the joint representation of these interests, but there can be no justification in the statement that their representatives can look after the interests of this Association and this Association feels sure that the Burma Chamber of Commerce has no desire to assume this responsibility.

10. This Association was formed in 1898. It is, therefore, not of recent growth ; it is virile and its members have a permanent stake in the country.

11. This Association has always in the past had representatives, not only in the Legislatures, but in bodies such as the Corporation of Rangoon, Commissioners for the Port of Rangoon, the Council of the Rangoon University, the Railways Advisory Board, &c. Its representatives in past Councils have given good service to the country, and men like the late Mr. Goodliffe and the late Mr. Du Bern have not only claimed respect, but have been leaders in the House itself.

12. In the new House, whether it be under a Federal Constitution and more so if under a Separation Constitution where all-India subjects, such as Customs, &c., will be transferred, it is most desirable, in the interests of good government and enlightened legislation, that the special experience which a representative of this Association will have, should be at the disposal of the Legislature.

13. The protection of the trading interests of the country in such matters as licences for various trades—chemists, firearms, ammunition, liquors, &c.—regulations for motor-vehicles and other forms of transport, the law regarding debtors, public holidays, shop hours, methods of assessment of customs duty of widely varied classes of articles, &c., &c., are all matters on which a representative of this Association would be one of the few persons able to speak with authority.

14. Although the headquarters of this Association are in Rangoon its members, through their branches and agencies, have an interest in

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the retail business throughout the Province and, through this, it has a personal contact no other body has, and has a first-hand knowledge of the individual reaction to the subjects that may come before the new House, and yet, by its compactness, it is eminently suitable to form a constituency by itself.

15. In the opening paragraph of this Memorandum it was stated that its object was to protest against the proposal to deprive this Association of its seat in the new Lower House. On account of its stake in the country this Association views with grave anxiety the proposals contained in the Franchise Memorandum, but it will conclude on a higher plane and express the view that it is in the interest of Burma itself that the Trades Association should continue to be represented in the Reformed Burma Legislature.

H. W. SMITH,
President.

VIII.—Anglo-Indian Community.

I have consulted representative Anglo-Indian opinion, both in Rangoon and the Districts, on the proposals made in the Memorandum, for the representation of the Anglo-Indian community in the new legislative bodies.

There appears to be strong opinion that the community should claim at least three seats in the Lower House. This was the claim made in the Memorandum approved at a public meeting of the community, and submitted to the Indian Statutory Commission (Simon) in 1930.

After eliminating Europeans in the "public force" there are only 9,858 Europeans in Burma, and yet it is proposed in the Memorandum to allot three seats to the European constituency in Burma on the basis of one seat to every 3,552 of the population. The population of Anglo-Indians in the elective area is 18,583, i.e. nearly double the European population. On the population basis, therefore, Anglo-Indians should be given twice the number of seats allotted to Europeans, i.e. six seats. There is no desire on the part of Anglo-Indians to reduce the number of seats allotted to Europeans, but it is felt that having regard to the size of the Anglo-Indian population, their high standard of literacy, the important part they play in the life of the Province, and the fact that they are a community permanently domiciled in Burma, that the three seats which they originally asked for should be allotted to them.

It may be pointed out that the Indian Franchise Committee has recommended that in the Province of Bengal, in which the Anglo-Indian population is 27,673, four seats should be allotted to the community, which works out at one seat for every 6,918·25 of the community. On this basis, it will be seen that Anglo-Indians in Burma should be allotted three seats.

There is a general consensus of opinion that election should be by postal ballot. My own view is that the ballot should be secret, and that "plumping" of votes should be allowed.

As to representation in the Upper House, this should be secured by a clause in the Instrument of Instructions issued to the Governor that at least one nominated member should be an Anglo-Indian.

C. H. CAMPAGNAC.

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IX.—Indian Community.

After consultation with my constituency and other Indian interests on the proposals contained in the Memorandum I hereby submit the views generally held by them.

I must state at the outset that the procedure adopted by the Local Government is most objectionable. It is generally felt that if Government were anxious to consult non-official opinion on the question of the composition of the future Legislature, such opinion should have been ascertained prior to the framing of concrete proposals. Instead, the Government have first framed certain proposals on their own initiative and are now consulting non-official opinion. Such a precedure, it is apprehended, is calculated to prejudice the issue, and result in injustice being done to certain interests. It would have been more appropriate if the Government, instead of prejudging the issue, had left the decision of the questions involved to the Joint Select Committee in consultation with the Burma Delegation.

Representation of Minorities in the Lower House.

In respect of the proposals regarding the representation of the minorities in the Lower House, it is strongly felt that the minority interests on the whole have not been given adequate representation. In particular, gross injustice has been done to the Indian interests. In the present House, taking the elected bloc only, the minorities have got 20 seats and the Labour seat specifically provided for under the Burma Electoral Rules can rightly be said to belong to them. Thus they hold even now 21 seats by right, which are furthur supplemented by nomination of at least four to five members. Thus the representation of minorities in the present House is about 30 per cent. exclusive of the official bloc. As regards the official bloc, it is the general view that it is intended to protect the interests of the minorities and special interests against any misuse of power by the majority and may thus be regarded as rightly belonging to them. Assuming that in the new Constitution no change is made in the strength of the House, and the official bloc is eliminated, it is a perfectly legitimate claim to suggest that the 14 official seats should naturally go to the minorities and special interests comprised in the non-official nominations. To illustrate the point the following calculation is given.

The seats for various minorities and special interests at present are as follows:—

Europeans	4	
Karens	5	
Indians	10	(including one Labour seat allotted under the Electoral Rules).
Anglo-Indians	1	
Chinese	1	
Nominated interests	8	
	29	

If the 14 seats now held by officials are distributed as suggested in proportion to the existing representation of the various interests, the

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seats to which respective interests would be entitled would be as follows :—

Europeans - - - -	2
Karens - - - -	2
Indians - - - -	5
Anglo-Indians - - - -	1
Nominated interests - - -	4
	14

On this basis five out of the 14 seats would come to the Indians as a matter of right and probably one out of the four seats allotted to nominated interests. This is in a House of 103 members. Without any extra representation in the new House it is clear in the light of the above calculation that the 12 seats proposed to be given to Indians are far below their due share.

It must be specifically pointed out that there is absolutely no justification whatsoever for including the two Labour seats in the representation to which the Indian community is legitimately entitled through General constituencies. Labour is a special interest and must be treated as such in the same manner as Burmese Labour has been treated. The inclusion of Labour seats in the representation through General constituencies deprives the Indian community of two seats to which they are entitled.

If the figures proposed for other minorities are scrutinised it is felt that so far as the Europeans and Karens are concerned Government appear to have adopted a more liberal basis than in the case of the Indians. While Indian opinion does not grudge the increased representation given to other minorities, it is not out of place to point out that the interests of the Karens, who have been given considerably increased representation, appear to be almost identical with those of the majority community, viz. the Burmese. Indian opinion insists that the representation of the Indian minority and Indian special interests must also receive fair treatment and feels that they are entitled to increased representation on the basis of the suggestions made above.

As regards the proposed representation of Indian commeircial interests, Indian commercial bodies strongly hold that it is entirely inadequate and must be increased. It may be pointed out that Indans in Burma have got commercial and industrial interests in almost every sphere besides agricultural interests also. While the Europeans have got their interests more compact, those of the Indians are spread out in diverse directions and embrace every branch of the economic activity of Burma. As such Indian commercial interests deserve representation in a much more liberal measure than what has been proposed for them.

A. CHANDOO.

X.—The Burma Chinese Chamber of Commerce.

The Burma Chinese Chamber was formed in the year 1907 by the Chinese British subjects as an Association of wholesale and retail merchants, millers, bankers and others engaged in the commerce of Burma. The Chamber is fully representative of all the important and well-known Chinese commercial houses dealing essentially in the trades of

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rice, oil, mining and timber throughout the Province. While at all times the Chamber chiefly takes a commercial interest in the affairs of the country, yet it has not been indifferent or slow to act or express its views in other matters for securing peace and tranquillity to the country and for progressive development of Burma's trade and resources and for the promotion of goodwill, co-operation and friendly relationship between the various communities in Burma.

For many years the Chamber has returned one representative to the Legislature. The principle of election of a representative was conceded to other Chambers of Commerce in India when the Morley-Minto Scheme of Reforms were introduced, and perhaps in consonance with such methods and precedents in other Provinces, the Chamber's whilom Chairman, the late Mr. Lim Chin Tsong, was nominated for many years in succession as an Hon'ble Member of the then Lieutenant-Governor's Legislative Council. Since the introduction of Burma Reforms in 1922 and the actual inception of the first Reform Council in 1923, the Chamber has elected as its representative Mr. Chan Chor Khine for the first and fourth terms of the Council and the late Sir Lee Ah Yain for the second and third terms. The confidence and trust reposed in the Chamber's representatives combined with the intelligent and high qualities of the representative concerned resulted in the appointment of the late Sir Lee Ah Yain as one of the trusted Ministers of the Government for two successive terms. The active participation of the Chinese in elections to public bodies and Legislative Council and the important parts they played therein as President, Chairman or members not only prove the fitness and ability of such persons to perform their civic duties and exercise their franchise, but also indicate the intensive desire on their part to identify their interest with that of the indigenous people of Burma.

The Chamber understands that the recommendations for a suitable form of government which will satisfy and content the various people of Burma and which will yet contain adequate safeguards for the preservation of internal peace and for the protection of all commercial interests are well in hand except for definite allocation of seats in the Council, and ventures to submit this Memorandum in the hope that suitable recommendations be made for adequate representation and reservation of seats in the proposed Council.

The Chinese population in Burma for the elective area is given as 121,752 and the following figures gleaned from the Census Reports shows our numerical position in the Province :—

Born in Burma - -	Male -	35,659	
	Female	23,594	
			59,253
Born out of Burma - -	Male -	47,320	
	Female	15,179	
			62,499
	Total -		121,752
Permanent Residents -	Male -	62,299	
	Female	32,320	
			94,619
Non-permanent Residents -	Male -	20,680	
	Female	6,453	
			27,133
	Total -		121,752

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Although no separate figure is given for Chinese who are British subjects, it can safely be taken that out of the permanent residents 59,253 Chinese born in Burma are British subjects by birth and the rest are naturalised British subjects having made Burma their permanent home with Burmese wives and family. These Chinese occupy the entire length and breadth of Burma, and the tremendous growth of financial, industrial and trading interests of the community needs no advertisement in that no large city in the Province is without its "China Town," "Taroktan," and no village tract without its "Chinese Shop." As for their social and other activities, they have lived in peace and amity with their neighbours and have taken part in all important local functions, sharing their responsibility and duties as good citizens. They yield to none in their loyalty to the Government, they have helped the Government in bringing in more revenue by plying in legitimate and licensed trade and business which other people have neither the means nor inclinations to take up. Neither have they been backward and discriminate in contributing towards War Loans, Government Loans, University Endowment Funds, hospitals and other various public charitable institutions.

The basis of the present number of elective members in the Provincial Council is as follows:—

Burmese - - - - -	60
Indians - - - - -	9
Europeans - - - -	4
Karens - - - - -	5
Anglo-Indians - - - -	1
Chinese - - - - -	1
	80

The Chamber feels that in view of the important part played by the community in the life of the Province and by reason of our foremost place in trade and commerce of the country and our heavy contribution to the provincial revenue and the extent of our property in lands and buildings and the capital sunk and invested in the country, the single seat reserved for the community from the Chamber is entirely inadequate even on the basis of numbers. Added to which is the boundless difficulty of the limited choice of a representative to satisfactorily represent the diverse interests of the members who being descendants of Fukkien and Kuantung Provinces of China have their business places in Lower Burma and some in Upper Burma.

The Chamber, therefore, respectfully urges that the number of seats reserved for the Chamber in the proposed new Council should be raised to 2 per cent. of all the seats, or at least two seats to protect the wide and considerable vested interests of the community. Such a recommendation is not only equitable but also justified in view of the fact that no separate or communal representation is sought for in other constituencies where members of the community will be content with the existing right to compete with others in the General Elections. Further, it will be in consonance with the spirit of reforms and its consequent increase of representation.

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The Chamber submits that this request for more seats is not new, but is a reiteration and repetition of the one made by Mr. Hoe Kim Seng, the Chinese member of the Burma Delegation during the deliberations of the last Burma Round Table Conference.

To safeguard and sponsor the interests of the community and for such other purposes, this Chamber strongly pleads that a suitable Chinese representative (from this Chamber) be chosen and sent as one of the delegates to the Joint Select Committee to be held in London in connection with the proposed Burma Reforms.

CHAN CHOR KHINE.
HOE KIM SENG.
SAW BAH CHYE.
YEO MOH SEONG.
S. BOON TIN.
L. AH LYE.
TAN HAN TI.

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RECORD A.1—(*continued*)

III.—Memorandum by the Secretary of State for India on Excluded Areas in Burma

INTRODUCTORY.

1. As in India, there are in Burma certain areas which it is necessary to exclude wholly or partially from the administration of Ministers responsible to the Legislature and from the unrestricted application of Acts of the Legislature.

Paragraph 18 of the introduction to the Burma Constitutional Memorandum [Joint Committee on Indian Constitutional Reform (Session 1932-33) Volume III p. 64] made a general reference to the problem presented by these areas (which were provisionally defined in the two Schedules A and B attached); reference to particular points arising in regard to them was also made in the footnotes on pages 14, 16 and 25. But no detailed provisions were included in the Memorandum and this deficiency is now repaired by the proposals set out in the Appendix to the following explanatory note.

2. The areas which it is proposed to treat as wholly excluded are those which have already been notified under the Government of India Act as "backward tracts"; those which it is proposed to exclude partially are certain areas which have not been formally notified as "backward tracts" (though some of them are of generally similar character to those tracts), and are consequently at present subject in law to the Legislature and amenable to its measures, but which have been excluded from the operation of the Burma Rural Self-Government Act and do not return members to the Legislative Council.

3. As regards the existing backward tracts, the opinions of the delegates at the Burma Round Table Conference were divided. Some considered that their administration should be entrusted to the Governor as a reserved subject, and that the Legislature should have opportunity from time to time to discuss the subject at the discretion of the Governor. Others thought that responsibility for administration should be placed on a Minister; though there was division of opinion as to whether at the outset the Minister should be responsible to the Governor or to the Legislature.

4. In the declaration made by the Prime Minister on the 12th January, 1932, it was stated that the administration of the Federated Shan States and of the other "backward tracts" would be vested in the Governor.

PROPOSALS IN THE BURMA CONSTITUTIONAL MEMORANDUM.

5. The Burma Constitutional Memorandum has attached to it in Appendix II [Joint Committee on Indian Constitutional Reform (Session 1932-33) Volume III p. 94] two schedules, viz.:—

A. Areas which it is intended should be wholly excluded from the purview of the Legislature and of the Ministers responsible to it. The administration of the areas in Schedule A is proposed to be one subject in the Governor's Reserved Department (Proposal 10).

B. Areas which would be only Partially Excluded from the purview of the Legislature. In these administration would be carried on through Departments and Services in the charge of Ministers responsible to the Legislature, but the supervision of this administration would be a special responsibility of the Governor (Proposal 17), who would have full power to enable him to discharge his responsibility to Parliament, in respect to the administration.

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6. The Memorandum further contained a footnote to Proposal 50 stating that some provision would have to be made corresponding to Proposal 109 of the Indian White Paper, which deals with the discussion of matters concerning those areas in the Legislature. Otherwise the Burma Memorandum confined reference to these matters to a paragraph in the Introduction (No. 18) [Joint Committee on Indian Constitutional Reform (Session 1932-33) Volume III p. 64], which ran as follows:—

> "Again, in regard to the administration of what, in the case of India, have been described as Excluded or Partially Excluded areas, conditions in Burma may demand slightly different treatment. Detailed provisions for the treatment of such areas in Burma have therefore been excluded from the scope of this tentative scheme. It is proposed in the case of Burma that the areas falling within the two categories mentioned above should be enumerated in two separate Schedules, A and B, to the Constitution Act, and it will therefore be convenient to refer to them as Schedule A or Schedule B areas rather than Wholly or Partially Excluded areas. A provisional list of these areas will be found in Appendix II".

Schedules A and B.

7. The provisional Schedules in Appendix II of the Burma Memorandum have been re-examined by the Government of Burma, and it is now possible to substitute the following amended Schedules, which it is thought should be appended to the Constitution Act.

Schedule A.

1. Federated Shan States.
2. Arakan Hill Tracts.
3. Chin Hills District.
4. The Kachin Hill Tracts of the Myitkyina, Bhamo and Katha Districts.
5. The territory known as Hkamti Long in the Myitkyina District.
6. The Somra Tract and the Shan States of Hsawnghsup (Thaungdut) and Singkaling Hkamti (Kanti State) in the Upper Chindwin District.

The above areas cover about 90,200 square miles, and have a population of about 1,876,000.

[There are also certain inaccessible tribal areas, at present unadministered, but the greater part of which it is proposed to bring under a loose form of administration in the near future, which are of course at present entirely outside the purview of the Legislature and which should continue to be so excluded. It is proposed to include them in Schedule A when the exact terminology of the entry to be made in respect of them has been decided upon. The areas in question are the following:—

1. The area known as the Triangle in the Myitkyina District.
2. The area known as the Hukawng Valley lying to the north of the Upper Chindwin District.
3. The Upper Chindwin Naga Hills lying to the north-west of the Upper Chindwin District.]

Schedule B.

1. Such parts of the Myitkyina and Bhamo Districts as are not included in Schedule A.
2. Such parts of the Upper Chindwin District as constitute the Homalin Subdivision together with the village tracts which were included in the former Tamu township of the Mawlaik subdivision on the date preceding its abolition.
3. The Salween District.

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The areas in Schedule B cover about 22,200 square miles, and have a population of about 366,500.

Schedule A Areas.

1.—*General.*

8. In considering the future constitutional arrangements for the backward tracts in Burma it is important to remember that the word "backward" which is the technical term used to denote areas notified under Section 52A of the Government of India Act, 1919, may lead to a serious misunderstanding of the position. It suggests that the difference between these tracts and the ordinary districts is one of degree of development which will necessarily tend to disappear with time. This is far from the whole truth. The existing backward tracts are hill districts lying on the north, west and east of Burma, and resembling in their general characteristics the backward tracts along the eastern border of Assam. Their inhabitants, mainly Kachins, Chins and Shans, differ radically from those of the plains in race, religion, law, customs, and language, and most of these differences will be bridged, not by a simple process of development, but by the much slower and more difficult process of abandonment of their existing culture. It is the absence of common outlook and aspirations which is perhaps the main factor militating against the assimilation of the backward tracts in the hills in the political institutions of the plains. The history of the relations between the backward tracts and the plains is one of opposition and hostility, and the main reason for undertaking the administration of the tracts was the protection of the plains. Such feelings of antipathy die slowly in remote places; and the inhabitants of the backward tracts are still devoid of any real sense of community, political or otherwise, with the plains. Further, the inhabitants of the backward tracts are ignorant of conditions in the plains and those of the plains are equally ignorant of conditions in the tracts. It is true that since the annexation of Upper Burma, civilising influences have been at work. The Kachins come down with confidence from their hills to market in the villages of the plains and mix more freely with the plainsmen, and in some areas they have come under the influence of missionaries. Kachins and Chins also are recruited to the Burma Rifles and Burma Military Police. But the fact remains that the plains and the backward tracts are different worlds with no adequate mutual knowledge and no adequate contact by which such knowledge may be readily diffused.

9. The "backward tracts" in Burma are admittedly not ripe for representative institutions and have not, it is believed, shown any desire for them. The time will not be ripe for such a change until conditions in the tracts have undergone a fundamental change and until their inhabitants have learned to feel that they are part of a larger political whole. Such a state of affairs is not likely to come to pass within any period that can at present be foreseen.

10. Meanwhile, the provincial legislature, however capable of legislating for the plains which it knows and represents, is clearly not qualified to legislate for people it does not represent and for conditions of which it has no adequate knowledge. Added to this is the consideration that law in the backward tracts is mainly customary law supplemented by simple regulations issued under Section 71 of the Government of India Act—a very refractory substance for amalgamation with acts of the Legislature.

11. The form of administration is equally simple, being loose and flexible and often depending upon the personality of an individual officer.

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12. The foregoing remarks apply to all the areas which it is proposed to include in Schedule A (Wholly Excluded) and indeed are very largely applicable to some at least of the areas in Schedule B which it is proposed to exclude only partially.

2.—*The Shan States.*

13. Among the areas at present notified as backward under the Government of India Act is the Shan States Federation. At the Burma Round Table Conference the Shan States delegation indicated that they desired to preserve the separate existence of the Shan States Federation, and asked that the Federation should be placed in the direct charge of the Governor. The other delegates generally expressed sympathy with the Shan Chiefs' desire to preserve the position of the Federation.

14. In the Declaration made by the Prime Minister on the 12th January, 1932, it was stated that the administration of the Federated Shan States would be vested in the Governor, and following upon this announcement, it is proposed to place the Shan States in Schedule A to the Constitution Act.

15. The Shan States (Northern and Southern), are British territory. They occupy a block of some 60,000 square miles of mountainous territory, traversed from North to South by the Salween River, and lying between the Irrawaddy valley and the Chinese, French Indo-Chinese and Siamese frontiers. The line of division between the Northern and Southern groups is roughly due east of Mandalay. The two main groups, Northern and Southern, have together a total population of rather more than 1½ million and a total revenue of about 47½ lakhs.

16. The Shan States became British territory following the Proclamation of 1886, annexing the territories formerly governed by King Thibaw, and making them over to the Viceroy and Governor-General of India for administration. Prior to the British annexation, sovereignty over the Shan States had been claimed by the Kings of Ava.

17. British policy in the States after the annexation was aimed at establishing orderly administration at the least possible cost. The existing system of administration by the Shan Chiefs were therefore maintained. The result was an arrangement under which, though the States are British territory, and the Rulers and their subjects are British subjects, the criminal, civil and revenue administration are generally vested in the Chiefs.

18. The sanads of appointment issued to the Chiefs are not hereditary as is the rule in the rest of India. A fresh sanad is issued to each Chief on appointment, and though the selection of successors is generally made in the family of the governing Chief, this is not obligatory. It has been the deliberate policy of the British authorities to retain authority over the Chiefs (Sawbwas), while making use of their traditional position as the most appropriate method of administering a great variety of very simple races.

19. Under the Burma Laws Act of 1898, the civil, criminal and revenue administration was vested in the Chiefs, subject to obedience to the Superintendent of the States, and it was prescribed that the Law to be administered was " the customary law of the States so far as it is in accordance with justice, equity and good conscience, and not apposed to the spirit of the law in British India ". (This customary law can, however, be modified by orders issued by the Governor, who also has power to appoint officers to take part in the administration of the States.) At the same time the States were excluded from the operation of any Burma Act not specifically extended to them.

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20. In 1922, in connection with the application to Burma of the Reforms of 1919, the main block* of Northern and Southern Shan States was formed into a Federation—a separate sub-administration in the charge of the Governor (not the Governor in Council) and removed therefore from the scope of the new Burma Legislature.

21. The scheme contemplated no interference in the internal management of the States, and the Chiefs continue to collect their taxes and to be responsible for law and order, maintain courts, appoint their own officials and control their own subjects under the advice of their respective Superintendents (and Assistant Superintendents) as before. But the common services of Public Works, Medical Administration, Forests, Education and Agriculture, and, to a small extent, local Police, have been centralised under the control of the Federation.

22. The funds of the Federation are principally derived from—

(*a*) contributions from the individual States, varying from 40 per cent. to 50 per cent. of their revenues,

(*b*) the mineral and forest royalties accruing within the Federation, less 25 per cent. allotted to the individual Chiefs,

(*c*) a contribution from Burma revenues,†

and amount to rather over Rs.30 lakhs per annum. The Federal Council, consisting of seventeen Sawbwas, four elected representatives of the lesser Rulers and the Superintendents of the Northern and Southern Shan States, is an Advisory Body only, possessing no legislative power. The Superintendent of the Southern Shan States, who is also Commissioner for the whole of the States, is President of the Council, and Agent of the Governor in respect of the administration. All Departmental officers employed in the States are removed from ordinary departmental control, and directly responsible, through the Superintendents, to the Governor. This method of administration corresponds to what is proposed for all the other areas placed in Schedule A to the new Constitution Act.

23. When the States were notified in 1922, at the time of the formation of the Federation, as "backward tracts" under the Government of India Act, the revenues levied in them were scheduled as allocable solely to the Governor for the purpose of the administration of them. Such revenues are not shown in the Finance and Revenue accounts of the Province generally, but in a separate account. It will be necessary to conserve this arrangement.

Schedule B Areas.

24 It should be explained that in accordance with the Prime Minister's statement of 12th January, 1932, all the tracts at present notified as "backward" have been placed in Schedule A, and will be controlled exclusively by the Governor.

25. There are, however, three administrative districts, Myitkyina, Bhamo and Upper Chindwin, in which in addition to considerable areas already notified as backward, there are comprised other areas which, though never formally declared to be "backward tracts" under Section 52A of the Government of India Act, have always been wholly excluded from the

* There are a few isolated blocks of Shans elsewhere in the northern districts of Burma, notably Hsawnghsup and Singkaling Hkamti.

† This will probably disappear when the financial arrangements for the Shan States Federation are reviewed in the near future.

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operation of the Burma Rural Self Government Act;* and have not been included in constituencies for the election of members to the Legislative Council. A fourth district, Salween, which contains no areas at present notified as backward, consists entirely of areas of this class.

26. There seems very little doubt that, judged by existing conditions, the areas referred to in these four districts should be wholly excluded and placed in Schedule A. They are definitely backward areas in the general sense of the word, having a scattered population and a very low level of literacy. It will be difficult to form satisfactory constituencies in some of them, and still more difficult to make satisfactory polling arrangements. Nevertheless, as these areas have never been formally declared "backward tracts", and do not consist exclusively of hill districts, it is obviously undesirable to withdraw them from the scope of Ministers and the Legislature. It is, therefore, proposed to treat them in the same way as Partially Excluded Areas in India. A list of them is given in Schedule B above. The following notes give some description of the districts in which these areas occur, and the manner in which it is proposed to treat them.

27. *Myitkyina District.*—This district is the most northerly district of Burma and runs up to the borders of Tibet. The district contains large areas of unadministered territory, notably the Triangle, but even excluding these areas, it comprises a total area of 18,350 square miles. Nevertheless, the population is only 171,000, made up, mainly of Burmans (including Karens) 38,000, Kachins 40,000, Shans 62,000, Indians 17,000 and Chinese 4,000. Half of the population is located in the hill tracts, already notified as "backward tracts". Of the total population only 31,000 are literate.

The district comprises the Putao (including the territory known as Hkamti Long) Sumprabum, Sadon, Htawgaw, Myitkyina, Mogaung and Kamaing subdivisions. The first four subdivisions are composed wholly of hill tracts which are now classified as "backward tracts" and which must continue to be treated as "totally excluded areas." There remain for consideration the Myitkyina, Mogaung and Kamaing subdivisions. The "plains" areas in these subdivisions have not been excluded from the scope of the Legislative Council, but have not been formed into a constituency and do not return a member to the Legislative Council. The total area of these "plains" areas is about 3,500 square miles and the population is about 89,000. Most of the 31,000 literates of the district are found in the plains. The proposal is that these plains areas should be treated as "partially excluded", and that as far as possible they should be formed into a constituency and should return a member to the Lower House of the Legislature.

28. *Bhamo District.*—The area of this district is 6,900 square miles, of which 2,800 square miles are Kachin Hill Tracts and 4,100 square miles plains areas. The total population is 121,000, made up chiefly of Burmans (including Karens) 32,000, Kachins 47,000 and Shans 34,000. Only 22,000 of the population are literates. The proposals in respect of this district are much the same as those made for Myitkyina. The Kachin Hill Tracts, which are at present "backward tracts" should continue to be "totally excluded", and the rest of the district, that is the plains area, should be "partially excluded". These plains cover an area of rather more than 4,000 square miles and contain a population of about 66,000, mostly Burmans and Shans. The plains areas are more compact than in Myitkyina, and no particular difficulty is anticipated in forming them into a constituency and making suitable polling arrangements.

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* The purpose of which is to provide for the institution in rural areas of District Councils Circle Boards and School Boards "for the purpose of associating the inhabitants of such areas more closely with the administration of matters affecting their daily lives."

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29. *The Upper Chindwin District.*—This district adjoins Manipur in the west and towards the north runs up to the borders of the "human sacrifice" area of the unadministered Naga Hills. Large tracts of unadministered area are also included in the district itself. Leaving this unadministered territory out of account, the total area of the district is 16,000 square miles, of which 2,400 square miles are accounted for by the three existing "backward tracts", the Somra Tract, Singkaling Hkamti (Kanti State) and Hsawnghsup (Thaungdut State). The total population of the district is about 205,000, and the number of literates is only 63,557 The "backward tracts" should continue to be "totally excluded areas". The Somra Tract is a wild tract in which there was a rising some years ago, and the Thaungdut and Kanti States are backward Shan States each with its own Sawbwa. The rest of the district is made up of the Kalewa, Mawlaik and Homalin subdivisions, and in these districts the Burmese, who form nearly half of the total population of the district, are located. The three subdivisions are in different stages of development and require separate consideration. The Kalewa subdivision is inhabited mainly by Burmans. No special treatment is required, and there is no reason why the subdivision should not be entirely within the jurisdiction of the Legislature and the Ministers. The same remarks apply to the Mawlaik subdivision other than what was formerly the Tamu township. This township (now amalgamated with the neighbouring township of Mawlaik) covers an area of 540 square miles on the border of Manipur. It is wild and difficult country. The people are not ripe for representative institutions, and it would be impossible to make proper polling arrangements. The rest of the Mawlaik subdivision on the other hand is occupied by people who speak Burmese, and it might be brought wholly under the control of Ministers and the Legislature. The Homalin subdivision, however, stands much in the same category as the Tamu township. Generally speaking, the people are backward, the standard of literacy is low, and the population is mixed. In the greater part of the subdivision the people are quite incapable of exercising the franchise. It is proposed that the Kalewa subdivision and the Mawlaik subdivision excluding the Tamu township should be formed into a constituency of the Legislature, and come wholly under its authority, and that the Tamu township of the Mawlaik subdivision and the Homalin subdivision should be treated as "partially excluded areas", no attempt being made at present to form constituencies out of these two latter areas.

30. *Salween District.*—This district is a remote and inaccessible tract on the eastern frontier of Burma adjoining Siam. The area of the district is 2,666 square miles, and the population only 54,000. The district consists of wild and hilly country, and the population is composed entirely of Karens. These Karens, though of the same racial stock as those of the plains, retain all the characteristics of unsophisticated and primitive hillmen, and in respect of political development and aptitude are wholly distinguishable from their kinsmen who have settled in and accommodated themselves to the plains. There are only 4,400 literates in the district. It is impossible to understand why the district was never declared a backward tract, and the proper course is totally to exclude the area. It is, however, proposed to treat it as a "partially excluded area," but to make no attempt to form it into a constituency.

The Burma Frontier Service.

31. In connection with the subject of Excluded Areas, reference may be made to paragraph 22 of the Introduction to the Burma Constitutional Memorandum, which runs as follows:—

> "In addition to the ordinary Provincial Service, which covers the whole of the civil administration in the middle and lower grades, Burma

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possesses the Burma Frontier Service. This Service is now controlled and recruited by the Local Government, but many of its members, in common with many members of the Provincial Services, have rights guaranteed by the Secretary of State. In view of the fact that if Burma were separated from India most of the officers of the Burma Frontier Service would serve in areas under the sole control of the Governor, it would seem proper that the Service should be recruited and controlled by the Governor acting in his discretion."

32. The object aimed at by the proposal in this paragraph regarding the future control and recruitment of the Burma Frontier Service is to secure that the Service through which the Excluded Areas are mainly administered shall be recruited by the Governor, in his discretion, with particular regard to the characteristics requisite in officers charged with the administration of these remote areas and their untutored inhabitants.

APPENDIX.

The Secretary of State for India's Proposals in respect of Excluded Areas in Burma.

N.B.—These are practically identical with the corresponding proposals 106-109 in the Indian White Paper.

(A) His Majesty will be empowered to direct by Order in Council that any area within Burma is to be an "Excluded Area" (Schedule A) or a "Partially Excluded Area" (Schedule B) and by subsequent Orders in Council to revoke or vary any such Order.

(B) In respect of areas in Schedule B the Governor will be declared to have a special responsibility (see paragraph 17).

The Governor will himself direct and control the administration of any area in the Province for the time being placed in Schedule A. (See paragraph 10.)

(C) Legislation required, whether for areas in Schedule A or Schedule B, will be obtained in the following manner:—

No Act of the Legislature will apply to such an area unless the Governor in his discretion so directs, and in giving such a direction the Governor will be empowered to direct that the Act, in its application to the area, or to any specified part thereof, is to have effect subject to such exceptions or modifications as he thinks fit.

The Governor will also be empowered at his discretion to make Regulations for the peace and good government of any area which is for the time being in Schedule A or Schedule B and will be competent by any Regulation so made to repeal or amend any Act of the Legislature which is, for the time being, applicable to the area in question.

Regulations made under this provision will have the same force and effect as an Act of the Legislature made applicable to the area by direction of the Governor, and will be subject to disallowance in the same manner as an Act of the Burma Legislature, but will not be subject to repeal or amendment by any Act of that Legislature.

(D) Rules made by the Governor in connection with legislative procedure will contain a provision prohibiting the discussion in the Legislature of, or the asking of questions on, any matter arising out of the administration of an area in Schedule A, and enabling the Governor, at his discretion, to disallow any resolution or question regarding the administration of an area in Schedule B.

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RECORD A.2

[21ST DECEMBER, 1933.]

I.—Memorandum by the Secretary of State for India on Discrimination in Burma

1. The Indian White Paper contains in Proposals 122, 123 and 124 indications of the provisions contemplated to be included in the Indian Constitution for the prevention of discriminatory legislation against any British subject in India whatever his domicile (122), for the specific protection (on a basis of reciprocity) of British subjects (and companies) domiciled in the United Kingdom (123) against discriminatory legislation, and for the passage, nevertheless, of Subsidy Acts intended to foster Indian industries (124) by methods which, but for this provision, might be inadmissible as being discriminatory. Corresponding proposals in relation respectively to British subjects of whatever domicile in Burma, and British subjects of United Kingdom domicile in Burma are included in the Burma Memorandum (Joint Committee on Indian Constitutional Reform [Session 1932-33] Volume III p. 83) in paragraphs 58, 59 and 61; and in paragraph 60 an indication is given that it will be necessary to consider whether and to what extent a specific protection should be accorded in Burma to British subjects of Indian domicile corresponding to that proposed for British subjects of United Kingdom domicile.

2. On 3rd November the Secretary of State for India circulated a Memorandum A.68 (vide Joint Committee on Indian Constitutional Reform [Session 1932-33] Volume IIB. p. 1297) affording a more precise and detailed statement of the purposes sought to be achieved by the Proposals in the Indian White Paper. No new proposals were made; the original objects were simply set out in a more complete form. It will be convenient therefore, to consider the question of protection from discrimination in Burma in relation to the provisions set out in Memorandum A.68 (vide Joint Committee on Indian Constitutional Reform [Session 1932-33] Volume IIB p. 1297) rather than to those in Burma Proposals 58, 59 and 61 which correspond to the superseded statements in the Indian White Paper, Proposals 122, 123 and 124.

Provision for British subjects of United Kingdom domicile and companies incorporated in the United Kingdom, but trading in Burma.

3. It will be generally agreed, no doubt, that as Burma is at present a province of British India, and as British subjects domiciled in the United Kingdom occupy in Burma the same position as in other Provinces, and occupy it by virtue of the same considerations, precisely the same degree of protection should be accorded to them in Burma, if separated from India, as is to be accorded in continental India. It is proposed accordingly that the protection which is provided in India for British subjects of United Kingdom domicile and for companies incorporated in the United Kingdom by paragraph 3, sub-paragraphs (i)-(vi) inclusive, of Document A.68 should be provided in precisely similar form and degree in Burma. These paragraphs, it is proposed, should apply *totidem verbis* in the case of Burma, with the substitution of the words "Burma" and "Burman" for "India" (or "British India") and "Indian".

4. These proposals, it will be observed, when so amended will afford liberty to the Burma Legislature to take reciprocal action in the event of the imposition in the United Kingdom of restrictions and disabilities on Burman British subjects.

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5. It is contemplated further that the exceptions to the foregoing provisions which are indicated in paragraph 3 (vii) of Document A.68, so far as they are applicable to British subjects of United Kingdom domicile or British companies incorporated in the United Kingdom, should apply in Burma as in India, and that the provisions of sub-paragraph (viii) should equally be made applicable to United Kingdom shipping by the substitution of the words " Burma " or " Burman " for " British India " and " Indian ".

6. In relation to protection against administrative discrimination it is proposed to adopt in Proposal 17 (*e*) of the Burma Memorandum (Joint Committee on Indian Constitutional Reform [Session 1932-33] Volume III p. 70) the amendment of Proposal 18 (*c*) of the Indian White Paper suggested in paragraph 4 of the Secretary of State's memorandum.

British subjects domiciled elsewhere than in the United Kingdom or India.

7. The provisions to be made in respect of the protection in Burma of British subjects domiciled in India are dealt with below. But as regards other British subjects, domiciled elsewhere in the Empire than in the United Kingdom, it is proposed that a similar liberty (subject, however, to the proposal in paragraph 15) to impose conditions on the entry into Burma of such persons and to negotiate with the Governments of their countries of domicile, should be left to the Burma Legislature as it is proposed in paragraph 5 of Document A.68 (vide Joint Committee on Indian Constitutional Reform [Session 1932-33] Volume IIB p. 1297), should be left to the Indian Legislatures. For the disabilities and restrictions which in some parts of the Empire are applied to Indian British subjects apply to those domiciled in Burma no less than those domiciled in other Provinces of British India.

Protection for British subjects domiciled in India and for companies incorporated in India, but trading in Burma.

8. By virtue of Burma's incorporation in the Indian Empire as a Province of British India, subordinate to the same Central Government as her sister Provinces, Indian domiciled in or originating from those other Provinces constitute an important element in Burma. They number over one million in a total population of about fourteen millions. Many are serving in Government departments, in the Police, civil and military. Indian enterprise has contributed largely to the agricultural development of Burma and Indians have established in Burma commercial and trading organisations involving capital expenditure of many crores of rupees which are invested in the country.

9. On the other hand, a very great proportion of the Indian population in Burma consists of labourers who do not intend to stay in that country more than a few years and who while they are there tend to oust the indigenous labourer and by accepting lower wages to lower his standard of living. The Royal Commission on Labour in India made a strong recommendation that steps should be taken to control and restrict the flow of Indian labour immigration into Burma.

10. Further, Indian money lenders who advance money on the security of agricultural land and on the crops operate on so extensive a scale as seriously to affect in times of depression the ownership of the land by the indigenous agricultural population. Such money lenders no doubt fulfil a useful function in general; but in a country where the natural land system

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is that of peasant proprietorship the extensive transfer of ownership to non-indigenous and non-agricultural classes is a matter which requires careful attention.

11. It is no easy matter to reconcile the claims, on the one hand, of the continental Indian to be protected in the position he has acquired as a result of Burma's inclusion in British India, and, on the other, of the Burman to be protected from the pressure reckoned by so vast and so populous a neighbour.

12. It is proposed to meet these conflicting claims by the application to Indians in Burma of provisions corresponding generally to those proposed for the protection of British subjects of United Kingdom domicile in paragraph 3 of Document A.68 [vide Joint Committee on Indian Constitutional Reform (Session 1932-33) Volume IIB p. 1297], but modified to meet the particular circumstances in which the two cases differ—notably in respect of labour immigration, which from India is of serious importance, but from the United Kingdom not existent.

13. On this basis the provisions of paragraphs 3 (i), 3 (ii) (*b*)—but not (*a*) —3 (iii), 3 (iv), 3 (v), 3 (vi) and 3 (viii) would apply, generally, to Indians in Burma as to United Kingdom subjects in India, the words Burma or Burman being substituted for India (or British India) and Indian. The provisions in question, so amended, are appended to this vote.

14. It would, of course, be necessary to qualify the protection so afforded by exceptions on the lines of paragraph 3 (vii). In particular an exception on the lines of sub-paragraph (vii) (1) (*b*) will be required to maintain the existing limitations on the rights of persons of non-Burman birth or domicile to compete for certain public appointments or qualify for the exercise of certain professions; and an exception on the lines of sub-paragraph (*d*) will be required in order to preserve to the Burma Legislature the right to pass legislation designed to prevent the undue alienation of land, referred to above, from the indigenous agriculturist to non-agricultural classes, whether Indian or other.

15. No protection of the right of entry into Burma is contemplated in favour of British subjects domiciled in India such as is proposed by paragraph 3 (ii) (*a*) for British subjects domiciled in the United Kingdom. The right of the Burma Legislature to pass legislation restricting or imposing conditions on entry into Burma will apply in respect of British subjects domiciled in India as in respect of those domiciled elsewhere (except in the United Kingdom). But with a view to preventing the imposition of any vexatious restrictions or unreasonable conditions for the entry of Indians of good standing into Burma, it is proposed that the introduction of any legislation regulating immigration, whether from India or from any other country—since differentiation between country and country in this respect will obviously be undesirable—should be subject to the Governor's prior consent. In case this precaution is considered insufficient to prevent injudicious legislation affecting the entry of Indians into Burma, it is suggested that the Governor's Instrument of Instructions should indicate that this category of legislation is one in which particularly his discretionary power to reserve Bills for the signification of His Majesty's pleasure might be exercised.

16. It may be remarked that the best solution of this question, apart from such provisions in the constitution Act as may be required to safeguard the position of the Burma Legislature, on the one hand, and of British-India subjects, on the other, lies in the conclusion by the Governments concerned of an Immigration and Emigration Convention.

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Professional Qualifications.

17. As regards professional qualifications other than those of the medical profession, the remarks in paragraph 6 of Document A.68 [vide Joint Committee on Indian Constitutional Reform (Session 1932-33) Volume IIB p. 1297] are applicable to the case of Burma no less than to that of India, and to the case of persons holding Indian qualifications no less than to those holding British qualifications. The Governor should refuse in Burma as in India to assent to legislation debarring from the practice of their profession persons already practising on the strength of a British or an Indian qualification. And, while it should not be permissible for a person to be disabled from the practice of his profession in Burma merely because his qualification is a British or India qualification, it would be unreasonable to prevent the requirement in Burma of additional qualifications justified by special local conditions.

18. As regards Medical qualifications it is not possible at the present time to indicate with precision what provisions will be required in the Burma Constitution. Hitherto the registration of Medical practitioners in Burma has been regulated by the Burma Medical Act of 1915 (amended in 1927) which besides providing for the recognition of certain qualifications conferred in Burma, entitles to registration in Burma any person holding a qualification under the Medical Acts (i.e. a British qualification) and any person registered as a Medical practitioner in any province of British India. (Incidentally it authorises the Burma (Provincial) Medical Council to refuse to register any person holding only a qualification conferred in a Dominion or foreign country which does not recognise Indian medical degrees).

19. On the other hand the recently passed Indian Medical Council Act which applies to Burma does not recognise, for the rest of India, the qualifications granted by Medical institutions in Burma, but provides for early inspection of the courses and examinations prescribed by the University of Rangoon with a view to framing conditions for the recognition of its degrees.

20. The existing position, therefore, is somewhat fluid, and it is hardly possible at present to frame proposals, for inclusion in the Burma Constitution, in relation to it. In the event of separation the position of the Indian Medical Council in relation to medical institutions in Burma, and of the successor to the present Provincial Burma Medical Council in relation to medical institutions and Medical Councils outside Burma will evidently need consideration and regulation. Possibly the most convenient course would be an arrangement either with the General Medical Council or with the Indian Medical Council similar to the agreement established between the Irish Free State and the General Medical Council in 1927. In the meantime no more precise proposal seems possible than that provision should be made in the Burma Act for the continued acceptance, as qualifications entitling to registration in Burma, of the British qualifications from time to time recognised by the General Medical Council, and of the Indian qualifications from time to time recognised under the Indian Medical Council Act. If necessary, provision might perhaps be made for an appeal to the Privy Council in case the Indian Medical Council declined or ceased to recognise as valid for India the diploma granted by a Medical institution in Burma for Doctors, Masters, Bachelors or Licentiates of Medicine or Surgery. Provision for an appeal of this kind is made in Section 13 (2) of the Medical Act 1886, which allows an appeal to the Privy Council, upon a refusal of the General Medical Council to recognise in this country a colonial or Indian medical qualification. Something of this kind could perhaps be provided if necessary to afford a means of appeal against refusal of recognition which appeared to conflict with the Convention suggested above.

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ANNEXURE.

PROVISIONS IN PARAGRAPH 3 OF DOCUMENT A.68 [VIDE JOINT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM (SESSION 1932-33) VOLUME IIB P. 1297] MODIFIED TO MEET REQUIREMENTS IN BURMA OF BRITISH SUBJECTS DOMICILED IN INDIA.

General declaration as to British Subjects in Burma.

(i) It is proposed that the Constitution Act should contain a general declaration that no British subject (Burman or otherwise) shall be disabled in Burma from holding public office by reason only of his religion, descent, caste, colour, or place of birth, nor, on the same grounds, from practising any profession, trade or calling.

Special provision for persons who are British subjects domiciled in British India.

(ii) As regards British subjects domiciled in British India in so far as they are not covered by clause (i), it is intended, subject to what is said in clause (v), to provide a special form of protection in respect of the following matters:—

Taxation*
Travel and residence
The holding of property
The holding of public office
The carrying on of any trade, business, occupation or profession

} in Burma

against statutory disabilities based upon domicile, residence, duration of residence, language, race, religion or place of birth.

Special provision for companies incorporated in British India but trading in Burma.

(iii) As regards companies which are or may hereafter be incorporated in India and trading in Burma, it is intended to prevent (subject to the provisions of any Immigration law and to the special provision as regards bounties and subsidies of clause (vii) (2)), the imposition in Burma of any discriminatory taxation* or of any statutory disability upon any such company, if the incidence of that taxation or disability is based upon

the place of incorporation of the Company; or

The domicile, residence, duration of residence, language, race, religion, descent or place of birth of its directors, shareholders, or Agents or Servants.

Special provision for companies incorporated in Burma.

(iv) In the case of a company which is or may hereafter be incorporated in Burma, British subjects domiciled in British India will (subject to the special provisions as regards bounties and subsidies of clause (vii) (2)) be deemed *ipso facto* to comply with any conditions imposed by law on the Company in respect to the domicile, residence, duration of residence, language, race, religion, descent or place of birth of its Directors, Shareholders, Agents or Servants.

Provisions for reciprocity.

(v) It is, however, intended to provide that if any restriction, disability or condition of the kind, and based upon any of the grounds, indicated in clauses (ii), (iii) or (iv), is imposed by the law of the Federal or Provincial Governments of India (or by provisions having the force of law) affecting in British India Burman subjects of His Majesty or companies incorporated

*"Taxation" is intended to cover imposts of all kinds, including, e.g., rates and cesses.

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in Burma, the provisions of those paragraphs will not apply to any Burman law imposing in Burma the like restrictions, etc., based upon the same ground.

Reservation of Bills which, though not in form, are, in fact, discriminatory.

(vi) In addition, it is proposed that the Constitution Act shall require the reservation for the signification of His Majesty's pleasure of any Bill which, though not in form repugnant to the provisions indicated in clauses (ii), (iii), or (iv), the Governor in his discretion considers likely to subject to unfair discrimination any class of His Majesty's subjects protected by those clauses.

Exceptions.

(vii) The provisions indicated above will be subject to two other forms of exception or qualification:—

Savings.

(1) It will be necessary to save, notwithstanding the provisions of clauses (i), (ii), (iii) and (iv)—

(*a*) laws which exempt from taxation persons not domiciled or resident in Burma;

(*b*) laws rules and orders in operation at the date of the passing of the Constitution Act (e.g. the Burma Courts (Amendment) Act of 1931 which places, in effect, restrictions on non-Burmans in respect of practice before courts subordinate to the High Court of Rangoon);

(*c*) the due operation of the Governor's special responsibility for the prevention of any grave menace to the maintenance of peace and tranquillity;

(*d*) the right to legislate in the sense indicated in the provisos to paragraph 122.

Exceptions in regard to bounties and subsidies.

(2) It is proposed that an Act, which, with a view to the encouragement of trade or industry in Burma, authorises the payment of grants, bounties, or subsidies out of public funds, may lawfully require in the case of any Company not engaged in Burma at the time the Bounty Act was passed in the branch of trade or industry which it is sought to encourage, as a condition of eligibility for any such grant, bounty or subsidy, that a company shall be incorporated by or under the laws of Burma, or compliance with such conditions as to the composition of the Board of Directors or as to the facilities to be given for training of Burmans, as may be prescribed by the Act.*

In the case of companies engaged in Burma in the trade in question at the time the Subsidy Act was passed, the general provisions indicated in clauses (iii) and (iv) will apply: and such companies will be eligible for such grants, bounties or subsidies equally with Burman Companies.

Special provision for ships and shipping.

It is proposed that provision on the following lines should be inserted in the Constitution Act:—

"Without derogation from the generality of the provisions as to discrimination, ships registered in British India shall not be subpected by law in Burma to any discrimination whatsoever, either as regards the ship or her officers or crew or her passengers or cargo, to which ships registered in Burma would not be subjected in India."

* This proposal is intended to give effect to the recommendations of the External Capital Committee's Report 1925.

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RECORD A.2 (*continued*)

II.—Memorandum by the Secretary of State for India giving Proposals for the Future Administration of the Burma Railways

INTRODUCTORY.

1. Proposal 68 of the Burma Constitutional Memorandum (Joint Committee on Indian Constitutional Reform [Session 1932-33] Volume III p. 68) suggests that under the constitution outlined for a separated Burma, the Burma Railways should be managed by a Statutory Board constituted on similar lines to the Board which it is proposed to set up in India. The proposals made in the following memorandum consequently represent an attempt to bring a scheme for the establishment of a Railway Board, drafted by the Government of Burma, as far as possible into line with the scheme for India set out in Joint Committee on Indian Constitutional Reform [Session 1932-33] Volume III pp. 39 to 46, bearing in mind the differing circumstances of the two cases. It should be understood that the proposals now put forward are of a tentative nature.

2. The principal difference between the two schemes is concerned with the constitution and functions of the Railway Board, and it may be useful to offer some comments on these points.

3. It should be explained that there is a marked difference in the nature of the problem presented by the railways in India and in Burma. In the first place, as regards mileage, the State-owned lines in India cover some 30,000 miles, while the Burma railways cover only a little more than 2,000 miles. Secondly, the Indian Railway Authority will be concerned with a large system of State railways operating in all provinces, some of them managed by the State, and others by Companies, and also a certain number of Company-owned lines. In Burma there is a unitary system of railways. There are no problems of railway inter-communication with other provinces, and such small separate lines as exist, *e.g.*, the Burma Mines Railway and certain light railways in forests and factories, have not yet been brought under the Indian Railways Act. Thus, not only is the problem presented by the railways in Burma a far smaller problem than that to be faced in India, but it is a far more compact problem, inasmuch as no question arises of the reconciliation and co-ordination of a number of possibly conflicting interests. The Burma railways will be the concern of the State alone, and the solution of the problem of their future management does not necessitate the establishment, as is proposed in India, of a Railway Authority intermediate between the Legislature and Government on the one hand, and the executive management on the other.

4. It is therefore proposed in the case of Burma to establish a single Board of Management, which will combine in itself the functions which in the case of India it is proposed should be shared between the Railway Authority and the executive management. Thus, in India it is proposed that the Railway Authority will be a Board directing the control of all railways, including non-State railways, but having nothing to do with their day-to-day management, whereas in Burma the authority will more appropriately be of the nature of a Board of Directors for the one railway system owned by the State. This will enable the Burma Board to exercise a more detailed control than the Indian Board, and this consideration explains the apparently more restricted nature of the proposals for the composition of the Board. In Burma it is possible to make the Agent

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or General Manager the *ex officio* President of the Board, whereas in India it would not be practicable to make one of the Agents of the numerous railways President. The Board in Burma will gain an intimate knowledge of the internal working of the railway: it will be responsible, among other things, for the earning capacity of the railway, and, therefore, it is necessary that persons of business and financial capacity should predominate in the Board. The scheme put forward provides for two official members, namely the Financial Adviser and the Secretary to Government in the department responsible for railways. The presence of the Financial Adviser on the Board is necessary because of the vital importance of railway finance to general finance, and is in the ultimate interest of the tax-payer. As regards the inclusion in the Board of the Secretary to Government in the Department which deals with communications, a link is required between the Board and the Ministry. As in the Indian scheme, it is not proposed that the Minister responsible for railways should be a member of the Board or have a vote at any meeting. He may however be called upon to defend railway policy in the Legislature and to speak on proposals for a loan or contribution; it therefore seems important that he should have a permanent representative on the Board. The question whether this representative should be entitled to vote need not for the present be decided. As in the Indian proposals the Minister responsible for Transport and Communications might be authorised to convene special meetings of the Railway Board to discuss matters of policy or questions of public interest, and to preside at such meetings.

5. It may be mentioned here that the retention of the present Advisory Council is not an essential part of the scheme, and there is no need to provide for it in the Statute. The Advisory Council is at present not a very active body, because it has no financial control. It has, however, been found useful, and it is inexpensive. The Board of Management will occupy the position of a Board of Directors of a commercial concern, and will deal with the management of the railways on business lines, having, however, so far as possible, regard to commercial, agricultural and industrial interests. The Advisory Council represents the general public using the railways and brings to notice questions relating to amenities at railway stations, the needs of passengers and matters of that kind. It gives the general public and members of the Legislative Council elected to it an opportunity of ventilating grievances and advancing suggestions. It is not intended that it should be allowed to discuss questions affecting labour and personnel. The Chairman of the Advisory Council (*i.e.*, the Chief Commissioner and President of the Board of Management) should have the power to rule out any matter and decide whether or not minutes of the discussions should be published in the newspapers, subject to the approval of the Board of Management. The Advisory Council will, therefore, not be an authority parallel to the Board of Management. On subjects discussed by it, it will advise the Chief Commissioner who will either deal with such suggestions on his own authority or refer them to the Board. The question of the continuance of the Advisory Council could, however, be considered later in the light of experience. In any case the composition of the Council would require alteration in view of the representation proposed on the Board of Management of interests now represented on the Advisory Council. The four Chambers of Commerce at present send four representatives to the Advisory Council, and since it is proposed that they should appoint four of the non-official members of the Board of Management it is considered that they need no longer be represented on the Advisory Council. This question, however, might well be left to be dealt with by the Board of Management itself.

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NOTES ON THE SECRETARY OF STATE'S MEMORANDUM IN JOINT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM [SESSION 1932-33] VOLUME III (PP. 39 TO 46).

Paragraph 2 of the Memorandum.

The composition of the Board has been dealt with above. As regards the two non-official members who do not represent the Chambers of Commerce, it seems advisable, in order to ensure the independent and non-political character of the Board, that they should be appointed by the Governor in his discretion.

Paragraph 4 of the Indian Memorandum.

The principles laid down in this paragraph including the remarks on the subject of defence, apply *mutatis mutandis* to the case of Burma.

Paragraph 5 of the Indian Memorandum.

As regards the method of enacting provisions for the railway authority, neither (1) nor (4) of the methods suggested in paragraph 5 of the Memorandum in the Indian proposals is appropriate in the case of Burma, and possibly the best solution would be on the lines of the second course there suggested.

SKETCH PROPOSALS FOR THE FUTURE ADMINISTRATION OF THE BURMA RAILWAYS.

1. The property in all railways existing in Burma and administered by the Indian Railway Board at the time of the passing of the Act and in all railways constructed in Burma at the cost of public revenues after the passing of this Act shall vest in His Majesty represented by the Governor.

2. Railway finance shall be separated from general finance.

3.—(*a*) The Railways of Burma shall be administered on business principles, due regard being paid to the interests of agriculture, commerce, industry and the general public, and to defence requirements.

(*b*) Subject to (*a*) above the general control of policy will rest with the Government and the Legislature.

4.—(*a*) The executive control and management of the railways in Burma shall be exercised by a Board of Management.

(*b*) The Chief Officer of the Board shall be called the Chief Commissioner and shall be General Manager of the railways and President of the Board of Management. The Chief Commissioner shall be appointed by the Governor acting in his discretion, and shall receive such salary as the Governor acting in his discretion shall determine. He shall carry out the duties from time to time delegated to him by the Board of Management, and may delegate such powers to his subordinate officers as may be approved by the Board. He shall have right of access to the Governor. He must be a person having an expert knowledge of and practical training in the work of railways.

(*c*) In addition to the President the Board of Management shall consist of eight members as follows:—

(i) the Financial Adviser;

(ii) the Secretary to the Government of Burma in the department which for the time being deals with the subject of railways;

(iii) six non-official members.

The four Chambers of Commerce in Rangoon, i.e., the Burma Chamber of Commerce, the Burma Indian Chamber of Commerce, the Burmese Chamber of Commerce and the Chinese Chamber of Commerce, shall each

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nominate one non-official member. The two remaining non-official members shall be appointed by the Governor acting in his discretion. The six non-official members shall hold office for five years and their remuneration for the first three years after the coming into force of the Act shall be fixed by the Act at rates sufficient to secure suitable men: and thereafter their emoluments shall be such as the Governor in his discretion, after consultation with the Government, may from time to time determine. They shall be eligible for re-appointment, and may be removed from office by the Governor in his discretion, if in his opinion, after consultation with the Government, there is sufficient cause for such action.

The Minister responsible for Transport and Communications may at any time convene a special meeting of the Board of Management for the purpose of discussing matters of policy or questions of public interest. At such meetings the Minister will preside. The Minister may by order require or authorise the Board of Management to give effect to decisions of the Government and the Legislature on matters of policy, and it shall be obligatory on the Board of Management to give effect to such decisions.

No Minister or Member of the Legislature shall be eligible to hold office as a member of the Board till one year has elapsed since he surrendered his office or seat, and if a member of the Board becomes a member of the Legislature, or holds any interest in any railway contract in Burma he shall be deemed to have vacated his seat on the Board. No person may be appointed as a member of the Board who has personally held a railway contract, or has been concerned in the management of companies holding such contracts, within one year of the termination of the contract.

5. The Board shall be responsible for the proper maintenance and efficient operation of the railways of Burma and shall so adjust rates, fares and other charges as to meet the necessary outlay on

(i) working expenses, including maintenance, renewals, bonus, interest on provident funds and provision for gratuities admissible to staff;

(ii) depreciation (calculable on such scale as may be approved by Government);

(iii) interest on existing and future capital and any other fixed charges,

with due regard to the provision of a surplus for appropriation, subject to the provisions of paragraph 6 below, to the railway reserve fund.

6. After meeting from receipts the necessary outlay specified in paragraph 5 above, the surplus will be disposed of in such manner as may be agreed upon between the Government and the Board of Management under a scheme of apportionment running for a period of not less than five years. In the event of such agreement not being reached the decision will lie with the Governor in his discretion. In the event of a dispute as to the adequacy or otherwise of the allowance to be made in respect of renewals and depreciation the Chief Audit Authority shall be the deciding authority.

7. Revenue estimates will be submitted annually to the Government, which will in turn submit them to the Legislature, but these estimates will not be subject to vote. If the revenue estimates disclose the need for a contribution from general revenues, a vote of the Legislature will be required. The programme of capital expenditure which is to be financed from loans by the Government and proposals for the construction of new lines, in whatever manner they are to be financed, will be submitted to the Government for approval by the Legislature. The Government may, however, empower the Board of Management to incur capital expenditure subject to conditions to be prescribed.

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8. Subject to the powers of the Governor in the exercise of his special responsibilities, and subject to the safeguarding of the rights of all officers in the service at the time of the establishment of the Board of Management, the Board is empowered in consultation with the Public Service Commission to regulate by rules and by general or special order the classification of railway services and methods of recruitment, qualifications for appointment, conditions of service, pay and allowances, provident fund benefits and pensions, gratuities, discipline and conduct of those services. in making such rules or issuing such general or special orders the Board shall be subject to the control of the Government of Burma. All other rules required for the efficient conduct of railway administration shall be made by the Board of Management subject to the control of the Governor acting in his discretion.

9. The Government shall have power to make rules not inconsistent with the Act regarding the powers and functions of the Board, the maintenance of and payments to and from the depreciation and reserve funds, and the investment of surplus monies pertaining to the Funds.

10. The Board of Management will at all times furnish the Government with such information as Government may desire, and will publish an Annual Report and Annual Accounts. The Accounts will be certified by or on behalf of the Auditor-General.

11. Should any question arise involving a conflict of interest between the various authorities responsible for railways, waterways and roads, as competitive means of transport, a Commission will be appointed by the Governor to ascertain the views of all the interests concerned and to report, with recommendations, to the Government, whose decision shall be final. The Commission shall consist of one independent expert of the highest standing and experience in transport matters, with whom will be associated, at the discretion of the Governor, two or more assessors.

12. Maxima and minima rates and fares shall be fixed by the Board of Management, subject to the control of the Government. Any individual or organisation having a complaint against the railway administration in respect of any of the matters which may, at present, be referred by the Railway Department to the Railway Rates Advisory Committee, may have their matter referred, under such conditions as the Government may prescribe, to an Advisory Committee to be appointed by the Government Before the Government passes any order on a recommendation of the Advisory Committee it shall consult the Board of Management.

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RECORD B.1

Record of a General Discussion between the Joint Committee and the Delegates from Burma on the 6th and 7th December, 1933

DIE MERCURII, 6° DECEMBRIS, 1933.

Present:

Lord Archbishop of Canterbury.
Marquess of Salisbury.
Marquess of Zetland.
Marquess of Linlithgow.
Marquess of Reading.
Earl of Derby.
Earl of Lytton.
Earl Peel.
Lord Middleton.
Lord Ker (M. Lothian).
Lord Irwin.
Lord Snell.
Lord Rankeillour.
Lord Hutchison of Montrose.
Major Attlee.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Mr. Cocks.
Sir Reginald Craddock.
Mr. Davidson.
Mr. Isaac Foot.
Sir Samuel Hoare.
Mr. Morgan Jones.
Sir Joseph Nall.
Lord Eustace Percy.
Miss Pickford.
Sir John Wardlaw-Milne.
Earl Winterton.

The following Delegates from Burma were also present:—

Sra Shwe Ba.
Mr. C. H. Campagnac.
Mr. N. M. Cowasji.
U Kyaw Din.
Mr. K. B. Harper.
U Chit Hlaing.
U Thein Maung.
Dr. Ba Maw.
U Ba Pe.
Dr. Ma Saw Sa.
U Shwe Tha.
Mr. S. A. S. Tyabji.

The MARQUESS of LINLITHGOW in the Chair.

Chairman.

My Lords and Gentlemen: The business this afternoon is a general discussion of the issue of Separation. I should suggest that the Committee hears a series of statements from the Delegation, and that both the Committee and the Delegates should as far as possible avoid by question or otherwise interrupting these statements; and, after the statements have been completed, that we should undertake a general discussion of the question.

U Kyaw Din.

My Lord Chairman, my Lords, Ladies and Gentlemen: It is the general wish of my brother Delegates that I should open the deliberations on this question of Separation and anti-Separation. At the very onset, I wish to make myself clear. Any opinions I hold, any views I put forward, any feelings or sentiment I express, are my own as a Burman, and as a Delegate they do not reflect the views of the Government of Burma, of which I was a Member a few weeks ago only. As I submitted to you yesterday, my Lord Chairman, this question of Separation and non-separation has been discussed on the floor of the Legislative Council of Burma and discussed almost threadbare. The Reports of those discussions were submitted to you completely and as the issue is not so comparatively broad, I may be pardoned if I repeat some of those arguments before you to-day. It has been said in responsible quarters even that the Burmese people were not in a position and were not able to decide for themselves on this question. I venture to submit, my Lord Chairman, that this is far from being correct. We are very decided in our opinion; we are fixed in our aims and in our desires. Perhaps those who do not enter into our spirit, into our feelings, probably do not follow us as we want them to, and if this afternoon I could give you a glimpse of our ideals, of our aims, of our aspirations, I should consider myself justified for having undertaken this long journey of 7,000 miles with an English winter at its end. To enable you to understand us I should like to place before you two fundamental considerations. On those two fundamental considerations the whole of our aims and our entire desires are based. The first is that the Burmese are a nation and a people. This may sound obvious, but from the literature that was sup-

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plied and piled upon us, and from the cursory glance I had over that literature, I came to the conclusion that at least the Indian Delegates did not quite realise that. When I say we are a people and a nation, I distinguish our people from that of India in this respect: India is a very big continent. The Bengalis, for instance, cannot claim themselves to be a nation or a people. Every little community, every member of a sect or religion, will remain in a watertight compartment as it were. Therefore, their only way of political emancipation is by way of a Federation of these different watertight compartments, whereas Burma is different. Every Burman remembers, and cherishes that memory, that he is a member of a whole. The second fundamental idea is that every Burman remembers that not very long ago, only 47 years ago, he had a King of his own; his nation was a nation that had an honourable seat amongst the family of nations. His songs, his lyrics, his folklore press him on to that, remind him of that fact, and the great idea of his life is to strive on so that he may gain to that status, so that he may form a separate unit, so that he may form one political entity. It never enters into his mind, not even in his dreams, that he would form a unit, a minor unit of a great Federation of different peoples. Those are the fundamental ideals, hopes and aspirations of Burma. If that is so, one would naturally ask, why do you not want to be a separate unit yourself when you have got the chance now? My answer to that, my Lord Chairman, is this: Because our ideas are so fixed, our desire to form a separate unit so ardent, our hopes of attaining that unity are so great that we are prepared to sacrifice that for the present moment, if we find that the ways and means offered to us of attaining our ideals do not come up to the standard which we have set up. That, I venture to submit, my Lord Chairman, is the beginning of the anti-separationist League and ideals. "If that is so," it may be asked, "why did you then 18 months ago start this movement?" As I submitted to you we had our doubts, we had our fears and those doubts and fears were shared not only by us but by the Government of Burma itself. May I invite your attention to the despatch of the Government of Burma dated the 13th August, 1930? The Government of Burma expressed those doubts and fears in this language: "The Government of Burma could not possibly agree to separation on any other terms, and they trust that His Majesty's Government will see fit to set at rest any doubts that may still exist on the subject. They attach importance to the point, for the allegation is frequently made in that section of the Public Press of Burma which is opposed to the recommendation of the Statutory Commission that the British Government will seize the opportunity of separation to reduce Burma to the status of a Crown Colony." Those were the doubts and fears of the Government of Burma. Those were the doubts and fears which I shared fully and which prompted me to start this anti-separationist League. I may inform you, my Lord Chairman, that I stood for election on the Anti-Separationist card. Without any organisation, without any political organisation or funds, the Anti-Separationists came in; half a million voters stood by them and urged them to go on forward. At that time we had only the statement of the Right Honourable The Prime Minister with regard to what is going to be our future. Those doubts were further strengthened when I recall to my mind the little incident the Burma Delegates had at the Burma Round Table Conference. One of the Burma Delegates (he happened to be an Englishman) expressed the hope that any political advancement made to India would apply to Burma; he was promptly ticked off and he was told that what was held out to India was meant for India and need not necessarily apply to Burma. That increased our fears. That expressed the opinion as put forward by the Government of Burma. It was at no time contemplated, as I submitted, that we would form part, a small unit, of a great Federation. At the very beginning when we started this movement nearly 18 months or 20 months ago, some of the papers described us as "Federationists." We immediately repudiated it—that we were not Federationists but that we were anti-separationists on the basis of the Constitution as outlined by the Right Honourable The Prime Minister. At that time I would ask you to bear in mind that we had before us only the statement of the Right Honourable The Prime Minister;

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the Indian question had not been discussed. Although it had been to a certain extent discussed, yet it had not been announced what India was going to be provided with. Remembering all these facts our policy was that we would wait and see what was going to be given to India. You will notice, my Lord Chairman, from the Resolutions and from the discussions that were made in December last year, when this first question was put to us, we felt, and I still think we rightly felt, that the choice given to us was extremely narrow; not that we did not understand the implications, but we thought to ourselves: We will express our own desires and our own wishes instead of answering the questions put to us. That is the reason why we passed that Resolution unanimously; that was the opinion of the whole of Burma. If I may repeat in substance the Resolution passed by us on that occasion it comes to this, three points: First, that we would oppose separation on the basis of the Constitution as outlined to us: that we would continue to oppose separation unless and until we get both at the Centre and in the Provinces the same amount of responsibility as is granted to the Indian Provinces. We would further emphatically oppose Federation with India unless we get certain terms and conditions. One of those terms and conditions was the right of secession. The right of secession at that time to my mind was a very small item, but the greater considerations that weighed with me at that time were financial rights, financial justness, rights which were due to us as a part of the Indian Federation, but those rights were due to us because of the peculiar position we occupy in respect to India. Those were the three principles which we enunciated. You will further notice, my Lord Chairman, that on the second occasion when the deliberations were made barring myself there was no discussion at all on this question of separation or non-separation. Since then, time has changed; things have been made clearer to us, and one would naturally ask: "What is your opinion to-day? No doubt, probably, you were justified in 1930, 1931 and the beginning of 1932, to hold the opinion you did, but how about it now?" I should like to put the present position in these words. I cannot do better than by referring to a statement of the Right Honourable the Secretary of State for India made in the House of Commons on the 20th March, 1933, with this one little addition: "To put it summarily: the same range of opportunity and function that it is proposed to devolve in India either upon the Federal Legislature or the Provincial Legislatures is in the case of Burma to be devolved upon the Burma Legislature; the same subjects that in India are proposed to be reserved to the Governor-General would in Burma be reserved to the Governor, and the same special responsibilities that in India are to be imposed on the Governor-General or the Provincial Governors, as the case may be, will in Burma be imposed upon the Governor. That is a statement in general terms, and inevitably there will be some modifications and differences in detail due to the differing circumstances of the two cases; but, broadly speaking, the two sets of proposals do correspond closely enough to comply fully with the statement made by my predecessor in this House on the 20th January, 1931, that the prospects of constitutional advance held out to Burma as part of British India will not be prejudiced by a decision to separate, and they correspond so closely as to satisfy also, I should have thought, the stipulation made by the Burma Legislative Council in its resolution of the 22nd December for the immediate transfer to popular control of at least the same measure of responsibility, and the same subjects and powers, as will be transferred to popular control in the Indian Federation both at the Centre and in the Provinces."

This statement cleared away some of the doubts, some of the fears; it clears the atmosphere, but there is still one little one left to my mind, and it is this: Yes, we will get it now. How about 20 years hence? Will we get the same advancement that India will get during that period? That is not yet clear. That is one of the fears, and one of the doubts. Probably in the course of the discussion on the constitutional aspect of the problem that question will arise, and probably we shall be in a position to discuss that matter, but, in the meantime, I should like to say that our hopes and our aspirations are that we should form a separate unit, one political entity, an equal partner in that great commonwealth of nations known as the British

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Empire. With these words, my Lord Chairman, I would close my remarks.

U Ba Pe.

My Lord Chairman, I am very glad to hear the remarks of my friend U Kyaw Din, who stood at the last election in opposition to us as an anti-separationist. I am glad that he has now come to the same view as ourselves, that separation is the salvation for the country.

U Kyaw Din: No.

U Ba Pe.

He is out for the same status, namely, a separate unit, not as a province or unit of Indian Federation, but a separate unit of the British Empire on the same footing as those self-governing Dominions like Canada, Australia and others. That is to say, he is a separationist. Being a separationist I endorse his remarks as regards the sentiment of the Burmese people on this question. Until 1885 we were a nation on an equal footing with other nations in the East. The sentiment of the Burmese people still cherishes that position. By accident Burma is placed in the Indian Empire to the great financial and material loss of the Burmese people. As a part of the Indian Empire we see every day we are handicapped in all ways. We suffer in finance, in economics and other aspects of our life. We have for this reason been asking to be separated from India, as far as I remember, since 1885. As a matter of fact, the first move for separation was made by the Indians themselves by the Indian National Congress in 1885. We have been agitating for the separation, but up to 1928 or 1929 neither the Burma Government, nor the Government of India, nor the British Government would give a fair hearing to our request. Fortunately the Indian Statutory Commission which visited Burma somewhere in 1928 or 1929 came to our rescue, gave prominence to our legitimate aspirations and gave an authoritative, if I may say so, statement of the case in their report. Since then the separation question has been to the fore in the whole of Burma, but, as pointed out by my friend U Kyaw Din, there is a section of people in Burma who have been influenced by the writings in Burma, to the effect that Burma would suffer if she were separated from India. Another matter about which the Burmese people were very much troubled was the position which Burma, supposing she were not a Crown Colony, would attain in the future after separation. Fortunately these points have been more or less settled, and we have now only one course left, and that course is to accept separation and work on the consideration of a constitution for a separated Burma. I may say in Burma there is no Burman who can be classified as a Federalist, that is, for perpetual and unconditional federation with India. There is no Burman with that view. There may be a few Indians who believe in the federation, but all the indigenous races in Burma are dead against entering the Indian Federation perpetually and unconditionally. My friends of the anti-separationist camp, they too, if I may say so, are separationists and not Federalists. The only difference between us, the separationists proper, and the anti-separationist, is a difference in method and not in objective. We are out for the same objective, Dominion status, only we differ in method. The difference between me and my friend, Dr. Ba Maw, is the difference between Mr. Cosgrave and Mr. de Valera. So our aims are the same. The method, of course, is different. But the difference in methods is due to uncertainty as regards Burma's future after separation. Since those uncertainties have been removed, I should think there would have been only one method, and the method that is followed by us so far. I can quote *ad nauseam* from the speeches of my friends Dr. Ba Maw, U Kyaw Din and U Chit Hlaing in support of my statement that they are separationists as ourselves, except that they differ from us in methods for obtaining the same objective.

I may say we regard this question of separation and federation as formally settled in Burma, as there is no Federalist, and the uncertainties that led my friends to form their anti-separationist League were also cleared up by the statement made by the Right Honourable the Secretary of State for India. On this question of separation versus federation, I do not think there need be much more said. I do not think any one of the Delegates will differ from me when I say that once the constitution that is to be given to Burma is one more or less in line with our aspirations, the question of separation or federation will die a natural death. I do not think I need waste the time of the Committee

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much more on the point. I think I have indicated it sufficiently to show that there is no difference of opinion as far as this question of separation is concerned. We are out here for separation, and I am sure my friends opposite will also support me in this aspect.

U Chit Hlaing.

My Lord, as a Member of the Burma Round Table Conference, as a man who had, from the start of the dyarchical institutions in Burma, non-co-operated with the Dyarchical Council, up to the time I was invited to the Burma Round Table Conference, I had been a non-co-operator for the past ten years. Only as an instance, on this separation question I had to co-operate with Government and took part in the Round Table Conference simply because the question of principle of separation of Burma from India had been discussed at the first Indian Round Table Conference with three Delegates sent by the Burma Government, all of whom are separationists, and none of the non-separationists were made parties to the Delegation. As President of the General Council of Burmese Associations I had to cable to the first Indian Round Table Conference for not allowing us to take part in the Conference. Afterwards we were invited to the Burma Round Table Conference.

At the Burma Round Table Conference only four or five of us stood as anti-separationists, and requested the Conference to refer the matter of separation or federation to the people of Burma. At the end of the Burma Round Table Conference the Prime Minister was good enough to refer the question of federation or separation to the electorate of Burma, with the constitution outlined by him for Burma, if separated, and also the result of the two Sessions of the Indian Round Table Conference. The Prime Minister's statement, and the result of the two Sessions of the Indian Round Table Conference were published in English and in Burmese by the Burma Government and distributed in thousands and thousands to the people of the electorates of Burma. This is one of the specimens of it. (*Producing same.*) This is a Burmese copy and an English copy. As the Committee knows full well the Burmese can read and write more than any Indian race, and especially when the Burmese copies are given to them they can understand the contents of them. On the strength of these publications wherein is contained the result of the two Indian Conferences, the Burma Round Table Conference and the speech of His Excellency the Governor of Burma in the Legislative Council as to how the voting should be done, this was all well known to the people, those being distributed by the Government. Statements have been made in Burma as well as in other places that there have been misrepresentations as regards the terms of secession, the terms of federation and all that. These are not contained in the Government papers that were distributed to the people. Those were the things that occurred to the Members of the Burma Legislature in December, 1932, over a month after the election. The election was on the 9th November. On the 9th of November there was nothing about secession before the electorate. There was nothing about conditional Federation before the electorate. Before the electorate there was only the statement of the Prime Minister, the Burma Round Table Conference, and the two Indian Conferences, and they were all known to the people when they voted. Anti-separationist candidates secured over five lakhs; that means over half a million votes, while the separationists secured 270,000, just a little over half the votes secured by the anti-separationists. That was the result of the election. U Kyaw Din has stated to the Committee that he was an anti-separationist. Since he became a Minister under the Burma Government. I believe he has turned Federationist now. So if such somersaults are to be considered now in the light of their position or in the light of their change of views, would not it be dangerous to say, " What was the result of the election? " The result of the election was that there were more anti-separationists than separationists. There were 42 anti-separationists in the Council as a result of the election: 29 separationists and nine neutrals. That was all known and that was all clear to the Burma Government and to the British Government, too. In fact, the figures were all given clearly in the Burma Legislative Council when a Member of the Council asked the result of the elections at various representations, and that was given. Therefore, I submit to this Committee that His

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Majesty's Government has given a pledge to the people of Burma that their desires —their votes—will weigh in respect of separation or Federation, and did not say one single word in reference to the Burma Council's Resolution. They just left it to the electorate of Burma, the people of Burma, and did not say it was to be decided by the decision of the Burma Council. In the course of five or six weeks after the election what was the result? As it has already appeared, as in the instance of some friends here, too, some anti-separationists became separationists or conditional separationists. That had nothing to do with the electorate. The electorate have decided by a large majority that they prefer to federate according to the terms given by the Prime Minister, and that is the decision of the electorate of Burma. I submit that should be binding on the people of Burma and should be sufficient for the British Government to act upon. If, by some unfortunate or fortunate things that happened, some of the anti-separationists became separationists in the course of six months or a year, if that were to be taken as the deciding factor, I think in another six months or a year there will be more separationists in Burma than there were over a year ago. That would be because separationists have the advantage, especially in Burma, so far as their connections with Government are concerned. Anti-separationists have been considered in the eyes of the Burma Government to be almost anti-British. That might be considered rather strange, but it is a fact, all the same. In fact, as soon as I got the invitation of the Joint Select Committee to come to England, I wanted to start at once almost and tried to come here. "No," they said, "you must go at a certain time; you must travel in a certain way; you must not travel by a non-British line." I was asked, further, as to why I wanted to come earlier, and as regards how allowances were to be given to me, and so forth. This is the unfortunate position of anti-separationists in the eyes of the Burma Government. Particularly so in this respect, because the Burma Government's position so far has been in favour of separation right through.

As regards U Ba Pe's statement that there is no Burman Federationist in Burma, that depends entirely on how he defines Federationists. The British Government has given us only two issues to answer. When I happened to be President of the Burma Legislative Council for eight days there was only one resolution that was put up, and that was a resolution for separation. No other resolution was put up; and I said, "If you have any other resolution, put it." There was none, so I asked the Member who put forward that resolution to move. He said he did not want to move. The result was, I had no other course but to do my duty and to ask them whether they had any amendment to move. Then amendments were put in. When amendments were put in I said the amendments were not in order, and they were dissatisfied and they moved a resolution of non-confidence against me. That shows —and it will be shown now—that there are only two alternatives open to the Burma Legislative Council or to Burma —either to separate or to federate. If you want to separate you must separate on the Prime Minister's statement. If you want to federate you must federate on the Prime Minister's statement. No other conditions can be added, neither can the two alternatives be modified. That was my view as Council President, and I expressed it, and I submit that was a proper and correct view. Now, it has been proved by the December Resolution of conditional federation and conditional separation. The British Government said: "No, this is not the way you should have put it and that is ambiguous." What I submit is, that we have only two courses open, either to separate on the terms of the Prime Minister's statement or to federate on the terms of the Prime Minister's statement. There is no other course. We are asked to take only one of them. Take one of the two. So we tried our best in the April-May Session. U Ba Maw and myself put forward our resolution on the lines of the Premier's statement. The debate went on. We were asked how long it would take. We said it would take 12 days. That was the natural course of events. But, though the rules in the Council gave a speaker 30 minutes, the speeches were lengthened to four hours, five hours, and 10 hours, with the result that, when the twelfth day came, there was no end of it. It was talked out. That was the April-May Session. Then when the scheme for Burma was presented to this Committee and a copy was sent to Burma for the consideration of the Burma Legislative Council, we again put forward our amendment to the

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proposed Constitution, and that was that, of the two alternatives, we would rather take the federal alternative. That amendment was thrown out by the President. Therefore, up to this day, the Burma Legislative Council win. Those who were against separation were not given the right to give their own opinion to prove that we are in favour of federation on the terms of the Prime Minister's Statement, because of these hitches and obstacles that were put in our way. That is the position of affairs in the Burma Legislative Council. What I would submit, finally, to the Committee is that we are only sent here to offer to confer with this Committee, not as representatives of various parties; we were not elected by the people to present their views here, but we were only selected by the Burma Government, and we have come and we are presenting our own views, and that is not binding on the people, because we have not the mandate of the people to speak as such. But what I would submit to the Committee is that the people have already given their votes as an electorate to the question of separation or Federation on the 9th November, 1932, on the lines as given by the Premier and about which pamphlets have been widely distributed in all parts of Burma in Burmese as well as in English; therefore, I submit that the decision is binding upon the people of Burma as well as upon the British Government and this Committee to maintain that that is the decision of the people of Burma. With these words I leave the matter in the Committee's hands.

U Thein Maung.

My Lord Chairman, I beg to take you as briefly as possible through the history of the demand for separation and to discuss at the same time first the reasons for the demand; secondly, the question as to whether there has been any change of public opinion as regards separation; thirdly, as to what have been the causes of the apparent change in the public opinion, and lastly as to what appears to be the only course open now. Shortly after the well-known announcement of the 20th August, 1917, was made by the Secretary of State for India, the Burmese people held public meetings and resolved that Burma should be separated from India. As a matter of fact, strong Delegations were sent to wait upon the Secretary of State for India and the Viceroy in connection with the people's demand for separation from India. The demand then was so intense that the Indians in Burma felt that they should not interefere. My honourable friend, Mr. Tyabji, who is here as a member of the Delegation, moved at a meeting of the Burma Provincial Congress Committee in 1916-17 that the question of separation was one for the people of Burma to decide. That was a question in which Indians could not interfere. The result of the agitation in favour of separation in those days, my Lord Chairman, was a paragraph in the Report on Indian Constitutional Reforms popularly known as the Montford Report, being a Report of Mr. Montagu and Lord Chelmsford—I am referring to paragraph 198 of that Report.. They say: "We have not included Burma in our survey except in so far as while the Province remains part of the Indian polity, it is necessary to provide for its representation in the Central Government. Our reasons are that Burma is not India. Its people belong to another race, in another stage of political development, and its problems are altogether different. For instance, the application to Burma of the general principles of throwing open the Public Service more widely to Indians, would only mean the replacement of one alien bureaucracy by another." The Burmese people also sent two deputations to wait on the Secretary of State for India in connection with the proposed Constitutional Reforms in the years 1919 and 1920, and in those days the people were unanimously in favour of separation, and the deputations presented what was then called a monster memorial demanding the separation of Burma from India. The Joint Select Committee on the Government of India Bill, 1919, also left out Burma to begin with for separate treatment. I am referring, my Lord Chairman, to the Report of the Joint Select Committee on the Government of India Bill, paragraph 8. They say, "There remain certain other topics which do not conveniently fall within any particular clause. The first of these is the treatment of Burma, and after hearing evidence, the Committee have not advised that Burma should be included within the scheme. They do not doubt but that the Burmese have deserved and should receive a Constitution analogous to that provided in this Bill

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for their Indian fellow subjects. But Burma is only by accident part of the responsibility of the Governor-General of India. The Burmese are as distinct from the Indians in race and language as they are from the British." That was in the year 1919-20. As I have submitted before, my Lord Chairman, the Burma deputations urged for separation according to the mandate that had been given by the people of Burma unanimously; at the same time they had to fight in those days against certain Constitutional schemes which were popularly known then as the Craddock Schemes: those schemes having been set up in rivalry to the reforms proposed by the Secretary of State for India and the Viceroy. We did not succeed in those days in our agitation for separation, as our attention was constantly diverted by the struggle against the rival scheme. With reference to this my honourable friend, Dr. Ba Maw, who is a Member of the Delegation and who is a very prominent leader of the anti-separationists, observed in the Burma Legislative Council: "We all know that 10 years ago, 15 years ago, and as every separationist Member of the House will admit, even 20 years ago, when Burma was clamouring unitedly with one will and with one desire for separation, the British Government never condescended to lend its ear to that cry." My Lord Chairman, here is an admission that we have been united, 10 years ago, 15 years ago. 20 years ago, with one will and with one desire in our clamour, as he puts it, for separation. Since then, my Lord Chairman, the Indian Statutory Commission under the Chairmanship of the Right Honourable Sir John Simon has visited the country and the Government of Burma submitted a Memorandum on separation to that Commission, setting out all the points in favour of separation, all the grounds that have been urged by the people of Burma from time to time in support of their demand for separation. They pointed out in the course of that Memorandum first that: "Sufficient consideration has not been given to the special circumstances and needs of the Province by the Indian Legislature and by the Government of India." Secondly, they pointed out that "the representation of Burma in the Indian Legislature has been too weak to exercise any influence in the Legislative Assembly" and they say "from the nature of things Burma has not and never can have any effective voice in shaping policy in the Indian Legislature." Thirdly, they pointed out that "the disabilities of Burma are already beginning to assume a more positive form; it was becoming increasingly evident that Burmese interests sometimes diverged very considerably from those of India," and they referred to the policy of discriminating protection that has been adopted by the Government of India much to the detriment of Burma. They mentioned the protection of the Indian steel industry, the paper industry, and they also referred to export duties on rice, hides and skins, and in this connection they ended up by observing that "The interests of the two countries have already begun to diverge and clashes are likely to become more and more frequent, and it is inevitable that when there is a clash the interests of the smaller country must go to the wall; the smaller country must be overshadowed by the larger. Indeed, there is a danger that our individuality will be submerged." Then, the Government of Burma went on to point out that caste is the one vital structure which Hinduism has dealt her and that it is the negation of everything that constitutes a nation and that these difficulties do not exist in Burma. The Burmans, they say, in fact, approximate far more closely to the ordinary conception of a nation than the Indians and the Constitutional problem, if separated from that of India, is at once reduced to manageable proportions and becomes far simpler. Then, they proceeded to point out that separation would enable Burma to cut herself free from many perplexities which need not really concern her. Then, they also pointed out that Burmese contributions to the Central Government were unduly heavy and that though the incidence of taxation per head of the population is heavier in Burma than in any other Province the Province is still the most undeveloped part of British India. Then, they concluded by saying that the closer British India approaches to responsible Government the less justification there is for a position in which Burma is included in British India for reasons of administrative convenience. They supplemented their grounds for separation in a separate note, a note on the financial settlement effected by the Meston Committee. In that Memorandum, my Lord Chairman, they pointed out how badly Burma has fared under

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the various financial settlements with the Government of India, and they pointed out that the Burma taxpayer is making a contribution of a very substantial amount for the benefit of India. There, in addition to the export duties on rice, hides and skins, they referred to the unfairness of excise duties on petrol and kerosene oil, and the income tax. They summarised the position in this paragraph—paragraph 41 of the Memorandum: "The picture which is outlined in the preceding paragraphs is that of a Province in which the incidence of both Central and Provincial revenue is far in excess of that in other Provinces; which furnishes Central revenues that, in comparison with those furnished by other Provinces, are increasingly large and rapidly expanding: in which is levied Provincial revenue that, though large and containing receipts of heavy amount not levied in other Provinces, is in comparison with Central revenue inelastic; and in which Provincial expenditure has in recent years expanded with great rapidity. This expansion has been occasioned, not only by the conditions common to all Provinces under a reformed system of Government, but also by the absence in Burma of the standard of material and administrative development which had been attained in other Provinces." The Statutory Commission, my Lord Chairman, heard evidence and travelled very extensively in Burma, to see whether there was a genuine public opinion in favour of separation. This is what the Commissioners themselves say in Volume I of their Report at page 77: "The Statutory Commission has visited Burma, and taken evidence there; it has travelled, by rail and by water, considerable distances, and has taken the opportunity of seeing what it could, both of the village life and of the industrial enterprises of that country—the oil fields, the great port of Rangoon, the former capital Mandalay, and some other towns in the Irrawaddy Valley. We must endeavour to bring home to the British Parliament and the British people in what the difference between Burma and the rest of India essentially consists," and then they proceeded to adumbrate their points about the difference between Burma and the rest of India. Then, my Lord Chairman, in their Report the Statutory Commission stated: "We have come to a definite conclusion that nothing but the most overwhelming considerations could justify the continued retention of Burma within the Government of India." I am quoting from the report at page 184. Their reasons for the recommendation are, firstly, that there was a strong demand for separation; secondly, the Constitutional difficulty of giving Burma a suitable place in any Centralised system; and, thirdly, divergence of interests between the two countries. They actually referred to the discriminative tariff policy and instances in which the interests of Burma had been overlooked by the Government of India. I submit, my Lord Chairman, that all these reasons given by the Statutory Commission for separating Burma from India are still valid. Incidentally I may point out that both the Government of Burma and the Statutory Commission recognised that there were anti-separationists or, rather, so-called anti-separationists, and they gave their explanations for the existence of such persons; for instance, the Government of Burma in its Memorandum on separation, at paragraph 3, observed: "Some Burman political leaders believe that by maintaining the connection between Burma and India, Burma will get self-government more quickly than if it stood alone; but even these politicians desire merely to postpone the question of separation and no one in Burma believes that the Burmans will acquiesce permanently in being governed by a self-governing India. If so, ultimate separation is merely a question of time." Then the Statutory Commission also observed at page 184: "We ourselves have little doubt from what we saw and heard in Burma that so far as there is public opinion in the country it is strongly in favour of separation; that among thinking Burmans the great majority desire separation immediately, and that it is only the elements which derive their political inspiration from corresponding Indian sources that would postpone separation, for they believe that Burmese political progress may be hastened by a further period of association with India." My Lord Chairman, the observations are still correct that those who style themselves as anti-separationists are really not anti-separationists, in the sense that they would join the Indian Federation unconditionally without an intention of seceding therefrom. They are only holding out in the hope that they might get a better

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Constitution by remaining for some years more in the Indian Federation. The recommendation of the Statutory Commission was that Burma should be separated from India immediately and that an announcement to that effect should be made immediately. The Burma Legislative Council welcomed the recommendation. As a matter of fact, the Legislature of Burma passed a Resolution in favour of separation on the 18th February, 1929, just to give the assurance to the Statutory Commission, although that assurance was hardly necessary, that it was the genuine desire of the people that there should be separation from India, and on the 9th August, 1930, the Burma Legislative Council passed a Resolution thanking the Royal Statutory Commission for having recommended separation in accordance with the wishes of the people of Burma. The Government of Burma also supported the recommendation, and the Government of India in their despatch on the Report of the Statutory Commission also accepted separation in principle. I am referring to page 83 of the despatch. At page 84 thereof the Government of India say: "We endorse the view expressed by the Commission that so far as there is public opinion in Burma it is strongly in favour of separation. We support in principle the proposal that Burma should now be separated. We accept the view of the Commission that there is nothing to be gained by postponing separation to any later stage in the Constitutional growth of British India. If separation be accepted in principle, the present revision of the whole Constitution of government in British India supplies the appropriate occasion for making the change."

Then, my Lord, we come to the Indian Round Table Conference, and your Lordship will remember that there was a Sub-Committee No. IV dealing with Burma, and that Committee recommended separation, and that recommendation was noted at a full meeting of the Indian Round Table Conference.

While I am dealing with the Indian Round Table Conference, my Lord, might I refer your Lordship to an observation made by Lord Peel at page 196 of the proceedings. His Lordship observed: "I spent some little time in Burma last January. One always gains much more from personal observation than from any number of blue books. My experience was, during the weeks I spent in Burma, that there was an extraordinarily strong and widespread desire to be separated from the Indian Empire." My Lord, here is a statement corroborating the report of the Statutory Commission on personal observation.

Then, my Lord, we come to what appears to me to be the turning point in the history of the demand for separation. The All-India Congress at Karachi in April, 1931, resolved, as pointed out at page 4 of the sketch on Constitutional Developments in Burma: "This Congress recognises the right of the people of Burma to claim separation from India and to establish an independent Burman State." What is important is in the rest of the resolution "or to remain an autonomous partner in a free India with a right of separation at any time they may desire to exercise it."

Mr. *Isaac Foot*: What date was that, did you say?

U Thein Maung.

That is March-April, 1931. That was the turning point. There is a definite statement that the Indian Congress was prepared to recognise the right of Burma to secede from the federation at any time, and that offer was repeated in the course of the Budget debate in the Indian Legislative Assembly on the 17th March, 1932. As stated at page 5 of the Sketch on Constitutional Developments the generally expressed opinion was that no obstacle should be placed in the way of allowing Burma to decide either for separation or for federation: that a decision of Burma to enter the Federation should not be irrevocable, and that the question of separation at some future date should not be ruled out. My Lord, the Resolution passed at the All-India Congress at Karachi was absolutely non-official so the seal of authority was put on it by the Indian Legislative Assembly in March, 1932. I submit, my Lord, that what was done then has been the real cause of the apparent change in public opinion.

U Chit Hlaing: Hear, hear!

U Thein Maung.

My honourable friend, U Chit Hlaing, actually says hear, hear, at this stage. I am glad that thereby he is admitting by implication the correctness of my observations. Your Lordship will see that this discussion in this Legislative

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Assembly was some months before the general election. The result was that the country was told in the course of the election campaigns that there would be this right to secede from the Federation at any time at the will of the people of Burma. My Lord, may I stop here for a moment to discuss the attitude of the Indians by way of explaining the resolution passed at Karachi and the trend of discussion in the Legislative Assembly? As the Government of Burma have pointed out in the "Views of Local Government on the recommendations of the Indian Statutory Commission, 1930," on page 306: "The Indian community naturally regards separation with dislike. For obvious reasons they would prefer that Burma should remain part of British India, and also no doubt partly as the result of recent disturbances in Rangoon, they look forward to separation with some apprehension."

The Government of India also in their despatch at pages 82 and 83 looked at separation from a purely Indian point of view. They observed at page 82 that "it would not be safe to accept at present the Commission's finding that separation could fairly be effected in such a way as to do no financial injury to India." Again they observe a little lower down on the same page: "It would still be necessary to assess the economic effect on India of a separated Burma." So my Lords see that the apprehensions of Indians in Burma were to a certain extent shared by the Government of India also. Having regard to the apprehensions of Indians over the question of separation there can be no wonder that there should be this resolution passed at the All-India Congress at Karachi, that there should be this offer made in the course of the Budget Debate in the Legislative Assembly. However, in fairness to a certain section of Indians who are so ably led by my honourable friend Mr. Tyabji, who is on this Delegation, I must refer, my Lord, to another passage in the Local Government's views on page 306. The Government of Burma observe: "As far as the Government of Burma are aware the attitude of thinking Indians resident in Burma is quite correct. They recognised that if Burmans generally, after full consideration of the issues involved, desire that Burma should be separated from India, that desire should be acceded to unless it can be demonstrated that for financial, military, or other reasons separation is not a practicable proposition. Most of them recognise, too, that it will be difficult to establish a *caveat* of this kind in face of the recent conclusion of the Commission, and it is probable that they will concentrate mainly on securing protection for their interests in the new Constitution of Burma." The same views were given expression to by Mr. Tyabji in the Burma Legislative Council. He said: "I stood for election on the neutral ticket on the understanding that I would not cast my vote either for separation or federation, and after the question was decided, that I would do my best in the interests of Burma and for the constituency which I have the honour to represent. I decided, Sir, to take up this attitude not this year for electioneering purposes, but since 1916-17, when at the Burma Provincial Congress Committee I had the honour to move a resolution stating that it was for the Burmese people to decide whether they would separate from or federate with India. The Indian National Congress, at many of its sessions, has passed similar resolutions, and the great leaders who have come from India, amongst whom was Mahatma Gandhi, stated to the Indians in Burma, that in their opinion, the Indians should be neutral on this question. This position of neutrality, Sir, has been generally accepted for many years, so much so that in this Council, almost on every debate on the separation question, the Indian Members have taken up a neutral attitude. Therefore, Sir, I represent that party of Indians living in Burma which, though claiming the full right of citizenship, forgo that right on this issue voluntarily and gladly, to uphold the principles of self-determination for smaller nations. If the Burmese people decide in effect to separate from India, I would tell this House that India as a whole (of course, there will be dissentients, Sir) will not feel aggrieved. They will wish Burma godspeed to her destination and to her desired goal and to that liberty which is the birthright of every nation."

My Lord, as I was submitting to your Lordship, there was an inducement held out by the Indians by their resolution at the Karachi Congress and by the discussion in the Legislative Assembly. There was an inducement held out to Burma to join the Federation, with hopes

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of secession with a better Constitution in the near future. I submit that inducement has warped. Hence the apparent change of public opinion. In addition to that inducement, there was general dissatisfaction with the suggested Constitution for a separated Burma as outlined by the Right Honourable the Prime Minister at the end of the Burma Round Table Conference. I submit, my Lord, that those are the real reasons for the apparent change in public opinion. Then there came the General Election, of which my honourable friend U Chit Hlaing has spoken at some length. I only wish to say, in reply, that at the General Election the right of secession was taken for granted.

U Chit Hlaing: No.

U Thein Maung.

My friends say No.

U Chit Hlaing: Where is it?

U Thein Maung.

But I know for a fact that in the course of the electioneering campaign the right of secession was referred to as a matter within practical politics, and for their authority they gave the resolution of the Karachi Congress and the discussion in the Legislative Assembly. They also told the country that necessary modification of the Indian Constitution to suit the conditions of Burma could be obtained. They also dilated on the defects in the Constitution that had been outlined for Burma by the Prime Minister. In addition to this, there was the Indian influence, or rather the influence of that section of the Indian Community which was against separation, making itself felt during the General Election. In this connection, my Lord, I beg to refer to the Report on the Administration of Burma for 1931-32, page 10. There the Government of Burma observed: "The Indians formed an association known as the Burma-Indian Association, for the purpose of protecting their interests in Burma, and they are currently believed to have given financial assistance to some anti-separationist leaders." So my Lord Chairman, the result of the General Election was affected by the proposition that there would be this right of secession at our pleasure at any time, by the proposition that suitable modifications in the general Constitution would be made for Burma, and the general dissatisfaction with the Constitution outlined for Burma also had a good deal to do with the result of the election. But what was the decision given by the people of Burma in the General Election? My submission is that they simply decided they were not prepared to accept the Constitution as outlined by the Prime Minister for a separated Burma. That is the only reason why there should have been these resolutions of the Burma Legislative Council, which would at first sight appear to you to be perfectly meaningless, but read in the light of my submissions, your Lordship will see at once that all these resolutions in the Burma Legislative Council are unanimous in opposing unconditional Federation and in demanding a better Constitution for separation.

Now, my Lord Chairman, we come to another stage, at which we have to consider whether Burma should be separated from India or federated with it. As observed by His Highness the Maharajah of Alwar at the Indian Round Table Conference, page 196, and in the Simon Commission Report, if there is anything emphatic, anything definite, it is about the separation of Burma. The Commissioners say: "We come to the definite conclusion that nothing but the most overwhelming considerations could justify the continued retention of Burma within the Government of India." Now, the question before us is whether it can be said that there are overwhelming considerations for the retention of Burma within the Government of India. In other words, the question is: Has there been a genuine change of public opinion as regards separation? Has it veered round in favour of Federation? I submit, my Lords, that the answer is No. As pointed out by my honourable friend, U Ba Pe, there is no one who is really an anti-separationist in Burma. In this connection, if I may quote my honourable friend, U Ba Maw again, he said in the Burma Legislative Council: "There is at present a great deal of discussion regarding the actual meaning of the term 'anti-separation.' Several people in the House as well as outside have tried to give all sorts of meanings to the term. I personally have been subjected to the most scurrilous attacks for my definition of it. There are actually influences outside the House as well as inside working to commit a fraud on the country by misusing the term 'anti-separation' and giving it an extremely literal meaning in order to make 'anti-separation' mean unconditional and perpetual Federation

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with India. In these circumstances, Sir, I consider it is extremely important for the purpose of a proper and fair discussion that the House should know the real meaning of this term. Sir, that meaning is in those Jubilee Hall resolutions that is the definite voice of the anti-separationists of Burma, and any meaning that goes beyond the Jubilee Hall resolutions is a betrayal." My Lord, you have got the Jubilee Hall Meeting referred to by Dr. Ba Maw at page 6 of the Sketch of Constitutional Developments in Burma. My honourable friend, Dr. Ba Maw, later on in the same speech admitted that the Jubilee Hall resolutions are nothing more than an attitude of protest, and as for my honourable friend, U Chit Hlaing, and the party that he leads, they are not anti-separationists in the real sense of the term either. U Chit Hlaing said in the Burma Legislative Council on the 16th December, 1932: "Another matter on which I wish to speak is the allegation by the honourable Finance Member that I am a perpetual Federationist. I do not know from where he heard this. Since the time separation came to be talked about, three or four years ago now, I said that we should federate with India only when we could get what we wanted, and also at the Jubilee Hall Convocation on 12th July, at which I was the Chairman, I declared that Federation with India would only be agreed to provided we get what we wanted. It does not mean perpetual Federation, but Federation only when we get our demands. I do not mean unconditional Federation as mentioned by the Prime Minister." Then, he again observed, on the 22nd December, 1932, "Some say that they are not permanent Federationists; no, there is none. There may have been misunderstanding. So far as that is concerned, I personally have no mind to federate permanently. I do not entertain such an idea now nor shall I do so in future. Far be it from me to have a desire to federate permanently with India. I have no intention of federating permanently even with the British Government. I have said this not only here but also at the Burma Round Table Conference." So, my Lord, the position remains that there is not a single Federationist in Burma; we are all unanimous in favour of Separation. The difference between us is only as to the question of time. We separationists say that Burma should be separated now, but the so-called anti-separationists wish to remain in the Federation for some years, hoping that they would be able to get out of the Federation in the near future with a better Constitution. That is the only difference between us. My Lord Chairman, what I regard as the key to their attitude can be found in the speeches of my honourable friends U Chit Hlaing and Dr. Ba Maw. For instance, U Chit Hlaing said in the Burma Legislative Council on the 22nd December, 1932: "In my opinion, if the British Government have a real desire to separate Burma from India they should give her a Constitution superior to the one outlined for India." My Lord will see at once that there is here a little confusion of ideals. We agitated for separation; we sent deputations in 1916, 1917, 1919, 1920, and so on; we asked for separation; but, when separation is held out to us, U Chit Hlaing thinks that it is the desire of the British Government to separate Burma from India, and acting on that assumption, he says: "If the British Government have a real desire to separate Burma from India they should give her a Constitution superior to the one outlined for India." Then, to come back to my honourable friend Dr. Ba Maw, there being only two anti-separationist parties, one led by U Chit Hlaing and the other by Dr. Ba Maw, as regards the right of secession, Dr. Ba Maw said, on the 21st December, 1932, in the Burma Legislative Council: "My opinion is that this threat regarding the right of secession is absolutely illegal and is contrary to all the promises given to us by the British Government. If the British Government insists on maintaining that attitude, if it insists on declaring that the right of secession will not be a subject for discussion at any Conference, then I do say it will be absolutely useless for us to enter into any such discussion, because it will end in failure. Governments and Secretaries of State in their days of brief authority may make solemn declarations, but history proves that Governments have been known to fall, and policies change even in an unchanging East. The Secretary of State may make a certain declaration, but that declaration is not immutable; it can alter with a change of Government or a change of policy, so our final position as regards the right of secession is this: We refuse to admit that this right does not exist; we claim that it is

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an inherent right that no law can alienate. We say that if Burma enters the Indian Federation it will be on the basis of a contract among the Federating units. We deny the right of the British Government to interfere in any mutual arrangements among the Federating units, and we deny that there can be any statutory enactment refusing us our rights. All that we ask is that our rights to enter the Indian Federation, and by this right of entering also to secede from it, should be given formal and statutory recognition in our future Constitution. If no such recognition were given, this would not prevent us from still claiming it. As I have already mentioned, Indian politicians have expressed their attitude towards the right. U Soe Nyun has read out certain passages, but I say that those statements merely reflect a certain section of Indian political opinion. U Soe Nyun even will not claim that the statements he has read out reflect the whole mind of political India. These statements were made some time ago." So, my Lord will see that in spite of announcements by the Right Honourable the Prime Minister and the Secretary of State for India, my honourable friend, Dr. Ba Maw, and his Party still believe that there would be this right to secede from the Federation at any time. They were obviously relying on the Karachi Resolution, observations made in the Legislative Assembly, and as regards opinions expressed by some Indian leaders, they say that they do not represent the whole mind of political India, and, if they do, there might be a change of opinion in favour of secession. My Lord will see that they were really hoping against hope with reference to the right of secession. Then, Dr. Ba Maw again observed, in the course of the same speech "U Soe Nyun has tried to alarm the House by reading out statements regarding the tremendous difficulties that Burma is likely to meet, if and when it contemplates leaving the Indian Federation. I admit that the difficulties will be tremendous, but U Soe Nyun must also remember that those difficulties are no more tremendous than the difficulties that he and I and all of us will meet in trying to achieve full responsible Government." So, my Lord, Dr. Ba Maw, the leader of one anti-separationist party, still believes in the right of secession, and he also made it clear in the course of the same speech that he was not for unconditional Federation. He said there should be financial adjustments on a contract basis; that a separate debt account for Burma should be kept by the Government of India so that there would be no difficulty as regards accounts when Burma wanted to secede from the Federation. He also said that Burma should have compensation in some form or other for the protective duties that had been created for the benefit of India. He further observed that every Burmese subject should be in Burmese hands unless a case is definitely made out in favour of the Central Government and suggested reconsideration of the division of subjects into Central and Provincial for the benefit of Burma. So, my Lord sees that the anti-separationists are holding out against separation on the Constitution as outlined by the Prime Minister, because they still believe that there would be this right of secession. They still believe that they would have the support of Indian leaders when they wanted to leave the Federation; but, my Lord Chairman, amongst the papers that were placed before us since our arrival, we have found records of statements made by the Members of the Indian Delegation to this Joint Select Committee on the question of separation or Federation, and those statements make it perfectly clear that the Indian leaders are not prepared to concede any right of secession to Burma. That being so, and since there is no one in Burma who is willing to federate with India unconditionally and permanently, my submission is that we need not go on to discuss the other conditions which were stipulated for by Dr. Ba Maw for Federation. The position now is that hopes aroused by the Karachi Congress and the Indian Legislative Assembly have now been proved to be false, and opposition to unconditional and permanent Federation is unanimous. I am glad to submit to my Lord that if there be any unanimity in this Delegation it is the unanimity in opposing unconditional Federation, and since conditional Federation with modifications of the Indian Constitution to suit the conditions of Burma and the Burmese people are impossible, I submit that the only alternative, the only course that is now open, is separation. My Lord Chairman, separation will raise the status of Burma politically and financially. Burma will profit to the extent of about 3 crores

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of rupees every year. In this connection, a reference may be made to the sketch on Constitutional developments at page 12 and the Report of the Statutory Commission, page 187. Furthermore, after separation, Burma will have fiscal autonomy and will be able to enter into trade agreements. In this connection, both the Governments of India and Burma have recognised the desirability or necessity of a trade convention between India and Burma, and when Burma is free, she may be inclined to enter into trade agreements with countries like Ceylon, and others, since she is bound to benefit by such agreements, and after separation the Burmese people will be enabled to preserve their own race, for example, by regulating immigration, and, if Burma be separated now, the Indian Constitution, which has to be so evenly balanced on account of the varying interests and factors, will not be disturbed in the future. In this connection, I wish to refer to page 5 of the sketch on Constitutional developments where the Secretary of State for India has pointed out: "Apart from the fact that the admission of any such right, that is the right to secede, would be a negation of the whole idea of Federation, secession would be objectionable on account of its effects on such important and delicately adjusted matters as the distribution of representation in the Indian polity and in the size of the Federal Legislature. Moreover, secession by Burma after an interval would reopen at that stage the whole question of the Constitution of that country, the settlement of which would still remain a matter for determination by His Majesty's Government, and this is a contingency that His Majesty's Government are not prepared to contemplate." I submit, my Lord Chairman, that in the interests of Burma and also of India the British Government's provisional decision in favour of separation might be endorsed. The aspirations of the people of Burma are two-fold: First, to be a separate unit in the British Commonwealth, and, secondly, to have full responsible Government, with the status of a Dominion. Separation will satisfy one of the aspirations and we hope that the other aspiration might be satisfied to a very large extent on the advice and recommendation of this Committee after we have discussed the Constitutional Proposals. My honourable friend, U Kyaw Din, observed that he is satisfied for the present, but he has his own doubts as to the future. He is afraid that the Constitutional progress of Burma in future might be impeded on account of her separation from India.

In this connection I am prepared to accept the statement made by the Secretary of State for India in the House of Commons. He said: "They" (that is the Government) "wish it to be understood that the prospects of constitutional advance held out to Burma as part of British India will not be prejudiced by this decision, and that the Constitutional objective after separation will remain the progressive realisation of responsible Government in Burma as an integral part of the Empire." I hope, my Lord, that in regard to separation this Committee's recommendations would dispel all such doubts as may be entertained by my honourable friend, U Kyaw Din, and people like him, and that it should be made perfectly clear, for instance in the Proclamation inaugurating the reforms, that separation of Burma from India should not in any way impede her constitutional progress towards full and responsible Government. That is all I have to submit, my Lord.

Dr. *Ba Maw.*

My Lord Chairman, I realise that I have a somewhat difficult duty to perform, and, before I proceed to its performance, I wish to restore this discussion to reality and, for that purpose I wish to make three preliminary observations. My Lord, we who have come from Burma have adopted a peculiarly Burmese method in our election campaign as well as in the interpretation of words. As I listened to my honourable friend, U Thein Maung, I realised the tremendous difficulty that My Lord and the Members of the Committee will meet in evaluating the various terms and coming to a proper finding on the most important issue from our point of view. For this purpose, my Lord, I hope you will allow me to make three preliminary observations. The first observation is that if this discussion is not to be fruitless (if we are to render any assistance to the Members of this Committee) we must define the terms "separation" and "federation", and give my Lord and other Members of the Committee the Burmese meanings, the meanings that we have attached to the terms "separation" and "federation", and the way

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in which we have used those terms in our last general election. The second observation which I wish to make, with my Lord's permission, is that, as I read the meaning of this invitation that the Committee was kind enough to issue to me, we have been nominated by the Government of Burma not to express our own individual opinions, but to express the opinions, feelings and convictions (whether they are right or whether they are wrong) of the masses of the people whom we represent, and from this strict point of view I do feel—I may be wrong, my Lord, or I may be right; it is for the Committee to say the final word—that we are not here appearing to place before my Lord certain learned arguments, but to render my Lord and the Members of this Committee assistance by placing before them all the real facts, the real feelings, whether they are right, or whether they are wrong, of the masses.

In this sense, my Lord, in short, I do submit that it is our duty to assist my Lord and the other Members of the Committee to reach the real mind of the country apart from all this logic chopping.

The third point that I wish to make is this: The supporters of separation up to this point have dwelt in a very lofty and noble way on ultimate aspirations. I do wish to save the discussion from what I beg to submit would amount to an analogy to the present Irish morass. I do wish to submit, my Lord, that we are here to help my Lord and the Members of the Committee to consider a very limited and a very practical question, the question being that two alternatives are offered to Burma—separation on the basis of the Prime Minister's proposed constitution, and federation on the basis of the White Paper. Therefore I will not indulge in dreams that we all know have led to disaster in other parts of the Empire, but I will try to adhere to realities, and to present my case in a practical way apart from talks of old Burmese Kings, apart from talks of Burma's independence and things of that sort.

In this connection I must say, with the greatest respect to my friends U Kyaw Din and U Ba Pe, that the value of their statements to my mind is absolutely vitiated by the fact that they have based their entire case for separation on dreams of an independent Burma.

Any analysis, or any attempt to go beneath the surface of that argument, will reveal their real mind, namely, that separation to them means an independent Burma, a Burma that can develop her nationhood, that can raise ideals that are absolutely contradictory to any ideal, however lofty, that the British Empire can present to us. Therefore, my Lord, I do wish, first of all, to clear the air a bit and to say that we are here, as far as I understand the terms of my invitation, to assist this Committee in answering a certain specific, a certain concrete issue, namely, as between two alternatives separation on the basis of the Prime Minister's constitution, and federation on the basis of the White Paper proposals for India, what will Burma choose?

Now, my Lord, U Chit Hlaing has dwelt somewhat on the historical aspect. He has tried his very best to create a historical background to this discussion, and, as I have already submitted, my Lord, I feel that it is my duty to assist the Members of this Committee to understand the Burmese situation. We, my Lord, live and work and think in a country which is 8,000 miles away. Our terms of thought are not the English terms of thought. We have interpreted certain words in our own way. U Thein Maung, with absolute skill and absolute honesty, has presented to the Committee the interpretation of "Federation" as an ideal, but what U Thein Maung has thought fit not to inform the Committee about is the idea of separation as it occurs to the average Burmese mind. U Thein Maung dwelt at very great length upon the persistent attempt to obtain separation in days past. He thought it proper to read out a certain passage from the speech that I made in the Burma Legislative Council. I do wish he had proceeded a bit further, because that would have helped my Lord and other Members of the Committee to understand what really was in my mind at the time that I made that statement. I go further, that it is the latter part that gives the real meaning to my statement, and U Thein Maung thought fit to suppress that particular latter part of my statement.

Chairman: Will you give the date of that reference so as to connect it with the other?

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Dr. *Ba Maw.*

It is the speech that I made in the December Session of the Burma Legislative Council, my Lord, at page 258. I go further and say: It is remembered that Burma in the days of its political youth asked for separation, and for not much else, and it is to be separation, but on British terms and not on Burmese terms. I do realise the fact that when our political life began in Burma we began in a very crude and unsatisfactory way. I do admit, my Lord, that in those days, for which we Members of the Delegation admit no responsibility, Burmese politicians, if we may compliment them with that term, asked for separation and nothing else. But, my Lord, political thought, even in a remote country like Burma, has evolved, and I will prove its evolution from the statement made by the recognised separationist leader, U Ba Pe. In the Burma Legislative Council on the 11th August, 1930, three motions were considered, and, in speaking in connection with those motions, U Ba Pe, as the leader of the People's Party (U Ba Pe's position is admitted as the leader of the separationists in Burma) said this: "We have three motions now relating to constitutional issues in some form or other. The first was the question of separation, and this motion was passed the other day. The next one was the appointment of a Commission which was passed a few minutes ago." May I explain here, my Lord, that the Commission refers to the well-known Simon Commission—"and the third is the present motion on Dominion status under discussion. All these three motions are inter-related, and, if Government is keen on one and opposed to the other, it will not suit the wishes of the Members of this side of the House. Either accept all the three, or reject them. Separation without Dominion status is of no value to us." U Thein Maung very abruptly stopped at the first stage of the evolution of the idea of separation, but I am referring to a statement made in the Burma Legislative Council by the leader of the separationists on the 11th August, 1930, and on that occasion U Ba Pe was supported by every Separationist in the Council, so much so that all the three motions passed without a division.

Now, my Lord, I do hope your Lordship will appreciate the difficulty of my task. I am trying to assist the Committee to come to a fair and just conclusion on the facts—the actual objective facts.

The final word, my Lord, rests entirely with the Committee. That is their responsibility, and we fully appreciate that we are here to make statements and to enter into discussions merely for the purpose of assisting the Committee to come to a final decision. But, just as the Committee has its responsibility with regard to the final decision of the issue, we too have our responsibility to present all the objective facts with regard to the issue. As I said at the beginning of my statement, my Lord, we are nominated Members, but there is no reason why we ought to impose upon the Committee our own individual views and arguments. As I interpret my duty, our duty is to go beyond our individual minds and to try as much as lies in our power to collect the objective facts in the country, and to serve merely as vehicles for placing all those objective facts before this Committee.

Now, my Lord, I wish to inform my Lords of the political position just before the momentous statement was made by the Prime Minister with regard to the separation issue. Under the dyarchical system of Government political Burma was divided into two parts. There were the co-operators, and the non-co-operators. The co-operators, represented very ably by U Ba Pe and Sir Joseph Maung Gyi, entered the dyarchical Councils and worked dyarchy. The non-co-operators in the country, represented by U Chit Hlaing, U So Thin and one or two other leaders, refused to enter the dyarchical Council and carried on the agitation in the country. I would lay special stress upon this fact, because the Right Honourable the Secretary of State for India, in statements that he has made, has relied very greatly upon two things; first of all, upon the unanimous decision of the Burma Legislative Council—of a dyarchical Burma Legislative Council, and, secondly, upon the findings of the Simon Commission.

Now, my Lord, we all know (it is admitted) that that Burma Legislative Council that passed that resolution in favour of separation was a Legislative Council that did not represent the entire political mind of Burma, because it did not represent that section of political Burma that is composed of the non-co-operators, and the

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General Election has proved conclusively, if it has proved anything, that the Non-Co-operators are in an overwhelming majority. Secondly, connected with this is a further fact that the people who undertook to give evidence before the Simon Commission, the people who made themselves vocal and thought it proper at that time to act as representatives of the entire political world of Burma, were people who were Co-operators, people who were chosen by the dyarchical council that represented only the co-operating section of political Burma. Therefore, my Lord, I wish to submit this as a conclusion, that what took place in the dyarchical council in Burma merely represented a section, and that has proved now to be a minor section, of political Burma. Secondly, whatever evidence was placed before the Simon Commission was merely a reflection of that Co-operating mind and the views held by that particular mind. Now, my Lord, in support of this I wish to place before your Lordship and the Members of the Committee one further fact, that when the Burma Government thought it proper to send a Burma Delegation—the first Burma Delegation—to the Indian Round Table Conference (all nominated members, consisting of Separationists)—on that occasion the Non-Co-operating element (what we call in Burmese Wunthanus; that word may be a little difficult; that is why I am forced to use an unwieldy phrase, the Non-Co-operators) submitted a monster Memorial to the British Government making it very clear that they were opposed to separation and that they wanted to federate with India. Then, my Lord, I take it that this was one of the reasons (and there were probably other reasons) why, after very careful consideration of the issue by the Burma Round Table Conference, the British Government, represented by the Right Honourable the Prime Minister, came to the conclusion that in those circumstances it was best to refer the matter to the Burmese electorate. Now, my Lord, this fact is most important for me. This fact, first of all, proves that all the arguments, very learned, very skilful and very one-sided, advanced by U Thein Maung, were dismissed by the British Government, who thought it the best course in the circumstances to leave the decision to the Burmese electorate. If U Thein Maung's present arguments have any force, if they have any value, my submission, with all respect, is that His Majesty's Government at the time when these same arguments were advanced at the Burma Round Table Conference would have accepted them and would have acted on them. The fact that those arguments were dismissed, the fact that His Majesty's Government thought it proper to refer the matter to the Burmese electorate, shows that, after the most careful consideration, His Majesty's Government was of the opinion that those arguments had no validity in the present circumstances, and that the only proper course was to obtain a decision from the Burmese electorate.

Now my Lord, I come to the Burma Round Table Conference. After that His Majesty's Government was kind enough—and we all in Burma very greatly appreciated this kindness—to make a statement through the Right Honourable the Prime Minister, allowing us something, allowing Burma something, that, as far as my reading goes, had never been allowed to any Indian Province. It allowed us a very limited but a very welcome form of self-determination. His Majesty's Government told us that we could determine this particular issue of Separation for ourselves; that it would leave the determination of the issue to the Burmese electorate. We were extremely grateful, my Lord, and the entire country responded in an extraordinary way.

Now, my Lord, may I, with your permission, revert to the statement that I have made, that before that announcement the greater part of political Burma consisted of Non-Co-operators; and here, if I may be permitted to do so, I would digress a little, to something that concerns me personally, because it may assist the Committee to understand the situation. That Non-Co-operating Burma, a few months (less than a year) before this announcement, had started a rebellion in Burma that was most disastrous, and that every thinking intelligent Burman deprecated. This rebellion was started by the Non-Co-operators and it led to very troublous times in Burma. I must here digress a little in order to explain my personal position in that rebellion. I became professionally connected with the rebellion in the sense that I defended most of the rebels in a Court of Law, and in this way I came to understand their real intentions and

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their real desires. After we had obtained this memorable pledge (I can give it no better description) of His Majesty's Government, that the matter would be allowed to be decided by the Burmese electorate, U Chit Hlaing and I—the two of us—personally toured the entire country and got into touch with these Non-Co-operators. I will declare it here: I personally got into touch with these rebels, and I told them that they must give up their Non-Co-operating ways—that here was a promise, as solemn as any promise could be, given by His Majesty's Government, through the mouth of the Right Honourable the Prime Minister, that this decision on an important issue was left in the hands of the Burmese electorate. I personally toured the whole of Burma and personally explained the position to them—that this was a promise as good as anybody or any country in the world could obtain; and on the strength of this solemn statement the Non-Co-operators agreed to give up Non-Co-operation, and agreed to contest the recent elections. As soon as they reached this decision, all the Non-Co-operating Associations got together, and we convened an All-Burma Anti-Separationist Meeting at the Jubilee Hall, the resolutions of which meeting have been referred to by U Kyaw Din. Here I wish to explain, because I have really come to a difficult part of my work, that these Jubilee Hall resolutions were written by me. All their defects, all their failings are entirely on my head; but I do wish to submit to the Committee our real intention and what was at the back of our minds when we framed those resolutions. First of all, my Lord, to understand those resolutions it is important to place before your Lordships a fact that very closely preceded the Jubilee Hall meeting and the resolutions which were passed at the time—at the outside, a week before.

U Chit Hlaing: A fortnight.

Dr. *Ba Maw*.

U Chit Hlaing corrects me—at the outside, a fortnight previous to that Jubilee Hall meeting. On the 27th of June the Right Honourable the Secretary of State for India made a statement in the House of Commons. I do not propose to read the whole statement out, my Lord, but the statement was to the effect that in the event of Burma's entry into the Indian Federation, Burma would not be allowed the right of secession. I am trying to explain a word that has created a good deal of misunderstanding—the word "emphatically." Then, my Lord, we decided to hold this meeting, and in Resolution No. 3 we used the word "emphatically"—"That the Convention emphatically protests against the permanent and unconditional inclusion of Burma in the Indian Federation." I do admit, my Lord, that this was not a very happy word to use. I do admit that, my Lord, but as an explanation, for whatever it is worth, I am submitting this fact, that at the time the mind of the whole country was engaged with the statement made by the Right Honourable the Secretary of State for India in the House of Commons, and the resolution was a direct reaction to that statement, among the Anti-Separationists.

Now, my Lord, we proposed to form an Anti-Separationist League. Against us is brought forward this particular word, that we were "emphatically" opposed to the inclusion of Burma in the Indian Federation; but I do most earnestly ask the Committee to consider the other fact. It is not my point of view, my Lord, that I am placing before you, it is the feeling of the country, the point of view of the entire country. Now, my Lord, the Anti-Separation League was created at that meeting and we called ourselves Anti-Separationists. I submit that great importance should be attached to that. We did not call ourselves Anti-Perpetual Federationists; we did not call ourselves Conditional Federationists, but we selected the most obvious title, the word that most described our real feelings, our real attitude, namely, Anti-Separationists. We called ourselves Anti-Separationists, and U Kyaw Din, who has frankly admitted to the Committee that he stood as an Anti-Separationist, atacked Separation. But within a fortnight of his election U Kyaw Din had become a Separationist. I am not interested in that, my Lord, because my only interest is to present to the Committee the real mind of the country. Here were the anti-separationists who proposed to form a league on the basis of the Prime Minister's declaration, accepting the Prime Minister's declaration at its face value, and who proposed to call themselves anti-separationists. From that the Committee will be able to discover what was the dominating thought

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in our minds. The thought that dominated all our minds was opposition to separation as given by the Prime Minister. Now, my Lord, there is the further fact that at that Meeting and at every other anti-separationist meeting and at the time of the December Session of the Burma Legislative Council, the first Resolution that was always passed was a resolution opposing separation on the basis of the Prime Minister's terms. Now, psychologically, I do most respectfully submit that if my Lord and the Committee desire to know the real mind of the country these facts must be given tremendous weight. Here is a new political party, new for the purposes of election, that propose to call themselves anti-separationists. Here are the two parties that invariably, whenever they obtain a chance, pass as their first and foremost resolution, as a primary resolution in their policy, a resolution opposing separation on the basis of the Prime Minister's terms. Then, we went through the country and fought the general election. Here, I must turn again from the course of my argument and deal with a few points raised by U Thein Maung. U Thein Maung has actually alleged that we were influenced in our policy by a declaration of the Karachi Congress. U Thein Maung has even gone further and alleged that we were influenced by the Indian element. My Lord, what U Thein Maung has not explained to your Lordship and the other Members of the Committee is that first of all a literal translation of the Prime Minister's declaration (there were only two alternatives, one of which was perpetual Federation) was widely distributed throughout the entire country. Fact No. 2, my Lord, is that against the Karachi Congress Declaration, which had no weight whatever with our people, there were the most solemn declarations by the British Government. There were repeated declarations by the British Government that were broadcast through the entire country to the effect that Federation meant perpetual Federation. The third fact is that the separationists in contesting the general elections against us made it one of their strongest arguments that Federation with India would mean perpetual Federation. But U Thein Maung has mentioned a certain Karachi Congress Resolution. Whether we paid any attention to it or not is proved by the fact that in none of our election posters, in none of our election pamphlets, did we worry even to mention the Karachi Congress Resolution. I challenge U Thein Maung to produce any leaflet or poster in which we took the slightest notice of the Karachi Congress Resolution. Our cry was that this was a Burmese question, and we must decide it in the Burmese manner. That was the entire burden of all my election speeches and election speeches made by U Chit Hlaing. Now, there is another point; it is such a trivial point that I feel ashamed to be forced to deal with it, but, as U Thein Maung has thought fit to place it before my Lord and the Members of the Committee, I am afraid I must deal with it. I have already submitted that non-co-operators form the majority in political Burma, as has been proved by the recent elections. Now, before any allegation of Indian influence could be made, the non-co-operators, the G.C.B.A.s and the Wunthanus, had consistently voted against and passed resolutions against the separation of Burma from India on any basis short of full responsible self-government. And then, my Lord, these allegations which have unfortunately entered into this Committee Room can easily be met by counter-allegations. I am sure the Honourable Members of the Committee know the nature of general elections in all parts of the world. Even Great Britain is not free from certain party pledges and party statements that have no meaning after the election is over. An historic case as we know even in Burma is the case of Mr. Lloyd George, having won a general election on the slogan "Hang the Kaiser." Now, my Lord, as to this allegation of influence, we are in a position to support our allegation although I should have been the last person to introduce it into this Committee Room. We are in a position to support our allegation that the local Government of Burma took the greatest and most active interest in recent elections and in every constituency Government officials were the most active assistants of the separationists. Another proposition is this: it is a test: We anti-separationists were too poor even to have a headquarters. We anti-separationists could not run a paper. We started a vernacular paper which ran exactly for four or five months and then died a most unfortunate death. The separationists control all the papers in

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Burma; the entire Anglo-Burma Press of Burma supported the separationists, and it is well known that the separationists had got very, very large party funds. We are a party consisting purely of the masses and without any funds, without even a headquarters, without even a paper. We had to fight our battles all over the country by issuing cheap posters, cheap in the economic sense, against two parties that worked with every advantage. U Thein Maung has thought it proper to allege Indian influence. I challenge U Thein Maung to place before the Committee, it is his duty to do so, if he introduces such highly controversial and delicate questions into this Committee Room, to place material before the Committee in support of statements like that. He quotes a certain statement from the local government, but with the greatest respect I say that this report made by the Burma Government has no value, for the simple reason that the Burma Government is not in a position to make any statement independently on this question. The Burma Government have got themselves so involved in the separation question that any statement made by them is bound to be vitiated. Then, my Lord, we come to the historic resolution of the Legislative Council, the December Resolution. The December Resolution is unfortunately worded; I admit it; I am entirely responsible again for that; but I submit that words may be important, but when it comes to crucial issues people go beyond words and try to get the real sense, the real mind of the people. I admit the word "emphatically" is unfortunately used there, but we are not the only people who have made such unfortunate mistakes. With the greatest respect, I wish to point out a far more vital instance of an unfortunate mistake in drafting. I am referring to the terrible mistake made in the Balfour Report that arose out of the Imperial Conference of 1926, where the Report put in italics the reference to equality in status among the Dominions, but when it came to the qualifying clause (may I refer to it because it is so important?) "the principles of equality and similarity appropriate to status do not universally extend to function," Lord Balfour and the Members of his Committee forgot to place these equally important words, the concluding words, in italics, with the most unfortunate results that have manifested themselves in Ireland and the other Dominions. Therefore, I admit my fault, but as I am in the company of one of the greatest statesmen of our day, Lord Balfour, I do submit that such a mistake ought to be overlooked. Mistakes occur, after all, even in interpreting the Report of 1926, in interpreting the Westminster Statute. English Constitutionalists are unanimous that equal stress ought to be laid on the second statement as on the first, and that the introduction of the italics in connection with the first statement is a most unfortunate mistake. Therefore, my Lord, here again when I come to the December Resolution I wish to point out to the Members of the Committee that Resolution No. 1, the First Resolution, is a Resolution rejecting separation on the basis of the Prime Minister's Constitution, and it goes on to say—it is so important that I ask my Lord's permission to read this Resolution: "That this Council opposes the separation of Burma from India on the basis of the constitution for a separated Burma outlined in the statement that the Prime Minister made at the Burma Round Table Conference on the 12th January, 1932." Here is an unqualified, unconditional (notwithstanding all the fine phrases of U Thein Maung) opposition to separation of Burma from India on the basis of the Constitution for a separated Burma. But we do not stop there; we lay still greater stress on this point by going on in No. 2—"That this Council emphatically opposes the unconditional and permanent federation of Burma with India." Then, No. 3, "This Council will"—it is amusing to U Ba Pe, but I have prefaced my submission with a frank admission that this word "emphatically" was wrongly chosen; we chose it because this Jubilee Hall Resolution was passed within a fortnight of the statement made in the House of Commons by the Secretary of State for India. It was a reaction to the statement made by the Secretary of State for India.

Sir *Austen Chamberlain*: What was the third Resolution? You did not read it.

Dr. *Ba Maw*.

"That this Council will continue to oppose the separation of Burma from India until Burma is granted a Constitu-

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tion on the following basis." The first is: "The future Constitution of Burma shall provide for the immediate transfer to popular control of at least the same measure of responsibility and the same subjects and powers as will be transferred to popular control in the Indian Federation, both at the Centre and in the Provinces." The second is: "The subjects and powers reserved to the Governor shall be only for a period of transition and such reserved powers shall be framed and exercised in accordance with recognised constitutional practice and shall in no way prejudice the advance of Burma through the new constitution to full responsibility for her own Government within a reasonable period, and the new constitution for Burma shall further prescribe the manner in which or the time when the said reserved subjects and powers are to be transferred to popular control on the basis of full responsibility." It is rather an unwieldly way of putting the idea of automatic growth. Now, in connection with this, in my speech, because I was responsible for the writing of this Resolution, I have enlarged on this idea: "Reasonable period" is an important part of the Second Motion. There will undoubtedly be much difficulty and dispute in trying to indicate the period but it must be done because this is a necessary guarantee for our future rights and a guarantee must, therefore, be quickly given. Full responsible government must be assured us within a reasonable period —reasonable, that is to say, from the point of view of people who calculate time in a simple business way and without any thought of sophisticated computations. Then, my Lord, in this particular part of my speech, I have made it perfectly clear, and the motion was accepted by the entire House, that we were referring to a Statutory provision in the proposed Constitution for a separated Burma, and guaranteeing Burma the principle of automatic growth, that is, to enable Burma to achieve full responsible self-government within a reasonable period. Now, my Lord, this particular interpretation and the entire Resolution was accepted by the Legislative Council without a division. Further, at that time, on that occasion U Ba Pe submitted another Resolution supporting the principle of separation for Burma. That Resolution was put to the voto and it was defeated. These two things took place practically at the same time. Therefore, there is complete evidence of the real mind of the Legislative Council at the time of the passing of both these Resolutions.

Lord *Eustace Percy*: Dr. Ba Maw has not finished reading the third section of the Resolution.

Dr. *Ba Maw*.

No, my Lord, shall I do so?

Lord *Eustace Percy*: It might be just as well, in order to get it all before the Committee.

Dr. *Ba Maw*.

Certainly, my Lord. The third part of the Resolution deals with Federation: "In the event of failure to obtain a definite pronouncement from His Majesty's Government that Burma, if and when separated from India, will be granted the aforesaid constitution,"—now the condition is, as soon as we fail to obtain a definite pronouncement from His Majesty's Government—"this Council proposes that Burma shall enter the Indian Federation with at least the following terms. We have the terms. I will explain that further. "(*a*) Burma shall have the right to secede from the Indian Federation, which it may exercise through its Legislature. (*b*) There shall be such financial adjustments between Burma and India as may be required by Burma's peculiar local conditions and other circumstances. (*c*) The division of Central and Provincial subjects in the proposed Indian Federation shall be reconsidered with reference to Burma with a view to provincialisation of additional subjects, special regard being had to Burma's geographical position and its peculiar needs and conditions, and further Burma shall be afforded all necessary facilities for acquiring administrative experience and knowledge of the reserved and federal subjects."

Now, my Lord, I am perfectly prepared to admit that this is not in the present circumstances a practicable Resolution. After all, we must face realities. Whatever we may desire, we as practical men are prepared to face realities, and it will be our duty to accept the final decision of this Committee. Here is a Resolution that is impracticable in both aspects. U Thein Maung has stressed the impracticability of the Federal part of the Resolution, but he has not at all referred to the absolute im-

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practicability of the part relating to separation. I do ask U Thein Maung to be fair to us. Here is a proposition that is impracticable at both ends. He cannot use the Federal end as an argument against us without at the same time honestly accepting the impossibility of the end relating to separation. I quite admit, I am here to make a sincere statement, that we in this matter have been led away by certain dreams which unfortunately have proved impracticable. An impracticable dream may be against we anti-separationists, but the same argument applies with the same force to the separationists. The separationists, according to the terms of this Resolution, cannot under any circumstances come and make the declaration that U Thein Maung has thought proper to make, namely, that they are separationists. They are separationists on the basis of a Constitution that will ensure Burma full responsible self-government by the process of automatic growth within a reasonable period, and so long as that condition is not achieved they are not separationists. The separationists have very cheerfully said that no one is a Federationist in Burma. According to this Resolution, I must admit it, but, at the same time, by the same token, no one is a separationist in Burma. Any man who has subscribed to this Resolution cannot be called a separationist upon the present terms, upon the very restricted terms that are now before the Honourable Committee, because, as U Thein Maung says, His Majesty's Government has issued the final word against conditional Federation. In the same way, His Majesty's Government has issued the final word against the proposition of automatic growth as a part of our Constitution. Again, my Lord, I feel the weight of my duty to present both sides of the case, all the real objective facts. Now, naturally, you will ask me the explanation for this Resolution. I admit that we were led away by dreams. As I mentioned in my speech, this was a declaration of rights; it must be treated as a declaration of rights. Rightly or wrongly, we considered, and we still consider, these to be our rights, but as I have submitted, the final word is with the Committee. But here was a declaration, and I do not see why these declarations should prevent us from pursuing our policy. Surely, my Lord, the Committee did not consider that the demand of the Princes for the right of secession is an insurmountable obstacle to the entry of the Indian States into the Federation? I do ask the Committee to treat our demand on the same basis, to give the same value, no more and no less, to our demand for the right of secession as the Committee will be pleased to give to the demands of the Indian Princes.

Sir Austen Chamberlain: I do not know what passage Dr. Ba Maw has in his mind which causes him to think that the Committee contemplated that there would be a right of secession.

Dr. *Ba Maw.*

No, Sir. I am extremely sorry if I have been misunderstood. What I mean is this, that the demand made by the Indian Princes for the right of secession has not been considered an obstacle to the entry of the Indian States into the proposed Indian Federation. Similarly, I plead that our demand for the right of secession, even if disallowed, should not be considered an impediment to Burma's entry into the Indian Federation. I place my case on the same level as the case of the Indian States. It is no presumption, my Lord; I place it for moral reasons. Just as Burma, among the Indian Provinces, is the only Province that has been allowed to determine this question by an election, that is to say, if Burma enters into the Indian Federation, it will be a voluntary entry, so also it is a case of voluntary entry for the Indian States. This cannot be said in the case of other Indian Provinces. Therefore, on that moral ground, I say that our case in this aspect is the same as that of the Indian Princes, no more, no less. So, as I have already submitted, there is ample explanation for the Resolution. Every argument that the separationists have used against us based upon this Resolution can cut both ways. This Resolution is as much against separation, if it is literally interpreted, as against Federation. Then, we come to a further stage. After the passing of this Resolution, we were waiting for news from England, and the news came at the proper time. The Secretary of State for India practically declared—not in so many words—that this Resolution was not a proper answer to the question asked by the Prime Minister, and that it was our duty to supply the British Government with a proper answer, failing which the

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British Government would have to consider for itself the best method of removing the barrier to reforms in Burma. As soon as this statement was made, we, the anti-separationists, naturally reconsidered the whole situation. We realised that the December Resolution was really a declaration of rights of ideals which we have to admit had nothing to do with the Prime Minister's question. We realised our duty, namely, to give a specific answer to a specific question, and realising this duty we submitted a Resolution in the April Session of the Burma Legislative Council. Now, my Lord, as regards this particular Resolution, it is extremely simple and I do not see how it conflicts in any way with the Resolution that I have just read out, namely, the December Resolution. The April Resolution states very simply that if our choice is confined to the two alternatives placed before Burma by the Prime Minister we choose the Federal alternative. Now, in connection with this, I ask the Members of the Committee to attach due weight to the result of the election as well. We fought that election entirely on the basis of the Prime Minister's declaration. There could be no allegation of concealment; there could be no allegation of misrepresentation, for the very simple and sufficient reason that the Burma Government had taken every care to broadcast the full statement made by the Prime Minister, and the Burma Government as well as our opponents, the separationists, had made the threat of perpetual Federation their principal argument against us. We went to the country and we fought that issue on the Prime Minister's declaration, and the country by an overwhelming majority, as U Ba Pe has pointed out, decided against separation on the basis of the Prime Minister's Constitution.

Now, my Lord, at this juncture I wish to deal with what U Ba Pe has said. He has said that every Burman is a separationist. But I do, with the greatest respect, wish to warn the Committee to understand that word in the Burmese sense. True, my Lord, every Burman is a separationist, but a separationist, if I may be allowed to use the word, in the Irish sense. His reference to the Burmese King, his reference to our own laws and constitution, are most conclusive proof of what separation means to the Burmese mind. I am supporting it with evidence. They say that we told the country that there would be no perpetual federation. That is impossible in view of all the literature that the Burma Government have issued, in view of the repeated statements made by the Right Honourable the Secretary of State for India in the House of Commons, and other statements repeated by the Burma Government, but there is ample evidence that the separationists fought that election on the basis that separation would mean that every Indian would be expelled from Burma.

U Ba Pe: No.

Dr. *Ba Maw.*

That separation would mean (I repeat it) that all the posts in Burma would come into Burmese hands; separation would mean Burma for the Burmans. On this point I have a very excellent authority. I am referring to one of our most successful Governors, Sir Reginald Craddock, in a statement that he made regarding separation even in his time. I am quoting from a speech made on the 14th August, 1918: "But, so far as I have been able to gauge these sentiments, I think that it is correct to say that Burma is proud to form part of the Indian Empire, and has no desire to be separated from India."

Then there is a statement which was published in the "Rangoon Times" on the 28th July, 1921: "The insistence with which the question of separation comes to the fore could not fail to convince us and the public in general that provincial public opinion, which is still but fairly defined on most subjects, is quite emphatic on this one. A little analytical conversation with advocates for separation shows that motives for their advocacy are widely different; for instance, very many non-Burmans support the separationist cause because they are in favour of preserving the comparative tranquillity of this Province, whereas it is under in able" (there is a misprint here; I think it should be "undeniable") "that another section of the separationist thought is intimately connected with the 'Burma for the Burmans' aspiration, and is part of the programme for insularising this country." This was the plank, that they could, under the new Constitution, make immigration laws which would not only expel the resident Indians, but would prevent

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other Indians from coming into the country. I am only pointing out a fact just to prove how the most primitive factor, namely, the factor of race hatred, was the basis of the recent separation campaign. It was all directed at that, as U Thein Maung has himself admitted, and it was greatly the result of a Burmo-Indian riot which took place a few months, or, at the outside, a year from the time when the separation question was raised for the country. That the Burman takes no interest in this separation issue by itself is completely proved by the fact that, throughout the three election campaigns under the dyarchical system of government, in no election campaign did any party make separation an issue. In no election under dyarchy did any separationist party, or any party, make separation an issue, and separation became an issue, and a very real issue, only at the time of the first Indian Round Table Conference, and immediately after the announcement of His Majesty's Government, through the Right Honourable the Prime Minister. This conclusively proves that separation is not such an urgent issue in the minds of the people, and the recent election results show that the Burman attaches not the slightest importance to separation, but he lays all the stress upon an acceptable constitution. I ask the Members of the Committee to consider this. In Burma it is admitted that Upper Burma is more purely Burmese in race, in sentiment, in tradition, in every possible sense, and in this particular separation controversy the whole of Upper Burma, with the exception of two constituencies, voted against separation.

Now, my Lord, I am sure my separationist friends themselves will not dispute the fact that Upper Burma represents real Burmese sentiment, and Upper Burma was almost unanimously against separation. Lower Burma to a large extent voted for separation. Naturally the Committee will ask me why. For several reasons, the most important being the fall in the price of commodities, the present economic depression. The average Burman being hit very badly by the present economic depression sees the Indian taking away his food. The agriculturist finds that the Indian is the moneylender from whom he has to raise a direct loan. The man in Lower Burma finds that Indian labour is being employed to a very great extent, and these were the dominating factors in the situation. The main objects in their minds were to eliminate Indian competition, and to eliminate the Indian creditor, what we call the chetti, the man who takes away Burmese lands in lieu of unpaid debts. I ask my Lord and the Members of the Committee whether these three facts could be cured by separation. Would any responsible separationist say that the agriculturist or the Lower Burman would be satisfied on these three points, namely, that Indian competition would be eliminated by separation; secondly, that the Indian moneylender, the creditor, would be eliminated by separation, and, thirdly, that Burmese lands would revert to Burmese hands through separation? These are the prospects they have in view, my Lord. Their idea of separation is not an abstract idea. Their idea of separation is a real and immediate release from these troubles, and they understand separation in that sense, and, so long as separation does not connote that, they are, in my submission, against separation. These are the real factors which have weighed most with the separationists. My Lord, I believe I have taxed the patience of the Committee to a great extent, but circumstances have forced me to discharge my duty in that way. I have tried to the best of my ability to place all the facts as I see them. I may be right, my Lord, I may be wrong, but I do wish to assure the Committee that I am trying to discharge my duty sincerely, and to the best of my ability, because, whatever the other side may say against us, there cannot be any dispute that the masses have voted overwhelmingly against separation, and I beg to submit that what will weigh with my Lord and the Members of the Committee is the solemn pledge given by His Majesty's Government, that the electorate will have to decide the question for themselves. The result of the pledge was a general election in which the non-co-operators lifted the boycott and, believing in the pledge of His Majesty's Government, took part in the general election; and the result of the general election was an overwhelming majority against separation. Of course, I do appreciate the fact that nothing can bind the Committee in its final decisions, but I also believe, my Lord, with all my heart, that a solemn pledge given by His Majesty's Government to Burma will be ultimately im-

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plemented by the Committee. So I base my entire case, apart from all the explanations that I have given, upon that solemn pledge, and upon the result of the election which took place in consequence of that pledge. I thank the Committee very gratefully for the hearing that it has given me.

Mr. *Harper.*

My Lord Chairman, the attitude of the European community in Burma to the general issue between separation and federation has always been, and still is, that the choice is one for the people of Burma to exercise. In effect that, of course, means at this present stage the people in Burma who have the duty and the power to influence public opinion. On such general issues as the racial and religious and national and other such issues, the European community have been careful to take neither one side nor the other, but have been prepared to fall into line with the majority choice. The community, particularly the commercial section of it, have taken the view that their most helpful contribution to this problem would be to confine themselves to the practical effects of separation, to study to what extent the material interests of Burma would be affected, both the Burma Government revenues and the livelihood of the Burma people.

In particular, there are three issues which in this connection have seemed to us to be of fundamental importance. Firstly, there is the effect of India's protective fiscal policy on Burma. Secondly, the financial consequences of separation, that is to say, the probable result of the financial settlement which will have to be made, and, thirdly, the question of the trade relations of Burma with India in the event of separation. Taking the first of these issues, the effect of India's protective policy on Burma, U Thein Maung and U Ba Pe have both referred to this point, and I agree with them that the effect on Burma has been that India has protected industries which do not exist, with one exception, in Burma, with the result that the cost of the protected commodities has risen to the people of Burma, and there has been no corresponding benefit to Burma in return. The whole tendency in recent years since this protective policy has been in force in India indicates that as time goes on India will become more industrialised and will industrialise at a greater pace certainly than Burma, and that the present disadvantages that have resulted to Burma will be perpetuated and aggravated. This, of course, is an argument in favour of separation.

On the second issue, the financial aspect, thanks to the publication of what is known as the Howard Nixon Memorandum, that has had a certain amount of attention in the Burma Legislative Council, though, naturally, perhaps with a limited degree of appreciation of the intricate details of that rather complicated document. In his speech at the conclusion of the Burma Round Table Conference, the Prime Minister promised that what he called a decision on this financial problem would be made and published before the general election which took place in Burma a year ago, on the sole issue of separation versus federation. Unfortunately it was not found possible to fulfil that promise, but the Government of Burma have since published a statement from which it appears that the Government of Burma in an attempt to bring the Howard Nixon figures, or some of them, up to date, arrived at the conclusion that Burma will gain a matter of 298½ lakhs of rupees per annum. This figure has since been amended by an adjustment in receipts of customs duties and the total is now put at 270 lakhs. This includes an estimated loss of 93 lakhs by the Burma railways which should, I think, be added back, as losses by railways will not, if railway finance is separated from general revenues, be a charge on the general revenues. If this is added back, this would make the total 363 lakhs, from which there has to be deducted a sum for pensions and a sum for redemption of debt to India. Allowing, say, one crore to 1⅓ crores of rupees to cover these two deductions, we arrive at a net gain to Burma by Separation of over two crores per annum. This, of course, is only an estimate, but we think it probably enough to indicate that there would be a gain to Burma in this respect by Separation, and with a total Budget of 9¼ crores, as it is at present, one might reasonably describe a gain of two crores, if it is achieved, as substantial. This is another point, of course, for Separation.

I would like to leave that point and turn to what we regard as the most im-

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portant of these three issues, that is, the economic issue as represented by the trade relations between India and Burma. We in the European Community have felt it inconvenient, in our attempts to help in this Separation problem, to have been left, as we are still left, without any clear indication by the Council of their choice between the two alternatives which were offered to them; but it is in one sense, perhaps, fortunate that this issue is still open. For we feel that this all-important question of the future trade relations between India and Burma has not so far received the consideration it deserves. It has been rarely mentioned, I think, in the debates in the Council, and, as Members of the Committee will have noticed, it has not been mentioned at all so far in the speeches which have preceded mine. It is a matter of vital material importance to Burma, and one which, in our opinion, must be fully considered before a reasoned decision on the Separation issue can be taken. The point is discussed at some length in the Memorandum which has been submitted to the Committee by the Burma Chamber of Commerce. I may perhaps be allowed to explain that I am not the author of that Memorandum or of the other Memorandum which is bound with it, but I shall be very glad to do my best to answer any questions which the Committee may wish to ask on it. Briefly, the position of the trade relations between Burma and India is this. Burma is an agricultural and exporting country, and 48 per cent. of its total exports go to India. That does not include a matter of eight crores of rupees annual remittances to India by Indian labourers in Burma. In return, Burma takes 42 per cent. of its imports from India. It is clear, therefore, that, however slack the ties with India may or may not be in matters of race and religion and the rest, Burma is definitely now an integral part of the economic unit of the Indian Empire. This we regard as a fact of fundamental importance which must not be lost sight of at any time in considering this question of Separation. The Montagu-Chelmsford Report, from which U Thein Maung has already quoted to-day, said that Burma is not India, and the Joint Select Committee on the 1919 Bill stated that Burma was tacked on to India by an accident. But it has to be remembered that that same accident has been responsible for the growth of Burma's economic connection with India and for the position to-day, that Burma is, as I say, part of the economic unit within the Indian Empire. In 1862, when four divisions of Lower Burma were formed into the Indian Province of British Burma, the total trade of Burma, imports and exports together, with India and elsewhere, amounted to a value of five crores of rupees. Now the trade with India alone is in the neighbourhood of 40 crores of rupees. All that has grown up under the system of Free Trade which exists within the Indian Empire. Whenever, therefore, it is suggested that the accidental nature of Burma's administrative connection with India is a good reason for breaking that connection, it must be remembered that the result of that accident, while not vastly changing conditions—differences of race and others, which existed before that time—has been to forge new links which did not then exist. The problem, therefore, to my mind, becomes this: If there are unnecessary or undesirable ties between India and Burma which should be broken, can this be done without automatically severing other ties which it is vital to Burma to retain? Can Burma be separated politically without disturbing the economic connection? In our opinion, the danger in this case lies in tariffs, and, as the Indian Statutory Commission pointed out, the effect of Separation would, *prima facie*, be that the tariffs of each country would apply against the other. It is never wise, I think, to be dogmatic on the effect of tariffs, but I think this much can be safely said, that they invariably change the channels and courses of trade. In fact, that is often their object. Any effect of this nature which tariffs might have on Burma's exports would be to divert them away from India to the possibly vain search for other markets. Although little appreciation of this danger seems to have been shown so far by the Burmese people (which is perhaps not very surprising, for the Burmese people do not take or have not so far taken a leading part in the business and commerce of their country; that has been left largely to Indian, European and Chinese capital and endeavour), although the Burmese people themselves do not seem to have appreciated this danger so far, the close trade relations which do exist between India and Burma have been recognised

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at each important stage in the development of Indian Constitutional Reforms during the last few years, first by the Indian Statutory Commission, and then by the Burma Sub-Committee of the Round Table Conference, of which my friend U Ba Pe was a member, and then by the Prime Minister in his speech at the end of the Burma Round Table Conference, when he said: "It is important that separation should cause a minimum disturbance of the close trade relations between Burma and India, and arrangements will have to be made in regard to these relations before separation takes place." So all these authorities have recognised the need for a minimum disturbance of the close trade relations between the two countries. A minimum disturbance implies some disturbance, and we recognise that if each country is to have freedom as regards its outside tariffs there must be some reactions on the Indo-Burma trade, but so far as the Indo-Burma trade itself is concerned we are convinced that if any tariffs at all are allowed, the result will not be a minimum disturbance. It will be, or will very soon develop into, a serious disturbance which could have no other effect than gravely to reduce the prosperity of Burma. It has been suggested to us in Burma that if the negotiations for a trade agreement to regulate these relations were left to the present Governments of Burma and India—assuming for a moment that it were constitutionally possible for a Province of India to make a trade agreement with the Central Government—those present Governments would be reluctant to agree to tie the hands of their successors by withholding their right to use tariffs as a means of raising revenue. I think that is a perfectly intelligible reluctance. The Chamber of Commerce Memorandum indicates on that point that a light revenue tariff by Burma and India on the imports from each other might in itself do little harm but it would bring in little revenue and would not be worth imposing as a revenue measure. There they speak of a tariff of 5 per cent. A few days ago I heard the President of the Board of Trade in a broadcast address refer to tariffs of 20 to 30 per cent. as a moderate level, as tariffs go. I do not hesitate to say that if that is what tariffs mean—and it is what tariffs mean—Burma's trade with India would be severely shaken, if it were made subject to tariffs of that order.

Then there is a wider significance to this question which I must mention; it is of the utmost importance both to Burma and India that if Burma is to be separated from India politically, the parting should be friendly and that relations should remain of the friendliest possible a character. The Committee will know much better than I do how close a connection there often is between economic relations and diplomatic relations. History in our part of the world, unfortunately, shows that it does not take great provocation to arouse feelings of aggressive animosity between Burmans and Indians, and there must, in the case of India and Burma, always be a grave danger of friction in economic relations affecting relations of another kind. The key to this seems to us to lie in maintaining the existing freedom from tariffs under which Burma and India now trade together. The question is, how can this be reconciled with the political separation of Burma from India if that is to be the Committee's recommendation? If it is not to be their recommendation, then, of course, under Federation, no change in India-Burma trade relations would arise, though other existing economic disadvantages would be perpetuated. But, if it is to be separation, how is this vital economic connection to be maintained? If it were possible to provide in the Constitution Act that the existing relationship be maintained, even for a limited period of years, we feel that it would in fact be in the best interests of both countries, but this would involve some *pro tanto* interference with the fiscal autonomy of both the new Governments. I do not know how far the Committee are prepared to go in that direction. In case there are insuperable difficulties in such a suggestion, the Burma Chamber of Commerce in their Memorandum have suggested another course. They have urged the Joint Select Committee to do three things. Firstly, to record an emphatic view that it would be in Burma's and India's interests to maintain the existing trade relations and that the relations should be regulated by a trade convention. Secondly, to record the view that in order to avoid interfering so far as possible with the fiscal autonomy of the new Governments, the Convention should be negotiated between

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the new Government of India and the new Government of Burma; and, thirdly, to recommend that the Constitution Act should provide that until that Trade Convention has been concluded by the new Governments, existing trade relations should be continued. We make this request, not by any means because we think it is the surest method of preserving those relations. We think there may be great difficulties in arriving at a satisfactory agreement. Nothing, in fact, could be sure except an *ad hoc* provision in the Act, but we have put our request in this form because we consider it to be the most unobjectionable and the most reasonable measure that we could ask the Committee to support.

If I may sum up then the attitude of the European community in Burma on this separation issue, it is that if the people of the country desire separation and if the existing India-Burma trade relations are preserved, we consider that separation is the right course to adopt. If the country wants separation but those trade relations are not preserved, in our opinion separation could then be effected only at the cost of seriously reducing the material prosperity of Burma and of its people. Once again, we come up against this uncertainty about the country's wishes. As I said when I began my statement, the European community have consistently left the main issue to the people's representatives, and we have hoped that they would declare their choice unequivocally by a large majority. They have not, I regret to say, so far done so, and for myself, while I have listened to the speeches to-day with the greatest interest, I do not feel that we are much further advanced in knowing what are the real wishes of the majority of the people of Burma. The European community have given me no mandate to express an opinion in favour of or against separation on their behalf; they have never been unanimous on that subject and they are not unanimous on it now. In the circumstances, therefore, I hesitate to express any opinion of my own. I must be content to conclude by referring again to my main theme, and repeat that, if the decision of Parliament is to be for separation, it is of vital importance to the material prosperity of Burma that an effective arrangement be made to retain the good will of India and to ensure the maintenance of the existing fiscal relations between the two countries.

Ordered, That this Committee be adjourned to to-morrow at half-past Ten o'clock.

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DIE JOVIS, 7° DECEMBRIS, 1933.

Present:

Lord Archbishop of Canterbury.
Lord Chancellor.
Marquess of Salisbury.
Marquess of Zetland.
Marquess of Linlithgow.
Marquess of Reading.
Earl of Derby.
Earl of Lytton.
Earl Peel.
Lord Middleton.
Lord Ker (Marquess of Lothian).
Lord Hardinge of Penshurst.
Lord Irwin.
Lord Snell.
Lord Rankeillour.
Lord Hutchison of Montrose.

Major Attlee.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Mr. Cocks.
Sir Reginald Craddock.
Mr. Davidson.
Mr. Isaac Foot.
Sir Samuel Hoare.
Mr. Morgan Jones.
Sir Joseph Nall.
Lord Eustace Percy.
Miss Pickford.
Sir John Wardlaw-Milne.
Earl Winterton.

The following Delegates from Burma were also present:—

Sra Shwe Ba.
Mr. C. H. Campagnac.
Mr. N. M. Cowasji.
U Kyaw Din.
Mr. K. B. Harper.
U Chit Hlaing.

U Thein Maung.
Dr. Ba Maw.
U Ba Pe.
Dr. Ma Saw Sa.
U Shwe Tha.
Mr. S. A. S. Tyabji.

The MARQUESS of LINLITHGOW in the Chair.

Mr. *N. M. Cowasji.*

My Lord Chairman, the question of the separation of Burma may be examined from three aspects, the political, the financial and the economic. On the political aspect of this question, the leaders of both sections of the Burmese political parties have already addressed the Committee, and I do not wish to take up the time of the Committee by any observations of my own on this aspect of the question. The Indian position has been to refrain from expressing any definite opinion on this question, and to leave the decision to the indigenous people of Burma, but our view, however, is that the preponderating majority in which the candidates who stood on the non-separationist ticket were returned should be taken as the final rejection of the separation issue. Whether or not a case has been made out for the separation of Burma on political grounds, the case against separation on financial grounds is, in my humble opinion, unassailable. Contrary to the Prime Minister's declaration of the 12th January, 1932, no conclusions have been reached as to the final terms of the finished settlement in the event of Burma being separated, and it is unfortunate that there is no authoritative statement on this matter.

The Howard-Nixon Memorandum on the subject was drawn up in 1931 on the basis of the figures pertaining to the year 1929-30. Without entering into any controversy as to the adequacy of the provisions made therein for defence and other administrative charges, I find that the then estimate of the gain accruing to Burma was put down at 378 lakhs of rupees. These figures were brought up to date in a Memorandum published by the Government of Burma in April, 1933. This Memorandum reduced the estimated gain from Rs.378 lakhs to Rs.298 lakhs. The figures were mostly estimates of the financial year ending 31st March, 1933.

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Even at the time of publication of these figures it was widely held that the income side was over-estimated, and admittedly the Statement made no provision on the expenditure side for increased interest charges. The actuals now available reveal the extent of the over-estimation. Customs received, for instance, amount to only Rs.416 lakhs, to which has to be added the estimated cost of Excise on Burmese consumption of kerosene, and petrol, which amount to Rs.74 lakhs, bringing the total under the head of Customs Receipts to Rs.490 lakhs. The Government's figure of Rs.545 lakhs is thus Rs.55 lakhs in excess of the actuals.

As regards Salt revenue, the Government figure of Rs.47 lakhs turns out to be an over-estimate by Rs.13 lakhs. No provision has been made, as I have already stated, for the increased interest charges consequent upon the increase in Burma's share of the Indian Public Debt. The Government's estimate of the addition to Burma's Public Debt is Rs.583 lakhs. Moreover, there is the accumulated deficit in the Budgets of the last four years amounting to nearly Rs.7 crores which has been financed by temporary borrowings from the Government of India. It appears that the Government's estimate of Rs.583 lakhs errs somewhat on the low side, and while we have, of course, the very latest figures of the outstanding Public Debt of India, we have not got the correct figures of the unproductive Debt item. On the basis of the Government's figures alone we find that there is an additional debt liability of Rs.13 crores over and above the estimate in the Howard-Nixon Memorandum, involving on the basis of 5 per cent. interest an additional outgo of 65 lakhs of rupees. The income tax figure is based on 1930-31 actuals, but we all know that subsequently income tax receipts have fallen off. Without making any allowances for this and taking into account only the deterioration of Customs and Salt receipts and the additional interest charges, we find that the estimated benefit to Burma in the event of separation, reduces itself to Rs.165 lakhs, out of which has to be met the Debt Sinking Fund instalment of Rs.1 crore and pensionary liability of Rs.70 lakhs, representing the mean of the two conflicting estimates by Mr. Howard and Mr. Nixon.

The position during the first half of the current fiscal year has, if anything, worsened considerably. The Customs Revenue for the six months ending 30th September, 1933, exclusive of Excise, Kerosene and Petrol, amounts to only Rs.183 lakhs, as compared with Rs.224 lakhs during the corresponding period of last year; a fall in revenue of Rs.40 lakhs.

Whatever might have been the case on financial grounds for the separation of Burma at the time the Simon Commission recommended separation, there is none whatever at present. Admittedly the depression has hit Burma very hard, and the latest figures are in a sense probably abnormal, but it would be unsafe to make any estimates on the assumption that there will be a very substantial improvement in the near future or a rise in the world price level to that obtaining in 1929 or 1930, which alone would justify separation on financial grounds.

While on the basis of the figures available now there is no benefit to Burma by separation, the Province is struggling to balance its budget. Though in March last the budget was balanced on paper it is quite clear that there will be a deficit of at least Rs.1½ crores in the current year. A Retrenchment Committee is no doubt seated to find ways and means of bridging the gap between revenue and expenditure, but it is not possible to forecast the extent of savings they might be able to effect. Already there has been a good deal of economy practised, and the prospect of reducing expenses by Rs.1½ crores in a Budget of Rs.8 crores is none too rosy. It is thus clear that the future Government of a separated Burma cannot look forward to an automatic surplus being realised by the mere act of the separation of Burma, and if conditions do not improve in the very near future they will be obliged to resort to the taxation of Indo-Burmese trade soon after separation, not only with a view to the remission of the capitation and Thathameda taxes and finding the money for the Public Utility Departments, but merely for balancing the Budget itself. I am of opinion that the Government's assumption that Burmese finance will automatically require the assistance of taxation on the Indo-Burma trade is fully justified.

My friend, Mr. Harper's analysis of the financial consequences of separation is somewhat different and takes a more optimistic view of the situation than I

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am inclined to take. The broad conclusion of Mr. Harper is that Burma revenues will benefit to the extent of at least Rs.2 crores net per annum. If I understand the European Chamber's method of calculation rightly it is that they wish to make certain material changes in the method of approach to the problem adopted in the Howard-Nixon Memorandum and subsequently modified by the revised statement of the Burma Government. For instance, Mr. Harper would prefer to treat railway finance separately from general finance, thereby removing the railway deficit of 93 lakhs of rupees from the general budget. The intention is perhaps to carry forward this loss in the railway budget. The reasoning presumably is that in India the railway finances have been separated from the general budget under the 1924 Convention. The authors of that Convention, however, never visualised a situation in which the railway would be working at such a big loss as they are doing at present. What has happened so far is that in the early years of the separation convention the railways made very big profits indeed and put aside substantial amounts to reserve and depreciation funds and, in addition, paid its contribution to the general revenues. During the last three years, however, the railways have been working at a loss, but this deficit has been covered by transfers from the reserve fund and borrowings from the depreciation fund. There is technically no objection to average the result of both lean and good years, but the proposal of the European Chamber to start off with an uncovered deficit in the railway budget, when the railway is 100 per cent. State property, appears to me to be unbusinesslike. Such a position has not arisen in the case of the Indian railways yet, and I do not know what the Indian Legislature would do in a similar contingency with regard to the Indian railway system. I am of opinion that should there be any deficit in the working of the Burma State Railways, the deficit should be fairly and squarely faced and a provision made in the general Budget.

I now turn, my Lord, to the economic side of the separation question, and here I am on somewhat common ground with European commercial opinion in Burma. In fact, I venture to think that the case as presented by Mr. Harper for the Trade convention on the basis of Free Trade between India and Burma, in the event of separation, is really a case for federation and nothing else. I fully endorse the opinion of the British Burma Chamber, that Burma is an integral part of the economic unit which is contained in the present British India, and any policy which tends towards economic separation instead of economic integration is not in Burma's interests, and we feel convinced that the policy of political separation of Burma from India will result, directly and immediately, in the driving of an economic wedge, the consequences of which it is impossible to foresee. On these grounds I oppose the separation of Burma from India, both on financial and economic grounds.

Chairman: Does that conclude your statement?

Mr. *N. M. Cowasji.*

Yes.

Mr. *S. A. S. Tyabji.*

My Lord Chairman, I desire to make my position clear to you. I come here nominated by the Government to represent the Indian Community in Burma, not as a Member representing any constituency of the Burma Legislative Council. Generally speaking, there is no great difference of opinion in the Indian Community, for, though some may not take any active part in working for federation or against it, and others may do so, the general idea prevalent is that separation is undesirable at the moment. The reasons for the undesirability of separation in the opinion of some are connected with the economics of the country. With others, the political effect which they anticipate in a separation regime on the position of India and Burma, is uppermost in their mind. I must confess that the number of those who have become anxious of the political effect of separation on themselves has increased within the last two or three years because of the troublous times that we have had in Burma two or three years ago, and I may also say because anxiety has been caused by the type of electioneering indulged in during the last elections of the Council and which have been referred to by my friend, Dr. Ba Maw. I desire frankly to state that, besides these factors, Indians in Burma have a natural sympathy for federation, and such sentiment requires no apology, my Lord. Moreover, it must not be forgotten that a considerable number of them are on the general electorate and, as such, their

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votes have been canvassed for and sought by parties standing for election to the Council. Thus, they have received a direct invitation from the Burmese people themselves to take a part in the elections which were held to decide the issue of separation *versus* federation. No apology is needed on that behalf, for they belong to Burma and claim the right to exercise their franchise and political rights in the expression of their views. On the other hand, the three organizations of Indians, the Burma-Indian Chamber of Commerce, the Nada-coutta-Chettiars Association, and the Burma-Indian Association, have expressed no direct view on the question of separation or federation, nor have they directly or indirectly held any propaganda one way or the other. Nor have they spent money in financing any of the parties. Here I will at once deny the charge which my friend, U Thein Maung, made yesterday, that the Burma-Indian Association was formed for the purpose of carrying propaganda against separation and financing the Burmese Anti-Separationist Parties. That statement has been made in a Government Report, and I place before you, my Lord, this idea, that in this manner the Government has to a certain extent played the Indians against the Burmans. I can deny the charge because I myself have been the President of that Association for the past two years, and my attitude on the question is well known to my Burmese friends, and I can assure this Committee that the Burma-Indian Association did not pass a single resolution with regard to the question of separation or federation, did not put up any candidate to represent it in the Council, nor has it taken any active part in the decision of the separation or federation issue. Although these Associations have taken no part in any propaganda in favour of federation or against it, it does not mean that they have no opinion with regard to this question. They do feel, as my friend Mr. Cowasji has just stated, that the preponderating vote given in favour of the Anti-Separationists during the past election should have been a sufficient indication of the mind of Burma and should have indicated to this Honourable Committee the view taken by the people in Burma with regard to the federation and separation question. They do feel an anxiety about their political status in the country. They do believe that financially the position of the Province will be worse. They do believe that the trade of the country will suffer. With regard to the financial position of the country, my friend, Mr. Cowasji, has just made a statement, to which I do not desire to refer at this moment, but I do wish to say that in the debate that we heard yesterday very little was stated as to what advantages are going to be derived from separation, or what disadvantages will be felt from federation, with regard to social, religious, or political matters. So far, no one has even hinted that connection with India has led to any social or religious disabilities, nor have they stated that if Burma enters the Federation such social or religious disabilities would be felt.

As regards political disadvantages or advantages, very little has been said indeed, except that it is the desire of a part of the Burmese people to create a separate political entity. I say that in this matter it is only a part that desires to separate, and the whole of it does not, and to this matter, my Lord Chairman, I shall refer again.

So far as the economic conditions of Burma are concerned, no advantages have been shown as accruing from separation. What have been placed before this Committee are some of the disadvantages under which Burma is said to have been suffering. These advantages are of two kinds connected with policy, such as matters of tariff, or connected with disadvantages through administrative exigencies, such as the Meston Award and financial conditions arising out of that Award. As regards tariffs, Burma has to pay, but in turn Burma gets business from India to enable it to pay the expanded tariff and the protection that is given to her industries. At the same time, she has gained some advantage in at least two cases in the development of her nascent industries and the future development of the sugar industry in Burma.

My Lord Chairman, with regard to the financial Meston Award, I would only say that its injustice has been universal, and its injustice has been felt not only by Burma, but by provinces like Bengal, Bombay and Madras and most of the others, so that it is not a condition which is singular, which is specific to Burma alone, but it is a condition which has been felt by almost every province

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and it is, one might almost say, a common condition to all the provinces. The Meston Award has been condemned by almost all the provinces, but it may be stated that under Federation, those conditions would not prevail and would not be perpetuated. My Lord Chairman, it has been claimed that the connection of Burma with India has proved a loss to Burma financially, but in the consideration of this question, when balance sheets are made out and statements are prepared by the Government, facts are forgotten. It is forgotten that India has many overhead charges and she incurs many losses on behalf of provinces; for instance, she has been incurring constant loss for many years on the posts and telegraphs. It is for the benefit of all the provinces, not for Bengal or for Bombay, but the advantage has been derived by Burma also. I might remind you also that India has been stabilising her exchange, and, in doing so, has been incurring immense losses, but that loss also has been incurred not for India alone, but for all the provinces, for all the business, for the Government, and for the people of all the provinces. So that whilst in the balance sheets that are prepared the overhead charges, as I might say, are conveniently kept out, those charges which India undertakes to pay and the Central Government undertakes to pay, and, to meet those losses for the benefit of all the provinces, are not included in such balance sheets in such statements as have been prepared, and, in that, I confess that I feel that the Government of Burma has to some extent been responsible for the creation of ideas amongst the people that India has been very gravely unjust to Burma, whilst I would say that the injustice, if any, is equal to all the provinces and is not singular to Burma itself. In the financial consideration I desire to mention that conditions are constantly changing. We had the Howard-Nixon Report giving us certain facts and figures, but in that Report also there were indeterminate factors which made the Howard-Nixon Report almost out of date in a very short period. Later on that Report was followed by a statement given by the Government of Burma. That was supplemented and was corrected two months after it was put before the Legislative Council. With regard to these statements I have made my remarks in the Legislative Council, and I do not propose therefore to repeat those remarks here, my Lord Chairman. With regard to the trade conditions, I very much appreciated the statement which was made yesterday by my friend Mr. Harper. I agree with him to a very large extent; but before I come to the question of trade I would agree with my friend Mr. Cowasji that the losses on railways ought not to be treated in the manner that Mr. Harper has suggested; in any case, whether railway finance is kept separately or is combined does not matter; it does not matter whether the money goes out of the right pocket of the Government or the left pocket of the Government; so far as the people are concerned, it comes out of the same pocket, and that is all that the people are concerned about. Therefore the railway losses ought to be taken into consideration when considering the financial position of Burma. With regard to trade, as I say, I very much agree with what my friend Mr. Harper has stated. The trade conditions between India and Burma are so very intimate. 58 per cent. of the total trade of Burma is connected with India and there is no doubt that Burma has become an economic unit so far as India is concerned. Mr. Harper very well stated that the connection, accidental as it was, of Burma with India, has created a vast trade for Burma, and that trade as I stated just now, to the extent of 58 per cent., is connected with India. It is to be remembered that in these days when conventions and agreements between different countries are so prevalent, it will not be easy for Burma to find markets for commodities like rice, timber and oils, which she so freely exports to India. Whilst the export of rice is a very large quantity, I might mention that it forms only 5 per cent. of the total production of the rice of India. Therefore, so far as India is concerned, that trade of rice is not so important to India as it is to Burma. Five per cent. of the total production to India of rice is a quantity which could be made up if she chose to do so, but for Burma, if she loses the market in India, it would mean a calamity indeed. My Lord Chairman, the trade convention which has been proposed by my friend Mr. Harper, I agree with, and as to the three conditions that he has suggested, I feel very much inclined to agree with him upon those also. Together with that, I also feel that it is necessary that a Labour Convention between the Governments of India and

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Burma may also be formed because labour is as important a factor in the life of Burma as the trade factor, and it will be very necessary to arrive at a convention between India and Burma on the labour question, so that the friendly feeling may exist and continue between India and Burma if separation does take place. But, on the other hand, I would like to mention this, that hearing all these speeches I have failed to realise what are the political advantages that are going to be obtained from separation. I have failed to understand what are the economic advantages which Burma expects to gain out of separation, and what are the financial or economic advantages which Burma expects to gain out of separation. On neither of these two accounts can we see any definite advantage to Burma. On the other hand we do see very definite disadvantages which may accrue to Burma from separation, both with regard to her political and with regard to her economic well-being in the future; and I may say this, that even if a trade convention is formed, even if it is for 10 years, what is to happen after 10 years? During these 10 years, mentality in Burma and in India will be created, and we do not know what that would mean to Burma in the future. Burma's trade is, to my mind, very much dependent upon India, and anything that is going to jeopardise that is going to jeopardise the very lives of the people of Burma, and, therefore, to my mind, it is a most risky adventure for Burma at this moment to separate from India. I would suggest further, my Lord Chairman, that there would be some point if the whole of the people of Burma were of one mind in their demand for separation, but we see that the Legislative Council has not been able to give any decisive vote on this question. Even though you may not accept the electorates' decision on the question, yet I would point out that on page 6 of the introduction to the Burma White Paper it was stated: "In his statement on 12th January, 1932, the Prime Minister said, on behalf of His Majesty's Government, that if and when they were satisfied that the desire of the people of Burma was that the Government of their country should be separated from that of India, they would take steps, subject to the approval of Parliament, to give effect to this desire". I do ask this Committee whether it is satisfied that the desire of the people of Burma is to separate, whether they have given in unambiguous terms their decision, and if that be not so, what is the case for separation then? If the Council has not been prepared to give a decisive vote, it may be that both the parties may feel that their voting power was equal, or I go so far as to say that if a decision had been by a narrow majority, even then, for a vital change of this nature, there was not the justification for the Government to take a decisive step such as separation. Therefore, I ask that the position for a *status quo* has arisen and that be maintained. I do not desire to take up any further time of the Committee and I will end my statement.

Mr. *Campagnac.*

My Lord Chairman, I have very little to say on the subject. I represent here a very small but, I venture to say, a not unimportant community of Burma—that is, the Anglo-Burman community. I would ask Members of the Committee kindly to refer to the speech made by me at the Plenary Conference of the Burma Round Table Conference for the history and origin of this community. For the present, I shall only say that in the Anglo-Burman community are included Anglo-Indians and domiciled Europeans born or domiciled in Burma. As a minority community we cannot guide but must follow the destinies of the country, and for that reason when the Indian Statutory Commission came to Burma and we had to consider what our attitude would be towards this separation question, we asked ourselves first: "What is the general wish of the people of Burma?" We thought it would be wrong, it would be presumptuous on our part, to flout the will of the people. It has been admitted before your Lordship on all hands that up to that time, up to the time the Indian Statutory Commission visited Burma, there was a unanimous desire on the part of the people of Burma that Burma should be separated from India. Your Lordships have been told that delegations waited upon the late Mr. Montagu in India; that delegations were sent to England to confer with the Secretary of State and to impress upon him that Burma should be separated. There was only one opinion, and that was for separation.

Under those circumstances we considered it to be our duty to advocate

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before the Indian Statutory Commission that Burma should be separated from India.

In doing that, my Lord, we were going really very much against our own sentiment because many of us have Indian blood in our veins, many of us still have relations in India, all of us are connected by tradition with India. The question which arises now is has anything happened since then; has anything happened since the Indian Statutory Commission visited Burma to make us believe that the people of Burma have changed their minds? My Lord, it has been argued before you that this question of separation and federation was placed before the electorate of Burma, and that the electorate has decided by a very large majority in favour of federation. My Lord, if my community, or if I believed that to be the case, I would not to-day be urging before your Lordships that Burma should be separated from India. But, my Lord, I submit that the issue which was placed before the electorate was really not one of separation or federation. What the anti-separationists voted for was the Jubilee Hall Resolution and that Jubilee Hall Resolution emphatically opposed the perpetual federation with India, in other words, the electorate were induced to believe that they would be allowed to secede at any time, and at their will. We have been told, my Lord, that that resolution was unhappily worded, but there can be no question that that is the resolution which was put before the people of the country, and that was the resolution upon which they voted. In support of that statement, my Lords, if your Lordships will refer to the resolution which was moved or supported by the anti-separationists directly after the elections in the Legislative Council you have the same words appearing, you have the same demand that Burma should be allowed to separate at her own will.

My Lord, if the anti-separationists did, in fact, have a mandate from the country that Burma should enter the federation unconditionally without any right to secede, is it not passing strange, having regard to the fact that they had such a large majority in the House that they were able to put one of their own candidates into the Presidential Chair, that they did not table a clear cut resolution to that effect. But at that Session directly after the candidates had returned from the country no such resolution was put before the Legislative Council in Burma, and no answer, so far as I am aware (no satisfactory answer) has been given by the anti-separationists for not tabling such a resolution if that was the mandate which was, in fact, given to them at the elections.

My Lord, I do think that there should be no further delay in this matter. I venture to think that if, after the Burma Round Table Conference, without referring the question to the people of Burma at all, His Majesty's Government had declared that it was their settled policy to separate Burma from India, that statement would have been received with acclamation in Burma. It was only because the people of Burma were induced to believe that the British Government for purposes of their own wanted Burma to separate from India that the majority of the electors were induced to vote for anti-separationist candidates. I do also agree with Mr. Harper and my Indian friends that the parting should be friendly. I agree that there should be a trade convention, but I do not think that while that trade convention is being arrived at there should be any further delay on the part of His Majesty's Government in making a pronouncement. I think that everyone in Burma and in India too wants to know one way or the other whether Burma is going to be separated or not. Once His Majesty's Government has declared in favour of separation then we can go on and have our trade convention and any other conventions which may be necessary, and I hope that the parting will be as friendly as possible. That is all I have to say, my Lord, upon this point.

Sra Shwe Ba.

My Lord Chairman. I am speaking on behalf of the Karen community of Burma. My community is the second largest indigenous community numbering about one and a half million. In the Memorandum submitted by the Karen community to the Indian Statutory Commission under the head "Suggestions for the future," which is printed at pages 418 and 419 of Volume XVII of the proceedings, we gave reasons for the recommendations that Burma should be separated from India. To save the time of the Committee I will not now repeat the arguments in that Memorandum, to which I respectfully invite the attention

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of the Committee and request that this Memorandum be embodied in the proceedings. That Memorandum is as follows:

EXTRACT FROM MEMORANDUM SUBMITTED BY THE KAREN ELDERS OF BURMA.

SUGGESTIONS FOR THE FUTURE.

1. *Entire Separation of Burma from India.*—Note (*c*) of the Appendix to the communique issued by the Secretaries of the Indian Statutory Commission invites suggestions for the future. And we now propose to deal with this aspect of the situation.

Burma should be separated from India for reasons geographical, political and economic. Burma, as a province, forms no part of India. There are indisputable differences in customs, race, religion, language and interests. There can be no question that Burma will grow and develop on gradual and sound lines once she is separated from India.

"Burma is not India. Its people belong to another race in another stage of political development, and its problems are altogether different. For instance, the application to Burma of the general principles of throwing open the public service more widely to Indians would only mean the replacement of one alien bureaucracy by another."

In order to facilitate Separation and to make the transaction fair and equitable to both parties we would humbly request the Indian Statutory Commission to recommend to Parliament that Burma be furnished with accounts showing the amount expended by India on Burma and the amount India has been repaid by Burma during all these past years.

There was a time when the highest Court in Burma was subordinated to the High Court of Judicature at Fort William. In course of time it was felt that we could very well stand on our own legs in this direction and we are so standing now.

Likewise in the matter of Education, our High Schools and Colleges were for a long time affiliated to the University of Calcutta. When, in this matter also, Burma desired to have and work out her own plans for her rising sons and daughters numerous objections (which we need not repeat here) were set up against our becoming a detached entity educationally. The wisdom of our entire separation from the Calcutta University is more than amply justified by numerous incontrovertible facts. Thanks to the parental interest, broad vision and consuming zeal of His Excellency Sir Harcourt Butler, G.C.S.I., G.C.I.E., I.C.S., the first Governor of Burma, our University of Rangoon has won our deepest gratitude and claims the unbounded admiration of her sister universities In this connection, we quote with pardonable pride an extract from "The Anglo-Indian Review" dated Calcutta, March, 1928, which wrote spontaneously as follows:—

> "A great disadvantage under which the Anglo-Indian and Domiciled European Community suffers in India is the absence of a Residential University where the students have the advantage of living a corporate life as in the Western Universities. In fact, it is this disadvantage which deters many of our brilliant young men from going to a University. We have, therefore, much pleasure in bringing to the notice of parents and young men the splendid advantages offered by the University College at Rangoon. The new University buildings are rapidly nearing completion and will be ready for occupation from June this year. The University stands on an estate of 485 acres and is actually a miniature town. It will be one of the finest Universities in the East having every accessory of a modern University and being equipped with its own lighting arrangements, water and sewage equipment, roads, parks, playing fields, rowing and swimming clubs, gymnasium, theatre and a club house."

In the days when we asked for a University of our own, when we demanded the right of shaping and forming our educational policy in accordance with the aspirations and needs of our people and our Province, there were not a few who strongly objected to the severance of our long-established connection with the University of Calcutta, giving all sorts and kinds of imaginary drawbacks and hypothetical disadvantages attendant on the demanded severance. Facts speak louder than words and we are content to leave the facts as they are seen to-day

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Now, as we ask the Simon Commission to recommend to the British Parliament, *inter alia*, the separation of Burma from India we foresee that quite a number of people will raise their voices against our conception of the future welfare of Burma. We anticipate that the loudest cry will come from India herself. This would be quite natural as no one desires to kill the goose that lays the golden eggs. Continuing the metaphor, we may add that Burma has laid golden eggs for the benefit of India, but India has neglected Burma, has not considered our interests in the spirit of fair play and all this despite the fact that she has been exacting from us a very large portion of our revenues.

Over and above the considerations we have already advanced, there is another and more weighty reason and we beg to stress very particularly this particular aspect of our case. In our considered opinion the separation of Burma from India and that alone will make it possible for the different indigenous races of Burma — the Burmese, Karens, Kachins, Chins and Shans—to be usefully welded into one solid nation. Unless opportunities are open to the indigenous races of Burma to regard Burma nationally—and Burma as a separate entity under the British Crown is the only way—Burma can never progress nationally. As long as Burma is kept dangling on India's dhoti so long will there be no cohesion among the indigenous races of Burma.

We are firm in the belief that just as Burma has wonderfully progressed in the two definite directions we have indicated above—first, in the matter of our Law Courts and then in the line off our educational institutions—since we stood out independent of India, equally wonderfully or still more so shall our fair country progress when as a separate entity, under the fostering care of the British Government, her indigenous races welded into one nation will think not merely in terms of isolated racial pride but in the larger national consciousness of "Burman" citizens and will accordingly work heart and soul towards a common nationhood and a natural ideal.

At the Burma Round Table Conference the Karen Delegates again made known to the Conference that their mandate was for separation. Nothing has happened since then to make us change our views. On those grounds I wish to urge before the Joint Select Committee that the separation of Burma should be brought about as soon as possible. That is all I wish to say, my Lord.

U Shwe Tha.

My Lord, I wish to make a brief statement in view of the fact that this question has been fully discussed in the Burma Legislative Council. The anti-separationist party came into existence after the General Councils of Burmese Associations Convention held at the Jubilee Hall, Rangoon, in July, 1932. In accordance with Resolution 6 of this convention a new anti-separationist party was formed under the leadership of Dr. U Ba Maw and U Chit Hlaing. The resolution passed at that meeting was to the effect "That this Convention rejects the proposed constitution for a separated Burma, announced by the Prime Minister on the 12th January, 1932, as it falls far short of the aspirations of the people. Secondly, That this Convention opposes the separation of Burma from India on the basis of the proposed constitution for a separated Burma. Thirdly, That the Convention emphatically protests against the permanent and unconditional inclusion of Burma in the Indian Federation." The policies of the two anti-separationist parties were based upon the resolution passed by the Jubilee Hall Convention. At the general election in November, 1932, the two anti-separationist parties placed before the electorate the resolutions passed at the Jubilee Hall Convention. About 42 members of the two parties were returned as Members of the Legislative Council. During the discussion in the Burma Legislative Council on the question of separation from India or federation with India, the two leaders Dr. Ba Maw and U Chit Hlaing explained the definition of "anti-separationist". I think it would be important for me to refer to the statement first of U Chit Hlaing in the proceedings of the Burma Legislative Council, December, 1932, page 339. U Chit Hlaing said in his speech: "I do not like permanent federation" (that is one portion) "and now our demand for federation with India is one of conditional federation." Then Dr. Ba Maw stated in a speech which is reported on page 261, "There are actually influences outside the House as well as inside working to commit a fraud on the country by misusing the term Anti-Separation and

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giving it an extremely literal meaning in order to make Anti-Separation mean unconditional and perpetual Federation with India." In these circumstances, Sir, I consider it is extremely important for the purpose of a proper and fair discussion that the House should know the real meaning of this term. Sir, that meaning is in those Jubilee Hall resolutions. That is the definite voice of the Anti-Separationists of Burma, and any meaning that goes beyond the Jubilee Hall resolutions is a betrayal. Anti-Separation, as U Kyaw Din has already explained to the House, is a term that is used in no absolute sense but strictly within the reference made by the Prime Minister in his announcement. The first motion gives the full and complete Anti-Separationist verdict. First of all, we are Anti-Separationists in the sense that we oppose the Prime Minister's idea of Separation. In other words, we oppose the Separation of Burma from India on the basis of the Prime Minister's constitution. Secondly, we, with the same emphasis, oppose the idea of an unconditional and perpetual Federation with India. And thirdly, and that is the affirmative, the constructive aspect of the Anti-Separationists' policy, we say that we will continue our opposition of Separation until we obtain an acceptable constitution. Any use of the term Anti-Separation that departs from this particular meaning, the meaning given and fixed by the Jubilee Hall resolutions, is, I say, an act of dishonesty." Therefore the two leaders of the Anti-Separationist party have given us their definition of what "Anti-separation" means. Then U Kyaw Din has also stated the definition of "Anti-separationist." It appears from what I have read that Anti-separation does not mean permanent federation. The Anti-separationists say that they want conditional federation, that is to say, with a right of secession. On this point I may refer to the statement made by the Secretary of State for India, page 5 of the Sketch of Constitutional Developments in Burma. In the House of Commons the Secretary of State for India made the following statement. I need not read it all. "If an Indian Federation is established, it cannot be on the basis that its members can leave it as and when they choose." That is very important.

This was again discussed recently by the members of the Indian Joint Select Committee. The Indian members were of this opinion, namely, that should Burma join the Indian Federation they could not leave it as and when they choose.

Now the question of permanent federation. If the Anti-separationists were to say that they would federate with India permanently, this is not the mandate of the electorate. Let us refer to U Chit Hlaing's speech which is reported in the December meeting at page 338: "We are only authorised to do what they told us. They gave us their mandate. We can only act according to their mandate, and what is their mandate? The mandate was the resolution passed at the Jubilee Hall Convention." That is to say, that they were only for conditional separation and not for permanent federation.

Now, to sum up the position of the Anti-separationists, there can be no conditional federation, as I have just quoted the statement made by the Secretary of State for India. Permanent federation is not the mandate of the electorate. The result of the Anti-separationists should be separation with a better constitution which the separationists are asking for, so therefore they are in line with the policy of the separationists.

Then the question of separation of Burma from India was brought up before the Indian National Congress as far back as 1885, that is to say, there they said that if the British Government were going to annex Upper Burma the entire country should be separated from India, and since then this question of the separation of Burma has been brought up before the public. There is another question which I should like to state. Dr. Ba Maw yesterday stated that separationist candidates received the support of the Government. I stood as a separation candidate for Akyab East. I did not receive any support from the Government, but I did receive support from Indian voters of my electorate as the domiciled Indians in Arakan are in favour of separation. So from what I have said the people of Burma are in favour of separation.

Sir *Samuel Hoare.*

I do not propose, my Lord Chairman, to make a long speech. I have already dealt, in some detail, with the merits of certain of these proposals, in the speech that I made to the Indian Delegation on October 10th, a copy of which is I believe in the hands of the Members of

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the Committee and of the Delegates from Burma. Nor, my Lord Chairman, have I either the desire or the right to say anything on behalf of my colleagues of the Committee. I am speaking, in the first place, for myself and I am speaking, in the second place, for the Government. I am not in any way prejudicing any decision at which my colleagues of the Committee may ultimately arrive. I intend to devote my speech to one object and to one object alone, namely, to remove certain misunderstandings that seem to have arisen in the minds of some of our friends from Burma as to the attitude of the Government. My Lord Chairman, let me say at once that I am not at all surprised that misunderstandings should arise upon complicated issues of this kind, particularly when we realize that we and the gentlemen from Burma are divided by a distance of eight thousand miles. It may well be that speeches that I make in Westminster sometimes have reactions in Burma that their author would not desire. It may also be that we, here in London, eight thousand miles away from Burma, find it difficult always to follow the intricacies of their elections; sometimes we find it difficult to understand completely the inner meanings of some of their resolutions. All the more grateful, therefore, are we to have this opportunity of meeting these Burmese gentlemen here in the same room, of explaining our position to them and of hearing their explanations upon points that we do not at present fully understand. It is therefore a matter of great satisfaction to me and to Members of the Government that we should have heard, in such detail, both to-day and yesterday, the full explanations that have been given both by the representatives of the Anti-Separation Party, U Chit Hlaing and Dr. Ba Maw, and the representatives from the Separation Party, for instance, U Ba Pe and U Thein Maung and their other colleagues. I think we now know a good deal more of the various points about which hitherto we may not have had the fullest possible information. That is all to the good. We are gradually removing certain misunderstandings. Now, there is one misunderstanding in particular that I wish to remove this morning, from the point of view of the Government. I wish to make it quite clear to every Delegate from Burma and to everyone in Burma who is following this question that the Government has no ulterior motive in its mind whatever. If it comes to a decision for or against Separation, we have no possible axe to grind in the matter. There is no ulterior motive in our minds. Our only desire is to attempt to do the best for Burma itself. Let, therefore, every Member of the Committee and every Delegate from Burma, at the beginning of our Discussions, dismiss from his mind any idea that there may have been in his mind before, that there is some hidden hand behind the expressions of opinion that we may have used in favour of Separation, or that we have some ulterior motive in our minds in making the proposals that we have made in the White Paper that has been circulated to the Committee and to the Delegates. My Lord Chairman, let me tell the Committee the influences that have hitherto worked upon the minds of the Members of the Government. We have been impressed, first of all, by the historical differences between Burma and India. I accept fully what was so ably said yesterday by U Kyaw Din at the beginning of our Discussions, that the Burmese are very proud of their country, they are very conscious of the length and the interest of their history, they do regard themselves as a separate and a very important entity in the world at large. My Lord Chairman, we have been greatly impressed by that historical fact. I myself, when I have had a little time to spare—and it has not been very much—from the deliberations of these various Committees, have recently been reading a good deal of the history of Burma. The more I read of it, the more impressed I am by the fact of the great difference between the history of Burma and the history of India. Next, my Lord Chairman, we have been impressed by the geographical situation of Burma, in face of the geographical situation of India. In particular, as politicians—and I take only this one illustration to show you what is in my mind—we have been impressed by the fact that Representatives from Burma, if they are to attend the Indian Legislature, have to undertake a journey of about two thousand miles that takes, I think 48 hours by sea and about 36 hours by land, and that, whatever may be the arrangements that are made under the Indian Federation, those Representatives from Burma can be only very limited in number. At present I understand that four Representatives go from Burma to the Indian Legislature. Those four Representatives have to travel

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this very long journey, and when they arrive at Delhi they find themselves as four in face of an Assembly of 150. Now, my Lord Chairman, that is a practical fact that has weighed very much with me and my colleagues in the Government.

Next, we have been struck by what appear to us to be the social and religious differences between Burma and India. I need not dilate upon them this morning; I think they are obvious to all of us—social differences of every kind, religious differences of every kind. In Burma, for instance, there is the absence of Caste and, I am glad to think, also, the absence of that very bitter religious communal feeling that we should so much like to see disappear from the Indian picture.

Lastly, we have been impressed by what seemed to us to be substantial economic and financial differences between the two territories. Some of these differences were very ably explained by Mr. Harper in the statement that he made to the Committee last night. To give an illustration or two, the fact that the industrial development of India is much more highly advanced than is the industrial development of Burma; the fact again, to give a second illustration, that hitherto, judged by whatever tests we desire to apply, Burma has come off badly from the financial point of view as a result of its association with India.

Now, my Lord Chairman, those are the facts that have strongly impressed themselves upon our minds. Those are the facts that have led us to make the statements that I have made during the last two years, and that have led us to make the proposals that we have made in the White Paper. Behind those facts, let me say again that there is no ulterior motive whatever in the mind of the Government. Our only desire is, first of all, to face the facts and, secondly, to do the best that we can in the interests of Burma itself. Now it might be supposed that whilst being impressed by these facts in favour of separation, we had ignored the arguments against separation. That is not so. I am very conscious of the strength of some of those arguments. They seem to me to fall into three categories. First of all, there is a feeling—I do not know whether it is in the minds of any of the delegates from Burma, but I am sure from what I hear from Burma itself, it is in the minds of a good many people in Burma—they are afraid lest, under separation, they will suffer and they will be fobbed off with a constitution substantially inferior to any constitution that may be given to India. Indeed, my Lord Chairman, they are so nervous upon this point that I have seen many statements made implying that the result of separation will be Crown Colony Government for Burma. My answer to these doubts and suspicions is a very simple one. I merely point to the proposals in the Government White Paper. Any impartial investigator who looks at those proposals will see that there is no connection in the world between them and anything in the nature of Crown Colony Government. Next, my Lord Chairman, there is a widespread feeling, and it has been very ably expressed to-day and yesterday, this morning, for instance, by the two Indian delegates, the two delegates representing the Indian interests in Burma, and last night by Mr. Harper in one part of his interesting speech. There is evidently a widespread suspicion lest, under separation, the trade of Burma, and, as a result, the economic development of Burma, will be seriously compromised. My Lord Chairman, in my view, there is no more important question than the question of the future of Burma trade and the question of the future economic development of Burma. If I felt that separation need necessarily compromise or injure the trade of Burma and the economic development of Burma, I would say that that was an almost unanswerable reason against separation. I believe, however, that when the Committee and the delegates come in greater detail to consider this part of the problem, they will find that under a system of separation it would be possible to safeguard these economic interests and to avoid the dangers that have been suggested to us this morning and last night. For instance, I think myself that we should investigate very sympathetically the possibility of a trade agreement between Burma and India. I realise as fully as anyone in this room the vital importance of Burman trade to India, and Indian trade to Burma. I was greatly impressed by what Mr. Harper said last night as to the possibility of having a *status quo* for a period of time under which no alteration should be made in the relations; an interim period, that is to say, during which a trade treaty for the future could be adequately negotiated. I also agree with what Mr. Tyabji said

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this morning as to the importance of the labour problem upon the economic development of Burma, and I think there again in due course we shall come to consider that question in greater detail and we must take full account of the anxieties that are evidently in his mind and that I know are in the minds of many other representatives of Indian trade. From the point of view both of Burma and of India, I am sure that the less disturbance that there can be to their economic relations the better it will be for both countries. Lastly, there is a third argument that has been used against separation that we have by no means ignored. I have seen it suggested that Burma has on the whole gained political strength by its association with India, and I would not at all dissent from that view; that having gained political strength in the last 15 years, from the point of view of Burma, it would be wiser not to break the situation, but as the result of maintaining this political association with India, Burma in the future will be able to obtain better constitutional terms than she could obtain now. My Lord Chairman, that line of argument seems to me to presuppose two conditions. It seems to me, first of all, to presuppose the right of Burma to secede from the Indian Federation. It seems to me also to assume the right of Burma to obtain preferential treatment as compared with the treatment of the provinces of British India. Now upon both these points I can state my own view, and I can state the view of the Government; upon neither of them do I wish to prejudge the views of my colleagues upon the Committee, but stating my own views and the views of the Government, I can say very definitely that both those conditions strike at the very root of the permanent Federation that we have been considering for India. It is not that we wish to put a pistol at the throats of our friends from Burma and thrust them upon the horns of an impossible dilemma. It is simply this, that those two conditions strike at the very root of any permanent Federation, and, in the interests of permanent Federation, that is what, after all, the Government have been considering incessantly for the last three years, the British Government can never accept them. My Lord Chairman, it is interesting to note that I do not think a single one of the Indian delegates who were here until a few weeks ago would accept them either. There was a little talk based upon misunderstanding at one time of the rights of the princes to secede from the Indian Federation. When we went further into the details of the question, we found that the princes made no such demand, and it was quite clear that if they had made such a demand, not a single representative from British India would have accepted it. I was therefore very glad to note a passage in Dr. Ba Maw's interesting speech when he said that the anti-separationists in this respect demanded no more than the Indian princes. I can tell him that the Indian princes made no such demand and that if they had made such a demand, no Indian delegates would have accepted it. Let me again make it clear that these conditions, namely, that we could not admit either the right of secession or preferential treatment for Federation, are not directed in any way against Burma. They are conditions that are absolutely inherent in any system of government that is likely to remain permanent in India. Now, my Lord Chairman, I hope I have said enough to show that first of all we Members of the Government have tried to face the facts and to face the facts impartially, and that we have tried also to take into account the arguments that are used against separation. Until a short time ago it seemed as if opinion in Burma was unanimous in favour of separation; the Simon Commission, the representatives of Burma who sat with the Commission, and the Despatch of the Government of India (incidentally, from the point of view of finance, it might have been very tempting for the Government of India to oppose rather than to support separation). Until, therefore, quite a short time ago the opinion in Burma seemed to be unanimous. Since then there have been these differences of opinion showing themselves. They have shown themselves, but, even so, it does appear to me, and my view is strengthened by the discussions that have been taking place to-day and yesterday, that scarcely anyone in Burma seems in favour of permanent Federation. The chief argument that has been used to-day and yesterday has been the pledge that the Government is assumed to have given here and the result of the general election that took place last November. Let me remind the Committee exactly

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what did really take place. The Government never said that the general election need necessarily be the final word in the controversy. The Prime Minister was very careful to state both at the beginning of his speech and later on in his speech that the opinion of Burma would be asked and that when we had received the opinion of Burma, then the Government would have to arrive at its own decision; but never on any occasion has the Prime Minister or any Member of the Government abdicated the right of the Government or the right of this Committee or the right of Parliament to come to any decision that they thought fit, whatever may have been the result of the general election. I would remind the Committee of the words that were actually used by the Prime Minister on page 178 of the proceedings of the Round Table Conference. I will read one or two of the material paragraphs: "His Majesty's Government are prepared, if and when they are satisfied that the desire of the people of Burma is that the Government of their country should be separated from that of India, to take steps subject to the approval of Parliament," and so on. Then again there is another passage on page 182, the passage at the bottom of the page: "With this material before them, the people of Burma will be in a position to decide whether or not they are in favour of separation from India. His Majesty's Government consider that the decision might best be taken after a general election at which the broad issue had been placed before the Electorate." That passage quite clearly safeguards the right and indeed the duty of the Government and of Parliament to consider the whole problem after the election had taken place. Our difficulty, and it was a very practical difficulty, was that, rightly or wrongly, it did not seem to us that we did get either from the general election or from the subsequent proceedings of the Legislative Council, the explicit answer that we required to our very definite questions. Not having received this explicit answer, we could not obviously let the question drift on for ever. We felt that it was unfair to Burma and that it was also unfair to India (after all the Burma problem is tied up with the India problem) to leave things indefinitely vague and obscure. In face of that situation, we felt it our duty to put forward our views based as I say upon the facts as we saw them and with no ulterior motive in our minds; to put those views before this Committee and to ask you gentlemen from Burma to come to give us the benefit of your advice and assistance.

Now, my Lord Chairman, I have completed the task that I set myself, namely, to attempt to remove any misunderstanding that may still exist, that we Members of the Government are partisans in this controversy; that we are ignoring the interests of Burma, and that we are trying to impose upon Burma a constitution which Burma does not desire, for some ulterior motive in our own minds. My Lord Chairman, speaking for myself I am very grateful to the Delegates from Burma for the part that they have taken in this discussion. I shall take note of the arguments that they have so ably put forward, and I believe that when we come to consider the details of the White Paper, chapter by chapter, we shall find that many of the dangers that loom so large in the minds of certain members of the Delegation in the event of separation need not necessarily be inherent in separation but can be amply safeguarded in a separated constitution for Burma.

Chairman: My Lords and Gentlemen, I should propose to proceed now, subject to the approval of the Committee, by a suggestion that Members of the Committee in turn should put questions to the Delegates upon the statements which we have heard. I should propose that the questions and the answers and any discussion which may follow should be published verbatim. Is that agreed?

(*The same is agreed to.*)

Archbishop of *Canterbury*: I should only like to ask by way of starting these questions a question which is very general, but which might assist the members of the Committee if it could be answered. The impression left on my mind after listening very carefully to the speeches which have been made by the Delegates from Burma, is that the differences between them do not seem to me to be very fundamental, rather due to those misunderstandings which I hope the Secretary of State may have succeeded partially at least in removing. It is rather difficult, my Lord Chairman, to know to which of the

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Burmese Delegates to address any particular question, but perhaps I might address this one to Dr. Ba Maw, as he spoke very fully on the anti-separationist issue. I gather that it is common ground that there is no desire for permanence of Federation, but there is a common desire for securing a really full constitution for Burma. The question I should like to put is: Supposing that it is quite clear that no right to secede could possibly be conceded to the province of Burma under the new constitution if it is achieved, supposing on the other side it is made quite clear that there is every desire that the constitution of a separated Burma should be on the lines of the Indian constitution, supposing these two points are made quite clear, would not that enable those who hitherto have been anti-separationists to join with the whole Committee in getting down to a discussion of the actual constitution sketched in the White Paper?

Dr. *Ba Maw*: No, your Grace. On that point, may I refer to the proceedings of the Burma Legislative Council of last April? This matter was brought home to us by a statement made by the Secretary of State for India after the passing of the December resolution. Immediately we realised the realities of the situation, we got together—that is, the anti-separationists got together—and after consulting the various constituencies that support U Chit Hlaing and myself, we drafted a joint resolution to this effect, that if our choice is limited to separation on the basis of the Prime Minister's proposed constitution and an entry into the Indian Federation on the same terms as the other Indian provinces, we unhesitatingly choose the federal alternative as being in keeping with the very clear mandate we obtained from the country. May I add, to elucidate further my meaning, that before and after we had submitted this resolution, I personally toured all the constituencies supporting me and all those constituencies—the various anti-separationist leagues existing in those several constituencies passed resolutions without a single exception completely supporting my attitude.

Archbishop of *Canterbury*: My suggestion is (I think it was partly supported by what U Kyaw Din said) that since then there have been many changes in the situation; there have been many explanations made, many issues have been made more clear partly this morning by what the Secretary of State has said; therefore, is not the situation somewhat different?

Dr. *Ba Maw*: On this point, with apologies to U Kyaw Din, may I submit this fact, that although certain members who obtained election on the anti-separationist ticket have changed, the electors have not changed.

Archbishop of *Canterbury*: There was one question I wanted to ask Mr. Harper about his very interesting speech, if I may say so. When you spoke of the trade convention that you desire, Mr. Harper, I was not quite clear whether what you had in mind was that some trade convention should be agreed upon immediately by the existing Governments, and which should be made binding for a certain number of years, or do you mean that the Constituent Act should provide that until some convention had been agreed upon by the new Governments, the existing trade relations should remain?

Mr. *Harper*: Your Grace, it is the latter that we mean. Our object is to get a trade agreement, naturally on the lines on which we think it should be, in a form which will be the most lasting, the most likely to be renewed from time to time as it expires. We feel that the most likely way to ensure a lasting agreement is to get an agreement negotiated between the two new Governments so that it would be their own work and not imposed upon them. If we were to leave it now to the present Governments, it would be difficult, we think, for them to agree to tie their successors in the way, for instance, of withholding the power for any period to impose revenue tariffs, tariffs for revenue measures. We think that those tariffs would in effect be objectionable but that the present Governments would have great difficulty in imposing any condition of that kind on the new Governments; so we would rather it were left to the new Governments to make their agreement and the non-officials would be prepared to help them with what we considered to be the best advice that we can give them, and that in the meantime until they can make that agreement it should be provided in the Act that the existing fiscal relations should continue.

Marquess of *Reading*: I want just to follow up what Mr. Harper has said. Before I do that I would like to ask, my

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Lord Chairman, one question. What we are discussing now, or rather what the Archbishop just put to Mr. Harper, based upon Mr. Harper's speech, is rather more, as I understand it, a measure that he suggests would be required for protection against anything in the nature of commercial discrimination, and also to continue the trade relations existing between Burma and India, and is not part of an argument addressed by him for or against separation. Am I right?

Mr. *Harper*: We regard this point, my Lord, as so important that, although it is a consequence of separation, it becomes, in our opinion, necessary to consider it as an issue. If our point could not be met then we would think that separation would have great dangers.

Marquess of *Reading*: That answers the question I wanted to put. Then I must pursue it a little further with you, in order to understand. You speak of a convention, but it is not quite clear to me what is meant by it. I presume what you have in mind is an agreement in the nature of a treaty (a convention if you choose to use the term), that is, terms arrived at after discussion between Burma and India in relation to all trade matters, or a majority of trade matters. That is what you had in mind.

Mr. *Harper*: Yes, my Lord, that is what I mean.

Marquess of *Reading*: What is not clear to me is, do you also require protection, or some provision in the constitution itself, or are you intending to rely entirely upon agreement. You have had to consider this, I know. The matter has been very carefully considered, but, of course, it differs very much in some aspects. If you have an agreement it is an agreement for a period of years, presumably, and, of course, it is subject to variation by assent between Burma and India—assume for the moment the two Governments. If, on the other hand, you have a provision in the Constitution, then, subject to any special provision in the Constitution, that would only be alterable by the British Parliament. Do I make clear to you what I have in mind?

Mr. *Harper*: Yes, my Lord.

Marquess of *Reading*: You see those are two quite different things, although they are both aiming at a similar kind of protection. Do you follow?

Mr. *Harper*: Yes, my Lord.

Marquess of *Reading*: What I am asking of you is, are you asking for both as a condition upon which you think there should be separation, or are you asking only for a convention which may be reached by agreement. That is what is not clear to me.

Mr. *Harper*: If it were possible (we do not know to what extent it would be possible) to ensure those relations by a specific provision in the Act we think, as we have said, that that would be in the best real interests of the two countries, but we have not asked for that because, if I have understood your question aright, we do not know how far the Committee would be prepared to go, or Parliament would be prepared to go in restricting the fiscal autonomy of the two new countries.

Marquess of *Reading*: I think I follow. You would prefer, if it is practicable, and the Committee thinks it should be done, that these provisions should be in the Constitution?

Mr. *Harper*: Yes.

Marquess of *Reading*: Because, of course, it gives you greater security?

Mr. *Harper*: Certainly, my Lord.

Marquess of *Reading*: But you do not make that a condition as I understand. If that is not possible, then you must depend upon an agreement?

Mr. *Harper*: Yes, that is the position.

Marquess of *Reading*: My Lord Chairman, I did not want to go into these questions because I thought they might come up later under trade relations. They are of extreme importance, I think, and the only reason I am pressing now on the matter of principle is just to understand what Mr. Harper's position is in view of what he has told us this morning, but I do not want to go into details with regard to it. The only thing I want to put to you further on the question of convention, Mr. Harper, is have you in mind an agreement or convention to be made by the Legislatures when they are formed, or have you in mind an agreement to be made before the new Legislatures are constituted?

Mr. *Harper*: After they have been constituted, with a provision in the Act that until that agreement is concluded the existing relations should continue.

Marquess of *Reading*: That is to say, free trade relations?

Mr. *Harper*: Free trade relations, yes.

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Marquess of *Reading*: But then afterwards you depend on what the Governments may do, with, of course, the Legislatures, under the Constitution.

Mr. *Harper*: If it is not possible to ensure it in any other way. The surer the way, of course, the better we should be pleased.

Marquess of *Reading*: I will pursue that now. Later, when we come to discuss trade relations, there are some further matters I want to point out to you and those who are interested—the Indian Delegates especially have an interest in this matter and I will resume it later on, or somebody else may. All I wanted for the moment was to understand your position in relation to separation, and that really, as I understand it, in view of what you have said, put quite briefly is that you would not wish to oppose separation, if you could get proper protection for the trade relations.

Mr. *Harper*: That is right.

Marquess of *Reading*: The political part of it you leave aside altogether. That is right, is it not?

Mr. *Harper*: Yes.

Marquess of *Reading*: There are one or two questions I wanted to ask Dr. Ba Maw and U Chit Hlaing in relation to what the Archbishop was putting. The position now, at least as I have understood from what has been said, is that you no longer rely upon the terms of the resolution of December, 1932 I mean you no longer rely on it in this sense: you are not abandoning it?

Dr. *Ba Maw*: No.

Marquess of *Reading*: But I understand your argument to be, and I am only putting it for this purpose, that apart altogether from it, even if you do not accept that resolution and the conditions you seek to impose there, you are still in favour of federation and against separation. That 1 what I understood you to say.

Dr. *Ba Maw*: Yes, that is so.

Marquess of *Reading*: Therefore, if that is right, the question of the right of secession only arises if it was proposed to give you any such right in the terms that were to be imposed on your entering into the federation. That is right, is it not?

Dr. *Ba Maw*: That is so.

Marquess of *Reading*: I only want to be perfectly clear about it, but I think it follows that even suppose this Committee, after discussing the matter, hearing what the Government have said, and hearing what you have said, came to the conclusion that there could be no right of secession granted, as I understand your point of view now that does not alter your case.

Dr. *Ba Maw*: Quite so.

Marquess of *Reading*: It does not alter it; you still maintain it?

Dr. *Ba Maw*: Quite so.

Marquess of *Reading*: I thought I understood it, but I was not quite clear. There is only one further point that I wanted to put with regard to that. It follows, I think, from the questions that have been put. Does that mean that, leaving aside special conditions, you are prepared to assent to federation on the same terms as are proposed for India subject to any special provisions that may be made for Burma?

Dr. *Ba Maw*: Quite so; we mean that.

Marquess of *Reading*: You leave yourselves in the hands of the Committee for that purpose; is that right?

Dr. *Ba Maw*: Quite so, but may I explain, my Lord, that we do ask for those special terms in the terms of the December resolution, but, if the Committee is not prepared to grant us those terms, that does not interfere with our desire to enter into the federation in preference to the other alternative, the alternative of separation based upon the Prime Minister's Constitution?

Marquess of *Reading*: I rather understood that you were saying that, but you have made it beyond all question now, and I need not pursue it. I do not want to ask any further questions.

Marquess of *Lothian*: Might I just pursue that a little further and ask Dr. Ba Maw or U Chit Hlaing to define it a little more clearly? Have you got the Indian White Paper in front of you?

Dr. *Ba Maw*: Yes.

Marquess of *Lothian*: Would you look at page 113, Appendix VI. That defines 64 matters which are going to be reserved to the Federal Government. On page 116, List II, it defines those powers which are exclusively provincial. Am I right in understanding you to say that in the event of this Committee recommending that there should be no special provisions for Burma either in regard to secession or anything else, you would be prepared to accept a provincial Government with the powers in List II only. Is that your view?

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Dr. *Ba Maw*: I did not quite follow.

Marquess of *Lothian*: The point as I understand it is this: You would prefer to have the ordinary powers which, under the Indian White Paper, are going to be given to an Indian Province, rather than the position which is proposed in the Burma White Paper, and you would therefore be content with the list of powers in Burma which are in List II on page 116 of the India White Paper. Is that correct?

Dr. *Ba Maw*: Yes, my Lord. If the Committee decides to give these subjects only to the other Indian Provinces, Burma, from our point of view, will be forced to accept them in the same way as the other Indian Provinces.

Marquess of *Lothian*: In the same way you would have no objection to the special powers of the Governor in Burma, and of the Governor-General as proposed in the Indian White Paper? You would accept those powers in a federation rather than the proposals of the Burma White Paper?

Dr. *Ba Maw*: We should be forced to accept that position if it was imposed upon us—if the Committee decides so.

Marquess of *Lothian*: Your view is, as between the two alternatives of the Burma White Paper and the position of an ordinary province in India, you would prefer the position, without any right of secession, of a province in the Indian Federation? That is your view?

Dr. *Ba Maw*: As between these two alternatives.

Marquess of *Lothian*: Might I ask U Ba Pe a question? You heard yesterday the speech of Mr. Harper, and there have been various documents circulated by the European community dealing with the trade relations between Burma and India. Supposing it did not prove to be possible to arrive at a fiscal convention between India and Burma, and supposing either on the side of India or on the side of Burma the demand was made for full fiscal rights, that is to say, that either side should have and might exercise the right of putting on any tariff against the other, would that affect your demand for separation?

U Ba Pe: No, Sir. I have expressed my view on this question at the First Indian Round Table Conference. If you refer to page 190 of the proceedings you will find that. "The third point is the trade relations between the two countries. As far as possible we want free trade between India and Burma. India wants our rice, our oil, our teak and other timber, and we want things from India. Burma requires manufactured goods from India, and it is in the interests of both countries not to raise tariff walls against each other. We must live peacefully together and devise ways and means for our mutual benefit. I do not see any difficulty in that direction." That was my view. I still hold to this view.

Marquess of *Lothian*: I think all history shows that when a nation obtains fiscal powers it invariably uses them, and the tariffs get higher and higher, and it is that possibility I want you to envisage. In view of that fact you would still be in favour of separation?

U Ba Pe: Yes.

Marquess of *Lothian*: Even if it did mean very high tariffs between India and Burma on both sides?

U Ba Pe: That is right.

Mr. *Isaac Foot*: May I put a question to Dr. Ba Maw and U Chit Hlaing. It is to ascertain as to how the opinions of the Burmese constituents were ascertained? I understand that there was a tour made by Dr. Ba Maw of his constituencies, or the constituencies that had expresesd an opinion on this matter. Was that tour before the election or after the election?

Dr. *Ba Maw*: Both before and after.

Mr. *Isaac Foot*: A reference was made just now by you to a meeting of your Association in which the question was put: Would they prefer federation or separation in the terms of the Prime Minister's statement. The Prime Minister's statement was the one that was made at the conclusion of the Burma Round Table Conference.

Dr. *Ba Maw*: Quite so.

Mr. *Isaac Foot*: And I suppose the terms that were then considered were those that had been explained in the book that was published. You had before you that book showing the recommendations of the Burma Round Table Conference?

Dr. *Ba Maw*: Quite so.

Mr. *Isaac Foot*: You had not been able to put before them, of course, the proposals that are contained in the new White Paper?

Dr. *Ba Maw*: I did, because my last tour took place about two months ago. After the April resolution, when there was some dispute in our country about the right of the Anti-Separationist Party

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to table those resolutions, I took the trouble of touring several parts of the country and I placed before them the paper containing the proposed Constitution by the Secretary of State for India, The last meeting that I held was a mass meeting at Mandalay, which is the capital of Upper Burma. I also asked all the various Anti-Separationist Leagues in all my constituencies to consider the new Constitution, and they unanimously decided that, of the two alternatives, they preferred the Federal alternative.

Mr. *Isaac Foot*: You have put before us your tour, both before the election and after.

Dr. *Ba Maw*: Quite so.

Mr. *Isaac Foot*: The meeting where they decided for federation decided for federation rather than for separation in the terms of the Prime Minister's statement. Have you had another meeting in which they have specifically decided for federation as against separation in the terms of the White Paper Proposals?

Dr. *Ba Maw*: They have had the White Paper explained to them. What was explained to them at a place called Sagaing and Mandalay was that the proposed Constitution was based on the Prime Minister's statement and that there were no material departures. We also took care to explain both these Constitutions to them and, after careful consideration, they decided as I have just explained.

Mr. *Isaac Foot*: I would like to ascertain further about these meetings. You have been to a meeting. Has the meeting been an extended meeting, or how long has it lasted?

Dr. *Ba Maw*: As regards the Mandalay meeting, it took three days according to our custom. The Wunthanus Associations have annual meetings where we discuss every subject that we consider to be important.

Mr. *Isaac Foot*: That would be the meeting of your Association, but I am trying to ascertain (I do not want to interrupt your answer) as to your appeal or your inquiry from the several constituencies. When you have visited a constituency, how long have you had for discussing the matter with the people of that division?

Dr. *Ba Maw*: I personally visited certain constituencies and in the case of other constituencies the fact is this: In my Party there are representatives of these several constituencies. After the last April and August Sessions we decided that each of these Party Members should convene meetings in their respective constituencies and obtain a decision from the constituency on this very strictly limited question of a choice between separation on the proposed Constitution and federation as contained in the Indian White Paper. I, as well as the other Members of my Party, undertook this task in all the constituencies supporting us.

Mr. *Isaac Foot*: I have some knowledge of appealing to a constituency in this country, and I am sorry to have to press the question, but I want to know what happens when you have been to a constituency in Burma and you have ascertained their opinion upon the Burma White Paper: what opportunity have those constituents of making up their minds upon the virtues or demerits of the White Paper? Do they take the description entirely from you?

Dr. *Ba Maw*: Immediately the Burma White Paper was sent to Burma, the Burma Government undertook the task of translating it into Burmese and each of the Legislative Council Members was supplied with a copy of the proposed Constitution, both in English and in Burmese. There were also several other copies available and we made full use of those available copies.

Mr. *Isaac Foot*: I understand that the representatives of the Legislative Council, of course, would have this paper themselves and would be able to give to it the very long time necessary for its understanding. You understand it. It is very complicated. It extends over a very wide area and demands a very exhaustive inquiry before any opinion can be expressed. I want to know if you can tell me what opportunity the average Burman constituent had of forming an opinion upon that detailed statement.

Dr. *Ba Maw*: The Burma White Paper is substantially a reproduction of the Prime Minister's proposed Constitution. At the time of the recent General Election everybody who worked for us and with us undertook the task of very carefully explaining the terms of the proposed Constitution to the Burma electorate. It was on those explanations that we conducted our election, and, of course, when the Burma White Paper appeared and when we discovered that it was substantially a reproduction of

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the Prime Minister's proposed Constitution, we made them understand that fact, and we further undertook the task of explaining any little departure that we happened to discover.

Mr. *Isaac Foot*: I have only one further question. I am sorry to take up the time of the Committee. There was one further thing you said. You said the decision of your Association was for federation rather than for separation, in the terms of the Prime Minister's statement.

Dr. *Ba Maw*: Quite so.

Mr. *Isaac Foot*: Was that because you did not consider the Prime Minister's statement was adequate to the Burman demand for independence, or because, whatever was proposed, federation would be the desire?

Dr. *Ba Maw*: No. May I explain this, because it is extremely important? Our position is this: We consider the Prime Minister's proposed separation to be a non-Burmese idea of separation, and, as I tried my very best to explain yesterday, of course, "separation" has so far been very loosely and very dangerously used. The term "separation" has meant a mass of loose things to the average Burman. To a considerable number of people it still means an independent and a royal Burma. Separation to another section means Burma for the Burmans; and separation for a third section, that is, the economic section, means purely the doubtful economic advantages of expelling the foreigners and of effecting the restoration of all the lands to Burmans. Therefore, we faced the problem in a concrete and practical way. We say that we oppose the Prime Minister's separation because it does not conform with our ideas of separation, and as this form of separation is unsuitable to us we oppose it.

Mr. *Isaac Foot*: Following upon that, a supplementary question is this: In appealing to your constituencies you had, of course, not only the spoken appeal, you had the written appeal?

Dr. *Ba Maw*: To a certain extent.

Mr. *Isaac Foot*: There would be some written appeal, would there not?

Dr. *Ba Maw*: Yes.

Mr. *Isaac Foot*: You were only able by your voice to reach a certain number of the electorate. There must be a great number to whom you can only send your literature.

Dr. *Ba Maw*: Yes.

Mr. *Isaac Foot*: Can you give us your appeal or address or your written appeal made to your constituents, setting out this question of federation as against separation? Have you got any general form of address that can be handed in to the Committee? Was there a common form of address sent out by you?

Dr. *Ba Maw*: I am afraid I have not brought any copies.

Mr. *Isaac Foot*: Was not there a manifesto of your Party?

Dr. *Ba Maw*: Yes, there was a manifesto.

Mr. *Isaac Foot*: Did that manifesto set out your case?

Dr. *Ba Maw*: We did set out our case.

Mr. *Isaac Foot*: And can we be supplied, in English of course, with the manifesto?

Dr. *Ba Maw*: I am afraid we shall have to write to Burma for it; that will take some time.

Mr. *Morgan Jones*: Has the India Office got it?

Sir *Samuel Hoare*: I understand we have got one or two of these manifestos at the India Office, but I am not quite sure whether it is the manifesto that you refer to. I will look them up and see if they are the kind of thing which you evidently desire. We could then circulate it to the Committee and to the Delegates.

Mr. *Isaac Foot*: All I would like to have is how the question upon which the answer has been given was put before the electors.

Sir *Samuel Hoare*: I will look and see what we have got.

Earl *Winterton*: If we are going to peruse electoral manifestos there is considerable room for doubt as to the interpretation to be put on the particular words of all manifestos of all parties in all countries.

Mr. *Isaac Foot*: Seeing that a very plain answer has been given, I would like to know how the question was put before the electorate.

Marquess of *Lothian*: On both sides.

Earl *Winterton*: On both sides.

Dr. *Ba Maw*: If you wish to pursue this matter, may I request one thing, that as a General Eelection is a General Election all the world over, there were all kinds of influences, and in order to understand the real position I submit

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that the manifestos of both sides in every constituency should be seen in order to see how the Separationists obtained their voes and how the Federationists obtained their votes. I am speaking from bitter personal experience.

Mr. *Isaac Foot*: We have all got that.

Dr. *Ba Maw*: I am afraid I shall have to mention one fact, that as the leader of the Anti-Separationists, as the person who was doing the greatest amount of work for the Anti-Separationists, the principal argument against me was that I was a Non-Buddhist, and therefore, as a Non-Buddist, they should not vote for me. That was the principal argument on which I could enlarge further with all kinds of unpleasant details, but I shall refrain from doing so. Whenever I made an attempt to enter any constituency, I was immediately met either at the wharf or at the railway station with huge placards containing all kinds of most violent language against me, attacking me for my religion. On this particular point U Kyaw Din will support me, because he happens to be a Non-Buddhist.

Marquess of *Zetland*: My Lord Chairman, I just wanted to ask a question arising out of something that Mr. Campagnac said. I understood you to say that you thought it was very desirable that whatever the conclusions of this Committee might be on the question of Federation or Separation, an announcement of those conclusions should be made at the earliest possible moment: was not that so?

Mr. *Campagnac*: That is so.

Marquess of *Zetland*: Had you in mind that it was desirable that this Committee should come to its conclusion on that point before the Delegates conclude their deliberations with us?

Mr. *Campagnac*: I think that would be desirable.

Marquess of *Zetland*: Then might I put the same question to U Ba Pe?

U Ba Pe: That is so.

Marquess of *Zetland*: Do you think it is desirable that this Committee should come to its conclusions on the issue of Federation or Separation before you leave us, and that a pronouncement should be made?

U Ba Pe: Certainly.

Marquess of *Zetland*: May I put the same question to U Kyaw Din?

U Kyaw Din: The same thing.

Marquess of *Zetland*: And U Chit Hlaing.

U Chit Hlaing: Yes.

Marquess of *Zetland*: In fact there is general agreement upon the point that the Committee should try to come to its conclusions at the earliest possible moment and that a statement should then be made.

U Chit Hlaing: Yes.

Sir *Austen Chamberlain*: Lord Zetland, will you ascertain (I am not quite certain from the form of your questions) whether it is the wish of all the gentlemen who have answered you that we should reach this decision early in our discussions with them, or whether it will satisfy them if before they leave us the Committee has reached the decision?

Marquess of *Zetland*: Would you answer Sir Austen's question?

Mr. *Campagnac*: I think the decision should be arrived at as early as possible, because if the Committee were going to recommend that Burma should be federated with India, then we would have to discuss the Constitution on quite different lines.

Marquess of *Zetland*: I presume that is the general view.

U Chit Hlaing: That is the general view.

Mr. *Tyabji*: And we also hold that view.

Marquess of *Zetland*: In fact, as far as I can judge, the Delegates are unanimous on that point.

U Chit Hlaing: Yes.

Marquess of *Zetland*: Then a different point. Might I ask Mr. Tyabji this question? I understood, Mr. Tyabji, that while you admitted the financial disabilities from which Burma in common with other provinces of British India has suffered under the Meston Award, you think those disabilities would disappear under a system of Federation? Was not that your point?

Mr. *Tyabji*: To a certain extent, yes.

Marquess of *Zetland*: Could you tell us what grounds you have for supposing that these disabilities would disappear under Federation? My view of these difficulties is that they have been due really to the fact that there has not been enough money to go round. Do you think that there would be more money to go round amongst the Provinces under Federation?

Mr. *Tyabji*: Under the Federation Financial Scheme certain of the taxes,

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a portion, for instance, of the income tax, and certain excises, would revert as soon as possible to the provinces.

Marquess of *Zetland*: As soon as possible.

Mr. *Tyabji*: Yes.

Marquess of *Zetland*: Could you go a little further and tell us how soon you think that would be likely to take place?

Mr. *Tyabji*: That, of course, is impossible to say.

Marquess of *Zetland*: Then there was only one other question I wished to ask, and that was also arising out of something that Mr. Tyabji said. He attached great importance, as I think everybody does, to the maintenance of the trade relations between Burma and India. If I understood him rightly, he thought that a trade agreement might secure those relations for a period of years, say, for 10 years, but he thought that they might be disturbed when the trade agreement came to an end. If experience showed that it clearly was in the interests of Burma and of India that the trade relations should continue on the some footing, why does he suppose that the Indian and Burmese Governments would alter the treaty?

Mr. *Tyabji*: From my point of view, the dependence of India on the Burmese trade is not so great as the dependence of Burmese trade on India. Therefore, the danger lies in the fact that in India, perhaps, conditions might emanate out of the separation which later may make it difficult for a trade convention on a free trade basis to be agreed upon.

Marquess of *Zetland*: In other words, you are afraid that under separation the Indian Federal Government might impose tariffs against the Burmese trade? Is that your real fear?

Mr. *Tyabji*: No. For instance, it is not a question of India imposing a tariff wall against Burma, but it might be a question of the development of India or Indian industries or Indian products. For instance, at the present time rice going from Burma is Indian rice, but when Burma is separated it does not remain an Indian product, and the desire might be cultivated to become more self-contained in that respect.

Marquess of *Salisbury*: In India?

Mr. *Tyabji*: In India.

Marquess of *Zetland*: But how do you suggest the Indian Government would set about making themselves more self-contained? You do not apparently fear that the Indian Government would impose a tariff against Burma's rice; at the same time you think India might want to become self-contained in the matter of the production of rice.

Mr. *Tyabji*: In the production of rice and the production of timber, for instance.

Marquess of *Zetland*: Yes. Let us take rice as an example. How do you suggest that the Indian Government is going to achieve its supposed object?

Mr. *Tyabji*: By an increase of agriculture—cultivation.

Marquess of *Zetland*: You are only afraid that the Indian Government may undertake an advanced agricultural policy under which it would produce more rice? Is that not likely to happen in any case?

Mr. *Tyabji*: It may not. So long as Burma is a Province it may not; so long as it supplies cheap rice, it may not happen, but if it becomes a separate entity it may.

Lord *Middleton*: There is one question I would like to ask U Ba Pe. Supposing that legislation based on this Committee's recommendation had not a scheme for Federation—I do not, of course, suggest that it is a probability—would your views on Separation remain unchanged? Do you wish to separate from India in any case?

U Ba Pe: Of the two alternatives, yes.

Marquess of *Salisbury*: Dr. Ba Maw, might I just, merely to clear up one or two answers which you have been kind enough to give to the questions, ask you this: as I understand you prefer Federation to separation on the terms of the Burmese White Paper; but if you got separation on your own terms, which would you prefer—separation or Federation?

Dr. *Ba Maw*: If we got separation on our own terms, any Burman would accept it on those terms. After all, we are approaching it as a very practical proposition, as I submit any other part of the British Empire would approach it. So that, on the basis of that argument, if the terms that we require are guaranteed to us under separation, we would accept separation.

Marquess of *Salisbury*: I thought you would give that answer, only I wanted to make it quite clear. Now might I ask just one question of Mr. Harper? I am afraid I was unlucky enough, owing to causes which I could not control, not to

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hear his speeches yesterday, but I gathered enough this morning to know how to put the question, I think—it is with reference to what Lord Reading asked him. As I understand it, you think a trade agreement between Burma and India in the case of separation, of the greatest importance?

Mr. *Harper*: Yes, of the greatest importance; rather, may I say, we consider the maintenance of the trade relations as of great importance.

Marquess of *Salisbury*: Yes. I ought to have said so. Do you think it is a *sine qua non* or that you could not agree to separation on any other terms?

Mr. *Harper*: There you are asking me a question which I am in rather a difficult position to answer on behalf of the European community, because, as I said yesterday, the European community have never been unanimous on this subject. Some of them have thought that this question of the trade relations is so important that as Federation is the only way of maintaining them, that is to say, the trade relations with India, it would be in the best interests of Burma to remain with India. The other view is that no constitution, no decision on this subject which really runs counter to the real wishes of the people will be a success; that the new constitution must be supported by the people of Burma. Therefore it would be no use, or it would not be wise to put on to them for the sake of their trade relations which they might not be able to assess, because if they were not allowed to go wrong, they would not have realised what it would have meant if they had gone wrong—so it would not therefore be wise to make a choice which is against their will and their wishes. In that event the position comes down to this, that we want to get the best of both worlds; we want to get what the Burmese people want.

Marquess of *Salisbury*: That is separation?

Mr. *Harper*: If it is separation; and we want to ensure that the consequences of separation will be, as far as the trade relation question is concerned, adjusted as we want them to be adjusted.

Marquess of *Salisbury*: I quite understand that that is your aspiration, but you think that precautions should be taken by this Committee so that in the final act the possibility of the alteration of the trade relations between Burma and India should be prevented?

Mr. *Harper*: Precisely.

Marquess of *Salisbury*: And to that purpose, I think you suggested in answer to Lord Reading, that there should be some clause inserted in the Constitution Act under which, pending an agreement between the two new Governments, the *status quo* should continue?

Mr. *Harper*: Yes.

Marquess of *Salisbury*: Have you thought of the consequences of such an arrangement? If the *status quo* continued it would not be possible for either Government to deal with their trade relations elsewhere freely until the period was over. May I explain my meaning? It is quite clear that if the Burmese Government or the Indian Government were free to make treaty relations elsewhere in respect of matters of trade which affected the two countries, then it would not be possible to continue the fiscal *status quo*.

Mr. *Harper*: The suggestion is, my Lord, that the *status quo* should be continued until the new Governments have arrived at a trade agreement. We contemplate that that trade agreement should not merely deal with the Indo-Burma trade, but there is room in that for reciprocal arrangements with regard to outside tariffs of both countries.

Marquess of *Salisbury*: That is a very complete and reasonable answer, but that means that until the agreement has been made the fiscal position would be stereotyped.

Mr. *Harper*: So far as the Indo-Burma trade is concerned.

Marquess of *Salisbury*: And not only trade between India and Burma, but all trade elsewhere which deals with the same commodities as the trade between India and Burma.

Mr. *Harper*: We have not asked for the fiscal policies relating to outside trade to remain in the *status quo*.

Marquess of *Salisbury*: But it would have to be so, would it not, because if the Burmese and Indian Governments make different fiscal arrangements with regard to the outside trade it will not be possible to maintain the *status quo* as between themselves.

Mr. *Harper*: We should hope they would consider this trade agreement between themselves as the first item to be adjusted.

Marquess of *Salisbury*: But we have got to consider how we arrange this clause in the Constitution Act. It

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appears to me that, upon your footing, we should have to say, supposing we followed the policy you were good enough to suggest, that, as far as the commodities which are in trade between Burma and India are concerned, the fiscal position should be stereotyped, not merely as between Burma and India alone, but elsewhere, until the new trade agreement had been come to.

Mr. *Harper*: We do not regard that as being absolutely necessary. If the Committee thinks so, then we should still consider that our Indo-Burma trade is the more important question to be adjusted.

Marquess of *Salisbury*: I must not press you but I wonder whether you would think over the point as to whether that is not a necessary conclusion of the argument.

Mr. *Harper*: I certainly will do so.

Marquess of *Zetland*: I am not quite clear. Why could not there be a free trade arrangement between India and Burma apart from other trade arrangements?

Marquess of *Salisbury*: It was pointed out by Lord Peel the other day, because then the trade from elsewhere would naturally flow to the market which had the lower tariff, and therefore it would pass to Burma or India, as the case may be, and, once there, it would pass freely straight across the boundary, because there would be free trade between the two; so you could not have it.

Sir *Samuel Hoare*: My Lord Chairman, the problem is a very intricate one, and I have several comments which I would like to make upon the conclusion that Lord Salisbury has just drawn, but I would prefer to make them when we deal with the question as a specific question.

Marquess of *Zetland*: I apologise for having butted in.

Marquess of *Salisbury*: Not in the least. Only one further question. Apart from this trade agreement, you heard the speech which I think Mr. Tyabji made this morning; he said that there ought to be a labour agreement as well as a trade agreement between the two new Governments; is that your view?

Mr. *Harper*: Yes, it is, that point has been dealt with actually in the memorandum which the European community have issued.

Marquess of *Salisbury*: And you think that is also of very great importance?

Mr. *Harper*: Of very great importance.

Marquess of *Salisbury*: You do not put it quite so high as the other.

Mr. *Harper*: I am not so directly concerned, my Lord. I think it is of enormous importance; I think they are both necessary in Burma's interests as well as in India's interests.

Lord *Rankeillour*: I think I must ask a question or two about the convention and the *status quo*, because it is even now not quite clear. I understood you wanted it put in the Constitution Act that the *status quo* should be maintained for a certain number of years.

Mr. *Harper*: We have not suggested any number of years. We have suggested that the *status quo* should be preserved until the new Governments can make their trade agreement.

Lord *Rankeillour*: Until that comes about?

Mr. *Harper*: Until they have concluded their trade agreement.

Lord *Rankeillour*: And if it does not come about the *status quo* would still remain. That is an obvious difficulty.

Mr. *Harper*: It is, my Lord.

Lord *Rankeillour*: But you are assuming all the time that there are separate Governments of India and Burma.

Mr. *Harper*: It would of course force the two Governments to come to an agreement, would it not?

Lord *Rankeillour*: Exactly, and they would have, as regards the outside world, the right to impose what duties they pleased.

Mr. *Harper*: That would be possible.

Lord *Rankeillour*: They might be different, and probably would be different.

Mr. *Harper*: Yes.

Lord *Rankeillour*: Whatever goods were affected by the one and were landed in the one country would be able to go on to the other without any further duty or hindrance.

Mr. *Harper*: I think that is a matter which could be adjusted also, surely, in the Act?

Lord *Rankeillour*: If it was not so it would not be the *status quo* still.

Mr. *Harper*: Not entirely, no; not in that respect, certainly. But it was not intended that anybody should be able to import through the country of the lower tariff; that is not the idea.

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Lord *Rankeillour*: If you maintain the *status quo* that must happen. You would have to modify it, otherwise.

Mr. *Harper*: Yes, it will have to be modified to that extent.

Lord *Rankeillour*: And it might happen that the consumers of one country would be benefited at the expense of the consumers of the other country.

Mr. *Harper*: By the tariffs of their own country, yes.

Lord *Rankeillour*: Not necessarily by their own country. It might work to the disadvantage of the other partner, might it not? If Indian producers had a tariff which benefited that produce and that produce was not made in Burma, that is to say, the production of Indian producers, the Burmese consumer might suffer.

Mr. *Harper*: As he does now.

Lord *Rankeillour*: The only other thing is that you do not suggest that the convention shall be made permanent by an Imperial statute?

Mr. *Harper*: We have not suggested that, no.

Lord *Rankeillour*: But then, of course, if it were not, it is liable to be denounced by either party.

Mr. *Harper*: Our view on that was that it would be made by the new Governments and have a greater chance of being renewed at the end of its period.

Lord *Rankeillour*: But, of course, it would be liable to attack from either Legislature.

Mr. *Harper*: It would, yes.

Lord *Rankeillour*: You do not suggest that it is possible for the Constitution Act in advance to contain some provision which would stereotype that convention so that it could only be repealed by a new Imperial Act?

Mr. *Harper*: It would be possible to do so. I have not asked that, but if it were possible to do so——

Lord *Rankeillour*: You would like it if it were possible?

Mr. *Harper*: Yes.

Major *Cadogan*: I must apologise to Dr. Ba Maw for again returning to his speech. He has answered so many questions already, but there is only one I want to ask him. I may be wrong, but his historical analysis of the birth and progress of the anti-separationist movement seemed to me to conflict with the experience of the Royal Statutory Commission. Dr. Ba Maw referred to the vote taken on the motion of U Ba Pe in December, 1929, on the subject of separation, and incidentally I may say that Dr. Ba Maw is quite wrong in saying that that was the only ground upon which we made our recommendation. That is only by the way. But Dr. Ba Maw discounted the effect of that vote on the grounds that the non-co-operators, that is, those not working the Montagu-Chelmsford reforms, were to a man anti-separationists. Is that really so? When we were on the work of the Commission in Burma, we went a long way beyond merely the members of the Council to discover what the feeling was in Burma, and I can refer the Committee to page 184 where we say: "Some may ask whether the verdict of the Council is the verdict of the country as a whole. We ourselves have little doubt from what we heard and saw in Burma, that, so far as there is public opinion in the country it is strongly in favour of separation." I do put it to Dr. Ba Maw that it was not the case that all the non-co-operators then were anti-separationists. I suggest to him that the anti-separationist movement grew some time after the visit of the Royal Statutory Commission to Burma.

Dr. *Ba Maw*: May I submit that what I have stated is literally true, though I admit that there is a small section of non-co-operators who are separationists. I admit that, but the position of the anti-separationists later was conclusively proved by the fact that anti-separation was adopted by the general body of non-co-operators and that they decided to lift the boycott in order to vote against separation. I am referring to the origin of the Jubilee Hall Meeting. That meeting was convened by the three non-co-operating associations, U Chit Hliang's Association, U Soe Thein's Association, and U Su's Association. These three associations admittedly represent the non-co-operating section.

Major *Cadogan*: At that time, in 1929, were they then definitely anti-separationists? That is the point of my question.

Dr. *Ba Maw*: Yes.

Major *Cadogan*: They have not become anti-separationists since the visit of the Statutory Commission? That is what I am asking.

Dr. *Ba Maw*: Anti-separation formed part of their policy. U Chit Hlaing will be able to give us the date because

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he worked for it in those days. I was not in politics in those days.

Major *Cadogan*: I understood your point was that when the Statutory Commission visited Burma, all the non-co-operators were separationists.

Dr. *Ba Maw*: With the exception of a very small section of non-co-operators.

Sir *Reginald Craddock*: All the questions I was going to ask I think have been covered by the replies already given.

Miss *Pickford*: I would like to ask U Kyaw Din whether he associates himself with the answers that have been given by Dr. Ba Maw?

U Kyaw Din: No, I do not.

Miss *Pickford*: May I ask you a little further. You do not agree with him in favouring federation with India on an equality with other Indian Provinces, without the right to secede?

U Kyaw Din: That is so.

Miss *Pickford*: If that was the alternative you would prefer separation on the lines of the Burmese White Paper?

U Kyaw Din: May I explain my position? Dr. Ba Maw has stated that he was one of those who started this Anti-separationist League. May I also add that I was one of them with him as my trusted colleague in starting this Anti-separationist League. When we started that League it never entered into our minds that we would ever federate with India. We were Anti-separationists on the basis that we would not separate from India on the basis of the Prime Minister's statement. At that time, I wish to make it plain, we had no other White Papers or any scheme of constitution, except the one that was made by the Right Honourable the Prime Minister, at the end of the Burma Round Table Conference. The Indian White Paper was not out then. At that time we were satisfied (I was satisfied at least) that the constitution that would be given to India would be in advance of any constitution that would be given to Burma. On those bases I joined Dr. Ba Maw, or rather Dr. Ba Maw joined me—at least the two of us worked together—that we would go out for a constitution that would be equal at least to that of India. On those bases we worked and started this Anti-separationist movement. If I may recall the speech I made, I made my position extremely clear as to what I mean by "Anti-separationist." This was in the Legislative Council—the speech on Anti-separation was first led by me; I led and Dr. Ba Maw and others followed me. These were my words: "Therefore Anti-separation does not necessarily mean federation. Anti-separation, as far as we are concerned, means this, that we are not satisfied with the constitution, but we are prepared to consider any constitution that would be satisfactory to the people of Burma." Then the White Paper for India comes. The White Paper for Burma comes. I compared the two. I was satisfied in my own mind that the constitution as promised to Burma, or as outlined for Burma, if I may put it that way, is equal to the constitution as outlined for India. To my mind there was no object in holding back when we would be under the same constitution. I have been accused of turning somersaults. I never turned somersaults in my life. On the other hand my other Anti-separationist friends who supported me in the Council turned somersaults. They said they would never agree to permanent federation. That was our war cry. That is how I got that big majority. That is my position.

Miss *Pickford*: May I ask Dr. Ba Maw just one question. He said in reply to Lord Salisbury that he would prefer separation on Burmese terms. I take it that that is the ultimate ideal which he holds out.

Dr. *Ba Maw*: That is so.

Miss *Pickford*: Could he tell me in a few words what are his reasons for thinking that he will reach that ideal by means of federation?

Dr. *Ba Maw*: I am not thinking of what is going to happen in the future. I am at present restricting myself, as the British Government required us to do, to the two alternatives placed before us, and, facing these two alternatives as a practical man, I say that I prefer the federal alternative.

Sir *John Wardlaw-Milne*: My Lord Chairman, I am in a little difficulty because the question I want to ask has already been touched on, and it may have been answered, and, if it has, of course, I withdraw it. The point that

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has interested me particularly is in connection with the remarks which were made yesterday regarding the election. U Chit Hlaing, for example, I think particularly said that the matter had been put to the Burmese people, and they had given their decision. I am paraphrasing his words, but I think that was in effect what he said. I want to ask this: Would these Delegates who support federation, and also those who are in favour of separation, answer me this question: Was the choice put before the electorate of Burma of separation, on the one hand, and permanent federation on the other?

U Kyaw Din: Never.

Sir *John Wardlaw-Milne*: May I finish the question to make it perfectly clear. Or was it, in fact, thus put before them, of separation on the one hand, and federation, possibly leading to better terms with some right of secession, whether stated or implied?

U Kyaw Din: That is so.

Sir *John Wardlaw-Milne*: I want to know which was put before the people of Burma?

U Kyaw Din: I can explain myself, my Lord Chairman, with your permission. When this propaganda was started it was started by Dr. Ba Maw and myself. I have spoken to as many meetings as Dr. Ba Maw did, sometimes in the same places, and sometimes in different places. I have always put forward that we would oppose permanent and unconditional federation at all costs. Dr. Ba Maw could not deny that.

Sir *John Wardlaw-Milne*: Does Dr. Ba Maw agree with it?

Dr. *Ba Maw*: May I explain, I do not agree because, realising the responsibility placed upon me in giving answers to the Committee I do not wish to make statements that I cannot support. I am appealing to actual records and actual facts. I want these facts to speak for themselves, whatever claims U Kyaw Din may make. I suppose he has reasons for making claims before this Committee which he would never have made in Burma.

U Kyaw Din: You have made claims.

Dr. *Ba Maw*: Fact No. 1 is that when we started the League we called ourselves Anti-Separationists. Now this is an extremely important fact; we never called ourselves conditional Federalists; we never called ourselves by any other name. We called ourselves "Anti-Separationists," and the Jubilee Hall resolutions will bear me out on that point. That is Fact No. 1. Fact No. 2 is: At every meeting where we did pass resolutions the first resolution always related to an unconditional opposition of separation on the basis of the Prime Minister's proposed constitution.

U Kyaw Din: That is right.

Dr. *Ba Maw*: Then, after having made clear these points, we go to the other points, namely, we say that we want a constitution acceptable to Burma; secondly, that we are opposed to an unconditional and perpetual federation. I am sure the Committee will fully appreciate this political situation because naturally, particularly in our part of the world, we start with certain fundamental propositions, and we go to propositions which are not primary but secondary, inasmuch as they merely proceed from the first propositions. But our first and foremost propositions are propositions embodied in our very name, that we are anti-separationists. While I am answering this question may I proceed further, because I feel that I owe a duty to explain these things. Up to now, of course, U Kyaw Din has also tried to stress the fourth resolution, and entirely ignored the first, second and third resolutions, and U Kyaw Din has given as his reason for doing so namely the appearance of the Indian White Paper and the Burma White Paper. I wish to submit one objective fact, that U Kyaw Din changed his colours months before the Indian White Paper and the Burma White Paper appeared.

U Kyaw Din: You are not correct.

Dr. *Ba Maw*: Here is a fact. U Kyaw Din stood for election at Henzada South as a Member of my party, and, within a fortnight of the election, he left the Party and made that speech after he had left the Party. A further fact (it is a painful fact, but I must mention it) is that we unfortunately have not the salutary convention that protects the integrity of Parliament in Britain. In other words, when people change their position on fundamental questions, they do not consider it their moral obligation to seek the sanction of their constituency, with the result that in spite of all those statements made by U Kyaw Din before this Committee he has not made them in his constituency.

U Kyaw Din: I protest.

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Dr. *Ba Maw*: With the result that the Anti-separationist League of his constituency unanimously passed a vote of non-confidence against him.

U Kyaw Din: That is not so.

Sir *John Wardlaw-Milne*: I am sure the Committee are interested in what has been said, but I wonder if Dr. Ba Maw will be kind enough to tell me the answer to my question? With great respect, what he has told me is extremely interesting as to his own view and the view of some of his colleagues here, but the question I want to ask him is one of fact, quite apart from any view he may himself hold, whether he is able to say as a mere onlooker that the question which was put to the electorate did give them the impression that the choice was between separation and permanent federation or not?

U Kyaw Din: I never gave that impression, my Lord. I always preached that separation, on the Premier's statement, is not good enough for us. But, on the other hand, I preached as strongly that permanent federation was detrimental and death to Burma's aspirations. In my constituency, and in the constituencies I spoke in, there was not one man, and there is not one man who will say "We will go in for permanent federation." I may inform this Committee, Sir, why U Chit Hlaing's party was separated from Dr. Ba Maw's party. U Chit Hlaing's party was for permanent federation; Dr. Ba Maw's party was not. That was the reason why there was this division at the beginning of the new Council.

Sir *John Wardlaw-Milne*: Then you would agree that that choice was not put before the people of Burma?

U Kyaw Din: Absolutely.

Sir *John Wardlaw-Milne*: U Ba Pe, would you agree with it?

U Ba Pe: Quite so.

Sir *John Wardlaw-Milne*: You agree it was not put before them?

U Ba Pe: Yes.

Sir *John Wardlaw-Milne*: I want to ask Mr. Harper a number of questions on details which I will reserve till we come to the question of trade relations, but there is one main question, and that is in connection with your proposal for a convention or agreement. You suggested, I think, to the Committee, that it was perhaps desirable, and I think we would all agree with that if it were possible that such an agreement or convention should be made between the new Governments.

Mr. *K. B. Harper*: Yes.

Sir *John Wardlaw-Milne*: Firstly, are you prepared to run the risk of leaving it to the new Governments (that is really one part of the question) and, secondly, supposing the new Governments cannot agree, what then? Is your idea of a continuation of what I will call, for the sake of brevity, the present Free Trade position, that that should continue until in fact the two Governments can agree, so that if, by any chance, one Government could not agree with the other, or stood out, Free Trade would continue for ever. How are you to be safeguarded?

Mr. *K. B. Harper*: I tried to answer this question this morning. I agree it is a point of great difficulty.

Sir *John Wardlaw-Milne*: If it has been answered, do not trouble to repeat your answer.

Mr. *K. B. Harper*: First of all, we think that the Government will be forced into some kind of an agreement by having that rather indefinite provision, but in all these matters of trade agreements we have been advised that it is impossible to make any provision which will last for ever, and that a period of some kind, in some form, will have to be put.

Sir *John Wardlaw-Milne*: On the whole, you are prepared to leave it to the goodwill of the two Governments?

Mr. *K. B. Harper*: We are prepared to do so.

Sir *John Wardlaw-Milne*: As I understand, you have already answered this to some extent, at any rate, I will not pursue it, but I want to get this point clear. Are you pinning any faith to the continuation of the present system until in fact the two parties to an agreement come together?

Mr. *K. B. Harper*: Yes, we are, in the sense that we think that when the new Governments have really considered their opinion, they will want to continue the present relations.

Sir *John Wardlaw-Milne*: And if they do not agree, you are safeguarded that the present conditions must continue until they do agree. Is that it?

Mr. *K. B. Harper*: That is as our proposal is worded, but I would not like to say whether that was our intention.

Lord *Eustace Percy*: I do not want to go further into the past politics of Burma at all, but I should like to get

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clear what Dr. Ba Maw's views really are. I thought I understood him, until his reply to Miss Pickford, in which he said he was not concerned with the future, but only with the present choice placed before the people of Burma by the Prime Minister. Surely, if one of those alternatives is permanent federation, you cannot say that you are or are not in favour of permanent federation without thinking about the future. Is Dr. Ba Maw in favour of a permanent federation with India on the terms of the Indian White Paper?

Dr. *Ba Maw*: I thought I made myself completely clear on this point. I am against both the terms of the separation as contained in the Burma White Paper as well as the terms of Federation as contained in the India White Paper. That is my complete attitude towards the constitutional part of the question, but if I am faced with these two alternatives on the principle of the lesser evil, I and U Chit Hlaing prefer the Federal alternative.

Lord *Eustace Percy*: And you prefer committing yourselves at this moment to permanent federation?

Dr. *Ba Maw*: If I have no choice. As I explained, the December resolution still contains our complete demand. If we cannot get the terms of the December resolution we are forced by circumstances to accept the next best thing: that is the federal alternative.

Lord *Eustace Percy*: But, Dr. Ba Maw, you say, "the federal alternative" in general terms.

Dr. *Ba Maw*: Exactly.

Lord *Eustace Percy*: But you choose that, knowing that it means permanent federation.

Dr. *Ba Maw*: With all its consequences.

Lord *Eustace Percy*: May I explain, in order that I may not appear to be laying a trap for you, what is in my mind? It has been obvious, I think, from all our discussions on the India White Paper that whatever may be the views of various sections of Indian opinion as to developments in the future, no section of Indian opinion anticipates that the Provinces, as against the Centre, will have wider powers or a wider autonomy in the future than they would have at the beginning of the Federation. Therefore, Burma in entering Federation on a permanent basis, would be permanently committed to a restriction to the Provincial powers as laid down in the White Paper. I am not now bringing into the question anything about the Governor's Special Responsibilities or the degree of responsible government. I am only talking of the powers of the Province as compared with the powers of the Centre. Therefore, you would be permanently committing yourselves to the Burma Legislature having no more power than is provided for a Province in the India White Paper permanently. Are you prepared to accept that as what you call the next best alternative.

Dr. *Ba Maw*: Yes.

Lord *Eustace Percy*: My Lord Chairman, I had wished to ask Mr. Cowasji some questions on his financial statement, which I confess I did not follow, but I think perhaps it would be best to postpone that until we have the figures before us in writing.

Chairman: I quite agree.

Major *C. R. Attlee*: Just to follow up that last question, Dr. Ba Maw, would you say briefly why you think that is the lesser of two evils?

Dr. *Ba Maw*: Because, first of all, it is the mandate of the country. The feeling of the country is——

Major *C. R. Attlee*: I have got that part. I was really asking for your personal point of view as a practical politician, looking at the thing—not what the verdict of the country was; but in what respects you thought it was better.

Dr. *Ba Maw*: Because, to give a short answer to that, we feel that it is safer to be in the Indian Federation than to separate on the proposed terms.

Major *C. R. Attlee*: Safer for whom?

Dr. *Ba Maw*: Safer economically, politically, and in various other respects.

Major *C. R. Attlee*: Safer economically: Do you think Burma cannot run itself financially; is that right?

Dr. *Ba Maw*: I am absolutely certain.

Major *C. R. Attlee*: You think there will be more money to spend in Burma if you belong to the Federation.

Dr. *Ba Maw*: I think that we will get more benefit out of the moneys actually spent.

Major *C. R. Attlee*: Do you anticipate that the finances of Burma are likely to improve, or is this a reason for permanent Federation, because you think that Burma is so constituted that it never can stand alone?

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Dr. *Ba Maw*: Because at present, to my mind—I may be taking a very dark view of things—as things are, Burma is an entirely agricultural country. We are entirely dependent, as far as the masses go, upon rice, and in the present world conditions I think that it will take us very many more lean years before we can recover from the present depression, and during that time and in the years to follow, if we are in the Federation, Indian credit and Indian trade will save the situation.

Major *C. R. Attlee*: Do you mean with the credit of the Government of India behind you?

Dr. *Ba Maw*: Exactly.

Major *C. R. Attlee*: Is not it a fact that at present Burma pays a considerable contribution to the Government of India which suggests on any financial adjustment she would pay less?

Dr. *Ba Maw*: That is a question that has received various answers. My point of view is that the money we are actually paying is not to India but to the Central subjects in India. The Central subjects will always be there and under the proposed Constitution in the Burma White Paper those Central subjects will be directly under the control of the Governor and the financial adviser. Therefore, whether those Central subjects are in India proper or whether they are in Burma, we must contribute these revenues towards their control, and so long as those Central subjects are not in Burmese hands we shall not have much say in their management. So long as that is a fact, which will be so under the proposed Burma White Paper Constitution, Burmans do not have much of a choice between the two. Whether the Central subjects are managed in India or in Burma they will not be under popular control. Therefore the moneys that we pay will, whether it be federation or whether it be separation, not be controlled by our popular Legislature under the proposed Constitution.

Major *C. R. Attlee*: I take your answer. I could not quite agree, perhaps, on the financial settlement. Your second point was that it would be politically better for Burma to be in the Indian Federation. What did you mean by that?

Dr. *Ba Maw*: Politically, looking to the future, it is my personal conviction that it will be the day for federations; that the position of the bigger and the stronger countries will be very appreciably better than the position of the smaller and isolated countries; and my statement is based upon that personal conviction, that we shall receive better protection and we shall feel greater benefit all round in a federation, unless, of course, decidedly greater benefits than what we can derive from a federation are guaranteed to us in our Constitution. I am approaching the subject entirely as a practical man. If I have to choose between two things, I say, as a practical man, that a proposition that ensures greater benefits to my country is the proposition that I must accept.

Major *C. R. Attlee*: Of course, you have ruled out independence altogether on financial grounds, so we can leave that aside, because you have said that Burma cannot stand alone financially. So with you it is merely a question whether you would like to join up with this Federation or that Federation. Is not that so?

Dr. *Ba Maw*: In our present circumstances.

Major *C. R. Attlee*: How do you mean?

Dr. *Ba Maw*: So long as we do not have effective control of all the subjects, particularly finance, I consider that it will be more advantageous for Burma to be in the Indian Federation.

Major *C. R. Attlee*: Do you suggest that your financial resources would be increased if you were entirely independent, and therefore you could manage, if you were entirely independent, while you could not manage as long as there was any other control than your own?

Dr. *Ba Maw*: My personal conviction is that if we had effective control of the subjects we could very easily balance our Budget, and as long as we could balance our Budget and ensure two full meals a day to our agriculturists, to our masses, I should be very happy.

Major *Attlee*: That seems to me rather to conflict with your last point, that as a purely agricultural country you never could expect to stand by yourselves.

Dr. *Ba Maw*: I am talking of the present circumstances, where our finances are not under popular control; facts are facts; with the result that before we can talk about our money, half of it or more is expended upon subjects over which we have absolutely no control.

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Major *Attlee*: Which subjects are those?

Dr. *Ba Maw*: The Services, the administration of which is our most expensive item in the Budget.

Major *Attlee*: I suppose you will still come under the Central Government as far as the Indian Civil Service is concerned?

Dr. *Ba Maw*: Quite so.

Major *Attlee*: Would you prefer that to be Burmanised or Indianised?

Dr. *Ba Maw*: Naturally I prefer it to be Burmanised.

Major *Attlee*: Which do you think it will be under the Federation?

Dr. *Ba Maw*: What is actually taking place in our country now is that the Government has interpreted the term "Indianisation" applied to Burma as "Burmanisation."

Major *Attlee*: Supposing it was interpreted the other way would you have any objection to your Services being Indianised?

Dr. *Ba Maw*: Most certainly so, and I am perfectly certain any Indian Province would have the greatest objection to members of other Provinces coming into its Services. I stand on exactly the same level with the rest of the Indian Provinces. Bengal would have the strongest objections to recruitment to its Services being made in Madras.

Major *Attlee*: It was only asking about All-India Services.

Dr. *Ba Maw*: At present under the present system we are recruiting in Burma to a certain section of the All-India Services.

Major *Attlee*: One point you made was economic, the other was political. What was the third point?

Dr. *Ba Maw*: These are the two points.

Major *Attlee*: Thank you.

Lord *Hardinge of Penshurst*: Mr. Tyabji this morning referred to Indian immigration and you mentioned the necessity for a labour convention. Is there at present any system of control of Indian immigration into Burma?

Mr. *Tyabji*: No, there is no control at present.

Lord *Hardinge of Penshurst*: Why is Indian immigration into Burma necessary at all? Are there not sufficient labourers from the backward classes that would make immigration unnecessary and would even contribute to the civilisation of these backward classes?

Mr. *Tyabji*: My Lord, the position in Burma is this: It is a very large country, very sparsely populated. It has, I think, about 68 persons to a square mile, and it is a country which is still undeveloped and has a very small population of about 1,45 lakhs. The cultivation in Burma has increased enormously, and, therefore, all the fresh population is taken up in agricultural pursuits. Therefore, the industrial labour that is required in Burma is supplied mainly by the Indian immigrant labour. Also the work of the Indian labour, the industrial work in Burma, is very much seasonal, that is to say, the rice mills, and the rice mills particularly, which employ quite a large amount of labour, work only for certain months in the year, and after the labour has done its work in the rice mills it goes over to the fields and does a certain amount of agricultural labour. Then again it comes back, a certain amount of it, and does work which is called casual work on the wharves and in the city for transport work, so it rotates during the year. At the present time, and for many years to come, it does not seem possible that there would be any amount of Burmese labour which would be available for industrial work. It is also considered that the agricultural expansion of the country would take up almost all the increase in the population. Therefore, the Indian labour is considered to be a necessity in Burma.

Lord *Hardinge of Penshurst*: Then the backward classes do not work at all?

Mr. *Tyabji*: There are no backward classes in Burma.

Lord *Hardinge of Penshurst*: I meant the tribal classes.

Mr. *Tyabji*: The tribal classes are all agriculturists.

Lord *Hardinge of Penshurst*: They do work in the fields?

Mr. *Tyabji*: They do work in the fields.

Lord *Hutchison of Montrose*: I would like to ask Dr. Ba Maw a question. I understand when the Statutory Commission under Sir John Simon visited Burma in 1929, the opinion then expressed, as expressed on page 184 of the Second Volume of that Report, was the almost unanimous opinion in Burma then in regard to their favour for separation.

Dr. *Ba Maw*: The opinion expressed?

Lord *Hutchison of Montrose*: At that time in 1929.

Dr. *Ba Maw*: In 1929 the witnesses who appeared before the Statutory Commission did make statements to that effect.

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Lord *Hutchison of Montrose*: I understand also that in the Council the question there was carried almost unanimously?

Dr. *Ba Maw*: Quite so, my Lord. In those days, the present anti-separationists were non-co-operating with dyarchy.

Lord *Hutchison of Montrose*: Might I ask you what has caused this reversion of opinion that has now come along, in your view and in your friends' view, that Federation will be better for Burma than separation?

Dr. *Ba Maw*: First of all, may I submit that there has been no reversion; that the non-co-operating section has consistently held to the view that separation on any terms less than Dominion status would be unacceptable for Burma. Rightly or wrongly they have consistently adhered to that point of view and consistently with that and with their policy of non-co-operation, they refused to have anything to do with the dyarchical councils and also with the Statutory Commission when it visited Burma. It was only when His Majesty's Government, through the Prime Minister, gave us a definite pledge that the decision will be according to the result of a General Election that U Chit Hlaing and I persuaded the non-co-operating element to vote and to enter the Council merely for the purpose of registering a protest against separation, as offered by the Prime Minister.

Lord *Hutchison of Montrose*: Then may I take it that the result of the recent elections has altered your opinion in Burma?

Dr. *Ba Maw*: I should put it this way, my Lord: The result of the election has brought out the real opinion of Burma on the issue.

Lord *Hutchison of Montrose*: I only want to bring out the point that of course we here, in the British Parliament, are somewhat in a fog as to the reasons for the change of view as expressed in this Report and as expressed by yourself yesterday and to-day.

U Chit Hlaing: There was no change at all.

Earl *Peel*: I would just like to ask two questions only. The first is from Dr. Ba Maw. He has told us, I think, that the separationists are only in favour of separation on the basis of Dominion status. That is so, is it not?

Dr. *Ba Maw*: And for that I am quoting two authorities. One is taken from a speech made in the Burmese Legislative Council by the accredited leader of the separationists, U Ba Pe in August, 1930, and the other is the first part of the December Resolution.

Earl *Peel*: I am not questioning your statement; I only wanted to found a question on it. In that case, if you do not have that you prefer to join the Indian Federation?

Dr. *Ba Maw*: Quite so, if we do not get the terms stated in the December Resolution.

Earl *Peel*: If you do not get your full terms?

Dr. *Ba Maw*: Yes.

Earl *Peel*: After all, compromise we all hate, do we not? In that case, as I say, you are prepared to enter the Indian Federation, but, of course, if you do that, do you not sacrifice any chance you might ever have of obtaining Dominion Status for Burma, either to-day or years ahead? You give up that ambition altogether?

Dr. *Ba Maw*: I am prepared to admit that to a certain extent, but at the same time what is much more vital to us is the immediate future rather than the remote future.

Earl *Peel*: You do not bother about posterity at all?

Dr. *Ba Maw*: I do, my Lord, but our first duty is to safeguard the immediate future.

Earl *Peel*: But when you are looking to the immediate future you are cutting yourselves off from something in, I will not say the remote future, but in the middle future. Is that not so?

Dr. *Ba Maw*: With due respect, I am not in a position, neither am I prepared, to discuss things that will occur in the next generation, whatever they may be.

Earl *Peel*: You want to stand on what you said, do you?

Dr. *Ba Maw*: Quite so.

Earl *Peel*: There is only one more question I want to ask. I am not quite sure to whom I should address it. I think it was Mr. Tyabji who said that there would be some risk in separation because the great bulk, or anyhow a very large percentage, of the rice export on which Burma depended so much went to India?

Mr. *Tyabji*: Yes, that is so, my Lord.

Earl *Peel*: I think it was you who said that the whole export of Burma to India, though large from the point of view of Burma, only represented 5 per cent. of the total production of India?

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Mr. *Tyabji*: Yes.

Earl *Peel*: Therefore I think your fears were that India, by increasing its production, might very seriously injure Burma by not requiring the rice from Burma, and that Burma would not be able to get another market for its rice?

Mr. *Tyabji*: That was my point.

Earl *Peel*: But is it not the fact (you have been speaking about the seasonal immigration of Indians into Burma for certain purposes) that it is very much to the interests of India that, as it were, her surplus labour should migrate for certain periods to Burma in order to get employment?

Mr. *Tyabji*: That is so, my Lord.

Earl *Peel*: If that is so, Burma has got a very strong hand, has it not, in any negotiation with India? She can say to India, "Well, you must take our rice because otherwise we might wish to cut off the supply of this labour to Burma." Therefore you would be negotiating on fairly equal terms with India, would you not?

Mr. *Tyabji*: May I say this, my Lord, that although the Indian labour coming to Burma is about 3 lakhs per annum, still the number is not such a large one that if it did not find an outlet in Burma it would be impossible for those people to live. The improvement in agriculture and the improvement in industries in India itself would probably be providing a certain amount of work for the labour which at present goes out of India. It has, at the same time, outlets in different parts or other parts of the world, such as Ceylon, Singapore, Shanghai, Mauritius and Kenya, and therefore the outlet is not restricted only to Burma as the outlet of rice is restricted to India.

Earl *Peel*: I suppose it is likely also that although, as we know, Burma depends so much on its rice at present, equally with India it will probably develop its industries as well, and the demand for labour from India will probably increase. Of course, a certain amount will be taken up, no doubt, by the Burmese themselves, but it is likely to increase, is it not, and therefore the surplus labour is not likely to be absorbed by emigration to other places?

Mr. *Tyabji*: Looking at the present, and, say, for five or ten years ahead, it does not seem that there will be such a very large demand for an increase of labour in Burma.

Earl *Peel*: Therefore you think on the whole that the interests in the two countries, as it were, would not be so evenly balanced, as I suggested?

Mr. *Tyabji*: Yes, my Lord.

Chairman: My Lords and Gentlemen, I understand that the Secretary of State desires to put no further questions. Does any member of the Committee desire to put any other questions?

I should propose now that the Committee and Delegates should proceed to examine in detail the proposals of the Burma White Paper in accordance with the detailed programme which has been circulated. Subject to the approval of the Committee, I do not propose to cause to be taken a verbatim report of this next phase of our inquiry.

May I at this stage say to the Burma Delegation—and I should like these words to go upon the Note—that during our work together it is, of course, understood that a Delegate who happens to be an anti-Separationist must not be held to prejudice in the slightest degree his case upon the main issue of Separation versus Federation by reason of the fact that such Delegate is prepared to make his contribution towards an examination of the scheme of Constitutional Reform in Burma as set out in the Burma White Paper.

Ordered, That this Committee be adjourned to to-morrow at half-past Ten o'clock.

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RECORD B.2

[15TH MARCH, 1934.]

The following Memoranda were handed in by Burma Delegates after their discussions with the Committee had terminated

I.—Memorandum Submitted to the Joint Committee on her departure by Dr. Ma Saw Sa on Wifehood Franchise and the proposal to reserve Seats for Women

As the representative of Burmese women in the Burma Delegation I welcome the recommendation of literacy and age qualifications for women by the Indian Franchise Committee. But this does not widen the franchise enough for practical purposes. We cannot accept the recommendation that the wife of a man with property qualification be not granted the vote in Burma on the ground that it would bring the number of women voters into practical equality with the number of male voters. Even though equal numbers be enfranchised, we cannot hope for a full voting strength in operation at the beginning before things settle down. Even later, women for reasons peculiar to them and for reasons of household duties may be prevented from taking full advantage of their vote.

Apart from that, we claim that, in the case of votes given to a man on property qualification, the wife is equally entitled to vote, on the same ground, because she is, in Burma, the joint owner of property. The claim is so clear, asking only a fair treatment of men and women alike, that I feel that there should be no question about it.

We claim wifehood franchise for the wives of all men who vote on other qualifications, also, for the same reason.

On the principle of equal status with men, we are not at all in favour of having seats reserved for women.

The Burmese women are fully emancipated and are regarded by men in our land as equal partners with them in home, economic and political matters, as borne out by their unanimous and full support of our claims.

As Burma is expected and is hoping to make a definite forward move, under the new Constitution, we feel that it is only in keeping with the tradition of Burma that women should keep pace with men and that therefore it is important and necessary that we be given our own rightful place and a fair share in the working of the Constitution. If, by narrowing down the franchise, women are not given their natural place, our national progress and our constitutional advance will be set back.

I trust that the rights and claims of women, forming practically half the population, may have adequate importance given to them, and that mere increase of work in preparing electoral rolls and running the elections would not be accepted as an excuse for denying them their just rights and claims.

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RECORD B.2 (*continued*)

II.—General Memorandum submitted to the Joint Committee on his departure by U Chit Hlaing on the Position of Burma

1. Burma is at present a part of the Indian Empire. She has her own Legislative Council and has her representatives in the Indian Council of State and Legislative Assembly.

2. From the point of view of Government, Civil Service, police, trade, fiscal policy and foreign policy, she is, and for generations has been in fact, part and parcel of the Indian Empire. Not only so but the people of Burma have come to look on themselves and their country as part of the Indian Empire and as sharers in its destiny.

3. It is true that the Government of Burma has made in recent years many moves towards the separation of Burma from the remainder of the Indian Empire, but these have been official actions and preparations and have not received the sanction of the people of Burma.

4. The majority of people in Burma were opposed to the diarchical constitution inaugurated by the Montagu-Chelmsford Reforms and for ten years (until the last General Election) took no part either in the elections or in the legislatures. They were opposed also to the Statutory Commission presided over by Sir John Simon and gave no evidence before it.

5. The only people who took part in the elections, sat in the legislatures at Rangoon and Delhi or Simla, and gave evidence before the Statutory Commission, were the so-called co-operators and it was from the ranks of this minority only that representatives were invited to serve on the First Indian Round Table Conference.

6. We who wish to continue as part of the Indian Federation never accepted them as acting or speaking for the majority of the electors of Burma whom I, Dr. Ba Maw, and others represent, nor do we accept them now as speaking for any except a minority of the people and electors of Burma.

7. On their statements, backed up by the Government of Burma and the India Office, it was assumed that Burma would wish to be separated from India. A Burma Round Table Conference was held in London, at St. James's Palace, from 27th November, 1931, to 12th January, 1932.

8. At that Burma Round Table Conference we, the Burman majority, who desire to remain in the Indian Federation, were represented for the first time.

9. In spite of our statements there, most of the time of that Conference, as most of the time that we have sat as Delegates with this Joint Select Committee, was spent in discussing the kind of constitution Burma should have *if she were separated from India.*

10. It was agreed on all sides, at the Burma Round Table Conference, that the decision of separation from or continued federation with India should be decided by the people of Burma by their votes on this distinct issue at a General Election to be held after our return to Burma following the conclusion of the Burma Round Table Conference.

11. At the final session of that Conference the Prime Minister made the matter crystal clear. He read a statement which he was " authorised to make " by his " colleagues of His Majesty's Government." *

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* Cmd. 4004 of 1932 p. 182.

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12. The chief points in the Prime Minister's Declaration were contained in these words:—

"The first step is to *ascertain whether the people of Burma* endorse the provisional decision that separation should take place. . . .

"*The people of Burma will be in a position to decide* whether or not they are in favour of separation from India. His Majesty's Government consider that the decision might best be taken after a general election at which the broad issue had been placed before the electorate. . . .

"*That decision will determine* whether, on the one hand, Burma should be independent of India with a Constitution on the lines set forth above or, on the other hand, should remain a Province of India with the prospects indicated in the proceedings of the two Sessions of the Indian Round Table Conference—and in this connection it should be remembered that if an Indian Federation is established it cannot be on the basis that members can leave it as and when they choose." *

(*My Italics.*)

13. The Prime Minister's statement was translated into Burmese, printed as a booklet (a copy of which was exhibited to the Joint Select Committee), and circulated by the Government of Burma by thousands in every village in Burma. It is impossible, therefore, to argue that the electors of Burma were not fully cognisant of the issue to be voted on at the General Election, of their responsibility in casting their votes, and of the express statement made by the Prime Minister that Burma's decision on this question of federation or separation was final and conclusive.

14. The issue put before the electors of Burma was further emphasised and made clear by a statement, made by the Secretary of State for India in the House of Commons on 20th March, 1933, after the General Election had taken place. In this statement the Secretary of State for India used these words:—

"In the event of Burma electing for separation from India, His Majesty's Government hope that it will be possible for the Joint Select Committee to examine their proposals for a Constitution for a separated Burma, and to do so in consultation with representatives of Burma, in the same way as it is proposed that representatives of India should be taken into consultation on the Indian proposals.

"The second of *the two alternatives open to Burma* is to remain a province of British India and be included as a Governor's Province in the Indian Federation. It has been explained more than once in this House, and also in the Legislative Council in Burma, that no differentiation in favour of any one Province in respect of conditions of inclusion in the Federation is possible. The constitutional proposals for each and every Governor's Province are now shown in detail in the White Paper that has just been laid.

"*If Burma chooses to remain a Province of India* in the Indian Federation, the proposals contained in this White Paper for the structure of the Provincial Constitutions, for the relations between Provinces and the Federal authority, and for the allocation of revenue between Provincial and Federal Exchequers, will be applicable to her as to all other Provinces; and the inclusion of Burma will necessitate no modification of these proposals. Her inclusion would, however, involve some revision of the Federal proposals, in respect, particularly,

* Cmd. 4004 of 1932, Pages 182-183.

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of the composition of the Federal Legislature. His Majesty's Government contemplate that, *if Burma elects for inclusion in the Federation* while the present proposals are under consideration by the Joint Select Committee, the adjustments involved by her inclusion might be made at the Committee stage; but it is evident that the longer that Burma delays a choice between the only two alternatives that are open, the greater will be the delay to the prospects of her own constitutional development." *

(*My Italics.*)

15. If after that Election, fought on the issue fixed by His Majesty's Government, Burma is now separated from India against the clear expression of their wishes given by a large majority of the people of Burma at the General Election, it will shake the faith of the Burman people in the sanctity of British pledges. I dread and am unable to anticipate what the possible reactions in Burma may be. This is a matter that affects the people of Burma vitally in their economic and financial future. They look to His Majesty's Government to fulfil the pledge given to them by your Prime Minister. They feel no doubt that such pledges are as sacred to you as they are to us. I pray you not to force our people into the belief that a promise given to them by His Majesty's Government is not to be relied on to be carried out to the full. We have trusted you and pray that the trust of a people 8,000 miles away from your shores may not be misplaced.

16. There is no party or section in Burma or in the Legislative Council—not even the Separationists represented by the People's Party led by U Ba Pe—which has not refused to accept the separated constitution for Burma outlined by the Prime Minister at the conclusion of the Burma Round Table Conference. Indeed, all parties have voted against such a constitution as being quite unacceptable to Burma.

17. The General Election, for the election of 80 members to the Burma Legislative Council, *on the issue fixed by the British Cabinet*, was held in Burma in November, 1932. The final results were as follows:—

Anti-Separationists	42
Separationists	29
Neutrals	9

The figures were given by me in the Discussion between the Joint Committee and the Delegates from Burma on 6th December, 1933, as Anti-Separationists over 500,000; and Separationists 270,000. The voting was therefore nearly 2 to 1 in favour of continuing the association with India and against separation.†

The "Morning Post" of London, commenting upon this, said that "the Burmans have now to all appearances voluntarily voted themselves into the proposed Federation of All-India." That exactly sums up the position.

18. We were astounded, in the course of our earlier discussions with the Joint Select Committee on 7th December, 1933, to hear the Secretary of State say that—

"*The Government never said that the general election need necessarily be the final word in the controversy.* The Prime Minister was very

* HANSARD. Vol. 276. No. 53. 20th March 1933. Cols. 3 & 4.

† RECORD OF DISCUSSIONS. B1 [Joint Committee on Indian Constitutional Reform. (Session 1933-34.) Volume II, p. 119.]

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careful to state both at the beginning of his speech and later on in his speech that the opinion of Burma would be asked and that when we had received the opinion of Burma, then *the Government would have to arrive at its own decision;* but never on any occasion has the Prime Minister or any Member of the Government abdicated the right of the Government or the right of this Committee or the right of Parliament to come to any decision that they thought fit, whatever may have been the result of the general election. I would remind the Committee of the words that were actually used by the Prime Minister on page 178 of the proceedings of the Round Table Conference. I will read one or two of the material paragraphs: 'His Majesty's Government are prepared, if and when they are satisfied that the desire of the people of Burma is that the Government of their country should be separated from that of India, to take steps subject to the approval of Parliament,' and so on. Then again there is another passage on page 182, the passage at the bottom of the page: 'With this material before them, the people of Burma will be in a position to decide whether or not they are in favour of separation from India. His Majesty's Government consider that the decision might best be taken after a general election at which the broad issue had been placed before the Electorate.' That passage quite clearly safeguards the right and indeed the duty of the Government and of Parliament to consider the whole problem after the election had taken place."*

(*My Italics.*)

19. The whole burden of the Prime Minister's speech was to lay the onus of decision on the people of Burma to vote as to whether they elected to be separated from India or to continue as part of the Indian Federation.

20. The portion of the Prime Minister's speech quoted by the Secretary of State as quite clearly safeguarding "the right and indeed the duty of the Government and of Parliament to consider the whole problem after the election had taken place" refers *not* to the decision of His Majesty's Government but to the decision of the Burma Legislative Council after the election.

It was so understood by us at the time the statement was made by the Prime Minister, and it was so understood in Burma. Indeed, it is difficult to see how any other meaning could be read into the words.

21. It is true that no clear decision was given by the Burma Legislative Council but it is equally true that no party is in favour of the proposed constitution as outlined by the Prime Minister and all parties voted against it.

22. In view of the Prime Minister's statement on behalf of His Majesty's Government, it seems to be clearly promised to us that Burma cannot be treated as outside the proposed Indian Federation *unless she specifically votes for separation.* This she has not done. It would seem therefore as if the logical course would be for His Majesty's Government to continue to treat Burma as a Province of the Indian Federation.

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* RECORD OF DISCUSSIONS. B1 [Joint Committee on Indian Constitutional Reform. (Session 1933-34.) Volume II, p. 157.]

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GENERAL MEMORANDUM BY U CHIT HLAING.

23. The Secretary of State presented a Memorandum on Burma to the Joint Committee on 10th October, 1933.* In view of the results of the General Election in November, 1932, it is surprising to read in his Memorandum:—

> "I have come to two conclusions that were reached by the Statutory Commission, namely, that Burma should henceforth be separated from India, and that the general body of Burman opinion supports separation."

How he arrived at this conclusion we are unable to understand. There is certainly no ground for it in the result of the last General Election.

24. On 29th November, 1933—on the eve of our meeting with this Joint Select Committee—an article occupying a column and a half appeared in the middle pages of the "Times" newspaper in London under the heading "The Choice for Burma." That article, "From a Special Correspondent" gave, in our view, an entirely misleading picture of the present political position in Burma. Although I replied to this article at once, the Editor of the "Times" did not and has not published my reply giving the real facts and figures. That is only one example of how difficult it is to have our true position realised or appreciated by the British public.

25. Of the Delegates from Burma who have been asked to sit with this Joint Select Committee, only 4 out of 12 represent the majority on the Burma Legislative Council elected at the last General Election. The others represent other "parties and interests in Burma"—to quote from the Secretary of State's Memorandum.†

26. It does seem to us as if the strength of our position and case was not realised in this country in regard to the question of federation and it is to be regretted that it was not possible to devote more time to the discussion of this problem.

27. I ventured to outline the special provisions that, in our view, should be included in the Constitution Act. To the points in that speech I would humbly request the members of the Joint Select Committee to pay special attention.

28. We earnestly pray that the decision of the majority of the electors of Burma, given so clearly at the General Election held in November, 1932, may be accepted by His Majesty's Government and that we may be included in the Indian Federation. If this Joint Committee should decide otherwise the faith of an Eastern people will be seriously shaken with repercussions that no one can foresee.

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* RECORD. VI. [Joint Committee on Indian Constitutional Reform (Session 1932–33.) Volume III, p. 135.]

† RECORD. IV. [Joint Committee on Indian Constitutional Reform. (Session 1932–33.) Volume III, p. 53.]

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RECORD B.2 (*continued*)

III. — Joint Memorandum submitted to the Joint Committee on their departure by U Ba Pe, U Shway Tha, Dr. Ma Saw Sa, U Thein Maung and *U Kyaw Din on the Scheme of Constitutional Reform in Burma if separated from India

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* Subject to a separate memorandum attached hereunto.

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JOINT MEMORANDUM BY U BA PE, U SHWAY THA, DR. MA SAW SA, U THEIN MAUNG AND U KYAW DIN.

INTRODUCTION.

The aspiration of the people of Burma is to attain "Dominion Status," i.e., full responsible self-government on equal footing with other Dominions within the British Commonwealth of free nations. The constitution as sketched in the Burma White Paper proposals is not full responsible self-government. It does not come up to the aspirations of the people of Burma.

We are told that it is an attempt to lay the foundation of Burma's future full responsible self-government. However, there are so many reservations, checks and safeguards that unless modifications and improvements are effected as suggested in the following pages, it will not serve its purpose.

In suggesting them we have the following in view:—

(*a*) That transfer of power and responsibility as regards departments other than those that are reserved should be real and effective.

(*b*) What is kept back from popular control at present should be transferred within reasonable time. With this end in view there should be provisions to train the people of Burma in the reserved Departments, to keep the reserved Departments in close contact with the Legislature and to facilitate transfer to popular control without necessity for further Parliamentary legislation.

(*c*) There should be provisions enabling the Burmese people to protect their interests.

(*d*) The safeguards should be provided and used only in the interests of the people of Burma.

(*e*) To apply the principle of reciprocity immediately as between India and Burma or as between the United Kingdom and Burma would be highly unfair, as Burma is comparatively young, inexperienced, and ill-equipped, and therefore unable to hold her own against others at present. The new Constitution should give her a fair opportuniiy for commercial, economic and political growth.

It is stated in para. 24 of the Introduction to the Burma Proposals that the question of continued recruitment by the Secretary of State to the Superior Medical and Railway Services is under examination. It is also stated in para. 38 (3) of Appendix II to Record A1 (II) (Joint Committee on Indian Constitutional Reform, Session 1933-34, Volume II, p. 51) that a lengthy investigation as to what should be qualifications for Labour constituencies will be necessary. We hope that the results of the said examination and the proposed investigation will be placed before the people of Burma, and that we shall be given an opportunity to express our opinion thereon.

We were assured that we could submit a memorandum expressing our views on Mr. Harper's memorandum on trade relations, etc., and we shall do so when he supplies us with a copy.

The King Emperor.

We welcome the suggestion that His Majesty might be pleased to adopt the title of King-Emperor of Burma after the separation of Burma from India.

The Governor-General of Burma.

(1) The head of the Executive in Burma should be designated Governor-General.

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(2) He should always be a man who has had appreciable Parliamentary experience, held high political office or had experience in the working of full responsible Government.

(3) He should never be a military man, a member of the Civil Service nor a man who is not acceptable to the Ministry of Burma with which he would have to work. (*Cf.* the case of the Dominions.)

The Working of the Executive.

PROPOSAL 10.

A.—*Defence.*

(1) *Military Council.*—There should be a Military Council for Burma on the lines of the Imperial Defence Committee. (*Cf.* Report of Sub-Committee VII, Defence, Indian Round Table Conference, pages 46-47 and 86-87, and Burma Round Table Conference Report, para. 69 at page 127.)

(2) *Training the people to defend themselves.*—The Governor-General and the Military Council should be charged with the duty of raising a Burmese army and training the Burmese people to defend themselves, e.g., by opening schools on the model of British Army Schools, by having Burmans trained to be Army officers in India or the United Kingdom, by making provision for Officers' Training Corps in the University and High Schools and by raising citizen forces.

(3) *Periodical Reports.*—The Governor-General should be required to report periodically of the progress made in Burmanization of the army, including the Military Police.

(4) *Military Estimates.*—There should be close consultation between the Dofence Member and other immediate advisers of the Governor-General on the one hand and the Council of Ministers on the other before the Military estimates are submitted to the Governor-General for final approval and for presentation to the Legislature.

(*Cf.*—Sub-Committee's Reports, Indian Round Table Conference, page 44.)

(5) *The Legislature and military affairs.*—The Legislature of Burma should be kept acquainted with military matters and it should have the right to discuss them.

(Burma Round Table Conference Report, paras. 69 and 71 at pages 127 and 128.)

B.—*External Affairs.*

These should be confined to the subject of political relations with other countries. Commercial, economic and other relations should be within the purview of the Legislature of Burma and Ministers responsible thereto.

(*Cf.*—The Fourth Report of the Federal Structure Committee, para. 11, quoted at page 165 of the proceedings of the Burma Round Table Conference.)

C.—*Ecclesiastical Affairs.*

It should be made clear that the ecclesiastical affairs are only those of the European Civil and Military services in order to dispel all doubts and apprehensions which have arisen as regards Buddhism, etc. (*Cf.*—Burma Round Table Conference Proceedings, pages 176-177.) Expenditure on them should be placed under Defence. (*Ibid.*)

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JOINT MEMORANDUM BY U BA PE, U SHWAY THA, DR. MA SAW SA, U THEIN MAUNG AND U KYAW DIN.

D.—*Schedule A (Excluded Areas).*

1. All areas in this Schedule except the Federated Shan States should be transferred to Schedule B; and there should be express provision for removal of areas from both Schedules by Orders in Council as proposed by the Secretary of State for India. (Appendix of Record A.1 [III], [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 102].

2. The contribution from Burma revenues to Federated Shan States, viz., the subvention referred to in the Report of the Statutory Commission, Vol. I, at page 82, should be stopped immediately and they should be required to pay their share of the costs of defence and general administration.

3. The claim made by them for financial settlement between them and Burma should be referred to an impartial tribunal—like the tribunal proposed for such settlement between India and Burma—and should not be left to be dealt with by the Governor-General. (Burma Round Table Conference Report, pages 109-110, para. 4.)

4. Government of Burma should be charged with the duty of adopting and carrying out *a definite policy to remove the backwardness* of the areas excluded partially or otherwise in order that they may be qualified for a share in representative Democratic Government with the rest of Burma in the near future.

5. *Legislation.*—Clause (C) in the Appendix of Record A.1 [III] [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 102], should be so amended that the Governor-General should have to act on the advice of the responsible Minister as regards areas in Schedule B, inasmuch as the Minister is to be primarily responsible for their administration.

6. *Legislature and Scheduled Areas.*—The Legislature of Burma should not be altogether prohibited from discussing or asking questions about the administration of areas in Schedule A. The Governor-General's power to disallow any question or resolution about them should be regarded as sufficient safeguard as in the case of areas in Schedule B.

(*Cf.*—Burma Round Table Conference Report, para. 64 at page 126.)

Monetary Policy, Currency and Coinage.—The reservation of these subjects should be for the period of transition only. The Secretary of State for India observed at a meeting of the Indian Round Table Conference that "the British Government have fully accepted the fact that there can be no effective transfer of responsibility unless there is an effective transfer of financial responsibility." (Indian Round Table Conference, 3rd Session, page 79) and transfer of financial responsibility cannot be effective so long as currency coinage and monetary policy are reserved.

2. The Government of Burma should have liberty to introduce a separate currency system for Burma as recommended by Sir Henry Howard and Mr. J. C. Nixon in para. 7 of their Memorandum on the Financial Questions arising out of the proposed separation of Burma from India.

3. Burma should have liberty to establish a central reserve Bank of her own either as a State Bank or a shareholders' bank as recommended by the Burma Provincial Banking Enquiry Committee, 1929-30 (para. 804 at page 350). (*Cf.*—The recommendation of the International Financial Conference at Brussels in 1920.) We do not suggest that Burma should have

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a separate currency system and a separate reserve bank straight away. However, we must insist upon her right to have them in future should the Government of Burma consider it to her advantage to do so.

E.—*Reserved Subjects generally.*

It should be made quite clear at least in the Instrument of Instructions to the Governor that Burmans should be associated with the administration of all the reserved subjects, e.g., as Parliamentary Under-Secretaries or by increased employment in responsible posts in the departments, so that they may get the necessary training to take over the full responsibility of administering them in future.

Financial Adviser.

PROPOSAL 11.

The Financial Adviser should not be eligible for appointment as a Counsellor. He should be an independent expert who is not connected with any political or financial interests in India, Burma and the United Kingdom; he should not have any executive power (*Cf.* the Report of the Financial Safeguards Committee, 3rd Indian Round Table Conference, p. 35) and he should not be allowed to develop into a rival Finance Member. He should be under statutory obligation to give such financial advice to the Legislature of Burma as it may require.

Council of Ministers.

PROPOSALS 12, 13, 14.

1. The Prime Minister should be a person who commands the largest following in the House of Representatives and he should be asked by the Governor-General to form the Ministry. We are of opinion that no nominated member of the Upper House should be in the Ministry. However, we are prepared to leave it to the discretion of the Prime Minister. We would insist upon it only if the Governor-General actually *chooses* his Ministers.

2. The Council of Ministers should be collectively responsible for all matters concerning departments of state administered by members thereof.

3. The Council of Ministers should retire or be required to retire from Office should it cease to retain the support of a majority in the House of Representatives.

4. The maximum number of Ministers should not be fixed in the Constitution Act, inasmuch as there must be provision for future replacement of Counsellors by Ministers as and when reserved subjects are transferred.

5. The Council of Ministers should have the right to reduce or surrender their salaries during their term of office.

6. The Prime Minister should have the right to appoint Parliamentary Secretaries for Ministers. (*Cf.*—Government of India Act, 1919, S. 52.)

Financial Adviser's Salary and conditions of service.

PROPOSAL 16.

Financial Adviser's salary and conditions of service should be fixed by the Governor-General after consultation with Ministers.

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Special Responsibilities of the Governor-General.

PROPOSAL 17.

Commercial discrimination in clause (*e*) should be confined to what falls within Proposals 58 and 59 only or proposals superseding them, viz. Record A2 (I) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 108].

The Governor-General's decision as to whether any of the special responsibilities are involved by any given circumstances should be reported immediately to the Secretary of State and shall be subject to cancellation by him. It shall also be subject to revision by the Judicial Committee of the Privy Council at the instance of the Ministry.

Instrument of Instructions.

PROPOSAL 20.

In addition to what is in para. 23 of the Introduction to Indian Proposals, the Instrument of Instructions should contain the following:—

(1) Instructions on the points raised above under the heading "Defence".

(2) Instructions to foster the growth of healthy constitutional conventions in the direction of full responsible self-government.

(3) Instructions for automatic growth of the constitution to ensure the advance of Burma through the new constitution to full responsibility for her own government.

(*Cf.*—The Prime Minister's speech at page 177 of the Burma Round Table Conference Proceedings and para. 5 of the Introduction to the Burma Proposals.)

The Legislature.

PROPOSAL 21.

The Legislature should be unicameral. A second chamber is not necessary for the following reasons:—

(1) Burma is not being granted full responsible self-government yet and it is doubtful whether a second chamber would be necessary with it even, there having been a decided tendency in the Dominions to create single chamber Legislatures in the place of the original bicameral system. (*Keith* on Responsible Government in the Dominions, page 391.)

(2) There are ample checks and safeguards on the little power that is being transferred in the form of Governor's powers and special responsibilities and provisions against commercial and administrative discrimination.

(3) The composition of the House of Representatives would be such, having regard to the proposed representation of minority communities and special interests, that it would in itself be an insurance against rash legislation.

(4) The case of Burma is different from that of India inasmuch as the Government must be unitary and not federal.

The Special Commission on the Constitution of Ceylon observed at page 39 of their report "However the question may be approached it can hardly be denied that the creation of a Second Chamber, even with a scope less wide and with powers less extensive than those assigned to the Lower House, would

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neutralize to a large extent the transfer of responsibility to the elected representatives of the people. It would be the height of timidity as of inconsistency to recommend a transfer of responsibility while devising means to render that transfer not fully effective." And these remarks apply to the Burma proposals with greater force having regard to the proposed composition and powers of the Upper House.

PROPOSAL 22.

The Governor-General should exercise his powers to summon, prorogue and dissolve the Legislature ordinarily on the advice of Ministers.

The Composition of the Chambers.

PROPOSAL 25.

The Senate, if there must be one at all in spite of our protest, should be constituted as follows:—

Half by direct election, each Division and the Rangoon Town District being treated as separate constituencies for the purpose;

Quarter by indirect election by the House of Representatives; and

Quarter by nomination—not by the Governor-General in his discretion, but by the Governor-General on the advice of the Council of Ministers.

PROPOSAL 28.

Senators returned by direct election should not be required to retire by rotation. They should be allowed the full period of eight years.

As regards members elected indirectly, those who polled the smallest number of votes should be required to retire first (*Cf.* the rules of the Bar Council, Rangoon). Government nominees should also be placed in serial order and those who are at the bottom should be required to retire first. One third of the nominated and indirectly elected Senators should retire at the end of the 5th year, another third of them should retire at the end of the 6th year, and the remaining third at the end of the 7th year.

PROPOSAL 29.

The numbers should be subject to variation by a constitutional resolution or by an Order in Council having regard to the fact that areas which are excluded at present must have representation when they are allowed to come in.

PROPOSAL 33.

Conviction of election offences and suspension from legal practice should be disqualifications for five years only, subject to the proposed proviso.

Legislative Procedure.

PROPOSAL 37.

There should be no deviation from the well-known parliamentary practice and procedure nor from the Indian Proposals as regards Money Bills and they should not be allowed to be initiated in the Upper House.

In this connection the promise made to Burma by the Secretary of State for India* that her prospects of constitutional advance would not be prejudiced by separation from India should be borne in mind.

* In the House of Commons 20th January, 1931.

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PROPOSAL 40.

The Governor-General should not be merely empowered but required to call a joint session of the Houses in case of a deadlock; or in the alternative a certain number of the members of either House should have the right to requisition a joint session of the Houses.

PROPOSAL 41.

The Governor-General should be required to take Ministers into his confidence and to consult them before he exercises his discretion as proposed. Furthermore, Governor-General's Acts should come into force only with the assent of His Majesty in Council and they should not be presented for such assent "until copies have been laid before each House of Parliament for not less than eight days on which that House has sat." (*Cf.* Government of India Act, S. 72E (2) and (3).)

PROPOSAL 43.

The Governor-General should have no right to stop proceedings in the Legislature as regards matters which are within its competence. His power to refuse assent to the Bill and to reserve it for signification of the pleasure of His Majesty in Council are sufficient safeguards. The proposal strikes at the very root of liberty to discuss matters and propose measures in the Legislature.

Procedure with regard to Financial Proposals.

PROPOSALS 44 AND 45.

It should be made clear that Governor-General always means Governor-General with his Council of Ministers and that even where he is to act "at his discretion" or "in his discretion" he would have to act after consultation with his Ministers.

Proposal 45 should also require budgets for excluded areas other than the Federated Shan States to be prepared separately from those for the Federation and the rest of Burma for the reasons stated under Proposal 47.

PROPOSAL 47 (iii).

We have urged above that the Military Estimates should be prepared in close consultation with the Ministers.

As regards expenditures on Excluded Areas (other than the Federation of Shan States) they should be met out of the revenue therefrom and any contribution that the Governor-General might require out of the general revenue should be votable by the Legislature of Burma.

Salaries.—The Legislature ought to have the right not only to discuss but also to reduce salaries of all except the Governor-General—not for political but for financial reasons. There has been grave dissatisfaction in the country that the salaries of high officials cannot be reduced even in these days of serious economic depression and financial stringency.

Emergency Powers of the Governor in relation to Legislation.

PROPOSAL 51.

1. Ordinances and not mere renewals thereof should be required to be laid before both Houses of Parliament as soon as possible.

2. They should not only be subject to disallowance as an Act passed by the Legislature but should also be controlled or superseded by any such Act.

(Cf.—Government of India Act, S. 72).

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Powers of the Legislature.

PROPOSAL 55.

The words in italics have given rise to disputes as to the real purport of the entire proposal, but we have been assured that it would be made clear that the intention is only to provide for enforcement of the Naval Discipline Act, the Army Act, the Air Force Act, and similar Acts as regards members of Indian public forces in Burma.

Constitutional Resolutions.

Sufficient power should be given to the Legislature of Burma to amend the constitution by constitutional resolutions (Cf. Art. 68 of the Constitution of New Zealand which reads "It shall be lawful for the said General Assembly (*i.e.*, the New Zealand Legislature) by an Act or Acts to alter from time to time any provisions of this Act.") Redistribution of constituencies, revising their delimitations, revision of the franchise, rearrangement of the methods of election and the alteration of the size of legislature should be within its power subject to safeguard by prescribing a definite majority say of two thirds (Cf. Indian Statutory Commission's Report, Vol. II, paras. 94, 95 and 109. We however object to the suggestion of restriction for ten years therein).

PROPOSALS 58, 59, 60, 61 AND 62.

These have been superseded by Record A. 2 (I) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 103], and attention is invited to our remarks thereon.

Financial Powers and Relations.

PROPOSAL 64.

There is a consensus of opinion that financial settlement between India and Burma should be referred to an independent tribunal.

The Government of India in their Despatch on Proposals for Constitutional Reforms, dated 20th September, 1930, observed "We believe that a Committee of the Privy Council would be the sort of tribunal most likely to satisfy Indian opinion. Their decisions could be given on evidence placed before them, assisted by expert witnesses or possibly assessors, from India and from Burma". Sub Committee No. IV (Burma) of the Indian Round Table Conference considered that it should be dealt with in the manner recommended by the Government of India; and we are of the same opinion. We only wish to add that the Tribunal should be appointed or declared as soon as the decision to separate Burma from India is arrived at and that financial settlement between Burma proper and the Federated Shan States should also be referred to the same tribunal.

Statutory Railway Board.

PROPOSAL 68.

Record A. 2 (II) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 109] and the Sketch Proposals for the future administration of the Burma Railways attached to the Record.

Para. 4 (*b*) *of the Sketch Proposals.*—1. The Chief Commissioner, *i.e.*, the General Manager of the railways, should not be President of the Board of Management. He should be only a member in executive charge of the affairs of the Board which should have the right to elect its own President

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from among its non-official members. It is highly desirable to have an independent President who would see that the Chief Commissioner places the necessary items on the agenda with all the necessary information thereon, that the Chief Commissioner carries out all the resolutions of the Board with due despatch and who would conduct the business of the meetings fairly. We have had experience of difficulties and dissatisfaction where members in executive charge are Presidents.

2. The President of the Board—and not the Chief Commissioner—should have the right of access to the Governor-General of Burma, and that right should be exercised in consultation with the Minister in charge of Railways. It is not at all proper to let the President have access to the Governor-General behind the back of such Minister.

3. The Governor-General should appoint the Chief Commissioner after consultation with the Minister in charge of railways

4. The Governor-General should determine the Chief Commissioner's salary after consultation with the Minister.

Para. 4 (*c*)—1. The Financial Adviser should not be a member of the Board. He should be only an independent adviser thereto in order that there might be no cause for suspicion that he has pet schemes or ideas of his own or that he is taking sides.

He should be required to attend meetings of the Board to give it the benefit of his financial advice, but should not be at liberty to vote upon, or to make, any proposition at any such meeting. (Cf. The position of the Inspector of Schools with reference to the Rangoon Education Board under Burma Act VI of 1922, Schedule I, Chapter VII, S. 8).

2. Non-official members should be appointed by the Governor-General after consultation with the Minister.

3. Remuneration of the non-official members of the Board should not be fixed in the Constitution Act but should be left to be fixed by the Governor in consultation with the Minister.

Para. 5. Please add "ordinarily" after "shall" in the third line. We agree that the Board should adjust rates, fares and other charges to meet the necessary outlay; but it is not always practicable nor expedient to do so. e.g., during a period of trade depression, like the one through which Burma is passing, rates and fares cannot be increased at all and if they are increased the revenue will rather decrease than increase. The Board should have power to raise loans through the Government of Burma to meet the deficits during such periods.

Para. 7. The railways should be entitled to contribution from general revenue only as regards such new lines as may be required by Government to be constructed for purely defence purposes; and such contributions should cease as soon as these lines become self-supporting.

General. 1. The Constitution and powers of the Board should be subject to variation by Orders in Council.

2. Disqualifications for non-official members of the Board should be the same as those for the Indian Railway Authority (Joint Committee on Indian Constitutional Reform, Session 1932-33—Vol. III.—page 41).

PROPOSAL 71.

Further provision should be made for preparation of separate Budgets for Burma proper and areas (if any) in Schedule A other than the Federated Shan States. (Please see observations on Proposal 47 (iii)).

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The High Court.

PROPOSAL 73.

1. The Judges should be appointed by His Majesty on the recommendation of the Governor-General, and the latter should make the recommendation after consultation with the Minister in charge of Law and Order.

2. The age limit, having regard to climatic conditions, should remain 60 and should not be raised to 62.

PROPOSAL 74.

There was remarkable unanimity of opinion among the members of the Burma Delegation at the Burma Round Table Conference

(1) that the Chief Justice should always be a Barrister (or Advocate) Judge and

(2) that the quota of Indian Civil Service Judges should not be increased beyond one-third (Burma Round Table Conference Proceedings, pages 125-136), and the members of the Burma Delegation before the Joint Select Committee are in unanimous agreement with them.

In fact, we do look forward to the day when we shall be drawing on the legal profession for all Judges of the High Court.

PROPOSAL 75.

It should be open to the Legislature of Burma to discuss the scales of pay, pension, leave and other allowances for all Judges and generally to make recommendations for reduction thereof for financial reasons, especially during the days of trade depression and financial stringency.

PROPOSAL 76.

Temporary appointments very often lead on to permanent ones and there is no reason why in these days of quick communication, temporary appointments should not be made by the Crown in the same manner as permanent ones.

The Secretary of State's Advisers.

PROPOSAL 80.

Burma should have a Secretary of State for Burma separately from India. We would prefer a separate Secretary of State; but if that be not possible, we would like the office of Secretary of State for Burma to be held by the Secretary of State for Dominions. We object to the Office being held by the Secretary of State for India, as we feel that it would be impossible for him to hold the balance evenly between India and Burma, and that we should have a member of the British Cabinet to stand up for Burma when there are disputes or differences between the two countries.

PROPOSAL 83.

The Secretary of State for Burma should in no case be required to consult members of the Indian Council in any matter relating to Burma.

General.—There should be a separate High Commissioner for Burma with a separate Burma House in London.

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The Public Services.

PROPOSALS 86 AND 88.

The last sentences in these proposals are too vague. They should be deleted. The rest of these proposals are wide enough to cover all legitimate claims for compensation.

PROPOSAL 87.

The last sentence should be deleted since a statutory inquiry is contemplated (Proposal 93) and the Inquiry Commission or Committee is to have power to recommend rules and regulations *re* conditions of service, etc.

We assume that the determination of cadre, conditions of service, salaries, etc. of the other services would be entirely within the power of the Government of Burma.

PROPOSAL 93.

The statutory inquiry should be made within a year or two after the new Constitution Act comes into force, it should be by a committee of equal numbers appointed by Parliament and the Legislature of Burma, and appointments to services should not be made *in advance* before the Committee have reported.

Public Services Commission.

PROPOSAL 100.

We appreciate the desirability of the Public Services Commission being free from political influence. However, we feel that it would be too drastic to disqualify the Chairman of the Commission permanently from holding any office under the Crown in Burma. Disqualification for a period of five years would serve the purpose.

The members of the Commission should be appointed by the Governor-General in consultation with Ministers, and the majority community should always be represented thereon.

GENERAL.

I.—*Automatic Growth.*

We wish to repeat the observations made by Sir Oscar de Glanville (now President of the Legislative Council of Burma) "We ought to have a constitution with safeguards which will enable us without further legislation or Round Table Conferences or Statutory Commissions gradually to attain full responsible self-government." (Burma Round Table Conference Proceedings, page 50.) Major Graham Pole also stated thereat "I am also of opinion that the new constitution must be such as will automatically develop into full self-government without the necessity of coming back for another Act of Parliament. I am strengthened in this view by the opinion expressed by the Simon Commission." (*Ibid* page 165.) The Prime Minister remarked at the end of the said Conference "You are not only getting to-day, you are getting to-morrow as well, and what you have got is not merely the Constitution as may be laid down in the Act of Parliament very shortly; but with that you have got the potentialities of that Constitution, and the potentialities, the chances of advance, of broadening, of widening, of extending are with you etc." (*Ibid* pages 177-178.)

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The Burmese people attach great importance to provisions for automatic growth and they are anxious that the period of transition should be short. (Resolution of the Burma Legislative Council of the 22nd December, 1932.) And there has been great stress laid on the seeds of growth in the Constitution before the Joint Select Committee. We accordingly submit (1) that the Legislature of Burma should have ample powers to deal with constitutional matters by means of constitutional resolutions as suggested by us under Proposal 55, and (2) that provision should be made for transfer of reserved subjects by Orders in Council on the recommendation of the Legislature of Burma.

II.—*Excluded Areas.*

With reference to Clause A in the Appendix to Record A 1 [III] (Joint Committee on Indian Constitutional Reform, Session 1933-34) we wish it to be made clear that subsequent Orders in Council would be passed to take the areas out of the Schedules (in the case of the Federated Shan States when the Sawbwas wish to fall into line with Burma and in the case of others when they have made sufficient progress to take part in a responsible representative form of government along with Burma proper) and to amalgamate them with Burma proper. We make this submission as it has been suggested in some quarters that some of these areas might be amalgamated with areas outside the Burmese territory, *e.g.*, to form a North East Frontier Province of the Indian Empire. We strongly object to these suggestions and we are glad that no such suggestion has been made to us by Government.

III.—*Burmanization of the Army and Military Police.*

We wish to make it quite clear that we are not asking for duplication of the Forces for Defence by raising a Burmese Army. The Indian troops and the Military Police should be replaced gradually as and when Burmese forces are raised.

IV.—*Trade Convention with India.*

The Trade Convention should be between the Governments of India and Burma under the new constitutions. However, as this is a matter of vital importance, the progress of negotiations therefor should be reported, and the terms proposed therefor should be submitted to the Legislature of Burma for approval.

V.—*Financial Settlement between India and Burma.*

The Government of Burma should place their case before the Legislature of Burma through the Finance Committee thereof before it is submitted to the independent tribunal for adjudication.

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APPENDIX 'A'

Discrimination in Burma

A.

[*Vide page* 1297, *Vol. II B, Minutes of Evidence given before the Joint Committee on Indian Constitutional Reform* (*Session* 1932-33).]

Clause 3 (i).—There should be a reciprocity clause as against the rest of the British Empire inasmuch as such a clause is there even in the case of the United Kingdom. Equality or mutuality is equity and it is absolutely unfair to compel Burma to recognise the rights of citizens of other countries in the British Commonwealth which do not similarly recognise the rights of her people. Besides, there is no reason why they should not be satisfied even with the same terms and conditions as the United Kingdom. This protest is made on principle. In actual practice there may not be any Burman to take advantage of reciprocity in the matter for some considerable time.

Clause 3 (ii) (*b*).—It should be made quite clear that a certain percentage of labour to be employed on any particular job being required to be Burmese (with a view to helping indigenous labour and thereby alleviating unemployment) would not be within the mischief of this sub-clause.

Clause 3 (iii).—It should be made quite clear that prescription of the following conditions for contracts with or concessions by Government or local public bodies would not be within the mischief of this sub-clause so far as companies to be incorporated hereafter are concerned:—

(1) Requirement to offer a certain percentage of the share capital to the Burmese people in the first instance;

(2) Requirement that the Burmese people should be represented on the Directorate;

(3) Requirement that facilities should be given for training Burmans; and

(4) Requirement that a certain percentage of labour employed should be Burmese.

It is but fair that new companies seeking contracts with or concessions from the Burma Government and the local public bodies should throw their shares and directorate open to the Burmese public, provide facilities for their training and employ some Burmese labour.

Clause 3 (iv).—Add " and contracts with or concessions by the Burma Government and local public bodies " after " bounties and subsidies of clause (vii) (2) " for the reasons set out above.

Clause 3 (vii) (2).—It should also be lawful to require that companies incorporated after the passing of the Bounty Act should first offer a certain proportion of their share capital to the Burmese public. As regards companies already trading in Burma, it should be lawful to require as a qualification for the benefit of the Bounty or Subsidy Act that they should offer unsold shares or debentures to the Burmese public, make arrangements for representation of the Burmese people on the Directorate and provide facilities for the training of Burmans and that a certain percentage of labour employed by them should be Burmese, subsidies being usually intended not only for particular trades but also for the people of the country through them.

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Clause 3 (viii).—It should be lawful to requisition facilities for the training of Burmans in shipping and navigation.

Clause 4.—It should be clearly declared in the Constitution Act itself that the clauses against discrimination should not affect freedom of contract in any way.

Clause 6.—It should be clearly declared in the Constitution Act itself that it is open to Burma to require additional qualifications from new entrants to professions which are justified by the special needs of conditions in Burma.

General.—It should be within the competence of the Burma Legislature to remove such commercial and administrative discrimination as may have been in existence before the Constitution Act comes into force.

B.

[*Vide Record A2* (1) *Joint Committee on Indian Constitutional Reform* (*Session* 1933-34), *Volume II, p.* 103.]

The proposals in the Annexure to this Memorandum are open to the same criticism as those in the Memorandum by the Secretary of State dealt with in part A of this Appendix.

We note with some satisfaction that no protection of the right of entry into Burma is contemplated in favour of British subjects domiciled in India and we were glad that the Secretary of State for India observed before the Joint Select Committee that any restriction on the right of Burma to control immigration would strike at the very roots of self-government. (*Cf.* Sir Hari Singh Gour quoting Resolution XXII of the Imperial War Conference, etc., on page 1321 of Volume II B of the Evidence of the Joint Committee on Indian Constitutional Reform (Session 1932-33).)

However, we find serious restrictions actually proposed. It is proposed in paragraph 15 that the introduction of any legislation regulating immigration should be subject to the Governor or Governor-General's prior consent and might also be reserved for signification of His Majesty's pleasure and we strongly oppose these proposals.

With reference to paragraph 14, it should be made quite clear in the Act that the Government of Burma should have complete control of its own land policy.

With reference to paragraphs 18, 19 and 20, the principle underlying S. 13 (1) of the Indian Medical Council Act, 1933, should be applied in favour of Burma and the Government of Burma should be at liberty to negotiate with authorities in India and other countries for the settling of a *Scheme of Reciprocity* for the recognition of medical qualifications. The proposal in paragraph 20 that Indian qualifications recognised under the Indian Medical Council Act should be accepted ad interim pending arrangements with the said Council is objectionable inasmuch as it would interfere with the Burma Government's discretion and put it under a handicap in the negotiations. The proposal in the same paragraph that there might be an appeal to the Privy Council is unacceptable both on principle and on account of time and expenditure involved in appeals thereto.

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APPENDIX 'B'

Franchise, Composition of Legislature and Representation of Minorities and Special Interests

[*Vide Record A1 (II) Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 9.*]

A.—*Communal Representation.*

1. There should be no communal representation for the following reasons:—

(*a*) "We regard any system of communal electorates as a very serious hindrance to the development of the self-governing principle"—Report on Indian Constitutional Reforms, 1918, para. 231.

"Division by creeds and classes means the creation of political camps organised against each other and teaches men to think as partisans and not as citizens, and it is difficult to see how the change from this system to national representation is ever to occur."—*Ibid.*, para. 229.

(*b*) In surveying the situation in Ceylon the special Commission on its constitution "have come unhesitatingly to the conclusion that communal representation is, as it were a canker in the body politic, eating deeper and deeper into the vital energies of the people, breeding self-interest, suspicion and animosity, poisoning the new growth of political consciousness and effectively preventing the development of a national or corporate spirit. . . . There can be no hope of binding together the diverse elements of the population in a realization of their common kinship and an acknowledgment of common obligations to the country of which they are all citizens so long as the system of communal representation, with all its disintegrating influences, remains a distinctive feature of the constitution."—(See the Report page 39, *cf. ibid.*, pages 91, 99 and 100). Communal representation has been abolished in Ceylon as a result of this report.

(*c*) The communal problem in the Indian sense does not exist in Burma. (See the Footnote under Burma Proposal 20.)

(*d*) If the criterion of the existence of a minority adopted by the League of Nations be applied viz.: that a minority must constitute at least 20 per cent. of the total population, there are no minorities in Burma.

(*e*) The minority communities have gained representation through general constituencies in the past and they are influential enough to do so in future, e.g.

Mr. Lamb, a European, was returned for Magwe General Constituency.

Mr. Wellington, an Anglo-Indian, was returned by the Tavoy General Constituency.

U San Baw, a Karen, was returned by Tharrawaddy General Constituency.

Mr. Eusoof, an Indian, was returned by Moulmein General Constituency.

(Attention is invited to Appendix B 1. for a list of non-Burmans returned by general constituencies.)

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Besides, even as regards the Indian Legislature, where the whole of Burma forms one constituency, Indians like Messrs. Munshi, Chari, Naidu and Hamid, have been returned.

(*f*) In some constituencies the minorities are compact enough to be able to secure the seats to themselves, e.g., the Indians in Rangoon, the Chinese in West Rangoon, and the Karens in Thaton and Amherst districts.

(*g*) Two of the communities are to be represented through special seats for commercial interests, such seats being provided for the European and Indian Chambers of Commerce.

(*h*) Protection of the legitimate interests of the minorities is a special responsibility of the Governor-General; and

(*i*) There are provisions against trade and administrative discrimination.

For further criticism of minority claims please see Burma Round Table Conference Report, page 115, para. 26, and cp. page 164 of the Proceedings and pages 55 to 64 of the Burma Round Table Conference Proceedings of the whole Committee.

2. We would make the following submissions with reference to the various communities:—

(a) *The European Community.*—There are 11,651 Europeans in Burma, divided as follows:—

British subjects:	
Races of British Empire	9,998
Other races	629
Total	10,627
Foreign subjects	1,024
Total	11,651

If the number of British troops is deducted, there will be 9,858, consisting of Europeans in Government service, commercial firms, and in the other professions. Those in service will be amply protected by provisions in the Act. Those in the professions will also be on the same footing as members of other communities. The commercial interest will also be protected by the proposals against discrimination. There will also be seats for European Commerce. In addition to these the Governor, the Counsellors, the Financial Adviser, and many members of the Superior Services will, for some time to come, be Europeans and they can very well look after the interests of the community. If the European Community is given communal seats on the population basis like the other communities, and no special weightage is allowed for their commerce inasmuch as it is to get special representation, the community would be entitled to about ·08 of the seats. (See para. 2 and 5 (3) of Appendix II to Record A1 (II) Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume 11, pp. 36-38.) That being so, there is no justification to provide communal seats for the European Community.

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(b) *The Anglo-Indians.*—There is no justification for the provision of communal seats for the Anglo-Indians. According to the 1931 Census Report on Burma, they number 19,200 in the whole of Burma and 18,447 in the areas that will be made into constituencies. The Community is divided into three sections, viz.:—

(*a*) Those with European and Indian blood.

(*b*) Those with European and Burmese blood.

(*c*) Those with no European blood but pure Burmans or Indians who adopt European names, customs and manner.

Anglo-Indian members of Section (*b*) are out for a merger with the Burmese people and are opposed to communal representation and separate electorates. Section (*c*) is also against communal representation. The agitation for communal representation is only by a section of Section (*a*), consisting mainly of Anglo-Indians serving in the Railways, Post and Telegraphs Departments. They have no abiding interest in the country and they will return to India on completion of their term of service in Burma. They have also no special commercial interest to be protected. As regards members of the various services, their prospects and position will be fully secured by proposals under the caption of Public Services. They will also enjoy equal rights and liberties on the same footing as the Burmese people. There is therefore no justification to provide communal seats for the Anglo Indians.

(c) *The Karens.*—According to the 1931 Census Report on Burma there are 1,367,673 Karens. But in the areas that will be made into constituencies there are only 1,100,226. In the proposed Karen constituencies, however, there will be only 749,700. The Karens are divided by religion as follows:—

Buddhists	1,049,547
Christians	218,890
Animists and others	98,959
Muslims	287

The Christian Karens are again sub-divided as follows:—

Baptists	168,935
Roman Catholics	41,294
Anglicans	7,817
Other sects	744

A few months ago out of 168,935 Baptist Karens some 7,000 Karens gave up Christianity and formed a new religion under the leadership of Sao Durmay Thompson.

The demand for communal representation is made by the Baptist Karens only. The Buddhist and Animist Karens live peacefully with the Burmese and they do not want communal representation. Among the Christian Karens neither the Roman Catholics nor the Anglicans want it. At the last general election among the five Karens returned to the Burma Legislative Council, there are two Buddhist Karens. One joined Dr. Ba Maw's Party and the other U Chit Hlaing's Party. They are against communal representation. In the Burma Legislative Council, therefore, three Baptist Karens only are for communal representation. The vast majority of the Karen community does not want it. The Karens are in a strong position in at least half a dozen constituencies and without communal representation they can always find seats in the Legislature.

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(d) *The Indians* in Burma numbered 1,017,825 according to the 1931 Census. In the areas that will be made into constituencies there are 955,338 only. But of this number 683,433 are born outside Burma and 376,905 are temporary residents. Of the 955,338 Indians 320,319 will be in the proposed Indian constituencies. Again in the 955,338 Indians are also included members of what are known as Indo-Burma races. The members of these Indo-Burma races are opposed to communal representation as they always get seats in the Council through general electorates. In the 955,338 Indians also are included very large numbers of Indian coolies—estimated in Rangoon town alone between 65,000 and 70,000. It is proposed to allot two seats to Indian Labour. If the Labour votes and the votes of the members of Indo-Burma races are deducted from 955,338, the actual number of Indians who are clamouring for communal representation on separate electorates will be very small indeed. If the deduction of Indian Labour votes and votes of the Indo-Burma races be effected from the Indians in the Indian communal constituencies, i.e., from 320,319, the actual number of Indians who are clamouring for communal representation will be confined to members of the India-Burma Association, India-Burma Chamber of Commerce, and Nattukkottai Chettiar Association. They are temporary residents with no abiding national interests in the country. The Indians are in a strong position in Rangoon, Mandalay, and other places, and they will always find seats in the Legislature through the general constituencies. It is, therefore, very unfair to the people of Burma to provide communal seats to a section of Indians in the name of the whole Indian community.

3. We have shown above that there is no justification to provide communal seats in that legislature. The people of Burma are opposed to it. The Burma Government did not recommend communal representation in its Memorandum submitted to the Burma Reforms Committee in 1921 (vide para. 6 of the Report). The Burma Reforms Committee also came to a similar conclusion and stated that it is undesirable to segregate them completely from the general electorate (para. 21). Communal representation was forced on Burma by the Government of India to pacify Indian agitation. As a result of the communities who received this kind of representation have clamoured for more. To satisfy this demand it is now proposed to allot them more seats. The following table will show the one-sidedness of the proposed allotment of seats:—

Communities.	*Present Seats.*	*Proposed Seats.*	*Gain. Per Cent.*
Karens	5	12	140
Indians	9	12	33.3
Europeans	4	7	75
Anglo-Indians	1	2	100
Chinese	1	1	Nil
	20	34	70
Non-communal	83	98	18
	103	132	

It will be seen that the seats for the Burmese Chamber and University are included in the non-communal seats while the seats allotted to Burmese labour are not taken into consideration. The 23 nominated official and non-official seats in the present Legislative Council are also included in the non-communal seats as they are not meant for any particular community.

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From the table below also it will be seen the increase in communal and special representations is unjustifiable.

	Total Number.	*Communal and Special.*	*Per cent.*
Present	103	20	19.4
Proposed	132	34	25.7

The following observations of the Special Commission on the Constitution of Ceylon, who ultimately recommended the abolition of communal representation, apply with special force to the claims now advanced by various communities.

> "We found, however, that not only did those who already had communal seats desire that the number of these should be increased but also that a number of other communities, religions, castes and special interests, not at present represented, came before us claiming that it was necessary for them to have seats in the Legislative Council and that they were as much entitled to this privilege as those who already possessed it. The result was that, so far from the demand being reduced, increased and new claims were put forward which would have made the number of communal seats more than 50, instead of the 10 already existing. Our investigations show that the desire for communal representation tends to grow rather than to die down, and in these circumstances, it being in itself admittedly undesirable, it would seem well to abolish it altogether while the number of seats involved is still comparatively small."

4. If there must be communal representation and if there must be an Upper House at all, such representation should be in the Upper House. Minorities are bound to be represented therein as a result of the elections, direct and indirect, proposed by us; and on default representatives for them can be nominated by Government.

5. It is not fair that members of the minorities who receive communal representation on separate electorates are allowed to stand for election in the general constituencies. They should not be allowed to stand for election in any constituency other than their own.

6. Such communal representation as is allowed should be only for a definite period of ten years or until a substantial majority of the representatives in the Legislature of any community so protected declare themselves in favour of change whichever is earlier. (*Cf.* Report of the Burma Round Table Conference, para. 26 at p. 115.)

B.—*Plural Member Constituencies.*

All general constituencies should be single member constituencies so that the areas might be smaller and members might be able to keep themselves more in touch with their respective constituencies. This is the general desire of the people, witness discussions in the Burma Legislative Council on the 10th August, 1933 (Burma Legislative Council Proceedings, Vol. 26, p. 119). The Government of Burma is prepared to satisfy this desire. [See para. 27 of Appendix II to Record A1 (JI), Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 47.] Besides, there is ample time to have new general constituencies delimited as single member ones for the first election under the new constitution.

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C.—*Special Interests.*

It is proposed to allot seats to the following special interests:—

(*a*) European Chamber of Commerce.

(*b*) Indian Chamber of Commerce.

(*c*) Chinese Chamber of Commerce.

(*d*) Burmese Chamber of Commerce.

(*e*) Indian Labour.

(*f*) Burmese Labour.

(*g*) University.

As regards the European Chamber of Commerce, it is proposed to allot four seats. We consider this is too much. The Governor, the Counsellors, the Financial Adviser will be Europeans for some time to come. There will be provisions in the Act against trade or administrative discrimination. The Superior Services in all branches will contain Europeans for some time to come. Besides it cannot be said that the European interests in trade and commerce are separate from or are above the interests of the whole country in these matters. In actual fact, however, the interests of the people of Burma in these respects are much wider and more abiding. We therefore consider that the present representation by two seats is quite adequate.

As regards the Indian Chamber of Commerce, their interest is not more than that of the European, and considerably less than that of the people of the country. One seat to the Indian Chamber is therefore quite adequate.

As regards the Chinese Chamber, we do not consider that any seat should be given to it. The majority of the members of this Chamber are non-British and are Chinese subjects and there is no justification for providing seats for non-British subjects in Burma. Besides, the Chinese community has always won a seat for West Rangoon constituency.

As regards the Burmese Chamber we consider that it should at least be placed on the same footing as the European Chamber seeing that the people of Burma, whose abiding interests in the country cannot be denied, have predominating interest in the trade and commerce of the country.

No Reservation of Seats for Women.

The proposal to reserve seats for women has been made by the Secretary of State for India very tentatively. It is expressly stated in paragraph 32 of Record A1 (II), Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 24, that it is not proposed to press the suggestion if the women of Burma do not wish reservation of seats.

The women's delegate at the Burma Round Table Conference disclaimed any requirement by the women of Burma for special means of representation. She made herself quite clear, saying, "We do not claim special treatment or special electorates. . . . I definitely say we want to stand in the open field with our men demanding equal responsibilities with equal rights." (Burma Round Table Conference Proceedings, page 163.) The lady member of the present Burma Delegation has also stated definitely that the women of Burma ask only for a fair field and no favour and that they object to reservation of seats for them on principle. Besides no one on the same Delegation has supported the proposal to reserve seats for them.

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The people of Burma have always treated their women very well, and a lady was returned to the Burma Legislative Council by a general constituency as soon as one sought election after removal of the sex disqualification. There is every likelihood of women faring better without reserved seats.

Seats for Labour.

Since two seats for Burmese labour are counted against the majority community, i.e., the Burmese people for the purpose of calculating seats for minorities, Burmese labour should be represented by Burmans only. At the same time there should be provisions to prevent representation of labour by employers thereof.

Rangoon Trades Association.

We strongly support the recommendation of the Government of Burma that there should be no special seat for the Rangoon Trades Association in the House of Representatives. [Appendix II 6 (5) of Record A1, Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 39.] The Chairman of the Burma Reforms Committee, 1921, and two members thereof, Mr. Smyth (now Sir S. A. Smyth) and U. Myin, would have preferred (in 1921) to withhold representation on the ground that if the comparatively unimportant interests of the retail trade in Rangoon are entitled to representation there are many similar interests such as co-operative societies who ought to receive at least equal, if not prior, treatment. And this reason remains valid and will gain more and more force in the course of time.

General Rural Constituencies.

Akyab District West, Bassein District, and Prome District, each with a population over 360,000, should get three seats each instead of two as proposed by the Government of Burma in para. 27 of Appendix II to Record A1 (II) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 47].

Franchise for the Lower House—(Appendix II, para. 37)—
Enfranchisement of Women.

The Indian Franchise Committee recommended wifehood franchise for India.

They observed, "We think that it is a reasonable view that marriage gives a community of interest and that in it a woman enters into a partnership with her husband which may well confer civic rights as well as domestic duties." And these observations apply with greater force to Burma where, according to Burmese Buddhist Law, women enjoy equal rights with their husbands and where husbands and wives own properties jointly and in co-partnership irrespective of the manner in which they have been acquired. In the vast majority of cases, wifehood franchise would mean not a concession but only removal of an anomaly by due recognition of the wife's property qualification or payment-of-tax qualification, the properties having stood and the taxes having been paid in the name of the husband only. The suggestion that recognition of wifehood franchise might mean that more women than men are enfranchised is not borne out by the statement of the Government of Burma (Record A1 (II) Appendix II, para. 37, Joint Committee on Indian Constitutional Reform,

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Session 1933-34), and there should be no objection to the number of women voters being practically equal to that of male voters. At any rate, men have not raised any objection thereto and purely administrative difficulties, which can be surmounted with a little effort on the part of Government, shoul dnot be allowed to stand in the way where such an important question as enfranchisement of women is concerned.

Without wifehood franchise, only 700,000 women will be enfranchised as against 2·3 millions of men in a population of 12·9 millions (ibid., para. 39).

Qualifications for members of the Upper House.

(Appendix II, para. 46, page 53.)

The Burma Delegation is unanimous in the opinion that the proposed qualifications are too high. We submit that the present qualifications for members of the Indian Legislative Assembly should be accepted as qualifications for members of the Upper House and that there should be no sex disqualification. We also submit that the present franchise for the same Assembly without sex disqualification should be accepted as franchise for direct elections to the Upper House.

We further submit that apart from property qualification and qualification by service in public appointments, qualification by having been a graduate or a member of a learned profession for a certain number of years or by having been member of the Burma Legislature or President of local self-governing bodies should be recognised.

The qualifications proposed by Government recognise only very high property qualifications and distinguished public service, and they can only produce an organ of class-government which is objectionable from all points of view.

APPENDIX 'B1.'

List of Members of Minority Communities returned by General Constituencies to the Legislative Council of Burma

First Term, 1923.

1.	W. S. Lamb, Magwe West	European.
2.	U Po, Kyankse	Indo-Burmans.
3.	U Sulaiman, Mandalay Town	
4.	Ebrahim Mohamod, Morgui	
5.	U La Ba, Tavoy Town	Karens.
6.	U San Baw, Tharrawaddy South ...	
7.	H. C. Khoo, Tavoy Rural	Chino-Burmese.
8.	U Mya, Myingyan North	
9.	L. Ah Yain, Rangoon West	

Second Term, 1926.

1.	K. Beng Chong, Rangoon West ...	Chino-Burmese.
2.	U Mya, Myingyan North	
3.	L. Soo Doon, Tavoy Rural	
4.	H. Kim Seng, Pegu North	
5.	L. H. Wellington, Tavoy Town ...	Anglo-Burmans.
6.	U Ni, alias E. Pritchard, Prome Town	
7.	E. G. Maracan, Akyab West	Indo-Burmans.
8.	U Shwe Yun, Mergui	
9.	U Mya, Meiktila West	
10.	U Maung Maung, Sagaing East ...	

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Third Term, 1928.

1. U Aung Thin, Mandalay Town	Indo-Burmans.
2. M. Eusoof, Moulmein Town	
3. U Ba Yin, Meiktila East	
4. U Mg Mg, Sagaing East	
5. L. H. Wellington, Tavoy Town	Anglo-Burmans.
6. U Ni, Myingyan North	
7. H. Kim Seng, Pegu North	Chino-Burmese.
8. U Po Aye, Yamethin North	
9. Chan Chor Khine, Rangoon West ...	
10. U San My, Pakokku East	Burmese Christian.
11. U Tun Pe, University	

Fourth Term, 1932.

1. H. C. Khoo, Tavoy Town	Chino-Burmese.
2. L. C. Khoo, Tavoy Rural	
3. L. Choon Fong, Rangoon West	
4. U Po Khine, Akyab West	Indo-Burman.
5. U Ni, Myingyan	Anglo-Burman.
6. U Kyaw Din, Henzada South	Burmese Christians.
7. U Tun Pe, University	

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APPENDIX 'C'

Memorandum on Arakan by U Shway Tha

Arakan is a narrow fertile strip of territory lying along the Western coast of Burma. It has an area of about 18,000 square miles and a population of about a million. On the north it is bounded by a conglomeration of hills of Chittagong Hill Tracts and Manipur. On the north-east it is separated from Chittagong District of Eastern Bengal by the Naaf river, on the west and on the south by the Bay of Bengal, and on the east it is separated from the mainland of Burma proper by the lofty ranges known as the Arakan Yomas. Thus the country is more or less shut in by natural barriers throughout the year. Arakan owing to its geographical position is cut off from the rest of Burma. Her needs in communication, roads and education are neglected in comparison to other divisions in Burma which pay about the same revenue as Arakan. To remedy this, provision for appointment of a Parliamentary Under-Secretary for Arakan may be made in the Constitution Act. His duties will be to look after the interests of Arakan and advise the Ministry.

When Arakan's aim is accomplished, i.e., after communication by way of roads and railways with Burma proper and formation of schools to the satisfaction of the Arakanese public, the post of Parliamentary Under-Secretary may be discontinued.

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APPENDIX 'D'

On Memorandum by Lord Eustace Percy and others on Education in Burma (*See* Appendix D(1))

Comment, para. (1).—No case for additional safeguard has been made out. It is quite clear that there has been no pressure, political or otherwise, brought to bear on the heads of the schools and that there has been no threat nor suggestion to reduce the grants. If there be any reduction—other than pro rata with other schools—and if such reduction be not justifiable, the Governor-General of Burma would have ample powers to interfere under Proposal 17 (*c*) and (*e*).

Comment, para. (2).—There is no case for additional safeguard. School Boards usually act on the advice of Education Officers known as Inspectors of Schools and they are subject to control by the Deputy Commissioner, the Commissioner, and the Ministry of Education. The right of appeal already provided is ample. To allow minority communities to appeal to the Governor-General of Burma in any case of dispute between them and a local education authority would make the position of the local education authority and the Ministry of Education impossible and it might lead on to serious political and constitutional consequences.

As in the case of English schools, the Governor would have ample power to intervene on behalf of minorities if there be administrative discrimination against them under Proposal 17 (*c*) and (*e*).

Comment, para. (3).—No case for an inquiry has been made out. There is no indirect motive and no discrimination. The standard of English is being raised for non-Europeans just as the standard of Burmese is being raised for English schools. The Government of Burma and the University of Rangoon should be free to deal with the standards of education in Burma and the University. At any rate the consultation should not imply a gesture for lowering those standards.

APPENDIX 'D1'

Memorandum on Education in Burma by Lord Eustace Percy and others

(1) *Admission of Students to English schools.*—The schools have no complaint to make against any existing law or regulation. They enjoy freedom to admit or exclude what students they please. Their complaint is that they have sometimes felt obliged in the past to act contrary to their better judgment in this matter because they have feared that their Government grants might otherwise be reduced. They ask, therefore, that the grant regulations now in force, both as to the amount and conditions of grant, shall not be altered to the prejudice of existing schools without the consent of the Secretary of State.

(2) *Registration of minority vernacular schools as subsidised schools.*—The complaint here is that District Boards have been unable to register *new* Indian or Karen schools for subsidy, or even to "recognise" them so that their students may enter for government examinations. These minorities, therefore, ask that in any district where there are a minimum

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number of children belonging to the community concerned that community should have a constitutional claim to a fair proportion of local grants and, in case of dispute, a right of appeal to the Governor acting under his special responsibility. They suggest that the Governor's special responsibility in such matters should be more precisely defined, on the lines sketched in paragraph 85 of the Report of the Burma Round Table Conference; and that, in deciding appeals, he should consult representatives of the minority communities.

(3) *Language.*—The complaint here is that the Government, in pursuit of the bi-lingual policy which it has recently adopted, is so raising the standard of Burmese as a compulsory subject in High Schools and for University matriculation as to prejudice the interests of non-Burmese students. The English schools would not object to the recognition of Burmese and English as twin official languages (as in the South African constitution), or to both languages being taught in the schools, as in South Africa. Nor do they object to Burmese being made a compulsory subject for examinations for entry into locally recruited public services for which a knowledge of the language may be considered necessary by the Public Services Commission. They would, however, urge that, as in South Africa, the second official language should not be a compulsory subject of school or university examinations for English students, or at least that English students should be able to pass in the second official language at a lower standard (as in the optional subjects for matriculation in South Africa). Similar objections are raised by the Indian and Karen communities, though they fully recognise the necessity for their communities to attain a reasonable standard in Burmese.

The decision on these complaints and suggestions must lie with the Joint Select Committee, but the following comments on each of the above three heads may be of service to the Committee in reaching a conclusion:—

(1) If it is considered necessary to safeguard the position of the English schools, such a safeguard might take the form of a statutory provision on the lines of that proposed in regard to Anglo-Indian schools in India in the first part of paragraph 4 (*a*) of the Report of Lord Irwin's Committee: *i.e.*, that there should be no reduction in existing educational grants-in-aid for these schools other than a reduction *pro rata* with a reduction in the general educational grants-in-aid.

(2) The Governor's special responsibility for the legitimate interest of minorities might provide a sufficient safeguard for minority vernacular schools if it were made clear in his Instrument of Instructions (*a*) that, in the area of any local education authority, a fair proportion of grants to vernacular schools should be applied to Indian and Karen schools, if fit for recognition and desiring it, and (*b*) that he should give the minority communities an opportunity of appealing to him in any case of dispute between them and a local education authority. The question by what means the Governor should be enabled to enforce decisions taken under his special responsibilities in matters of local administration, having regard to the nature of the existing local government legislation in Burma, may require further consideration by the Joint Select Committee. It should be added that, in the view of the Burmese delegates, a fair proportion of grants is already being applied to minority vernacular schools, recent difficulties having been solely due to the financial straits of local authorities, which have affected Burmese vernacular schools no less than minority vernacular schools.

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(3) Apparently the minorities have little complaint to make against the position in regard to language teaching as it existed up to about a year ago. That position was that a lower standard of English was accepted in high school examinations in Burmese Anglo-vernacular schools and a lower standard of Burmese in English schools and in Indian and Karen Anglo-vernacular schools; and Burmese was not, at any rate in practice, a universally compulsory subject for university matriculation. It is understood that within the last year or so the university has made Burmese a compulsory subject in its matriculation examination, and both the Government and the university have announced their intention of requiring an equally high standard in both English and Burmese for all high school final examinations and for university matriculation in about five years' time. In these circumstances, it might be desirable to consult the Government of Burma as to whether the *status quo* of a year or so ago might not be restored and perpetuated.

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APPENDIX 'E'

Memorandum by U Kyaw Din

I agree generally with the memorandum signed by U Ba Pe, U Shway Tha, Dr. Ma Saw Sa and U Thein Maung except on the following points:—

(1) At the present juncture, I am of the opinion that an Upper House, as proposed, is essential. I think the proposals regarding the mode of election and nomination as proposed in the Burma Government memorandum are suitable, and I agree with the views of the Burma Government. But I consider that the qualification for membership as proposed by the Burma Government is too high.

(2) I am against communal representation on principle. But as things now stand in Burma, I cannot see any other alternative except the proposals made by Burma Government as a suitable and satisfactory solution of this difficult question.

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RECORD B.2 *(continued)*

IV.—Memorandum by Sra Shwe Ba on behalf of the Karen Community

Introduction.

The Karens form a second important indigenous race in Burma. To acquaint the Joint Select Committee with the situation of the Karens, who are an entirely different race from the Burmese, and their claims in the proposed constitution for Burma, I would respectfully invite references to the Memorandum submitted to the Indian Statutory Commission by the Karen Elders of Burma and to the various Census Reports of the Government. I would also invite a reference to the claims put forward by the Karen delegates at the Burma Round Table Conference, *vide* Burma Round Table Conference Proceedings, pages 60 and 61, 86 and 87, and 141-143.

1. As my right to represent the claims of the whole Karen Community and my statement that the Karens as a body are in favour of separate electorates for the Karens has been challenged, it seems necessary for me to make my position clear on this matter. Some statements of my position and of the basis of the claims of the Karens seem therefore to be called for at this juncture.

2. I endorse the statement made by the Secretary of State for India [*vide* Para. 23, Record A1 (II), Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 18], that the difference between the Karens and the Burmese is "entirely racial." As further stated therein it is true that "Religious differences seem to be an unimportant factor." I might also add that the Karens and Burmese have in many cases a different outlook, too. This fact has been greatly recognised by the Government of Burma in their Memorandum to the Indian Statutory Commission, page 10, paragraph 24. The Karens have always maintained a racial solidarity forming a highly individualised group and withstanding assimilation into the Burmese.

3. I also agree with the statement made by the Secretary of State in the same Memorandum on page 13, paragraph 7: "But the Karens, though belonging to the same main branch of family are a different race from the Burmese proper, speaking a different language and holding aloof from the Burmese in many ways." I wish to lay special emphasis on the words "in many ways." But I fear that space would not permit me to mention them.

4. It has been contended that the claim for separate representation for the Karens did not represent the unanimous view of the Community. This must be emphatically repudiated. If there is any matter on which there is a unanimity of opinion on the part of the Karens, this is the one. The history of the political activities of the Karens furnishes irrefutable evidence that the demand for separate representation is the foremost one of all.

(*a*) Successive Karen deputations have waited upon the various Parliamentary Committees and representatives of the British Government to express their desire and enforce the claim for separate representation since the introduction of Reforms in Burma. In 1917 a deputation of the Karens crossed over the Bay of Bengal and waited on Mr. Montagu, the then Secretary of State for India, and Lord Chelmsford, the then Viceroy of India, and made a representation on behalf of the Karens for a grant of their own

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representation by separate electorates in the new constitutional scheme for Burma. Another Karen deputation came over to London in 1919 to give evidence before the Joint Select Committee presided over by the Earl of Selborne in a committee room of the House of Lords. This deputation again reiterated the same request. Further the representatives of the Karens of which I was one, expressed this same desire in their evidence before the Whyte Committee in 1921.

The Karens have thus unanimously and consistently maintained their view on the matter of separate representation for themselves.

(*b*) It may be further pointed out that I have been given a mandate to press for the grant to the Karens of representation by separate electorates in the proposed scheme for the government of Burma both on the occasion of the Burma Round Table Conference and also before the present Joint Select Committee. A meeting of the General Council of Pwo Karen Associations was held in Rangoon on the 12th of October, 1931, prior to the departure of the Karen delegates to the Burma Round Table Conference and passed a unanimous resolution to instruct the Karen delegates to demand nothing less than representation of Karens by separate electorates. This was mentioned by my colleague, Mr. Loo Nee, before the Burma Round Table Conference. This mandate was given us with a hint of liability to be regarded as traitors to the Karen cause in the event of default to put forward this claim. The meeting which gave this mandate, it may be mentioned, was attended by the Karens irrespective of creed, denomination or tribe.

On the 9th September, 1933, a Representative Karen meeting was held in Rangoon [*vide* Appendix III (IV) B, Record A1 (II) Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 71] and unanimously accepted the proposal of separate representation for Karens. Again on the 6th November, 1933, a meeting of representatives of the Karens was held prior to my departure to England to sit with the Joint Parliamentary Committee. I was reminded in a farewell message to accept no alternative but separate electorates for the Karens. Thus, the Karens have been unanimous and have never shown a cleavage of opinion on this point.

5. The suggestion has been made that I voice only the opinion of the Karens of the Christian section to which I belong. This statement, made by those with little knowledge of the desires of the Karens, is entirely untrue. I was elected to the Burma Legislative Council on the last three occasions by Karen Buddhists, who form the majority in my constituency. As the President of the General Council of two Karen Associations, Burma, whose membership comprises mostly non-Christians, I can boldly say that I am actually voicing the attitude of the whole Karen Community in demanding separate electorates. I may further mention that there has never been an occasion since the Reforms were introduced in Burma on which the contest for Karen seats in the Legislative Council was along religious lines. The doubts cast on the representative character of the Karen delegate on account of his religious affiliation must be strongly repudiated. The following extract from a letter from a Karen Buddhist member of the present Legislative Council, representing Amherst Karen Rural, will convincingly show that not only my own co-religionists but Buddhist Karens also regard me as their leader and spokesman and that religious affiliation is not a disqualification of my expression of the views on behalf of the Karens.

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MEMORANDUM BY SRA SHWE BA ON BEHALF OF THE KAREN COMMUNITY.

Dated Kawkareik,

5th September, 1933.

DEAR U SHWE BA,

I am very much thankful to your letter of the 1st instant and I understand that my knowledge and experience is not as wide as yours. So I should say that I will agree to all the views made by you for the Karens . . . Sorry, I could not furnish you with my view as requested by you and I solely rely on your views.

* * *

Yours sincerely,

(Sgd.) HTUN BAW, M.L.C.,

Kawkareik.

I would point out that during the whole period occupied by the present review of the constitutional position, no section of the Karen community has recorded views on this subject conflicting with those now urged by me.

6. The demand of the Karens for an adequate representation by separate electorates stands upon a stronger ground than that of other minorities. Unlike the others the Karens are the aborigines of Burma, claiming a history in the country longer than even the Burmese. The interests of the Karens are more closely bound up with Burma than that of the other minorities, the Indians and the Europeans, whose residence is mostly temporary conditioned mainly upon commercial interests.

7. It is the considered opinion of the Karens that they cannot obtain adequate representation in the government of the country except through separate representation by their own elected members in the Legislature of Burma. A statement has been made that since the Karens had been elected from general constituencies in the first Council they need not be given separate communal representation in the new constitution. However the facts seem to be against such a possibility. Three Karens were elected to the first Burma Legislative Council under very special and exceptional circumstances. In the later elections no Karen member was returned from the general constituencies, although seats were contested by them. The elections have been run on racial lines and there is no guarantee that it will not be so in future. Hence the Karens stand no chance of being elected in the general electorates. The sentiments of the majority party show clearly a racial outlook and bias. It is therefore obvious that an adequate representation of the Karen interests in the new Legislature can only be made through separate communal electorates.

8. In the matter of the representation of the minorities generally, the Karens are in favour of an allotment of seats on population basis. For this reason, they have accepted the award of 12 seats for their community although their claim was for 16 seats. The allotment to the Indian and European communities of more seats than they are qualified for on this ground cannot be agreed to. Other considerations besides that of representation on population basis, would give these communities larger representation than the sons of the soil who have permanent interests and full rights of the country. The Indians and the Europeans have their mother countries, India and England, respectively. All political advantages, rights and privileges are theirs. If they are not content with all this, which they do not share with us, and make extravagant claims in respect of Burma, they are certainly asking too much for the " best of both worlds."

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I would in this connection support the views expressed by the Independent Party, Appendix III, of Record A1 (II), Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 55.

9. Reference has been made to my provisional view tendered to the Government of Burma as contained in the Record A1 (II), Appendix III (IV), Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 71, that the Karens and Burmans can easily hold the reins in their hands. This statement does not mean that the Karens are in every way of one accord with the Burmese. As stated in paragraph 27 of Record A1 (II), Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 20, the Karen members of the Legislative Council "did not tend to form a solid bloc but voted according to the matter in debate." The statement was intended to show the possibility of an increase in the strength of the representation of the indigenous races by acceding to the claim of the Karens for separate representation.

10. Regarding the number of seats to be allotted to the Karens, the proposal of the Government of Burma to allot 12 seats to the Karens on population basis has been accepted by the Representative Karen Meeting —[*vide* Record A1 (II), Appendix III (IV) Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 71]. A slight correction (to make up 12) should be made in the last paragraph of page 39, to which should be added Tharrawaddy and Prome with Karen population of 31,300. However, in the matter of their distribution the Karens have felt it necessary strongly to urge that the representation should be distributed over a wide area instead of being concentrated in a comparatively small area. This proposal is deemed necessary in view of the need for political education in the democratic methods of election and for better service to the new Government of Burma.

11. It is to be hoped that the position of the Karens in the matter of representation by separate electorates has been made clear.

12. I must also not forget to mention that in the Burma Army it is the desire of the Karens for the creation of a Karen regiment, the officers of which should comprise a proportion of Karen officers.

13. The Karens are a peculiar race in Burma, speaking a language of their own, and their traditions, culture, manners and customs are unlike the Burmans, by whom they were once oppressed. The Karens have always been loyal to the British Government. The fact that during the Great War the Karens furnished more men (who also saw active service) in proportion to their numbers and contributed more men to the Burma Military Police for the defence of Burma than did the Burmese community proper, must avowedly deserve concrete recognition and a grant of adequate measures to obtain their legitimate rights and privileges, consonant with their sentiments, wishes and aspirations, for their future progress and prosperity, politically, socially, and economically, in order to enjoy their rightful place in the administration of the country in which they have peacefully lived.

I hope that I have made the case for the Karens clear, and have made it without fear or favour in order that the Committee may realise our true and earnest desire for the privilege of serving our homeland as a separate entity, strongly maintaining that in so doing we will be promoting the true interests of our motherland.

I would, in conclusion, add that without adequate safeguards to preserve the legitimate rights of the Karens racially, educationally, economically, and religiously, and a grant of adequate representation through separate

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electorates which is the only means of education for the Karens of Burma in the democratic government, the seed of automatic growth cannot be said to be provided in the proposed constitution for Responsible Government of Burma.

Communal representation for the Karens is not a menace to progressive democratic government. The Karens, being the true sons of the soil, wish to share the burden of the government of the country in which they live and die. In the past no opportunity has been given them to take their proper place in the life of the province. They have always been downtrodden and oppressed. Needless for me to mention all the details of our past sad history. As only the wearer knows where the shoe pinches, so the Karens have sufficient experiences in the past. We do not want to obstruct the reforms which we would not only welcome but work in co-operation with the majority for the betterment of Burma.

The Karens further ask for adequate statutory safeguards in the matter of administrative services, education and religion, etc. This we ask as there has been a tendency during the past few years for nationality and religion to be considered more important than efficiency.

In this connection I would refer to the statement by my colleague, Mr. Loo Nee, on this subject before the Burma Round Table Conference (Proceedings, pp. 60-61) in which he asked for separate Karen electorates, representation on public bodies, and in the Public Services, with statutory provision for the protection of Karens, with reserved rights to the Governor to intervene to remedy any injustice.

It is the desire of the Karens that at least three seats may be allotted to the Karens by the nomination of the Governor in the Upper House.

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RECORD B.2 (*continued*)

V.—"A" Memorandum by Mr. K. B. Harper on Trade Relations between India and Burma in the Event of Separation

I.—*Introduction.*

In my statement to the Committee on the Separation issue on the 6th December (which is reported in Record B1, Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 140), I pointed out that the European Community in Burma attach the utmost importance to the preservation of the existing fiscal relationship in respect of the exchange of indigenous articles of trade between India and Burma in the event of Burma being separated from India. I think I am right in saying that all the other members of the Burma delegation share the European Community's view of the importance of preserving these relations. This Memorandum does not enlarge on the need for preserving this relationship but, accepting that, deals with the practical question of giving effect to it.

II.—*Description of "Existing Relations."*

The articles of trade exchanged between India and Burma are at present subject to the following fiscal conditions:

1. India and Burma at present form one fiscal unit and there are no *export or import customs* duties payable on goods exchanged between India and Burma.

2. There are certain indigenously produced articles which are subject to Central Excise duties, namely, Petrol, Kerosene, Silver and Salt.

3. Cigarettes are subject in Burma to a *Provincial Luxury* Duty which applies to imports from India and of Indian made cigarettes and to cigarettes manufactured and consumed in Burma.

4. Matches are subject in Burma to a *Provincial Consumption* Duty which applies to all matches sold in Burma, whether Burma, Indian or foreign made.

5. The Excise Duties on Petrol and Silver are at the same rates as those of the Import Duties on Petrol and Silver imported from other countries. The Excise Duty on Kerosene is at present 11¼ pies per gallon less than the Import Duty. The Excise Duty on Salt is at present 2½ annas per maund less than the Import Duty.

III.—*Suggested Formula.*

In my statement on the 6th December I ventured to ask the Joint Committee, if it were not found possible to enact that in spite of political Separation the "existing fiscal relationship" between India and Burma shall be maintained, to adopt alternatively a three-fold course; firstly, to record an emphatic view that it would be in Burma's and India's interests to maintain the "existing trade relations" and that those relations should be regulated by a Trade Agreement; secondly, to record the view that in order to avoid so far as possible interfering with the fiscal autonomy of the new Governments the Agreement should be negotiated between the new Government of India and the new Government of Burma; and thirdly, to recommend that the Constitution Act should provide that until that Trade Agreement has been concluded by the new Governments, "existing trade

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relations" should be continued. Whether for this status quo period or for a longer period, if it is decided to enact the preservation of this existing relationship, it will be necessary to define the principle in the Constitution Act. While claiming no ability as a draftsman I venture to attempt below a formula designed to cover the principle involved.

1. There shall be free trade* between India and Burma in all indigenous articles and products:

Provided that where any article or product was on the day preceding the date of Separation subject to a Central Excise Duty or a Provincial Consumption or Luxury Duty, such article may be charged on importation from India into Burma or *vice versa* to a corresponding duty being neither (i) higher than the rate of the Excise Consumption or Luxury Duty as the case may be from time to time chargeable in respect of similar indigenous articles or products of the importing country; nor (ii) in the case of an article or product on which, on the day preceding the date of Separation, the rate of Excise, Consumption or Luxury Duty in the importing country was lower than that of the Import Duty on similar foreign articles or products, at a lesser differential below the rate of Import Duty from time to time chargeable on such foreign articles or products than was in force on that day.

2. India and Burma shall each be free to alter its tariffs in respect of its trade with other countries:

Provided (*a*) that if the rate of import duty on any article is altered by either country such rules may be made by the country of the higher tariff as may be necessary to provide for the payment of the due rate of import duty on such articles re-exported from the country of the lower tariffs; and

(*b*) further that the articles listed in *Schedule A* (*India*) shall not be made subject to any reduction of duty by the Government of Burma except with the agreement from time to time of the Government of India, and articles listed in *Schedule B* (*Burma*) shall not be made subject to any reduction of duty by the Government of India except with the agreement from time to time of the Government of Burma.

With regard to the last provision it is suggested that the two Governments should agree upon two lists to be scheduled to the Act—Schedule A being a list compiled by India of articles of Indian manufacture, e.g., Cotton Piece Goods, on which Burma would agree to maintain the preference afforded by the existing rates of import duty; Schedule B being a similar list (including, e.g., Teak) compiled by Burma *mutatis mutandis*. These lists would presumably have to be agreed by the present Governments, but could be added to or amended from time to time by agreement between the two countries.

IV.—*Points the Formula should cover.*

It is suggested that it would be necessary for the Formula to fulfil the following subjects:

(*a*) to cover all aspects of "existing relations" as described above in Section II.

(*b*) to leave India and Burma general freedom of action as regards their respective tariffs on their trade with other countries.

* By "free trade" is meant freedom from both Import and Export Duties.

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(*c*) to allow for the possibility of a reduction of outside tariffs by either country having the effect of adversely altering "existing relations."

(*d*) in the event of either country altering its import duty on any article, to prevent the re-exportation from the country of the lower tariff of such article free of duty into the country of the higher tariff.

(*e*) in the event of either country reducing its export duty on any article or products, to prevent the re-exportation from the country of the lower tariff of such article or product imported free of duty from the country of the higher tariff.

(*f*) to avoid undue restriction of the working of Imperial Preference.

V.—*The Formula analysed.*

The Formula suggested in Section III is intended to cover the desired objects in the following manner:

(*a*) "Existing Relations" as defined in Section II;

1. The basis of free trade relations between India and Burma is preserved by Part 1 of the Formula.

2. The Central Excises in force on certain indigenous products are covered in the Proviso to Part 1.

3. The Provincial Luxury Duty on cigarettes is covered in the Proviso to Part 1.

4. The Provincial Consumption Duty on matches is covered in the Proviso to Part 1.

5. The differential between the rates of Import Duty and Excise Duty on kerosene and salt are covered in the Proviso to Part 1.

(*b*) Freedom to both countries in respect of their outside tariffs is covered in Part 2.

(*c*) Adjustments for a reduction of outside tariffs adversely changing "existing relations" are provided for in Part 2 (*b*).

(*d*) Adjustments for re-exports from the country of the lower import duty into the country of the higher import duty are provided for in Part 2 (*a*).

(*e*) Re-exports from the country of the lower export duty of articles and products imported free of duty from the country of the higher export duty would be dealt with under Part 2 (*b*).

(*f*) Working of Imperial Preference. In respect of articles on either schedule referred to in Part 2 (*b*) of the Formula, the fixing of Imperial Preferential rates would be subject to agreement between India and Burma. In respect of all other articles Part 2 imposes no restriction.

Finally, the whole Formula is designed to impose the minimum of interference with the fiscal freedom of either country consistent with the fulfilment of the main principle.

VI.—*Certificates of Origin.*

Part 2 (*a*) of the Formula provides that if the rate of Import Duty on any article, other than an indigenous article, is altered by either country, such rules may be made by the country of the higher tariff as may be necessary to provide for the payment of the due rate of Import Duty on such articles re-exported from the country of the lower tariff. In order to distinguish between re-exported and indigenous articles for this purpose it would be necessary to adopt some device, e.g. for the importer to furnish

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a Certificate of Origin of the article in question. In an Annexure to this Memorandum I have discussed possible alternatives to procedure by Certificates of Origin. I have arrived at the conclusion that no other alternative would be satisfactory, and that the possible inconvenience of the system of certificates would present no serious obstacle to the fulfilment of the proposal to maintain the "existing trade relations."

VII.—*Comparative Bargaining Power of the two countries.*

Although it is suggested that in practice there should be no insuperable difficulty in defining satisfactorily the existing fiscal relationship which it is desired to preserve between India and Burma, pending the conclusion of a Trade Agreement between the two countries, it is by no means certain that it will be found possible to conclude an Agreement which will be satisfactory to both parties. The success of any negotiations must depend to a large extent on that intangible factor "goodwill" and not merely on the respective bargaining powers of the two countries. It is to be sincerely hoped that the goodwill of neither country will be strained by the act of Separation but there is no point in being blind to the possibility of this not being the case.

In considering the respective bargaining powers of India and Burma there can be no doubt that the whip hand lies with the larger country. Taking the average figures of recent years, it will be seen that of Burma's Exports 48 per cent. go to India, while of India's Exports the proportion which goes to Burma is no more than 5 per cent. Prima facie therefore India is much less dependent on the Burma market than Burma is on the Indian. If we take the rupee value of exports from both countries it will be seen that, if Rice be excluded, Burma's Exports to India amount to about Rs.16 crores per annum and India's to Burma to about Rs.12 crores per annum. On this basis it might be argued that if it could be assumed that India would not in any event want to tax Burma rice the bargaining powers of the two countries are fairly evenly balanced. Indeed, in any such bargain, the deciding factor is Rice—the crop on which it is estimated 60 per cent. of the population of Burma directly depend for their livelihood and prosperity. The total Rice production of India, excluding Burma, varies between 22 and 28 million tons per annum. Burma's annual exports of Rice to India have in recent years varied between 900,000 and 1,300,000 tons per annum. So long as Burma has been part of India, India has not hesitated to take annually from Burma all but a few thousand tons of the country's requirements of rice in excess of its own production. India has gone even further than this, for, thanks to its call on Burma rice, it has been able to export Patna rice in larger quantities than the total of its imports of foreign rice from other countries than Burma. With Burma no longer Indian territory, it may be that India's rice policy will change. No great expansion would be needed to increase India's own production from 22/28,000,000 tons by the 1,000,000 tons now imported from Burma. It is always difficult to say with certainty who would pay an import duty on any particular article. Ultimately the tendency is for it to be recovered from the consumer. If an import duty on Burma rice imported into India were to raise the price of rice in India, this would provide the encouragement needed to agriculturalists to produce the extra million tons. At present the world's production of rice is slightly ahead of consumption. In these circumstances, it might not be possible for the seller of Burma rice in India to recover the duty in his price, in which case India might welcome the opportunity to impose such a duty and be assisted in getting the support of the Legislature by the expectation that its burden would fall on the Burma agriculturalist.

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MEMORANDUM BY MR. K. B. HARPER ON TRADE RELATIONS BETWEEN INDIA AND BURMA IF SEPARATED.

So long, therefore, as there can be any possibility of Burma rice becoming vulnerable to an Indian import duty, and in to-day's conditions it would be so, the balance of bargaining power in negotiations for a Trade Agreement will be heavily with India. It is true that it is proposed to give Burma the power to restrict immigration of Indian Labour, and that this power will be available for use as a bargaining counter whether Indian Labour is an item for inclusion in the Trade Agreement or in a separate ad hoc Convention. But it would be dangerous to assume that this power will be entirely and only in Burma's hands. As a weapon, it may be two-edged. One of the main reasons for the employment of Indians in Burma hitherto has been that Indians are, in many of the tasks on which they are employed, more efficient than Burmans.

Following upon riots between Burmans and Indians in May, 1930, an agreement was drawn up whereby 50 per cent. of the stevedore labour in the Port of Rangoon was to be allotted to Burmese labour gangs, where it had formerly been almost entirely Indian. Even now, when Burmese labour has had three-and-a-half years of training and experience, its outturn of work is so much below that of Indians that shipping companies have to pay to their stevedores when Burmese labour is employed 20 to 25 per cent. more than they pay when the labour employed is Indian. In the wharf labour of the Port, which is more arduous than stevedore work, the Commissioners for the Port of Rangoon have given a trial in the last few years to Burmese labour. After a reasonable period of trial it was estimated that the Burmese gangs, employed as "casual labour," had turned out 45 per cent. less work than Indian gangs. A further year's trial was undertaken with Burmese gangs on continuous employment. Careful records of the results were kept and it was found that their outturn of work was still 45 per cent. less than that of Indians under similar conditions.

The effect therefore of employing Burmans in the work of the Port of Rangoon has been very considerably to increase the cost of handling cargo, and it is logical to assume that this extra cost is, and in normal times will continue to be, borne by Burma—by the consumer in the case of imports and by the producer in the case of exports. Even the present degree of reduction, therefore, and certainly any further reduction of the quota of Indian labour in Rangoon, are not matters to the disadvantage of India only.

Further, there are certain classes of work for which training is necessary, and in which few Burmans have so far sought employment. These include river engineering works and maintenance, river survey, and work as crews of inland steam vessels. There is also a class of specialised labour known as "busta" coolies, who are employed in the shipment of bagged cargo. Burma's exports of rice, all of which is packed and shipped in gunny bags, are handled at the rice mills by this class of labour. These are all instances of work for which in present conditions Indians are indispensable. It may be accepted that no future Burma Government would restrict the entry of these classes of Indian labour into Burma, but if for any reason India were to prohibit their emigration, the effect would be seriously to hold up the business of the Ports of Burma.

VIII.—*Possibility of India and Burma not being able to come to an Agreement satisfactory to both Parties.*

If the arguments in the foregoing Section are accepted, it follows that in any negotiations for a Trade Agreement, Burma may find itself in the position of having to accept terms which in themselves put Burma at a disadvantage; or alternatively of having to hold up the conclusion of the

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Agreement. If, therefore, the Joint Committee decide to recommend the Separation of Burma from India politically, I would respectfully urge that they not only endorse the vital need for not breaking the internal economic connection of the two countries, but also recommend that Parliament accept the responsibility of ensuring that any Trade Agreement which may be negotiated between them will be fair to both parties. Whether this object could be best achieved by the inclusion of special provisions in the Constitution Act, or by granting a right of appeal by either party to the Privy Council or by some other means is a matter of constitutional practice which I am not qualified to judge, and which I confidently commend to the wisdom of the Joint Committee and Parliament.

ANNEXURE.

CERTIFICATES OF ORIGIN.

In Section VI of the Memorandum it is stated that if there is to be free trade between India and Burma in indigenous articles, it will be necessary to be able to distinguish indigenous from re-exported articles. Wherever a similar necessity has arisen from the adoption of a system of preferential tariffs, I understand that the device usually employed is that of Certificates of Origin. Before resorting to this procedure the Governments of India and Burma will no doubt wish to consider whether there is any simpler method of attaining the object in view in the case of India-Burma trade.

One suggestion is that there might be a provision on the lines that, subject to the proviso to Part 1 of the Formula,

> there shall be free trade between India and Burma in all articles except those on which there are, in respect of imports from other countries, different rates of duty in India from those prevailing in Burma; on such articles imports into the country of the higher tariff shall be subject to duty at a rate equivalent to the difference between the rates of duty in force in the two countries.

The differential rate of duty would, under this provision, apply equally to indigenous and re-exported articles. Taking, for the purpose of argument by a particular case, the instance of rice, it would be possible under this proposal for India to put a Customs Duty on imports of non-Burma rice into India in which event the same rate of duty would automatically become applicable to imports of Burma rice into India. This is precisely the kind of situation which it is desired to avoid. This duty differential suggestion would, therefore, not act satisfactorily in the case of increases in duty or of the imposition of a duty where none formerly existed. To confine the operation of the proposal to cases of reduction of duty by either country would clearly not fulfil its object since Certificates of Origin would still be necessary in the cases of increases of duty.

There would, moreover, seem likely in practice to be a further objection. Customs Duties in India at the present date are subject to a surcharge of 25 per cent. imposed in September, 1931. At the time of its imposition it was stated by the Government of India that this increase in the Customs Duties was made by way of surcharge because it was intended to be temporary, to be removed as soon as the revenue position permits. The surcharges are still in force at the present date and indications suggest the possibility that the revenue position will not permit their removal for some time to come. If therefore it is decided to separate Burma it is possible that these surcharges will still be in force at the date of Separation. If, after Separation, Burma were in a position to remove these surcharges

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before India could do so it would obviously be unfair to Burma if in fulfilling the assurance which was made by the Government of India to the public at the time of the imposition of the surcharges, the effect of their removal were to be that Burma's indigenous articles were to become subject on their importation into India to duty at a rate equivalent to the surcharge which Burma had removed. On the other hand to take the substantive rate of Customs Duty (after deducting the surcharge) as the rate from which reductions would operate for the purpose of this suggestion would be no remedy, for the need for Certificates of Origin would again arise as soon as the surcharge was removed by one but not the other country and the object of the suggestion would thus be destroyed.

It would, therefore, seem that this suggestion does not offer a satisfactory method of avoiding the use of Certificates of Origin, nor am I aware of any other method of doing so other than a complete Customs Union in which rates of import duty would remain the same in Burma as in India. But this would in itself preclude one of the main benefits to be expected from Separation. Moreover, I suggest that there is, in these times, no serious practical objection to the use of Certificates of Origin. With the extension of Imperial Preference this procedure is becoming daily more and more common and offers no real difficulty which could not be overcome in the case of Indo-Burma trade. In any case, the possibility of inconvenience which the use of Certificates of Origin may sometimes involve does not seem to constitute an obstacle to the principle underlying the proposal to maintain the "existing trade relations" between India and Burma. I suggest, therefore, that it may safely be left to the Governments of India and Burma to make rules for the use of Certificates of Origin, or for any other method they may agree upon, in accordance with Part 2 (*a*) of the suggested Formula.

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"B" Memorandum by Mr. K. B. Harper on the Burma White Paper Proposals

The views of the European Community in Burma on certain of the matters which arise from the "Scheme of Constitutional Reform in Burma if Separated from India" were expressed by me in the Discussions with the Committee. These notes are supplementary.

Proposal 25.

This Proposal deals with the selection of Members of the Senate, half by election by the Lower House and half by nomination by the Governor. Although the object of this method is to make "the Upper Chamber as far as possible fully representative of the interests of different sections of the population,"* it would be unfortunate if the result of elections by members of the Lower House were that the Minorities had to rely entirely on the Governor's nomination to give them their due representation in the Upper House. In the minds of political Burmans there is a distinction between elected and nominated members of the Legislature. They regard the latter merely as creatures obliged to follow the dictates of the authority which nominated them, with none of the freedom of elected members in speech and vote. If, therefore, the Minorities have to rely entirely on nomination for their representation in the Senate the composition of the House will be a constant reminder and exaggeration of the depth of the apparent gulf between the Majority and Minority Communities. This would be the more regrettable because in fact the real gulf is neither wide nor deep. The peace and prosperity of Burma and all its people is the common interest of all communities. It is important therefore that the Minorities should return some of the elected members, but there is only one method of election which would reasonably enable them to do so, namely, the method of the "single transferable vote." I would suggest therefore that it should be prescribed in the Constitution Act that this shall be the method by which the indirect election to the Upper House should proceed.

I suggest also that the Governor's Instructions should direct him to use his power of nomination first to redress any inequalities which may have resulted from the indirect election of the elected half of the House, and then to fill the remaining seats with men whose qualifications may be of particular value to the Senate.

Proposal 27.

This Proposal deals with the procedure for filling Casual Vacancies in the Senate. It provides that if the seat of a Senator becomes vacant it shall be filled by election if he were an elected member or by nomination if he were nominated. If the vacant seat is that of an elected member there is no method of election, either by the single transferable vote or otherwise, which could result in the return of a Minority representative, unless he were the choice of the Majority community in the Lower House. This would clearly be unfair to a Minority community if the member whose seat becomes vacant were their representative. It would obviously not be possible to confine the power of electing a member to the vacant seat to those members who had elected the vacating Senator, since it would not be possible to say with certainty who those electors were. I suggest therefore that all Casual Vacancies should be filled by nomination and that the member so nominated should hold his seat for so long as the

* See footnote to p. 71 of Record IV (Joint Committee on Indian Constitutional Reform, Session 1932–33 (Volume III)).

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vacating member would have held his had he not vacated it. In such cases if it were an elected seat which had become vacant the new member would retire when his predecessor would have retired under Proposal 28, and the seat would then become open again to election in the ordinary course of rotation.

Proposal 28.

In any method by which members are retired by chance and their successors are elected by design there is an inherent improbability that the balance of representation will remain undisturbed. Under Proposal 28 one-quarter of the Senators will retire every two years, nominated members after the first and third two years and elected members after the second and fourth. Since the selection of the individual Senators for retirement is to be on the result of a ballot, the chances are against the proportion of Minority to Majority representatives being the same among the retiring quota as in the whole House from which they are retiring. It follows that after each rotational by-election either the Majority or Minority communities are likely to find themselves with one or more fewer representatives in the House than they had previously.* It would not be possible for the Governor to restore the balance until a nominated portion of the House retires two years later, and even then he might be able to do so only at the expense of depriving the House of some specially qualified Senator who would otherwise have been renominated.

I suggest that it would be possible to get over this difficulty by retiring some nominated and some elected members in each quarter; say, for example, in a House of 36 Members, retiring five nominated and four elected after the first and third two years, and four nominated and five elected after the

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* E.G. In Houses of 133 Members (Lower) and 36 (Upper) the quota for original elections to the Upper House would be ... ... $\frac{133+1}{18+1} = \frac{134}{19} =$ 7·05, or 8 votes.

and, with a total Minority representation in the Lower House of, say, 34 Members, the maximum total number of elected seats obtainable by Minorities in the Upper House would be ... ... $\frac{34}{8} = 4$ seats.

In rotational by-elections the quota would be ... ... $\frac{133+1}{9+1} = \frac{134}{10} = 13{\cdot}4$ or 14 votes.

and the seats obtainable by the Minorities would be ... ... $\frac{34}{14} = 2$ seats.

Therefore if the original ballot for the retirement of the first nine elected members were to result in retiring more or less than two Minority members (and the chances are four to one against retiring exactly two), the by-election (by the system of the Single Transferable Vote, which alone can ensure the return of any Minority member at all) must in one period result in a loss of a seat or seats to either the Majority or Minority communities followed by a reversal of the inequality four years later. Even if the Governor in the intervening two year period redressed the inequality by nomination, the history of the Upper House would be one of constant alteration in the balance of Majority and Minority representation, a situation which would be none the more satisfactory for the possibility of foreseeing with reasonable certainty what the balance would be at any particular time in the future.

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second and fourth two years. By this means the Governor could redress immediately after each by-election any inequality which might have resulted from it, and I suggest that his Instructions should direct him to do so.

Proposal 29.

For the reasons reproduced in Sections V-VII of Appendix III of Record A1 (II), Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, pp. 75-87, the Burma Chamber of Commerce claims 13 and the Burma British Association 12 of the seats of the Lower House of 132 members, or, say, 10 per cent.

I would also invite the attention of the Joint Committee to the support of these claims which is afforded by the Secretary of State's Memorandum published in Record A1 (II), Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 9.

1. The Table on p. 12 of this Volume summarising the position in respect of Communal representation, gives the impression that the European Community hold only four seats in the present Lower House in Burma. The Table, however, takes no account of the nominated members in the House. To omit these is to give credence to the erroneous impression held in some quarters in Burma that the purpose of nominating members is to add under another name to the strength of the Official Bloc and that these members are not as free to speak and vote as elected members. There are seven of these nominated members and as the Secretary of State points out* they "have hitherto included almost invariably since 1922 three European Members." The effective non-official European representation in the present Burma Council is therefore not four but seven seats. This fact is further recognised in Table B in Appendix I of Record A1 (II), Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 32.

2. The European Community in Burma claim parallel treatment to that accorded in the Communal award to Europeans in Bengal, viz., 10 per cent. of the total seats in the Lower House. In support of this claim I would refer the Committee to the Secretary of State's statement in paragraph 27 (iv) of Record A1 (II), Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 21, to the effect that "the position and importance of the European non-official community in Burma is more nearly comparable to that in Bengal (or Bombay, where there is nearly as high a proportion of general seats allotted), than to that in any other Province."

3. When calculating the representation which should be given to Minorities it is difficult to assess the extent to which the Karens should be regarded as a Minority Community. The point is discussed in the Memoranda of the Burma British Association† and the Burma Chamber of Commerce‡ and the conclusion arrived at is that "we must regard the Burmese and Karens together as the real Majority interest, and the Europeans, Indians, Anglo-Indians and Chinese as the true Minorities."

In support of this conclusion I would invite the attention of the Committee to the Karen delegate's own letter§ of 21st September, 1933, to the Reforms Secretary to the Government of Burma where he summarises his views on that Government's proposals for the distribution of seats in the Lower House, in these words: "This summary clearly indicates the majority

* Paragraph 27 (iv) of his Memorandum, Record A1 (II) (Joint Committee on Indian Constitutional Reform, Session 1933-34), Volume II, p. 21.

† Paragraph 3 of Record A1 (II) (Joint Committee on Indian Constitutional Reform, Session 1933-34), Volume II, p. 10.

‡ Paragraph 7, Record A1 (II) (Joint Committee on Indian Constitutional Reform, Session 1933-34), Volume II, p. 13.

§ Paragraph 7, Record A1 (II) (Joint Committee on Indian Constitutional Reform, Session 1933-34), Volume II, p. 13.

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of the Burmans in the Council, and there appears to be no fear when the percentage of the Minority representation is only 26. The Burmans and Karens, being true sons of the soil, can easily hold the reins in their hands."

This statement justifies the apprehension that, in the consideration of any legislation adversely affecting the non-indigenous Minorities in Burma, those Minorities could not safely look to the Karen Members for support.

4. The Burma Chamber of Commerce* calls attention to the large amount of British capital invested in Burma, and the Secretary of State† points out that "a considerable portion of the wealth of the country is derived from the enterprise of a comparatively few, but highly important, commercial and industrial organisations". He concludes that these interests must be given adequate representation. "It is not enough that they should merely be able to give expert advice to the majority on matters in which their constituents at least will have little or no experience and no conscious concern, the representatives of commerce and industry in such conditions need to be given sufficient voting strength to ensure that their advice is, at any rate listened to with attention."

I endorse this Conclusion, but regret that the representation at present proposed for the European Community is inadequate for the fulfilment of this object.

5. The present and proposed distribution of seats in the Lower House in Burma may be summarised as follows:

	No. of seats.	*Total House.*	*Percentage.*
Non-Official Europeans			
Present	7	103	6·8
Proposed by Government of Burma ...	7	132	5·3
Proposed by Secretary of State ...	8	133	6·0

To see the real position in its proper perspective the Official Bloc of 16 members should be excluded from these calculations. The comparative figures are then as follows:

	No. of seats.	*Total House (excl. Official Bloc from present House).*	*Percentage.*
Non-Official Europeans			
Present	7	87	8·0
Proposed by Government of Burma ...	7	132	5·3
Proposed by Secretary of State	8	133	6·0

Not only therefore is it proposed to reduce the effective representation of the European community below the present level, but in the process the Europeans, in common with the other Minorities, are also to lose the protection hitherto afforded by the existence of the Official Bloc.

6. The European Community have from the beginning realised that differences of opinion might exist as to the exact extent to which their representation should be increased in the new Lower House, but have confidently assumed that there could be no question of reducing it below its present level. It is not surprising therefore that the present proposals have been received by the Europeans in Burma with profound dissatisfaction and apprehension.

* Para. 20 of Record A 1 (II) (Joint Committee on Indian Constitutional Reform, Session 1933-34), Volume II, p. 16.

† Para. 29 (ii) of Record A 1 (II) (Joint Committee on Indian Constitutional Reform, Session 1933-34), Volume II, p. 22.

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MEMORANDUM BY MR. K. B. HARPER ON THE BURMA WHITE PAPER.

To do no more than avoid a reduction of their present degree of representation they should have 8 per cent of the seats in the new House of 133, or 11 seats. In addition, having regard to the abolition of the Official Bloc, the relative importance of the European Commercial interests, the close analogy between the position of Europeans in Burma and in Bengal, the doubtful practicability of looking on the Karen vote as a Minority vote, the need for a steadying element in the Lower House, and the greater weight to be attached to all these considerations if Burma is to be separated, I submit that there are sound grounds for giving further weightage to European representation in Burma, and that there should accordingly be reserved to European interests 10 per cent. of the total seats in the House.*

Proposal 36.

This Proposal is to provide in the Act that among other matters "(c) the method of election of representatives of minorities and other interests" will be regulated by Orders in Council. While the European Community in Burma appreciate the theoretical objections to Communal Electorates, the position in Burma is that so long as the Majority Communities deny the existence of the Minorities and therefore any obligation to protect their interests, just so long will it be necessary for the Minority communities to assert that their interests do exist and must be protected by Communal Electorates. It is to be hoped that experience of self-government in action in Burma will satisfy the Minorities that they can safely forego the Communal electorates which at this stage they consider necessary for their protection. But I would request the Joint Committee to endorse the principle to which expression was given by the Indian Statutory Commission† that the decision in this matter must rest with the Minorities themselves in the light of the treatment which they have been accorded by the Majority, and that the Act should provide that no change in the method of election of representatives of Minorities and other interests should be made in the future without the consent of the Minorities and interests concerned.

Proposal 47.

In order to preserve the complete independence of the High Court from the Legislature, I suggest that the salaries and pensions of judges of the High Court should not be open to discussion in the Legislature. As proposed at present in para. (iv) of Proposal 47, the salaries and pensions of judges will not be submitted to the vote of either Chamber but will be open to discussion in both Chambers. I suggest that there is no advantage to be gained by allowing discussion of this subject. If it were to be suggested that the Legislature in the interests of economy should be allowed to discuss the salaries and pensions of judges with the object of recommending a reduction in the salary of any or all of them, such a recommendation would cut across Proposal 75 under which a judge is to be assured that his salary will not be reduced during his tenure of office. Some economy could no doubt be achieved by reducing the number of judges but the criterion for the desirability of so doing would be the amount of work requiring to

* As the Burma Chamber of Commerce points out in paragraph 21 of their Memorandum of Record A 1 (II) (Joint Committee on Indian Constitutional Reform, Session 1933-34), Volume II, p. 84, the apportionment of these seats between General constituencies and Special interests is a matter of minor importance. On the analogy of Bengal, a suitable allocation would be in the ratio of six General to seven Special.

† Vol. II, paragraph 95, of Report of Indian Statutory Commission.

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be done by the High Court rather than the cost of the judges' salaries. If such a reduction were considered necessary, there would appear to be more suitable channels for achieving it than by way of discussion of judges' salaries in the Legislature. With the close relations which it is hoped the Governor will have with his Ministers the latter should have no difficulty in acquainting him with their views in a matter of this kind.

There appears to be no advantage in the discussion of judges' salaries which can go any distance towards outweighing the disadvantages of allowing the Legislature to affect in any way the administration of the High Court. I suggest therefore that the salaries and pensions of judges of the High Court should be classed with the salary and allowance of the Governor as matters which will neither be submitted to the vote of either Chamber nor be open to discussion by the Legislature.

Proposals 58, 59, 60, 61, 62.

A separate Memorandum on these Proposals will be submitted.

Proposal 68.

This Proposal concerns the Constitution of a Statutory Railway Board in Burma. The suggestions which I put forward on behalf of the Burma Chamber of Commerce will be found to be to a large extent in accord with those of the Secretary of State as published in Record A2 (II) (Joint Committee on Indian Constitutional Reform, Session 1933-34). The chief point of difference between them is that in the interests of efficiency the Burma Chamber prefers a board of six to a Board of eight as proposed by the Secretary of State. Although the Burma Railways is a big business, it is homogeneous in nature, not requiring great diversity of experience. Further, there is, undoubtedly, a limited field from which to select suitable men to serve on the Board, especially since it is proposed, rightly in my opinion, to exclude all Members of either House of the Legislature.

A provision in the India scheme has been adopted in the Burma proposals, namely, that no person who in his personal capacity or as a manager of a company is interested in a Railway Contract will be eligible for membership of the Board. The principle is unexceptionable, and in India, where the field of selection of members is almost unlimited, the proposal is no doubt entirely practical. In Burma, however, the field is so small that application of this provision is likely to result in depriving the Board of some of the otherwise most suitable candidates for membership. I suggest, therefore, that the object of the provision would be satisfactorily met in Burma by excluding any member of the Board who is in his personal or business capacity interested in any of the Railway contracts from the discussion and decision on the contract in question.

Proposal 74.

Under this Proposal, which deals with the qualifications for appointment as Chief Justice or Judge of the High Court, the provisions of Section 101 (4) of the Government of India Act of 1919 are to be abrogated.

I have received a cable from these Associations expressing the view that Burma is not yet ready for a judiciary containing no judge drawn from the Civil Service. They suggest therefore that the substance of Section 101 (4) of the present Act should be re-enacted, except that

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the minimum percentage of Civilian Judges should be reduced from one-third to one-quarter; and that in particular eligibility for the Chief Justiceship should be confined to judges who have previously been practising barristers or legal practitioners.

The latter point is of the utmost importance. The chief value of Civilian Judges lies in their experience on the criminal side. The Chief Justice presides over the First Appeal Bench. He has also to control the administration of justice throughout Burma. It is very necessary therefore that he should be a trained lawyer, skilled in Civil Law. The Civilian Judge is not normally well-grounded in such law.

It might be argued that Proposal 74 is designed to allow the best man to be appointed as Chief Justice. It might, however, be inconvenient in practice to pass over a Civilian Judge for promotion to the Chief Justiceship if he were in length of service the next senior judge. It would be more satisfactory to recognise this position in the Act, and to prescribe that only a judge who has been a practising barrister or legal practitioner will be eligible to be Chief Justice.

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"C" Memorandum by Mr. K. B. Harper on Representation of Burma in the Indian Federal Legislature in the event of Burma being included in the Federation

As regards the representation of Burma in the Federal Legislature (in the event of Burma being included in the Indian Federation) I would suggest that,

in the Council of State

(1) eight seats should be allotted to Burma;

(2) the number of non-Provincial Communal* seats should be increased from 10 to 11;

(3) of the non-Provincial Communal seats eight (instead of seven) should be reserved for Europeans. This will generally enable Burma Europeans to secure the election of their choice to one of the European seats.

in the Federal Assembly

I would suggest increasing the total number of seats so as to allow of the allotment of 15 seats to Burma. One of these seats should be reserved for the Burma European Community and one for the Burma Chamber of Commerce.

Although it would be possible to find grounds, such as Burma's contributions to the Central Revenues,† for granting to Burma larger representation in the Federal Legislature, the above is in accordance with the claim registered by the European Representative at the Third Indian Round Table Conference, and in the circumstances is regarded by the European community in Burma as adequate.

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* Appendix 1, p. 88, of the Indian White Paper.
† Indian Statutory Commission Report, Vol. II, Table on p. 230.

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"D" Memorandum by Mr. K. B. Harper on Discrimination in and against Burma if Separated from India

Vide:—(a) *Proposals* 58 *to* 62, *Burma White Paper, page* 53, *Volume III* (Joint Committee on Indian Constitutional Reform, Session 1932-33).

(b) *Memorandum by the Secretary of State for India, page* 1297, *Volume II B* (Joint Committee on Indian Constitutional Reform, Session 1932-33).

(c) *Memorandum by the Secretary of State for India on Discrimination in Burma, Record A.2* (Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 103).

Part I.—Discrimination as between Burma and the United Kingdom.

Part II.—Discrimination as between Burma and India.

(*a*) Provisions in the Burma Constitution Act.

(*b*) Provisions in the India Constitution Act.

Part I.

Discrimination as between Burma and the United Kingdom.

1. It is proposed to apply the provisions of paragraphs 3, 4, 5 and 6 of the Memorandum by the Secretary of State for India, page 1297, Volume II B (Joint Committee on Indian Constitutional Reform, Session 1932-33) *totidem verbis* to Burma. The Memorandum by the Secretary of State for India, page 1297, Volume II B (Joint Committee on Indian Constitutional Reform, Session 1932-33), supersedes the Burma Proposals 58, 59 and 61 by including and expanding them. The comments in this section of the Memorandum therefore refer to the Memorandum by the Secretary of State for India, page 1297, Volume II B (Joint Committee on Indian Constitutional Reform, Session 1932-33), rather than to the Burma White Paper Proposals [page 53, Volume III, Joint Committee on Indian Constitutional Reform (Session 1932-33)], the words "Burma" and "Burman" being read for "India" (or "British India") and "Indian."

2. The Memorandum by the Secretary of State for India, page 1297, Volume II B (Joint Committee on Indian Constitutional Reform, Session 1932-33), explains many points which were not altogether clear in the original Proposals. The proposals, speaking generally, are, in the opinion of the European community in Burma, as satisfactory as any form of constitutional safeguard is likely to be in the face of determined attempts to circumvent it. So much, however, depends on the precise wording in which the Bill is framed that final opinion must be reserved until a draft of the Bill itself is obtainable. I would respectfully express the hope that adequate time will be available for the examination of the Bill.

3. In the meantime, in the hope that they may be of assistance to the Joint Committee, I venture to offer the following comments. Some of them refer to matters of principle. The remainder are largely drafting matters.

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MEMORANDUM BY MR. K. B. HARPER ON DISCRIMINATION IN AND AGAINST BURMA IF SEPARATED FROM INDIA.

I take the paragraphs of the Memorandum by the Secretary of State for India [page 1297, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)] in numerical order:—

4. *Paragraphs* 1 *and* 2 call for no comment.

5. *Paragraph* 3 (*i*).—*General Declaration as to British Subjects*: A list of Disabilities and a list of Prohibited Grounds of disability are given in this sub-paragraph. Both lists differ from those given in 3 (ii) (*b*) which deals with British subjects domiciled in the United Kingdom. I presume that this is not intentional. I suggest it is important that these lists should be uniform. To make them so the list of *Prohibited Grounds* in 3 (i) should include Residence, Duration of Residence, Language, and Domicile. Continuity of Residence is not covered and should be added. A full list of *Prohibited Grounds* in respect of Subjects, in paragraphs 3 (i) and (ii) (*b*), would then be

Domicile.
Residence.
Duration or Continuity of Residence.
Race.
Religion.
Descent.
Caste.
Colour.
Language or Place of Birth.

6. As regards *Disabilities*, Taxation, Travel and Residence, "the right to make and enforce Contracts," "the holding of Property" should be added to 3 (i). The full list of Disabilities in these two paragraphs would then be as set out in 3 (ii) (*b*) after adding "the right to make and enforce Contracts."

7. The corresponding lists in respect of Companies are dealt with in the reference in this Memorandum to paragraph 3 (iii).

8. *Paragraph* 3 (*ii*).—*British Subjects domiciled in the United Kingdom*: Subject to the comments which I make in paragraphs 32 to 36 of this Memorandum* and to any criticism which may be necessary when the "special form of protection" referred to in 3 (ii) (*b*) is formulated, the principle embodied in this clause is satisfactory.

9. I would suggest that the matters in respect of which protection is to be provided should be termed "Civil Rights" generally, the specific cases of Taxation, Travel, and Residence, etc., being expressed as examples, and that the right to make and enforce contracts should be added to the examples.

I have suggested that the prohibited grounds should be the same as the list given in the comments above on 3 (i).

10. *Paragraph* 3 (*iii*).—*Companies incorporated in the United Kingdom, but trading in Burma*: Taxation is the only disability specified in this paragraph, but it is assumed (and it is suggested that it be made clear)

* Where I suggest the extension of the protection of paras. 3 (ii) to (v) of the memorandum by the Secretary of State for India [page 1297, Volume II B. Joint Committee on Indian Constitutional Reform (Session 1932-33)] to all British subjects domiciled in parts of the British Empire which do not discriminate against Burma.

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that all the Civil Rights referred to in the comments above on 3 (ii) (*b*) are included, in so far as they are applicable in the case of Companies.

11. There are two other points calling for comment:—

(*a*) The paragraph refers to trading *in* India: it does not cover trading *with* India (or Burma). Burma Proposal 59 protected United Kingdom British subjects in respect of certain specified rights among which was the right "to carry on any trade or business in, or with the inhabitants of, Burma." I presume from this and from the Secretary of State's answer to Q. 15,634* that Companies trading *with* Burma are protected as well as Companies trading *in* Burma.

(*b*) It is difficult and therefore presumably dangerous to specify all the grounds of discrimination against a Company which are to be prohibited. As it stands, however, the proposal of this sub-paragraph leaves room for evasion by basing disabilities on the size of a Company's capital or on the currency in which it is expressed, or on the situation of its registered office, or on some disability attaching to its debenture-holders. If these grounds are added the list in this sub-paragraph would be extended to include:

the Place of Incorporation
the Situation of the Registered Office
the Amount of Capital
the Currency in which the Capital is expressed
} of the Company.

or the

Domicile.
Residence.
Duration or Continuity of Residence.
Race.
Religion.
Descent.
Caste.
Colour.
Language or Place of Birth

of its Directors, Shareholders, Debenture Holders, Agents or Servants.

12. *Para* 3 (*iv*).—*Companies incorporated in Burma:* Colour and Continuity of Residence and a reference to Debenture Holders would need to be added to this paragraph to complete the list of grounds referred to in above comments on 3 (iii).

13. This proposal deals with Companies "which are or may hereafter be incorporated." Provision appears also to be necessary to prevent legislation prohibiting the incorporation of a Company absolutely or except in conditions which would be contrary to the spirit of these proposals.

14. There is a further serious difficulty about this proposal. It is, I understand, intended to protect a Company against certain disabilities if, for

* Q. 15,634. Mr. *Jayaker*: "You make no distinction throughout your Memorandum, Secretary of State, as regards bodies which were trading with India at the date of the Constitution Act but which were not resident in India nor had establishments there. You make no distinction between bodies which were trading and had residence and establishments and those which were merely trading but who had no residence and no establishments?"

Secretary of State: "No; and I do not think you can make any distinction of that kind." [Page 1330, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33).]

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example, its shareholders are United Kingdom British subjects. As the proposal is worded it is the United Kingdom British subject and not the Company itself which gets the benefits of the ipso facto provision. If there were also among the shareholders British subjects from some part of the Empire other than the United Kingdom, they presumably would not get the benefit of the ipso facto provision, and therefore the Company would not receive due protection.

15. I respectfully agree with the answer which the Secretary of State gave to Question 15,640, [page 1331, Volume II B, Joint Committee on Indian Constitutional (session 1932-33)] (on a similar but not the same point) that in these matters incorporation is the only satisfactory test. In this case it would follow that the ipso facto provisions should be made available to all Briitsh subjects domiciled in parts of the Empire which do not discriminate against Burma.*

16. I would suggest that the sense of this paragraph, in the case of a Company which is or may hereafter be incorporated in Burma, should be:

> Directors, shareholders, debenture holders, agents or servants of a Company incorporated in Burma will, subject to the special provisions as regards bounties and subsidies of Clause vii (2), be deemed ipso facto to comply with any conditions imposed by law on the Company in respect to their domicile, residence, duration or contiunity of residence, race, religion, descent, caste, colour, language or place of birth.

One of the advantages of such amendment is that the employment of foreigners, who are occasionally employed by Burma Companies in technical and scientific work, would not involve the Company in any difficulty under the terms of this paragraph.

17. *Para.* 3 (*v*).—*Provisions for Reciprocity:* Proposals 3 (ii), (iii) and (iv) deal only with discrimination against United Kingdom British subjects and Companies. As regards the principle embodied in the provisions for reciprocity under this sub-paragraph, I understand that protection by prohibition is to be afforded prima facie in all cases but can be withheld or withdrawn in respect of any particular disability to which Burmans are made liable by law of the United Kingdom. I would suggest that this clause in the Act should be so drafted as to make it clear that the onus would be on the Government of Burma to justify any such discrimination by a reference to a corresponding discrimination of the United Kingdom and that it will not be necessary for the Complainant to prove that such discrimination does not exist in the United Kingdom.

18. In order to prevent the possibility of discriminatory legislation being based on a mistake of, say, a person exercising delegated powers in the United Kingdom, I would suggest that some procedure should be prescribed whereby before any discriminatory legislation is introduced the Government of Burma should satisfy itself by enquiries through the proper channel as to whether the legislation in the United Kingdom really bears the character

* The extension of all the proposals of paragraph 3 to British subjects domiciled in parts of the Empire which do not discriminate against India instead of only to United Kingdom British subjects is discussed in paras. 32 to 36 of this Memorandum in comments on paragraph 5 of the Memorandum by the Secretary of State for India, [page 1297 Joint Committee on Indian Constitutional Reform (Session 1932-33)].

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MEMORANDUM BY MR. K. B. HARPER ON DISCRIMINATION IN AND AGAINST BURMA IF SEPARATED FROM INDIA.

which the Government of Burma alleges it bears. It might be possible to obtain a certificate from the United Kingdom either:

(1) that the discrimination is in order under the law of the United Kingdom

or

(2) that it is not so in order.

In the case of (1) the Government of Burma could legally reciprocate with the like restrictions on the same grounds, applied generally and not to any person or Company in particular.

19. It is not stated whether "reciprocal disabilities" will be applied to "existing or future persons or Companies" or to "future persons or Companies" only, but I understand that the latter is intended. I respectfully suggest this should be made clear.

20. *Para* 3 (*vi*).—*Reservation of Bills:* This proposal provides for the compulsory reservation of Bills which, though apparently not in form, are in fact discriminatory. This is a valuable safeguard. The opening words of sub-paragraph (vii) (viz., "The provisions indicated above will be subject to two other forms of exception or qualification") suggest that no subsidy Bill under 3 (vii) (2) will be compulsorily reserved, even if it is the means of subjecting one or more of His Majesty's subjects to "unfair discrimination." I understand that this is not intended, and I suggest that it be made clear that such Bills are subject to the provisions of sub-paragraph (vi).

21. The word "class," in this sub-paragraph, may be unduly restrictive and I would suggest words in substitution to read: "likely to subject to unfair discrimination any one or more of His Majesty's subjects or any class, company, partnership or association of His Majesty's subjects protected by these clauses."

22. *Confiscation.*—There is one important safeguard which appears to have been omitted from paragraph 3 of the Memorandum by Secretary of State for India [page 1297, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)], and that is protection against confiscation. The proposals do not deal with the question of confiscation but, in answer to Q. 15,769 [page 1347, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)], the Secretary of State remarked that it has always been "assumed that somewhere in the Act there should be a Clause prohibiting confiscation, expropriation, and also dealing with compensation." This is both satisfactory and important. I suggest it is necessary that the Act should provide clearly that no person shall be deprived of his property unless proper compensation is paid, the amount to be ascertained by independent arbitration or judicial proceedings and that the expropriation shall not be effective until the full amount of compensation has been paid and duly received.

23. *Paragraph* 3 (*vii*).—*Exceptions:* Exceptions (1) (*a*), (*b*) and (*c*) appear to be necessary and unexceptionable. Sub-section (*d*) saves "the right to legislate in the sense indicated in the provisos to paragraph 122."* Under these provisos no law will be deemed to be discriminatory because:—

(1) it prohibits the mortgage or sale of agricultural land to a member of non-agricultural class, i.e., "A class of persons engaged in, or connected with, agriculture in that area."

* Of the Indian White Paper (Cmd. 4268).

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MEMORANDUM BY MR. K. B. HARPER ON DISCRIMINATION IN AND AGAINST BURMA IF SEPARATED FROM INDIA.

While I understand the same difficulty does not arise in parts* of India it is hardly possible to say in Burma who does or who does not belong to an agricultural "class." In the circumstances in which the rice crop, for instance, is, and for many years has been, financed in Burma it is certainly not possible to describe Indian bankers or money lenders as "a class of persons not engaged in or connected with agriculture in Burma," and I understand it is this class of Indian to which the proposal is generally directed.†

Would an Englishman who has previously been engaged in other pursuits and who wishes to start planting in Burma be a person "belonging" to such a "class"?

Again it would seem that mortgages to banks or other commercial lenders could be directly prohibited, with one result at least, that the value of all agricultural land would automatically be reduced.

The proposal might, further, authorise the prohibition of a genuine sale of agricultural land for building or industrial purposes.

If the intention of this proposal is not only to permit measures, but also to point to a certain kind of measure, for preventing agricultural land in Burma from passing into the hands of "non-indigenous and non-agricultural"† owners, it would seem that the solution of this important and difficult problem lies in some other direction. The disadvantages of the proposal as it stands appear to outweigh the problematical advantages.

Less (but not much less) exception could, perhaps, be taken to provisions which would leave the way open to prohibit the transfer of agricultural land not to any class but to any person or association of persons who have not in good faith the intention themselves to build on it or cultivate it or turn it to industrial use. Even this, being a restriction, would have the effect of reducing land values. It is doubtful, moreover, whether this would be a matter of discrimination within the meaning of the memorandum by the Secretary of State for India [page 1297, Volume II B, Joint Committee on Indian Constitution Reform (Session 1932-33)] and whether therefore there is any need to specify such a provision as an exception.

(2) It "recognises the existence of some right, privilege, or disability attaching to the members of a community by virtue of some privilege, law or custom having the force of law."

If the words "at the date of Separation" are added after the word "existence" there can be no objection to this proposal.

(3) It is declared by the Governor "to be necessary in the interests of the peace and tranquillity of Burma or any part thereof."

I presume that the intention is that before any legislation of the kind envisaged can be introduced the Governor will formally certify that the matter is one of temporary urgency and is necessary in the interests of the peace and tranquillity of Burma.

The history of Burma repeated during the last few years shows that it is not difficult to foment a rebellion in Burma. There is no reason to believe from consideration of the origin of rebellions in Burma that under a responsible Government the country will be any more immune from the danger of

* See Punjab Land Alienation Act of 1900.

† Paragraph 10 of the Secretary of State's Memorandum on Discrimination in Burma, published in Record A 2 [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 104].

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rebellion than under the former or the present forms of Government. If the proviso in this paragraph is to find a place in the Act it is calculated to encourage rebellion or some lesser disorder of the kind, directed perhaps to political ends. If, as I understand, the Governor's administrative powers to carry out his special responsibility for the prevention of any grave menace to the peace or tranquillity of Burma are unlimited, I suggest there is no need for this proviso in the Act.

24. *Para.* 3 (vii) (2).—*Exceptions in regard to Bounties and Subsidies:* From the language of paragraphs 3 (iii) and (iv) read with paragraph 3 (vii) (2) it is assumed that the intention is to treat the special provisions of the latter paragraph as exceptions from the general prohibitions against discrimination. It is important that this should be so. It is hoped therefore that in giving effect to these general prohibitions the clauses of the Bill will be so drafted as to cover all cases of discrimination by means of or in the matter of bounties or subsidies, the exceptions referred to in 3 (vii) (2) being dealt with by way of proviso.

25. The general principle of this paragraph has for some time past been accepted by the Associated Chambers of Commerce of India of which the Burma Chamber of Commerce is a member. The following comments are directed towards a clearer appreciation of the details involved in giving effect to the principle:—

(*a*) It is understood that technically the word "subsidies" does not include the protection afforded by import duties and that nothing in this paragraph can be read to mean that any conditions such as those recommended by the External Capital Committee may be demanded in connection with the imposition of an import duty, or that any legislative measure may be passed to withhold (by requiring a refund or otherwise) the benefits of such protection from any Company entering the trade in question after the import duty has been imposed.

(*b*) It has been observed that in discussing the principle embodied in this Exception, there has been a tendency to introduce the item of contracts. I understand that this paragraph is to be read in its strictly literal sense; that it refers to bounties and subsidies paid out of public funds, and that the terms cannot be extended to include contracts with Government or other statutory bodies. A commercial contract ordinarily connotes the sale of articles or services in return for payment made, and differs therefore radically from bounties and subsidies in the sense in which I understand this paragraph. I suggest it should be made clear that nothing in this paragraph can be read to mean that conditions such as those recommended by the External Capital Committee may be required by law of any Company in order to render it eligible to receive a Government contract.

(*c*) I understand and suggest it be made clear that under this proposal no condition may be imposed on a "future" Company in order to render it eligible for a bounty or subsidy unless that condition has been specifically included in the Subsidy Act itself, and further that the only conditions which may be imposed are those recommended by the External Capital Committee, namely:

(1) in all cases reasonable facilities for the technical training of apprentices, and

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(2) in the cases of incorporated companies—

(i) that the companies should be registered under the Indian Companies Act, 1913, with rupee capital, and

(ii) that a reasonable proportion of the directorate should be Indian

substituting, of course, in the case of Burma, the word "Burman" for "Indian" in para. (2) (ii).

With regard to (1) and (2) (ii) it is important that the word "reasonable" should govern these conditions.

26. It is appreciated that para. 3 (vii) (2) concedes an important power which in principle it would be unreasonable to withhold from the new Burma legislature. It is, however, not only important; it is one of the most difficult to define and limit appropriately. So much depends on the form of words adopted. It is therefore not possible to express a final opinion on the proposal until an opportunity comes to consider the draft of the Bill itself.

27. *Para.* 3 (viii).—*Special Provision for Ships and Shipping:* This seems to be a necessary provision and I have no comment to make on it.

28. *Para.* 4.—*Administrative Discrimination:* I understand that in Document A. 68 the broad distinction between discrimination by legislation and discrimination by administrative action lies in the remedies proposed in each case. While acts of the kind referred to in 3 (i), (ii) and (iii) (where they are applicable) are prohibited no less when the discrimination is administrative than when it is legislative,* in the latter case remedy will be sought in the courts; in the former complainants will rely on the special responsibility of the Governor. It is generally agreed, I think, that administrative discrimination is the more difficult form to cope with and provide against. I respectfully agree with the Secretary of State that the Governor's hand should not be tied* in the attempt to make his obligations explicit, but I put forward the following comments:

(1) in addition to the General Declaration contained in 3 (i) I would suggest that a provision should appear in the Act declaring all discrimination to be illegal and distinguishing between administrative and legislative discrimination by stating that recourse to the courts may be had only in the case of discrimination by a legislature or "by any person or body exercising delegated legislative powers".† It should be made clear that the Governor's powers in exercising his special responsibilities in matters of administrative discrimination are unfettered and implicit.

(2) The phrase "the prevention of commercial discrimination" which appears in Burma Proposal 17 (*e*) is to be extended to "the prevention of discrimination in matters affecting trade, commerce, industry or ships." Agreeing again as to the dangers of explicitness, I suggest that the phrase, as it is now proposed to expand it, is open to that very objection. It explicitly refers to "trade, commerce, industry and ships," and by implication leaves at least two other heads unprotected, viz., the holding of property and the exercise of a profession. I would suggest that the wording of the Act should explicitly prevent

* See Secretary of State's reply to Q. 15,410 [page 1304, Volume II B Joint Committee on Indian Constitutional Reform (Session 1932-33)].

† First sentence of para. 4 of the memorandum by the Secretary of State for India [page 1297, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)].

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"discrimination in any matter relating to status or civil rights," various kinds of rights being named as examples.*

29. In Questions 15,765 to 15,767 (page 1346, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)] Sir Hubert Carr put forward the suggestion that any person who considers himself to be disabled by discriminatory administrative action should have the right to demand an enquiry into his case. It appears from the Secretary of State's answer that he understood Sir Hubert Carr to refer to a somewhat cumbrous and slow procedure, "a formidable affair; a number of people are appointed, taking weeks, it may be months, to come to a decision," and so on. I agree with the Secretary of State that such a procedure would in most cases be in every way unsuitable, but I venture to think that this is not the kind of enquiry which Sir Hubert Carr had in mind. In practice it will presumably be the case, almost invariably, that appeals to the Governor in the matter of alleged discrimination will be directed against the action of a Minister. It is clear that the Minister's prestige must limit the nature of the enquiry which would be possible. It could only be undertaken by the Governor himself or by some independent person of authority such as a High Court Judge. The seat of the enquiry might be far away from the Governor's headquarters, too far away for his personal attention. The Governor might be reluctant to look for evidence beyond the word of the Minister himself. A High Court Judge could undertake a more thorough enquiry, at headquarters and elsewhere, than the Governor himself could, and could do so without legal formalities. A power to require security and to award costs should prove sufficient safeguard against frivolous applications for an enquiry.

30. I suggest therefore that in such matters the complainant should be given the right to demand an enquiry constituted as the Governor might think suitable, the object of the enquiry being to ascertain the facts and report them to the Governor for action at his discretion. While I agree with the Secretary of State that in general "elasticity and freedom"† in the hands of the Governor are essential to enable him to fulfil his various responsibilities, I suggest that in this connection the Governor himself might welcome the complainant's right to demand an enquiry as a means of relieving him of the embarrassment of having to institute action against one of his Ministers. This right in the hands of a complainant might also not be without its moral effect on those in administrative authority.

31. If, however, this suggestion is unacceptable to the Joint Committee I would endorse Sir Hubert Carr's request that in the Act the Governor should be given express permission to institute an enquiry and that his Instructions should call his attention to this power. I read the Secretary of State's reply to Question 15,767‡ to mean that he will in any case

* I would suggest as examples the right to hold and enjoy property of every description, the right to make and enforce contracts, the right to carry on or exercise any trade, business, employment, vocation or profession, and eligibility for any grant, bounty or subsidy, or for any office, post or preferment, and discrimination in the imposition or levying of any taxation, cesses, duties, rebates or other impositions of whatsoever kind.

† Secretary of State's answer to Question 15,765 [page 1346, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)].

‡ Q. 15,767. Sir *Hubert Carr*: "In answer to that I would say that the class of enquiry I had in mind was the Governor appointing one man in whom he had confidence to go and investigate the cause of the complaint which might lie three or four hundred miles away from the Governor's seat?"

Secretary of State: "He could do that . . ." [page 1347, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)].

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have implicit power in this respect, but I suggest it is not clear that without special provision in the Act he would have authority to appoint a High Court Judge to hold an enquiry and summon witnesses, if necessary. There appears also to be considerable force in Sir Hubert Carr's point that unless explicitly referred to in his Instructions as a course which is contemplated as suitable, it may either be overlooked by the Governor or, if ordered by him, might be regarded by the Minister as a pointed aspersion.

32. *Paragraph* 5: This paragraph draws a distinction between the proposals as they affect (*a*) British subjects domiciled in the United Kingdom and (*b*) British subjects domiciled elsewhere in the Empire than in the United Kingdom. For convenience and brevity of title I refer in this section to (*a*) as U.K. subjects and (*b*) as non-U.K. subjects.

33. Under this proposal full protection is accorded to U.K. subjects including right of entry into Burma. Non-U.K. subjects are to receive the general protection of paragraph 3 (i) once they have obtained legal entry, but such entry may be refused.

34. I understand that the object of this proposal is to reconcile "British and Indian policy in India . . . . not to draw distinctions in India itself between one national of the British Empire and another"* with the existing fact that such distinctions are drawn in some other parts of the Empire. While I agree that it is not reasonable to compel Burma to accord treatment to a part of the British Empire which does not accord that same treatment to Burmans, it is not clear why those countries in the British Empire which do not discriminate against Burma should be treated on parallel lines with countries which do, rather than with the United Kingdom which does not.

35. The proposal as it stands appears to go further than the principle expressed by Sir Austen Chamberlain in Question 15,515 [page 1316, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)] and accepted by the Secretary of State, namely, that the Constitution Act shall not "give free entry to India to the citizens of a Dominion which refuses free entry to Indians in that Dominion." Under the proposals, a refusal of entry to non-U.K. subjects is not dependent on discrimination by the non-U.K. country against Burma. Entry can be refused for any reason or without stating any reason. Even though we may accept it as unlikely that Burma will refuse entry to British subjects from a part of the Empire which does not discriminate against Burma, Burma is being given the power to do so, and this itself would seem to be contrary to the principle, which I suggest it is important to preserve, that British subjects throughout the Empire have an inherent right to protection in any country within the Empire until they have forfeited it by the action of such country.

36. I appreciate the Secretary of State's object† in drawing the attention of India and Burma and of those parts of the British Empire which at present discriminate against them to the advantage of making agreements which would be satisfactory to both sides. I respectfully suggest however that not only would this object be no less achievable, but the proposals

* Answer to Question 15,536 [page 1319, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)].

† Answer to Question 15,503 [page 1315, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)].

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would operate more simply and fairly if sub-paragraphs 3 (ii) (*a*) and (*b*), 3 (iii), 3 (iv) and 3 (v) were made applicable to all British subjects domiciled in, and Companies incorporated in, parts of the British Empire which do not discriminate against India or Burma in respect of any of the Civil Rights, including entry, referred to in paragraph 3 (ii) (*a*) and (*b*).

I am trespassing here on the Joint Committee's labours in connection with the Indian White Paper, but it would be unreasonable to distinguish in this respect between Burma and India.

37. *Para.* 6: This paragraph deals with professional qualifications. This is a matter to which the European community in Burma attaches great importance and on which I must reserve comment until the Secretary of State's proposals have taken more concrete shape. At this stage there are certain general principles to which the European community adheres:—

(1) The quality of knowledge required for qualification in a profession varies so greatly between country and country that this is not a suitable subject for simple treatment on a reciprocal basis.

(2) No person possessing British professional qualifications should be in a worse position after the Act comes into force, as regards liberty to practise in Burma, than he is now.

(3) As regards basic qualifications, no law or regulations made in Burma for the purpose of prescribing qualifications for any given profession should disable from practice in Burma a person whose qualifications would in England entitle him to practise.*

(4) It is not unreasonable to allow the Burma legislature "to require additional qualifications from new entrants to professions which are justified by the special needs" of Burma conditions; but this must not be used as a means of discrimination which is not required for those special conditions or is contrary to the spirit of these proposals.

38. To ensure these principles it is suggested that:—

(*a*) No law or rule affecting the existing right of British subjects to practise in Burma by reason of British qualifications may be made without the prior consent of the Governor and such law shall, after being passed by the legislature, be reserved for His Majesty's assent, or

(*b*) There should be a clause in the Constitution Act explicitly recognising in Burma British qualifications in all professions, inasmuch as these qualifications are recognised as adequate to-day.

39. I understand that all the above principles are accepted by His Majesty's Government. The European community attaches great importance to providing for them adequately and effectively in the Act.

PART II.

Discrimination as between Burma and India.

(*a*) *Provisions in the Burma Act.*

1. I agree with the view expressed by the Secretary of State in his Memorandum on Discrimination in Burma, published in Record A 2 (paragraph 3)

* This is not quite the same thing as is suggested by the Secretary of State's wording in para. 6 viz.: "No law or regulations made in India for the purpose of prescribing the qualifications for any given profession shall have the effect of disabling from practice in India, on the strength of his British qualifications, any holder of a British qualification."

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(Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 103) that "as Burma is at present a province of British India and as British subjects domiciled in the United Kingdom occupy in Burma the same position as in other Provinces, and occupy it by virtue of the same considerations, precisely the same degree of protection should be accorded to them in Burma, if separated from India, as is to be accorded in continental India." For parallel reasons I consider that the same principles should apply as between Indians in Burma and Burmans in India, if Burma is separated from India. In general therefore I endorse the proposal that the terms of the Memorandum by the Secretary of State for India [page 1297, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)], should be applied as between Burma and India, the words "Burma" and "Burman" being substituted for "India" (or "British India") and "Indian," and "India" for "United Kingdom," subject to the criticisms which I have made under the various corresponding heads in Part A of this Memorandum.

2. The one exception which the proposals (contained in the Annexure of Record A 2 (Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 107) make to this general rule is in the matter of the right of entry of Indians into Burma, on the lines of the corresponding right assured to United Kingdom British subjects in accordance with paragraph 3 (ii) (*a*) of Document A 68.

Careful consideration of the problem which is so clearly put in paragraphs 8 to 11 of the Secretary of State's Memorandum in Record A 2 (Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, pp. 104 and 105) makes it difficult to escape the conclusion that there must be some means of controlling labour immigration from India to Burma. The existence of the problem is not conducive at present to good feeling between Indians and Burmans in Burma. It is, however, of the greatest practical importance, in the opinion of the European community in Burma, that if Burma is to be separated the parting should be, and should remain, friendly. With this in mind I would strongly support the observation made by the Secretary of State in paragraph 16 of his Memorandum, that the best solution of this problem lies in the conclusion between the Governments of India and Burma of an Immigration and Emigration convention. I would in fact go further, and suggest that statutory power to control immigration should not be granted to either Burma or India until they have tried to come to an agreement.

3. If my suggestion as regards the amendment of 3 (ii) (*a*)* is adopted there will be no discrimination by Burma against Indian immigration and therefore the present free entry of labour into Burma will be allowed to continue until the two countries have come to an agreement on this subject.

If agreement proves unattainable, and the problem seems seriously to call for more drastic measures, then the question of giving Burma statutory power to restrict immigration should be considered at a later date by Parliament.

If legislative power of this kind is eventually granted to Burma it will presumably be unreasonable to withhold a similar power from India.

4. If such power is to be given to the Legislatures I attach the greatest importance to the procedure contemplated in para. 15 of the Secretary

* As set out in para. 32 of this Memorandum.

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of State's Memorandum, under which any legislation regulating immigration—and I would add emigration* should be subject to the prior assent of the Governor-General or Governor as the case may be, together with the further precaution of indicating in their Instruments of Instructions that this category of legislation is particularly suitable for reservation for His Majesty's assent.

5. *Professional Qualifications.*—Comment on this subject must be reserved until definite proposals have taken shape.

(*b*) *Provisions in the India Act.*

6. Proposals exist for provisions in the Burma Act concerning discrimination† between

(1) Burma and the United Kingdom (paragraphs 3 to 6 of Record A 2 [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, pp. 103 and 104]).

(2) Burma and India (paragraphs 8 to 16 of Record A 2 [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, pp. 104 and 105]).

(3) Burma and British subjects domiciled elsewhere than in the United Kingdom and India (paragraph 7 of Record A 2 [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 104]).

I have seen no proposals for provisions to be included in the India Act to deal with discrimination in India against British subjects domiciled in and Companies incorporated in Burma, except in so far as British subjects in Burma are covered by the general declaration of para. 3 (i) of the memorandum by the Secretary of State for India [page 1297, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)].

7. I presume it is intended to include in the India Act suitable provisions on lines parallel to the corresponding provisions in the memorandum by the Secretary of State for India [page 1297, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)] and Record A 2 [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 103].

8. If my suggestion is accepted that neither the Burma nor India legislature should have the power to refuse entry to immigrants until the possibility of controlling such immigration by agreement has been fully explored without success, provision on the lines of 3 (ii) (*a*) of the memorandum by the Secretary of State for India [page 1297, Volume II B, Joint Committee on Indian Constitutional Reform (Session 1932-33)] (with "Burma" inserted where the words "United Kingdom" occur) would presumably find a place in the India Act.

* For the reasons given earlier in this Memorandum (V. "A," Section VII).

† In other matters than professional qualifications.

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RECORD B.2 (*continued*)

VI.—Memorandum on behalf of the Anglo-Burman Community by Mr. Campagnac

Both as a legacy and bulwark of British Rule in the East the Anglo-Burman community might be excused perhaps if it sought to put forward special claims for consideration at the hands of Great Britain.

It owes its origin and the traditions it cherishes to the British annexation and occupation of Burma, and its members, whether the Asiatic element in their mixed descent be Indian or Burman, can justly pride themselves on their community's magnificent record of service to the British Raj and the province from the early pioneering days down to and after the Great War.

But the Anglo-Burman community, in this era of changing political conditions for the province which is its home, has no desire to seek any preferential treatment. It lives amicably with its neighbours and it identifies itself with their social, economic and political aspirations. All it asks is that it shall be allowed to preserve its own ideals intact and that it shall be saved from the risk of complete submergence by other and numerically stronger communities in the Burma of to-day.

For this end it advances the following extremely moderate demands:—

(1) That the new constitution should provide safeguards against any curtailment of grants to European schools and against any lowering of the standards of European education.

(2) That under the new constitution Anglo-Burmans should have the right to compete on equal terms with Burmans for appointments in the service of Government or of local bodies.

(3) That the community should secure representation in the Lower House of the new Legislature through separate electorates.

(4) That two seats should be reserved for the community in the Lower House and that at least one seat should be reserved for it in the Upper House, this latter seat being filled by nomination by the Governor.

As regards the first point the lack of any restriction of the number of Asiatic pupils admitted to European schools has already had the effect of lowering the standard of European education, and the community, faced with the ever-increasing difficulty of securing employment for its members, is naturally anxious that this tendency towards a lowering of educational standards should be checked and that its children should be given an education calculated to enable them to hold their own with Burmans.

As regards the second point there has been a marked tendency since the reforms were introduced into Burma to give preference to the claims of Burman Buddhists in the matter of appointments both under Government and under local bodies; and the result is to be seen in the very large number of unemployed Anglo-Burmans to-day. The community hopes that the same safeguards and protection as may be accorded to Anglo-Indians in India in this matter of appointments will also be extended to Anglo-Burmans in Burma.

That the desire for separate electorates is unanimous, so far as the Anglo-Burman community is concerned, I took occasion to convince myself before leaving Burma for England by consulting opinion throughout Burma through the branches of the Anglo-Burman Union; and that the

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community is opposed to any compromise on this point is proved by the cable I received from the President of the Mandalay branch of the Anglo-Burman Union in answer to a letter I despatched on my way to London. which reads:—

"Mandalay, 4th December, 1933.

"Your letter from Colombo. Mandalay requests you secure for Burma what Gidney will obtain for India, namely, European Education reserved and communal representation through communal electorates. We strongly oppose compromise with fellow Delegates on these points and request co-operation with British representatives who are in full sympathy with our special claims."

On the question of a reservation of seats for the community in the Legislature it may be noted that the Burma Provincial Committee appointed to co-operate with the Indian Statutory Commission recommended that two seats should be so reserved in the Legislative Council while in Appendix III (II), Record A1 (ii) [Joint Committee on Indian Constitutional Reform, Session 1933-34, Volume II, p. 55] it will be seen that the Society of which U Chit Hlaing is President has agreed to the Anglo-Burmans having two seats reserved for them in the Lower House. If there are to be two Chambers in the Legislature, it is obviously only fair that the Community should also be represented in the Upper House.

Officially the community is still designated the Anglo-Indian community, in spite of the fact that it was decided at a public meeting some three years ago to drop the title Anglo-Indians and adopt that of Anglo-Burmans. As a matter of fact the community to-day is made up of about 60 per cent. Anglo-Burmans, 30 per cent. Anglo-Indians and 10 per cent. domiciled Europeans. I have been the elected representative of the community ever since the Montagu-Chelmsford Reforms and I was returned unopposed at the last two elections. There is only one Association of the community in Burma to-day, known as the Anglo-Burman Union. This Union has over 1,000 members on its rolls and has branches at Mandalay, Toungoo, Maymyo and Kalaw. Up till two years ago there were two Associations in Burma—one was the Anglo-Burman Association, of which I was the President, and the other was the Anglo-Indian and Domiciled European Association, which was a branch of an association registered in India. These two Associations amalgamated two years ago and registered under the name of the Anglo-Burman Union, of which I am the President.

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RECORD B.2 (*continued*)

VII.—Memorandum submitted by Mr. S. A. S. Tyabji on Indian Labour in Burma

I have the honour to submit this Memorandum on matters arising out of the Burma White Paper and other Memoranda submitted to the Joint Select Committee. At the outset I must state that Indian Labour has been placed at a great disadvantage in so far as proposals regarding their representation in the Lower and Upper House and franchise affecting them are concerned. The fact is that the *memorandum of the Government of Burma on these subjects was marked " confidential " and was given to a few persons. The memorandum being confidential it was not possible to place it before Labour for its clear expression of opinion.

Therefore, my first submission is that any decisions arrived at by the Joint Select Committee on the questions of Labour representation in the Lower and Upper House, and the franchise affecting them, may be published in Burma, for expression of opinion on them by Labour.

I.—*Representation of Labour in the Lower House.*

(*a*) The memorandum by the Government of Burma and that by the Rt. Hon. The Secretary of State for India, propose to give two elected seats to Indian Labour, but these shall be included within the 10 seats which have been allotted to the Indian community based on population basis.

I submit that Labour has always been considered as a " special interest," and the Royal Commission on Labour in India directly supports this view in their Report. Therefore the Labour seats should be treated separately and should not be included in the number of seats based on population basis.

(*b*) It is contended that the total Indian representation in the Lower House is inadequate. A strong case is made out in a separate memorandum, which is jointly signed by Mr. Cowasjee and myself, for increase of Indian representation. My submission is that if the number of seats for the Indian community is increased, in such an event the number of seats for Indian Labour be increased from two to three seats, the reason for such an increase being

(1) recognition of the part played by Indian Labour in the development of Burma;

(2) the substantial proportion of Indians in Burma employed in the occupation of Labour;

(3) the necessity of having sufficient number of Labour representatives to propound the views of Indian Labour in Burma, on laws and regulations which may in future be considered by the Lower House.

II.—*Labour Constituencies.*

It has been proposed to constitute two Labour constituencies for Indian Labour, one in Rangoon, or Rangoon combined with Syriam, and the other in the Oil Fields—the latter being undefined.

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* Vide Record A 1 (II), Appendix II [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 36].

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MEMORANDUM BY MR. S. A. S. TYABJI ON INDIAN LABOUR IN BURMA.

(a) *One in Rangoon.*

1. The Indian Labour population—Labour including occupations like traders and shop asistants, Army, Navy, and Air Force, etc., technical experts and professional classes, managers and officials of organised industrial undertakings, and manual workers—number 150,000 approximately in Rangoon alone. Out of this, manual workers would approximately number 100,000.

Therefore Rangoon with one Labour seat would have a Labour electorate, on adult franchise, of 100,000 voters. This number of voters is three times more than the total number of voters of all the other Indian communal constituencies put together, i.e., 33,000.

2. Therefore my first submission is that in any case Syriam be not included in the Labour constituency of Rangoon, because

(i) it will add considerably to the large electorate in Rangoon;

(ii) Syriam is not opposite to Rangoon, but takes about 45 minutes to reach by steam launch;

(iii) it is otherwise treated as a separate constituency.

3. I further suggest that this constituency be divided into two parts—(*a*) East Rangoon, (*b*) West Rangoon—and the Oil Fields constituency be not formed.

(b) *Oil-Field Constituency.*

1. The Oil Field constituency is a very small constituency. To an inquiry made by me, the Reforms Secretary to the Government of Burma, in his letter No. 37, Reforms, dated 23rd September, 1933, stated the figures of employed for the year 1932 as under:—

Total employed	14,330
Burman indigenous	7,726
Indians	6,401
Others	203

2. Thus it will be seen that the number of Indian Labour electors would only be 6,401 (1932).

3. The Oil Field constituency besides being a small one comprises only one interest.

4. It is cut away from the other centres of industry and agriculture, and has little connection with those problems which the general industrial or agricultural Indian labour has to face.

5. Therefore I submit that the proposed constituency for Indian Labour in Oil Fields would not be really representative and that it would be preferable, as suggested above, to fill the two seats from Rangoon.

(c) 1. If through increase of Indian representation labour obtains one more seat, I propose that it should be given to agricultural Indian labour.

2. Indian agricultural labour has problems of its own, and it may be suitable and advisable that it may be represented direct by at least one constituency.

3. There are a considerable number of Indian labourers born in Burma, occupied in agricultural labour numbering approximately 150,000.

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4. As Akyab District has the largest number of Indians outside Rangoon, it would be suitable to select one area out of that district to form into a rural constituency of about 25,000 voters.

(*d*) 1. If it is not considered advisable to form a rural agricultural labour constituency, then I suggest that Akyab Town be given a labour seat.

As Rangoon represents the largest number of Indian Labour in the Delta so does Akyab represent the second largest number of Indian labour of the coast.

Reference—Imperial Table XI—Occupations by Race—p. 186. Census of Burma, 1931, part II. The following is the summary of the above table. viz.:

"Earners and working dependents" for "All occupations."

	All races.	*Indians born in*	*Indians born out*	*Indo-Burma.*
Burma	5,331,000	97,000	465,000	55,000
Delta	2,341,000	36,000	323,000	12,000
Coast	700,000	54,000	66,000	25,000
	3,041,000	90,000	389,000	37,000
Centre and North	2,290,000	7,000	76,000	18,000

It would mean that the following would be represented:

	Rangoon.		*Akyab.*	
Indians born in Burma	36,000		54,000	
Indo-Burma	12,000		25,000	
		48,000		79,000
Indians born out	323,000		66,000	
	371,000		145,000	

Roughly, two seats for Rangoon and one seat for Akyab would enable these two large centres for Indian Labour (Industrial and Agricultural) to be represented.

2. It is also a fact that the Coast is not easy of access from Rangoon, and its problems would best be understood by representatives from Akyab Town.

3. I however realise that Akyab is a small constituency having the following population:

Indian races	38,000	
Other indigenous races	13,000	
Indian Hindus	11,000	
Indian Muslims	10,000	23,500
Indo-Burma races	2,500	

4. But I prefer Akyab to Oil Fields because

(i) it has a larger labour interest, comprising industrial and agricultural interests;

(ii) it definitely represents the second largest area in which Indians born outside Burma, and the largest area in which Indians born in Burma, and Indo-Burma races are settled;

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(iii) it represents an area about whose problems persons living in Rangoon do not, as a rule, know much. It is much easier to reach the Oil Fields or Yenangyaung from Rangoon than to reach Akyab.

(iv) Akyab would definitely represent Industry (17,000) and Transport (15,000), i.e., 32,000 Labour, as against 6,000 employed in the Oil Fields. The representative from Akyab would also be in a position to know the conditions of 80,000 agricultural labourers, out of whom 45,000 are born in Burma and 17,000 belong to Indo-Burma races.

(v) Oil field is an isolated interest.

III.—*Franchise.*

1. I have the honour to submit that in Record A1 (II) (Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 15) it is proposed in para. 15 (*b*) to " insure also that the great majority of the non-indigenous population will not have the vote till they have resided in Burma for at least three years, so that when the time comes for them to vote they will have had the opportunity afforded by three years' residence to acquire an interest in local affairs and exercise their vote intelligently."

2. From this I understand that it is not desired to make all those persons born in Burma or who have resided in Burma for a considerable period, that is, more than three years, prove their interest in the country at every election.

3. I understand that all that is desired is to ensure that persons who have not acquired interest in local affairs shall not have the vote. Therefore it is considered that:

(i) payment of income tax " involves residence for a minimum period of 12 to 18 months, and this seems adequate in the case of a person of some standing and education."

(ii) " It is not considered necessary to apply it (the three years' test) to the qualification based on possession of property (Rule 3 (*a*)) which will in any case take some time to acquire."

4. From the above two qualifications it is clear that three years' qualification is one of the qualifications amongst others (as per above) to prove that a person has acquired an interest in local affairs to exercise his vote intelligently.

5. The three years test is applied in rural constituencies to persons paying certain taxes, and in urban constituencies to persons paying certain taxes, and also to those paying rent at the rate of Rs. 48 per year.

6. The three years qualification in rural constituencies as applying to Indians, born in Burma, or resident for a considerable number of years in Burma, would fall heavier on them than on indigenous persons because

(*a*) though they may have paid their tax for two years out of three or for the last 10 years, but failed to pay for one year out of the three years they would lose their franchise.

(*b*) In the case of urban constituencies, a person must have made payments for the three previous years of municipal or cantonment taxes (these are being paid generally by house owners) or he must have paid for the three previous years rent of not less than Rs. 48 per year; or must have lived rent free for the previous three years.

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(*c*) Any person not being able to prove payments of rent for three years would automatically lose his vote.

(*d*) In the case of Indians, both in rural and urban areas, the problem of necessary visits to India arise and these short absences may mean in rural areas non-payment of certain taxes, and in urban areas non-payment of rent by such absentees, and they would lose their franchise although they may have been paying their taxes or rent regularly for quite a number of years.

(*e*) In the case of urban constituencies, an absence of six months or one month from Burma would be sufficient to disqualify a person unless he maintains a rented house during his absence, which a poor man is not expected to do.

(*f*) It is a fact that Indian traders and poor classes move about considerably, and in many trades are forced to move about from place to place.

(*g*) The rich man has two qualifications—property and income tax, and he can eventually fall back on rental qualification, whilst the poor man has only one qualification—that of paying rent or taxes for three years.

(*h*) It is unjust that if a person has been paying his rent or tax for a number of years, for one failure he should be disqualified, whilst a rich man may pay his income tax every third year and still obtain his vote.

7. The real intention behind this proposal was to take away the vote from immigrant Indian labourers, if they have not stayed in the country for three years, because, it is said, they would acquire no interest in local affairs.

8. The fact is:—

(*a*) that the majority of Indian labourers who come to Burma have spent many more than three years in Burma. They stay in Burma for two and a-half or three years, go back and return within six months or a year. In this manner a goodly portion of their life is spent in Burma.

(*b*) It is wrong to think that such labourers have no interest in local affairs, or that by nature they are such as could not understand matters affecting them, or generally.

(*c*) From personal experience, I can state that they are very wide-awake persons, and have the same shrewd common-sense which mass electorates have in every country.

9. The Indian immigrant labour against whom particularly the residential test was considered desirable, number 300,000 to 400,000 out of a population of 14,000,000.

10. Out of 300,000, about 100,000 labourers would be found in Rangoon.

11. Out of 100,000 in Rangoon, about 3,000 or 4,000 labourers came on to the electoral roll of Rangoon East and West Indian constituencies, taken together.

12. The total number of Indian voters inclusive of Rangoon for Indian constituencies number 30,000 out of which not more than 7,000 or 8,000 labourers come on to the electoral rolls, under the present franchise qualifications.

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13. Besides the Indian immigrant labour, it will very seriously affect that class whose income or salary is less than Rs. 80 and more than that of the manual labourer, and would form the largest majority of the following occupational groups:—

Occupation.	*All races.*	*Indians born in.*	*Born out.*	*Indo-Burma.*
Trade	557,000	9,000	87,000	12,000
Public Force	31,000	1,000	13,000	—
Public Administration	45,000	1,000	12,000	1,000
	633,000	11,000	112,000	13,000

(*Note.*—These figures include working dependants.)

14. A large majority of these would be the class I am referring to. This class through trade and service has an abiding interest and has lived in the country, except a few, for a considerable number of years.

15. This class of person has the sound common-sense required to act as a buffer between ultra-capitalistic or ultra-socialistic policies; to put any check on it seems impolitic. It is true that the majority of these would be paying rent of Rs. 48 per annum, but the practical difficulties arising from proving through three years rental seem insuperable for many.

16. The practical difficulties are the following:—

(*a*) The insuperable difficulty of preserving three years rental receipt, as proof.

(*b*) Change of venue of small traders.

(*c*) Transfer of persons in Government service, private service or public force.

(*d*) For Indians in particular, added to these difficulties is the one necessitating their going to India to their relations every few years.

17. Through actual experience I have found that even in a large city like Rangoon, on our present electoral rules, it is very difficult to produce rental receipts even of the previous year, and in the East and West Rangoon Indian constituencies very small numbers of such class of persons (compared to their number) can be enrolled on the electoral rolls.

18. With regard to Indian Immigrant Labour, the difficulties are:

(*a*) A very small percentage is stationary in any one constituency, as almost all Industrial work is seasonal. Sometimes he is in the rice mill, at other times working as casual labourer; again during other months working in the fields. How can such a person obtain rental receipts for three years?

(*b*) He cannot obtain certificate from his employer after three years that during particular months he worked with him, and obtained free lodging worth Rs. 48 per annum.

19. I venture to suggest that if the rule obtaining in Burma at present and the manner of its working is closely examined, it will be found that it is more restrictive than the rule prevailing in Ceylon. 6c. of Ceylon Electoral rules runs thus: "Has not for a continuous period of six months in the eighteen months immediately prior to the first day of August in that year resided in the electoral district to which the register relates."

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20. The Burma electoral rules—Schedule II. Qualification of Electors under Urban Constituencies, lays down in Section 3 (*b*) "Has paid during and in respect of the *previous* financial year, etc., etc." and in 3 (*c*) (i) "Has paid during and in respect of the *previous* financial year, etc." 3 (*c*) (ii) "Has lived rent free during the *previous* financial year, etc., etc."

It will be seen that these qualifications lay down the necessity of having paid certain taxes, rent, or lived rent free, etc., "during the previous financial year." Our financial year ends on 31st March. Therefore the person must have been in Burma for at least one year prior to the making up of the electoral roll, if the electoral roll is prepared in April.

21. Whilst in Ceylon the voter has to prove that he has resided in the electoral district for at least six months in the eighteen months prior to the first of August, in Burma, as the rule stands at present, he has to prove that he has paid tax, rent, etc., for the previous financial year—thus the length of residence required is much longer than under the present Ceylon Constitution.

22. In the memorandum of the Government of Burma on the franchise proposals—paragraph 33—I point to the following sentence: "The names of persons on the present electoral rolls would, however, be allowed to remain and such persons would not be disfranchised." Thereby I understand that all those who are on the present roll would not be disqualified on account of three years qualification from being entered on the fresh roll. I agree with this proviso, and if any alteration of existing qualifications are made perhaps on Ceylon lines, this proviso must form part of it.

23. It is quite clear from paragraphs 1, 2, 3 and 4 of this Memorandum that the principle which is desired to introduce is that a person must have "interest in local affairs" to be able to vote intelligently, and that the three years test is a method and not a principle.

24. Therefore my proposal is that

(*a*) Instead of 3 years rules as proposed, the Ceylon rule be introduced, or in the alternative maintain the present qualification 3 b. 6 and 3 c (ii) of the Burma electoral rules, Schedule II.

(*b*) If the Ceylon rule 6. c. is introduced no further residential qualification need be proved.

(*c*) If the present Burma qualification is maintained, and it is considered that proving of three years residence is necessary, then it should be possible to prove three years residence

(i) through production of rent receipts for three years;

(ii) through certificate from a bank, or a banker, or co-operative societies of having an account with a bank or a banker or co-operative society for three years;

(iii) through production of registration of a firm (under the local act);

(iv) through certificate of membership of a registered organisation;

(v) through certificate of membership of an organisation representing a profession;

(vi) through certificate of service in government administration or service in semi-government public institutions;

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(vii) through certificate or through pay bills of service in a private firm;

(viii) through certificate of an employer that a labourer has worked for three years with him;

(ix) through other reasonable proofs that he has been in the country for three years, with possible break;

(x) through a name of a person being in one of the previous electoral rolls prior to the new rules coming in;

provided that once a person's name has appeared on the roll under the new qualification it shall be considered proof of his three years residential qualification, and such a person shall not be called upon to prove his residential qualification on preparation of every fresh electoral roll.

IV.—*Discrimination in Burma.*

(*Vide Annexure to Record A2 (I) (Joint Committee on Indian Constitutional Reform, Session* 1933-34, *Volume II, p.* 107.)

1. *Regulation of Immigration.*—No protection of right of entry into Burma is contemplated in favour of British subjects domiciled in India such as is proposed by para. 3 ii (*a*) for British subjects domiciled in the United Kingdom. Para. 9 referred only to immigrant labour, and not to all the immigrants from India. I am not against a regulation of Indian Immigrant Labour through a Convention between the Governments of Burma and India; but I could not view with equanimity the taking away of our right of free entry into Burma. I understand the right of free entry into Burma for Indians would remain intact and would be provided for in the same manner as for British subjects domiciled in the United Kingdom, except that so far as Indian Immigrant Labour was concerned, a Labour convention between Governments of India and Burma would probably be the best means of arranging the question satisfactorily.

2. Therefore I contend that 3 ii (*a*) must equally apply to British subjects domiciled in India, or United Kingdom, with the proviso that the regulation of the Indian Immigrant Labour should (in my opinion) be arranged for through a convention between the Governments of India and Burma. It is a question of policy between the two countries, and the Government of India would be in a position to obtain those conditions of life and work for Indian Immigrant Labour which the Royal Commission on Labour in India envisaged, and which are stated under the Chapter for Burma in their Report.

3. I am constrained to state that there is in my mind a very strong impression that neither the value of the past services nor the absolute need in future of Indian Immigrant Labour has been recognised or realised by Government of Burma, at all events by officers who have had anything to do with problems connected with them. To give point to this statement I refer to Vol. X Burma, pages 270 to 299 of the Report of the Royal Commission on Labour in India, as also to the report of the Rangoon Housing Committee and to my dissenting note thereto.

4. Under the Government of Burma, there have been two posts, one as Director of Labour Statistics, and the Protector of Immigrants. Generally these are combined in one officer. At present they are held by two separate officers. The Director of Labour Statistics is generally an I.C.S.

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and he is often in charge of Land Records. These officers have no particular interest or practical experience in labour matters. The result is that statistics which could help in the solution of the manner in which Immigrant Labour could be regulated are absent. I have made some study of the subject, and it has shown me how many factors must be considered, factors with regard to which I can obtain no data.

5. The problem of regulation of immigrant Indian labour presents the following considerations. One must firstly have a fair idea of what is the normal requirements of labour for each branch of Industry, without having a large surplus of unemployed, and during what part of the year they are required, and what would be the subsidiary occupation when seasonal industries cease to work; to what community or district in India would the required labour belong; which is the embarkation port; what will be the position of labour which walks across the boundary between Chittagong and Akyab (for which we have no information available). What then would be the system of regulation which will give each industry sufficient labour and give subsidiary employment to labour when seasonal industries cease to work till the industries begin to work again. Clearly, a flat reduction of 50,000 or one lac for any year under such complicated circumstances could not be a satisfactory method. When it is remembered that different classes or communities of labour do different types of work; that all labour does not embark in India from one port, for instance, part of Telugu labour comes through Madras, and part of Telugu labour and part of Ooriya labour through Coromandal Coast ports; parts of Ooriya, Hindustani, Punjabi and part of Bengali labour comes through Calcutta, and part of Bengali (Chittagong) labour comes through Chittagong all to Rangoon. A part of Bengali (Chittagong) labour walks across to Akyab; that each of these classes have sub-classes which are specialised in some particular form of labour and are required at some particular time of the year.

6. With due sense of responsibility therefore I would sound a note of warning that any hasty measure for regulation of such labour may act with disastrous effect on the Industries of Burma.

7. Therefore my submission is that the first step should be for the present Governments of Burma and India to enter into an agreement that status quo should be maintained till the two new governments come into being. As soon as the two new governments come into being a convention may be entered into that in future by mutual co-operation Indian immigrant labour (to be defined) may be regulated; secondly, that the Government of Burma will take upon itself greater responsibilities with regard to conditions of life and labour of immigrant labour; and, thirdly, I suggest the condition that once Indian immigrant labour to the extent required lands in Burma that there shall be no further restriction imposed upon employers to employ any particular labour, or on labour to seek any employment or work, and that it shall be unlawful for government or any public bodies to specify any type of labour to be employed by an employer in carrying out any work on its behalf. In the meantime the Government of India should immediately appoint a protector of immigrant Indian labour in Burma; he would study the whole problem including condition of life and labour in Burma, and suggest after three years to the Government of India and, if desired, to Government of Burma the extent and method of regulation and the steps that should be taken to improve the conditions of

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work and life of labour. If Government of Burma so desires, it can simultaneously appoint its own officer to study the same problems and the two officers could work out some scheme in co-operation with each other.

8. In my making these suggestions it must not be understood that I am not sympathetic towards the requirements of indigenous labour. But my clear position is that Indian immigrant labour would be required by Burma for some considerable period yet. The rapid increase in cultivation both in rice and other cereals since about 1880 has naturally required all the indigenous labour that was available. And to my mind cultivation will go on increasing—if the Burmese people take to industrial labour—some other labour will have to do the agricultural work. It seems impossible that a land where there is yet so large an acreage of culturable land, and as communication by road and rail is opened, further lands would become culturable, where the population per square mile is only 68, that such land would be allowed to remain vacant and uncultivated, specially so when the pressure on land in other countries is becoming unbearable.

9. This problem of the desire of indigenous labour to take part in Industrial Labour has manifested itself since about 1930, since when values of agricultural products have gone down considerably. The position has been further accentuated by the decline of the importance of subsidiary industries, like hand weaving, etc. On the other hand it is conceivable that an agricultural country which imports annually cigarettes and tobacco to the extent of 1½ crores of rupees, milk products to over one crore of rupees, Fish about one crore of rupees, Betelnut and Cocoanut and such like articles of a very considerable value, must lose both work and money at some stage of its development. This is so because of lack of any distinct agricultural or industrial policy of the government—both transferred subjects.

10. It may be asked why agricultural labour cannot take part in Industrial labour, when agricultural work has ceased. Shortly, the explanation is, that the agricultural seasons and the industrial seasons overlap each other. Therefore the only solution to provide more work for agricultural workers is to create agricultural industries.

11. It is possible that my conception of the whole problem may be wrong, but my views are not unsympathetic towards indigenous people—in fact I have been doing all in my power to promote the views I have expressed above.

12. It will thus be seen that Indian labour is not a challenge to indigenous labour; it was brought in, and since has been coming in to meet a demand which indigenous labour could not meet, and is therefore supplementary to it, for the need of the country.

13. Arguments that it sends considerable money out of the country have no bearing on the question. It does definitely come to earn money, and in doing so helps the country to earn profits many times the amount which it itself earns, therefore it is not a loss.

14. I think I have dealt passingly on the more important factors arising in consideration of this problem, which though lightly touched upon will give an idea of the type of factors which must be dealt with as a complete policy to solve the problems of Agricultural and Industrial Labour.

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RECORD B.2 (*continued*)

VIII.—Memoranda by Mr. N. M. Cowasjee and Mr. S. A. S. Tyabji

"A" Discrimination in Burma

[*Vide—Record A2 (I) Joint Committee on Indian Constitutional Reform (Session* 1933-34), *Volume II, p.* 103.]

I. We have to offer one preliminary remark which applies generally to the Memorandum referred to above. We understand by the term "British subjects domiciled in British India" those persons born in or settled in British India. We have to point to the fact that there are quite a number of persons from Indian States, who practise their profession or trade or are employed in service, and there are business houses whose principals or managers or office staff are persons born or domiciled in Indian States. It is undesirable to exclude such persons or firms from protection against discrimination.

Therefore we propose that wherever the words "British India" appear, be added the words "and Indian States", or if Federation of British India and of Indian States becomes a fact, a suitable term may be used to indicate British subjects domiciled in the Federation of British India and Indian States.

II. *Reference—Annexure—Clause (vii) Exceptions.*

Whilst we do not object to maintaining laws, rules, and orders in operation at the passing of the Constitution Act (e.g. the Burma Courts (Amendment) Act of 1931) and further, for example, such rules as have been already framed for the purposes of selection for services, we do consider that giving them a finality, as this "exception" proposes to do is not right. There are many rules and orders in respect of service, or entry into service, which even now act most unjustly and vexatiously against Indo-Burmans, Indians and Anglo-Indians, and even against those who are born and bred in Burma. This is so particularly in the matter of "selection" to services, or selection for entry into educational institutions. We submit that in a case of any act, rule, or order, which places distinct disability, or is so worded as to enable its being used to discriminate, then it should be possible to get it amended through an appeal to the Governor's special powers. For instance in the matter of appointment in the public service if an unnecessarily high qualification in the Burmese language is laid down as a necessary qualification, or in fact if written or viva voce examinations of candidates in the Burmese language are made unnecessarily difficult, we think a case of discrimination by the back door would be established, and the Governor should then have the power to intervene.

III.—(*a*) *Provisos to para.* 122 *of Indian White Paper.* (Cmd. 4268.)

I. 1*st proviso—power of enacting laws against land alienation.*—Prior to consideration of this proviso, we take the opportunity of removing some misconceptions in para. 10 of Record A.2 (I) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 104].

(1) The definition of an agriculturist as per Section 1349 of the Land Records Manual is (*a*) "An agriculturist is a person who cultivates land for a livelihood, or did so until incapacitated by age or otherwise, or (*b*) the wife, widow or child of such a person."

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(*b*) "Resident" means living within the surveyor's charge in which the land is situated.

These two very narrow definitions must be borne in mind, when considering the subject of land alienation to others than "agriculturists."

(2) According to the Report on the Land Revenue Administration of Burma for the year ending 30th June, 1932,

	Acres.
(i) The total occupied area in Burma is	18,755,026
(ii) Agriculturists occupy (or 73 per cent. of above)	13,753,202
(iii) Resident non-agriculturists occupy	1,251,657
(iv) Non-resident non-agriculturists occupy	3,750,167

Therefore (iii) and (iv) together occupy 5,001,824 acres or 27 per cent. of the total occupied area. It should be remembered that non-agriculturists include Burmese, other indigenous races, Indo-Burmans, Chinese, and Indians. Therefore statements made that a major part of the land has passed into the hands of the Chettiyars are not borne out by facts.

(3) Total acreage of lands owned by Chettiyars is not high.

(4) The general policy of Chettiyar bankers is to keep their resources liquid.

(5) Paragraphs 36, 37, 38 and 67 of the Burma Provincial Banking Enquiry Committee Report may be referred to.

(6) Development of paddy cultivation in Burma within the last 30 or 35 years is remarkable.

(7) Total number of acres under paddy cultivation has increased from 55 lacs acres in 1896 to 121 lacs acres in 1933.

(8) From 1861-1870 the export of rice averaged 363,000 tons. In 1932-33 the exportable surplus is estimated at 3,450,000 tons.

(9) In this development Chettiyars have played a remarkable part.

(10) These facts do not prove the "extensive transfer of ownership to non-indigenous and non-agricultural classes," particularly so if the definitions of "agriculturist" and "resident" quoted above, are kept in mind.

II. We realise that Burma has even now the power to make laws to prevent alienation of agricultural lands, and we realise that just as it has been considered inadvisable to pass any such act in the past, so it may be in the future. We therefore do not desire to restrict this power of the Legislature, except in case of such a law being passed as a discriminatory measure against some particular class of persons, or some particular interest, in which case we request that power may be reserved to the Governor to intervene, or/and that such a Bill may be reserved for the signification of His Majesty's pleasure. We think that this clause should be so modified as to prevent the possibility of the introduction of discriminatory legislation as above indicated.

IV. *2nd proviso.*—"or which recognises the existence of some right, privilege, or disability attaching to members of a community by virtue of some privilege, law or custom having the force of law."

Frankly neither in the Burma Legislative Council nor during the Joint Select Committee sittings have we been able to understand or realise the import and scope of this proviso. Under the Arbitration Board it

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MEMORANDUM BY MR. N. M. COWASJEE AND MR. S. A. S. TYABJI ON DISCRIMINATION IN BURMA.

was arranged in 1930 that a certain proportion of Indian and Burmese labour should be employed. Is it contemplated to cover a case of this nature as coming within the scope of this proviso? This is but an example of what we fear. If such be the intention of this proviso, then we say that it may be possible to read this proviso in such a manner as to nullify many of the safeguards proposed to be provided in the Constitution Act. We therefore desire that this proviso may be deleted.

V. *3rd proviso*, viz.—"A Federal or Provincial law, however, which might otherwise be void on the ground of its discriminatory character will be valid if previously declared by the Governor-General or a Governor, as the case may be, in his discretion, to be necessary in the interests of the peace and tranquillity of India or any part thereof.*

* *Footnote.*—Without a qualification of this kind, legislation such as e.g. the Indian Criminal Tribes Act, would be invalidated by the provisions of this paragraph."

This proviso in the Burma White Paper under para. 58, appeared without the footnote, and as such it was most objectionable on the grounds that any law of a discriminatory character could be declared valid by the authority concerned if sufficient political pressure was brought to bear on him through threats or through actual violence. If this proviso is to be included in the Constitution Act, it must be made quite clear that it should and would apply only to such cases as the explanatory footnote indicates, and to no other type of law of a discriminatory nature.

VI.—*Control of Immigration.*

[*Vide—paras.* 9 *and* 15 *of Record A2 (I) Joint Committee on Indian Constitutional Reform (Session* 1933-34), *Volume II, pp.* 104 *and* 105.]

1. *Para.* 9 indicates that steps be taken to control and restrict the flow of Indian Labour immigration into Burma.

Para. 15 states: "No protection of the right of entry into Burma is contemplated in favour of British subjects domiciled in India such as is proposed by paragraph 3 (ii) (*a*) for British subjects domiciled in the United Kingdom."

2. Read together, these paragraphs mean that Indians in general, including Indian Immigrant Labour would be discriminated against as regards right of entry into Burma, as against British subjects domiciled in the United Kingdom, who would have free right of entry. We protest most strongly against such a discrimination against British subjects domiciled in India. We agree that in all countries where there is considerable immigration of labour from another country, such immigration of labour is regulated through treaties between the two countries concerned, or by law by one of the countries concerned. As regards Indian labour immigration, we agree that it may be regulated by a Labour Convention between India and Burma; but we do protest against any similar restriction being placed against the entry of other Indians than Indian labour. We would consider this as grossly discriminatory, and the whole Indian community in Burma and the people of India also would resent such a gross act of discrimination against them, in a country which formed part of India and in the development of which the Government of India and the people of India have taken such a remarkable part.

3. We desire to point to the fact that Indian commerce and industry, professions and service are very important interests of Indians. Though many Indians have made Burma their home, their business connections and family connections make it necessary to visit India at intervals. A

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considerable number of Indians have to come to India for shorter or longer visits on account of business, or private requirements. It would, therefore be most objectionable in principle to discriminate against such Indians.

4. We therefore strongly advocate that paragraph 3 (ii) (*a*) mentioned should apply to Indians generally, with a proviso that so far as Indian immigrant labour is concerned it may be regulated through a Labour Convention between India and Burma.

VII.—*Languages of the Indian minorities in Burma.*

1. We desire to make the request that the languages of the Indian minorities in Burma, which are now recognised by law, may continue to be recognised under the Constitution Act.

2. If this be not done, we are apprehensive of discriminatory legislation being passed at some future date, which may have the effect of removing the recognition at present given to our languages. Such removal of recognition would mean that schools for such languages would not come within the competency of the educational authorities, and therefore no grant may be made to such schools; secondly, interpreters in court for such languages may be done away with. These are but two examples of how the removal of recognition of these languages may effect the Indian community.

VIII.—*Discrimination in Government service.*

1. We are apprehensive that in future there may be a great deal of discrimination even against those who are born in Burma and those who belong to the Indo-Burma class, as regards their entry into Government service.

2. We therefore request that minority communities may be represented by at least one member on the Public Services Commission to be formed under Proposal No. 100 of the Burma White Paper.

IX.—*Discrimination in matters connected with Education.*

1. We state that there is a strong feeling in the Indian community that their vernacular education is not supported by the educational authorities, i.e., Local Educational Boards, to the extent that their number and interest justify.

2. They find great difficulty in getting their schools recognised, and if they are recognised, to obtain sanction of adequate teachers and their salaries, or at least in the proportion given to Burmese schools.

3. The Educational Boards fall under two categories—those constituted under the Local Self-Government Act, and those coming under different municipal Acts, for instance, of Rangoon, Moulmein, etc.

4. We desire that some safeguard be created in this respect, either in accordance with paragraph 85 of the Report of the Burma Round Table Conference, or through the creation of special responsibilities of the Governor in this respect.

5. In case some safeguard as above is provided, machinery would be needed whereby effect could be given to a decision by the Governor, or a decision arrived at through other means, in respect of Educational Boards, whether controlled by District Councils or by Rangoon Municipality or other municipalities.

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MEMORANDUM BY MR. N. M. COWASJEE AND MR. S. A. S. TYABJI ON DISCRIMINATION IN BURMA.

"B" Representation of Indian Minority in the Lower House

I. At the outset the signatories desire to state that the "Memorandum on the Representation of Minorities and on the Constituencies and Franchise of the Lower House, and proposals for the Upper House" issued by the Government of Burma to some individuals was marked "Strictly Confidential." As a result, contents of the Memorandum until very recently were known to a few.

II. *Representation of Indian Community in the Lower House.*

(*a*) Record A1 (II) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 20], para. 27 (ii), sets out the representation given to Indians on population basis of 7.7 per cent. which gives to Indians ten general seats.

(*b*) Two labour seats for Indians are also provided for (*vide* Appendix I (*a*)—Record A1 (II) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 31]), which, however, are to be included in the ten general seats provided on population basis.

(*c*) Under Appendix I (*a*) of Record A1 (II) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 31]—Representation for Commerce and Industry—Burma Indian Chamber is given two seats.

(*d*) Summary, para. 7, Indian community is given twelve seats in all.

III.—(1) We join in the opinion expressed by the Burma Chamber of Commerce that the representation of the minorities is insufficient.

(2) We agree generally with the Burma Chamber of Commerce, Rangoon, in their Memorandum, Appendix III (vi) to Record A1 (II) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 79] that "the case of the Karens, however, is entirely different from that of the other minorities," i.e., Europeans, Indians, Chinese and Anglo-Indians.

(3) We agree with the statement made in para. 13 of the above quoted Memorandum and regret that though there shall be 132 elected seats as against 88 non-official seats in the present House, not a single seat out of the 44 increased seats would be given to Europeans, and we add, to the Indians.

(4) Equally with the Europeans we are aggrieved and contend that the drastic reduction of minorities from 24 per cent. in the present House to 17 per cent. in the future House does not seem to be justified by any line of reasoning.

IV.—(1) We maintain that the twelve seats given to the Indians is an inadequate representation of Indians in a House of 133 for the following reasons:—

(*a*) In the present House of 103, Indian Community is already represented by twelve seats as follows:—

	Seats.
(i) General—Urban	8
(ii) Special—Indian Chamber of Commerce	1
(iii) Nominated—Labour	1
(iv) Nominated	2
Total	12

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(*b*) Twelve seats in the present Council of 88 elected members forms 13·64 per cent., and of 103 members, including the official bloc and nominated members, 11·64 per cent.

(*c*) In an elected House of 133 seats, twelve proposed seats for the Indian Community forms 9·02 per cent., a reduction of 2·62 per cent, or 4·62 per cent.

(*d*) On behalf of the Indian Community we strongly protest against such reduction in the proposed Council, and inadequate representation given to the Indian Community. We refer to the protest made by Mr. A. Chandoo (Appendix III (ix) of Record A1 (II) (Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 89).

V. The proposal of the Secretary of State in Record A1 (II) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 20], para. 27 (ii), is: "Having regard to the conflicting considerations to be taken into account in regard to the Indian Community, it is proposed to allot to it a general representation proportionate to its population of 7·7 per cent., i.e., ten seats, these to include the two constituencies to be created for Indian Labour. This may be regarded as ample representation for a Community of which at least half consists of migratory labour."

(*a*) We will take the last statement first and definitely say that "at least half" does not consist of migratory labour. Approximately 300,000 labourers come into Burma, and the same number goes out every year. Therefore migratory labour at most forms ¼th part of the Indian plus Indo-Burma population, as will be shown below. It may be stated that the census was taken at a time when most of those who were to return had already gone to India.

(*b*) Secondly, we state that the ratio of 7·7 per cent. on population basis is incorrect for the following reasons:—

(i) It will be noted that till now the Indo-Burma races have been included in the Indian electorate;

(ii) the request of the Indo-Burmans for a separate electorate was rejected as in para. 23, Part II of the Secretary of State's Record A I (II) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 18].

It is thus obvious that Indo-Burma races must be included in the Indian population for calculation of seats on population basis.

(iii) According to para. 27 (ii) of the Secretary of State's memorandum, the total Indian population was 955,300 out of 12,358,000. We contend that for divisional Burma, Indian population for electoral purposes was as under (vide Imperial Table VII 1-B, Census 1931).

Indian Hindus	538,650
Indian Muslims	391,558
Other Indians	53,330
	983,538
Indo-Burma races	180,733
	1,164,271

(iv) The difference between population in Divisional Burma and that in Elective area being only 27,000, this difference for purposes of calculation is ignored.

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MEMORANDUM BY MR. N. M. COWASJEE AND MR. S. A. S. TYABJI ON DISCRIMINATION IN BURMA.

(v) 1,164,271 Indians plus Indo-Burmans form 8·88 per cent. of 13,102,000 population of Divisional Burma.

(vi) Difference between percentage given for elective area, i.e. 7·67 and 8·88 is 1·21. If 1·21 is added to 7·73 to get an approximate correction of percentage under area made into constituencies, percentage of 8·94 is obtained, instead of 7·73.

(vii) Therefore on 8·94 per cent. basis Indians should be given 12 seats.

(viii) The population of Karens is 1,100,200 and that of Indians is 1,164,271. On the basis of the seats given to Karens, i.e., 12 seats, the proportion of seats to be given to Indians is at least equal to the Karens, i.e., 12 seats on population basis.

(c) We contend that there is no justification for including two Labour seats within the general seats based on population basis, as proposed in Record A1 (II) [Joint Committee on Indian Constitutional Reform (Session 1933-34), Volume II, p. 31] because:—

(i) Labour seats are considered to represent special interests.

(ii) The election will be on a different basis, with its own electorate.

(iii) Therefore Labour seats must be treated as representing special interests and must not be included within the number based on population basis.

VI. We endorse the following views so ably expressed by the Burma Chamber of Commerce:—

(i) "It may be said without fear of contradiction that the country has been brought to its present stage of development by the enterprise and capital of the European, Indian and Chinese communities under sound administration. The whole economic structure of Burma to-day is based on a framework of an industrial, trading and banking organisation created by these minorities."

(ii) "It follows that these minorities, and the great commercial interests involved are politically in a very exposed position, etc."

(iii) "As compared with most of the Indian provinces there is ample room for giving weightage to minorities in Burma."

VII. At this stage we would state the main interests of the Indian community, and briefly indicate the difference between the interests of the Indian and European communities. The interest of the Indian community lies in professions, service and labour, and in property, commerce and industry and agriculture.

(i) So far as professions and liberal arts are concerned, earners and working dependants are indicated by the following figures (1931):—

	M.	*F.*
Total	175,724	23,166
Indians	11,400	600
Europeans	500	536
Anglo-Indians	423	812

The Europeans are generally highly placed, with European qualifications, whilst the Indians in the majority of cases are not so well placed, have a harder life, and have either Indian or Burmese qualifications. From the point of view of their number and diversity of profession they have a larger interest than the Europeans.

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MEMORANDUM BY MR. N. M. COWASJEE AND MR. S. A. S. TYABJI ON DISCRIMINATION IN BURMA.

Public administration.

(ii) *Service.*—The following figures set out the comparative position:—

	M.	*F.*		*M.*	*F.*
Total	44,479	388	Indians born in ...	993	19
Indians ...	14,559	92	Indians born out ...	12,742	68
Europeans ...	359	6	Indo-Burma ...	864	5
Anglo-Indians ...	725	50			

The Europeans in public administration almost all hold high positions, and are under the direct protection of the Secretary of State for India. The Indians on the other hand, in the majority of cases, are in the provincial services, and they are more exposed to the change of political conditions than the Europeans. Attention may be drawn to the fact that there has been an alteration in the compilation of the census of 1931 to include working dependants. Therefore, the 1921 census gives a clearer picture of those in service. Table XX, part III. (These do not include dependants.)

	M	*F.*		*M.*	*F.*
Total	33,242	992	Burma Muslim ...	450	18
Indians ...	5,052	56	Indians born in ...	555	13
European and allied races	293	8	Indians born out...	4,047	25
				5,052	56

(iii) (*a*) *Industry.*—Earners and working dependants (1931).

	M.	*F.*		*M.*	*F*
Total	309,400	35,500	Indians born in ...	5,500	1,600
Indians ...	102,200	7,600	Indians born out...	93,000	4,000
Europeans ...	645	15	Indo-Burma ...	3,700	2,000
Anglo-Indians	650	59		102,200	7,600

(*b*) *Trade.*

	M.	*F.*		*M.*	*F.*
Total	266,000	291,000	Born in	6,647	2,500
Indians ...	97,030	11,366	Born out	84,000	3,000
Europeans ...	698	59	Indo-Burma ...	6,383	5,866
Anglo-Indians ...	554	155		97,030	11,366

These figures show a very diversified and much extended interest in industry and trade of the Indian community, as against compact trade of the Europeans.

(iv) Since the British occupation of Burma, in the opening up of the country, the British subjects of United Kingdom have played a great part, but at the same time it cannot be denied that the Indians have taken at least an equal if not a greater part. Whilst the British have opened out Oilfields and worked Mineral Mines and Forests, through capital, it would have been impossible for them to have done so without Indian labour. Whilst the Railways were capitalised by the British, the labour was entirely Indian; whilst British capital supplied steam launches on the rivers, the labour again was Indian; whilst rice mills and saw mills were first started by the Britishers, labour was supplied by India. At the same time Indians also opened up the forests and worked rice mills and saw mills and started

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other industries. Immense amount of Indian capital has been invested in such concerns, and it is a known fact that all industrial labour in Burma is Indian. On the other hand we make bold to say that Indian labour and Indian capital has very largely benefited and expanded agriculture in Burma, in comparison with British capital and enterprise. British capital, if it has been invested in agriculture has been so invested only through Indian Bankers who have shouldered all the risks of a credit so uncertain as agricultural credit. It was Indian capital which opened up the Delta and many areas on the new Rangoon Mandalay line even before the Railway was laid, and from swamps turned them into huge rice-producing areas which have so largely benefited the European Exporters and Industrialists. Whilst British merchants have been the Importers, the Indian merchants have been the distributors bearing all the risks of credit. The present vast dimensions of the British import trade, if not wholly, are mainly due to the enterprise of the Indian merchants who have carried the British goods to the remotest corners of Burma.

(v) To recapitulate, Indians numerically are more largely interested in professions and Liberal arts, and perhaps their total interest in this respect may be larger than that of the Europeans. In public administration again their numerical strength is much larger, but conditions of service give them much less protection than the Europeans; in trade and industry the number of those working in it are considerable; although the interest of the Europeans in trade and industry is very extensive and vast it is compact and well guarded, whilst the interest of the Indians is diffused and spread out to the most interior areas of Burma, and it therefore carries much larger risks; whilst Indians are labourers, Europeans are large employers of labour, and in the agricultural field Indians are bankers, owners of land, cultivators, cultivating tenants and agricultural labourers. Therefore whilst appreciating and fully realising the great part that has been played by European capital and organisation, we desire that the part played by Indian capital and labour may be appreciated equally, and we claim that it is the right of the Indian community to receive a larger and fairer representation than has been proposed.

VIII. The minorities are represented in the present Burma Legislative Council as under:

Europeans	7
Karens	5
Indians	12
Anglo-Indian	1
Chinese	1
Special interests	4
	30

Out of 30 seats Indians have 12 seats. If the present 14 official seats are proportionately distributed amongst the minorities and interests, Indians would get 6 seats.

IX. Therefore we desire that Indian community be given:

(1) Seats on population basis of 9 per cent.

(2) Labour seats be not included within the number based on population basis.

(3) Proportion of seats out of the official bloc of 14 as per VIII above.

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X. Out of the increased number of seats, we press that one more seat be given to the Nattukottai Chettiyar Association for the following reasons:

1. The Nattukottai Chettiyar Association, Rangoon, has a membership of 1,300 Chettiyars.

2. It has been recognised as spokesman and custodian of Chettiyar interests in Burma.

3. It was given the privilege of nominating a member to the Burma Provincial Banking Enquiry Committee, and also to the Agricultural Debtors' Protection Committee, Burma.

4. The Chettiyar community has held a unique position during the last 70 years in the economic life of Burma and has contributed largely to the development of the agricultural, industrial and economic growth of the country.

5. The existing financial state of the Chettiyar firms in Burma has been put down at about 75 crores of rupees. (Ref. p. 211, Vol. I of Banking Enquiry Report, Burma.)

6. This large interest is spread over almost every economic life of the country. The Banking Enquiry Report states that "the internal and external trade of the country would break down, and the rice crop could not even be produced" without this financing agency. (Page 190, Banking Enquiry Reports, Burma, Vol. I.)

7. It may be mentioned that in Madras the Nagarathar Association representing the Chettiyar community is treated as a "special interest" and has the right to elect one member to the Legislative Council.

XI. We submit, even if the representation of the Indian Community is increased in the manner proposed, and even if the representation of other communities is increased, the total strength of the minority seats will be far below the total strength of the majority seats, and there is no cause for fear that any combination of minority groups could out vote the majority group.

XII. The last point that we desire to press upon the Joint Select Committee is that the change of political conditions of Burma, i.e., separation (if separation takes place) plus further reforms, fundamentally alters the political status of Indians in Burma, and new conditions of things are likely to affect them to a larger degree than to any other community. Greater representation of the community in the Lower House is one of the means of allaying genuine apprehension and anxiety which the question of separation is causing them.

On behalf of the Indian community of Burma, we press for a substantial increase in their representation in the Lower House.

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RECORD B.3

[29TH MAY, 1934.]

Supplementary Memoranda submitted by Delegates from Burma commenting on Memoranda submitted by Mr. K. B. Harper on Trade Relations between India and Burma and on commercial discrimination (*vide* Record B.2 pp. 221 and 239)

I.—Memorandum by U Chit Hlaing, M.L.C.

Mr. Harper's Memorandum on trade relations between India and Burma in the event of separation appears to me to be a striking corroboration of the demand of the Burmese anti-separationists that Burma should not be separated from India. The fiscal, economic and financial reasons, among others, which persuaded our anti-separationists to oppose separation have been, I am afraid, ignored until recently by all those who championed the cause of separation, or who, like the Europeans in Burma, followed in the wake of the Separationist Party.

Our anti-separationist parties have always realised the immense part which the economics and finances of a country play in its political development, and it is because we feel that no amount of trade agreements with their technique of formulas, certificates of origin, etc., can help Burma, once she is separated from India, that we have thought it our duty to oppose separation. Our conviction that the vast majorities of the people of Burma are opposed to separation was corroborated by the results of the elections when over 500,000 electors cast their votes against separation as compared with half this number in favour of separation. Such an overwhelming majority in the country was also reflected in the Council, but as a result of intrigues and manoeuvres into which it is not necessary to enter now, the Council was prevented from recording in clear terms the definite verdict of the electorate that Burma should not be separated from India. The situation has, however, cleared up during the last few months, and Dr. Ba Maw and I were voicing the verdict of the majority of the people of Burma when, before the Joint Select Committee, we insisted that "We are fully prepared to enter into the Indian Federation unconditionally and accept the division of the powers between the Centre and the Units of Federation".

Whilst on this point we must painfully draw the attention of the Joint Select Committee to the fact that, though we have been pressing for affording the anti-separationists an opportunity of discussing the question of Burma's entry into the Indian Federation ever since the inception of the Indian Round Table Conference discussions, this request remained unheeded up to the last, and the anti-separationists were prevented from presenting their case before the Round Table Conferences and the Joint Select Committee when the delegates from India were sitting with it. This partiality towards separation has also stood out very prominently in the fact that, though the Secretary of State for India has published from time to time various documents dealing with the position of Burma after separation, not a single memorandum has been prepared so far as we know to show the position of Burma as an autonomous member of the Indian Federation.

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MEMORANDUM BY U CHIT HLAING, M.L.C.

Nevertheless it is necessary for us, the anti-separationists of Burma, to give an indication to the Joint Select Committee of how Burma should be provided for in the forthcoming federation. As regards the Federal Legislature we claim that Burma should be treated as one of the major provinces and allotted no less than 25 seats in the Federal Assembly and 18 seats in the Council of State. As regards the composition of the local Burma Legislature, it is presumed that the proposals made by Government in this connection will apply to federated Burma as well. I might here add that we are perfectly prepared to accept the position that in the event of federation the local Burma Legislature should have only those powers that are conferred on the legislatures of the major provinces in India. It is, doubtless, essential that certain adjustments will have to be made in the matter of allocation of revenues between the Federal Government and Burma as a federal unit. These adjustments are more essential in so far as the finances of Burma are to-day in a very precarious condition. As a matter of fact, the recent discussion in the Burma Council on the question of the assignment to Burma of 50 per cent. of the export duty on rice has made it clear that the whole Council, including even the separationists, has become aware of the economic advantages of federation, and we hope that when the question of Burma's entry into the Federation is considered her claim in connection with the assignment of the excise duty on kerosene and petrol consumed in Burma as also on the income tax levied on personal incomes, etc., will be favourably considered and the province provided with an opportunity of proper development as an autonomous federal unit. It is hoped that the policy of Burma remaining as a part of India advocated by our anti-separation parties, if adopted by the Joint Select Committee, will result in so satisfactory a solution of the economic and financial problems of Burma that the details contained in the Memorandum submitted by Mr. Harper will not require any further consideration.

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RECORD B.3 (*continued*)

II.—Memorandum by U Ba Pe, U Thein Maung, Dr. Ma Saw Sa and U Shway Tha in reply to Mr. Harper's Memorandum on Trade Relations between India and Burma

(*Vide Record B2, page* 221)

The importance of preserving the existing fiscal relationship in respect of the exchange of indigenous articles of trade between India and Burma is recognised by us. We generally support the recommendation of the Burma Sub-Committee of the first Indian Round Table Conference that it may be found possible to conclude a favourable Trade Convention between India and Burma, that a Trade Convention would benefit both countries and that Separation should cause a minimum disturbance of the close trade connection that exists between the two countries. In view of this recommendation and in view of the fact that the currency system of India and Burma would be linked up for some time to come, we agree that there should be a trade agreement between the new Government of India and the new Government of Burma and that in the meanwhile the existing relations should be maintained.

2. With reference to the suggested formula, we cannot agree to para. 111 (2) (*b*), as it will have the effect of perpetuating protective duties in favour of India, such as iron, steel and cotton piece goods, and thereby defeat one of the principal objects of Separation. There are no protective duties in India, for instance on rice, for the benefit of Burma to justify the suggestion on the ground of mutual benefit.

3. As regards the comparative bargaining powers of the two countries, we are of opinion that Mr. Harper's argument is based on a wrong premise.

A comparative study of the imports of the two countries for the last five years shows as follows:—

In Crores of Rupees.

—	1928–29	1929–30	1930–31	1931–32	1932–33
Burma's total imports ...	35	35	27	20	19
Burma's imports from India	14	14	11	10	9
OR	40%	40%	40%	49%	45%
India's total imports ...	266	251	172	138	144
India's imports from Burma	34	32	24	32	22
OR	13%	13%	14%	16%	15%

From this table it will be seen that an average of 43 per cent. of Burma's imports came from India as against an average of 14 per cent. of India's imports which went from Burma. Of these (Burma's export into India or

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MEMORANDUM BY U BA PE AND OTHERS IN REPLY TO MR. HARPER'S MEMORANDUM ON TRADE RELATIONS BETWEEN INDIA AND BURMA.

India's import from Burma) the main item is rice; 16·7 crores in 1928-29, 13·7 crores in 1929-30, 9·5 crores in 1930-31, 9·3 crores in 1931-32 and 7·9 crores in 1932-33. The fall in value from 1933 onwards is due to the lower price of rice, though the quantity in tons is on the increase. At the Imperial Conference held in London in the year 1930, His Majesty's Government declared that they were opposed to any policy involving duty on food-stuff and raw materials. Burma being an agricultural country, her exports into India are rice (food-stuff) and other raw materials such as skin hides, etc., and thus Burma has no cause to be alarmed at a tariff wall, if that declaration is given effect to, as it should. India buys Burma rice simply because it is the cheapest available in the market, and as Burma has the nearest port to India she stands a better chance in all trade competitions for rice.

That India can and will produce more rice with a view to be independent of Burma rice is easier said than done because it will be economically unsound for India to do so. Paddy cannot be grown at all places in India with a lower incident of cost than that of Burma. Though India has been following a steady programme of agricultural expansion, the import of Burma rice as shown in Mr. Harper's note has not decreased. It is also beneficial to India to export its own rice and import Burma rice for its consumption, as done by farmers of Ireland. The demand for rice in India is so great that she has to buy not only from Burma but also from Siam, Indo-China and occasionally from Japan.

From the comparative statement shown below it will be found that the acreage of paddy lands and yield of rice in all India has been steadily increasing. Burma's acreage on the other hand has shown a decrease. It is due to the fact that the growing of paddy has been found not so profitable as it used to be and consequently Burma's exportable surplus of rice is bound to decrease in the near future.

	1929–30	1930–31	1931–32
In million acres	80.6	82.7	84.0
In million tons of rice produced in India	31.1	32.2	32.8
Import of Burma rice in tons only ...	902,953	810,979	1,036,899
In million acres in Burma	12.9	13.0	12.5

Further, if India refuses to buy Burma rice, as Mr. Harper fears, Burmans will not be the only sufferers. With the shrinkage in paddy cultivation, the immigrant Indian labour now required for harvesting purposes will not be required; the scope of Indian merchants and bankers now doing business with the Burman agriculturists will be considerably reduced; the Burman agricultural labourers thrown out of employment will rush towards industrial centres and claim for work from Indian labourers now being employed, the result would be that the Indian labourers will have to make legitimate room for the indigenous labourers. Consequently the Indian labourers will be thrown out of employment and incidentally check the inflow

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MEMORANDUM BY U BA PE AND OTHERS IN REPLY TO MR. HARPER'S MEMORANDUM ON TRADE RELATIONS BETWEEN INDIA AND BURMA.

of future immigrant labourers. We do not think, therefore, that the Indians in India will refuse to buy Burma rice, as Mr. Harper fears, since it will have an adverse effect on their brethren in Burma.

With regard to Mr. Harper's attempt to run down Burmese labour, we are of opinion that Mr. Harper has not stated the matter fairly. That Burmans took to stevedore and wharf labour recently is partially true, but since then they have proved themselves equally efficient, as can be seen from the comparative statement below, obtained as a result of competition by one stevedore:—

S.S. Tonson Maru—loading by Burmese labourers.

5-6-30—2,028 bags by 2 Burmese gangs.
6-6-30—726 bags by 1 Burmese gang.
7-6-30—1,924 bags by 2 Burmese gangs.
8-6-30—No work done. No cargo.
9-6-30—1,512 bags by 2 Burmese gangs.
10-6-30—1,397 bags by 2 Burmese gangs.
11-6-30—No work done. No cargo.
12-6-30—No work done. No cargo.
13-6-30—No work done. No cargo.
14-6-30—1,790 bags by 2 Burmese gangs.
15-6-30—No work done. No cargo.
16-6-30—6,347 bags by 3 Burmese gangs.

In 7 days, 14 Burmese gangs completed 15,714 bags.

S.S. Moiwu Maru—loading by Indian labourers.

5-6-30—1,076 bags by 3 gangs.
6-6-30—4,524 bags by 4 gangs.
7-6-30—1,846 bags by 2 gangs.
8-6-30—2,284 bags by 2 gangs.
9-6-30—1,064 bags by 1 gang.
10-6-30—4,157 bags by 4 gangs.
11-6-30—1,566 bags by 2 gangs.
12-6-30— 652 bags by 1 gang.
13-6-30—1,126 bags by 1 gang.

In 9 working days, 20 Indian gangs completed 18,291 bags.

Result at a glance.

Burmese—14 gangs	Indian—20 gangs
1122.4 bags per gang or	914.6 bags per gang or
2244.85 bags per day	2072.3 bags per day

The result of this competition was published in all the local daily papers and its correctness has never been challenged by the detractors of Burmese labour. That competition took place in 1930, and at present we can assert with confidence that Burmese stevedore or wharf labour is in no way less

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efficient than Indian labour. From the above it will be seen that there need be no fear of lack of sufficient labour in Burma on account of Indians stopping their immigration into Burma.

During the world's war of 1914 the ability of the Burmese as mechanics was recognised and much praised. Thus with the advance and increase in the mechanisation of labour, the industrialists in Burma have no cause for alarm for dearth of efficient labour.

Mr. Harper's statement that the outturn of the Burmese labour employed at the Port of Rangoon has been found to be 45 per cent. that of Indian labour is true, but the comparison was not on a fair and equitable basis. It related to one kind of cargo only, namely, loading and unloading of zinc concentrates. This particular type of work can be done best by a class of Indians known as "Nagas." Neither Burma labourers nor any one of the other classes of Indian labourers known as "Telegus" and "Tamilians," who, from the greater majority of labourers employed at the Port, can do that work as well as Nagas.

Furthermore, Burmese labour had to work against prejudice and vested interests in that the supervising officers are Indians and it is, in fact, due to subtle methods employed by Indian supervising officers as hinted by Lord Salisbury in question 15,416 of A 68, that the Burmese labourers showed such a bad result.

We are of opinion that Burma has an equally strong bargaining power and we cannot therefore agree that Parliament should fetter the future actions of the new Governments of India and Burma.

We, however, have no objection if Parliament would accept the responsibility of arbitrating on points of difference as regards the first trade agreement between the two new Governments.

(Sgd.) U. BA PE.

(Sgd.) U. THEIN MAUNG.

(Sgd.) DR. MA SAW SA.

(Sgd.) U. SHWAY THA.

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RECORD B.3 (*continued*)

III.—Memorandum by U Ba Pe, U Thein Maung, Dr. Ma Saw Sa and U Shway Tha in reply to Mr. Harper's Memorandum on Commercial Discrimination

(*Vide Record B2, page* 239)

We have already set out our views on this subject in Appendix A to our joint memorandum; and the following replies to the more important contentions of Mr. Harper should be read with the said Appendix.

Paras. 5 *and* 6 *of Mr. Harper's Memorandum.*

The distinction between British subjects in general and British subjects domiciled in the United Kingdom is obviously intentional. This is as it should be, and we are strongly opposed to the suggestion that they should be treated alike in all respects, i.e., to the suggestions for amendment of para. 3 (1) of Memo. A 68. We even object to the clause as it stands as we are of opinion that it gives undue advantage to other British subjects instead of enabling Burma to negotiate with other parts of the British Empire on equal terms.

Paras. 9 *and* 10.

We are against the proposed amendment. "Civil Rights" are too wide, and it is better to confine the safeguard to certain specified rights.

Para. 11 (*a*).

We are against the suggestion that companies which are merely trading *with* Burma should have the benefit of the same safeguards as companies which are trading *in* Burma. The difference in the interests that the companies have in the country and its people is quite obvious. Besides, acceptance of the suggestion would in actual practice mean extending the benefit of the safeguards to all and sundry companies.

Para. 11 (*b*).

Please see our remarks on Clause 3 (iii) in our joint memorandum.

Para. 12.

With reference to debenture holders it should be made clear that requirement of the debentures being thrown open, in the first instance, to the people of Burma is no infringement of the safeguard.

Paras. 15 *and* 16.

We are against the proposed amendments. The original provision with our amendment will not prevent employment of foreigners in technical and scientific work so long as facilities are provided for training Burmans as well.

Para. 17.

The suggestion that the onus should be on the Government of Burma is absurd. Whoever challenges the validity of any piece of legislation or any act of administration as *ultra vires* should be prepared to prove that it is so.

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MEMORANDUM BY U BA PE AND OTHERS IN REPLY TO MR. HARPER'S MEMORANDUM ON COMMERCIAL DISCRIMINATION.

Para. 18.

It is only a matter of prudence and not one for express provision in the Constitution Act.

Para. 19.

Reciprocity being of the essence of the matter, there is no reason for distinction between existing and future persons and companies.

Para. 20.

The discretion of the Governor-General of Burma should not be fettered; and the original proposal is quite clear.

Para. 21.

We strongly object to the suggested amendment. Nothing but discrimination against a class as such should require interference by the Governor-General of Burma.

Para. 23.

Exception (1). We support the Secretary of State and claim that the Government of Burma should have full liberty to shape its own land policy. Difficulties raised by Mr. Harper are purely imaginary. Besides we are not discussing any definite Bill prepared by the Government of Burma in exercise of its right to shape its own policy as yet.

Exception (3). We take very strong exception to the allegation that the proviso being made expressly in the Act would "encourage rebellion or some lesser disorder of the kind directed perhaps to political ends." The people of Burma have on the whole been law-abiding, and we are confident that they will be more so under a responsible Government. We think it is a distinct advantage to have a special provision under which the Governor-General can act instead of relying too much on the omnibus clause about his powers.

Para. 25 (*a*).

The same principles should apply to subsidies and protection by import duties, i.e., our observations as regards bounties and subsidies in connection with Clause 3 (vii) (2) of Memo. A 68 in Appendix A to our joint memorandum should be taken into consideration as regards import duties to be imposed after the enactment of the Constitution Act.

Para. 25 (*b*).

Government and other statutory bodies should have the right to give preference to companies which comply with conditions as to employment of Burmese labour, etc., as set out in Appendix A to our joint memorandum under Clause 3 (ii) (*b*) and 3 (iii).

Para. 25 (*c*).

Please see Appendix A to our joint memorandum under Clause 3 (iii) and 3 (vii) (2).

Para. 28.

We are against the suggested amendment, "Any matter relating to status or civil rights" being too wide and dangerously vague.

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MEMORANDUM BY U BA PE AND OTHERS IN REPLY TO MR. HARPER'S MEMORANDUM ON COMMERCIAL DISCRIMINATION.

Paras. 29 *and* 30.

We agree with the Secretary of State and we are of opinion that Mr. Harper is expecting trouble where there can be none. There is no necessity for express provision in the Constitution Act or the instrument of instructions.

Para. 36.

We are against the suggestion. Clause 5 of Memo. A 68 should be left as it is in order that the Government of Burma may be able to negotiate with the Governments of the other parts of the British Empire on an equal footing.

Paras. 37-39.

We attach the greatest importance to the proviso that it shall be open to Burma to require additional qualifications from new entrants to professions which are justified by the special needs of conditions in Burma.

Paras. 41 *and* 42.

We are against the suggestion that statutory power to control immigration should be withheld until India and Burma have tried to come to an agreement. Mr. Harper admits that there should be some means of controlling labour immigration from India into Burma. He also admits that the best solution is an Immigration and Emigration Convention; and no satisfactory convention can be expected unless both parties have full powers.

Para. 43.

Please see Part B of Appendix A to our joint memorandum.

(Sgd.) U BA PE.

(Sgd.) U THEIN MAUNG.

(Sgd.) DR. MA SAW SA.

(Sgd.) U SHWAY THA.

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RECORD B.3 (*continued*)

IV.—Memorandum by Mr. N. M. Cowasjee

1. From a perusal of Mr. Harper's memorandum on trade relations between India and Burma in the event of separation, I am convinced that separation is economically unsound. There are a great many difficulties in the way of the negotiation of a trade agreement satisfactory to both sides. Leaving aside the intangible element of goodwill, there might be a conflict of bona fide interests not only of trade and industry, but also of Government finance on both sides. Burma is now in a very advantageous position as far as her trade is concerned, in that, at a time of contraction of foreign markets, she has the benefit of a widening market for her products in India. Burma's annual exports of rice to India have averaged about 800,000 tons, but during 1933, a year when Burma had the record exportable surplus of 3,450,000 tons, and when rice was subjected to restrictions in Japan, China, Java and Central European countries, her exports to India totalled very nearly 1,500,000 tons, so that she was saved the difficulties which would have arisen had an accumulation of unsaleable rice taken place. Burma will be giving up her vantage ground in this connection by separating herself from India.

2. During the current year exports to India form the outstanding characteristic of the rice market. The extent to which this privileged position would be threatened, in the event of separation, is already indicated by the beginnings of trade in rice between Siam and the East Coast of India. As Mr. Harper says, when Burma ceases to be a part of British India, it is quite possible that India's rice policy might change, and such a change is bound to re-act unfavourably on Burma. I need not emphasise the importance of the Indian market to both Burma kerosene and Burma timber.

3. Burma is too small a country to attempt experiments in economic self-sufficiency, and in view of the great dependence of Burma on the Indian markets, it appears to me that it would be extremely unwise to decide on the separation of Burma and face all the economic consequence arising therefrom, merely on the expectation that a satisfactory trade agreement could be concluded. It appears to me to be suicidal to create new and unnecessary economic difficulties and then seek their remedy. Having regard to the present world conditions and the certainty of the policy of economic nationalism throughout the world being emphasised in the near future, the economic interests of Burma should be safeguarded by continuing her as a unit of the Indian Federation rather than by separating her from India and exposing her to a fresh economic crisis. I repeat what I stated in my speech at the opening session of the Joint Select Committee proceedings, viz., that separation is economically indefensible and financially not feasible. I will now deal with some of the provisions of the Secretary of State's Memorandum on discrimination in Burma.

4. *Proposal* 3 (*ii*) (*a*).—It has been proposed by the Secretary of State that while the right of entry into Burma of British subjects domiciled in the United Kingdom should be safeguarded against attack by the Burma legislature by the inclusion of the safeguarding provision 3 (ii) (*a*) in the constitution, a similar safeguard should be denied to British subjects domiciled in India. At the outset, on behalf of the Indian Community, I must protest against this proposal which is in direct contradiction to the pledge uttered by the Prime Minister on behalf of the British Government on the last day of the Burma Round Table Conference, when in the course of his announcement

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of the policy of the British Government in regard to separated Burma he stated that " the main principle to be followed must be that of equal rights and opportunities for any British subject ordinarily resident or carrying on trade or business (whether through the medium of branches or agencies or otherwise) in Burma; and the Governor should have power to secure that this principle is observed both in legislation and administration." The withdrawal from the Indian community of a safeguard guaranteed by the British Government on a par with the British subjects in the United Kingdom is bound to have very unwholesome effects upon the faith of the Burma Indians in the sense of fair play and justice towards their community at the hands of the Imperial Government.

I would therefore very earnestly request that equality should be guaranteed alike to the British Indian and the United Kingdom subjects in a separated Burma. The proposed differential treatment of the Indians is more deplorable as its intention seems to be to give the Burma legislature the power to control immigration of Indian labour. Assuming for a moment that the power of controlling immigration of labour should be given to Burma, the right of refusing entry to any or all classes of British Indian subjects is too wide a power to be entrusted to Burma Legislature for the achievement of a limited object and would, in no event, be countenanced by the Indian community in Burma.

5. I am in agreement with Mr. Harper in all that he says about the present position of and need for Indian immigrant labour in Burma. The continued availability of Indian labour in Burma, in the present circumstances, is absolutely essential to the preservation of the economic fabric of Burma, and in no sense can it be said to displace Burmese labour. The situation has not, therefore, arisen in which it is desirable to envisage control of Indian labour immigration.

6. There is another aspect of this labour restriction problem to which I would particularly draw the attention of His Majesty's Secretary of State for India. Even if a trade agreement which is deemed by all parties is satisfactorily negotiated, notwithstanding the strain on good-will which the threat of shutting out Indians will impose, the existence of the power of controlling entry is likely to cause friction in the working of the trade agreement.

In these circumstances I think that the problem of labour should be dealt with as and when it arises and in a manner different from that contemplated by the Secretary of State; but in any case I am of the opinion that statutory power to control entry of Indians should not be given to the Burma legislature, and I strongly urge the extension of the scope of safeguard 3 (ii) (*a*) to comprise British subjects domiciled in India along with those in the United Kingdom.

If, however, in spite of the joint opposition of both the European and the Indian in Burma, the power to control entry of British Indian subjects is to be given to the legislature, it is of the utmost importance, that such legislation should be subject to the prior assent of the Governor of separated Burma and that the Instrument of Instruction should make it clear that the Governor has a special responsibility in respect of this subject and that he should see that the right of such legislation is not abused.

Exceptions. Para. 3 (vii) (*b*).—This provision in the case of Burma is of much wider scope than the corresponding provision in the proposed clause to be included in the Indian Constitution. While in the case of India it is intended to save only laws in operation at the date of the passing of the

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MEMORANDUM BY MR. N. M. COWASJEE ON THE MEMORANDA SUBMITTED BY MR. K. B. HARPER TO THE MEMBERS OF THE JOINT PARLIAMENTARY COMMITTEE.

Constitution Act, such as the Criminal Tribes Act, it is proposed in the case of Burma to legalise any law, rule or order at the date of passing of the Constitution Act, which has a discriminatory effect. This provision will in practice hit the Indian community in the matter of entry into services and practice of the professions. The inclusion of this clause nullifies the effect of the general declaration 3 (i) and the special safeguard 3 (ii) (*b*). I claim that the Indian community settled in Burma is entitled to get their due share of the appointments in the Public Services and to have no restrictions placed in the way of their carrying on any occupation or profession. Any administrative regulations and orders now in force in this connection should be repealed and the Burma Legislature should not have the right of nullifying the safeguards in the manner now proposed by the Secretary of State.

I oppose the inclusion of sub-section (*d*) (i), (ii) and (iii) in the constitution. The intention of this proviso is to declare that certain laws shall not be deemed discriminatory by reason of safeguards 3 (i), (ii), (iii) and (iv).

Under (*d*) (*i*).—No law will be deemed to be discriminatory on the ground only that "it prohibits the mortgage or sale of agricultural land to a member of a non-agricultural class, that is, a class of persons engaged in or connected with agriculture in that area".

I agree fully with all Mr. Harper says on this subject and I would add the following additional considerations which make the inclusion of this proviso in the constitution inadvisable:—

From the very inception when the Revenue Act came to be enforced so far back as 1876, the settled law of the country was, that any person who had been in possession of any cultivable land for 12 years continuously and having for that period regularly paid the revenue thereon, or held the same under exemption from revenue, was deemed to have upon the expiration of that period to acquire the status of landholder in respect of such land, and possession under Section 3 meant not only the possession of servant or agent, but also mortgagee.

By Section 8 of the Lower Burma Revenue Act the status of landholder was defined. And that section enacted that landholder shall have permanent, heritable and transferable right of occupancy in the land subject only to the payment of Government revenues. It is thus clear that not only the policy of Government, but the Statutory Law of the country, provided that anybody who was in possession for 12 years of an agricultural land, and paid the Government revenues thereon for that period, was entitled as a matter of right to transfer his land either by way of sale or mortgage and then vested rights have been created from the passing of the Act.

The following is a definition given of cultivator in Rule 50 A 5 in the Rules of the Administration of Government Estate:—

"Cultivator" means any person who by reason of earning his livelihood in whole or in part by personal labour in the cultivation of land is classified by the Manager as cultivator.

The following is the definition given in the draft of the abortive Burma National Mortgage Bill, 1926:—

"Agriculturist" means a person who:—

"(*a*) is engaged or has habitually been engaged in the cultivation of land with his own hands as his principal means of subsistence; or

"(*b*) satisfies both the following conditions, viz.—

"(i) he superintends directly (i.e., not through an agent, tenant or employee) and from day to day continuously through-

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out the working periods of the year the actual cultivation of land and all the processes connected with and the treatment of the cattle and other equipment used therein; and

"(ii) he derives the major part of his income either from such superintendence of the cultivation of land or from the actual cultivation of land or such superintendence and actual cultivation jointly; or

"(c) is included in any class of persons which may be declared by the rules to be included in the term 'Agriculturist'."

It is to be presumed that the terms "bona fide cultivator" is used in the Draft Constitution in the sense in which it is understood by Revenue Officers administering Revenue Law under the Land Revenue Act and the rules and directions thereunder. If so, the term excluded all landlords who rent out their lands to tenants and also others who employ agents or others to supervise the work of cultivation.

It is clear from these definitions (which are likely to be followed) that the class of people who will be designated cultivators will be cultivating owners and tenants; for the most part, a moneyless class of people who cannot buy land. It follows from this that land will not be saleable. Chettyars and bankers who have strained their resources to finance agriculturists so as to keep them on the land and who might have taken over the lands for debt, but have not, will be penalised for their laudable efforts by not being able to realise the lands—if their efforts turn out to be unsuccessful and loans are unpaid; and those who have already taken over lands for debt will have the strongest possible reasons for retaining them.

But the effect on the agricultural industry will be disastrous. It will kill agricultural credit altogether, and as agriculture in Burma is industrialised and must live on credit, this industry will gradually decline and die out. The export trade will be the first to go as without such credit as is supplied by capitalists, crops will be grown for subsistence only and not for export. The exportable surplus is 3½ million tons, but as sources of credit become exhausted this surplus will gradually dwindle until it ceases to exist.

Crop loans would not be advanced if lands are not a marketable security as all lenders of crop-loans look to the land as their ultimate security for these advances in the event of default.

Various commissions and committees have reported to Government that what is needed is organised credit for agriculture. The Royal Commission on Agriculture and the Indian Central Banking Enquiry Committee and Provincial Committees have all urged the extension and mobilisation of agricultural credit, but agricultural credit cannot be organised if it has as a basis assets which cannot be marketed.

(*d*) (*ii*).—"No law will be deemed to be discriminatory for this purpose on the ground only that it recognises the existence of some right, privilege or disability attaching to the members of a community by virtue of some privilege, law or custom having the force of law."

This exception is too wide and its exact significance is not quite clear. To my mind the inclusion of a provision like this will encourage riots and rebellions with the object of securing rights and privileges or imposing disabilities. I have in mind the riot of 1930 in the City of Rangoon when normal conditions were returned only after Burmese labour obtained 50 per cent. quota of port labour.

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MEMORANDUM BY MR. N. M. COWASJEE ON THE MEMORANDA SUBMITTED BY MR. K. B. HARPER TO THE MEMBERS OF THE JOINT PARLIAMENTARY COMMITTEE.

At the moment of writing Burmese port labour in Rangoon, though admittedly inefficient and unsuited for the type of work, has put forward the demand that 100 per cent. of the labour should be handed over to them instead of the 50 per cent. now given. This necessitated extensive precautions by the police to prevent a disturbance of the peace.

This is a dangerous precedent of any constitutional provision which gives recognition to rights and privileges, secured by riots or threats of riots and disorder, would act as a direct encouragement to disorders in future of greater or less intensity. Mr. Harper's suggestion of the inclusion of the words "at the date of separation" after the word "existence" only mitigates my objection to the clause.

(*d*) (*iii*).—It is declared by the Governor "to be necessary in the interests of the peace and tranquility of Burma or any part thereof".

I agree with Mr. Harper that there is no need for this proviso in the Act.

In conclusion I would add that, though some of my suggestions would have the effect of precluding the future Legislature of Burma from undertaking legislation which the present Legislative Council is competent to pass. I would strongly urge that the new experiment of a separated Burma is fraught with so many dangers that all measures intended to protect the safety of the State and its economic well-being should be judged on their own merits.

Moreover, it is well known that, under the safeguards which are being introduced in the new Indian Reforms, the future Indian Legislature will find various subjects now legitimately within its field becoming *ultra vires* its competence.

It is therefore without the slightest hesitation that I suggest, for separated Burma the application of the conservative principles which seem to be the guiding policy of the British Government in connection with the future reforms in India.

N. M. COWASJEE.

Rangoon,
5th March, 1934.

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RECORD B.3 (*continued*)

V.—Memorandum by S. A. S. Tyabji

The Memorandum on Trade Relations by Mr. K. B. Harper came to my hand on the 24th February, 1934, and on the same day I received a letter from the Reform Secretary stressing the need of early despatch of any views I desired to express on it. On the 27th (25th and 26th being holidays) I addressed a letter to the Reforms Secretary asking him if I could place this Memorandum before the Burma Indian Chamber of Commerce, and the Indian Association for eliciting their views, I was informed that the Memorandum was confidential till it was published.

I have, therefore, not been able to obtain the views of these two important bodies, and the views expressed herein are my own.

Prior to any definite conclusions being arrived at, it will be advisable to give an opportunity for public discussion of this very important question, which may affect differently sections of the mercantile community.

2. I generally agree with Para. I. Introduction.

3.—(i) I generally agree with Para. II, sub-sections 1, 2, 3 and 5.

(ii) *Reference Sub-Section 4—para. II.*—(*a*) Since Mr. Harper's Memorandum was written, a central tax at Rs.2/4 per gross boxes has been imposed. Therefore, there is now the provincial consumption duty of annas eleven per gross boxes, and the centrol excise tax of Rs.2/4 per gross boxes on matches to which customs duty is not applicable.

(iii) I would further add to the five fiscal conditions laid down by Mr. Harper—the 6th fiscal condition—though consequential, yet real:—that indigenous products—agricultural or manufactured—exported from Burma or India to India or Burma enjoy a preference against products of a similar nature imported by either country from any other country.

4.—(A) *Reference Para. III.*—I am in general agreement with the remarks made by Mr. Harper.

(B) *Ref. Suggested Formula.*—Section I.—(i) I understand that the intention of the formula is to maintain free trade (i.e., freedom from both import and export duties) between Burma and India in all indigenous articles and products.

(ii) Secondly, to confirm to the "existing relations" with regard to Fiscal conditions; therefore, to provide:—

(*a*) that after separation, the excise, consumption, or luxury duties on goods imported by one country from the other shall not be higher on imported products of the other country than on the indigenous products of the importing country.

(*b*) that the parity between excise, consumption, or luxury duties and customs duty on corresponding class of goods, shall be maintained in the future, i.e., in future the difference between excise duty and import

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duty on Kerosene Oil at 11¼ pies, or 25 per cent. (whether 11¼ pies or 25 per cent. must be definitely indicated) of the import duty, and on salt at 2½ annas per maund shall be maintained during the status quo period until the new Governments of India and Burma negotiate a Trade Agreement.

5.—(i) *Ref. to Section 2 of suggested Formula.*—This section states "India and Burma shall each be free to alter its Tariffs in respect of its trade with other countries."

(ii) The consequence of this proviso are clearly foreseen, viz.: "to allow for the possibility of outside tariffs by either country having the effect of *adversely altering "existing relations."* (Vide Chapter IV—Clause C.)

(iii) The effect of such a condition as would "adversely alter the existing relations" clearly cuts across the desire to maintain "existing relations," as also across the spirit of the Trade Convention.

(iv) But the adverse effect of section 2 under discussion is somewhat reduced by the proviso (*b*) to it, i.e., that lists shall be prepared by the Government of Burma, and that Government of India, of, I presume, articles imported into Burma or India by the other, on which import duty now exists, on foreign articles, but shall not be reduced, except by agreement between the two Governments from time to time.

(v) Therefore, the vigorous effect of Section 2 under consideration would fall on those articles which are not so listed.

(vi) Therefore it becomes at once necessary to examine whether the making of such lists by the two Governments would be possible, and if so, what would the lists be like, and what would the residue be like on which the effect of the section is to fall with full vigour; and whether the effect on the residue, if adverse, would be severe in the near future.

(vii) For such a purpose a very complete classification of the Imports from India into Burma and the Exports from Burma into India and the cross trades with other countries for the year 1932-33 and previous years is required. For lack of time, this is not possible for me to do, but as a sample, I give figures for the trades between India and Burma for the year 1929-30 and 1932-33, which I hope will be found fairly accurate.

(viii) I have divided the imports from India, and the exports from Burma into India into the following classes:—

(*a*) Natural and Raw Products for internal consumption;
(*b*) Natural and Raw Products not for internal consumption;
(*c*) Manufactured articles, including articles for internal consumption.

6. Pointing to tables A, B and C, attached as annexure I to this note, I wish to draw attention to the following clear facts:—

(i) That under each of the three sections into which I have divided the Export Trade of Burma (columns 5 and 6), it will be found that one or two groups make up the largest portion of the Trade of that section, whilst other groups under the same section show comparatively a small trade.

For instance: (Figures are in Lacs).

In Section A, the export of rice accounts for Rs.1218.24 out of a total of Rs.1718.88 for 1929-30, and for Rs.739.40 out of Rs.969.15 for 1932-33, but the export of other articles which make up the balance, i.e., grain, pulse

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and flour, excluding rice, spices, fruits and vegetables and fish are of great importance.

(ii) On the other hand if the import from India (columns 1 and 2) is referred to, all the groups mentioned are important, though as compared to the value and volume of Export of paddy and rice from Burma to India, relatively they are small.

(iii) In Section B, Export from Burma to India (columns 5 and 6), timber is the one group of real value, whilst from articles imported from India to Burma, coal and coke is most important.

(iv) In the third, Section C, Mineral Oil and its products is the only important Burma group (columns 5 and 6). In 1932-33 out of a total of Rs.1544.73 of this section the sum of Rs.1481.66 was accounted for by this group. The only other articles of manufacture exported from Burma are matches and cigarettes, which seem to have the potentiality of development in the near future.

(v) On the other hand, under Imports from India, Textiles, metal ware and allied articles, manufactured articles for internal consumption stand out as of primary importance, whilst other groups as of secondary importance because of their present value and future potentiality.

7. Hereto, I attach the lists of articles of primary and secondary importance to India and Burma, as Annexure II.

8. *Excise and Consumption and Luxury Duties as per suggested Formula.* —If we now take the Burma List (annexure II), the justification for stabilising the " existing relations " as proposed in the proviso to the first part of the " suggested formula " is clear; and I agree with the first part of the formula, which would stabilise part of the present position of the following or those which come under this head on the day preceding day of Separation:—

	1929-30.	1932-33
Petrol	334·05	541·10
Kerosene	524·42	852·35
Sugar	3·31	2·14
Cigarettes	8·00	5·30
Matches	11·33	19·39
Silver (approx.)	100·00	100·00

9. After removing from the Burma list (annexure II) those articles whose " existing relations " are established through the first proviso to part I of the suggested formula, as per preceding para, the articles which remain on the list must be considered as to which of them be listed to form schedule B (Burma) of the proviso B to part 2 of the formula.

(i) Rice is the most important article of Burma's trade; as pointed out in Mr. Harper's Memorandum, and elsewhere, its position—as regards its export to India—is vulnerable. In the Legislative Council of Bengal and Madras questions have been raised of Burma rice depreciating the price of rice of those provinces. Large irrigation schemes in Sindh, the Punjab, United Provinces, Bihar, Mysore and in Hyderabad State will open out to rice cultivation extensive tracts of India; and may I repeat that the total export of rice from Burma forms but a minute proportion of the total rice production in India. Burma supplies rice to India, because of the present annual failure of crops in India. The position of Burma rice is insecure

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also because of the competition of rice from Saigon in Indian ports; it is possible that Japan will become a regular exporter of her surplus rice production in the near future. Therefore I say that the position of Burma's rice export to India is vulnerable, and "existing relations" must be established, if possible, with some further preference in its favour.

(ii) *Grain, Pulse and Flour.*—Cultivation of grain and pulse has been rapidly increasing. It has already reached a level, where one may legitimately say, it is sufficient to meet the total provincial requirement of Burma. I may here make the fact clear that out of this export trade of Rs.256·32 and Rs.109·47 wheat flour accounted for only Rs.2·14 and Rs.1·82 in 1929-30 and 1932-33 respectively. The volume of export of grain and pulse (excluding rice) was 71,000 tons and 72,000 tons in the two respective years.

Therefore, the balance of export trade in favour of Burma is large, and growing, and it will still expand provided "existing relations" are maintained.

It has to be noted that the Eastern Coast of India, particularly Karachi and Bombay are more and more supplied with grain and pulse from Mesopotamia, whilst the Western Coast is the natural market for Burma—provided existing relations are maintained; Starits and Saigon are her competitors, and if Burma has to compete on equal terms (because of reduction of duty) with these countries one can not but help thinking that her export trade would lose considerable ground. Therefore, "existing relations" must be maintained. There is another vital reason why Burma grain and pulse must have an assured market in India. She is dependent beyond the line of safety on rice. If her dependence on rice is to be reduced, increased cultivation of grain and pulse is one of the venue. Even if the existing relations with regard to rice are established, I submit it is a broken reed, and it is imperative to reduce Burma's reliance on rice.

(iii) Therefore I submit grain and pulse must make one of the items on the Burma schedule.

Fruits and Vegetables.—Comparatively it is a small item. Out of Rs.39·11 and Rs.36·04, values of export of 1929-30 and 1932-33, vegetables accounted for Rs.36·04 and Rs.34·47 for the respective years. The largest part of this group comprises of potatoes, which are cultivated in the Shan States. In former years potato was an imported article from India, mostly from Calcutta; since in cultivation in recent years in the Shan States, it is largely exported to Calcutta, and forms now one of the important and potential agricultural products of the Shan States. It has become an economic factor in the Shan States, and if, perchance, "existing relations" cannot be stabilised, the Shan States will receive a very severe shock in its present economic structure. Moreover, the increased cultivation of Fruits and vegetables is another venue, whereby Burma's dependence on rice may be reduced. In my opinion, therefore, this should make one of the items in Burma's schedule.

(iv) *Wood and Timber.*—India is the largest purchaser of Burma's wood and timber. The exports to India and other countries were as under:—

Exports.	1929-30.	1932-33
India	324·87	179·85
Foreign	147·83	43·37

It is necessary that this product of Burma should obtain a safe market in India, which has been her largest market for many years past. Even at present, though there is an import duty on foreign wood and

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timber, Teak from Siam is making headway in the Bombay and Madras Markets; if, on separation, the duty on teak is reduced on Burma teak and other timber have to compete on more equal footing with Siamese, Burma teak will find it difficult to compete.

Burma has sunk crores of rupees in the making of teak plantations; if she loses the market of India, the crores of rupees sunk in those forest plantations, can never be recovered.

(v) Therefore, I submit wood and timber must form one of the items on the Burma schedule.

Dyeing and Tanning materials, and Lac.—There are other forest produces, which largely come from the Shan States. On most of these items there is a 25 per cent. ad valorem duty on foreign products. Starits has been largely competing, even with 25 per cent. duty against her products. In Burma itself there is a small market for these products, and if the trade is ultimately lost, the economic effect on the people of the Backward Tract and Shan States would be considerable. It is true the trade in Lac has decreased to but one lac of rupees per annum, but I anticipate an improvement in its trade, provided that its present position is maintained. I am therefore strongly in favour of putting these on the list.

Note.—Since writing these a very brisk demand for Lac has sprung up in Bengal.

(vi) *Hides and Skins.*—This is a group which in former years was of considerable importance. In the year 1926-27 the shipments to India consisted of 1,591 tons to the value of Rs. 10.98, but the trade has dwindled down to the present value of Rs. 3.93. There is a small demand for its use in Burma itself, and I suggest that when an agreement is negotiated, India be induced to give Burma an opportunity of an export trade to India in it. I therefore suggest putting this on the list.

(vii) *Minerals and Ores.*—This is an important trade. The greater portion of its consists in exports of refined tin to India. If the duty on it is reduced, Penang and Singapore would probably take away the whole trade, as even at present their trade with India in tin block is large. Therefore I propose to place this on the list.

(viii) *Candles, Paraffin, Lubricants, Oils and Other Mineral Oil.*—These are free of excise at present, and I propose their present position be stabilised.

(ix) *Vegetable Oil, Seeds non-essential and Spices.*—I propose to place these on the Burma List. Demand for these is considerable in Burma, as the imports from India prove. If the duty on these is reduced, the price of these commodities would be reduced, thereby a price war would follow between Indian and Straits import which would affect the agriculture of these products in Burma adversely. At present the cultivation of seeds and spices is increasing and the production of vegetable oil is also on the increase. Cultivation of seeds and spices must be increased in Burma to reduce its reliance on rice.

Para. 12.—I now propose to consider the question from the point of view of India, because it is necessary to realise that, and to make proposals in respect of Trade Convention which should be fair to India and Burma, for I can only visualise a Trade Convention between the two parties which is based upon the immediate requirements of trade of both, giving full

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consideration to their future requirements, and maintaining their self-respect, and fiscal powers obtained by each intact. Any Trade Convention proposed to India, which does not take into account her requirements of markets for her industrial products, would, if I know anything of India, be strenuously opposed. Any suggestion of superimposition of another will, even of Parliament, in fiscal matters, will raise a storm of resentment. Even if a Trade Convention is forced upon India by Parliament that Trade Convention, will, not only not achieve its objects, but may set up a reaction, and may mean a direct or indirect fiscal war between the two countries, and a continuous effort to get behind the letter and spirit of a Trade Convention by all means; and I cannot conceive of a Trade Convention which can stand such a strain. If under any forced agreement Burma rice is to be protected in India as against rice of other countries other than Burma, cultivation of rice in India can be urged which might inflict a lasting injury to Burma; production of other articles of very large importance to Burma, may be forced to expand in India. No one can legally object to such expansion of internal agriculture or industry, though the objective may lie clearly in nullifying the Convention. Such actions will have lasting effect.

If a Trade Convention is desired, then the basis of the Convention must be fair dealing between the two countries, so that, when it is proposed to India, she may at least feel that it is a straight deal. I would reduce bargaining to the minimum. Burma will come out worse in it. I propose to deal with the question on this basis.

13.—(i) I may at once make one point clear. The first part of the suggested formula deals with excise, consumption and luxury duties. So far as Indian articles imported into Burma are concerned, it affects only the importation of cigarettes and sugar. In terms of trade value, articles of each country imported by the other, conditions of which are stabilised are as under:—

—	Burma.		India.	
	1929–30.	1932–33.	1929–30.	1932–33.
Salt	nil	nil	2·45	4·08
Petrol	334·05	531·10	—	—
Kerosene	524·42	862·35	—	—
Matches	11·33	19·39	—	—
Cigarettes	8·00	5·30	101·07	59·12
Sugar	3·31	2·14	5·42	4·05
Total	881·11	1,420·28	108·94	67·25
Silver (approx.)	100·00	100·00	—	—
TOTAL	981·11	1,520·28	108·94	67·25

(ii) In other words, India consents to stabilise condition of Burma imports, as to excise, consumption and luxury duties, to the tune of Rs. 981.11 and Rs. 1520.28 whilst Burma agrees to stabilise condition of Indian imports

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to the extent of Rs. 108.94 and 67.25 as per values of trade of 1929-30 and 1932-33 respectively. This result of the first portion of the formula must be clearly kept in mind.

14. I suggest a list of Indian articles of primary and secondary importance, which are exported to Burma as per Annexure II. The total comes to Rs. 1034.80 and Rs. 737.98; out of these must be deducted the articles which are stabilised by Part I of the formula (as per para. 13 (i)). This leaves Rs. 925.86 and Rs. 670.73 for the years 1929-30 and 1932-33 respectively. I suggest all the articles mentioned in the list as per annexure II therein except salt and cigarettes and sugar be put on schedule (India) as contemplated in proviso B to part 2 of Mr. Harper's formula.

15. I have selected these articles after a careful study of direct cross trades affecting each article, as between Burma and India, and Burma and foreign countries. I have, unfortunately, not the time at my disposal to go into the details of each article proposed to be put on schedule, but I think the list would fairly represent India's view point which I am considering. I have omitted coal and jute from the list, because these do not require protection.

Broadly speaking, however, the demand in Burma of India's agricultural products as shown by trade returns and in India for agricultural products of Burma is the general reason, apart from considerations of trade conditions, which have made me place the India's agricultural products on the list. As to manufactured goods, India's cotton textile industry and other industries are making a rapid headway. Just as India is the natural market for Burma's products, so is Burma the natural market for India's products.

A study of the trade has shown me that just as Burma's goods need protection from goods of other countries, and that if her goods had to compete on equal terms with those of other countries than India, Burma's goods may not be able to hold the market; so India's goods need protection from goods of other countries; in passing it may be mentioned that Burma's manufactured articles—kerosene—though well established still requires a favourable treatment from India. If detailed consideration of trade is desired, I am prepared to supply a note on each article.

16.—(i) I now compare the effect on the process of maintaining "existing relations" with regard to the trade of India and Burma.

(ii) For the sake of clarity, I divide the Trade of Burma and India into three parts:—

(*a*) Goods of either country, whose "existing relations" are stabilised by the first part of Mr. Harper's suggested formula.

(*b*) Articles listed in Schedule A (Indian) and Schedule B (Burma) which shall not be subject to any reduction of import duty except by agreement between India and Burma.

(*c*) Articles which do not come under the category A or B above, and would be open to the rigours of reduction of duty in respect of trade with other countries.

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(iii) The following figures show the comparative values of goods stabilised as under 16 (ii) A—above:—

	1929-30.	1932-33.
India	108·94	67·25
Burma	981·11	1520·28

(iv) The following figures show the comparative value of goods which I suggest to place on Schedule A (India) and Schedule B (Burma) as per 16 (ii) B—above:—

	1929-30.	1932-33.	
India	925·86	670·73	Schedule A.
Burma	2059·34	1244·52	Schedule B.

(v) Articles which do not come under the category of A or B of 16 (ii) above and would be open to rigours of alterations of duty, having the effect of altering "existing relations" amount as under:—

	1929-30.	1932-33.
India as per 16 (ii) (*a*)	108·94	67·25
India as per 16 (ii) (*b*)	925·86	670·73
Total of (*a*) and (*b*)	1034·80	737·98
India: total imports from	1531·30	999·52
India as per 16 (ii) (*a*) and (*b*)	1034·80	737·98
Unstabilised residue affected by part 2 of proposed formula	496·50	261·54
Burma as per 16 (ii) (*a*)	981·11	1520·28
Burma as per 16 (ii) (*b*)	2059·34	1244·52
	3040·45	2764·80
Total export to India, including silver ...	3118·45	2823·35
Burma total of 16 (ii) (*a*) and (*b*)	3040·45	2764·80
Unstabilised residue	78·00	58·55

(vi) The percentage of articles as per 16 (ii) (*a*) to the total trade would be in the case of:—

	1929-30.	1932-33.
	Per cent.	Per cent.
Burma	29	51
India	7	7

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(vii) The approximate percentage of articles as per 16 (ii) (*b*) to the total trade, i.e., Indian Export and Import Trade, would be in the case of:—

	1929-30.	1932-33.
	Per cent.	Per cent.
Burma	64	44
India	60	66

(viii) The approximate percentage of articles as per 16 (ii) (*a*) and (*b*) to the total import from India to Burma and export from Burma to India would be in the case of:—

	1929-30.	1932-33.
	Per cent.	Per cent.
Burma	93	95
India	67	73

(ix) With regard to India the value of goods as per 16 (ii) (*b*) does not include the value of coal and coke and jute textiles, because, as stated above, these require no protection. But Burma would be justified in her statement that she is willing to place these on Schedule A (India). This would add to the value:—

	1929-30.	1932-33.
Coal Coke	117·09	54·97
Jute Textile	258·30	123·76
	376·39	178·73
16 (ii) (*b*) India	925·86	670·73
16 (ii) (*b*) India, inclusive of coal and jute	1302·25	849·46

(x) In this case the approximate percentage of articles as per 16 (ii) (*b*)—the total import from India to Burma, and export from Burma to India would be in the case of:—

	1929-30.	1932-33.
	Per cent.	Per cent.
Burma	64	44
India	85	85

(xi) The approximate percentage of articles as per 16 (ii) (*a*) and (*b*) to the total import from India to Burma and export from Burma to India would be in the case of:—

	1929-30.	1932-33.
	Per cent.	Per cent.
Burma	93	95
India	92	92

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17.—(i) I arrive at the conclusion that the Schedule A (India) and Schedule B (Burma) must be on similar lines to the schedules I have made, as to group of items and their value, to serve the purpose of keeping as close as possible to "free trade" in letter and in spirit between India and Burma, or that they will utterly fail in their purpose of anything near free trade and of maintaining "existing relations."

(ii) If only a few articles of large importance are to be placed on the Schedule B (Burma), I am convinced from a close study of cross trades that other exports would decrease very considerably and immediately, if the duties on foreign imports were reduced. As they consist mostly of agricultural or forest produce the effect would be disastrous on the agriculture of the Province, and on the economic condition of the people engaged in the collection of forest produces.

(iii) With regard to those articles which are not placed on Schedules A and B, great uncertainty would be created, with a bad psychological effect on the minds of traders, which will be disastrous to trade. Therefore, I submit that the schedules should be either large or not at all.

(iv) It would seem that it would be better to bring the whole trade under one condition, i.e. that if either party desired to reduce the import duty on corresponding articles imported from foreign countries that such reduction shall be agreed to by both parties.

(v) But what are the chances of such reduction of duties either by Burma or Burma? India's fiscal policy at present is rather to increase the customs duties either for reasons of finance or for protection of her industries and it seems likely that this position will remain for the next ten years at least. On the other hand Burma's financial conditions preclude any considerable reduction of duties for financial reason; it is not likely that Burma's financial condition would so change as to enable her to reduce the duties to any extent. If such be facts, why give such undue importance to the reduction of duties.

(vi) If any question of reducing duties has been mooted in Burma it has been with regard to Iron and steel machinery. If this question is to be raised—there are two sides to the question—from the point of view of Burma and India—I submit it should be raised as a distinct individual matter with India, rather than make of it a general question, and insert a general proviso in the formula.

(vii) There has been no question raised in Burma with regard to import duties on cotton textiles, as everyone realises that such a step would mean flooding of Japanese cotton textiles, neither in the interest of India or of the United Kingdom, which countries are large purchasers of Burma's goods.

(viii) Neither has there been any suggestion reducing duties on any other goods except iron and steel machinery.

(ix) Therefore, I suggest to isolate the question of reduction of duty on iron, steel and machinery, particularly the latter; if Burma decides that it desires to do so, then this should be one of the questions to be settled

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as between India and Burma when the Trade Convention is being arranged between the two countries. If properly put to her, India will listen to reason.

18.—(i) Because of the complexity of the question which the previous paragraphs prove, I am in favour of the first suggestion of Mr. Harper, i.e., "to enact that in spite of political separation the 'existing fiscal relationship' between India and Burma shall be maintained during the status quo period, i.e., till both the parties enter into Trade Convention". This is my first choice.

(ii) By the above, I mean, that till the Trade Convention is entered into, the customs duties, excise duties, provincial consumption duty, luxury duty, and all other duties shall apply to Burma in the same manner, as if, for that purpose Burma were to be a province of India.

(iii) (*a*) Provided proceeds of Export and Import Customs duties shall be credited to Burma.

(*b*) Provided proceeds of Central excises collected in Burma shall be credited to Burma, except central excises on Kerosine and Silver, shipped to India, which shall be paid to India.

(*c*) Provided Provincial Excises collected in Burma shall be credited to Burma.

19.—(i) But, if it is not possible to enact that in spite of political separation of Burma the existing fiscal relationship between India and Burma shall be maintained during the status quo period as suggested in the preceding paragraph, I suggest that the next best course would be to accept the first paragraph of the formula suggested by Mr. Harper.

(ii) As to the second part, i.e., "India and Burma shall each be free to alter its tariffs in respect of its trade with other countries," I do not agree.

(iii) Increase of tariffs by Burma or India on trade with other countries would raise no complex question.

(iv) If either Burma or India increases the tariffs on goods imported from other countries, the country so raising the tariff shall have the right to impose a duty on corresponding goods of the country, India or Burma, from whence corresponding goods may be imported, the duty being equivalent to the percentage increase in duty, prevailing on the date of Separation of Burma from India.

20.—(i) Decrease of tariffs by Burma or India on trade with other countries, "having the effect of adversely alterating 'existing relations'" raises questions of great complexity as previous paragraphs dealing with this aspect have shown.

(ii) Safeguard provided in Mr. Harper's formula proviso B to part 2 of it, is in itself full of complexities.

(iii) The possibility of reduction in tariffs by either country are remote except in case of Burma on Iron or Steel or Machinery.

(iv) Therefore, I submit there shall be no inclusion of a general power to reduce tariffs.

(v) The question whether duties on iron or steel or machinery be reduced or has not been passed by the Burma Council. But if it were so decided,

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the matter should be taken up with the Government of India as an individual case.

(vi) Therefore, I suggest that in the second part of the formula, the word "alter" be deleted, and in its place the word "increase" be inserted.

(vii) Proviso "B" be deleted, and in place of proviso "B" the following proviso be inserted:—

> "If India or Burma increases its tariffs in respect of its trade with other countries, the country so increasing the tariff shall have the right of imposing on corresponding trade of goods of the other country a duty which shall not be more than the percentage increase on the previous rate of duty, provided that the 'existing relations' on the date prior to separation of Burma from India is maintained."

(viii) If proviso "B" standing in Mr. Harper's formula is not deleted for any reason, then I suggest that the proviso suggested in 20 (vii) be inserted as proviso "C."

21.—(i) Again, if the Joint Select Committee does not agree to the deletion of part 2 with proviso "B" or in essence maintains the position as expressed in part 2, though in other words, then I submit, that it must be made perfectly clear, that to alter tariffs in respect of its trade with other countries, "having the effect of adversely altering existing relations between India and Burma," is definitely not contemplated, and would be against the spirit of the arrangement made for the period of status quo.

(ii) The reason for the above statement is that once such an alteration of tariffs as would adversely affect the other party, Burma or India, is made, a direct or indirect Fiscal War between the two countries will be inaugurated.

(iii) Also, that if the schedules A and B, as contemplated in proviso "B" of Part 2 of Mr. Harper's suggested formula are not deleted, they shall be as complete as possible, and they shall be based rather on inclusion of as many articles as possible, than on exclusion of as many (articles) as possible; the more the excluded articles will be, the greater will be the risk of a fiscal war.

22.—(i) Whether my above amendments and suggestions in part or whole are accepted or rejected, I suggest that Fiscal Boards be established in India and Burma, which shall deal with all matters connected with Fiscal relations between Burma and India. They shall serve as the Tariff Board of India now serves. The Fiscal Board of India and Burma should have six monthly conferences at least, so that through personal contact between the representatives of the two countries points of view of both the sides may be understood and appreciated, and above all, a friendly and continuous contact may be obtained between the two countries.

(ii) Unlike the Tariff Board, the Chairman of the Board shall be a member of the Council, or at least be able to speak as an expert in the Council in Burma or the Indian Assembly in India. To this I attach importance particularly with regard to Burma Council, in which knowledge of Fiscal matters is undeveloped. A Board somewhat on the lines of the proposed Railway Board is what I contemplate.

23.—(i) With regard to excise, as per proviso to Part I of Mr. Harper's formula, I venture to think that as it stands, it stabilises present position, but does not contemplate imposition of any new excise duty, or provincial

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consumption duty or luxury duty, or any other similar new duty. I am of opinion that new Excise or similar duties may be imposed by Burma or India or a Province of India, provided that "existing relations" are maintained, that is, that the parity which prevailed the day previous to Separation between the articles from India or Burma imported by one or the other and corresponding foreign articles and indigenous articles shall be maintained.

23.—(ii) *Reference Certificate of Origin—Chapter VI.*—It is a detail which can be considered later. I have not been able to make myself sufficiently acquainted with details of the matter, and therefore express no opinion at present.

24. *Comparative Bargaining Power of the two countries—Chapter VII.*—I generally agree with Mr. Harper's remarks. In respect of remarks by Mr. Harper with regard to Indian Labour, I desire to point out one fact. The provinces from where "coolies" come are the best customers of Burma as the following figures prove:—

	1929-30.	1932-33.
Bengal	1019·48	689·89
Madras	936·35	824·73
United Kingdom	536·96	368·26
Ceylon	507·89	244·98
Germany	442·68	219·35
Japan	104·41	149·97

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ANNEXURE I.

SUMMARY OF IMPORT AND EXPORT TRADE BETWEEN BURMA AND INDIA.

Section.		Articles.	Import into Burma from				Export from Burma to			
			India.		Foreign.		India.		Foreign.	
			1929-30.	1932-33.	1929-30.	1932-33.	1929-30.	1932-33.	1929-30.	1932-33.
			1.	2.	3.	4.	5.	6.	7.	8.
			Lakhs of Rupees.	Lakhs of Rupees.	Lakhs of Rupees.	Lakhs of Rupees.	Lakhs of Rupees.	Lakhs of Rupees.	Lakhs of Rupees	Lakhs of Rupees.
A.	1.	Fishery, salted, unsalted, wet-salted, etc. (excluding canned fish).	64·88	42·59	21·30	9·82	16·67	9·17	—	—
	2.	Fruits and vegetables—fresh and dried.	55·87	40·07	14·50	12·21	39·11	36·04	—	—
	3.	Grain, pulse and flour (excluding rice)	100·00	65·00	13·52	1·20	256·23	109·47	51·66	19·88
	4.	Rice and paddy	21·42	13·49	—	—	1,218·24	739·40	2,597·21	1,166·10
	5.	Vegetable oils	67·04	42·17	53·48	36·09	13·00	7·50	—	—
	6.	Seeds—non-essential...	44·96	27·56	—	—	4·08	2·58	—	—
	7.	Spices	97·80	49·80	16·79	10·15	8·36	8·76	—	—
	8.	Salt	2·45	4·05	—	—	·22	·42	—	—
			454·42	284·73	119·59	69·47	1,555·91	913·34	2,648·87	1,185·98
B.	1.	Coal and coke	117·09	54·97	4·35	4·09	—	—	—	—
	2.	Dyeing and tanning material ...	2·27	2·23	—	—	12·61	6·80	7·84	2·72
	3.	Lac	—	—	—	—	37·35	1·86	5·62	·35
	4.	Hides and skins	—	—	—	—	15·08	3·93	19·06	9·99
	5.	Precious stones	—	—	—	—	—	—	—	—
	6.	Metals and ores	53·12	39·53	182·81	63·89	35·10	33·20	469·85	286·62
	7.	Wood and timber	—	—	—	—	324·87	179·85	147·83	43·37
	8.	Other unmanufactured	8·12	11·44	—	—	—	—	—	—
	9.	Cotton	—	—	—	—	3·44	—	99·14	67·96
	10.	Tobacco unmanufactured	51·67	33·37	—	—	14·88	8·68	16·24	3·23

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11.	Silver	—	—	—	—	100·00	100·00	—	—
		235·16	161·35	187·16	67·98	543·33	334·32	765·58	414·24
C. 1.	Textile								
	Cotton	202·29	199·32	567·95	337·05	11·18	13·31	—	—
	Haberdashery	—	—	24·59	15·40	—	—	—	—
	Hemp	—	—	—	—	—	—	—	—
	Jute	258·30	123·76	2·17	1·16	6·44	5·89	—	—
	Silk	·34	·49	36·95	17·56	—	—	—	—
		460·93	323·57	631·66	371·17	17·62	19·20	—	—
2.	Metalware, including—	—	—	182·81	63·89	—	—	—	—
	Building and engineering material	—	—	32·75	12·23	—	—	—	—
	Hardware and cutlery	—	—	62·63	26·03	—	—	—	—
	Instruments and apparatus ...	—	—	37·48	19·40	12·27	8·49	—	—
	Machinery and millwork	—	—	191·87	65·90	—	—	—	—
	Mechanically propelled vehicles ...	29·97	29·95	83·21	27·66	—	—	—	—
		29·97	29·95	590·75	215·11	12·27	8·49	—	—
3.	Articles of internal comsumption—								
	Provision	66·63	39·87	156·80	80·74	5·27	3·30	—	—
	Sugar	5·42	4·05	72·93	29·67	3·31	2·14	—	—
	Tobacco and cigarettes	106·30	62·90	22·73	2·46	8·34	8·94	2·03	—
	Spirit and wine	—	—	53·02	28·41	—	—	—	—
		178·35	106·82	305·48	141·28	16·92	14·38	2·03	—
4.	Matches	—	—	—	—	11·33	19·39	—	—
		—	—	—	—	11·33	19·39	—	—
	Carried forward ...	669·25	460·34	1,527·89	727·56	58·14	61·46	2·03	—

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ANNEXURE I—(*continued*).

SUMMARY OF IMPORT AND EXPORT TRADE BETWEEN BURMA AND INDIA.

Section.	Articles.	Import into Burma from				Export from Burma to			
		India.		Foreign.		India.		Foreign.	
		1929-30.	1932-33.	1929-30.	1932-33.	1929-30.	1932-33.	1929-30.	1932-33.
		1.	2.	3.	4.	5.	6.	7.	8.
		Lakhs of Rupees.	Lakhs of Rupees.	Lakhs of Rupees.	Lakhs of Rupees.	Lakhs of Rupees.	Lakhs of Rupees.	Lakhs of Rupees.	Lakhs of Rupees.
	Brought forward ...	669·25	460·34	1,527·89	727·56	58·14	61·46	2·03	—
C. 5.	Drugs and medicines	4·06	4·00	11·33	7·92	—	—	—	—
	Chemicals	3·06	1·47	25·10	18·52	2·38	1·61	—	—
		7·12	5·47	36·43	26·44	2·38	1·61	—	—
6.	Paper and pasteboard	4·92	5·34	31·91	24·12	—	—	—	—
	Stationery	1·45	—	11·00	5·26	—	—	—	—
		6·37	5·34	42·91	29·38	—	—	—	—
7.	Perfumery	·24	—	—	—	—	—	—	—
	Toilet requirements	—	—	10·69	8·49	—	—	—	—
	Soap	1·57	—	33·81	14·34	1·21	—	—	—
		1·81	—	44·50	22·83	1·21	—	—	—
8.	Tallow and stearine	—	—	—	—	3·13	—	—	—
	Mineral oils	26·21	20·20	50·74	20·86	896·90*	1,469·36†	1·19	·91
	Candles	1·49	1·29	—	—	9·74	8·83	10·87	4·72
	Paraffin wax	—	—	—	—	3·83	3·47	236·54	142·12
		27·70	21·49	50·74	20·86	913·60	1,481·66	248·60	147·75

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9.	Earthenware—Porcelain	—	—	19·01	11·41	—	—	—	—
	Glassware	—	—	13·35	7·29	—	—	—	—
		—	—	32·36	18·70	—	—	—	—
10.	Leather	9·87	4·87	1·99	1·47	—	—	—	—
		9·87	4·87	1·99	1·47	—	—	—	—
	Total Section C.	722·12	497·51	1,736·82	847·24	975·33	1,544·73	250·63	147·75
	GRAND TOTAL—A, B and C ...	1,411·70	943·59	2,043·57	984·69	3,074·57	2,792·39	3,667·08	1,747·97

	*1929-30. Lakhs of Rupees.	†1932-33. Lakhs. of Rupees.
Petrol	334·05	541·10
Lubricating	35·58	70·60
Kerosene	524·42	852·35
Other...	2·85	5·31
TOTAL	896·90	1,469·36

EXPLANATION—

I.—(*a*) This table summarises Trade between India and Burma.

(*b*) Section A : natural and raw products for internal consumption ;
Section B : natural and raw products *not* for internal consumption ;
Section C : manufactured articles including articles for internal consumption ;

(*c*) each section is made up of single or group of articles.

II.—(*a*) Columns 1 and 2 and columns 5 and 6 form basis of Annexure II.

(*b*) Columns 3 and 4 and 7 and 8 show comparative trade in corresponding articles with countries other than India.

III.—The totals of Sections A, B and C are less than the total of the whole Trade as some of the articles are not included.
The omissions amount to :

	1929-30.	1932-33.
India	119·60	55·93
Burma	143·88	132·96

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ANNEXURE II.

List of Primary and Secondary Articles of Importance

India.		Articles.	Burma.	
1929–30.	1932–33.		1929–30.	1932–33.
—	—	Petrol...	334·05	541·10
—	—	Kerosene	524·42	852·35
—	—	Matches	11·33	19·39
101·07	59·12	Cigarettes	8·00	5·30
5·42	4·05	Sugar	3·31	2·14
—	—	Silver (approximate) ...	100·00	100·00
2·45	4·08	Salt	—	—
64·88	42·59	Fish, dry, salted and unsalted	16·67	9·17
55·87	40·07	Fruits and vegetables (fresh and dried).	39·11	36·04
100·33	65·04	Grains, pulse and flour (except rice).	256·23	109·47
21·42	13·49	Rice and paddy	1,218·24	739·40
2·27	2·23	Dyeing and tanning ...	12·61	6·80
97·80	49·80	Spices	8·36	8·76
67·04	42·17	Vegetable oils	13·00	7·50
44·96	27·56	Seeds, non-essential... ...	4·08	2·58
—	—	Lac	37·35	1·86
—	—	Hides and skins	15·08	3·93
53·12	39·53	Metals and ores	35·10	33·20
9·87	4·87	Leather	—	—
51·67	33·37	Tobacco—unmanufactured...	14·88	8·68
106·28	62·89	Tobacco—manufactured ...	8·32	8·93
—	—	Wood and timber	324·87	179·85
—	—	Cotton—raw	3·44	·14
—	—	Haberdashery	—	—
29·97	29·95	Metalware, including building and engineering material, hardware and cutlery, utensils, apparatus, machinery and millwork, mechanically propelled vehicles.	—	—
202·29	199·32	Cotton textile	—	—
66·53	39·87	Provisions	—	—
4·06	4·00	Drugs and Medicines ...	—	—
3·06	1·47	Chemicals	—	—
1·45	—	Stationery	—	—
1·57	—	Soap	—	—
1·49	1·29	Candles	9·74	8·83
—	—	Paraffin wax...	3·83	3·47
—	—	Lubricating oils	35·58	70·60
26·21	20·20	Other mineral oils	2·85	5·31
—	—	Earthenware...	—	—
—	—	Glassware	—	—
1,034·80	737·98		3,040·45	2,764·80
108·94	67·25	Deduct—stabilised (Excise)...	981·11	1,520·28
925·86	670·73	Schedule A— India. Schedule B— Burma.	2,059·34	1,244·52

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RECORD C1

Papers laid before the Committee by the Secretary of State for India

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I.—Memorandum by the Secretary of State for India [25th July, 1934] on the Action contemplated in relation to Family Pension Funds

[This memorandum incorporates and brings up to date the memorandum previously published as Record VII (Session 1932-33).]

1. In paragraph 73 of the introduction to the White Paper it was stated that His Majesty's Government considered that the balances of the Family Pension Funds must be recognised as a definite debt liability of the Government of India and as the property of subscribers; and that they were examining a proposal for the gradual conversion of these assets into separate sterling funds.

2. The Funds referred to do not include various funds, civil and military, which were established in the time of the East India Company under private management. The assets of these Funds were taken over by Government, under powers conveyed by Acts of Parliament, and the pensions at fixed rates guaranteed as charges on the revenues of India. The capital of these Funds therefore no longer exists and the position of persons drawing pension under their rules differs in no way from that of officers in receipt of ordinary retiring pensions.

3. The Funds now under consideration are four in number:—

(1) The Indian Military Service Family Pension Scheme.
(2) The Indian Military Widows' and Orphans' Fund.
(3) The Indian Civil Service Family Pension Scheme.
(4) The Superior Services (India) Family Pension Fund.

The first two are maintained by officers of the Indian Army. Subscription to the first is compulsory on all officers commissioned between 1873 and 1915, and to the second on all officers commissioned since that date. The third Fund, as its name implies, is maintained by the Indian Civil Service, subscription being compulsory on all officers entering since 1881. The fourth was established in 1928 for officers of services, other than the Indian Civil Service, recruited by the Secretary of State in Council, and membership is compulsory on all such officers now entering the services; there is, in addition, a large voluntary membership of officers of similar type who were appointed before the institution of the Fund.

4. The Funds are in all cases self-supporting. Subscriptions are paid into the general balances of the Government of India, and pensions are met from those balances. An account is kept of receipts and payments, and interest is added to the balances at rates determined from time to

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MEMORANDUM BY THE SECRETARY OF STATE FOR INDIA ON THE ACTION CONTEMPLATED IN RELATION TO FAMILY PENSION FUNDS.

time by the Secretary of State in Council. The liabilities and assets are subjected every five years to actuarial examination, and any necessary alterations in the rates of subscription and benefits are made by the Secretary of State in Council, after consideration of the Actuary's reports.

5. On the basis of the latest available information the receipts and payments during the financial year 1934-35, together with the opening and closing balances at the credit of the several Funds, are estimated as follows:—

——	I.M.S.F.P.	I.M.W.O.F.	I.C.S.F.P.	S.S. (I) F.P.F.	Total.
	£	£	£	£	£
Balance, 1st April, 1934	6,586,000	527,000	4,202,000	503,000	11,818,000
Interest ...	297,000	25,000	191,000	23,000	536,000
Contributions...	73,000	51,000	44,000	38,000	206,000
	6,956,000	603,000	4,437,000	564,000	12,560,000
Payments ...	317,000	7,000	121,000	12,000	457,000
	6,639,000	596,000	4,316,000	552,000	12,103,000

6. In May 1933 circulars were issued to subscribers of all four funds inviting their views on the following suggestions:—

That Commissioners or Trustees should be appointed for the purpose of holding and investing on behalf of subscribers in approved securities, which would presumably be confined to those authorised by the Trustee Act, sums handed over to them; that these Commissioners should be paid annually for this purpose the contributions received during the year and the interest allowed by the Government of India on the balances remaining in its hands, and that money for the payment of pensions as they fall due should be provided by the Government of India out of the balances in its hands, which would thus be gradually reduced.

It was pointed out to the subscribers that by investment in Trustee Stocks it was improbable that the Commissioners would be able to secure a yield equal to the rate of interest allowed on the balances under the existing arrangements, which is based on the current yield of India long-dated sterling securities; that allowance might have to be made, particularly in the present conditions, for capital depreciation of investments, a risk from which the Funds are now exempt; and that as a result it was probable that the proposals would involve some reduction in the rates of pension now payable.

7. The effect of the above proposals would clearly be that the balance in the hands of the Government of India would gradually disappear as it was drawn upon to meet the demands of a growing pension list; while

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a new fund would gradually be built up from the investments made by the Commissioners. The period which would elapse before the transfer was complete, that is to say before the entire balances in the hands of Government had been paid out, would vary with the different Funds. It has been estimated at from 15 to 20 years in the case of the Indian Military Service Family Pension Scheme, and at as much as 40 years in the case of the Indian Military Widows' and Orphans' Fund, with intermediate periods in the other cases.

8. A large majority of the replies received from subscribers indicated a desire for the investment of the balances in sterling securities, but the scheme outlined in the circulars was criticised on the ground that the period elapsing before transfer would be complete was too long. In order to meet this criticism, it is proposed to abandon the scheme whereby the rate of transfer would be regulated automatically by the amount of the annual payments of pension: and to substitute a scheme whereby transfer could be made at any rate allowed by the financial conditions of the time, but subject in any case to the completion of the transfer by a fixed maximum period. It is hoped that, in practice, any maximum period will be inoperative. Should existing financial conditions continue without serious deterioration, it should be possible to complete the transfer within quite a short period after the Constitution Act has been passed and the subscribers and pensioners have expressed their final assent. It will, however, probably be desired that a limit shall be set by statute to the period of transfer; and in fixing this limit it is necessary to consider the possible effects on the exchange position of the Government of India. A scheme of this nature imposes no ultimate charge on Indian Revenues, which are in any case liable to pay the entire balances sooner or later in the form of pensions. It involves, however, the disbursement in sterling within the limits fixed of sums which would otherwise remain a liability to be met at a later date; and such an addition to the sterling requirements, if sufficiently large, might in certain circumstances become embarrassing. It would be imprudent to impose on the finances of the Federation what might prove to be an intolerable burden; and it is thought, therefore, that the statutory maximum period should not be shorter than 12 years. This period is intended only as a limit by which the Government would be bound. As just indicated, it is expected that it will actually prove possible to complete the transfer within quite a short time.

9. It is not contemplated that the Commissioners should have any responsibility for the administration of the pension schemes, or for the collection of subscriptions and disbursement of pensions. The administration would remain in the hands of the Secretary of State, who would decide, after consultation with subscribers, all such matters as rates of contribution or pension, changes in the regulations, &c. The disbursement of pensions and collection of subscriptions would continue to be carried out through the ordinary paying agencies of the Government of India. The function of the Commissioners, therefore, would be solely that of holding and investing money handed over to them, and of supplying from the funds in their hands, when required, money for the payment of pensions.

10. Inasmuch as the proposals, if accepted, would involve a change in the conditions under which members of the Funds have hitherto subscribed, and moreover a change which, in some respects, for instance, in regard to the rate of interest realised, would be to their disadvantage, it is held that

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even though a large majority may desire the change it would be inequitable to impose on a minority who are content, as at present, to rely on the credit of the Government of India, the consequences of transfer. It is contemplated, therefore, that before any action is taken on the lines indicated above, circulars should be issued to all subscribers and pensioners setting out, as fully as possible, in the light of actuarial investigations now in progress, the prospects under the present conditions and those, necessarily less favourable, which may be expected if the funds are invested in sterling; and that each subscriber and pensioner should be asked to elect one or other of the two alternatives.

11. It should perhaps be mentioned that it will not be possible to put before the subscribers the precise effects of the election they will be called upon to make. The actuarial reports will show the results on the two suppositions that on the one hand the present arrangements are maintained *in toto* and on the other that the entire funds are invested in sterling. The effect of a reduction in the rate of interest is not, however, the same on all types of policy. It clearly varies with the probable duration of the liability, and must be greater in the case of a young subscriber, in respect of whom it is necessary to take account of possible pensions payable 70 years hence or even later, than in the case of an elderly subscriber or beneficiary. The results obtained for the whole of the funds will therefore only be true of portions of those funds if the portions are true samples of the whole, containing the proper proportion of each class, old and young, subscribers and beneficiaries. If, on the other hand, the result of the elections is to split the funds to a great extent by classes; if, for instance the majority of older subscribers and beneficiaries elect to remain under the existing conditions while the younger choose transfer to sterling investments; then the effects on the two portions of any fund would differ both *inter se* and from the effects ascertained for the fund as a whole. While, therefore, every effort will be made to arrange the material in such a manner as to give the fullest information, it will be necessary to state that the figures must be regarded as to some extent provisional, and that the final effects can only be known after the election is actually made.

12. The division of the various funds each into two portions, which, apart from the highly improbable contingency of a unanimous vote, must be the effect of the election, may produce certain undesirable results. The financial stability of any pension scheme depends on the realisation of the estimates made of the prospects of death, marriage, fertility, &c.; and the smaller the membership the greater is the probability of casual variations from these estimates. There is therefore a danger that, if one or the other portion of any divided fund were a small proportion of the whole, it might produce irregular results, and be found, at a later date, either to be unreasonably large in comparison with its liabilities or, more regrettably, to be inadequate to discharge them. In the case of those who elect for transfer to invested funds no special steps in relation to this possible danger seem necessary; firstly because it is improbable, in view of the opinions already elicited from subscribers as recorded above, that the funds constituted by these subscribers will be unduly small, and secondly because, as the position will have arisen by their own action and largely on their own initiative, it is reasonable that they should bear the consequences. In the case, however, of those who elect to abide by the present conditions it is

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felt that they should be protected from any ill-effects consequent on the withdrawal of the majority. It is contemplated, therefore, that if the numbers remaining are in any case too small to offer a reasonable prospect of stability, the fund should be taken over by the Government of India on lines similar to those followed in the case of the Presidency Funds in the last century; that is to say, that the Government of India should assume full possession of the balance on deposit in its hands and should receive, as sums due to Indian revenues and not as deposits, all future contributions; and should guarantee the payment from the revenues of India of pensions at such rate as might be shown, by actuarial valuations specially made for the purpose at the date of taking over, to be justified.

13. The above proposal would involve the possible extinction, in the case of the subscribers or pensioners electing to remain dependent on the Government of India, of their existing right to benefit derived from their accumulated funds, and the substitution of a different right, namely, to fixed benefits payable from the revenues of India. In the case also of those subscribers who elect to rely for their dependants' pensions on funds invested in sterling securities there would be, as has been said above, a material change in the conditions under which they have hitherto subscribed; and though in this case the change will have received the assent of all the individuals concerned, it is desirable, if not essential, that any doubts as to the legitimacy of the action should be set at rest by legal sanction covering both cases.

14. Inasmuch as it is desirable that the measures taken in the case of each fund should accord as closely as possible with the views expressed by subscribers, which may not in all cases be identical, it seems inadvisable to include in the Constitution Act itself definite and final provisions. A form of permissive enactment would appear to be preferable, and it is therefore proposed:—

That His Majesty should be empowered by the Constitution Act to direct by Order in Council the appointment of Commissioners for the purpose of receiving moneys accruing to or belonging to all or any of the Family Pension Funds, and of holding or investing the same for the purposes of the Funds; and to make regulations for the transfer to the Commissioners, in such manner and within such a period as may be prescribed, of the moneys accruing to the Funds and the balances in the hands of the Government of India: provided that the period prescribed shall not exceed 12 years from the 31st March following the passing into law of the Constitution Act: and provided further that the regulations shall not require the transfer to the Commissioners of moneys or balances relating to liabilities in respect of subscribers or pensioners who have signified their objection thereto:

That the interest and dividends received by the Commissioners so appointed on sums invested in their hands shall be declared exempt from Income Tax:

That the Order in Council may prescribe an authority to determine the rate of interest to be added on the balances remaining in the hands of the Government of India:

That the Order in Council may further provide that, in the case of any subscribers and beneficiaries who shall have signified their objections

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to the transfer to the Commissioners of the moneys or balances relating to their liabilities, it shall be open to the Secretary of State to grant to the said beneficiaries, or to the dependants of the said subscribers, a right to benefits payable from the revenues of India at fixed rates to be determined by him, and that the moneys and balances aforesaid shall in consideration of such grant lapse to the revenues of India and the Government of India shall be discharged of all liability in respect thereof.

[11TH OCTOBER, 1934.]

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RECORD C1 (*continued*)

II.—Government of India, Home Department, Resolution, dated 4th July, 1934

Section I.—General.

In accordance with undertakings given in the Legislative Assembly the Government of India have carefully reviewed the results of the policy followed since 1925 of reserving a certain percentage of direct appointments to Government service for the redress of communal inequalities. It has been represented that though this policy was adopted mainly with the object of securing increased representation for Muslims in the public services, it has failed to secure for them their due share of appointments, and it has been contended that this position cannot be remedied unless a fixed percentage of vacancies is reserved for Muslims. In particular, attention has been drawn to the small number of Muslims in the Railway service, even on those railways which run through areas in which Muslims form a high percentage of the total population.

The review of the position has shown that these complaints are justified, and the Government of India are satisfied by the enquiries they have made that the instructions regarding recruitment must be revised with a view to improving the position of Muslims in the services.

2. In considering this general question the Government of India have also to take into account the claims of the Anglo-Indians and domiciled Europeans and of the depressed classes. Anglo-Indians have always held a large percentage of appointments in certain branches of the public service, and it has been recognised that in view of the degree to which the community has been dependent on this employment, steps must be taken to prevent in the new conditions anything in the nature of a rapid displacement of Anglo-Indians from their existing position, which might occasion a violent dislocation of the economic structure of the community. The instructions which follow in regard to the employment of Anglo-Indians and domiciled Europeans in certain departments are designed to give effect to this policy.

3. In regard to the depressed classes it is common ground that all reasonable steps should be taken to secure for them a fair degree of representation in the public services. The intention of the caste Hindus in this respect was formally stated in the Poona Agreement of 1932 and His Majesty's Government in accepting that agreement took due note of this point. In the present state of general education in these classes the Government of India consider that no useful purpose will be served by reserving for them a definite percentage of vacancies out of the number available for Hindus as a whole, but they hope to ensure that duly qualified candidates from the depressed classes are not deprived of fair opportunities of appointment merely because they cannot succeed in open competition.

4. The Government of India have also considered carefully the position of minority communities other than those mentioned above and are satisfied that the new rules will continue to provide for them, as at present, a reasonable degree of representation in the services.

5. The Government of India propose to prescribe annual returns in order to enable them to watch the observance of the rules laid down below.

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GOVERNMENT OF INDIA, HOME DEPARTMENT, RESOLUTION, DATED 4TH JULY, 1934.

Section II.—Scope of Rules.

6. The general rules which the Government of India have with the approval of the Secretary of State adopted with the purpose of securing these objects are explained below. They relate only to direct recruitment and not to recruitment by promotion, which will continue to be made as at present solely on merit. They apply to the Indian Civil Service, the Central Services, Class I and Class II, and the Subordinate services under the administrative control of the Government of India, with the exception of a few services and posts for which high technical or special qualifications are required, but do not apply to recruitment for these services in the Province of Burma. In regard to the railways, they apply to all posts other than those of inferior servants or labourers on the four State-managed railways, and the administrations of the Company-managed railways will be asked to adopt similar rules for the services in these railways.

Section III.—Rules for Services recruited on an All-India basis.

7.—(1) For the Indian Civil Service and the Central and Subordinate services, to which recruitment is made on an all-India basis, the following rules will be observed:—

(i) Twenty-five per cent. of all vacancies to be filled by direct recruitment of Indians will be reserved for Muslims and $8\frac{1}{3}$ per cent. for other minority communities.

(ii) When recruitment is made by open competition, if Muslims or the other minority communities obtain less than these percentages, these percentages will be secured to them by means of nomination; if, however, Muslims obtain more than their reserved percentage in open competition, no reduction will be made in the percentage reserved for other minorities, while if the other minorities obtain more than their reserved percentage in open competition no reduction will be made in the percentage reserved for Muslims.

(iii) If members of the other minority communities obtain less than their reserved percentage in open competition and if duly qualified candidates are not available for nomination, the residue of the $8\frac{1}{3}$ per cent. will be available for Muslims.

(iv) The percentage of $8\frac{1}{3}$ reserved for the other minorities will not be distributed among them in any fixed proportion.

(v) In all cases a minimum standard of qualification will be imposed, and the reservations are subject to this condition.

(vi) In order to secure fair representation for the depressed classes duly qualified members of these classes may be nominated to a public service, even though recruitment to that service is being made by competition. Members of these classes, if appointed by nomination, will not count against the percentages reserved in accordance with clause (i) above.

(2) For the reason given in paragraph 2 of this Resolution the Government of India have paid special attention to the question of Anglo-Indians and domiciled Europeans in gazetted posts on the railways for which recruitment is made on an all-India basis. In order to maintain approximately

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their present representation in these posts the Anglo-Indian and domiciled community will require to obtain about 9 per cent. of the total vacancies available to members of Indian communities. The Government of India have satisfied themselves that at present the community is obtaining by promotions to these gazetted posts and by direct recruitment to them more than 9 per cent. of these vacancies. In these circumstances it has been decided that no special reservation is at present required. If and when the community is shown to be receiving less than 9 per cent. of these vacancies it will be considered what adjustments in regard to direct recruitment may be required to safeguard their legitimate interests.

Section IV.—Rules for Services recruited locally.

8. In the case of all services to which recruitment is made by local areas and not on all-India basis, e.g., subordinate posts in the Railways, Posts and Telegraphs Department, Customs Service, Income-tax Department, &c., the general rules prescribed above will apply subject to the following modifications:—

(1) The total reservation for India as a whole of 25 per cent. for Muslims and of 8⅓ per cent. for other minorities will be obtained by fixing a percentage for each Railway or local area or circle having regard to the population ratio of Muslims and other minority communities in the area and the rules for recruitment adopted by the Local Government of the area concerned.

(2) In the case of the Railways and Posts and Telegraphs Department and Customs Service in which the Anglo-Indian and domiciled European community is at present principally employed, special provisions described in the next paragraph are required in order to give effect to the policy stated in paragraph 2 above.

9.—(1) (*a*) The Anglo-Indian and domiciled European community at present hold 8·8 per cent. of the subordinate posts on the Railways. To safeguard their position 8 per cent. of all vacancies to be filled by direct recruitment will be reserved for members of this community. This total percentage will be obtained by fixing a separate percentage (i) for each railway having regard to the number of members of this community at present employed, (ii) for each branch or department of the Railway service, so as to ensure that Anglo-Indians continue to be employed in those branches in which they are at present principally employed, e.g. the Mechanical Engineering, Civil Engineering and Traffic Departments. No posts in the higher grades of the subordinate posts will be reserved, and promotion to these grades will be made, as at present, solely on merit.

(*b*) The reservation of 25 per cent. for Muslims and 8 per cent. for Anglo-Indians makes it necessary to increase the reservation of 33⅓ per cent. hitherto adopted for all minority communities, in order to safeguard the interests of minorities other than Muslims and Anglo-Indians. It has been decided, therefore, to reserve for them 6 per cent. of vacancies filled by direct recruitment, which is approximately the percentage of posts held by members of these communities at present. This total reservation will be obtained in the manner prescribed in paragraph 8 (1) of this Resolution and will not be further subdivided among the minority communities.

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GOVERNMENT OF INDIA, HOME DEPARTMENT, RESOLUTION, DATED 4TH JULY, 1934.

(2) In the Posts and Telegraphs Department the same principles will be followed as in the case of the Railways for safeguarding the interests of the Anglo-Indian and domiciled European community, which at present holds about 2·2 per cent. of all subordinate posts. It has been ascertained that if a reservation is made for this community of 5 per cent. of the vacancies in the branches, departments or categories which members of this community may reasonably be expected to enter, it will result in securing for them a percentage equal to slightly less than the percentage of subordinate posts which they at present hold. In the departments or branches in which a special reservation is made for Anglo-Indians, the reservation of vacancies for other minorities will be fixed so as to be equal approximately to the percentage of subordinate posts at present held by them. The total reservation for Anglo-Indians and other minority communities, other than Muslims, will in any case be not less than $8\frac{1}{3}$ per cent.

(3) Anglo-Indians are at present largely employed in subordinate posts in the Appraising Department and in the superior preventive service at the major ports. For the former department special technical qualifications are required, and in accordance with the general principles indicated in paragraph 6 it will be excluded from the operation of these rules. In the Preventive Service special qualifications are required, and the present system of recruitment whereby posts are reserved for Anglo-Indians will be maintained.

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RECORD C1 (*continued*)

III.—A Note by the Secretary of State for India [30th November, 1933] on Terrorism in India

1. Members of the Committee will remember that I undertook in the summer to furnish a note which would give a picture of what terrorism actually means, particularly in the Presidency of Bengal. In Bengal terrorism has a 30 years' history and exists on a scale that is quite unparalleled in any other Province. I therefore circulate to the Committee, as Appendix A, a separate and comprehensive note which I have received from India, giving an account of terrorism in Bengal, with full statistics of outrages.

2. A study of this note and of the detailed statistics at the end will show that during the present year the measures taken by the authorities to deal with the terrorist menace in Bengal have begun to bear fruit and have resulted in a considerable drop in the number of serious terrorist crimes. At the same time, outrages still occur, new recruits are still joining the movement, and much yet remains to be done before there can be any slackening of effort on the part of Government, or any relaxation of the measures found necessary by the authorities to deal with those responsible. Past experience has shown that, in the case of the terrorists, nothing can be hoped from a policy of conciliation. The Note shows what has been the result of the decisions to release offenders or relax control which have been taken in the last 13 years. The terrorists who had been interned under the Defence of India Act were all included in the general amnesty of 1920. They merely utilised their freedom to reorganise their forces, and on the failure of Mr. Gandhi's non-co-operation movement of 1920–22 they launched a fresh terrorist outbreak, which by 1925 was so serious that special powers to deal with it had to be taken in the form of the Bengal Criminal Law Amendment Act and Ordinance. Again, by September 1928 all the détenus who had been interned under the Bengal Act had once more been released in view of the lull then existing in terrorist activities. The lull continued until April 1930, and the powers of detention and arrest without trial contained in

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the Bengal Act were allowed to lapse at the end of the five-year period provided in that Act. Barely a fortnight later occurred the Chittagong Armoury Raid—the first manifestation of a renewed campaign of violent crime. With these experiences as a warning, it is clear that any change in our present policy towards terrorism would be fraught with disaster.

3. For the rest of India, I have thought it sufficient to circulate, as Appendix B, a list of terrorist outrages in the various Provinces up to the 30th June 1933. In circulating this list I desire to make the following comments only.

Probably the most persistent terrorist organisation outside Bengal is the Hindustan Republican Association, subsequently styled the Hindustan Socialist Republican Association or Army. This was originally started, after the failure of Mr. Gandhi's first mass civil disobedience campaign, by two Bengalis in the United Provinces. The rules of the Association stated that "the object of the Association shall be to establish a Federated Republic of the United States of India by an organised and armed revolution." Each provincial organisation was to have its various departments and each was to concentrate on crimes of violence with a view to collect money and arms; for the enforcement of discipline assassination was made permissible. This Association has since its inception been very loosely knit; at times it has almost ceased to exist, but it has frequently come to notice subsequently, and, as will be seen later, it has even been established in Madras. It has functioned in Bihar, the United Provinces, Punjab and Delhi. There are indications that at present it is entering into an alliance with active communists; its activities require careful watching, but there is no reason to doubt that the police forces in the various Provinces are well equipped to deal with it.

4. Apart from this Association, the manifestations of terrorism in Provinces outside Bengal have in the main been of a sporadic and isolated character. In the United Provinces, which from its geographical situation has always been liable to the permeation of revolutionary influences from Bengal, the most serious incident is that connected with what is known as the Kakori gang, which was largely of Bengali origin. Though the list of attempted outrages is a long one, it is fortunate that in very few cases have they been successful; only one attempt has been made, at Jhansi in August 1930, to assassinate a British officer and that was frustrated without difficulty. In Bihar and Orissa and Assam, where again there have been signs of terrorist activity from time to time, the provincial police have proved themselves to be capable of disposing of any conspiracy within a short space of time and under the powers conferred by the ordinary law. In Bombay the instances of attempted outrages have been too few and isolated to

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indicate the presence of any definite terrorist organisation, and it was the considered conclusion of a police officer placed on special duty in 1930–31 to enquire into the extent to which revolutionary doctrines had taken root in the Presidency, that there was no organised party in existence for the purpose of committing political outrages or connected with revolutionary movements in other Provinces. The same is true of the Central Provinces. In Madras there was an outbreak of terrorist crimes in the early part of this year, but timely action by the police, which resulted in the prosecution of 22 persons in the Madras City Conspiracy Case, prevented any furthur spread of this form of activity. The Punjab had to deal with a severe outbreak of revolutionary activity in 1930, and in December of that year an attempt was made to murder the Governor; but following the execution of Bhagat Singh in March 1931 and the passing of the Press Act in October 1931 and the Punjab Criminal Law Amendment Act of 1932, the situation has greatly improved and terrorism may now be considered to be definitely under control. There, as elsewhere, however, constant vigilance is necessary if law and order are to be maintained, for there is reason to apprehend that there is still considerable covert sympathy with the movement among a section of the people, and the scope for recruitment in schools and colleges is substantial. As regards the North-West Frontier Province, it may be pointed out that the population of that Province is predominantly Muslim, while the members of the various terrorist parties are almost all Hindus. Consequently the appeal of organised terrorism has hitherto been small. Though the Pathan is known to be violent by nature and easily moved to assassination by motives of fanaticism or revenge, this is a different matter from the murder clubs which constitute the terrorist groups elsewhere.

5. To sum up, terrorism has its birth in Bengal, and where it has shown its head in other Provinces it can almost invariably be traced to Bengali influences. It is at all events true to say that in no Province but Bengal is there that widespread and deep-rooted terrorist mentality which is essential for its development. It is this which accounts for the fact that when terrorist conspiracies have existed elsewhere Government has been able to deal more promptly and more effectively with them than in Bengal. Gang after gang has been successfully broken up by the Police with no more than the ordinary provisions of the Penal Code to assist them. That remains the position to-day. Efforts, however, are being made to effect a combination of terrorists, communists, and Ghadr Party* conspirators for the purpose of bringing about

* A subversive organisation composed of Sikhs living in California, other parts of North and South America, and also in the Punjab, which is at present favourably viewed by the Communist International.

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mass risings in the future. So long as the Police can contrive to obtain inside information regarding these movements, as it may safely be claimed that they have done in the past, there is no great cause for anxiety; but there is still every reason for extreme vigilance.

6. I do not wish to minimise in any way the danger that this terrorist movement may still hold for us. Still less do I wish to convey any impression that we are not conscious of what this sinister campaign of violence has meant to our officers, both British and Indian. There are few parts of India where it has not at times demanded most anxious vigilance and prompt executive action; there are parts, and particularly the province of Bengal, where it has caused a deplorable loss of valuable lives. I cannot pay too high a tribute to the courage and the high sense of duty which has been shown by our officers in facing day by day the dangers and anxieties involved in the long-continued fight against these conspiracies of anarchy and murder.

7. In this connection a word may be said about some of the special measures adopted by the authorities to carry on the fight in Bengal. In paragraph 21 of Annexure A reference is made to the legislative enactments which form the basis of Government action. Under one of these enactments the campaign of incitement to murder in the public Press has been largely checked; under another (as will be seen from Annexure IV) over 2,000 suspects have been arrested. Where serious outrages have taken place and the ends of justice foiled by the hostile or unresponsive attitude of the local inhabitants, collective fines have been imposed or additional police posted at the expense of the appropriate section of the inhabitants. In the particularly difficult district of Chittagong, where absconders from the armoury raid at one time roamed and terrorised the countryside, still stricter measures have been enforced. After the raid two battalions of troops joined forces with the police and maintained constant pressure on the enemy by patrolling the country and searching villages and houses; in addition various restrictions have been imposed from time to time such as curfew orders, the prohibition of the use of bicycles by Hindu youths, and finally the imposition of an "identity card" system, by which the movements of students and young men could be controlled. In addition to these punitive and preventive measures, a constructive attempt has been made, with good results, to improve the morale of the law-abiding citizen and to undermine that of the terrorist by the quartering of two brigades of troops in certain districts of the Presidency.

8. In conclusion, I would draw the attention of the Committee to the relations, limited though they may be, which exist between

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terrorism and other subversive movements. The particular relation between communism and terrorism in Bengal is treated in paragraphs 11 and 32 of Appendix A. As regards other Provinces, reference is made in paragraph 3 above to the connection between the Hindustan Socialist Republican Association and communists, and in paragraph 5 to the attempts at a *rapprochement* between communists, terrorists and members of the Ghadr Party. It is unnecessary for me to do more than mention these tendencies; the dangers which have been and may be involved in such combinations are obvious.

[30th NOVEMBER, 1932.]

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A NOTE BY THE SECRETARY OF STATE FOR INDIA ON TERRORISM IN INDIA.

APPENDIX A.

Terrorism in Bengal.

SECTION I. 1905–1919.

1. Terrorism in Bengal had its origin in the anti-partition agitation. The original organisers were two brothers, Barindra and Arabinda Ghosh, and they laid the foundations of the main Western Bengal terrorist association, the Jugantar Party. A year or two later one Pulin Behari Das started a similar organisation in Eastern Bengal, out of which evolved the other great terrorist party—the Anushilan Samity. Starting with inflammatory writings in the Press, these terrorist organisations eventually started a campaign of dacoity and murder on a widespread scale, and by 1915 the situation had grown so serious that very drastic powers had to be taken under the Defence of India Act to enable the police to deal with the menace. It is unnecessary to deal in any further detail with this early period of terrorist history, for it was exhaustively dealt with in the report of the Committee appointed in December 1917 under the presidentship of the Hon'ble Mr. Justice Rowlatt.

The Committee summarised the position as follows :—

> "Since the year 1906 revolutionary outrages in Bengal have numbered 210 and attempts at committing such outrages have amounted to 101. Definite information is in the hands of the Police of the complicity of no less than 1,038 persons in these offences. But of these only 84 persons have been convicted of specified crimes in 39 prosecutions, and of these persons 30 were tried by tribunals constituted under the Defence of India Act. Ten attempts have been made to strike at revolutionary conspiracies by means of prosecutions directed against groups or branches. In these prosecutions 192 persons were involved, 63 of whom were convicted. Eighty-two revolutionaries have rendered themselves liable to be bound over to be of good behaviour under the preventive sections of the Criminal Procedure Code. In regard to 51 of these, there is direct evidence of complicity in outrages. There have, moreover, been 59 prosecutions under the Arms and Explosives Acts which have resulted in convictions of 58 persons."
>
> "The main reason why it has not been possible by the ordinary machinery of the criminal law to convict and imprison on a larger scale those guilty of outrages, and so put down crime, is simply want of evidence. There have been 91 dacoities since 1907, of which 16 were accompanied by murder, and from 1st January 1915 to 30th June 1916 there were 14 murders, 8 of them being of police officers, for which it has not been possible to put anyone upon trial. This difficulty in obtaining legal evidence has been no doubt greatly enhanced by terrorism. But apart from that the inherent difficulties are formidable."

Then after an exhaustive examination of the difficulties, they found that it would be necessary to provide for the continuance, with certain limitation, of the powers conferred by the Defence of India Act. "By these means alone," they wrote, "has the conspiracy been paralysed for the present, and we are unable to devise any expedient, operating according to strict judicial forms, which can be relied on to prevent its reviving, to check it if it does revive, or, in the last resort, to suppress.

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it anew. This will involve some infringement of the rules normally safeguarding the liberty of the subject. We have endeavoured to make that infringement as small as we think possible consistently with the production of an effective scheme." Again they wrote:—"The powers we suggest for dealing with future emergencies must be ready for use at short notice. They must, therefore, be on the statute book in advance. That fact alone is calculated to have some moral effect. To postpone legislation till the danger is instant is, in our view, to risk a recurrence of the history of the years 1906–17."

A Bill was, accordingly, drafted on the lines recommended, and passed in the Assembly in Delhi in March 1919 as the Revolutionary and Anarchical Crimes Act, 1919. The Act was stillborn, but the accuracy of the findings of the Committee has been proved by subsequent events.

2. Before the Rowlatt Committee had concluded their labours, a committee of two judges of the High Courts (viz. Chandravarkar and Beachcroft, JJ.), respectively, of Bombay and Calcutta, was appointed to examine and report on the cases in which the Local Government had taken action under the Defence of India Act. Between June 1916 and November 1919, 1,029 persons had been interned under the Act, and the judges after examining over 806 cases advised that in only six of them did they think that there were not sufficient grounds for believing that the persons concerned had acted in a manner prejudicial to the public safety or the defence of British India. This was a striking testimony to the care with which the information had been sifted by Government before they took action. The report of these judges also supported the conclusion of the Rowlatt Committee that revolutionary conspiracies of the kind which occurred in Bengal cannot be checked by the ordinary processes of the law. After discussing the special conditions of the problem, they wrote, "Under these circumstances, it is impossible to secure a fair trial by the procedure of the Evidence Act and the Criminal Procedure Code which is appropriate only to normal conditions of crime. The procedure to deal with revolutionary crime has to be practicable in the sense of being appropriate to its special conditions, so as to secure as fair a trial as is feasible under the exceptional situation."

3. Early in 1920 after the Royal Proclamation of 1919 all those who had been interned under the Defence of India Act were released and the amnesty was extended gradually to most of the leaders of the revolutionary movements.

SECTION II. 1920–1929.

4. The Montagu-Chelmsford Reforms were formally inaugurated by H.R.H. the Duke of Connaught in February 1921. These reforms were followed, in 1922, by the repeal of virtually all the enactments supplementing the Criminal Law except the Seditious Meeting Act, 1911, and Part II of the Indian Criminal Law Amendment Act of 1908. The Rowlatt Act, which had never been put into operation, and the Indian Press Act, were also repealed. The reforms had, however, failed to meet the demands of the extremists and the destruction of the reformed system of government became the avowed object of all the extremist political parties. The period was one of great political and economic difficulty. The high prices prevailing had engendered a vague resentment against the Government, the religious feelings of the Muslims had been greatly disturbed by the misfortunes of Turkey, and political feelings stirred by

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events in the Punjab. Mr. Gandhi adroitly took advantage of all these factors to launch his non-co-operation movement in 1920. Schools and colleges and law courts were to be boycotted, titles renounced, national schools and arbitration courts started, foreign goods, and particularly cloth, boycotted, with a view to bring Government to its knees. It took a little time before the full effects of the furious agitation among the masses made themselves felt. Though Mr. Gandhi's ideas were non-violent, his followers gradually got out of control, and the movement eventually led to the shocking tragedy of Chauri Chaura in the United Provinces in February 1922. In Bengal the results of the movement were manifested in the mutiny in the Rajshahi Jail, the exodus of tea garden coolies from Assam, and a strike on the Assam-Bengal Railway and the India General Steam Navigation Co.'s steamer services. In the country districts the agitation was directed largely against the police, including the village police, and in many districts there was a refusal to pay the chaukidari tax and the rents of Government and private landlords. All through, the Press poured forth a torrent of propaganda and abuse and kept the Province in a ferment of excitement.

5. The terrorists, now freed from restraint, were content to watch developments while utilising every opportunity (such as the volunteer movement) of drawing their followers together and extending their influence. Endeavours were made to organise *ashrams* on lines similar to those which played so important a part in former movements. Leading members of the two main organisations were active in every form of propaganda, particularly among the student class. Every cause of unrest was exploited and every centre of agitation utilised for the dissemination of terrorism and capture of new recruits. Many of their leaders obtained responsible positions in district Congress committees and used their positions to consolidate their followers. This penetration of the Congress machine had very important consequences, for it helped them internally in the matter of recruitment and organisation and externally in the matter of public sympathy. The penetration was so rapid that in 1924 the terrorists were in a position to compel the Bengal Provincial Congress to put through a resolution eulogising one Gopi Mohan Shaha, who was executed for assassinating Mr. Day of Calcutta in mistake for Sir Charles Tegart, the Commissioner of Police. The time was to come when there were few districts in the Province where terrorists were not represented on local Congress committees.

6. Being satisfied by Mr. Gandhi's arrest and conviction, in 1922, that his programme had definitely failed, they decided then to resume their campaign of violence. There is reason to believe that the Chittagong Congress of April 1922 was the occasion of the decision to resume violent methods. This second terrorist campaign was ushered in, like the first, by a resumption of terrorist propaganda in the extremist Press. Within a short time of the repeal of the Indian Press Act in March 1922, mushroom vernacular journals like the *Atma Sakti*, the *Sarathi*, the *Mukti Kam*, *Bijali*, and others began to publish articles having a direct or indirect tendency to incite violent hostility against Government and the British. The commonest type of propaganda was to denounce the economic oppression of the British in India, to extol in mystical and sometimes in poetic language freedom and self-sacrifice, and to publish appreciative articles in praise of revolutionaries. This last was a new feature of revolutionary propaganda, and its nature will appear from the

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following extract from the annual report on Indian newspapers in Bengal for the year 1923:—

> "A noteworthy feature in the year under review was the large amount of writing in frank praise of old revolutionaries. The *Ananda Bazar Patrika* referred to them as selfless youths with indomitable resolution, who kindled the lamp of life by undergoing death. The *Prabartak*, in continuation of previous issues, extolled Kanai Lall Dutt (the murderer of the approver Narenda Lal Gossain in the Alipore Conspiracy Case). These are primarily narratives. Highly appreciative biographical notices of Jatindra Mukherjea and his three associates (killed at Balasore in an encounter with the police) now appeared in many papers. It was explained, however, that this laudation did not necessarily imply adoption of their methods. The justification was set forth by the *Sarathi*. The distrust of the people must be removed. To give them such a training, the life stories of self-sacrificing heroic patriots must be recited to them. We may not adopt their methods, but are we not on that account to respect their renunciation, their heroism, and their patriotism?"

7. The Jugantar group was the first to strike. In May 1923 they committed a dacoity with double murder at Kona near Howrah; in the same month the Ultadinghi post office was looted. The same gang committed a robbery with murder at Garpar Road on the 30th July in which firearms were used. The murder of a postmaster at Sankaritola followed. The investigation in this resulted in full corroboration of the information already in the possession of Government, and showed that these outrages were all the work of a particular group of the terrorist party. Seven members of this group were put on trial in the Alipore conspiracy case, but many of the facts in the possession of Government could not be placed before the court and they were eventually acquitted.

The situation after these outrages had been committed was serious. It was clear that the terrorists had been encouraged by the belief that Government could no longer deal with their conspiracies effectively. It was clear also that unless immediate action was taken, Bengal would again be exposed to the dangers of the previous outbreak of revolutionary crime. Accordingly, several of the important suspects, including Subash Chandra Bose, the Chief Executive Officer of the Corporation, were incarcerated under Regulation III of 1818. This action served, however, to check the movement only for the time being. New leaders were found and operations were resumed. In December 1923 a robbery of Rs. 17,000, the property of the Assam-Bengal Railway, was committed at Chittagong by four *bhadralok* youths armed with revolvers. Subsequent investigation showed that certain *bhadralok* youths were hiding in suspicious circumstances in a house in a village at some distance from Chittagong. The search of this house 10 days after the robbery led to the discovery of a number of weapons and ammunition of a foreign make. The attempt to arrest the occupants of the house led to a running fight between them and a body of police and to the arrest of two youths with firearms. An attempt was made to decoy from his house one of the chief witnesses in the robbery case with the intention of murdering him, and on the next evening a sub-inspector who had arrested one of the accused in this case and knew the others by sight, was shot at Chittagong.

Some of the accused in the Alipore conspiracy case stated subsequently that one of the immediate objects of the conspiracy was the assassination

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of police officers. In the early part of 1923 persons were found watching the movements of these officers and their residences. These watchers were themselves placed under observation, and traced to places known to be haunts of the conspirators. In January 1924 Mr. Day was murdered in Calcutta, by Gopi Mohan Saha, in mistake for Mr. Tegart (later Sir Charles). In March, a bomb factory was discovered in Calcutta fully equipped with explosives and implements for loading and fitting bomb-shells, of which a number, both loaded and unloaded, were found. The bombs showed a marked advance on anything which had previously come to light. About the same time a young *bhadralok* was severely injured while handling explosives at Faridpur. In July a well-known member was arrested in the streets of Calcutta with a fully-loaded revolver in his possession. At the end of July "Red Bengal" leaflets made their appearance. The first issue announced the initiation of a campaign of assassination of police officers, the second impressed on the political leaders of Bengal the necessity for the existence of an active violence party. This was followed in August by the explosion of a bomb in a *khaddar* shop in Mirzapur Street. The man who actually threw the bomb was pursued and seized and another arrest was made at the same time on the spot.

8. The above is a brief outline of the outward manifestations of the existence of a widespread conspiracy. Apart from these, Government were in possession of information to show that, during the year 1924, the conspirators attempted to assassinate police officers, high Government officials and suspected members of their own organisations. No less than five such attempts were made between July and October, and the escape of the intended victims could only be regarded as providential. In some cases the would-be assassins suspected police vigilance, in others they were thwarted by the unexpected movements of their intended victims. In June 1924 the Bengal Provincial Congress at their meeting at Serajgunj passed a resolution expressing admiration for the spirit of self-sacrifice exhibited by Gopi Mohan Saha. The effects of the resolution were electrical. It was by far the most potent instrument for organisation, and became a perpetual incitement to the youth of Bengal to take to violent ways.

9. The situation towards the end of 1924 had, therefore, become one of considerable anxiety. The existence of a widespread revolutionary movement was hardly disputed; indeed, it was acknowledged by Mr. C. R. Das, the Swarajist leader, himself. It was daily increasing in strength, and as in the years before 1916, ordinary measures had failed to check it. The Local Government felt bound, therefore, to meet the menace by obtaining from the Governor-General the issue of an Ordinance arming the Executive with powers similar to those they had had under the Defence of India Act. A special session of the Legislative Council was called in the following January to pass a Bill to replace the Ordinance, but leave to introduce the Bill was refused by the Council. The Bill was, accordingly, certified by the Governor; under it the special powers were to remain in force for five years. The powers taken were not as wide as under the Defence of India Act. The definition of persons against whom section 11, which allowed of preventive arrest and detention by Executive order, could be used was narrowed to prevent the net being cast too wide, and to avoid the criticism that it was aimed at the Swaraj party. The schedule, of offences in connection with which action could be taken, too, was shortened, and the net result was that it was possible to take action only against active

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terrorists as distinguished from recruiters or organisers. Nevertheless, prompt use of these powers, by placing leaders and active members under restraint, enabled Government to bring the movement under control. Between the issue of the Ordinance in 1924 and the end of 1928 only one murder occurred, the brutal murder of a distinguished police officer, Rai Bhupendra Nath Chatterjee Bahadur, Special Superintendent of Police, Intelligence Branch, in the Alipore Jail, in May 1926. Only 187 persons were dealt with under the Act and by September 1928 all had been set free, though a certain number remained for some time longer under restriction orders which limited their movements. When the Act expired in 1930 no use had been made of the special powers for the purpose of making fresh arrests for nearly three years. This result was made possible by the recognition on the part of the terrorist leaders that they were not sufficiently well organised to conduct a campaign against Government. It was not an indication that terrorist activities had ceased.

10. The position in December 1929 was, in fact, that the principal leaders of the two parties—the Jugantar and the Anushilan—had an ambitious scheme for bringing about a general rising. For some time there had been much controversy over the adoption of a resolution by the Congress, favouring complete independence as India's goal. The Congress sessions of 1928 and 1929 afforded opportunities for a meeting of revolutionary leaders all over India, and there is reason to believe that plans for a rising were discussed and given definite shape on these occasions. But the principal revolutionary leaders considered that an adequate supply of arms and man-power had not yet been collected, and were, therefore, in favour of waiting until the deficiencies were supplied. A large number of groups of terrorists led by young hotheads had sprung up, who wanted a campaign of immediate violence launched. As will be seen in the next section, it was the latter who forced the issue.

11. To make this section complete, it is necessary to add a word dealing with the influence of events in Russia on the thought and programme of the terrorists.

The Bolshevik revolution had received the close attention of Indian revolutionaries by reason both of the violent methods on which it was based and also because of its connection with several Indian revolutionaries, of whom the most notable was Narendra Bhattacharya *alias* M. N. Roy, who had been prominently associated with German plots during the war, and was later maintained by the Third International to organise action in India. Several members of the Anushilan and Jugantar organisations were sent to Europe to study revolutionary methods, and by 1924–25 the influence of this movement is definitely traceable in the ideas and plans of terrorists in general.

In March 1925 definite information was received that Sachindra Sanyal, a notorious revolutionary of the Anushilan party, who was convicted in the Kakori conspiracy case (1926), was in touch with M. N. Roy, from whom he was receiving money. The latter's *Appeal to the Nationalists*, which was an attempt to lead the Congress back to civil disobedience and mass revolution, was distributed at the Belgaum Congress by two members of the All-India Congress Committee. There is also reason to believe that the resolution to establish a "political sufferers' fund," which was thrown out at the Belgaum Congress and passed subsequently at a later session, was inspired by M. N. Roy and adopted by the Jugantar party. A mass of proscribed revolutionary literature addressed to various

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revolutionaries continued to be intercepted in the foreign mail. Towards the end of 1925 a party called the "Labour Swarajya Party" was formed, by persons closely connected with the Congress, of which the name was subsequently changed to "The Bengal Labour and Peasants Party." The object of the party was "the attainment of Swarajya in the sense of complete independence of India based on economic and social emancipation and political freedom of men and women." Its demands were the nationalisation of "industries and public utilities such as mines, railways, telegraphs, inland waterways, tramways, &c." under the control of "Workers' Committees," and the "ultimate ownership of land to be vested in autonomous village communities consisting of intellectual as well as physical labourers." Its organ, *The Langal*, ceased after 15 issues for want of funds, and the party itself laboured under the ever-present threat of bankruptcy, but a secret branch of it was reported to be working in co-operation with the Anushilan Samity.

The Anushilan Samity's programme at this stage (1926) was itself greatly influenced by M. N. Roy, and advocated the preparation of the masses for revolution by inculcating first communist, and then terrorist, doctrines.

SECTION III. 1930–1933.

12. Mr. Gandhi began the civil disobedience movement early in 1930 by his march on Dandi. His action at once released the widespread wave of unrest which had gathered round the discussions of the future constitution, and the personnel of the Simon Commission, during the past two years. The general wave of rebellion against authority which followed provided the terrorists with an unrivalled opportunity for launching their campaign, of which the younger groups were not slow to take advantage. The Chittagong Jugantar group, one of the most active sections of the new violence party, which was in control of the Congress organisation in Chittagong, was the first to take the offensive.

13. On the night of the 18th April they carried out a spectacular and daring raid on a much larger scale than anything previously attempted by the terrorists. Four batches of varying strength set out from the Congress office in Chittagong. One was to capture the Police Armoury, one to capture the Auxiliary Force Armoury, one to massacre the Europeans in the Club, and the other to destroy the telephone exchange and telegraph office. As it happened, the Club was practically deserted and the party deputed to attack the Club joined the other groups. The Police Armoury party consisted of about 50 youths led by Ananta Singh and Ganesh Ghosh. All were in khaki, and the leaders were dressed as officers. They were challenged by the police sentry, who was shot down, while the remainder of the force swarmed into the building, broke into the Armoury and Magazine, and armed themselves with muskets, revolvers, and ammunition. Practically the same procedure was followed in the case of the Auxiliary Force Armoury. The sentry, another sepoy, and the Sergeant Major who lived close to the Armoury, were shot dead. The place was then forced open, and pistols revolvers, rifles and a Lewis gun were taken away. While this party were in possession of the Armoury they fired on motor-cars passing on the road and killed a railway guard, the driver, and assistant driver of a taxi and a police constable who was in the car of the District Magistrate. They also wounded the District Magistrate's driver and the occupant of a

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passing taxi. The telegraph office party seized and chloroformed the telephone operator, hacked the telephone board to pieces and set fire to it. The Telegraph Master was fired at when he came to the operator's assistance, but he returned with a gun and drove the raiders off before they destroyed the telegraph office. This party then went to the police lines and joined the main party. A counter-attack under the Deputy Inspector-General of Police was organised, and although few in numbers and poorly equipped, it succeeded in forcing the raiders to leave the town and retreat towards the hills. The raiders thus had to abandon their further project of raiding the Government Treasury and massacring the Europeans in the town.

14. Meanwhile, another party acting under orders of the terrorist leaders had cut all telegraph communications between Chittagong and the outside world, and attempted to interrupt railway communications by removing a rail and derailing a goods train; yet another party attempted, unsuccessfully, to derail the down-mail train to Chittagong at a place 70 miles from Chittagong on the same night.

Information of the raid was sent out by wireless from a ship in the harbour, and reinforcements reached Chittagong on the 20th April. Various skirmishes took place between the Government forces and the rebels, several of whom were shot dead, but the principal leaders remained absconding. One surrendered on the 28th June in Calcutta, and on the 31st August three others were arrested and one shot dead at Chandernagore (near Calcutta). The principal leader, Surjya Sen, was not arrested until 1933, and it is only recently that he has been condemned to death along with another of his associates by a Special Tribunal. His appeal is now pending before the High Court in Calcutta.

15. The news of this coup, unprecedented in the annals of terrorist crime in Bengal, was received by revolutionaries all over the Province with delight. The effect was electric and from that moment the outlook of the Bengali terrorists changed. The younger members of all parties, whose heads were already crammed with ideas of driving out the British by force of arms, but whose hands had been restrained by their leaders, clamoured for a chance to emulate the Chittagong terrorists. Recruits poured into the various terrorist groups in a steady stream. The leaders could no longer hope, nor did they wish, to keep them back, for in the face of the results achieved at Chittagong there seemed to be no reason why their over-cautious policy should be maintained. The romantic appeal of the raid attracted into the fold of the terrorist party women and young girls, who from this time onwards are found assisting the terrorists as housekeepers, messengers, custodians of arms and sometimes as comrades.

16. The Bengal Criminal Law Amendment Act of 1925 was due to expire on 21st March 1930. In November 1929 the police view was that the Act should remain permanently in force to act as a constant restraining influence on revolutionaries. It was urged that a five years' limit had prevented any reformation of those with whom it dealt. In the discussions that followed the following alternatives were considered:—

(i) The Local Government should be empowered to bring the Act into force by notification, at any time, and for as long as necessary.

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(ii) The Act should be allowed to lapse with the prospect of immediate re-enactment when necessary.

(iii) Continuance of the Act for five years.

(iv) Continuance for five years of the sections relating to trial by special procedure.

This last proposal was eventually agreed to and enacted as the Bengal Criminal Law Amendment (Part Continuance) Act, 1930, on the 1st April 1930.

After the Chittagong raid, however, the lost powers of arrest and detention were immediately conferred by Ordinance. In July, the Bengal Government asked for the replacement of the Ordinance by permanent legislation. In the Act as passed, however, a five-year limit was imposed. With this modification the Bill was passed by the Legislative Council by a large majority and became law as Bengal Act VI of 1930 on the 16th October 1930.

17. To resume the narrative of events, the Chittagong Armoury raid took place, as has been stated, in April. In May, the leaders of the main Jugantar party in Calcutta drew up a programme of terrorism and made arrangements for the manufacture of bombs. Information in possession of Government shows that the principal features of this programme were:—

(1) The murder of Europeans in hotels, clubs and cinemas, simultaneously in Calcutta and the districts by bombs.
(2) The burning of the aerodrome in Dum-Dum with petrol.
(3) The cutting off of the gas and electric supply of Calcutta, by destroying the gas works and electric power stations.
(4) The cutting off of the petrol supply of Calcutta by destroying the depot at Budge-Budge.
(5) The disorganisation of the tramway service in Calcutta by cutting overhead wires.
(6) The destruction of telegraphic communication between Calcutta and the districts in Bengal.
(7) The destruction of bridges and railway lines by dynamite and hand grenades.

The first blow was struck on the 25th August 1930 by an attempt made by Anuja Sen and Dinesh Chandra Mazumdar (under orders of the Jugantar leaders) to murder the Commissioner of Police, Sir Charles Tegart, in Dalhousie Square. One of the bombs exploded behind the Commissioner's car and killed Anuja Sen. Dinesh Mazumdar, who was also wounded by the bomb, managed to run away a short distance, but was arrested. Two loaded bombs and one loaded revolver were found on the person of Anuja Sen, and one loaded bomb, one loaded revolver, and four spare cartridges on the person of Dinesh Mazumdar. It was the intention of the Jugantar leaders that the murder of Sir Charles Tegart should be the signal for all Jugantar groups in the Province to begin a widespread series of outrages.

On the 26th August a bomb was thrown into Jorabagan Police Station in Calcutta, but fortunately it exploded outside the station. No police officers were injured, but three members of the public were hit. On the following day, at 9 a.m., another bomb was thrown into the compound of the Eden Garden police outpost, in Calcutta, and injured three persons including one constable. Two days later Mr. Lowman, the Inspector

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General of Police, and Mr. Hodson, the Superintendent of Police, were shot at Dacca. Mr. Lowman died, but Mr. Hodson, though severely wounded, survived. On the 31st August a police party led by Sir Charles Tegart surrounded a house in Chandernagore in which some of the Chittagong raiders were hiding, and after a brief engagement killed one of the absconders and arrested three with revolvers.

On the 25th August Dr. Narayan Chandra Ray, who was in charge of the bomb-making activities of this party, was arrested. In September many of his confederates were arrested and put on trial and sentenced to various periods of transportation from 20 years downwards. According to the confession of Dr. Narayan Ray made in this case, his mind had been inflamed by speeches made by Subhash Bose and another well-known political agitator. By the end of 1929 he had already joined a terrorist group and had begun to make experiments with explosives, especially Tri-Nitro-Toluol. Towards the end of 1929 he received formulæ for T.N.T. and Amatol procured through certain leaders of the Jugantar party. He attended the Lahore Congress and, before returning to Calcutta, he had learned how high explosive shells were loaded with Amatol. On his return to Calcutta early in 1930 he and his cousin Gobinda Ray (still absconding) actually manufactured some explosives. In May 1930 Dr. Narayan Ray was given by one of the Jugantar leaders a supply of empty bomb shells, which he loaded and fitted with detonators. A large number of these shells were distributed throughout the Province.

On the 8th December 1930 three young men dressed as Europeans rushed into the office of Colonel Simpson, Inspector-General of Prisons, in Writers' Buildings, Calcutta, and shot him dead. After this they went down the corridor firing into the rooms of other officials and wounded Mr. Townend, I.C.S., Secretary to the Government of Bengal, and Mr. Nelson, I.C.S., the Legal Remembrancer. They were trapped in the latter's room and all three attempted to commit suicide. One died on the spot. The other two were Binay Krishna Basu (the murderer of Mr. Lowman), who died a few days later, and Dinesh Gupta, who was hanged for this murder on the 7th July 1931.

In addition to the outrages that were actually carried out the police obtained information of various plots for raiding Treasuries and Armouries, for the assassination of officials and for other crimes of violence. Many plots were frustrated by the arrest of the plotters and consequent disorganisation of their groups. The police were also able to prevent the carrying out of any of their bigger or more sensational schemes. Owing to the limitations of the Bengal Criminal Law Amendment Act at this time, the powers of the police were confined to what may be described roughly as purely defensive action. These powers did not admit of wholesale attacks on various organisations, and although the action taken was certainly successful in preventing further outrages on the lines of the Chittagong armoury raid and several projected attacks on officials, at headquarters stations, and on police barracks, the terrorist organisations still remained intact.

18. At the end of 1930, then, several of the most important leaders of all parties were under arrest, but the organisations, to all intents and purposes, were still intact. Press and platform propaganda in pursuance of Gandhi's Civil Disobedience Movement was arousing anti-British sentiment and a spirit of lawlessness in the Province to a degree which would have been deemed incredible even in 1929. Seditious literature of the most violent description was being broadcast in the shape of

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pamphlets and books. It is true that the Congress formally dissociated itself from terrorism, but it was equally clear that if some of the workers and leaders of the Congress were given a free hand they would not be averse to giving their general support to terrorism.

19. With the Irwin-Gandhi Pact, in March 1931, the Press Ordinance was withdrawn, and the Indian Press at once reverted to its old habit of glorification of assassins and the propagation of the cult of murder. During March the occasion for adulatory articles was found in the execution of Bhagat Singh and his two companions. When Mr. Peddie was assassinated on the 7th April 1931 the attitude of the Press was far from satisfactory. Similarly, praise of Dinesh Gupta, the murderer of Colonel Simpson, and Ram Krishna Biswas, convicted of the Chandpur murder, was widespread and in some cases unrestrained, and demands for their reprieve were loud and persistent. Every acquittal of a terrorist was hailed with delight, everything that could be said in favour of them being printed in bold type. The culmination of this attitude of mind was the resolution of the Congress-managed Corporation of Calcutta placing on record a token of homage to Dinesh Gupta, one of the murderers of Colonel Simpson. It is small wonder that in the circumstances described the terrorist cult should have found more votaries than even before, and that 1931 should have been one of the darkest years in the history of terrorist crime.

20. No less than 67 outrages, including nine murders, of which particulars will be found in Annexure III, occurred in 1931. Only a few instances need be quoted here to show the determined manner in which terrorist crimes were carried out.

On the 16th March at Barama, Chittagong, an Assistant Sub-Inspector of Police of the District Intelligence Branch encountered two absconders of the Chittagong armoury raid case. One of them fired at him with a revolver and wounded him and both escaped. On the 7th March at about 6.45 p.m. two *bhadralok* Hindu youths shot Mr. Peddie, I.C.S., District Magistrate of Midnapore, from behind, at close range, while he was attending an exhibition of manual work in a local school which he had himself arranged for the benefit of the students. Both the assailants escaped.

On the 27th July Mr. Garlick, I.C.S., Sessions Judge, 24-Parganas, was shot through the head by a youth while sitting in court. The assassin was immediately shot down by the sergeant on duty, but committed suicide by swallowing cyanide of potassium while lying wounded under the table. The murder was committed in revenge for the sentence of hanging inflicted on Dinesh Gupta by the tribunal of which Mr. Garlick was president.

On the evening of 21st August at Tangail, a *bhadralok* youth fired at Mr. Cassells, I.C.S., the Divisional Commissioner, who was on his way to inspect the Co-operative bank. The culprit escaped and a person subsequently tried for the offence was acquitted for want of sufficient identification.

On the 30th August Khan Bahadur Ahsanulla, Inspector of Police, Chittagong, was shot dead by a *bhadralok* Hindu youth, who was captured, convicted and sentenced to transportation for life. The murder inflamed Moslem feeling and was followed by a communal outbreak.

On the 28th October two *bhadralok* youths shot at and severely wounded Mr. Durno, I.C.S., District Magistrate, Dacca, while he was sitting in his car outside a shop in one of the main streets. The culprits escaped.

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A NOTE BY THE SECRETARY OF STATE FOR INDIA ON TERRORISM IN INDIA.

On the 29th October Mr. Villiers, the President of the European Association, had a narrow escape from death, when he was attacked in his own office by one Bimal Das Gupta, the alleged murderer of Mr. Peddie.

On the 14th December Mr. C. G. B. Stevens, I.C.S., District Magistrate, Tippera, was shot dead in his house by two young girls who approached him with a request to arrange a swimming exhibition for them. Both were sentenced to transportation for life by a special tribunal.

21. By the end of July 1931 it was evident that the existing legislation was not sufficient to cope with the terrorist menace. The way in which the Press lent itself to constant and violent propaganda in favour of assassins has already been referred to. The murders which had already taken place could be traced, in no small measure, to incitements in the Press and the Local Government were convinced that action to control the Press was a vital necessity. As regards the powers of arrest and detention conferred by the Criminal Law Amendment Act, 1930, it was found essential to ask that its scope should be widened so that action could be taken, not only against persons actually concerned in the commission of terrorist associations, but also against those who are members or helpers of those associations. On the 9th October 1931 Act XXIII of 1931 (An Act to provide against publication of matter inciting to or encouraging murder or violence) was passed and on the 29th October the Government of India promulgated Ordinance IX of 1931 conferring the powers asked for in regard to arrest and detention and widening the schedule of offences by the inclusion of the sections relating to the waging of war against the King or the harbouring of absconders.

A month later, on the 30th November, the Bengal Emergency Powers Ordinance XI of 1931 was issued. Chapter I of the Ordinance provided for emergency powers which would apply immediately to the district of Chittagong. Military and police were to combine in operations to round up terrorists and absconders in that district, and to render these operations effective the District Magistrate was given powers, among others, to commandeer property, limit access to certain places, regulate traffic and transport and impose a collective fine upon recalcitrant inhabitants. Chapter II provided for special tribunals and special magistrates and a procedure designed to overcome delaying tactics.

Thus, though the situation at the end of 1931 was far from reassuring, the police were again armed with adequate powers. Civil disobedience was waning and they were, therefore, free to devote all their energies to the suppression of terrorism.

On the expiry of the Ordinances it was felt that the Bengal Government should be armed with the legislative weapons necessary to grapple with the menace of the terrorist movement. Accordingly the Bengal Suppression of Terrorist Outrages Act, 1932,* and the Bengal Criminal Law (Arms and Explosives) Act, 1932, were introduced and passed by the Legislative Council.

22. During the first part of the year 1932 rumours were rife of threats to carry out indiscriminate massacres of Europeans in clubs and cinemas. Actually one outrage of this dastardly nature was carried into effect when the Pahartali Railway Institute at Chittagong was attacked in September 1932 with bombs and revolvers. The attack was led by a girl named Priti Waddadar, who committed suicide on the scene of attack.

* This Act embodied the provisions of Ordinance XI of 1931.

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A NOTE BY THE SECRETARY OF STATE FOR INDIA ON TERRORISM IN INDIA.

Earlier in the year Mr. Douglas, I.C.S., District Magistrate of Midnapore, was shot dead on the 30th April while presiding at a meeting of the District Board; on the 27th June a Sub-Deputy Magistrate was shot dead in his house in Dacca town, and on the 29th July Mr. Ellison, Superintendent of Police, was shot dead in Comilla town. On the 5th August and again on the 28th September 1932, attempts were made to murder Sir Alfred Watson, the editor of the *Statesman*. On the 22nd August an attempt was made to shoot Mr. Grassby, the Additional Superintendent of Police, Dacca, and on the 18th November an attempt was made to murder Mr. Luke, Superintendent of the Rajshahi Central Jail, both of which fortunately failed.

23. The list is formidable enough, but it will be seen from Annexure III, where the particulars of all the outrages in 1930–33 are given, that the total number of crimes both against persons and against property have registered a notable decline in 1933. From the latter part of 1932 the tide began to turn, and between September 1932 and July 1933 the only murderous outrage which the terrorists could carry out in British India was the attempt on Mr. Luke, though in French Chandernagore M. Quin, the French Commissioner of Police, was shot on the 10th March 1933. Plot after plot was discovered and foiled, and one leader after another was captured. A stage has at last been reached when, in spite of dangerous conspiracies which every now and again come to light, the situation is definitely under control, so far as large-scale organised outrages are concerned. But there are a large number of individuals abroad who are prepared to commit or take part in isolated outrages and have apparently no difficulty in securing arms. As an instance there may be quoted the latest outrage, the murder of Mr. Burge, the District Magistrate of Midnapore. He was shot dead on the Police football ground just before the start of a match in which he was to play. Still more recently it was reported that a veritable armoury of revolvers, ammunition and dynamite had been discovered in North Calcutta. Hence, constant vigilance and continual action are required, not only against old members who are plotting outrages, but also against new recruits who appear still to be drawn into the movement in fairly large numbers, and to be ready for any kind of crime.

SECTION IV.—GENERAL SURVEY.

24. It will be seen from the figures given in Annexure IV that 2,167 persons have been dealt with under the Bengal Criminal Law Amendment Act since 1930, and that of those there are no less than 1,351 in gaols and detention camps at present, and 288 in village and home domicile, making a total of 1,639. Of those dealt with, only 389 persons have been unconditionally released. There are, besides, 19 State prisoners under Regulation III of 1818 at present. Though the number of fresh arrests has declined in recent months the present monthly average is still disquietingly high and indicates that considerable recruitment is still going on.

One reason for this is that subversive propaganda and activities have been so rife in recent years that they have succeeded in creating a revolutionary mentality which has permeated almost every stratum of the literate *bhadralok* society. To a certain extent the unemployment problem among the educated middle classes in Bengal has been a powerful accessory to those who have deliberately sought to bring about this result,

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but the factors which have been chiefly responsible for the propagation of revolutionary ideas are a subversive Press, and successive organised movements for defiance of the laws by the methods variously known as non-co-operation and civil disobedience.

25. The Press has, for years, poured forth a venomous propaganda against the established Government, twisted and distorted every motive and every act of theirs, and held up to the admiration of the growing youth the heroism and self-sacrifice of the devotees of the pistol and the bomb who have been made to pay the penalty of the law. Nothing is more noticeable in the history of the revolutionary movement than the connection between the recrudescence of violent propaganda in the Press and of terrorism. Normally prone to unrestrained criticism of Government action the Press has allowed itself to be used by terrorist leaders for their own ends. The natural consequence of the daily poisoning of the minds of the credulous public was to create a mentality which believed that there was no enormity of which Government was not capable, and the mischief caused did not end with the generation, for the children of those who minds were warped in their youth grew up in an atmosphere of hostility, suspicion and ill-will to Government. Every subversive movement, therefore, met with the open or tacit approval of large sections of the people. Happily, at the present moment the tone of the Press is generally a good deal healthier than it has been for years. How much of it is due to the prevalence of good sense and how much to the existence of a Press law it is not possible definitely to say, but judging by past experience, and having regard to the fact that terrorists appear to be able to influence the Press to a high degree, it is more than doubtful if the present healthy tone can be maintained without the assistance of a Press law.

26. Of the part played by successive movements for civil disobedience it is unnecessary to speak at length. Contrary to the expressed intentions of the author, they have, on many an occasion, broken out into violence, and even when they have, in fact, remained non-violent, succeeded in engendering a violent mentality towards the established Government which has pre-disposed young men to succumb readily to the arguments of the terrorist recruiter. It is a remarkable fact that a large percentage of the recruits to the terrorist movement are found to have made their political *debut* as civil resisters. Mr. Gandhi's association with the movement has served to give it an odour of sanctity and blurred the distinction between lawful and unlawful activities. It is not a matter of surprise, therefore, that the action of the police to disperse mobs of civil resisters should have met with a chorus of denunciation from the Press and the platform as acts of tyranny and oppression, and that the minds of youths should have been filled with thoughts of vengeance.

27. The net result of these facts has been greatly to widen the field of recruitment to the terrorist ranks. Gone are the days when elaborate ceremonies of initiation and of administration of vows, before an image of the goddess Kali, were necessary to ensure the devotion of recruits to the terrorist cause. It is sufficient now-a-days to give a boy a few seditious books to read, and to supplement this by instructions from persons who have won his trust and confidence. Further, good moral character is no longer an essential in a recruit. Throughout the Province, students in schools and colleges are now far more deeply permeated by a spirit of unreasoning resentment against Government, and of defiance of authority, and there are a large number of districts in which some or all

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of the educational institutions have terrorist groups connected with them under the control of the main leaders. The result is that murders are now committed by youths unknown to the police, at the bidding of their leaders. It is only fair to say, however, that only in a very few cases is evidence available to show that recruitment takes place inside the school or college, or through, or with, the sympathy of the staff. It is the students of the schools or colleges who form a suitable recruiting ground which is usually worked upon by outsiders, whose success is made more easy by the general failure of teachers generally to take any interest in or undertake any responsibility for the doings of their pupils outside the class-room.

28. Another recent and sinister development is the advent of the female terrorist. In the civil disobedience movement of 1930 women took an active part in picketing at the bidding of the leaders, who deliberately aimed at bringing women into the movement in the name of patriotism and service to the motherland. As has been shown, the step from non-violence to violence is a short one, and it is, perhaps, scarcely a matter of surprise, therefore, that under the stimulus of patriotic excitement working on distorted minds, two girls should have readily lent themselves as instruments for the murder of the District Magistrate of Tippera, and another should have made a treacherous attempt to take the life of Sir Stanley Jackson. The attack on the railway institute at Chittagong in September last year, in which one Englishwoman was killed and 11 other guests, including four women, wounded, was led by a woman, while another has just been sentenced by the tribunal to transportation for life in the supplementary raid case at Chittagong. Of those detained under the Bengal Criminal Law Amendment Act, 15 are women, and there are several against whom Government have so far refused to take action. There is evidence, therefore, that women are taking an increasing part in revolutionary conspiracies, a fact which adds to the difficulty of the police in dealing with them.

29. Reference has already been made to the encouragement which terrorism has received from time to time from the public adulation of terrorists in the Press. It has also been mentioned that after 1920 terrorists set themselves to penetrate the Congress machine by the capture of seats on the Executive Committees and on the all-India Congress Committee, and that under their influence the Bengal Provincial Congress passed a resolution in 1924 eulogising Gopi Mohan Saha, the murderer of Mr. Day.

30. To complete the picture it is necessary to say a word about the connection of the Congress Committee and the Calcutta Corporation and the manner in which subversive movements in general, and terrorism in particular, have received encouragement from the Corporation. The present Calcutta Corporation was the creation of the Act of 1923. In 1924, the Congress, under the lead of the late Mr. C. R. Das, obtained a large majority on it and since then has dominated it under the leadership successively of the late Mr. J. M. Sen Gupta, Mr. Subash Chandra Bose, both ex-Presidents of the Bengal Provincial Congress Committee, and of Dr. B. C. Roy. The two former were bitter critics of Government and at various times were incarcerated under Regulation III of 1818; the latter suffered imprisonment during the civil disobedience movement. One of the earliest acts of Mr. C. R. Das after his election as Mayor was to offer employment to those who had suffered in the "country's cause," many of them in the capacity of teachers in Corpora-

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tion Primary Schools, which under Swarajist control multiplied greatly. In the year 1923–24 there were 19 such schools under the Corporation. By the end of December 1931 there were 225 of them. When early in 1930 Mr. Gandhi opened his civil disobedience campaign, a large number of teachers of these schools took part in the campaign and continued to do so throughout 1931. The attitude of the Corporation in this matter was illustrated by the correspondence that passed between the Commissioner of Police and the Chief Executive Officer in 1931. On the 14th August 1931 Sir Charles Tegart drew the attention of the Chief Executive Officer to the fact that 12 Corporation teachers had been arrested for illegal picketing and requested him to see that this conduct on the part of Corporation employees was not repeated. No answer was given to this letter, but on the 8th September 1931 the Chief Executive Officer wrote complaining about the searches made by the police in Corporation schools. To this, Sir Charles replied that the searches were inevitable since evidence was accumulating to show that Corporation school teachers were conspiring to break the law, and that the Corporation schools were being used for unlawful purposes. He offered to supply the Corporation with details of searches and prosecutions. The Chief Executive Officer replied on the 25th September 1931 denying that there was any conspiracy on the part of the teachers, and then proceeded to allege that 14 teachers who had been arrested by the police had been beaten unmercifully by them.

Many Corporation buildings were used for the furtherance of the civil disobedience movement, and the occasions on which the Corporation adjourned as a mark of respect owing to the arrests of prominent persons connected with the civil disobedience movement are numerous.

31. But the Corporation were not content with participating in the civil disobedience movement alone. On the 13th September 1929 they expressed "their great sorrow at the untimely death of the great hero, Jatindra Nath Das" (an undertrial prisoner in the Lahore Conspiracy Case who died of hunger-strike), and under the direction of the Mayor, closed the offices and schools for one day. Later, a street was named after him. On the 11th February 1931 the Corporation granted six months' leave of absence to Dr. Narayan Ch. Ray, a Councillor, and convicted in the Dalhousie Square Bomb Conspiracy Case, "as his absence is due to causes which the Corporation considers sufficient to justify such an absence." On the 8th July 1931 the Corporation recorded its sense of grief at the execution of Dinesh Chandra Gupta, "who sacrificed his life in the pursuit of his ideal." In this form the resolution was published on the front page of the *Calcutta Municipal Gazette*, and below it a photograph of the murderer. Sixteen days later, Mr. Garlick, the President of the Tribunal which convicted Dinesh, was shot dead in his Court by a terrorist, on whose person a slip containing the following words was found:—"Cursed be your Court the injustice of which condemned Dinesh Gupta to death."

It will readily be appreciated that the public tributes paid by bodies like the Bengal Provincial Congress and the Calcutta Corporation to persons convicted of terrorist crime, and their general attitude of sympathy towards subversive movements, have been a perpetual incitement to emotional youth to undertake fresh outrages. Factors such as these did not weight the scale against Government in their campaign of 1916–19.

32. The formation of a "Peasants and Workers" organisation on communistic lines has already been referred to, and a brief reference may

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now be made to other open organisations through which the revolutionaries have sought to subvert existing society. The non-co-operation movement of 1921 showed that Government could be really seriously embarrassed by mass action. Communist literature and methods, therefore, found an increasing number of readers and exponents, and the advantages of mass action as a revolutionary instrument received considerable attention. It was thought that the doctrines based on class solidarity would be an effective antidote to the schisms of religious differences. Moscow was willing to help with money, and the doctrines had an intellectual appeal of their own to the *bhadralok* youths, themselves faced with the menace of unemployment. The "Peasants and Workers" movement died of inanition, but in the youth leagues and conferences which came into vogue in the period 1925–30 the doctrines of the Third International found considerable favour. Dr. Bhupendra Nath Dutt (an old terrorist), Kanai Lal Ganguli, Subash Bose (detained twice under Regulation III), Bankim Chandra Mukherji and others devoted their energies, from varying motives, to the development and growth of organisations based on communist or semi-communist ideas.

At the instance of Subash Chandra Bose, Pandit Jawahar Lal Nehru presided over the All-Bengal Students' Conference in 1928, and in his speech advocated communism and internationalism for India. Immediately on his departure an Independence League for Bengal was started by Subash Bose with a number of ex-*detenus* and State prisoners. They drew up a manifesto on Bolshevik lines which evoked some protest. When later, however, Jawahar Lal himself started the "Independence for India League," having for its object the achievement of Swaraj for India, with the help and support of Kanai Lal Ganguli and Bhupendra Dutt, it met with strong opposition from Subash Chandra Bose and his followers, who now formed a separate "Independence for India League" in Bengal from which Kanai Lal and Bhupendra Dutt were practically excluded. Later, when Jawahar Lal came to Calcutta in connection with the 1928 Congress, he addressed the Howrah District Workers' Conference and the All-Bengal Youth Association, both Congress organisations. To the former he spoke disparagingly of the Congress, who would be prepared to wait for another 10 years for Swaraj, but added that if the labouring classes and the starving millions of the country could be convinced that independence would remove their want and get them better food and clothing, they would not agree to wait for a single day for the achievement of Swaraj. This speech gives the clue to the primary object for which Labour was to be exploited and may be compared with the statement which appeared in *Liberty* of the 18th August 1929—"The Labour movement is very closely connected with the Swaraj movement, and what is needed at the present moment is a co-ordination between the two in order to force the hands of an unsympathetic Government." During the jute mill strikes of 1929 there were indications that the Congress scheme was to get the *intelligentsia* to organise a mass upheaval through the youth and students' and volunteer movements, with a view to coerce the Government. The scheme did not materialise and the Meerut case has for the time being ended attempts to form organisations on communist lines.

33. It remains now to say a word about the effect of the murder campaign on the daily lives of officials. During the last three years officials, particularly district and police officers, were in serious danger, and the unusual precautions which had to be taken for their safety

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undoubtedly interfered with their normal duties. They live in houses guarded by armed sentries; many of them when they go out are accompanied by armed personal guards, sometimes with their revolvers drawn; the roads they use are constantly patrolled; intending interviewers when not known are searched before admission; and in Calcutta and some other places there are restrictions on entrance to clubs which at times give rise to irritation and bad feeling. The precautions have necessarily interrupted the free intercourse between officials and non-officials which was such a feature of the administration, especially in the districts. During the last year or so, though the situation had apparently greatly improved, the full precautions have had to be maintained, and the latest tragedy at Midnapore is a stern warning that no relaxation of precautions can yet be permitted, even in connection with games, which were becoming more and more a common meeting ground for all sections of the community. So long as there is a group of people who consider it their business to murder officials there is no escape from the present position. Otherwise the normal administration goes on much as before, and though officers of all grades—and their wives and families—may view their daily work with greater anxiety than in the past, the tone generally is good, and there is none of that spirit of gloom and helplessness which was apparent two years ago. In the background there is a general realisation that in spite of the poignant tragedies that from time to time send a feeling of horror through all classes, the situation is better than it was. In some quarters there is a growing belief, or perhaps still only a hope, that public opinion is slowly turning against terrorism and that in their efforts to crush it Government and their officers have a steadily increasing amount of sympathy and support, though much of it may be tacit, from the community at large. In other quarters this is ascribed to a realisation that Government are in earnest in their efforts to stamp out terrorism and to the instinctive desire to be on the winning side, and it is held that any relaxation of effort on the part of Government will mean an immediate deterioration of the situation and a decrease in the amount of public sympathy and support for Government.

ANNEXURE I.

CLASSIFIED STATEMENT OF THE NUMBER OF CASES OF OUTRAGES DURING THE YEARS 1930–33, YEAR BY YEAR.

Items	1930	1931	1932	1933
Murderous outrages	7	5	5	3
Attempts at outrages	4	6	14	3
Dacoities*	10	23	68	34
Attempted dacoities*	—	2		
Robberies*	6	18		
Attempted robberies*	1	5		
Bomb throwing	6	7	3	—
Bomb explosions	1	—	4	3
Armed raids	1	—	—	—
Total	36	66	94	43

* Including mail, post and train.

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ANNEXURE II.

LIST OF CASUALTIES DUE TO TERRORIST OUTRAGES DURING THE YEARS 1930-33.

Class	1930		1931		1932		1933	
	Killed	Injured	Killed	Injured	Killed	Injured	Killed	Injured
Officials -	11	12	5	13	6	10	1	1
Non-officials -	10	14	4	3	6	27	—	—
Terrorists -	26	4	—	1	5	3	2	—

ANNEXURE III.

DETAILS OF CASES OF TERRORIST OUTRAGES DURING THE YEARS 1930-33. LIST "A" INCLUDES THE OUTRAGES OF MAJOR IMPORTANCE EACH YEAR LIST "B" ALL OTHER OUTRAGES.

1930—"A."

(1) On 1st February 1930, Satish Chandra Ray, an Assistant Teacher of the Ramananda Union H.E. School, was murdered at Kishoreganj, Mymensingh.

(2) On 18th April 1930, the terrorist party of Chittagong headed by Ananta Singh, attacked and looted the Auxiliary Force Armoury, the Telephone Exchange and the District Police Armoury in Chittagong town.

(3) On 7th May 1930, some absconding insurgents, while passing through village Sikalbaha, Chittagong, opened fire on villagers and escaped.

(4) On 16th May 1930, a bomb was thrown at the house of the officer-in-charge of the Shibpur Police Station, Howrah.

(5) On 19th July 1930, a bomb exploded on being thrown at police officers passing along Gaibandha Road in Gaibandha town, Rangpur.

(6) On 2nd August 1930, a constable was shot at while arresting certain accused in the warehouse looting case of Mymensingh town.

(7) On 25th August 1930, bombs were thrown at Sir Charles Tegart, Commissioner of Police, Calcutta, in Dalhousie Square.

(8) On 26th August 1930, a bomb was thrown in the compound of the Jorabagan Police Court, Calcutta.

(9) On 27th August 1930, a bomb was thrown at the Eden Gardens Police Outpost, Calcutta.

(10) On 29th August 1930, Ratan Bhusan Hazra was murdered at Deshbandhu Park, Calcutta.

(11) On 29th August 1930, Mr. Lowman, Inspector-General of Police, Bengal, and Mr. Hodson, Superintendent of Police, Dacca, were shot in the Mitford Hospital, Dacca.

(12) On 30th August 1930, a bomb was thrown in the house of Inspector Pabitra Bose of the Mymensingh Detective Department, Mymensingh town.

(13) On 23rd September 1930, a bomb was thrown in the compound of the Khulna Police Station where the District Intelligence Branch Inspector and others were sitting.

(14) On 13th October 1930, the Sub-Inspector of the Mymensingh District Intelligence Branch and his guard were shot at while endeavouring to arrest two absconders in the Mymensingh Excise Warehouse looting case.

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(15) On 1st December 1930, Inspector Tarini Mukharji of the Railway Police, was fatally shot at Chandpur Railway Station, in mistake for the Inspector-General of Police, who was travelling on the same train.

(16) On 8th December 1930, Colonel Simpson, Inspector-General of Prisons, Bengal, was fatally shot in Writers' Buildings, Calcutta.

1930—"B."

(1) On 24th March 1930, the body of Bhupendra Raha Ray, *alias* Pola, was found on the railway line, Mymensingh town, severely mutilated by being run over by a train.

(2) On 12th April 1930, five or six *bhadralogs* visited the *gaddi* of Messrs. Harish Chandra Sen and Ram Kanai Bhuiya at 23, Kali Kumar, Banarji Lane, Tala, Calcutta, and decamped with Rs. 15,000 in G. C. notes.

(3) On 23rd April 1930, Ananta Lal Singh and three others were arrested at Feni, when they fired on the police and decamped.

(4) On 29th April 1930, a dacoity occurred in the house of Amrita Lal Ray, Samanta Sena, Khulna, when articles worth Rs. 36 were looted.

(5) On 2nd June 1930, a postal overseer was waylaid and robbed of Rs. 1,000 while he was proceeding from Mulchar Police Station to Swarmgram Post Office, Dacca.

(6) On 25th August 1930, an attempt at mail robbery was made at Shahatali Railway Station (Saidpur, G. R. P.), by three persons who assaulted the postal peon carrying bags containing about Rs. 1,000 in cash.

(7) On 3rd September 1930, a mail peon was robbed of cash, &c., to the value of Rs. 3,650, near Rajshahi Railway Station.

(8) On 8th September 1930, a dacoity was committed in the Ichapura Post Office, Serajdikhan, Dacca, when Rs. 1,347, which included private money and ornaments of the postmaster, was looted.

(9) On 24th September 1930, a dacoity was committed in the houses of Chandi Charan Saha Poddar and Raj Kumar Saha Poddar, at Gopalpur, police station Kalkini, Faridpur, and cash and ornaments worth Rs. 551 were looted.

(10) On 17th October 1930, a dacoity with murder occurred at Armenian Street, Calcutta, in the gadi of Manikchand Gopalchand, in which the culprits decamped with Rs. 2,346.

(11) On 23rd October 1930, a dacoity occurred in the house of Jagatbandhu Bandopadhya, of Kalabaria, in which Rs. 400 in cash were looted.

(12) On 30th October 1930, a dacoity was committed in the house of Rajnath Banik, Madhabpasha, Babuganj, police station Barisal, in which Rs. 3,451 was looted.

(13) On 31st October 1930, a dacoity was committed in the house of Chandra Nath Tewari, Saldah, Mymensingh, when properties worth Rs. 35 were looted.

(14) On 1st November 1930, a peon of Rajshahi College was waylaid and robbed of Rs. 368.

(15) On 4th November 1930, a dacoity was committed in the house of Kali Charan Bhattacharji, of Jashodal, Mymensingh, in which cash and ornaments of unknown value were taken away.

(16) On 8th November 1930, the house of Umanath Majumdar, of Gangail, police station Kishoreganj, Mymensingh, was dacoited, but nothing was taken away.

(17) On 12th November 1930, while the Jamadar and two durwans of Messrs. R. Sim & Co., of Elashin, were taking a cash remittance of Rs. 15,000 by road from Tangail to the Company's office, they were waylaid and the whole amount snatched away.

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1930—"B"—*cont.*

(18) On 26th November 1930, a dacoity was committed in the house of Sarat Kumar Guha, Raghunathpur, police station Kotwali, Barisal, in which the dacoits carried away Rs. 941 in cash.

(19) On 8th December 1930, the bearer of the Intermediate College, Lalbag, Dacca, was waylaid and robbed of Rs. 2,093 which he was carrying to the Treasury for deposit.

(20) On 18th December 1930, a dacoity was committed in the house of Kailash Chandra Banarji, of Paisagaon, Tangibari, Dacca, in which properties worth Rs. 2,145 were carried away.

1931—"A."

(1) On 12th January 1931, a clerk of the Bhowal Court of Wards, Dacca, was shot at and wounded in an attempt at robbery.

(2) On 23rd February 1931, a bomb was thrown into the District Intelligence Branch Sub-Inspector's house at Barisal.

(3) On 16th March 1931, an Assistant Sub-Inspector of the Chittagong District Intelligence Branch was shot at and wounded by Tarakeswar Dastidar at Barama, police station Patiya, Chittagong.

(4) On 17th March 1931, a bomb was thrown into the house of the District Intelligence Branch Inspector, Nadia.

(5) On 17th March 1931, a bomb was thrown at the Kotwali Police Station, Nadia.

(6) On 17th March 1931, a bomb was thrown into the house of the Superintendent of Police, Nadia.

(7) On 7th April 1931, Mr. J. Peddie, I.C.S., District Magistrate, Midnapur, was assassinated.

(8) On 24th April 1931, a bomb was thrown at the Royal Calcutta Golf Club.

(9) On 27th July 1931, Mr. Garlick, I.C.S., District and Sessions Judge, Alipur, was assassinated.

(10) On 21st August 1931, an attempt was made on the life of Mr. A. Cassells, C.I.E., I.C.S., Divisional Commissioner, Dacca, at Tangail, Mymensingh.

(11) On 30th August 1931, Khan Bahadur Asanullah, Inspector of Police, Chittagong, was assassinated.

(12) On 9th September 1931, a bomb was thrown into the compound of Kalna Police Station, Burdwan.

(13) On 10th September 1931, a bomb was thrown into the Officer Commanding's quarters, Memari Police Station, Burdwan.

(14) On 29th October 1931, an attempt was made to murder Mr. Villiers, President, European Association, in his office at Clive Buildings.

(15) On 28th October 1931, an attempt was made to assassinate Mr. Durno, I.C.S., District Magistrate, Dacca, in Dacca town.

(16) On 11th November 1931, an attempt was made to shoot Inspector Monoranjan Chaudhuri at Rajballavpur, Sherpur, Mymensingh.

(17) On 14th December 1931, Mr. C. G. B. Stevens, I.C.S., District Magistrate, Tippera, was fatally shot.

(18) On 30th December 1931, an important witness in the Maniktolla dacoity case, was fatally shot at No. 52, Gouribari Lane, Calcutta.

1931—"B."

(1) On 5th January 1931, an attempt was made to rob the Post Office at Bazarkhola, Amanatganj, Barisal town.

(2) On 11th January 1931, a dacoity occurred at Nilganj Railway Station, police station Bhairab, Mymensingh, at which Rs. 22 was looted.

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1931—"B"—*cont.*

(3) On 20th January 1931, an attempt was made to rob the Bagerhat mail bag, which contained insured covers valued at Rs. 834, from the train.

(4) On 26th January 1931, a postal peon was robbed of Rs. 1,500 at Farashganj Road, Dacca town.

(5) On 14th February 1931, a dacoity occurred at Messrs. Ralli Bros. Agency, Jamalpur, Mymensingh, at which Rs. 7,919 was looted.

(6) On 21st February 1931, a dacoity occurred at Suapara, Dacca, at which Rs. 2,022 was looted.

(7) On 5th March 1931, a highway mail robbery took place at the Brahmanbaria Post Office, Tippera, when Rs. 10,942 was looted.

(8) On 10th March 1931, an armed dacoity occurred at Kauthal, police station Palong, Faridpur, at which Rs. 2,783 was looted.

(9) On 27th March 1931, a dacoity occurred in the house of Upendra Mazumdar, Khamargaon, police station Nandail, Mymensingh, at which Rs. 2,249 was stolen.

(10) On 7th April 1931, an armed mail dacoity occurred at Palong Steamer Station, at which Rs. 1,540 in cash was looted.

(11) On 11th April 1931, a train robbery took place between Atharbari and Sohagi stations, at which Rs. 9,160 was looted.

(12) On 17th April 1931, a dacoity occurred at Ranibazar, Rajshahi town, at which Rs. 1,000 was looted.

(13) On 20th April 1931, an armed robbery took place at Sealdah Railway Station, Rs. 4,938 being looted.

(14) On 11th May 1931, an armed dacoity occurred at Sontiabazar II, Mymensingh, Rs. 540 being stolen.

(15) On 16th May 1931, the Dacca postal van was robbed of Rs. 800.

(16) On 5th June 1931, a mail robbery took place at Samantasena, Khulna, Rs. 70 being looted.

(17) On 17th June 1931, Rs. 278 was looted from the office of the Assistant Station Master at Nayanpur Railway Station, Assam-Bengal Railway.

(18) On 2nd July 1931, a train robbery occurred at Gouripur-Iswarganj, Rs. 1,206 being looted.

(19) On 7th July 1931, an attempt was made to rob the mails at Kumarkhali, Nadia.

(20) On 17th July 1931, an armed dacoity occurred at Nitaiganj, Narayanganj, Dacca, Rs. 8,479 being looted.

(21) On 24th July 1931, an attempted mail robbery took place at Narayanpur, police station Jhalakati, Barisal.

(22) On 31st July 1931, an attempted mail robbery took place at Dharmaganj, police station Mendiganj, Barisal.

(23) On 1st August 1931, an armed robbery occurred at the Municipal office gate, Rs. 6,202 being looted.

(24) On 4th August 1931, an armed dacoity occurred at a jute firm at Nandail Road Bazar Station, Mymensingh, Rs. 395 being looted.

(25) On 10th August 1931, an armed robbery occurred at the Saraswati Samaj, Dacca town, Rs. 627 being looted.

(26) On 3rd September 1931, an armed robbery of postal money amounting to Rs. 348 occurred at the junction of Hare and Wyre Street, Dacca town.

(27) On 9th September 1931, a highway robbery occurred at Mankunda, Hooghly.

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1931—"B"—*cont.*

(28) On 11th September 1931, an armed dacoity occurred at Raghunathpur, police station Bagerhat, Khulna, Rs. 2,000 being stolen.

(29) On 13th September 1931, an armed dacoity occurred in the house of Bhagaban Saha of Neamatpur, police station Karimganj, Mymensingh, Rs. 2,333 being stolen.

(30) On 18th September 1931, an attempted mail dacoity took place near Ghoramara Post Office, Rajshahi.

(31) On 2nd October 1931, a dacoity occurred in the *gaddi* of Krista Ch. Sanatan Pal, Canal West Road, Maniktala, Calcutta. Rs. 300 which was looted, was subsequently recovered.

(32) On 5th October 1931, an armed dacoity occurred in the shop of Sushil Mohan Sahai Madhabdi Bazar, police station Narsingdi, Dacca; the amount looted not known.

(33) On 10th October 1931, a dacoity occurred in the house of Satish Ch. Malakar, police station Taltalla, Khulna, Rs. 412 being looted.

(34) On 10th October 1931, an attempted dacoity occurred in the house of Hriday Pal, Kalabandha, police station Melandah, Mymensingh.

(35) On 12th October 1931, a dacoity occurred in the house of Purna Ch. Saha, Kamalpur, police station Bajitpur, Mymensingh, Rs. 900 being looted.

(36) On 13th October 1931, an armed robbery of Rs. 28,000 in cash, which was being transmitted from the Imperial Bank, Dacca, to the Dacca Post Office, took place, but the money was recovered.

(37) On 16th October 1931, the mail bags containing Rs. 83 were robbed from Jinardi Railway Station Office (Bhairab Bazar, Government Railway Police, Saidpur Railway Police).

(38) On 17th October 1931, a dacoity occurred in the house of Nurjan Mallik of Khagragoria, Burdwan Police Station.

(39) On 20th October 1931, a postal runner was robbed of Rs. 1,272 near Nagargaon, police station, Katiadi, Mymensingh.

(40) On 21st October 1931, a dacoity occurred in the house of Radha Krista Deb Nath of Chandani, police station Naria, Faridpur, Rs. 994 being looted.

(41) On 28th October 1931, an armed dacoity occurred in the jute agency of Rukhini Kanta Sarkar, Gochihata, police station Katiadi, Mymensingh, Rs. 1,245 being looted.

(42) On 10th November 1931, an armed mail robbery occurred at Dharbila, police station Charghat, Rajshahi, Rs. 195 being looted but subsequently recovered.

(43) On 11th November 1931, an armed dacoity occurred in the house of Radha Madhab Pal, of North Madhyapara, Palong, Faridpur, Rs. 1,950 being stolen.

(44) On 16th November 1931, an armed mail robbery occurred at Kanaikati, Madaripur, Faridpur, Rs. 2,500 being looted.

(45) On 4th December 1931, an armed dacoity occurred in the house of Abdul Majid of Seorakanda, police station Tangail, Mymensingh, Rs. 2,608 being looted.

(46) On 7th December 1931, a dacoity occurred in the house of Mohendra Nath Sarkar, of Darimonpur, police station Hemtabad, Dinajpur, Rs. 100 being looted.

(47) On 15th December 1931, mail bags containing Rs. 1,900 were looted by armed men, near Naria Steamer Station, Faridpur.

(48) On 18th December 1931 an armed dacoity occurred in the house of Mohanta Nath of Telirbag, police station Tangibari, Dacca, Rs. 677 being looted.

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1932

MURDERS—5.

(1) On 30th April 1932, Mr. R. Douglas, I.C.S., District Magistrate, Midnapore, was shot dead at the District Board Office, Midnapore.

(2) On 14th June 1932, Captain Cameron was shot dead while leading a military raid on an absconders' den at Dhalghat police station, Patiya, Chittagong.

(3) On 27th June 1932, Babu Kamakhya Sen, Sub-Deputy Magistrate, was shot dead in his house in Dacca town.

(4) On 29th July 1932, Mr. Ellison, Superintendent of Police Tippera, was shot dead in Comilla town.

(5) On 24th September 1932, the European Institute at Pahartali, Chittagong, was raided by terrorists armed with revolvers and bombs and led by a woman terrorist, who eventually committed suicide. One European lady was killed and several Europeans and Anglo-Indians wounded.

ATTEMPTED MURDERS—14.

(1) On 19th January 1932, a murderous attack with iron rods was made on Sergeant Bourne in Dacca town and his revolver was stolen.

(2) On 22nd January 1932, a bomb was thrown at the compartment occupied by the District Magistrate, Howrah, at Patihal Railway Station, on the Howrah-Amta Railway.

(3) On 6th February 1932, an attempt was made on the life of His Excellency the Governor of Bengal at the annual Convocation of the Calcutta University in the Senate House, Calcutta.

(4) On 11th March 1932, a bomb was thrown into the quarters of the Sub-Divisional Officer, Kandi, Murshidabad.

(5) On 28th March 1932, the tents in the camp of the Settlement Officers, Lalmonirhat, Rangpur, were set fire to, for the purpose of stealing the revolvers of the officers.

(6) On 21st April 1932, a bomb exploded in the vestibule of the Head Office of Messrs. Martin & Co., Mission Row, Calcutta.

(7) On 18th May 1932, a parcel exploded in the Lamabazar Post Office, Chittagong town, injuring a packer of the Post Office.

(8) On 26th May 1932, guard constable Soleman Khan was assaulted near Government House, Dacca, and his revolver was stolen.

(9) On 12th June 1932, a bomb was thrown at the train at Rajbari Railway Station, Eastern Bengal Railway, in which the District Magistrate and Superintendent of Police, Faridpur, were travelling.

(10) On 5th August 1932, the first attempt was made to shoot Sir Alfred Watson, Editor of the *Statesman*, at Chowringhee. The assailant committed suicide.

(11) On 22nd August 1932, an attempt was made to shoot Mr. C. Grassby, Additional Superintendent of Police, Dacca, at the Nawabpur Railway Crossing, Dacca.

(12) On 28th September 1932, a second attempt was made on the life of Sir Alfred Watson, Editor of the *Statesman*, near Strand Road, Calcutta.

(13) On 18th November 1932, an attempt was made to murder Mr. Luke, Superintendent, Rajshahi Jail, at Rajshahi.

(14) On 19th November 1932, an attempt was made to murder a spy "Malia" at Kalikatcha, Sarail, Tippera.

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1932—*cont.*

DACOITIES AND ROBBERIES (INCLUDING ATTEMPTS)—68.

(1) On 3rd January 1932, a robbery was committed by four persons armed with revolvers in a shop at Kamalaghat, Mirkadim, Munshiganj Dacca.

(2) On 4th January 1932, an attempt was made at Munshiganj, Dacca, to rob a clerk and durwan of the Munshiganj Middle English School. The Durwan was wounded by a revolver bullet.

(3) On 9th January 1932, a boat dacoity was committed at Kurchai, police station Gaffargaon, Mymensingh.

(4) On 11th January 1932, a dacoity was committed in a house at Swarikanda, police station Netrakona, Mymensingh.

(5) On 18th January 1932, the mails were robbed by six persons armed with revolvers between Natherpetua and Uttardah railway stations on the Assam-Bengal Railway.

(6) On 18th January 1932, a dacoity was committed in a house at Sotashi, police station Bhusna, Faridpur.

(7) On 22nd January 1932, a dacoity was committed in a house at Kalyanchak, police station Amta, Howrah.

(8) On 10th February 1932, a dacoity was committed in the house of Kamini Kanta De of Madhakhola, police station Hossainpur, Mymensingh.

(9) On 10th February 1932, a dacoity was committed in a house at Massimpur, Bhabanipur, Kuliarchar, Mymensingh.

(10) On 13th February 1932, a dacoity was committed in the house of Hari Das Saha, of Banwaribad, police station Bharatpur, Murshidabad.

(11) On 15th February 1932, a dacoity was committed in a house at Sawali Charpara, police station Mirzapur, Mymensingh.

(12) On 18th February 1932, a mail dacoity was committed at Gangadarpatti, near Munshiganj, Dacca.

(13) On 23rd February 1932, a dacoity was committed at the Agency of Messrs. Ralli Bros. at Atharabari, police station Iswarganj, Mymensingh.

(14) On 27th February 1932, a dacoity was committed in a house at Sararchar, police station Bajitpur, Mymensingh.

(15) On 2nd March 1932, three youths attempted to rob a mail runner near the Boalia Post Office, police station Ghoramara, Rajshahi.

(16) On 5th March 1932, a dacoity was committed in a house at Uttar Bagdanga, Narail, Jessore.

(17) On 14th March 1932, a mail dacoity with murder was committed at Charmuguria Post Office, police station Madaripur, Faridpur.

(18) On 14th March 1932, a dacoity was committed in a house at Tegharia, Dacca.

(19) On 15th March 1932, a dacoity was committed in a house at Saldah, police station Naria, Faridpur.

(20) On 15th March 1932, a mail robbery was committed by three *bhadraloks* armed with revolvers at Lalbag, police station Lalbag, Dacca town.

(21) On 22nd March 1932, a mail runner was attacked and robbed of the mails at Nalchiti Steamer Ghat Road, Barisal.

(22) On 24th March 1932, a robbery was committed in a house at Sararchar, police station Bajitpur, Mymensingh, by two persons.

(23) On 4th April 1932, an attempt was made to rob a man by two youths armed with daggers on the road to Berhampore Railway Station near Cemetery), District Murshidabad.

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1932—*cont.*

(24) On 5th April 1932, a mail robbery was committed on the Keora Road, police station Jhalakati, Barisal.

(25) On 5th April 1932, an attempt at highway robbery was made at Dolaiganj Station Road, Dacca.

(26) On 5th April 1932, a house dacoity was committed at Agartola, Tripura State.

(27) On 11th April 1932, a mail robbery with murder was committed in Hari Mohan Roy Lane, Belliaghata, Calcutta.

(28) On 12th April 1932, a merchant was attacked and robbed by three youths armed with revolvers in a running train near Nilphamari Railway Station, Rangpur.

(29) On 13th April 1932, a mail robbery was committed at Jobsa Steamer Station, police station Naria, Faridpur.

(30) On 15th April 1932, a dacoity was committed in a shop at No. 8A, South Sealdah Road, Calcutta.

(31) On 1st May 1932, a dacoity was committed in the house of Mahesh Chandra Singh of Chandpur, Palashia, police station Nandail, Mymensingh.

(32) On 3rd May 1932, a dacoity was committed in the house of Muzaffar Sheik at Aynargop, police station Bajitpur, Mymensingh.

(33) On 9th May 1932, a dacoity was committed in the house of Joynarain Kapali of Noabad, police station Karimganj, Mymensingh.

(34) On 11th May 1932, a dacoity was committed in a house at Chagaldanda, Banaripara, Barisal.

(35) On 13th May 1932, a train dacoity was committed between Tezgaon and Dacca Railway Stations, Dacca.

(36) On 13th May 1932, a mail robbery was committed on the District Board Road, Rajnagar, Tippera.

(37) On 17th May 1932, a mail robbery, in which one dacoit was killed, was committed at Angaria, police station Palong, Faridpur.

(38) On 21st May 1932, a mail robbery was committed at Kanakshar, police station Bhedarganj, Faridpur.

(39) On 29th May 1932, a dacoity was committed in a house at Kamalpur, police station Bajitpur, Mymensingh.

(40) On 31st May 1932, a highway robbery was committed at Gourhati, police station Arambag, Hooghly.

(41) On 5th June 1932, a dacoity with murder was committed at Ramnagarpara, Kuniati, police station Kendua, Mymensingh.

(42) On 13th June 1932, a dacoity with murder was committed in a house at Mograbazar, police station Kasba, Tippera.

(43) On 14th June 1932, a dacoity was committed in a house at Binnahati, police station Kishoreganj, Mymensingh.

(44) On 15th June 1932, a dacoity was committed in the house of Rajani Kanta Karmakar of Jhilkipota, police station Maheshpur, Jessore.

(45) On 27th June 1932, a dacoity was committed in the house of Dr. Debendra Saha of Nayanpur Bazar, police station Kasba, Tippera.

(46) On 2nd July 1932, a highway robbery was committed on the Bejpara Road, police station Kotwali, Jessore.

(47) On 12th July 1932, a dacoity was committed on a Railwayganj hut at Halimpur, police station Bajitpur, Mymensingh.

(48) On 16th July 1932, a dacoity was committed in a house at Gangailpara, Taliapara, police station Karimganj, Mymensingh.

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A NOTE BY THE SECRETARY OF STATE FOR INDIA ON TERRORISM IN INDIA.

1932—*cont.*

(49) On 18th July 1932, a dacoity with murder was committed in a house at Singa, police station Gournadi, Barisal.

(50) On 22nd July 1932, a dacoity was committed in the house of Mati Mandal of Srikantapur, police station Suri, Birbhum.

(51) On 15th August 1932, a train dacoity was committed by four or five *bhadralok* youths armed with revolvers between Dacca and Tezgaon Railway Stations, Dacca.

(52) On 15th August 1932, while the school-fees of the Bogra Coronation School were being taken to the Post Office, the servants were robbed by two youths armed with revolvers in Bogra town.

(53) On 15th August 1932, a dacoity was committed in two houses in Charmuguria, police station Madaripur, Faridpur

(54) On 30th August 1932, a dacoity was committed in a house at West Noapara, police station Raozan, Chittagong.

(55) On 1st September 1932, five persons were arrested in a boat with arms, while on their way to commit a dacoity at Bhangeswardi, police station Bhusna, Faridpur.

(56) On 7th September 1932, a highway robbery by three youths armed with a pistol and daggers was committed near the Dacca Railway Station, Dacca.

(57) On 9th September 1932, a dacoity was committed in the house of Kanjali Charan Parui of Konnagar, Hooghly.

(58) On 14th September 1932, a dacoity was committed in the house of Narendra Shome of Shomepara, police station Munshiganj, Dacca.

(59) On 15th September 1932, an armed youth attempted to snatch away the mail bags from the mail peon near Khankhanapur Railway Station, Faridpur.

(60) On the 15th September 1932, a robbery with murder was committed at Begutia, police station Memari, Burdwan.

(61) On 25th September 1932, a dacoity was committed in the Lonesingh Post Office, Faridpur.

(62) On 26th September 1932, a dacoity was committed in a house at Panjia, police station Keshabpur, Faridpur.

(63) On 12th October 1932, a mail robbery was committed at Kamarpukur, Bankura.

(64) On 1st November 1932, a dacoity was committed in a house at Medda, police station Brahmanbaria, Tippera.

(65) Between 1st November 1932 and 2nd November 1932, a dacoity was committed at the Chandeo Kandi Board School in Mymensingh district.

(66) On 5th November 1932, an attempt to rob the mails was made at Islampur, police station Dhamrai, Dacca.

(67) On 28th November 1932, a dacoity was committed in the house of Brajabashi Banikya of Bejoypur, police station Parasuram, Noakhali.

(68) On 18th December 1932, a dacoity was committed in the house of Rakhal Chandra Mukharji of Chituri, police station Labpur, Birbhum.

OTHER OUTRAGES.

(*a*) *Bomb Throwing*—3.

(1) On 11th January 1932, a bomb was thrown at the boat of Circle Officer Maulvi Anwaruddin at Gohala, Muksudpur, Faridpur.

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1932—*cont.*

(2) On 2nd April 1932, a bomb was thrown at the house of Fatik Sinha of Plasseypara, police station Tehatta, Nadia.

(3) On 11th April 1932, a bomb was thrown into the quarters of the officer in charge of the Amta police station, Howrah.

(*b*) *Bomb Explosions—4.*

(1) On 15th April 1932, a bomb while being prepared exploded at Swamibag, police station Sutrapur, Dacca.

(2) On 27th May 1932, a bomb while being prepared exploded in the house of Kanai Lal Banarji of 35, Baikantha Chatarji Lane, Howrah.

(3) On 22nd October 1932, a bomb exploded at Joypurhat, Bogra.

(4) On 11th December 1932, a bomb exploded in the house of Suren Kabiraj of Raniganj, police station Asansol, Burdwan.

1933—"A."

(1) On 18th May 1933, when a suspected shelter was surrounded by the Police and Military at Gahira, Anwara, Chittagong, certain Armoury raid and terrorist absconders opened fire on the Government forces. Two absconders, viz. Tarakeswar Dastidar and Miss Kalpana Dutt, were arrested. The Government forces sustained no casualties.

(2) On 22nd May 1933, when No. 136/3B, Cornwallis Street, Calcutta, a suspected shelter of absconders, was surrounded by the Police, the absconders opened fire on the raiding party and wounded Special Branch Inspector M. Bhattacharji. Three dangerous absconders, including two who had escaped from custody, were arrested after an exchange of shots.

(3) On 2nd September 1933, Mr. B. E. J. Burge, I.C.S., District Judge of Midnapore, was shot dead at Midnapore. Two of his assailants were killed.

(4) On 28th October 1933, a party of 15 youths, carrying arms, raided the Hili railway station in the Dinajpur District and got away with cash and mail bags, after wounding a postal peon, a railway mechanic and four coolies. The postal peon subsequently died. Seven of the dacoits were arrested by the police later in the same day.

1933—"B."

(1) On 3rd January 1933, a mail dacoity was committed at Baramaira, police station Amta, Howrah.

(2) On 4th January 1933, a dacoity was committed in a house at Nalua, police station Matlab, Tippera.

(3) On 9th January 1933, two *bhadralog* youths attacked Private Flavell with iron rods on Savage Road, police station Lalbag, Dacca, for the purpose of stealing his revolver.

(4) On 22nd May 1933, an attempt was made to rob mails between Fakirhat and Rangdia, Khulna.

(5) On 24th May 1933, a mail robbery was committed at Kanchanpur Road, Bankura.

(6) On 13th June 1933, a mail dacoity was committed at Falshatia, police station Manikganj, Dacca.

(7) On 14th April 1933, an attempt was made by two armed youths on cycles to rob a jeweller in Lalchand Makim's Lane, police station Sutrapur, Dacca.

(8) On 16th June 1933, while a local merchant was taking an insured cover containing Rs. 1,000 to the Ghorama Post Office, he was attacked and robbed by three youths at Ranibazar, Boalia, Rajshahi.

(9) On 28th June 1933, an armed mail robbery was committed at Deruabari, police station Kotulpur, Bankura.

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ANNEXURE IV.

STATEMENT SHOWING NUMBER OF PERSONS ARRESTED AND DEALT WITH UNDER THE BENGAL CRIMINAL LAW AMENDMENT ACT, 1930, AND REGULATION III OF 1818, DURING THE YEARS 1930 TO 1933.

A

Year	Number of Persons arrested and dealt with under the B.C.L.A. Act, 1930	Number of Persons arrested and dealt with under Regulation III of 1818
1930	454	Nil.
1931	452	18
1932	927	3
1933	334	Nil.
Total	2,167	21

B

Analysis of the 2,167 persons arrested and dealt with under the Bengal Criminal Law Amendment Act, 1930 :—

(i) Number in jails in Bengal under section 4 (3)	57
(ii) Number in jails in Bengal under section 2 (1)	212
(iii) Number in jails outside Bengal under section 2 (1)	3
(iv) Number in camps :—	
(*a*) Berhampore	477
(*b*) Buxa	150
(*c*) Hijli	317
(*d*) Deoli	192
(v) Number in Home Domicile and village domicile	288
(vi) Number released and not under restraint	389
(vii) Number otherwise under restraint	46
(viii) Number undergoing imprisonment	25
(ix) Number of deaths	5
(x) Number absconding	6
Total	2,167

C

Analysis of the 21 persons arrested and dealt with under Regulation III of 1818 :—

(i) Number in jails outside Bengal	18
(ii) Number on parole	1
(iii) Number released	1
(iv) Number of deaths	1
Total	21

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A NOTE BY THE SECRETARY OF STATE FOR INDIA ON TERRORISM IN INDIA.

APPENDIX B.

LIST OF IMPORTANT OUTRAGES, CRIMES AND OTHER INCIDENTS CONNECTED WITH THE TERRORIST MOVEMENT, UP TO THE 30TH JUNE 1933, IN THE FOLLOWING PROVINCES :—

(1) The United Provinces.
(2) Bihar and Orissa.
(3) The Punjab.
(4) Delhi.
(5) The Bombay Presidency.
(6) The Madras Presidency.
(7) Burma.
(8) Central Provinces.
(9) Assam.
(10) North-West Frontier Province.

UNITED PROVINCES.

1930.

(1) On 31st May, at Cawnpore, an explosion occurred of some chemicals while explosives for bombs were being prepared.

(2) On 8th August, at Jhansi, one Laxmi Kand Pande attempted to assassinate the Commissioner of the Division.

(3) On 8th September, in Benares City, a bomb in a barley tin exploded, killing an elderly woman.

(4) On 1st December, at Cawnpore, a police search party was attacked and three wounded by one Salig Ram Shukla, who was shot dead.

1931.

(5) From 1st to 13th January, in Benares, a series of bombs exploded. A small boy was injured.

(6) On 2nd January, at Cawnpore, one Asoka Kumar Bose attempted unsuccessfully to assassinate Inspector Tika Ram, C.I.D., and a Sub-Inspector. The assailant was arrested and was convicted.

(7) On 3rd January, at Farrukhabad, a bomb exploded against a wall.

(8) On 7th January, at Benares, an attempt was made, in which bombs were used, to rob the Mail Van.

(9) On 11th January, at Cawnpore, a cocoanut-shell bomb was thrown into the camp of the Deputy Collector. It did not explode.

(10) On 21st January, at Cawnpore, a bomb exploded in a Mohalla without injury.

(11) On 6th February, at Benares, a cocoanut-shell bomb was discovered unexploded.

(12) On 6th February, at Benares, a cocoanut-shell bomb exploded in the compound of a house occupied by a Munsiff.

(13) On 17th February, at Shahjahanpur, a bomb exploded in a Dharamsala. One person was injured.

(14) On 27th February, at Allahabad, Chandra Shekhar Azad, an important terrorist leader, was shot dead at the Alfred Park, after a revolver fight with the police.

(15) On 3rd March, at Sitapur, a liquor vendor was injured by a bomb, and subsequently a crude bomb was found in the house of a goldsmith.

(16) On 6th June, at Cawnpore, two constables who had arrested a "wanted" revolutionary were attacked and seriously wounded.

(17) On 20th June, at Cawnpore, an armed robbery was committed in a shop. The Munim (clerk) of the shop was killed.

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A NOTE BY THE SECRETARY OF STATE FOR INDIA ON TERRORISM IN INDIA.

UNITED PROVINCES—1931—*cont.*

(18) On 22nd–23rd June, at Lucknow, two young men on bicycles stopped a carriage in which were a cloth merchant and two of his friends, throwing two bombs and slightly injuring the cloth merchant, one of his friends and the driver. They were subsequently arrested in Patna.

(19) On 18th July, at Cawnpore, an attempt was made on the life of a terrorist named Bir Bhaddar Tiwari, suspected of having turned informer.

(20) On 21st July, at Cawnpore, Ramesh Mehta, a terrorist, was shot and wounded by, it is alleged, one Raja Ram Zalim, a suspected terrorist.

(21) On 6th August, at Cawnpore, an employee of a cloth merchant was attacked and robbed at the point of a revolver. The culprit was arrested after he had wounded two of his captors.

(22) On 11th August, at Cawnpore, Raja Ram Zalim was shot dead by an unknown assailant.

(23) On 18th August, at Benares, a bomb exploded in a Police Outpost, injuring a policeman.

(24) On 24th November, at Jalaun, a second murderous attack was made on Bir Bhaddar Tiwari.

1932.

(25) On 23rd January, at Allahabad, Yashpal, said to be Commander-in Chief of the Hindustan Socialist Republican Army, was arrested after an exchange of revolver shots with the police. Two revolvers and a large quantity of ammunition were found.

(26) On 26th January, at Lucknow, a bomb was thrown at a policeman, but did not explode.

(27) On 1st February, at Lucknow, a bomb was thrown, injuring four sub-inspectors, two naiks and two members of the public.

(28) From 23rd February to 8th April, at Allahabad, a series of bombs exploded. Two constables and one private person were injured.

(29) On 1st April, at Benares, five persons were arrested attempting to destroy one of the piers of the Dufferin Bridge over the Ganges.

(30) On 10th May, at Sitapur, a country-made bomb exploded outside the house of the Superintendent of Police, causing no damage.

(31) On 13th July, at Agra, an armed dacoity was attempted by about half a dozen men. Two of them entered into the house of a rich business man, and fired at him and his munim, killing the latter. An alarm was raised and the dacoits fled.

(32) On 22nd November, in the Hardoi district, an express train was stopped by the communication cord. Two youths descended and on being challenged by the guard, they fled after one of them had fired at and wounded him. On their arrest the culprits admitted that they were on their way to join the revolutionary party in Calcutta.

1933.

(33) On 4th January, at Agra, three youths endeavoured to relieve a postman of Rs. 4,475 to gain funds for revolutionary purposes. One was arrested.

(34) On 5th January, at Cawnpore, the police were subjected to revolver fire when arresting a revolutionary absconder. The absconder was subsequently convicted.

(35) On 2nd February, at Sitapur, a postman carrying Rs. 633 was held up at the point of a revolver by two young men in broad daylight. The men seized the cash bag and made off.

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UNITED PROVINCES—1933—*cont.*

(36) On 5th February, at Cawnpore, a country-made bomb containing broken glass and pieces of metal was found broken but unexploded.

(37) On 25th February, at Benares, a merchant carrying money was attacked by two men, one of whom shot him when he refused to part with his property. One of the assailants was arrested after a running fight in which three more men were wounded by pistol shots. The other was also arrested on the spot. The merchant died.

(38) On 15th March, at Benares, a revolutionary absconder was arrested and found to be in possession of a loaded revolver and 59 cartridges.

(39) On 21st May, at Lucknow, a dangerous bomb was placed in the drain of a Police Outpost, but failed to explode.

BIHAR AND ORISSA.

1930.

(1) On 28th May, at Jhanjhara, an armed dacoity was committed.

(2) On 30th May, at Dheluaha, an armed dacoity was committed.

(3) On 13th October, at Jamalpur, three unknown men fired five shots at a Police Sub-Inspector and constable, who returned the fire, but the culprits escaped.

1931.

(4) On 13th April, at Patna, two cocoanut bombs exploded in an empty school and one unexploded bomb was found.

(5) On 15th June, at Hajipur, the Station Master and his Assistant and two coolies, while carrying cash bags, were attacked by armed dacoits, who opened fire. The Station Master and his Assistant were wounded, and the dacoits escaped with Rs. 640. A coolie was injured by a Kukri cut. The Station Master died.

(6) On 28th June, at Patna, a Sub-Inspector of Police was killed and a head constable seriously wounded by a bomb thrown by two revolutionaries, both of whom were injured also. Three bombs, one service revolver, 71 cartridges, one automatic pistol and two cartridges were recovered.

(7) On 31st July, at Patna, two men were injured while handling a bomb which exploded. One died.

(8) On 12th August, at Chapra, two youths were arrested, and one six-chambered revolver, an old pattern double-barrel pistol (loaded), some gunpowder and chloroform were recovered.

1932.

(9) On 9th November, at Bettiah, an approver in the Lahore Conspiracy Case of 1930 was fatally stabbed by two youths. One Ganesh Gupta was also fatally wounded by the assailants when he tried to prevent their escape.

PUNJAB.

1930.

(1) On 22nd February, at Amritsar, a country-made bomb was thrown at the Principal of the Khalsa College, while he was presiding over a gathering of 150 students. One person was killed and 11 wounded. Three persons were arrested and one convicted, but subsequently acquitted by the High Court.

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A NOTE BY THE SECRETARY OF STATE FOR INDIA ON TERRORISM IN INDIA.

PUNJAB—1930—*cont.*

(2) On 3rd March, at Jullundur, two cocoanut bomb-shells and a quantity of chemicals were found.

(3) On 9th March, at Amritsar, three bombs exploded in front of the City Kotwali.

(4) On 14th April, at Simla, a crude bomb was thrown at a police constable, but did not explode.

(5) On 26th May, at Sialkot, while a Hindu youth was filling explosives into a cigarette tin, one of his hands was blown off and he died.

(6) On 28th May, at Lahore, an explosion occurred while members of the Lahore revolutionary party were testing a bomb.

(7) On 27–28th May, in the Ludhiana District, two bombs were thrown at the railway line, for experimental purposes, by certain local undesirables, who planned a conspiracy to murder the Superintendent of Police and Deputy Commissioner.

(8) On 2nd June, at Lahore, a bomb exploded in a house which was used by the revolutionaries as a depôt.

(9) On 6th June, at Lyallpore, a bomb was thrown into a club exclusively used by European officers, but caused no damage.

(10) On 16th June, at Jhang, a bomb was thrown into the Police Post. Two policemen were wounded. Four persons were arrested, three convicted.

(11) On 19th June, at Rawalpindi, Lahore, Amritsar, Lyallpore, Gujranwala, Sheikhupura, simultaneous explosions of six very powerful "booby trap" bombs occurred. Two police officers were killed and four wounded.

(12) On 20th July, at Lahore, a bomb exploded in a suitcase belonging to a Sikh member of the Lahore revolutionary party.

(13) On 22nd July, at Moghulpura (Lahore), a bomb exploded inside a Sarai while it was being tested by a member of a secret organisation.

(14) On 28th July, at Amritsar, two youths were arrested at the Railway Station. Two revolvers and some cartridges were recovered.

(15) On 28th July, at Bhiwani, Hissar, a bomb containing glass, &c., was thrown into City Police Station. No damage was done.

(16) On 29th August, at Amritsar, a bomb exploded near the police barracks. One person was injured.

(17) On 4th October, at Lahore, an attempt was made on the life of K. B. Abdul Aziz, Superintendent of Police, while he was going in his car. K. B.'s orderly received a wound as a result of which he died later. The driver was also injured.

(18) On 12th October, at Lahore, an attempt was made on the life of Sergeant Smyth of the Lahore Police, with a revolver, but he escaped unhurt.

(19) On 4th November, at Lahore, two revolutionaries, Tehl Singh and Bashehar Nath, fired revolver shots at a police party deputed to effect their arrest. One of them was shot and died of wounds.

(20) On 7th November, at Lahore, a bomb and explosive material were found in a house.

(21) On 15th November, at Lahore, six revolvers and cartridges were found.

(22) On 17th December, at Sialkot, one country-made bomb exploded in the Government High School and two live bombs were found in Murray College. No one was injured.

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A NOTE BY THE SECRETARY OF STATE FOR INDIA ON TERRORISM IN INDIA.

PUNJAB—1930—*cont.*

(23) On 23rd December, at Lahore, when His Excellency the Governor of the Punjab was leaving the University Hall, at the conclusion of the Convocation, he was fired at by one Hari Kishan of Mardan (N.W.F.P.), and injured in the arm and hip. Two ladies, an Inspector of Police and an Assistant Sub-Inspector of Police were also wounded. The last mentioned subsequently succumbed to his injuries. The assailant was arrested on the spot and was sentenced to death.

1931.

(24) On 31st January, at Lahore, empty bomb-shells and a small quantity of bomb-making materials were found.

(25) On 14th April, at Ambala, two loaded revolvers, 24 live cartridges, an air-pistol and slugs, and three rounds of automatic ammunition were recovered from the luggage of a youth.

(26) On 30th April, at Chunian, District Lahore, three Hindus were arrested in the act of preparing bombs. Seven bombs in preparation were recovered.

(27) On 4th May, at Kup (P.S. Multan), cocoanut shell bombs filled with broken glass and razor blades were thrown into the Police Station.

(28) On 7th May, at Sucketgarh, while two suspects were being brought under escort from Jammu State they, along with two companions who were travelling with them for the purpose of standing bail, attacked the escort with revolvers. A constable was shot dead and a Head Constable and a Sub-Inspector were wounded.

(29) On 11th May, at Adampur, a bomb exploded in the hands of a Sikh, seriously injuring him and a companion. The former died.

(30) On 21st May, at Shahdara, two revolvers, one automatic pistol, five sticks of dynamite and some fuses were recovered from two arrested men.

(31) On 22nd May, at Sidh Marja, District Hoshiarpur, a bomb exploded, seriously injuring an Akali Sikh. Three more bombs were recovered.

(32) On 26th July, at Amritsar, two youths were arrested and a country-made muzzle-loading pistol was recovered. They were said to be members of a party for murdering high officials.

1932.

(33) On 12th March, at Lahore, a gold lace firm in the city was unsuccessfully attacked at a late hour by four young men armed with revolvers. It was found that the assailants were terrorists and the dacoity was attempted to serve political motives.

(34) On the night of 11th–12th May, at Ludhiana, all the wires on the Ludhiana-Ferozepore line were cut some $8\frac{1}{2}$ miles from Ludhiana. The following night all the wires were cut at three other places. A bomb in a cigarette tin which was picked up near the scene of one of the wire-cutting occurrences exploded.

1933.

(35) In March, in district Karnal, two men robbed a man of a gun and a bicycle and fled after shooting him in the wrist.

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A NOTE BY THE SECRETARY OF STATE FOR INDIA ON TERRORISM IN INDIA.

DELHI.

1930.

(1) On 6th July, a dacoity was committed at the Gadodia Store.

(2) On 28th October, Kailashpati, an absconder in the first Lahore Conspiracy Case, was arrested and four bomb shells, a Mauser pistol, ammunition, bomb-making materials and a mass of revolutionary literature was recovered. Enquiries resulted in the find of chemicals—enough to make explosives to fill about 6,000 bombs—in a house in Delhi.

(3) On 1st November, Dhanwantri, a listed absconder, attacked a policeman who attempted to arrest him, with a revolver. The policeman was injured but succeeded.

(4) On 26th December, a cigarette tin bomb was found at the railway station, and exploded. Two employees were injured, one fatally.

1931.

(5) On 17th April, four coolies were seriously injured and a passenger coach damaged, as a result of a bomb explosion near the Main Station.

(6) On 15th August, a revolver was recovered from the house of two Sikhs.

1932.

(7) On 2nd February, fragments of a bomb were found on the G.I.P. Railway line, at a spot 400 yards south-east of the Hardinge Bridge. The bomb was of a dangerous type but exploded harmlessly. The special train carrying the Lothian Committee passed the previous night.

(8) On 20th July, a constable on traffic duty was attacked by two persons who hit him on the head with an iron bar and attempted to snatch his revolver. They were disturbed, however, and were subsequently arrested and convicted.

BOMBAY AND SIND.

1930.

(1) On 21st February, at Jalgaon, an attempt was made with a revolver, smuggled from outside, by one Bhagwan Das, an undertrial prisoner, to murder the approver Jai Gopal. Jai Gopal and a Sub-Inspector of Police were wounded.

(2) On 10th and 12th April, when the G.I.P. Railwaymen's strike was in progress, certain strikers and others, who had entered into a conpiracy to blow up railway lines, stations and bridges, manufactured bombs and exploded one on the railway line between Parel and Dadar, one on Masjid Station, and one on Byculla Station. No serious damage was done. On the arrest of the conspirators, a large quantity of explosives was recovered.

(3) On 15th September, at Karachi, a crude bomb was thrown at the City Police Station, but caused no damage.

(4) On 29th September, at Karachi, a bomb exploded in Rewachand's Building.

(5) On 9th October, in Bombay, a shooting outrage near the Lamington Road Police Station took place, in which Sergeant Taylor and his wife were injured.

(6) On 25th November, at Karachi, a practically completed bomb and bomb-making materials were recovered.

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BOMBAY AND SIND—1930—*cont.*

(7) On 28th November, at Hyderabad (Sind), a crude bomb exploded in the compound of the bungalow of the Deputy Superintendent of Police.

(8) On 27th December, at Ahmedabad, a bomb exploded in the house of a tailor, in which he and a friend of his, both low-class Congress workers, were seriously injured. The bomb was intended to be used for killing local police officers.

1931.

(9) On 12th January, in Bombay City, a crude cocoanut-shell bomb exploded near the Mahabavdi Police Station. No damage was done.

(10) On 13th January, at Ahmednagar, a bomb was thrown into the compound of the sub-jail without causing damage.

(11) On 12th and 18th June, in Bombay, bombs exploded in Gunpowder Street.

(12) In May and June, at Poona, two rifles and one gun were stolen by some youths who were arrested. The arms were to be utilised in murdering certain British officers.

(13) On 22nd July, at Poona, an attempt was made on the life of the Acting Governor (Sir Ernest Hotson), by a student while His Excellency was on a visit to the Fergusson College, Poona. The assailant fired point blank at His Excellency, who had a miraculous escape, the bullet striking a metal button on his pocket book. Two revolvers and a dagger were recovered. The assailant was convicted.

(14) On 23rd July, at a village in Sind, an armed dacoity was committed in which Rs. 4,697 were looted. The object was to collect money for the purpose of avenging Bhagat Singh.

1932.

(15) On 3rd June, at Hyderabad (Sind), Hans Raj *alias* Wireless, a very important member of the Hindustan Socialist Republican Association, was arrested. A loaded automatic pistol, a country-made pistol, and an air-pistol were recovered, together with a certain amount of ammunition and two bomb-shells.

(16) On 19th October, at Panvel, an attempt was made on the life of Sub-Divisional Magistrate, Northern Division, Kolaba.

(17) On 30th October, in Bombay, on the arrival of *S.S. Hiraudi* from Goa, four revolvers and 25 cartridges were found in a passenger's luggage.

1933.

(18) On 7th April, in Bombay, a road robbery occurred, when a schoolmaster was relieved of the pay of his staff. The investigation of the crime disclosed the existence of the terrorist group "Anand Mandal." There was good reason to believe that three members of this party abetted the manufacture of the two very crude bombs which were thrown in the Empire Theatre, Bombay, on two occasions in March and in April 1933. They were charged accordingly but acquitted.

(19) On 21st April, at Ahmedabad, a loaded revolver, explosive substances mixed with pellets and gramophone needles, four bottles of kerosene oil mixed with petrol, a quantity of chemicals, and several copies of a leaflet threatening foreign cloth dealers with death if they persisted in selling foreign cloth, were found after the arrest of two suspected incendiaries.

(20) On 16th June, at Hyderabad (Sind), a bomb was thrown by two youths, near two British soldiers, one of whom was slightly injured.

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A. NOTE BY THE SECRETARY OF STATE FOR INDIA ON TERRORISM IN INDIA.

MADRAS.

1933.

(1) On 16th March, in Madras, a revolver was found in the Governor's box in the Legislative Council Hall.

(2) On 15th April, at Cocanada, half a dozen bombs were found in a boat.

(3) On 26th April at Ootacamund, four individuals dressed in khaki shirts and shorts, and armed with revolvers, successfully raided the Travancore National Bank. All were subsequently arrested and convicted.

BURMA.

1930.

(1) On 2nd July, near Insein, two revolver shots were fired at two police officers.

(2) On 1st September, in Rangoon, a daylight highway robbery was committed.

(3) On 28th October, between Subhinta and Nyaungchidauk Railway Stations, the Rangoon Mail was derailed.

CENTRAL PROVINCES.

1930.

(1) On 7th April, at Village Kauria, District Narsinghpur, a bomb explosion occurred in the house of a goldsmith. The goldsmith was killed and on a search of his house a quantity of chemicals and communistic and revolutionary literature was recovered.

1931.

(2) On 9th August, at Saugor, a dangerous bomb was found in the Government High School.

(3) On 21st August, at Marathi School, Burhanpur, a cocoanut bomb was thrown into a scout rally at which the Divisional Commissioner was present. The bomb did not explode.

(4) On 23rd July, between Dongargaon and Mandwa, two European military officers travelling in the Punjab mail were stabbed, one of whom (Lieutenant Hext) subsequently succumbed. Two persons who had committed the murder and an abettor were arrested.

1932.

*(5) On 3rd April, at Betul, a ·455 bore revolver was stolen from the house of a retired Sub-Inspector of Police.

*(6) On 9th June, at Hinganghat (Wardha), Rs. 1,403 were stolen from the railway station safe.

*(7) On 2nd July, at Nagpur, a ·455 bore revolver was stolen from the bungalow of the City Superintendent of Police.

ASSAM.

1931.

(1) On 6th January, between Harashpur and Gobindpur, a mail robbery was attempted.

(2) On 12th January, at Hatigarh, a dacoity was committed in which Rs. 3,420 in cash were stolen. One person was injured.

* These offences were committed by members of a revolutionary organisation, 13 of whom were prosecuted and 10 convicted.

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ASSAM—1931—*cont.*

(3) On 31st January, at Kamalganj, a mail robbery was committed.

(4) On 2nd March, at Dharampur, highway robbery of mails was attempted.

(5) On 2nd July, near Gauripur Junction, an armed dacoity was committed in which Rs. 2,796 were looted.

1932.

(6) On 27th February, between Shaistaganj and Habiganj, four masked men, armed with revolvers and daggers, entered the mail van of a passenger train and looted all the mail bags.

(7) On 27th September, at Dughar, cash and ornaments valued at Rs. 15,400 were stolen in a dacoity, probably committed by terrorists.

1933.

(8) On 12th January, near Sylhet, four bhadraloks assaulted the two mail runners from Sylhet to Sunamganj, took their bags and got away with Rs. 5,000–6,000 in insured covers and about Rs. 400 in cash.

(9) In February, in the Sylhet district, a serious dacoity took place in which a boy was shot dead and Rs. 3,000 were stolen.

(10) On 13th March, at Itakhola, Sylhet district, six bhadralok youths attacked a mail runner and when surrounded by villagers one of them opened fire, but was caught after one villager had been killed and two others wounded. The other dacoits fled with Rs. 1,400. Four were arrested later on.

NORTH-WEST FRONTIER PROVINCE.

1930.

(1) On 2nd July, in Peshawar Cantonment, a bomb exploded beneath the engine of the Calcutta mail train. No damage was done.

(2) On 8th July, at Peshawar, a crude bomb exploded outside the house of an Honorary Magistrate. No damage was done.

(3) On 15th July, in Peshawar Cantonment, an explosion occurred in one of the two old ornamental guns in the Mackeson Gardens.

(4) On 1st September, at Peshawar, a bomb of the Mills type, wrapped in cloth, was found by a Police Inspector on returning to his house at midnight. It exploded but did no damage.

(5) On 1st September, at Bannu, a bomb of the Mills type exploded in the house of the City Inspector, but did no damage.

1931.

(6) On 14th January, at Qudi Killa P.S. Sadr. Mardan, two Mills grenades were recovered from the house of a Hindu.

(7) On 20th–21st January, at Peshawar, a country-made bomb exploded on contact with the wheels of an engine, but did no damage.

(8) On 14th March, at Peshawar, a country-made bomb was thrown near the Kissa Khan Police Station, but it failed to explode.

(9) On 8th May, at Peshawar, two country-made bombs were found by the servant of a bookseller in the Kissa Khani Bazar.

(10) On 30th June, at Bannu, two bombs were found in the possession of a labourer.

(11) On 15th August, at Kot Najibullah, a youth, who was apparently preparing a bomb, was injured when it exploded.

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RECORD C1 *(continued)*

IV.—Questions asked by the Marquess of Salisbury on the position of the States in the Federal Finance Scheme of the White Paper, and replies thereto by the Secretary of State for India [16th December, 1933].

QUESTIONS BY THE MARQUESS OF SALISBURY.

It has been repeatedly stated that the States are not prepared to pay direct taxation until after all other sources of Federal revenue required to meet Federal expenditure have been exhausted, taking into account all possible savings through economy, and until therefore a condition of emergency has arisen. Then and then only will they directly contribute on a prescribed basis. This limitation, however, on direct taxation in the States is not to be held to apply to the Corporation Tax, at any rate in the case of a majority, I think a great majority, of the States. But it should be added, from the White Paper itself, that this tax for the first ten years is to be leviable only from British India. I am sure it will be agreed that it is most important that the Committee should realise the exact effect of the position of the States. I take it to be as follows:

1. Except in a state of emergency the States will not undertake to pay anything by way of direct taxation to Federal revenue for the first ten years.

2. After ten years they, or at any rate most of them, agree to be assessed to Corporation Tax on an equal footing with British India, though they reserve to themselves the right to pay an equivalent sum in place of actually levying the Corporation Tax.

Certain further questions arise, but they are subsidiary to these two main propositions.

3. As apparently, if all the Federal units are to bear an equal burden, the Income Tax being not leviable on the States cannot be used for Federal purposes except in an emergency, how is it proposed that the Federal Budget shall be balanced for the first ten years?

4. After ten years is it contemplated that the Federal Budget should if necessary be balanced by the Corporation Tax, and is the scope of this tax sufficiently productive and sufficiently equitable to be adequate for this purpose having regard to the unequal distribution of Companies in the different units of the Federation?

5. How is it intended that the prescribed basis on which in an emergency the Income Tax is to be levied from the States should be calculated?

6. How is it contemplated that the Assessment of Companies in the States is to be made and verified for the purposes of the Corporation Tax?

If the statements in paragraphs 1 and 2 are accurate and the Secretary of State is good enough to answer the questions in the remaining paragraphs, we shall have a clearer idea of the financial position of the States in the proposed Federation.

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QUESTIONS ASKED BY THE MARQUESS OF SALISBURY ON THE POSITION OF THE STATES IN THE FEDERAL FINANCE SCHEME OF THE WHITE PAPER, AND REPLIES THERETO BY THE SECRETARY OF STATE FOR INDIA.

MEMORANDUM BY THE SECRETARY OF STATE FOR INDIA IN REPLY TO THE ABOVE.

Questions Nos. 1 *and* 2.—Numbers 1 and 2 of Lord Salisbury's questions correctly state the position, but the following comments may be made by way of further elucidation. First it may be well to recall to the Committee the main heads of revenue at the Centre as given in Sir Malcolm Hailey's note, Record No. 1*. These are repeated for convenience of reference.

	Rs. Crores.	*£ Millions.*
Customs (net)	50·27	37·70
Income taxes (net)	17·21	12·91
Salt (net)	7·60	5·70
Other taxes (net)	·60	·45
Net tax revenue	75·68	56·76
Opium (net)	·63	·47
Railways (net)	Nil	Nil
Currency and Mint (net)	1·11	·83
Payments from States	·74	·56
Total	78·16	58·62

It will be seen that "direct taxation" is in practice equivalent to taxes on income and that these form only a little over one-fifth of the total net revenue. It also will be remembered that during the first ten years to which question No. 1 refers, the tributes from the States (about half a million pounds a year) will only be in process of gradual reduction *pari passu* with the remission of income tax to the Provinces, and that, accordingly, there will during this period at least be a contribution from some States otherwise than through "indirect taxation". It may also be well to add a comment on the phrase "state of emergency" in connection with the States' liability to contribute to taxes on income. It is true that it is only contemplated that the States should participate in special surcharges on income tax and that these special surcharges are not intended to be used except in times of difficulty when other sources open to the Federation have proved insufficient.† But the use of the term "emergency" must not be held to cover only grave financial crises.

Question No. 3.—It is evident from this question that there is a misconception in the minds of some members of the Committee. It is not proposed under the White Paper scheme that, because the States will only contribute to taxes on income through special surcharges (if and when these are imposed) the Federal Government should therefore forego the right to keep any part of the taxes on income raised from British India and should surrender the whole of it to the Provinces. The proposals in the White Paper contemplate that a certain percentage of the taxes on

* These figures give the budget estimate of Central Revenue (net) for 1933–34, and are not, of course, an estimate for the first year of Federation; but they will serve adequately as an illustration for the purpose of this note.

† Sir A. Hydari adds in his statement of 27th July the not unreasonable condition that the programme of remission of income tax to the Provinces should be suspended.

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income should be permanently assigned to the Federation and the determination of this percentage is left to be fixed subsequently by Order in Council. Unless financial conditions change for the better more radically than we have any reason to expect, I doubt whether it will be possible to fix the Federal permanent share of income tax at less than the maximum figure mentioned in the White Paper, viz. 50 per cent. As regards the balance of taxes on income, under the White Paper proposals as they stand, the Federation has the power of retaining the whole for three years, followed by a process of gradual remission to the Provinces extending over the next seven years. So that for three years the Federation has the whole Income Tax, and by the end of ten years, the Federation would have half and the Provinces half. There is a power in the Governor-General to hold up this programme and so retain, for the time being, more for the Centre. A point to which the Committee ought in due course to give careful attention is whether the most suitable method, in the existing financial conditions is that proposed in the White Paper, viz. a predetermined programme with power to suspend, or machinery by which the programme is left to be settled at a later date. However that may be, it will be plain that it is contemplated that although the States will not be contributing, the Federation should retain permanently a large portion of the taxes on income and only remit the remainder to the Provinces gradually as financial conditions admit.

The implication in question No. 3 is, apparently, that such a proposal is, at all events theoretically, unfair seeing that the Federation uses a source of taxation derived from some of the units only. At the second and third Round Table Conferences there was a good deal of discussion about the "equality of burden" as between the States and British India. The true position, viewed from this aspect, is not very easy to assess. Some of the many factors that have to be taken into consideration are the following:—

(i) Part of the taxes on income are in fact not collected solely from British India. Perhaps the most important head of this kind is income-tax deducted at the source on the interest on Government Securities which are widely held in the States as well as in British India.

(ii) If certain revenues are provided by British India only, *per contra* part of the Federal expenditure is only for British India, such as:—

(*a*) subsidies to deficit provinces other than the N.W.F.P.;

(*b*) a share of certain pre-Federation pensions;

(*c*) possibly also a share of the service of pre-Federation debt.

(This is a contentious question on which there has been much argument on one side and the other.)

(iii) The States make certain contributions in kind to Defence Expenditure, to which there is no parallel in British India.

The general conclusion which the Government reached, with a considerable measure of assent from the Indian delegates, was that it was very important to get away from any attempt to balance factors of this kind and to base their proposals for the allocation of resources between the Federation and Provinces (and in particular allocation of taxes on income) according to actual financial and economic necessities rather than to attempt to produce theoretical equality of burden between British India

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QUESTIONS ASKED BY THE MARQUESS OF SALISBURY ON THE POSITION OF THE STATES IN THE FEDERAL FINANCE SCHEME OF THE WHITE PAPER, AND REPLIES THERETO BY THE SECRETARY OF STATE FOR INDIA.

and the States. I regard as one of the most important of such necessities, an arrangement by which, eventually, both Provinces and Federation will have an element of direct taxation (viz. taxes on income) included among their resources.

I do not propose to make any attempt to give a precise estimate as to what would be the percentage of taxes on income drawn solely from British India which the Federation could retain without violating the principle of equality of burden, but assuming that the percentage retained is fixed as high as 50 per cent., there would probably be, in relation to taxes on income, a permanent inequality though not of great magnitude, and during the first 10 years, or longer period if the programme of remission to the Province is prolonged, there will be a larger inequality. At first sight this may appear unfair to British India, but it is impossible in the circumstances of India to proceed straight to an equality of position between the States and British India, when they have been so different in the past.

The really important feature of the Federal proposals in the financial field is not the failure to secure from the States their full contribution in relation to direct taxation but the dropping of their claim to a share in customs revenue which, backed to some extent by the Butler Committee, was becoming a problem of considerable gravity.

Question No. 4.—The present yield of the Corporation tax is about £1⅓ millions a year or approximately one-tenth of the total yield of taxes on income. No estimate has been made of the possible yield from Companies in the States. The proposal to federalise permanently this head of taxes on income did not in any way flow from the conception that it would be an item which was capable of balancing the Federal Budget. It is possible that it is a tax that may be developed, but it is by no means free from objections and it may well prove that it will not in future play a much more important part than it does now. The reason why this was singled out for special treatment was that it was the one form of taxes on income (other than special surcharges) in which most of the States at all events showed some disposition to be ready to participate. The advantage to be derived from their participation is really less directly financial than economic since it may help to prevent any future development in the direction of companies establishing themselves in the Indian States rather than in British India in order to avoid the incidence of the tax.

Question No. 5.—Since it will not be possible to form any accurate estimate of the income of States' subjects which would be assessable to income-tax if they were all liable under the British Indian Income Tax law, it is plain that some more or less arbitrary method will have to be employed for calculating the States' share of special surcharges when these are imposed. No method is altogether free from difficulty. The most promising proposal seems to be the following. An estimate would be made of the total revenues of each federating State and also of the British India Provinces on as nearly an equal basis as may be possible. The sum to be paid by the States as their counterpart to the special surcharges would then be the yield of surcharges in British India multiplied by the ratio of the sum of the States' revenues to the sum of the British India Provinces' revenues. The amount thus determined for the States would be divided among the States' units in proportion to their revenues. Probably

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QUESTIONS ASKED BY THE MARQUESS OF SALISBURY ON THE POSITION OF THE STATES IN THE FEDERAL FINANCE SCHEME OF THE WHITE PAPER, AND REPLIES THERETO BY THE SECRETARY OF STATE FOR INDIA.

percentages based on a method of this kind could be fixed for a period of five years at a time. The duty of revising the percentages in the light of new revenue figures might be laid on the Auditor-General.

Reference may be made on this question to paragraph 113 of the Report of the Federal Finance Committee, presided over by Lord Eustace Percy, in which is discussed the problem of allocation among units of "emergency contributions" of an analogous though slightly different kind.

Question No. 6.—Except where a State elects to pay Corporation Tax direct, the Companies in the States would be assessed either by Federal Officers or by States Officers acting on behalf of Federal Officers. In those cases where a State prefers that tax should not be paid direct by the Company but by the State, the latter choosing its own form of raising equivalent revenue, the power of assessing the sum to be paid by the State rests with the Federal Government. Since the Companies will, under the Federal Company Law, have to produce balance sheets, there will be some material, though no doubt of an inadequate kind, for the Federal Government to make its assessment. No doubt they will proceed by the method, when inadequate statistics are forthcoming, of propounding an assessment and leaving it to the State to produce information to justify a reduction.

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RECORD C1 (*continued*)

V.—Memorandum by the Secretary of State for India [2nd August, 1934] on the Federal Legislature

I should like to set out shortly the reasons for which I found myself able to agree with the plan for the election of British Indian members of the Federal Lower House contained in the Lord Chairman's Report, in the hope that those of my colleagues who still have doubts upon particular aspects of the plan may nevertheless, like myself, be prepared to accept it as a whole.

I explained my own views on the question at the various sessions of the Round Table Conference with, I hope, complete candour. As for my Government colleagues, they and I have never taken the view that the time has yet come when the *final* decisions must be taken on the constitutional and political issues involved in the question. We approach it as a question of choosing the machinery least likely, under the conditions prevailing *at present*, to give unsatisfactory results rather than of adherence to one or other of two opposing schools of political thought whether in India or in England—and there are divergent views on this subject in both countries. The arguments on both sides are set out in the draft Report. Fundamentally, the question resolves itself into one of balancing against the disadvantages of constituencies of huge area the disadvantages arising from the small quotas for election by the Provincial Legislatures. The choice is admittedly difficult.

Two considerations have weighed with me in reaching a different conclusion from the plan as proposed in the White Paper. In the first place, I feel strongly that only further experience of political forces and machinery in India will provide the material upon which can be based a final answer as to the best method of giving effect to the representative principle. This being so, I can find no answer to the arguments, elaborated in the draft Report, that the continuation at this stage of direct election would make it almost impossible to escape from this system in future. It would be likely to become more and more, rather than less, difficult with a lapse of time which is bound to be accompanied by a lowering of the franchise. The ultimate solution may be on the lines of the group system, but whatever the final solution may prove to be I am convinced that it would be easier to approach it from a system of indirect election rather than from direct.

I have come to this conclusion with the less hesitation in view of the proposals in the draft Report which will provide the Indian Legislature, in due course, with constitutional means of making its views on this subject known to Parliament.

What I have said describes my own position on this matter, but I am sure that it represents in substance the attitude of many of my Government colleagues on the Committee.

[2ND AUGUST, 1934.]

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RECORD C1 (*continued*)

VI.—Letter from the Secretary of State for India to the Lord Chairman of the Joint Select Committee

1st August, 1934.

It will be within your recollection that in July, 1933, I invited some of the members of the Joint Select Committee and delegates to be so kind as to assist me in hearing representations from leading Telegus and Oriyas who were then in London on the subject of the boundaries of the proposed new Orissa Province. The Joint Select Committee had decided not to hear evidence from these gentlemen on this particular subject.

As indicated in the attached memorandum, I have come to the conclusion, with the concurrence of my colleagues of the Joint Select Committee and delegates* who were good enough to assist me in the matter, that there should be added to the proposed new Province as defined in the White Paper (*a*) that portion of the Jeypore Estate which was recommended by the Orissa Committee of 1932 for inclusion in Orissa; (*b*) the Parlakimedi and Jalantra Maliahs; (*c*) a small portion of the Parlakimedi Estate (including Parlakimedi Town).

As the conclusions reached involve amendment of a Proposal mentioned in the White Paper, though on a point which involves administrative rather than constitutional issues, I think it right to report the conclusions to you for circulation to the Committee and publication in its records if you see no objecton.

MEMORANDUM.

Orissa Boundaries.

The Secretary of State for India, assisted by the marginally noted members of the Joint Select Committee and Indian Delegation, received representations on the subject of the boundaries of the proposed province of Orissa from Oriya representatives on 3rd July, 1933, and from Telegu representatives on 10th July. Each set of representatives was given an opportunity of commenting in writing on the documents submitted, and on the evidence tendered by the other. Sir Samuel O'Donnell, Chairman of the Orissa Committee (1932) was also consulted on 6th November and views expressed by the Madras Government and the Government of India were also taken into consideration.

Lord Zetland
Lord Derby
Lord Lothian
Major Attlee
Mr. R. A. Butler
†Sir Phiroze Sethna
†Sir N. N. Sircar
†Mr. Zafrulla Khan

The main points to which attention was devoted were the following:—

(*a*) Should the town of Berhampur be included in Orissa?

(*b*) Should the whole or any part of the Parlakimedi estate be included in Orissa?

(*c*) Should the Jeypore estate‡ be included in Orissa?

(*d*) Should territory be included in Orissa to make it possible to establish a summer headquarters of Government at Mahendragiri.

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* The delegates had returned to India before conclusions were reached regarding the Parlakimedi Estate.

† Sir N. Sircar attended the July, 1933, meetings but had left for India before any conclusions were reached. Sir P. Sethna and Mr. Zafrulla Khan had left before conclusions were reached regarding the Parlakimedi Estate.

‡ Used in this memorandum as synonymous with that part of the Vizagapatam Agency Tract which the Orissa Committee proposed to transfer to Orissa.

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LETTER FROM THE SECRETARY OF STATE FOR INDIA TO THE LORD CHAIRMAN OF THE JOINT SELECT COMMITTEE.

The conclusions reached are as follows:—

(*a*) The population of the town of Berhampur is approximately equally divided between Oriyas and Telegus. There appears to be no doubt of the correctness of the Telegu contention that, judged solely by financial and economic tests, their interests predominate over those of Oriyas in the Town. Nevertheless it seems impossible, on these grounds, to deny to the new province the only town which could form a suitable headquarters for its south-eastern area. The suggestion made by the Telegu representatives, that Chatrapur might suffice for such headquarters, was examined, but the conclusion reached is that it would be inadequate.

(*b*) The majority of the population of Parlakimedi estate is admittedly Telegu. On the other hand, the Zamindar, the Raja of Parlakimedi, who is a leading Oriya pressed strongly that his estate should be included in the new province. In view of the objection to transferring to Orissa the whole estate, with a predominantly Telegu population, the Raja submitted a proposal* that his estate should be divided between the two Provinces. The portion to be transferred to Orissa would include about 30 per cent. of the population of the whole estate and would comprise the town of Parlakimedi (in which the numbers of Telegus and Oriyas are approximately equal). The boundary may be roughly defined as follows. A line just to the south of the Gunupur-Parlakimedi Railway from the point where the Railway enters the estate at its north-west corner to the point where the Railway crosses the Mahendratanaya River, and from there a somewhat irregular line, whose general trend is east by north, to the north-eastern corner of the estate.

In this area (together with that of the Parlakimedi Maliahs lying to the north of it) Oriyas would slightly predominate over Telegus so far as mother-tongue is concerned and to a larger extent so far as race is concerned (though the race figures are somewhat conjectural). The transfer of this limited area to Orissa seemed to be a suitable solution of a difficult problem, and is accordingly recommended. The exact boundary would require delimitation.

(*c*) Considerations for and against the inclusion of Jeypore estate in Orissa are set out in paragraphs 71 and 72 of the report of the Orissa Committee. The balance of advantage appears to lie in transferring this area to Orissa.

(*d*) On examination it proved that the prospect of establishing a satisfactory summer seat of Government at Mahendragiri, even assuming this to be desirable policy, is so remote that it would be unwise to make a special adjustment of the boundary for this purpose.

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* Another, and earlier, proposal of the Raja for dividing the estate would have transferred to Orissa an area in which Telegus would undoubtedly have predominated. This earlier proposal was not accepted.

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RECORD C2

Joint Committee on Indian Constitutional Reform

Papers handed in by Members of the Committee

I.—Memorandum by The Earl of Derby, The Marquess of Zetland and Sir Austen Chamberlain on Direct versus Indirect Election

[5TH MARCH, 1934.]

In bringing the question of indirect versus direct election before the Committee on Monday and Tuesday last, we thought that the Committee would desire that that issue should be presented in its simplest form, unencumbered by the other questions which are nevertheless closely associated with it. The discussion, however, convinced us that many of our colleagues found it difficult to decide this issue without knowing how the Upper Chamber was to be constituted if the method proposed in the White Paper for the election of the Upper House were adopted for the Lower. We therefore, venture to submit for the consideration of our colleagues a plan for the constitution of both Chambers on the assumption that the method of indirect election is adopted for the Lower.

Our proposal is that the majority of the seats allotted to British India in the Lower House of the Federal Legislature should be filled in the manner proposed in the White Paper for filling the majority of the seats in the Federal Council of State; that is by the single transferable vote exercised by the members of the Provincial Legislatures. It appears from paragraph 18 of the introduction to the White Paper that, so far as the major communities are concerned, this system is expected to give a very fair communal representation, though it may be necessary to provide non-provincial communal seats for the smaller communities (Europeans, Anglo-Indians and Indian Christians) whose representatives in the Provincial Legislatures would be insufficiently numerous to provide the necessary quota to secure representation in a Federal Legislature elected under this system.

If the Lower House of the Federal Legislature were elected in this way, it would be necessary to devise some other means of forming the Council of State, and after considering various alternatives we have come to the conclusion that the Second Chamber should be composed of representatives nominated in their proper proportions by the provincial Governments and by the Princes. We suggest that the nominations should be for a term of nine years, one third of those chosen retiring every three years. It might be desirable, in order to secure the adequate representation of minorities, that the appointment of, say, one third of the representatives sent from each province should be reserved to the Governor acting in his discretion. In the case of the first Council of State formed under this system, it would be necessary to provide that one third of the members should vacate their seats at the end of the first three years of its life, and another third at the end of the first six years.

The scheme which we have roughly outlined has in its favour three positive advantages:—

(1) It avoids repeating in every stage of the constitution the system of communal electorates.

(2) It would enable the size of both Houses of the Federal Legislature to be kept down to a limit which would not be practicable if direct election were used for either House.

(3) It conforms to the advice of the Statutory Commission and avoids the vices of direct election in such vast areas with such imperfect communications as exist in India.

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RECORD C2 (*continued*)

II.—Memoranda by The Lord Rankeillour

A.—On the Relations of the Two Houses of the Federal Legislature in regard to Supply.

[8th March, 1934.]

The idea put forward in 48 of the Government proposals that the Council of State should be empowered, even provisionally, to restore grants struck out by the Legislative Assembly is completely foreign to our Constitutional notions as to the functions of an Upper House. If, however, the Government consider it justified by the peculiar circumstances of India, I have certainly no objection to make. I think, however, it carries with it the irresistible corollary that the Council of State should have the converse power of provisionally striking out or reducing grants passed by the Legislative Assembly. Otherwise the position would arise that the Council of State could do nothing in the direction of economy except at the price of creating a deficit which they could not fill up. Personally indeed I should favour the power being given to the Council of State provisionally to reject or reduce grants, even though the power of restoring them were withheld.

At the same time I am impressed by the argument that formidable delays might occur in the voting of Supply if Estimates were capable of being bandied about between the two Houses. I submit, however, that the expedient of laying of Estimates before a Joint Session in the first instance would be a remedy worse than the disease. The mere physical difficulties of having three large halls constantly available for legislative proceedings are considerable, and the whole object of a Revising Chamber would be defeated if members of both Houses were promiscuously engaged in the first instance in considering the proposals of the Government. The progress, moreover, of other urgent business would necessarily suffer.

I cannot but think that the difficulties now experienced in obtaining Supply may be due to some degree to Votes on Account not being taken, and I cannot see why the practice which prevails here should not be adopted in India.

Further, it has occurred to me that in cases of disagreement it might be possible to reduce the issues and shorten discussion by the old English constitutional expedient of a free Conference between the Houses. Each House would nominate a limited number of managers to present their case on a disagreement to the other. In so far as the Conference came to an agreement on certain points it would merely be necessary to put the one question in each Chamber that the decision of the Conference be approved. If, however, the Conference came to no complete result, it might at least narrow the issues if in the end it was necessary for a full Joint Session to take place. For the purposes of such a Session it might be provided by rules that each point in dispute should be put and decided after a statement by one of the managers for each House, and such statement might be limited, say, to half an hour.

I make these suggestions with diffidence because the expedient of free Conferences has not been used for nearly a hundred years, but it does seem possible that it might be useful under the new conditions now contemplated.

As to Appropriation Bills, their use in our Constitution is not merely to ensure the greatest possible opportunity for discussing "grievance before Supply," but to give the Treasury powers of borrowing and of what is known as "virement" which are both essential parts of our financial

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system. I think that if Appropriation Bills are not to be adopted in India a permanent provision will be necessary both to allow and to limit "virement," and I also think that borrowing powers during the financial year must be allowed by the Constitution Act both to the Indian Treasury and to the Governor-General at his discretion. The need of the latter provision has already been insisted upon in discussion.

8TH MARCH, 1934.

RECORD C2 *(continued)*

B.—ON THE COURTS IN INDIA.

[20TH MARCH, 1934.]

The functions of the Indian Courts, both as they now exist and as set forth in the Government proposals, and the powers of the new legislative bodies with regard to them, are somewhat complicated, and it would be impossible to deal with all the points that arise in any memorandum of a reasonable length.

The position is set out in Volume 3, Record III, published by order of the Select Committee, to which I would refer anyone who wishes to go in detail into the matter. I think, for the purposes of this paper, it is better to begin with Appendix VI of the Government proposals, which sets out the lists of subjects with which the Federal and Provincial Legislatures can deal. Item 63 of list one gives the Federal Legislature power to deal with the "jurisdiction powers and authority" of all Courts in British India from the High Court downwards with regard to Federal subjects. The result of this provision seems to be that the new Federal Legislature could take away the jurisdiction and powers of the High Court and distribute them among the lower Courts as regards all Federal subjects, and can equally forbid or restrict appeals as regards those subjects to the High Court from the lower Courts.

On turning to the Provincial list, Item 28 gives the Provincial Legislature general powers over the administration of justice, including the "constitution and organisation" of all the Courts in the province below the High Court. It would appear from this that the Legislature could pass what it chose concerning the qualifications for the magistracy and apparently also the grouping and subordination of different classes of magistrates and re-constitute the system of the officers and attendants about the lower Courts. By Item 29 they could add to or deduct from the competence of the Rent and Revenue Courts, and by Item 30, they could—as regards provincial subjects—add to or take from the competence and powers of all Courts up to and including the High Court, and confer these powers elsewhere.

Turning to List 3, both the Federal and the Provincial Legislature could likewise alter the competence and powers of all Courts up to the High Court with regard to what are known as the "Concurrent" subjects.

I submit that these proposals are open to serious risk of the Courts suffering from political influence and that it is necessary to put the High Courts on a permanent basis of authority, unalterable by at any rate the Provincial Legislature. This should be done in reference, not only to their competence to hear and decide cases, but with regard to their powers over the lower Courts. In this connection I would invite particular attention to Paragraphs 12 and 13 of Record 3 which I have cited above and in which allusion is made to an anxiety widely felt. It is perfectly true that the present control of the High Courts rests largely upon convention and that

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the provincial authorities have at present powers of interference, but the danger herein latent would be aggravated by the changes in Provincial Government. I suggest that the Convention should be translated into legislation if the prestige of the Courts, in the eyes of litigants, is to remain unimpaired. This legislation should comprise all provinces even where the Convention is not in force and even when the Provincial Legislature has already laid down rules as to communal representation on the Bench, as seems to be the case in the Punjab.

A difficult question arises when it is necessary to set up a special Tribunal to deal, for example, with terrorism, and where it is desirable that the sanction of the Provincial Legislature should be obtained to the innovation. I suggest that this should be done only with the previous leave of the Governor on the instructions of the Governor-General. I have been informed that a special Court set up in Bengal was, in fact, instituted on the motion of the Central Government, and that this might serve as a precedent, but I do not say this of my own knowledge.

As regards the powers of the Federal Legislature over the High Courts, I suggest that any change should require the previous consent of the Governor-General and that any Act of the Legislature in this regard should lie on the table of both Houses of Parliament with opportunity for a "prayer" to be moved against it.

With regard to the *constitution* of the High Courts, the Government proposals appear to safeguard it from undue influence, but I think, even here, it would be well to insert words that the recommendation for appointment by the Secretary of State should come from the *Governors* and not from the *Governments* in India.

With regard to appeals to the Privy Council, no doubt the rights in this matter possessed by Indian litigants have often been abused. On the other hand, there is evidence to show that justice is not always secure if the High Court be the final Court of Appeal. I submit that the right to appeal should not be curtailed, at any rate in cases where it is made contingent on "special leave". I would add that it is not clear in all cases how the judgments of the Federal, or if there be one, the Supreme Court, are always to be executed in the Provinces. This, however, is only one instance of the difficulty of enforcing Federal decisions and would, perhaps, have to be considered in connection with the general relations of the Federal Authorities and the Provincial Executive.

The object of these criticisms is to secure that, so far as humanly possible, the prestige of the High Court shall not diminish, that the administration of justice shall not vary from Province to Province, but shall be of a uniformly high standard throughout India, and that the tradition of British impartiality shall survive the inevitable changes which provincial autonomy would bring about.

20TH MARCH, 1934.

RECORD C2 *(continued)*

C.—ON SPECIAL POWERS REQUIRED IN RELATION TO DEFENCE.

[11TH OCTOBER, 1934.]

I feel bound, even at this stage, to draw attention again to the real difficulty created by paragraph 96 of the Report. This paragraph if translated into a Section of the Constitution Act would *confer* upon the Governor "a special power over and above his special responsibility" and *empower* him to assume charge of any branch of the Government under

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certain conditions. On the principle "inclusio unius est exclusio alterius" I submit that this provision would have to be interpreted as preventing him from assuming such charge unless these conditions were present. But the Committee have been repeatedly assured that the Governor in the discharge of his special responsibility can do anything that a Minister does, which must mean that he can administer a branch himself. I cannot see how these two positions are reconcilable.

This inconsistency, if I am right, may cause embarrassment in various directions but particularly in that of Defence. Paragraph 172 of the Report would enable the Governor-General to issue directions to the Provincial Government if the frontier was in danger, but would not enable either him or the Governor to assume charge of any branch of Government. But discussion has shown that there may be delay, lukewarmness or recalcitrance in carrying out such directions and meanwhile vital interests may suffer. It is true that the Governor-General and the Governor would not be in the helpless constitutional position of Lord Milner in 1899, but they will not have the immediate "Dora" powers which it may be vitally necessary for them to possess.

11TH OCTOBER, 1934.

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RECORD C2 (*continued*)

III.—Memorandum by The Earl of Derby and Sir Joseph Nall

[14TH MARCH, 1934.]

1. We have been asked to furnish some form of words dealing with commercial discriminations, which might be used as a basis for consideration and discussion with the aim, eventually, of placing a suggestion in the hands of the Joint Select Committee.

2. We have prepared a draft formula, but we do not think the merits or demerits of our suggestion can be adequately examined and weighed without some accompanying explanation, which it is the object of this memorandum to afford.

3. We approach the problem from the point of view of United Kingdom trade generally, and not merely from that of the Lancashire cotton industry, although our knowledge of the issues involved arises almost exclusively from our contact with the cotton trade. Our formula, however, is a "U.K. trade" formula, and not a cotton one. In our view provisions in a constitution can only be concerned with general principles and never with their particular application. Furthermore, past history, both distant and recent, makes it in the highest degree inexpedient from a political point of view that, in an Act embodying a new constitution for India, there should be any mention by name of the British cotton trade.

4. There are two other great British interests which properly arise in any consideration of the possible dangers from Indian discrimination. One is that of British Shipping: the other is that of British Capital.

British Shipping has, of course, a profound, if indirect interest in trade in goods of U.K. origin, and in that connection may well be consulted on the trade aspects of the problem of discrimination. It has also direct interests which are peculiarly its own, particularly in such matters as the prevention of flag discrimination. British owners of capital which is already or may be invested in enterprises within India have obvious interests in the problem.

It is of great importance to observe, however, that whereas British Shipping and British Capital must be protected from discrimination in a wide field of potential legislative and administrative activity—indeed, an almost unlimited field, embracing company law, factory legislation, internal taxation, subsidies, and so on throughout the whole range of a Government's internal economic policy—British trade, on the other hand, is only affected by tariffs or other regulations applied by imports.

5. Although one field is thus a broad one and the other quite a restricted one, it nevertheless seems to us that by reason of a combination of legal and political reasons, the broad field is far easier to deal with than the narrow. In the first place, the principles of the prevention of or protection against legislative or administrative discrimination of persons or their property within the frontiers of any country, are the subject of innumerable precedents, in our relations with foreign and Empire countries. The existence of such precedents removes any political or psychological difficulty in inserting suitable provisions in the Indian Constitution. H.M. Government showed itself willing in principle to deal with this matter when it inserted Paragraphs 122-124 in the White Paper. But the paragraphs are

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not as comprehensive as they might well be, and the reservations in 124 seem to whittle down somewhat a principle which could be stated without reservation. It would appear to be a case where expert lawyers could readily offer a re-draft, and we do not regard it as in any way part of our problem. We should like, however, to say that we consider the simplest and most direct form of words should be ultimately adopted for the reason that any attempt to specify details raises the danger of the unspecified contingency arising.

6. When you turn to the prevention of discrimination against British Trade, you face a problem of quite a different order. It raises acutely the vexed political question of Tariff Autonomy, and it involves considerations of revenue as well as of fiscal policy.

The Lancashire cotton industry has been the particular U.K. interest round which this issue has revolved. It has recently succeeded (one hopes permanently) in placating Indian susceptibilities, and no sensible person would wish to waken sleeping dogs by unnecessarily provocative action on this question of discriminatory tariff action.

Nevertheless, something quite definite and explicit must be inserted in the Act, because the absence of a safeguard would be a grave neglect of Britain's most vital interest.

7. The attitude of the Indian Delegates when the Lancashire Cotton Evidence was taken by the Joint Select Committee on 3rd November showed that they had no particular hostility to certain over-riding powers being exercised by the Governor-General to prevent discrimination. It may subsequently be of the utmost help to be able to describe our suggestions as conforming with the general trend of Indian comment on that occasion.

In any event, the obviously best plan in all the circumstances is not to raise old troubles by talking of Tariff Autonomy, but to seek a definition which will confer on the Governor-General—always the servant of the British Crown—the power to protect and preserve British interests.

8. It is presumably expedient to make what we want an addition to something already in the White Paper. Section 18 of "The Proposals" seems to be the proper place at which to introduce an amendment. We attach a proposed new wording of sub-paragraph (*e*) with which Section 18 ends. (See *annexure*.)

9. The suggested provisions regarding Tariffs are, it is submitted, nothing more than principles of equity which can properly be enshrined in an Act regulating the relations of the two countries at the moment when one is handing over fresh powers to the other, and in the degree to which Indian opinion will doubtless assent to the safeguards against discrimination, they partake more of the character of agreed principles such as two completely independent parties normally insert in a Treaty.

10. The principal objection will no doubt be that our draft is unduly lengthy, thus calling special and undesirable attention to the matter.

To that we can only reply that in this case, unlike that referred to at the end of our paragraph 5 above, specific mention of the contingencies to be provided against (involving a lengthy draft) was unavoidable for the reason that such short phrases as "discriminatory tariffs", and so forth have no absolute meaning, but are only relative and would therefore be entirely useless. This difficulty arises partly from the fact that the particular problem we are dealing with is entirely without precedent in international or inter-imperial relations.

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MEMORANDUM BY THE EARL OF DERBY AND SIR JOSEPH NALL

ANNEXURE.

DRAFT OF REVISED PARAGRAPH 18 (*e*).

(*e*) The prevention of commercial discrimination as between subjects or residents of different parts of the British Empire generally, including *inter alia* the following:—

(i) discrimination in legislative or administrative measures affecting commerce or industry within India or shipping at or in Indian ports.

(ii) discrimination against U.K. products as compared with those of other countries by tariffs or other measures to regulate imports whether directly by differential rates of duty, according to origin, or indirectly by differential treatment of various types of product.

(iii) discrimination against U.K. interests as compared with Indian interests by the establishment on goods of U.K. origin of levels of import duty or other restraints of a prohibitory or penal character in excess of the proved and equitable requirements of the economic situation in India.

(iv) discrimination such as would arise by action in violation of any agreement subsisting at the time between the Governments of India and Great Britain as regards the rates of tariff and margins of preference applicable to U.K. goods whether in general or in particular cases.

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RECORD C2 (*continued*)

IV.—Memorandum by Mr. C. R. Attlee on Responsibility at the Centre

[15TH MARCH, 1934.]

I. In submitting these suggestions to my colleagues I realise that they are only suggestions which will require working out. I am conscious of many objections, but I submit that many of them will be found to apply as much if not more to the scheme proposed in the White Paper.

II. I will set out briefly the reasons on which I base my suggestions. Indian politicians are for the most part convinced that the system of Government obtaining in this country, whereby a Cabinet dependent from day to day on the vote of the legislature is the only system of responsible government, or at least that it would be derogatory for Indians to accept anything different from what for the purposes of this note I will call the Westminster system.

III. Under the provisions of the White Paper we are in effect giving in the provincial sphere some dozen opportunities for Indian politicians to try by experiment how far this system or an adaptation of it is possible in an Oriental environment. The assumption of the White Paper is that it is desirable also to make the same experiment at the Centre. While I accept the necessity of providing for responsibility at the Centre, I am not persuaded that it is either possible or desirable to follow the Westminster model.

IV. I will briefly state my reasons:

(1) The immense population of India and the consequent difficulties of that effective connection between elector and elected which is of the essence of the Westminster system.

(2) The subject matter of Central administration and legislation is too narrow to provide the basis for it. The Westminster system is designed for a unitary not a federal State. The subject matter of Parliament embraces almost all the political interests of the people. In India 90 per cent. of the interests of the ordinary man are dealt with in the provincial sphere.

(3) The essence of the Westminster system is its flexibility which has allowed of its adaptation to new problems and the needs of new political classes. This quality is lost as soon as rigidities are introduced into its structure. The Committee has in fact been endeavouring to reduce, to a written form, and thus make rigid, the flexible rules and conventions which have been moulded to suit the occasion in this country. It is, in addition, hard to incorporate a mass of safeguards without the same effect.

(4) The working of the Westminster system depends on stable divisions on party lines. (A multiplicity of parties or groups makes its working difficult. It functions best when there are only two.) It depends also on a homogeneous ministry. Neither of these conditions is likely to be found in India.

(5) The division between elected representatives and State delegates is crossed by communal and economic cleavages. A barren and undesirable anti-British nationalism is the only basis which might bring these divergent elements together.

(6) The constituent elements of a Ministry are bound to be heterogeneous. Indeed, this is contemplated. Experience in the provinces has shown that while individual ministers may have a following, ministries as a whole rarely have support as a team from a majority. Indeed, followers are apt to cease to follow a leader when he becomes a minister.

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(7) Owing to the nature of the federation the members of the legislature will not be equally concerned in the territory of the federation. The discussions with Indians have shown the difficulty of ensuring that the will of British India shall prevail in purely British Indian matters under the Westminster system. I do not think that under the British system of responsible government an "in and out' provision is practicable.

(8) The danger of a large number of members with very little to do is not unknown at Westminster, and would seem to be inevitable at Delhi under the White Paper proposals.

V. For these reasons I think that the model should be rejected. I do not think, however, that an exact precedent can be found elsewhere. The German Reich of pre-war days shows the federation of units with differing internal constitution. The U.S.A. gives an example of a great federal State. In India, however, there is lacking the king post of those structures, i.e., an executive deriving its mandate separately from the legislature, in one case the Kaiser, in the other the President. Switzerland, despite its small size, is a federation and gives an example of an executive composed of persons of various political views responsible to and chosen by a legislature. I think that it is possible to combine certain features from the latter two countries.

Requisites at the Centre.

VI.—(1) A stable executive. (This is very difficult to obtain under a group system, vide France.)

(2) A constitution which will teach responsibility not irresponsibility to the members of the legislature.

(3) A real connection between the Centre and the Provinces. (It will be dangerous if the only link is through the autrocratic element, the Governors and Governor-General.)

(4) A strong Government, i.e., one which has behind it the force of public opinion.

(5) A constitution which has within itself possibilities of development and sufficient flexibility to allow experience to correct undesirable and unexpected results. The less detail embodied in what is confessedly an experiment the better.

The Essence of the Plan.

VII. The main idea is to place responsibility on the members of the legislature. (Without discussing the pros and cons of electoral systems I would state that one reason for my advocacy of indirect election by provincial councils is that I conceive the Central Legislature as composed of representatives of federal units not of blocks of population.) In other words, the elected representatives shall have power to alter policy without altering the personnel of the administration.

VIII. In the Westminster system as practised at present, the executive is in fact through the operation of the Party system the master not servant of the legislature. The Cabinet though formally selected by the Crown is really composed of the leading members of the Party in a majority. Its maintenance in power is due to the discipline of the Party machine, backed by the power of dissolution. This fact is obscured in the minds of most Indians through their addiction to the reading of theoretical constitutional text books.

IX. I suggest for the reasons given above that a stable ministry with a regular body of supporters in the legislature is unlikely under Indian conditions. Therefore, I desire to make the members responsible.

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MEMORANDUM OF MR. C. R. ATTLEE.

The plan suggested.

X. When the legislature has been properly constituted of the members from the States and Provinces, the Governor-General will consult with leading members in order to find out what combination of persons would be likely to command the confidence of the legislature. (This might be a matter of some difficulty. He would be much in the same position as a French President.) He would, no doubt, have to include State as well as provincial members, Moslems as well as Hindus.

XI. Having decided on his Ministry and on the members who are to have charge of the reserved departments, he would submit the Ministry as a whole to the legislature for a vote of confidence.

XII. I do not think that it is necessary to specify that this majority should be any particular fraction. The Governor-General would have in practice to satisfy himself that it was adequate. This vote would signify the acceptance by the legislature of the Ministry, and thereafter the Ministry should remain in office for a definite term, say, one or two years, during which period it could only be removed by a definite vote of No Confidence carried by a two-thirds or other fractional majority as decided. Thenceforward the Ministry would be more in the position of the Swiss Executive than of the British Cabinet. It would be a body composed of heterogeneous elements, but would be subject to the very powerful influences which tend to bring solidarity to a body of men in positions of responsibility. Formal joint responsibility would not be explicitly laid down, as indeed it is not in most constitutions, but the acts of the Government would be the acts of all. This system actually obtains in the Provinces to-day. The Ministry would not deem it necessary to resign on every adverse vote, nor would the individual minister, unless he deemed the matter of vital importance or as a censure on his character not his policy, the Minister would accept the verdict of the legislature.

XIII. The legislature would have to take responsibility for its actions. I assume that in the early stages of the new constitution the Governor-General will preside at meetings of his Cabinet and that only at a much later stage will this practice fall into desuetude. There should, however, be a first minister who would preside in the absence of the Governor-General, and lead in the legislature. He should hold a portfolio without too heavy an administrative content.

XIV. For the working of the legislative machine I suggest the setting up of a number of standing committees, some of which should be statutory. These committees should correspond with the functions of the Central Government. At their meetings the Minister should preside or, in the case of reserved subjects, the Official Member. It is in my view undesirable to have the duality which obtains in some constitutions between the Minister and the Chairman or rapporteur of the Committee. The Committees should sit with permanent officials in attendance. The Minister would have to get approval for his estimates from the Committee. The object of the system is to bring the members of the legislature into actual contact with administrative problems. The sittings of the Committees would to a large extent take the place of our "Supply Days". I think the control over administration would be more effective than under our system. The ventilation of important questions which should be discussed on the floor should be provided for by time being given for their discussion without formal votes of censure. The procedure being more like that of "the demand for papers" in the House of Lords procedure.

XV. I think that the Committee stages of Bills should wherever possible be remitted to the appropriate functional committee which should have attained a certain familiarity with the subject although other members might

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be added for particular bills. Second and third reading would, of course, be taken in the full sitting of the legislature. The Report Stage should be confined to Government amendments. The difficulty of dealing with bills relating only to British India could be met by remitting them to committees composed only of British Indian representatives or by restricting the right of vote to them. It might well be done by convention. The objection to "in and out" arrangements does not apply where "confidence" is not involved in every vote.

XVI. Reserved subjects such as Defence would equally have their committees wherein members would have the right to obtain information, criticise and make suggestions, but the powers of the members to vote would be restricted. Thus an informed opinion on Defence matters should be created. The same would apply to foreign policy excluding, of course, the relationship of the Governor-General and the States. I should myself prefer to see foreign policy a transferred subject. There should be a Budget Committee to which, after debate in the Legislature, the Budget should be remitted for examination in detail. A defeat on a proposal in the Budget would not necessarily lead to the resignation of the Ministry. If a tax should be rejected, it would be the duty of the Committee to find an alternative or suggest appropriate economies. The legislature itself should be made to feel its responsibility in its demands for expenditure and its provision for raising money.

XVII. It will be realised that in the background are the special powers and responsibilities of the Governor General which should, however, as far as consistent with safety not be used to allow the Legislature to escape its responsibilities.

XVIII. I apprehend that most legislation at the Centre would be introduced as private members' bills. It does not appear to me that a Ministry inevitably heterogeneous is likely to produce an extensive legislative programme, especially in view of the fact that so large a part of the legislative field is either in the provincial sphere or can only be made effective by provincial action.

XIX. In making these suggestions I have gone into some detail in considering the working of the machine in order to give my colleagues a picture of what is intended. It will be observed that the actual provisions which it would be necessary to insert in a bill are few, although some additions might have to be made to the Governor General's instructions. Most of the results claimed by me arise from the simple provision as to the selection and continuation of the Ministry. On the other hand, a great many detailed provisions which have been under discussion would be omitted.

XX. The system proposed is not fool proof. Given factious opposition it would break down, but I claim that the methods outlined above will tend to discount factious opposition.

I consider that the scheme gives possibilities of development, being free from rigidity.

In my view, though it is not an essential, a single chamber is more suitable for this kind of constitution.

I also think that the need for a close liaison with the provincial governments, especially in the matter of finance, makes indirect election by the provincial councils more suitable than direct election. The existence of the councils as electoral colleges in permanent existence should be a check on irresponsibility.

In conclusion I would apologise to the Committee for the roughness of this Note, but my available time is very scanty, and I wished to place the idea as early as possible before the Committee.

15TH MARCH, 1934.

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RECORD C2 (*continued*)

V.—Memorandum by The Lord Hardinge of Penshurst on the Anglo Indian Community

[17TH APRIL, 1934.]

The future position in India of the Anglo-Indian and Domiciled European Community under a reformed constitution is one that requires serious attention. Sir H. Gidney, in giving evidence, placed his views before the Joint Committee but no decision has so far been taken as to the requisite steps for the protection of this small but important minority beyond its treatment as one of the minorities provided for in the White Paper.

Nobody will dispute the responsibility in the past and the present of the British Nation for the existence of this Community and the very exceptional services rendered by Members of this Community in times of danger and stress during the past 100 years. It is hardly necessary to recall the names of Skinner, Hearsey, Rivett-Carnac, and others to remind the Committee of the loyalty of Anglo-Indians and the heroic part they played during the Mutiny. This loyalty they have always displayed, and during the Great War almost 80 per cent. of the male adult members of the Community were engaged in every theatre of the War, while many of the remainder served in the Indian Defence Force to maintain order in India in the absence of British and Indian troops. It is not out of place to recall the fact that Lieut. Robinson, V.C., who brought down the first German Zeppelin in England, and Lieut. Warneford, V.C., who brought down a German Zeppelin in France, were both members of the Domiciled Community.

Even since the War, during the riots of 1919 in the Punjab, when disloyal Indian telegraphists cut telegraph wires and mutilated official messages, the Governor had to fall back upon Anglo-Indians to replace them.

The Community is a small one, numbering about 200,000 and its chief avenues of employment in the past have been in the Railways, Telegraph and Customs Services. It is they who have built up and worked these services during many past decades, and who consequently deserve consideration from the Government of India, but who now, in order to satisfy the political demands of the more powerful communities, are being slowly but surely sacrificed on the altar of political expediency.

The special position of the Community was recognised in the Montagu-Chelmsford report, in the report of the Statutory Commission, in the Government of India Despatch of September, 1930, and at the First Round Table Conference, and in all these reports emphasis was laid on the obligation of the Government towards the Community and the necessity for special consideration being given to their claims for employment in the Services. Nevertheless, owing to Indianisation and to retrenchment, the situation of Anglo-Indians has of late years been steadily growing more serious and the percentage of posts held by them in the Railways, Telegraphs and Customs, has been gradually diminishing. In order to arrest this the only course would be to prevent for a certain number of years the substitution of Indians for Anglo-Indians and to reserve a fixed number of appointments in those services for members of the Anglo-Indian Community. There appears to be no valid reason why this course should not be pursued as part of the system of Defence which comes under the Viceroy's responsibility, since it is hardly necessary to stress the vital importance of maintaining an adequate number of loyal employees on the staffs of the Indian Railways and Telegraphs for the transport of troops during an outbreak of War on the Frontier or during civil disturbance.

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MEMORANDUM BY THE LORD HARDINGE OF PENSHURST.

As an illustration of the dangers resulting from Indianisation I am informed that on the North-Western Railway of India, which is a strategic railway traversing the whole of the Northern frontier, the personnel is being rapidly Indianised, and that now out of a total Railway Telegraph cadre of about 1,000 employees the Anglo-Indians hold only 0·5 per cent. of these appointments. The danger of such a situation can hardly be exaggerated since, however loyal the Railway Staff might be, a disloyal Telegraph Staff could disorganise military traffic within a few hours. This would mean a repetition of the situation in 1919.

Nor is it less important that amongst the employees of the Customs service there should be a strong and loyal Anglo-Indian element to check the smuggling of arms and ammunition into India at the Ports. Only recently the Government of Bengal has passed a "Smuggling of Arms Bill of 1934" to prevent the entry of arms and ammunition through the ports of Calcutta and Chittagong, which eventually found their way through recognised brokers into the hands of terrorists. This, however, will not prevent the entry of arms and ammunition at other Indian ports which has been rendered much more easy by the gradual Indianisation of the Customs Service.

It is very obvious that safeguards should be imposed in the new Constitution for the protection of the Anglo-Indian Staff which has always proved its loyalty in the three security Departments, Railways, Telegraphs and Customs, the two former in connection with the defence of India and the latter for the protection of civil officials from assassination.

To preserve the economic future of the Community the following clause is suggested for incorporation in the new Constitution Act:—

> "That as long as appointments are made on communal representation, adequate weightage, with due consideration to their present numbers, be given to the Anglo-Indian and Domiciled European Community regarding its future employment in all Government Services and that instructions be given to the Governor-General, Governors and Public Service Commissions to put this into effect."

Unless such a safeguard is inserted in the new Act the fate of the Community is doomed, and India's gain will be their destruction.

It will not be out of place to record here the assurance given by H.R.H. the Prince of Wales to an Anglo-Indian Deputation when he visited India in 1922:—

> "You may be confident that Great Britain and the Empire will not forget your community, who are so united in their devotion to the King Emperor and who gave such unmistakable tokens of their attachment to their Empire by their sacrifice in the War."

Again, in the Government of India's despatch of September, 1930, under the heading of "The Anglo-Indian Community" the following sentence occurs:—

> "A special obligation, we think, rests upon Parliament, before relaxing its own control, to ensure, as far as may be practicable, that the interests of the Anglo-Indian Community are protected."

Surely, in its own interests, Parliament will not repeat the error made in Ireland in regard to the Irish Loyalists of the South!

17TH APRIL, 1934.

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RECORD C3

The course of their discussions after the Indian Delegates had left made it necessary for the Committee to call into consultation certain persons conversant with the problems of Irrigation and Forestry. The persons so consulted submitted the memoranda reproduced in the following pages, which also contain the record of their consultation with the Committee.

I

IRRIGATION

[1st May, 1934.]

I.—Memorandum by Sir Raymond Hadow, C.I.E., A.M.Inst.C.E.

The short notice, which I have received for the preparation of a Memorandum, the absence of books of reference and the lack of precise knowledge as to the points on which information may be required, may tend to make this Memorandum vague in parts and incomplete in others. It should, therefore, be taken as a hurried attempt to set down facts drawn mostly from memory.

The White Paper proposes that the Provincial Legislatures shall have the sole power to make laws in respect of irrigation, water supplies, etc. (Proposals 111, 112 and 114; and item 11 in List II of Appendix VI); further the All-India Service of Engineers shall have no more recruits, and future recruitment will be on the basis of a Provincial Service (Proposals 183 and 190). In short, the proposal is that irrigation shall be under a Minister, completely "transferred" (as distinct from its present "reserved" status), and the staff will be in future in a Provincial service, recruited by the Provincial Government.

Recruitment to the Irrigation Services.

These proposals will affect different Provinces in different ways. There are Provinces whose interest in irrigation is comparatively small: irrigation is not a large matter either because facilities do not exist or because climatic conditions are such that it is usually not necessary. For such Provinces the proposals seem suitable, and they follow naturally from the fact that the sister Branch of the Public Works Department (the Buildings and Roads Branch) has been a "transferred" subject since the Government of India Act, 1919.

There are other Provinces, however, in which irrigation is a matter of the first importance. I shall take the example of the Punjab, the only Province of which I have intimate knowledge. In the Punjab about 12 million acres of crops are matured annually on canal water and the revenue derived therefrom represents about 40 per cent. of the provincial revenues. There are six large "canal colonies", that is to say, areas which was practically uninhabited barren waste before the construction of canals and now support millions of peasants brought in from other tracts. The Punjab Government has expressed the opinion that irrigation to the

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MEMORANDUM BY SIR RAYMOND HADOW, C.I.E., A.M.Inst.C.E.

Punjab represents "security" as much as the services rendered by the Indian Civil Service and the Indian Police. It is not too much to say that the whole prosperity of the Punjab depends on the canals: they have enabled the Province to rise from camparative poverty to a sure financial basis, they have made rich men of poor peasants, they provide a living for numerous others connected with agricultural produce and they tend to promote contentment by the creation of a well-to-do peasantry.

The question arises whether it is wise to try an experiment in a matter of such vital importance both to the finances of the Province and the contentment of the people. Is, in fact, anyone justified in gambling with other people's happiness or prosperity? The position I take up is exactly that described by Sir Austen Chamberlain in the statement he made in Question 11,533, when examining the Secretary of State. I entirely agree that provincial autonomy would be a sham in the Punjab without the transfer of irrigation, but I maintain that some additional condition should be imposed such that, as far as can humanly be said, there is no risk that the peasantry will be adversely affected by the change.

In my opinion there is only one way of ensuring that the canal systems do not fall into decay and that is by maintaining a certain proportion of recruits from this country. I am in no way afraid of the position of irrigation in respect of its control by a Minister or by the Provincial Legislature, for it must be realised that, things being as they are in the Punjab, it is highly probable that the Minister and the majority of the Legislature will be users of canal water. Mistakes may be made on the financial side, but my personal experience has been that both the Legislature and the Member in charge (as he is at present) accept the advice of their technical advisers in technical matters and have a very shrewd understanding of the objects aimed at. That being so, my suggestion is to make sure (without gambling) that the technical advice shall be sound—or at least as sound as it has been in the past. Consequently I advocate the continuance of recruitment of qualified men from this country. My reasons for this are—

(*a*) The Punjabi peasant desires it. It gives him a sense of security, and, though he may not like the result, he accepts it as just. I do not for a moment insinuate that he never receives justice from an Indian but he is suspicious if it does not suit him—a feeling into which the present state of high communal tension frequently enters. I am supported in this view by the frequent appeals presented to my Member (an Indian) and myself (as head of the department) to transfer an Indian officer and send a European in his place.

(*b*) The Indian engineer seldom makes a good administrative officer. The Punjabi takes naturally to mathematics, hydraulics and engineering, as may be seen by their success at the Thomason College, Roorkee. Their interests lie, however, much more on the technical side of their work than in canal administration, where they are again hampered by communal feelings. A Hindu officer once said to me bitterly: "A Hindu can do nothing right" in a predominantly Muslim tract. I attribute this absence of administrative ability to the fact that the first places in engineering examinations are usually taken by clever youths of a class which has no tradition or training in administration. Youths with such a tradition at present go into the Army or take such low places in open examinations as not to qualify for Government service. Until the sons of landed proprietors, ex-army officers and the like look upon the engineering profession as a suitable outlet, I fear that the right stamp of recruit will not be forthcoming. The result

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MEMORANDUM BY SIR RAYMOND HADOW, C.I.E., A.M.Inst.C.E.

of this is that the Provincial Governments in their anxiety to associate Indians with the administration of the services are often led to promote to administrative rank Indians lacking in the necessary qualities: this again makes it difficult to supersede Europeans of like quality, so that the whole efficiency of the administrative ranks tends to be lowered; this is bad for the canals and cultivators, bad for the taxpayer and bad for the service.

(*c*) I believe that the Punjabi politician would really welcome such recruitment. He would, it is true, probably complain in public and in the Legislature; but so many have bewailed the paucity of Europeans to me in private or have asked that a European be posted to their particular district that I find it difficult to believe that they would not be relieved to find European recruitment continued, so that whilst their object is obtained they can still retain a grievance: they would in fact be released from an embarrassing situation.

It may be argued that there is nothing in the White Paper to prevent the recruitment of Europeans to the irrigation service. I think it is too much to expect at present such recruitment at the hands of Indian Ministers. Pressure from public opinion and the Legislature would be too much for any opinion a Minister might hold.

As to the agency of the proposed European recruitment there are three possibilities:—

(*a*) the Provincial Government or Public Services Commission;
(*b*) the High Commissioner for India;
(*c*) the Secretary of State.

I unhesitatingly throw out the first two alternatives. Recruitment from a University is largely governed by the advice given by the University authorities, and they are not likely to advise entrance to a service, the recruiting agency of which they know little or nothing. Moreover, recruitment for years past has not been easy for the Secretary of State to accomplish satisfactorily with all his powerful influence; so how could it be done by less well-known agents? I advocate that the recruitment be done by the Secretary of State on the understanding that the recruits are servants of the Government for which they are recruited for all purposes of promotion, censure, etc.; it may possibly be necessary for the Secretary of State to lay down the scale of pay and pension, which he finds necessary to effect recruitment, though this is to be avoided if possible.

I am aware that this suggestion presents an anomaly, a view which was brought out by Mr. Zafrulla Khan in Questions No. 11823-5. But surely anomalies are almost unavoidable in anything except complete self-government, and as long as an anomaly is workable, it is a better solution to a difficulty than a gamble with the prosperity of millions.

A further question which arises is the duration of the European recruitment suggested. I am not impressed with the statutory inquiry provided for after five years in Proposal 189. It is far too short a time to form any correct judgment. Canals do not break down through inefficiency in a day: I have known it take five years to bring it to light when inefficient officers were in charge. Moreover, as is commonly said in irrigation circles, it takes ten years to make an officer efficient in all branches of his duties. I would leave the Provincial Government to make its own case, when the occasion arises, to get the approval of Parliament to a change.

There remains the question of to which Provinces these proposals might be applied. I am diffident about making any suggestions for lack of knowledge of other provincial conditions, but I would judge that the arguments advanced above would apply to Sind. There must be several Provinces

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MEMORANDUM BY SIR RAYMOND HADOW, C.I.E., A.M.Inst.C.E.

which fall between the two categories I have mentioned, that is those in which irrigation is of importance but probably not so important as in the Punjab. In such cases it might be advisable to follow the advice of the Provincial Governments.

Questions affecting two Provinces.

Since the Act of 1919, the Government of India has interfered when disputes arose between Provinces or between a Province and a State regarding the right to utilise the waters of a river. The Government did this, presumably, by reason of its power to "superintendence, direction and control" of a reserved subject. With the complete transfer of irrigation and water supplies, this power will cease, and I fail to find anything in the White Paper to take its place. The absence of any umpire or controlling authority in such matters lays open many possibilities of trouble on many tributaries to the Indus and Ganges rivers. I would urge that an Irrigation Board be appointed by Statute to adjudicate in such cases. It may be argued that an appeal to the common law would meet the case, but my experience is that this could only be a costly and unsatisfactory business. In the first place, the law on riparian rights is very vague or non-existent as between States; secondly, the evidence of the contesting parties is usually a mass of contradictory statistics, on which an expert alone can judge what value should be placed and what true implication arises. I suggest that such matters are better dealt with by an independent Board, the majority of whom should be irrigation engineers. It will be remembered that a notorious case in Egypt was dealt with on those lines. Lastly, a court of law could only pronounce a verdict on the case before it, whereas a Board might suggest a *via media*, such as would not block progress. It would be necessary to get all the States to agree to accept the findings of such a Board. My proposal is practically to bring the Central Board of Irrigation on to a statutory basis.

Co-ordinating authority.

One deplorable result of the provincialisation of irrigation in the Act of 1919 has been to provincialise the science of irrigation engineering in India. It was part of the duties, self imposed probably, of the Inspector General for Irrigation in India to co-ordinate the activities of the different Provinces; during his extensive tours he saw what was being done, learnt of advances made and was able to spread knowledge. As a result of the Act, this post was done away with, and each province became practically a water-tight compartment. The engineers, however, began to get in touch again with each other unofficially, and the result of a recommendation by the Agricultural Commission was a Bureau attached to the Central Board of Irrigation, to the cost of which the Provinces contribute. This Bureau, which has assumed in the eyes of engineers far more importance than the Board, has very limited funds at its disposal but tries to co-ordinate research and disseminate information. It meets once a year only, and, as its personnel changes annually, its progress is slow; it is suggested that it would be for the good of the irrigating provinces if the post of Inspector General were revived, his pay and expenses being shared by these provinces. It may be argued that the creation of such a post is not within the scope of the White Paper; on the other hand, it is to meet the results of proposals in the White Paper that the creation of such a post is urged.

(Signed) R. P. HADOW.

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RECORD C3 (*continued*)

II.—Notes for consultation with the Committee by Mr. (now Sir) C. T. Mullings, C.S.I.

Indians as irrigation Engineers are rapidly approaching the British in competence and they could be better still with more experienced instructors in the Engineering Colleges.

In Madras Brahmins are the best Engineers and the Public Works Department will be staffed mainly by Brahmins if efficiency dominates selection of candidates. If political necessity to distribute appointments among various castes is to be a future criterion, the choice of men in other castes connotes frequent selection of less able candidates, and the Service must deteriorate.

With a purely Indian administration nepotism may increase.

An immense revenue is derived from irrigation; and the value of crops so grown is several times as great, but supplying or withholding water is simple, and the opportunities for graft are large. Ryots much appreciate the rectitude of British engineers. Until caste distinctions diminish, the assumed bias of the Indian Engineer will be always a source of distrust and suspicion to other castes.

The Indian view of commissions from contractors and others is not as rigid as the British, though it has much improved by our tutelage.

These are the main reasons why the Irrigation Department would be improved by a leaven of British Engineers, but I anticipate no break down in administration were the British element to be eliminated by its gradual replacement or superannuation.

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RECORD C3 (*continued*)

III.—Consultation between the Committee and Sir Raymond Hadow, C.I.E., A.M. Inst. C.E.

[1st May, 1934.]

1. *Chairman*: Sir Raymond Hadow, you are good enough to attend this morning for a consultation with this Committee, and you have kindly provided us with a memorandum. I think you understand the arrangements for the consultation, namely, that the Committee will decide in due course whether to publish your memorandum and whatever may be said either by Members of the Committee or by yourself this morning?—Yes, my Lord.

2. Some of my colleagues, I think, may desire to put questions to you at this stage, unless you have anything that you would like to add to this memorandum?—No, I think not.

3. *Marquess of Zetland*: I think I appreciate your apprehensions, and I admit that they are very intelligible. You regard it as essential that for some time to come there should be a substantial element of European engineers in the Irrigation Service in India. That is your main contention, I think?—I limited myself to the Punjab in my note.

4. Let us take the Punjab, because really that is the most important Province, the Punjab and Sind, from this point of view. On the other hand, you show in your note that you do appreciate the fact that if the Punjab, like other Provinces, is to be given self-government, the Government of the Punjab must exercise control over its irrigation staff. That, you admit, I think?—Yes.

5. As I understand your proposal for securing an adequate representation of European engineers in the service of the Punjab, you would lay it down that a certain number should be recruited by the Secretary of State for India in this country?—Yes.

6. I am not quite clear how it would work. Would it then be within the competence of the Governor-General to instruct the Government of the Punjab that they should recruit a specified percentage or a specified number of European engineers through the Secretary of State?—I would cut the Governor-General out entirely. I would lay it down by statute that the recruitment to the Irrigation Branch had to be in a certain proportion of men from this country.

7. You would lay that down in the Constitution Act?—Following the Lee Commission report.

8. But for all time or for a limited period?—I think I dealt with that in my memorandum.

9. Yes, I think you did; I do not remember the exact paragraph in which you state it?—I said I was not a bit impressed by the five-year proposal which seemed to me to be absolutely useless and I would leave it for the local government to make out its case and for Parliament to accept it if its case was made out in due course.

10. Yes, I remember now. But the percentages laid down in the Constitution Act should remain in force until the Government of the Punjab have made out a case for altering them. That is your suggestion?—Yes; that is what one would do in practical politics—practical work. It would be for the other side to move.

Marquess of Zetland: Thank you; I just wanted to be quite clear in my mind how it was that you proposed to deal with that particular problem.

11. *Marquess of Salisbury*: Sir Raymond Hadow, you fully appreciate the capacity of your Indian staff; it is not that you despise them at all?—Not the slightest. Some of the best technical engineers that we have are Indians.

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CONSULTATION BETWEEN THE COMMITTEE AND SIR RAYMOND HADOW, C.I.E., A.M.Inst.C.E.

12. It is when you come to the position of superintendent or something of that kind, where you require more administrative skill, that the difficulty arises?—Exactly.

13. Would you tell the Committee how it happens that the Indians recruited are not qualified for the higher posts?—It is rather a difficult question to answer, but, as I have said in my memorandum, I think it is very largely due to the fact that the recruits do not come from the right class or classes; we do not get so much the sons of big landowners or ex-Army officers. On the other hand, we get more of the sons of shopkeepers and traders and possibly moneylenders who have no tradition of good administration behind them. That is my solution; I do not say that it is a fact at all; that is my opinion only.

14. Your opinion, of course, is very valuable. Now, at any rate, as I gathered from your memorandum, the result is that the peasants, or lower classes, to whom this question of irrigation is so vitally important have a sense of suspicion of other than British administration?—The Muhammadan suspects the Hindu, and the Hindu suspects the Muhammadan.

15. The communal question enters into it?—Badly, I am afraid.

16. Has it happened to you that you have evidence that these unfortunately contending persuasions rely upon British intervention as administrators?—It has. If you will permit me, I could give a short case.

17. Yes, please do?—There was one case when several deputations came up to protest to my Honourable Member and myself in Simla against the way they were being treated in the distribution of water. They came up to Simla I think twice in the hot weather, which is an example of the interest they were taking in the matter. I took the earliest opportunity of going round to see what their distribution was like after I had removed the Hindu officer on the orders of my superior and replaced him not by a Britisher but by an Indian Christian, because I had not a Britisher to place there. When I made my investigation I was met by crowds of men, and I spent most of the day making the investigation, and in the evening I announced to them that of all the cases I had tried, two, I think (speaking from memory) were short of water, and one was in excess, and in the remainder, 25 or 30 cases, the supply of water was correct. They took what I said with a shrug of the shoulder and said: "If you say it is right, all right, but what about the Hindu superintending engineer?" They also wanted him removed. That, Sir, is an example of how they would accept, as it were, an impartial statement that their water was right, whereas before they had been almost on the point of rioting about it; but the moment one Hindu was removed, they wanted the next Hindu removed as well.

18. Rightly or wrongly they trusted the British official in a way they would not trust an Indian official?—Exactly. What they were complaining about was perfectly all right except for these three small cases which I have mentioned. I had nothing to say against what was done except that it was possibly done tactlessly.

19. In the case you have quoted, although there was in truth no injustice, yet they had not sufficient confidence except in the British official? —Yes.

20. But I suppose there are cases, are there not, when things are not quite so equitable as that in the distribution of water. Injustices sometimes are done?—It is inevitable that in any system of distribution of

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water in the Punjab in the course of years that distribution, as it were, gets out of date, and it has to be continually overhauled, and if it is not overhauled in time or correctly, then the distribution of water is unequal.

21. Apart from the particular case you quote is there ground for a general suspicion amongst the peasantry? Is there such a thing, for instance, as corruption amongst the Indian officials?—Amongst the lower staff undoubtedly it is inevitable. It is in all of the lower staff of every Department.

22. In India?—Yes.

23. You do not mean everywhere; you mean in India?—I was thinking of India.

24. I am not sure that it is a very good word, but it is always used, but is there, what is called, nepotism? I think it practically means the helping of your relations?—There is a certain amount of it, but there is not much opportunity for it for the reason that we know perfectly well, when an officer is posted to any particular district, whether he has land there or relatives there, and consequently he is not often posted to his own district.

25. At any rate, you lay the greatest stress, as you did to my noble friend just now when he was examining you, upon the recruitment of an adequate number of British officials?—Yes.

26. I suppose that there would be some kind of protest if hereafter under the new administration British officials were recruited in the same proportion as they are now. Do you fear that?—No; I think it would be purely political.

27. Purely political, you say?—Yes, purely political, and I do not think it would really be very genuine.

28. You mean to say they would be obliged to have a sort of national appearance outside?—The Punjabi is very patriotic, provincially speaking, and "The Punjab for the Punjabis" is a very common cry, and the introduction of any other element is always objected to as a matter of principle, and they would naturally object openly to the recruitment of Britishers.

29. But you say you do not think it would be very genuine?—I do not think so. Why I say that is because so many politicians have spoken to me privately on the difficulties raised by the paucity of Britishers now in the Service.

30. I did not quite catch that?—So many politicians have privately spoken to me about the difficulties raised by the paucity of Britishers now in the Service.

30A. You say "privately"?—Yes.

30B. You stress that word "privately", do you?—Yes. Speaking as man to man, and not, of course, in the Legislative Chamber.

31. In answer to my noble friend you said you thought this recruiting ought to be carried out by the Secretary of State, not by the Governor-General?—I favour the opinion that the Secretary of State should recruit simply because I think he is the most powerful recruiting agency, the only agency by which we could get the right stamp of recruits.

32. You mean no one else would inspire sufficient confidence amongst the classes from which the recruits come?—Amongst the Universities and Colleges from which the recruits come.

33. In England you mean?—Yes.

34. You speak principally of the Punjab?—Yes.

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CONSULTATION BETWEEN THE COMMITTEE AND SIR RAYMOND HADOW, C.I.E., A.M.Inst.C.E.

35. But do you know something about Irrigation in the other parts of India?—I should be very sorry to give much of an opinion about it.

36. You just mentioned Sind?—Sind is next door to the Punjab. I know the conditions there better than I do those in other Provinces. I know the officials better, and I know the Sukkur scheme would be largely colonised by Punjab peasants.

37. May I take you to a rather different part of the subject? I suppose it is common ground, is it not, that the Provinces under the new Constitution must have some control over Irrigation. You do not think so?—I am afraid I do not quite understand.

38. I said it is common ground that in the new Constitution the Provinces should have some control over Irrigation?—The Provincial Governments?

39. Yes?—Yes, certainly.

40. You agree?—Yes, certainly.

41. Do you think there is any risk attaching to it? Would the Provincial Government be likely to look after Irrigation and give it sufficient attention and sufficient expenditure?—In the Punjab I am pretty confident that it would be all right because the agriculturist has the majority in the Council and always will have, and the Muslims under the Communal Award have also the majority and, personally, I think that they will always look after the goose that lays the golden egg.

42. That would be all right in the Punjab, but, as between Province and Province, there might be friction or difficulty sometimes?—There is almost certain to be.

43. "Almost certain", you say?—Yes, there would be friction between the Punjab and Sind, there would be friction between Kashmir and the Punjab and probably between the United Provinces and the Punjab over the Jumna, and so on; it is inevitable.

44. You would not like to add anything to the Committee out of your great experience under that head, because that is very important from our point of view?—At the present moment the Punjab is forbidden to take any more water from the Indus for ten years from 1929, in order that it may be established that the water there is more than sufficient for the Sukkur Barrage project. The Punjab holds that it is established now, and that we are simply waiting for ten years to prove what can be proved now, that is to say, everybody is losing money, waiting for ten years. We cannot go on with our projects; we cannot colonise; the peasants cannot grow crops, all because there is this difference of opinion. The Secretary of State gave his orders that we must wait for ten years. I presume in the future there will be nobody to give those instructions.

45. You are faced with that difficulty. You suggest a Board, I understand?—Yes.

46. A British-India Board?—Yes. It would have to include the States; the States must come in too.

47. It would be an all-India Board then?—Yes.

48. If I may put it in that way, if you had your way in the matter, would it have a mandatory power or only an advisory power?—I should make it mandatory.

49. You would give it authority?—Yes.

50. You also say you would like to see the office of Inspector General continued?—Yes, or, rather, it is not continued at the present moment; it is abolished.

51. When was it abolished?—After the Inchcape Committee. I am not quite sure when it was; it was about 1924.

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CONSULTATION BETWEEN THE COMMITTEE AND SIR RAYMOND HADOW, C.I.E., A.M.Inst.C.E.

52. That was an economy provision, was it?—Not entirely; it came in with the reforms too. The argument was that Irrigation was a Provincial subject, and therefore there was no need for an Inspector General at the Central Government.

53. In your experience would you say that the loss of the Inspector General during these years has been important?—I think we miss him very much.

54. It would have been of great benefit if he had continued, you think?—I think so.

55. And the Inspector General, of course, would be a Central Official?—Yes, but I would make the Provinces contribute to his pay.

56. In your view, Sir Raymond, would he be under the authority of the responsible Government at the Centre, or under the authority of the Governor General?—I am afraid I have not considered the details.

57. *Major Cadogan*: You could not, of course, make a stipulation that he should be a European, could you?—No, Sir, I had not that in my mind.

58. I was only wanting to make quite sure what you meant?—I had not anything of that kind in my mind at all.

59. *Marquess of Salisbury*: There is one other Central matter about which I would just like to ask you. Have you thought at all about the difficulties of a proper system of research in respect of Irrigation?—I did think of writing something in my Memorandum about it, but I did not quite see how it came into the question raised by the White Paper. I noticed, I think I am right in saying, that one of the Federal Subjects is "Central Research"—I think those are the words. I have not the White Paper with me.

Mr. Butler: I think it is No. 42.

Marquess of Salisbury: That is so, is it not, Under-Secretary?

60. *Mr. Butler*: Yes, it is in the Federal List, No. 42: "Central Agencies and Institutes for research"?—That assumes, apparently, that there is a Central Agency for research, whereas there is not any.

61. *Marquess of Salisbury*: There is not at present?—Not for Irrigation research.

62. Do you think there should be? Please do not confine yourself to the White Paper; we have a larger scope than that.—The difficulty was this: Under the present Constitution research is at the present minute a Central Subject, but the Central Government does nothing for Irrigation research at all. The Provinces, I was going to say in despair, have started their own small research institutes; we have one in the Punjab; the United Provinces has one; Sind has one; I believe Madras was about to start one when I left India, and they are doing good work, but their funds are very, very limited. The reason for that is, in a way, that the Provinces feel that research is a matter for the Government of India under the present Constitution and they are fortified in that opinion when they see the Government of India give ten lakhs a year, I think it is, to Agricultural Research. They also run the Pusa Agricultural College. They also run the Dehra Dun Forestry Research Institute. But the Government of India's sole contribution to Irrigation research is the contribution of 7,500 rupees every year to our little Bureau of Information which we run for ourselves. We have so little funds at our disposal that we very nearly had to give up our representation at the International Conference about Dams. That is in a country which has some of the biggest dams in the world, and they very nearly could not afford to send a Delegate there. We just managed to get the Government of India to give us funds for that.

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63. So what you would like to tell the Committee is that you think this is a very important subject which ought to be run Centrally?—I think so, and I think if there were an Inspector-General he would bring it much more before the Central Government. It is possibly news to you that in the whole of the Central Government there is not one Engineer of any kind. Naturally, they do not hear much about such matters.

Chairman: I did not like to interrupt Lord Salisbury's consultation, but the position is that Mr. Mullings is now available. It is a question whether the Committee would desire that Mr. Mullings should be heard at the same time as Sir Raymond. What does the Committee feel about that? That was the original arrangement.

Lord Hardinge of Penshurst: I see no objection to it.

Chairman: I have none.

MR. (now SIR) C. T. MULLINGS, C.S.I., is called in and examined as follows:

Chairman: Mr. Mullings, you are happily able to join Sir Raymond Hadow in consultation with the Committee at this stage. You have been good enough to prepare a Memorandum for us for which we are greatly obliged. We are in course of putting a few questions to Sir Raymond Hadow, and the Committee feels that both you gentlemen might well be heard together. Perhaps either of you will answer questions, as you think best, or if you disagree with each other on any particular point perhaps you will make that clear.

64. *Lord Rankeillour*: Sir Raymond, if the office of Inspector-General is revived, to whom should he report?—(*Sir Raymond Hadow*): I should follow more or less the same procedure as was adopted before, and that is: He reported to the Government of India, who merely forwarded his report to the Local Government. It was open to the Local Government to accept or to refuse the matter that was in the Report. They were not bound to accept it.

65. In practice, did the Central Government find any means of enforcing the Report, if they agreed with it, on the Provinces?—I do not think they could enforce it. They might bring pressure to bear, but I do not think they could legally enforce it in any way.

66. And, in future, they would not have the same means of bringing pressure to bear, would they?—No; they could merely express an opinion, but I would leave it entirely as it was in the old days, namely, that the Local Governments were presented with the Report of an independent and outside expert, and they could take it or accept it, and, if they refused it, it was their responsibility.

67. You would not regard it as possible to devise any means to enable the Central Government to enforce a report?—No, I do not think I would.

68. Now about the Irrigation Board: You wish to set that up merely for the purposes of adjusting quarrels and differences between Provinces or between Provinces and States?—Yes.

69. It would have no further function; it would not have any administrative function in trying to keep up the standard?—No.

70. Would you give its decisions the force of law—that is to say, would you give them the same validity as the decisions of a law court?—I think so. The questions that arise are nearly always of this kind: There may be a dispute between two Provinces; one Province, say, claims half the share in a river; the other Province says: "No, the share is not half; it is only 25 per cent." The decision that the Board would give would be that the share was 30, 40 or 50 per cent., whatever the decision was that

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they arrived at. That is nearly always the sort of difficulty we get into. I think Mr. Mullings has considerable knowledge between Madras and Hyderabad. (*Mr. Mullings*): And Mysore.

71. *Lord Rankeillour*: And I suppose if there is to be a new Federal Court, you would not allow the decisions of this Board to be subject to appeal to them, would you?—(*Sir Raymond Hadow*): No. My whole object is to keep all disputes of that kind out of the law.

72. But you would give their decisions the same legal sanctions as the decisions of a Federal Court?—It would have the same power.

73. It might not be very easy to exercise in the case of a recalcitrant Province, might it?—If they had accepted the proposal of a Board and had accepted its opinions, it would be rather strange if they went back upon it when the decision was against them.

74. But you have not thought of any kind of monetary sanction by withholding grants in a case like that?—It never crossed my mind that they would refuse.

75. Or that a State would refuse?—I think I said the States would have to accept the finding of a Board as final.

76. And, in fact, they would have, when they acceded to the Federation, to accept the jurisdiction of this Board?—Yes. I do not myself think the States or Provinces would object to such a proposal.

77. Now there is just one other thing, and you must pardon my ignorance, but how does the system of irrigation in practice work? I suppose there is rationing of water?—That is practically what it amounts to. The water is supplied in the Punjab at a rate of so many cubic feet per second per acre.

78. And is it necessary sometimes to curtail and then afterwards to increase the amount?—It does not flow continuously; it flows at intervals, and those intervals depend upon the supply in the river, the climatic conditions, the rainfall, the sowing of crops or ploughing, and it is very easy to see that you can keep certain areas short of water, and it very often happens naturally at a time when it is most important that they should receive it.

79. Can this cutting off or restriction of water in an area sometimes be exercised by subordinate officials?—It can be; it should not be.

80. But it can be?—It can be.

81. And right down, I suppose, a whole hierarchy of officials, even the quite low ones, might have power to let a landed owner or occupier of land have more or less?—Yes.

82. And that is what you fear, that for vindictive or corrupt reasons someone might be kept short of water?—Yes.

83. And that is why it is so necessary to have capable men who watch this process at the top?—I would rather put it: men with whom the Punjab peasant is sure he will have a square deal.

84. Do you think that sort of difficulty, accentuated by the communal trouble would be as acute in other parts of India as in the Punjab?—(*Mr. Mullings*): In Madras it would. (*Sir Raymond Hadow*): I would hesitate to reply, Sir; I would rather stick to what I know.

85. Is it difficult for the higher official to detect any improper switching off of water, and so on—is it a matter that he can soon find out?—It is not easy for a higher official, but the men immediately over the person who is not sharing the water fairly ought to be able to tell quickly, but for a higher official he would only know from complaints most probably.

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86. And then he would have to hold an inquiry?—He would hold an inquiry.

87. And he would have to be a man who understood something about evidence, and so on?—It is purely an informal inquiry.

88. *Lord Middleton*: What is the system of the administration in a Province under the Chief Engineer? How are his responsibilities delegated? How is the Province divided up?—In the Punjab, the Provinces are divided up, I think it is, into 17 circles of superintendents in charge of a superintending engineer.

89. Then the work of the head of that circle is mostly administrative?—Yes, exactly; that is where the administrative side really begins, with the superintending engineer. Under him are three or four engineers whose work is executive.

90. At what point does a technical engineer become an administrative engineer—that is, when he becomes a superintendent of a circle?—Yes, that is when he becomes important.

91. You rather dwelt on the fact that the Indian engineer was a better technician than administrator?—Generally speaking.

92. Can those circle superintendents' posts satisfactorily be held by Indians as a rule?—Yes. (*Mr. Mullings*): In Madras very often.

93. But satisfactorily?—(*Sir Raymond Hadow*): Some of them are.

94. The point I wanted to get at was what proportion of officials in a Province should be British?—The proportion of Indians and the British in a Service or Province has nothing to do with the number who will be employed in the administrative rank. Promotion to that rank is entirely by selection, so you might have a proportion of 50-50 over the whole service, but by the time it got to administrative rank it might be any other proportion you like, because the proportion is, or should be, entirely by selection.

95. Then supposing there are complaints of corruption in a district or a circle, who initiates the investigation or proceeding?—It depends upon to whom the complaint is made; if it is made to any officer, he would most probably start investigations on his own.

96. Would it be more difficult for an Indian to whom a complaint was made to investigate the complaint than for a British officer? Would he be subject to influences which would make it difficult for him?—Quite rarely he might have pressure brought to bear upon him not to make an investigation; but if it is a big case, it would be beyond his power to stop it at all. I sat on two Commissions of Inquiry myself during 1930, I think, and they both concerned officers of my own Department, both executive engineers. I think this is answering more or less your point. We were appointed as Commissioners, I and a Judge of the High Court under the Public Service Inquiry Act, which is an Act to enable you to inquire into cases of this kind. It was semi-judicial, but it only reported its findings on the charges. We gave no verdict on the officer himself. We had Counsel, and it took us nine months to be able to write a report on two of the charges. There were nine charges against the officers, I think I am right in saying. We did two and then informed the Government and gave them unofficially a look at our report, and they said that was quite enough, so we did not proceed with the rest; otherwise, one might be sitting there still. One needs some form of inquiry, undoubtedly. An ordinary officer, when he takes up a case of that kind, nearly always ends by saying that he will never touch another one; it gives him so much extra work and trouble, and usually a very unsatisfactory result at the end. Of course, the attempt is made to subject

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the charges to legal proof and the officers who inquire into the cases seldom know anything about the law; loopholes are found, and the whole case falls through, although everybody knows it is perfectly true.

97. *Sir Reginald Craddock*: Sir Raymond, what classes or castes do you get your engineers from, principally?—A great many of them come from the Bunya class, but we get them entirely from the Thomason College at Roorkee, and the Punjabis are usually very high up, most of them, mostly Hindus; they take very high places, and are mostly of the Kutri and Bunya classes, the shopkeeper class: I am speaking there from memory.

98. They are very largely Kutris, I suppose?—Yes.

99. What about Sikhs?—We get a certain number of those, but not very many. The competition at Roorkee is exceedingly keen, and most of the higher places are taken by the Hindu element; we occasionally get a Muhammadan, occasionally Sikhs, occasionally even Anglo-Indians.

100. Speaking generally, I suppose, you would say that the Hindu would get the majority of these posts?—Unless, as we do now, we pick any Muhammadan there is who is qualified, no matter where he is on the list, and then fill up the remaining vacancies with Hindus.

101. That does not make for the most competent people being employed? —No.

102. Then you spoke about administration. I have, of course, some experience of these Departments, and I was anxious to know from you whether you had had different experience from mine in the Punjab. One generally found that a man who was quite a brilliant promising assistant engineer and a good executive engineer aged more quickly than the European, and that very often a man who on his record is promoted to be superintending engineer does not fulfil the promise because he is getting fat or lazy or aging quickly?—Yes, I think that is very true.

103. Then as this irrigation would be under a Minister, you said particularly how important it is that in filling administrative posts, such as superintending engineer and above, selection should have full play, but with a Minister in charge, would he not have great pressure put upon him, whether from the Legislative Council or the politicians, to promote men who really would not have been selected under a strict system of selection? —That is very likely, but I am afraid that my opinion is that the selection at the present moment is not strict enough. I do not think that you can say that that would be the result of putting the irrigation under a Minister only.

104. No. The difference there, I suggest to you, is that it is rather more likely to happen with a Minister who is responsible to the Legislative Council and to the pressure put upon him by politicians than it is with an Indian member who is a member of a Council, it being a reserved subject?—Yes.

105. I think, Mr. Mullings, you say that in Madras the best engineers are found among the Madrasi Brahmins?—(*Mr. Mullings*): Yes.

106. How far do you find that the same men who are very good engineers are also good and reliable superintending engineers, namely, in administrative work?—I should think quite half of them have been excellent.

107. The Madrasi Brahmin is rather special in these respects, as far as I have seen?—Yes, I think so.

108. Then, Sir Raymond, you spoke about research; you mean by that the engineering part, do you, because the agricultural people conduct a great deal of research bearing upon irrigation of crops?—(*Sir Raymond Hadow*): Yes, but, if I may say so, their research has got a different object in view. Agricultural research has nearly always aimed at improving crops or improving the seed or the production of special kinds of crops, whereas our

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research is aimed at trying to prevent deterioration of soils by waterlogging. The two angles of vision are entirely different.

109. Of course, one would notice that difference in the Punjab, because so much of your irrigation is applied to land which would not crop at all if there were not irrigation?—Yes.

110. Taking my own experience in the Central Provinces, the difficulty was that where you get fairly decent crops, through reluctance to get water and incur that expenditure when they are hoping still that it may rain, they very often leave it till it is too late?—Yes.

111. Therefore, agricultural research in the Central Provinces as regards irrigation was directed very strongly to bringing out the benefits of irrigation to all sorts of crops in which the people were not accustomed to applying it. You do not get that in the Punjab, but you may get it elsewhere?—Quite so.

112. Then as regards the Irrigation Board that you have spoken about, in the past there has not been a Board with the Government of India to deal with disputes between Provinces, has there?—No, there has been no such Board.

113. But you had an Inspector-General of irrigation?—Who usually managed to reach a decision of sorts. I think they did in Madras.

114. But did they not have arbitrators appointed in Madras, usually?—(*Mr. Mullings*): Yes. I think we once had a Judge from the United Provinces.

115. An arbitrator?—Yes.

116. Who gave a formal award?—Yes.

117. That award was a recommendation to the Government?—Yes.

118. It did not go beyond that?—It did; it was disputed by the Madras Government, and I think it was considerably altered later on. That was 15 years or 20 years ago.

119. Where do you get your recruits from in Madras?—From the Engineering College at Guindy, close to Madras.

120. You do not get any Roorkee men there?—No.

121. I suppose all your engineers are Madrasis?—Yes.

122. You have not any outsiders?—Practically none; I doubt if there is one.

123. Do you get any Anglo-Indians in Madras among the Public Works Irrigation Board?—There may be a few subordinates, but none in the higher ranks.

124. You have not had any executive engineers?—No, not as a rule; there are one or two. The N.C.O.s have been allowed through the subordinate ranks and they have occasionally risen to be executive engineers about the end of their service.

125. They get some training at Roorkee?—Yes, or at Madras, or at one of the provincial colleges.

126. Sir Raymond has told us that he would like the present proportion of British recruitment of the irrigation engineers to be continued and appointed by the Secretary of State. Do you concur in that?—I think a few would be very desirable; but it would be hard in Madras to restrict them to the Irrigation Service, because we have not got a separate Irrigation Department.

127. You have never separated irrigation entirely from roads and buildings?—No, we have not.

128. You can have an Irrigation Branch, cannot you?—You could have, I suppose, but it would be rather difficult in the ordinary dry districts where

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there are tanks and buildings all muddled up together. It is not necessary to have more than one executive engineer for one of those districts.

129. But you have some engineers in Madras who have rather concentrated on irrigation?—Yes.

130. And who are employed in all the most important irrigation schemes?—Yes.

131. That would be so, would it not?—Yes, they could easily.

132. Still, at the same time you would like to see British recruitment continued to some extent, anyhow?—Yes, especially for irrigation. It does not matter so much about roads and buildings in Madras.

133. *Lord Eustace Percy*: But if it was only irrigation in Madras, would you have sufficient opportunities of promotion in a separate Irrigation Branch to get Englishmen?—I do not know. You would find that out after advertising for recruits.

134. *Mr. Davidson*: Mr. Mullings, in Madras, a great deal of the irrigation is as between the States and the Presidency, is it not? I mean, in Hyderabad and Mysore, and even down to Travancore there are questions which affect both?—Yes, there are.

135. Do you find that the qualifications of the State Irrigation Officers are more or less the same as the others?—No; nearly as good.

136. Do State subjects go to the College at Madras?—They have a little college of their own. One or two are occasionally sent to England.

137. *Major Cadogan*: I would like to ask you, Sir Raymond, supposing European recruitment to this Service ceased altogether, do you anticipate that the Provincial Governments would enlist European experts on short time contracts, and, if so, would that allay your misgivings as to the efficiency of the administrative being effected?—(*Sir Raymond Hadow*): I do not think it would be the slightest good to enlist experts on short time service. You have first got to catch your expert, and I do not know where, outside India, you would get anybody who could give really expert advice on the Indian form of irrigation. Secondly, a man would take many years before he could possibly get to the bottom of the question. The only form of expert you can get is the purely constructional engineering expert, not the irrigation expert, if I may put it that way.

138. *Lord Hardinge of Penshurst*: Mr. Mullings, you say that the best engineers are Brahmins. Do you mean that the non-Brahmin Hindus are less efficient than the Brahmins?—(*Mr. Mullings*): They do not pass such high tests in the examinations, so they do not get a chance of being appointed as a rule.

139. Why do they not pass?—They are not clever enough, yet.

140. I should have thought there was very little difference between them, the non-Brahmin Hindus, and the Madrasi and the Brahmins. Of course, you know better than I do. You say there is?—The Brahmin preponderates in the educated classes tremendously in spite of his smaller numbers.

141. Then do you consider that nepotism and corruption will be very much increased with the gradual disappearance of British officers?—I should think they would gain by their own experience.

142. Are the Brahmins equally corrupt?—Yes; I do not think they are as bad as they have been.

143. Education makes no difference, then?—I think they are improving quite a lot.

144. And you consider there would be no failure in the administration—no great breakdown were the British element to be entirely eliminated?—I do not think there would, no.

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145. Now as regards Mysore and Madras, there they have got an Irrigation Department, which is an entirely Indian Department, I fancy, have they not?—Yes.

146. And they construct all their irrigation works themselves?—Yes.

147. Do you happen to know whether they are very efficiently constructed or not?—The only one I know well, their largest one, has been very well built, Kunumbadi Reservoir it is called, a big irrigation work on the Cauvery.

148. I know it. I suppose if Mysore can get on as well without the British element Madras can?—Yes, the officers would be just the same type.

149. *Lord Hutchison of Montrose*: Provided that the White Paper Proposals were carried out, and Irrigation is a Transferred Department to a Province, how do you suggest that you could carry out through a Board control of water which affects several Provinces. Supposing a Board legislated on a definite question of policy of the handling of the water of a long river how could you enforce that on the Province concerned?—Unless the Central Government could, I do not know who could.

150. Have you studied at all the Egyptian water question from the point of view of policy?—No.

151. There there is always a conflict, or has been until declarations were made between the Sudan and Egypt as to the position of water on the Nile, and barrages were continually having to be made in a Province other than that to be served, in other words, upriver?—Yes.

152. Will that not be so in India?—I do not think it need. I think an Irrigation Board could settle it straight off.

153. Could they carry through negotiations between Province and Province as to the building of a barrage for a lower Province, in an upper Province, we will say?—I do not think that case would occur in Madras. (*Sir Raymond Hadow*): It might easily occur. You might easily have to conserve the waters of the Indus, say, far up in the Himalayas, not in either of the Provinces concerned. In fact we have been negotiating with one of the Hill States about building a dam right outside the Province entirely. The negotiations never came to anything in my time.

154. Would not such negotiations have to be carried out by a Central authority like the Government of India?—At the present minute?

155. Such negotiations with another State would have to be carried out by the Government of India?—At the present time or in the future?

156. In the future?—In the future I would put it all in the hands of a Board.

157. You have the same thing on the Nile where you have negotiations with Abyssinia and the Sudan to provide water for Egypt?—Yes.

158. If it is going to be purely a Provincial Service, what overriding authority will you have in the Government of India to deal with water, or conflicting interests, or the provision of barrages in a Province other than the one to be served?—That is what I would put in the hands of this Board, I suggest.

159. Which points to the necessity for some all-India control over water?—Very much so. That is what I failed to find in the White Paper. (*Mr. Mullings*): I agree.

160. *Earl Winterton*: Mr. Mullings, I gather the general effect of your assessment of the situation in your memorandum is that the competency of Indian engineers has been gradually increasing in recent years and corruption shows a tendency to decrease, or, rather, the standards of the Indian engineers in the Service show a tendency to improve?—Yes.

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161. *Earl Winterton*: And that despite the fact that at the present time they have the worst possible example of corruption in some countries where there are people of European descent?—They have the very worst example.

162. *Major Attlee*: Sir Raymond, I am not quite clear on your idea for a Board. Is the Board to be representative of the Provincial Governments or just of the Engineering Services?—(*Sir Raymond Hadow*): I would make the Board very much on the same lines as the Central Board of Irrigation at the present minute which contains members from all Provinces. If a question arises about one Province naturally that member of the Board does not come into the question at all. You select a panel of about three men from the Board, and you naturally select those who have experience of the kind of question raised but who have no connection with the actual Province itself.

163. It is more an arbitral Board than an administrative Board?—The present Board is merely to advise the Government of India.

164. Assuming you have the White Paper Proposals you have Provincial Autonomy?—Yes.

165. You have also got the States?—Yes.

166. Questions will come up with regard to the share of water between these, and possibly the consideration of joint schemes. Is it your idea that that should be done merely by negotiation between the parties concerned, or should there be some all-India authority that would be dealing with the matter on a more or less large scale plan?—I would have the outside authority. The negotiations between the States themselves will always take place. It is only when they fail to reach an agreement that the question would come up of the necessity for any other power.

167. Seeing that under the White Paper you are going to have a Federal Body at the Centre on which the States and the Provinces are going to be represented, do you think that it would be well that there should be some power in the Central Government?—Are you speaking of the Federal Court?

168. No, the Central Legislature?—I do not see the connection between the Central Legislature and this particular question of disputes.

169. The question of Irrigation I was suggesting was not a matter solely for one Province or one State?—The sources of supply for irrigation are certainly a matter of almost what one might call Imperial interest.

170. Exactly, and the point I was putting was whether you did or did not think that there should be in the Central Government some power of co-ordination?—That would be an alternative to the Board, I suggest?

171. Yes?—I am afraid my Board is a very half-boiled idea. I merely put that forward because, shortly before I left India, I discovered what I thought was this gap in the White Paper, and I made that point to my local government, and what has happened since I do not know. I may be quite incorrect, and there is no gap, but as far as I can see (I have studied it again) there is this gap, and a very serious gap. I only put forward this suggestion for a Board as some way out of it, but if there is a better solution I should be very glad to adopt it.

172. With regard to the question of the retention of a certain number of British personnel in the Engineering Services I was going to put it to you as to whether it would not be possible, without saying that you must have direct recruitment through the Secretary of State, to have some kind of power in the Central Government which, as it takes cognisance of all India, would be interested to see that there should be a certain standard of administration throughout the Irrigation Services?—I do not quite see what would follow from that, Sir. The idea is that

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the Central Government would take cognisance of the fact that in any Province there was not sufficient recruiting of Europeans, but I do not see what the next step would be.

173. Could not the Central Government actually recruit?—I do not think they could recruit well. I know for a fact from my own knowledge (I go back as far as 1914 in my knowledge of it) the Secretary of State's recruitment has not been easy except for a year or two after the War. He has not been able to get men very easily, and is it likely that the Government of India or the Provincial Governments could get men easily, or get them at all? I do not believe you would get them at all.

174. Is that from the point of view of the stability of employment?—No.

175. Or from the point of view of selection?—It is the mistrust, I think, that the College and University Authorities have for any new source of recruitment. They know the Secretary of State; they have supplied him with recruits for years, but when a new authority comes forward and asks for recruits I do not think they will take any notice of it until they see exactly what happens to other recruits who have been sent there. It has been so difficult that I think in 1925 two engineering officers were sent round all the engineering colleges in Britain finding out what the difficulties were and doing a mild form of propaganda, but I think it was only a few years ago that we asked (I am speaking from memory) either for three or two recruits and we only got two or one. That shows how difficult it is to get recruits even through the Secretary of State.

176. *Mr. Cocks*: Sir Raymond, at the present time the proportion of recruitment for the present All-India Irrigation Service is on a basis of equality, is it not, with a twenty per cent. reservation for the Provincial Service?—Yes.

177. It is forty per cent. British to sixty per cent. Indian?—It amounts to that.

178. Is that the proportion you suggest should be continued?—I did not fix any particular proportion in my mind.

179. *Mr. Cocks*: You do not suggest any definite percentage?—In the 40's or 50's would do. It comes to the fraction of a man in the end when you are only recruiting about three men.

180. Supposing you took it, for the sake of argument, that it should be 40 per cent. recruitment from Britain, do you mean 40 per cent. of each Provincial Service, or 40 per cent. of the total combined services in India?—I am only speaking of the Punjab in that case. I am not speaking of the other Provinces. Certainly a great many Provinces would not support British recruitment for their Irrigation Service. I am almost certain of that. I do not know what Mr. Mullings thinks. It would be so in the Provinces where Irrigation itself is a very minor matter such as Bengal.

181. *Marquess of Zetland*: No; I would not describe Irrigation as a minor matter in Bengal where we have tremendous hydraulic works for dealing with malaria?—I was speaking of Irrigation and not of Drainage, if I may be allowed to say so.

182. But I point out that drainage works are all part of the Irrigation Engineers' duties?—Quite so, but I have spoken to many Bengal Irrigation Engineers, and they have told me frequently that their entire work is drainage, Mr. Adam Williams, for instance.

183. I agree Mr. Adam Williams may find it is largely drainage?—It is all drainage. As to Irrigation itself, the putting of water on the land, is not the main service in Bengal.

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184. I agree, but you have your Irrigation service all the same?—That is so.

185. *Mr. Cocks*: Do you suggest that we should suggest in our Report a definite, but varying percentage for each different Province?—No, I would not go as far as that. I would say in certain Provinces (and I admit my own knowledge is not extensive enough to say which) where Irrigation is important a definite proportion should be laid down, but in the others it should be left to the local governments entirely.

186. It should be laid down in the future constitution of India you mean?—Yes.

187. As far as certain Provinces only are concerned?—Yes.

188. You know, of course, that the Simon Commission reported that British recruits are very difficult to obtain for the Irrigation Branch even on the All-India basis?—I did not remember that they had reported that, but I know that it is a fact.

189. If that was the case when Irrigation was a Reserved Subject, and on an All-India basis, do not you think that difficulty would be even greater if it is a subject that is to be transferred and made a Provincial one?—It would be, unless some form of guarantee is given by the Secretary of State. I am quite sure that a recruit entering the Irrigation Service would not even know what "transferred" and "reserved" meant. I do not think that would frighten him, but if he was told that the Secretary of State guaranteed his pay and pension he would consider that good enough.

190. *Earl Winterton*: He did guarantee them under the old system?—He did under the old system.

191. What the Lee Commission Report says is really very striking. After referring to recruitment for the Indian Civil Service and saying: "We are informed that men of the right type are coming forward in adequate numbers," they then add: "We understand that Police recruits are also in good state, but we understand that recruits are difficult to obtain for the Irrigation Branch of the Service"?—That is so, and they have been difficult to obtain for a number of years.

192. *Mr. Cocks*: It follows from that, does it not, that they will be even more difficult to obtain in the future under the new system?—What I suggested was very little altered from the present system. The only difference as far as I could see between them would be that they would be servants of the Local Government; they would have to rely on it entirely in matters like prospects, promotion, discipline and so forth, whereas, in the present system, in an All-India Service for those cases, they have an appeal, I think, to the Secretary of State; but the ordinary recruit does not even know that the right of appeal exists before he joins, I am quite sure.

193. Can you give me reasons why the sons of landed proprietors and that type of recruit does not come forward for this Service?—I think there are two reasons. One of them is that they are usually not clever enough; they have not got the acute mathematical brain that the other castes have; and, secondly, I think very largely in the Punjab, it is not looked upon as such a good profession, say, as the Army, or the Civil Service. It seems to me that the position in India is very much the same as it was about a hundred years ago in this country, when the engineer's profession was hardly a gentleman's profession. That is what I think the position is at present.

194. As far as that second reason is concerned, considering the importance of the Irrigation Service, do not you think that when it becomes a Transferred Subject and is Indianized, that objection will decrease, and that men of this type will come forward?—It will no doubt go as it has

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gone in this country. I am speaking from personal knowledge. My relatives have told me that about eighty years ago they only became Engineers under great objections from their parents. It was scarcely a decent thing to do.

195. Who would appoint the Irrigation Board—the Central Government?—I have not gone into that, but it is the sort of thing I would leave in the hands of the Governor-General—not in Council, but the Governor-General—some purely outside authority.

196. You suggested it should be a statutory body, embodied in the Constitution of India?—Yes.

197. You said it would be constituted something like the present Central Board of Irrigation, which I understand consists of the Provincial Chief Engineers and the Consulting Engineer of the Government of India?—He no longer exists.

198. He did at the time of this Report?—No doubt he did, but he has gone now.

199. That Board is a purely advisory one at the moment?—It is purely advisory and it can only give an opinion when it is called upon to do so.

200. Would not you propose that its Constitution should be altered in some way if it is to be made a body with a mandatory power?—Certainly. I was merely pointing out that there is a Board of that kind in existence at present.

201. You would hardly make the Provincial Chief Engineers—Civil Servants—the masters of their own Governments on such an issue as this?—As I was explaining before, supposing there was a dispute between Sind and the Punjab, the Representatives of Sind and the Punjab on the Board would be the people to give evidence, not to sit on the Board.

202. But the Board's decision would be final, you suggested?—Yes.

203. Therefore, you would think that, besides these Provincial Chief Engineers, there ought to be other people added?—Yes, but in my opinion there should be a majority of Engineers. My experience is that it is always difficult to get laymen who understand the technical difficulties.

204. Would the appointments to the Board be of an irremovable character, as the appointments of Judges are, or would they be appointed for a particular purpose?—They would be appointed for a particular purpose. (*Mr. Mullings*): An *ad hoc* Committee.

205. I do not want Sir Raymond to answer this question if he would rather not, but would he care to say whether he agrees with Mr. Mullings when he says in his last paragraph: "but I anticipate no breakdown in administration were the British element to be eliminated by its gradual replacement or superannuation"?—(*Sir Raymond Hadow*): I do not quite know what he means by a "breakdown in administration." I have read that myself, and I do not quite know what it means.

206. Could I ask Mr. Mullings?—(*Mr. Mullings*): I think it would be very nearly as satisfactory as it is now in Madras, certainly.

207. Even if the British element were entirely eliminated?—Yes, and because for fifteen or twenty years there would naturally be some Europeans left.

208. But what would happen at the end of the fifteen years?—They need not be replaced, I suggest, in Madras.

209. *Lord Eustace Percy*: Sir Raymond, may I return for a moment to this recruiting question: How is the administrative personnel in the Punjab now recruited, other than promotions from the Subordinate Service?—(*Sir Raymond Hadow*): Are you speaking of the Irrigation Service?

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210. Yes?—Most of the recruits come from the Thomason College at Roorkee.

211. What is the recruiting authority?—The Local Government.

212. The Central Public Services Commission have nothing to do with it?—Nothing to do with it, and they are formally appointed, after probation, by the Secretary of State. It is purely on the recommendation of the Local Government that they have found these officers suitable. He appoints them because he is the only Appointing Officer to an All-India Service. It is purely for Constitutional reasons.

213. Does the Local Government set the standards for the recruits?—Yes, we take the Roorkee certificates or degrees, as it were.

214. Do you get as high a standard as if the Central Public Services Commission did it?—They would choose the same men. Just as I was leaving India it was left to the Public Services Commission to choose them and they took them from the same college as we took them before, but it is a purely independent outside authority, of course.

215. So far as the Secretary of State's recruitment of Englishmen is concerned, do you contemplate that the Secretary of State should fix the educational standards and the examination in this country?—That is what he has done at present and we find that quite satisfactory. He most probably consults the Civil Service Commission here, I should think.

216. I was just going to ask you what function, except a pure facade, the Secretary of State would perform? The actual operation would be that the Civil Service Commission here would be recruiting a certain number of men for the Punjab Service?—That is really what it amounts to, I suppose. He would be, as you say, really a figurehead.

217. The only function the Secretary of State would perform, I understand, is that you anticipate that he would guarantee in some form the scale of salary and the pension?—I suggest that because it struck me that he would not either care to recruit people to whom he could give no guarantee, and, secondly, he might not be able to recruit them without giving them some form of guarantee.

218. But the Secretary of State could not, under the new system, guarantee a salary or a pension, because he would not have the control over the Government of India which would make him the salary-paying and pensioning authority?—But he is going to do that for the Indian Civil Service and the Police for five years.

219. He does that because he still retains control over the whole Service?—Yes.

220. He specially reserves through the Governor-General, under the White Paper, responsibility for their salaries and pensions?—Yes.

221. But that would not be the case with the Irrigation Engineers, would it?—I see the difficulty. It always has been a difficulty to me. I only bring in the Secretary of State, because, to my mind, he is the only person who could get recruits. If I thought the Provincial Government could do it, or the Public Services Commission, or the Governor-General, I would be only too glad to accept that point of view, but I cannot see any of them being successful, knowing what I do know about the recruiting for many years past.

222. As regards the Indian personnel, you would see no advantage at all, at any rate from the point of view of the Punjab, in concentrating recruitment in a Central Public Services Commission acting on behalf of the Province?—I think they are doing that now for their own recruits—Indian recruits, I should say.

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223. I do not know whether I might ask Mr. Mullings the same question. Do you think that Central recruitment of Indian personnel would be better than provincial recruitment?—(*Mr. Mullings*): I do not think so.

224. You think it would be worse?—I think so, yes. The Public Services Commission in Madras takes exactly the men we should choose. (*Sir Raymond Hadow*): The difficulty with central recruitment is that you may get a Madrasi in a post in the Punjab and *vice versa*, which I think Mr. Mullings will agree with me would be nothing short of a calamity.

225. *Mr. Butler*: Arising out of Lord Eustace Percy's questions, you say, in your own memorandum, that, if possible, the Secretary of State should avoid fixing a scale of pay and pension, because you realise, I think, the difficulties under Provincial autonomy, that we are dealing with a transferred subject?—Exactly.

226. Since you have acknowledged this difficulty, I wonder if you could help us by elaborating any further some method of getting over this difficulty that you mentioned. Would you suggest that there should be some method of consultation with the Provinces as to the scale of pay and terms and conditions of service?—That might easily get over the difficulty. I presume the Secretary of State would do that in any case. He would not necessarily accept the present All-India standard of pay or pension; I am not suggesting that.

228. Do you suggest that there should be some method of consultation with the Province?—Yes.

229. I understand, and I should like to ask Mr. Mullings this, that you would not wish this to apply to every Province?—I certainly would not thrust it down the Province's throat.

230. May I ask, Mr. Mullings, what your view would be upon this question?—(*Mr. Mullings*): I do not think the Secretary of State is required to recruit Europeans for Madras.

231. Sir Raymond, you mentioned the question of Sind. You are aware, I expect, that in the White Paper the Government of Sind is declared to have a special responsibility in respect of the administration of the Sukkur Barrage?—(*Sir Raymond Hadow*): Yes.

232. Do you think that would be a satisfactory safeguard for the administration of the Barrage and all it means to the Province? Do you think that that would be a distinct help to Sind?—Undoubtedly. Of course, I think the Barrage is almost more important to Sind than the canals are to the Punjab; it is everything, I think.

233. Then coming to the difficult question of the Board, I understand that you have given this matter some consideration, but that you would hesitate to claim that these were your final views upon so difficult a matter?—Certainly. As I say, I do not quite know how far my idea that there is a gap in the White Paper on this point is well founded to begin with, and my idea of the Board is really my own. I have not polished it up talking it over with other people, or had the benefit of their criticisms at all.

234. I agree with you that it is necessary to find some provision in the case where one unit is using water to the detriment of the interests of another unit. May I put it to you that it is rather difficult to base this purely on proprietary rights of water or to make the question a legal one purely?—Exactly. It is very difficult indeed.

235. And that would be disregarding the many political, economical and social elements which are involved in the use of water in India?—Exactly.

236. Would it not therefore be wiser, since there are so many objections raised and since you have acknowledged that it is difficult to base this

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question merely upon proprietary rights, that such a Board, which you have very kindly suggested to us, should be of an advisory character and should advise the Governor-General?—I would quite willingly accept that if I knew what the Governor-General would do on the advice. That is to say, could he then say to Provincial Governments who had provincial autonomy that, for instance, the share of water shall be so and so. I understand that he could not.

237. I refer to the difficulty there would be where one unit was using water to the detriment of another unit, and I suggested to you that a Board might be established which should advise the Governor-General?—Yes.

238. In the case of a difficulty between two units, would you agree that in the first place the Governor-General might reject the application if he thought it was not important and the difficulty was not a big one; an application from one or other unit, an aggrieved unit?—I find that very difficult to answer.

239. I do not want to press you, but in the case of one unit having a legitimate grievance, would you agree that this Board which should be appointed by the Governor-General, as you yourself have suggested, an *ad hoc* Board, chosen perhaps from a panel of experts, should then consider this grievance, and report in an advisory capacity to the Governor-General?—Yes.

240. And you will then, if you turn to the White Paper, see that under 70 G, the securing of the execution of orders lawfully issued by the Governor-General, he would have power to see that his orders were executed in a particular Province?—That comes under his special responsibilities?

241. Yes?—It has got to be the execution of an order lawfully issued by the Governor-General. Could he lawfully issue an order in this particular case?

242. If that were made plain in the Constitution Act, that would satisfy your difficulties?—I think so, yes; I think that would be a perfectly good solution.

243. *Marquess of Zetland*: May I ask one question of a general nature which I would like to put to both witnesses? It is admitted, I think, that in India there are some of the greatest irrigation works in the world, and in India they are of extraordinary interest to the irrigation engineers. Some of them were described by Sir Raymond as problems of drainage, which I should prefer to describe as the scientific regulation of flood water. There are other problems connected with the control of floods, for the prevention of disease, and so on, and I would have thought, therefore, that India would have been the irrigation engineer's paradise; yet I understand that extraordinary difficulty is experienced in securing competent engineers from this country. Now can they tell me what the real reason for that is?—It has always been a mystery to me. When one knows how difficult, for instance, it is to get employment in this country for the qualified engineers of the present minute, why more do not try to get out to the Irrigation Services in India, has always been a mystery to me.

244. From your knowledge of Members of the Irrigation Service, do you think there is anything with regard to the terms of employment which prevents people from applying—rates of pay, and so on?—I do not think so. I can only suppose that the University or College Authorities do not encourage it. They would probably say it is a lonely life and that everybody is fever-ridden. They have got most probably quite disturbed and wrong

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ideas on the subject. I can only suppose that. I read a report of the two officers I mentioned just now, and they did not seem to me to throw much light upon that, either.

245. Can Mr. Mullings throw any light upon that problem?—(*Mr. Mullings*): Do you not think it is probable that an Englishman does not like taking orders from an Indian.

246. But that has not been the case hitherto, has it. The Englishman has generally been in the superior posts?—Yes, but in the future he will not be.

247. No, and you suggest therefore that one of the reasons which may militate against recruitment in this country might be that the Englishman would find himself in a position in which he would be obliged to accept orders from an Indian?—Yes, especially if he felt confident that it was a wrong order.

248. *Major Cadogan*: But was not recruitment equally as difficult before? There was not so good a chance as there is now of a European being under an Indian official?—(*Sir Raymond Hadow*): To my knowledge it has been difficult since 1914; that is my own personal knowledge. There have been years when it has been easier, such as after the War for instance; about two years after the War there were floods of recruits.

249. *Earl Winterton*: It would also apply to other services, the Indian Civil Service and the Police Service, that a European would be under an Indian. Is there any special thing that differentiates the Irrigation Service in that respect from other Services?—(*Mr. Mullings*): I do not think so.

250. *Major Cadogan*: It was certainly not as lonely as the Forest Service, is it?—(*Sir Raymond Hadow*): I should say it was quite as lonely as the Punjab Forests, and probably not quite so pleasant, because the Punjab Forests are very largely in the Himalayas. I confess I do not know the reason why.

251. *Marquess of Salisbury*: Mr. Mullings, you prefer Brahmins for your engineering officers?—(*Mr. Mullings*): Yes.

252. But the other castes would not be so good?—They are never as high in the examinations, so they do not get the chance of getting selected.

253. But would you be afraid that under an Indian administration in Madras under the new Constitution the other castes would be admitted to the engineering?—I do not think they would be.

254. You think that the Justice Party would always have Brahmins for their Irrigation Officers?—No, I do not think they would, if they could help it.

255. The Justice Party are in a majority, are they not, in Madras?—They may be; I have not been out there for four years.

256. Of course we were informed, I think, that the present administration in so far as it is transferred is in the hands of the Justice Party now?—Yes, I suppose so.

257. If that were to happen it would not be so good if you had other castes?—The better men are the Brahmins.

258. So that the others are the worst men, therefore?—Yes.

259. *Lord Eustace Percy*: They are all recruited by examination, are they not?—Yes.

260. *Marquess of Salisbury*: You are a little afraid of nepotism, are you not?—Yes.

261. You say that with a wholly Indian administration nepotism may increase?—Yes.

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262. Do you think it will increase?—I should think it probably will.

263. Then you think that until caste distinction diminishes the assumed bias of the Indian engineer will always be a source of distrust and suspicion to other castes?—Yes.

264. So that there are several elements in this difference of caste and in the possibility of nepotism which would lead you to think that an Indian administration would not be quite so good?—It would not be quite so good.

265. Therefore, when you say at the end of your precis "but I anticipate no breakdown in administration were the British element to be eliminated by its gradual replacement on superannuation" you do not mean quite what you said just now in answer to one of my colleagues, that it would be quite as good as it was before?—No, not quite as good.

266. *Lord Rankeillour*: Might I just ask Sir Raymond one other question? Sir Raymond, you told me earlier on that you would give the Central Board judicial power, and that their findings should have the force of law, but, if you adopted Mr. Butler's suggestion, that would not be possible would it?—(*Sir Raymond Hadow*): No. His was entirely an alternative.

267. A complete alternative?—A complete alternative.

268. And cases of disputes in law between the Provinces would still have to go to the Federal Court?—I would try to have it so that all disputes as regards water rights had to go to the Board. The alternative is either to make the decision of that Board mandatory or to bring it under the Orders issued by the Governor-General under one of his special responsibilities, under the White Paper.

269. But if some question of law were involved you could hardly prevent one of the parties going to the highest Court over it, could you?—Over the decision of the Board?

270. Over the merits of the dispute. Would you not have to draw a distinction between policy and law in those cases?—The difficulty is to know what the law is. I think it would be very difficult to draw any distinction. I have been concerned with some disputes about water rights, and so far as I can make out there is no law at all upon the subject.

271. But if one of the parties thought they had a case in law you could not oust the Federal Court by giving a power to the Governor-General to decide it—at least it would be a very strong order to do it?—It would be very difficult; I see the difficulty.

272. *Mr. Butler*: It would not be inconsistent with the scheme which I put tentatively to you, that if any point of law arose the tribunal could refer it to the Federal Court for their opinion?—That would be one way out of it.

273. *Lord Rankeillour*: And you said that for instance the tribunal should negotiate with one of the States under the Himalayas. That is hardly compatible with judicial functions is it?—The Board would?

274. Yes.—Did I say that?

275. I thought you did.—No. I quoted a case myself in which I knew we had been negotiating.

276. But I thought you said that kind of negotiation you would transfer to this Board?—No. I think what I meant was that naturally the Provinces or the Province and the State would carry their negotiations through to a point where they reached a dispute; then it would be referred to the Board.

Lord Rankeillour: I beg your pardon; I misunderstood you.

277. *Lord Eustace Percy*: I wonder if I might ask one quite different question about Sind. How is the Irrigation Service to be recruited for

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Sind as the barrage work expands? I mean if the administration had remained as at present, would a staff have been drawn from the Punjab or other Provinces?—No; they have drawn all their staff from Bombay.

278. They have up to now?—And I presume they have got very nearly their full staff at work.

279. They have already, have they?—I should think so; I do not know. I am judging from my own experience in other projects in the Punjab where within say three or four years of the completion of the work you have got your full staff on it.

280. But if you have under the new Constitution a separate Province of Sind with a separate Provincial Irrigation Service, is that Irrigation Service likely to be large enough to provide prospective promotion for Englishmen?—It would be very small; the whole project is only as big as some of our single projects.

281. Is it conceivable, or are the language difficulties too great, that you could have a joint Irrigation Service for the Punjab and Sind?—There is the language difficulty, but also I think the Provincial jealousies would prevent it from being a workable proposition. (*Mr. Mullings*): And the Irrigation systems are so different are they not? (*Sir Raymond Hadow*): No, not the Sukkur Barrage. I do not say the actual assessment of revenue is the same. That I am afraid I do not know enough about, but they very largely follow the Punjab practices in Sind.

282. *Earl Winterton*: I wonder if you would permit me to ask a question, my Lord Chairman? It is perhaps rather outside the terms of the witnesses' evidence, but as we have two very distinguished Irrigation Experts here, I would like to ask a question, because it is of great practical importance. The question is: Do either of the witnesses think that there is a danger of a large quantity of the irrigated land in India in the next ten years becoming useless or partly useless owing to alkaline deposits? Perhaps I may say in asking the question that I myself have seen in India and in the near East, cases of land which ten years ago was bearing excellent crops. For instance, I was the guest of a very distinguished military officer at Dera Ismail Khan in 1927, and he showed me land that had been bearing excellent crops and was now full of alkaline deposits; and I have been told, through official channels, that there is danger in some parts of India that the irrigated land might be of very much less value in a few years time unless very great care is taken over this question. Could you give us any information upon that point?—My personal opinion is that practically none of the damage which is done by the canals is incurable; it is a matter of money.

283. And I suppose it is also a matter of research and of interchange of expert opinion between districts and the Provinces?—Very greatly. We have proved that you can reclaim it.

Lord Hutchison of Montrose: You have got the same thing in Egypt which has been counteracted by very vigorous drainage off of land once it is flooded.

284. *Chairman*: Do either of you gentlemen desire to say anything in conclusion?—No.

Chairman: Thank you very much. Then I should propose to the Committee that we ask these gentlemen to withdraw.

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RECORD C3 (*continued*)

II

FORESTRY

[27TH APRIL, 1934.]

I.—Memorandum by Sir Alexander Rodger, O.B.E.

Forest Policy.—Looking at this from an Imperial point of view, it has been very well laid down in Government of India Circular No. 22F. dated 19th October, 1894. "The sole object with which state forests are administered is the public benefit" (para. 2).

Recruitment.—Please refer to the Report of the Indian Statutory Commission, Vol. II, page 288, paragraph 330. "It is a matter of great moment both for the Revenues and for the contentment of India that this asset should be prudently developed and skilfully exploited." "We very much doubt whether India is yet in a position to find all the personnel which it requires to maintain the administration of these two departments, both of which demand not only the highest technical knowledge but the most resolute administrative zeal." See also quotation from the Linlithgow Commission in the same paragraph.

I am in favour of recruitment being carried out by the Government of India, on behalf of the provinces, because:—

(1) Provinces, with the small numbers which they will require, cannot hope to have as wide a field of selection as the Government of India recruiting for the whole of India.

(2) If higher training, which has begun at Dehra Dun, is to go on in India, it must all be carried out in one place. Provinces cannot possibly have their own training centres.

(3) If provinces fix their own rules for recruitment and their own scales of payment without regard to other provinces interests will be conflicting and the best men will pick and choose. See what has happened in Burma where a high scale of pay has been fixed which it is unlikely the other provinces will ever be able to pay. The method of recruitment for Burma has I believe been satisfactory, but the case with the smaller forest provinces may be very different.

(4) The Government of India obtains its men for the Central Research Institute at Dehra Dun and for the Andamans forest department from the provinces, on deputation. This is the best method because

(*a*) It gives a wide field of selection.

(*b*) Experienced suitable officers can be chosen.

(*c*) Men who prove unsuitable can be sent back to their provinces.

It is therefore desirable that the Government of India should have some say in the selection of officers for the provinces.

Centralisation.—I advocate a certain amount of control from the centre on the following grounds:—

(1) *The welfare of the people.*—See para. 129, Vol. II, of the Indian Statutory Commission's Report, page 109. And, apart from the backward tracts, there are thousands of small remote villages whose welfare depends on good administration of the forests.

(2) *The development of scientific administration*, and marketing, research, and education, can never be carried out properly by provincial Governments acting alone.

(3) *The Service.*—The weakening of the controlling staff cannot fail to react unfavourably on the welfare of the forests. The great traditions of a very successful All-India service will disappear and the outlook will become narrowed. Transfers of higher officers between provinces, and consequent co-operation will become difficult or impossible.

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RECORD C3 (*continued*)

II.—Consultation between the Committee and Sir Alexander Rodger, O.B.E.

[27TH APRIL, 1934.]

285. *Chairman*: Sir Alexander Rodger, you are good enough to come here to-day in order to give this Committee the benefit of your views and advice in the matter of Forests in India. I think you understand the arrangements for the consultation to-day. They are that the Committee reserves its discretion as to whether your Memorandum and whatever may be said to-day in committee by Members of the Committee, or by yourself, shall or shall not be laid before Parliament in due course. I think some of my colleagues—unless you desire to make a statement or to amplify this Memorandum at this stage—might wish to ask you one or two questions? —No, I do not want to say any more at present.

286. *Archbishop of Canterbury*: I am very ignorant, of course, of the actual procedure. Perhaps Sir Alexander could inform some of those like myself, who are not familiar with Indian Administration, first in the existing practice, in the Forestry Service, at what stage is the appointment in the hands of the Government of India now directly. At what stage are appointments made by other authorities lower down?—There are two Provinces, Burma and Bombay, in which, since about 1923, they have appointed their own Forestry Officers, because what at that time was called the Indian Forest Service was placed under the charge of an Indian Minister, from about 1923, so that those Provinces have had their Departments in their own Provinces under their own control.

287. *Marquess of Reading*: Are not those the only two Provinces in which the transfer was made at that time?—Yes, but the Government of India (I may mention that I was in charge of the first recruiting examination which we had in India for the Indian Forest Service for the remaining Provinces) up to this date keeps control especially of the higher administration of most of the other Provinces, of which there are six or seven.

288. *Archbishop of Canterbury*: What do you call exactly the higher administration? What are the Officers?—It is in this way: In a large Province, like the United Provinces, there are four who are called Conservators, who are the higher Administrative Officers, and in a small Province, like Bihar and Orissa, there is one Conservator. Those are what we call Administrative Officers, and it is the business of the Government of India to decide which Officer shall be moved from one Province to another in the interests of the Service.

289. Does that apply to the Provinces which are already controlling the Forestry Service?—No. Bombay and Madras, being separate Presidencies, for a very long time past, have had their own lists. There are no transfers now between Burma and the rest of India.

290. What you would wish would be to secure that in every Province, at any rate, all higher Officers of the Forestry Service should be recruited and appointed by the Secretary of State or by the Government of India, as the case may be?—I should like to see that. For the reasons stated in my Memorandum, I should like to see that the Government of India retained a certain amount of control of the recruitment of Officers to the Indian Forest Service.

Marquess of Salisbury: Do you mean the Government of India or the Secretary of State?

Archbishop of Canterbury: It is the Secretary of State in the White Paper.

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CONSULTATION BETWEEN THE COMMITTEE AND SIR ALEXANDER RODGER, O.B.E.

291. *Marquess of Salisbury*: I wish to know which Sir Alexander meant. (*To the Witness*): Which is it?—The Secretary of State has been accustomed to recruit the Officers for the higher ranks of the Indian Forest Service for many years past, and it has been a satisfactory arrangement. I think it would be perfectly sound if it were continued; but, on the other hand, the Government of India have, since about 1928, I think it was, recruited their own Indians in the country itself, and it would probably be inadvisable now to do away with that arrangement. That is three Indians out of four recruits.

292. *Sir Austen Chamberlain*: Out of four officials?—Out of four recruits, three have to be Indians and one has to be a European.

293. But a little time ago, when you were asked what you meant by the higher ranks, you referred to Conservators?—That is what we call the administrative ranks after they have had a number of years' service; gazetted ranks I should have said.

294. *Archbishop of Canterbury*: Then would you alter the arrangements now existing in Bombay and Burma and bring these into line with the other Provinces?—I am doubtful if you can do it now.

295. Have you any view as to the effect upon these Provinces, Bombay and Burma, of the existing arrangement as contrasted with that which obtains in the other Provinces?—We must look at that from two entirely different points of view. Burma, as a Forest Province, is in a class by itself. It has got 150,000 square miles of forest out of a total for India of a quarter of a million, roughly, so that one cannot consider it in the same way as any other Province, and, therefore, having had until recent years a very large revenue and a very large surplus, it has employed a large and important Forest Service of its own, so that it has been able to recruit on an adequate scale for itself. But Bombay, I think, is in a different category. I should say that Bombay has made a mistake in not recruiting sufficient gazetted officers since the transfer in 1923.

296. I wonder if you can tell us rather more precisely (of course, it is all so familiar to you) what officers are included in the phrase "gazetted officers," roughly speaking?—There are two classes of Officers; the Indian Forest Service and the Provincial Forest Services. The Provincial Forest Services are men recruited in the country, sometimes promoted from the lower subordinate grades, and sometimes directly recruited and trained in India. The Indian Forest Service was formerly entirely trained at Cooper's Hill, and has been of recent years partially trained in India at the Indian Forest Service College at Dehra Dun. Those two services we understand by gazetted forest officers.

297. Both services?—Yes.

298. But at present, except in the Provinces of Burma and Bombay, the whole of the Indian Forest Service is recruited by the Government of India and appointed?—The Secretary of State, I understand, when asked to do so—it has not been done so recently, but for a while one in four was recruited in this country.

299. *Marquess of Salisbury*: And even the ones that were recruited in this country were recruited on the authority of the Secretary of State?—I think so, yes.

Mr. Butler: That is so, yes.

300. *Archbishop of Canterbury*: Then, when you say that in Bombay you think that they do not recruit enough gazetted officers, what exactly does that mean?—Bombay has an area of about 15,000 square miles of forest under the Forest Department, and a total staff of 3,600 forest officers

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including gazetted officers and subordinates; and as far as I am aware Bombay have since 1923 recruited very few officers indeed, so that I should think in that long period of 11 years it is probable that they have not now sufficient supervising staff, with the consequent absolutely certain deterioration of the forests.

301. Is that for reasons of economy?—It is for reasons of economy largely, yes.

302. Is the proportion very much larger in the Provinces where the Forest Service has not been transferred?—The proportion of gazetted officers is higher I think, and Bombay has one of the largest total staffs. They only have I think about 50—I am subject to correction in this figure—but I think at present they only have about 50 gazetted staff, whereas Madras have about 90 and Burma about 190 and even a smaller province like Bengal has 35.

303. *Sir Austen Chamberlain*: The lack of recruitment in these ten years has been out of all proportion in the gazetted staff?—I should say so, yes.

304. *Lord Eustace Percy*: The Bombay Forests have always been very much less remunerative than the Madras ones, have they not?—They made a profit in 1932 of 16 lakhs, which is not bad for these modern days, and in 1926 they made a profit of 33 lakhs.

305. *Archbishop of Canterbury*: Your view would be that what you say about Bombay indicates that there might be a disposition, in the Provinces, if the appointment and recruitment was not kept largely in the hands of the Secretary of State, to understaff the service?—Yes, or to promote from the subordinate ranks people who were not sufficient expert.

306. *Sir Reginald Craddock*: Might I intervene with a question that might make it a little clearer. Your gazetted officers, really, are those who are selected either by original appointment or by promotion, to fulfil certain duties?—Yes.

307. And those men know there is a system of conservators or deputy conservators?—Yes.

308. Or otherwise more commonly called forest divisional officers, are they not?—A divisional officer is a territorial designation.

309. But that is the charge they hold, they hold charge of the Forest Division?—Yes.

310. And for that hitherto the Indian Forest Service, which was an All-India Service throughout, was recruited from England, and then there were the promoted men who were known as extra Assistant Conservators or extra Deputy Conservators, who were promoted from what you call the Provincial Service?—That was a fairly recent development, Sir Reginald, if you remember. That is being done now, yes.

311. It is the case, I think, that latterly most of the recruitment has been done in India?—Yes.

312. And there have not been so many sent from England as formerly —Very few.

313. I just wanted to bring out that fact, that the higher Indian Forest Service filled all those appointments which are known as Forest Divisional Officers, that is to say an officer who is in charge of a Forest Division?—I may remind you perhaps that Provincial Forest Officers were frequently in charge of the smaller forest divisions.

314. Yes, but those were known originally as extra Deputy Conservators or Extra Assistant Conservators?—Yes.

315. *Sir Austen Chamberlain*: May I ask would they have been trained at the Dehra Dun College?—Yes, they were.

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CONSULTATION BETWEEN THE COMMITTEE AND SIR ALEXANDER RODGER, O.B.E.

Sir Austen Chamberlain: What becomes of the Dehra Dun College under the White Paper? I do not know whether I ought to put that question. Perhaps the Under-Secretary could say.

Mr. Butler: The Dehra Dun College will continue in the future to do useful service as it has done in the past. I do not see myself that the terms of the White Paper will alter the future usefulness of the Dehra Dun College.

316. *Viscount Halifax*: I suppose the main function of the Dehra Dun College will be to continue central research, the results of which will be available to all the Provinces?—That is the Institute. We have three quite separate subdivisions. I had two colleges and one Institute there, but the college is not the same as the institute.

Sir Austen Chamberlain: May we get clear exactly what will be the function of the College?

317. *Marquess of Reading*: I really only wanted to get from Sir Alexander a little explanation with regard to Dehra Dun which may be useful to other members and will certainly be useful to me. You have there a college and you also have a central research Institute, have you not?—Yes.

318. They are separate Institutions?—They are under the same officer, and some of the staff do work for both.

319. Then in the College, is the College for the purpose of training persons who will become officers?—There are two colleges. May I explain that? There is a College for the subordinates, which has been going for a long time in Dehra Dun and we have been accustomed to train the rangers, that is the higher subordinate branch at Dehra Dun, since about 1870, not only for many of the Provinces of India, but also for places like Kashmir. In fact of recent years Kashmir and one or two other States have been the mainstay of this subordinate college. Then a few years ago we started a separate college for the training of the gazetted officers or the recruits for the Indian Forest Service. At that time recruitment in India was done by the Government of India and the men were all sent to Dehra Dun. I think if I may say so one cannot see a future for this College established for the training of the gazetted officers if the Provinces can do what they like in the matter of recruitment.

320. And obviously it would be impossible for the Provinces to run their own individual colleges?—Absolutely impossible. There is one in Madras now, for subordinates, but I am not sure that they are very pleased with it.

321. Then would you tell us about the Central Research Institute, just to give us a little idea of what functions that performs. Is it for All-India research?—The Central Research Institute is entirely financed by, and is the property of, the Government of India. The staff is recruited, as I have noted in my Memorandum, by getting the most suitable officers from every Province in India as may be most convenient for the Provinces and for the Government of India. A few years ago the Government of India built and established a very large Research Institute which is now in being, and they undertake forest research, which is by far the greater part done on behalf of the Provinces, because the Government of India, as a forest owner itself, is really not very important because the only forest of any importance that it runs directly is in the Andaman Islands; but the Provinces have no say in the management of the Research Institute because they do not subscribe to it; the money provided for the Institute is entirely Imperial, I believe.

322. *Marquess of Salisbury*: When you say "Imperial" do you mean British?—The Government of India.

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Consultation between the Committee and Sir Alexander Rodger, O.B.E.

323. *Marquess of Reading*: As I understand, it is largely because of your views as to the importance of having one training centre for the benefit of the whole of India that you make your observations with regard to the desirability of the Government of India having some control over the officers?—That is my view.

324. *Mr. Davidson*: May I interpose a question: Does the Dehra Dun Training Establishment cater at all for the Indian States?—Yes.

325. *Marquess of Reading*: Requests are made to the Government of India to allow an officer to go?—We used to be delighted to take anybody who would come who was qualified.

326. *Archbishop of Canterbury*: You say for these reasons which you put before us you want still to retain some measure of control by what we may call the Centre over Provincial administration of the Forests. Could you indicate a little more clearly what you mean by "some control"? It is a very wide phrase?—The Government of India has always, up to date, had an Inspector-General of Forests, and it has been from time to time, I believe, proposed that this officer should be abolished. I had the honour of occupying that position for about five years, and I am convinced that it is an essential post which should be retained if the Forests of India, which are a very important State property, are to remain in good order. I may give you one or two examples perhaps, with your permission. One of the most technical and important things in working the forests is the preparation of working plans, and in the course of my duties I was touring in several Provinces and had an opportunity of seeing the new working plans which have been made in these Provinces. It was perfectly obvious in, at any rate, two Provinces which I can call to mind that the local officers would find outside help and guidance of the greatest value.

327. *Marquess of Reading*: When you speak of the Government of India having some say in the selection of officers, I am not quite sure whether I am quite right in understanding what you mean. It is not merely the right of advice that you want there. When you say that they should have some say you want more that a right of advice. Is not that what you are suggesting?—Do you mean in recruitment?

328. Yes?—I think the only sensible way would be for them to recruit for the Provinces with perhaps some advice from, and co-operation with the Provinces.

329. To a certain extent it must be so, must it not?—I think so.

330. Because where the Provinces have not had control before of the Forests it has all been in the hands of the Government of India?—Yes; the revenue has been Provincial and the administration of recent years has been to a considerable extent Provincial, but the Government of India have had a certain amount of technical control.

Marquess of Salisbury: Will you go a little further, Lord Reading, and see what that control means?

Marquess of Reading: Yes, it is just that which I do not quite understand.

Marquess of Salisbury: Nor do I.

331. *Marquess of Reading*: You will understand the only reason I am putting this to you is because we all want as far as possible to follow what you are saying. You have had this very great experience, and we want to get the benefit of it. When you say "control", it is one thing to advocate that they should have a voice, and I will assume from what you have said, the voice in the selection of certain officers?—In the recruitment?

332. Yes?—Yes.

333. That is one thing that I gather you would advise?—Yes.

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CONSULTATION BETWEEN THE COMMITTEE AND SIR ALEXANDER RODGER, O.B.E.

334. But when that has been done do you recommend that there should be further powers of control in the Government of India? The recruitment is one thing, but the administration is another?—May I give you a case?

335. Yes?—Bihar and Orissa is a small Province, and it has a limited number of Forest Officers, only about 25 gazetted officers, and it has one Conservator. If a man becomes senior enough, he may become the Conservator of Bihar and Orissa and stay there for 20 years with, I think one must recognise, no great amount of experience except in his own small Province, and he would not improve as an administrative officer ought to. Under the present system the Conservator of Bihar and Orissa might be transferred to the United Provinces, or the Punjab, or Assam, or Bengal and would there very greatly enlarge his experience and become a much more valuable officer. That is one point of control. Then the point about working plans I have already mentioned to you. I think that this very technical subject should, as far as can be arranged, be under a certain amount of control by the Government of India.

336. It still leaves me in a certain amount of doubt, but I will not press it further. When you say, as you did in your last words, that there should be a certain amount of control that is still not quite clear. Do you mean by that that they should have supervision, or that they should have the control in the administration?—You cannot have a great deal of control of administration.

337. That is what I thought?—But in purely technical matters like research, marketing, education and working plans, I think it would be of great benefit for the Provinces to have this control, or guidance at any rate.

338. *Marquess of Salisbury*: By "control", you means an overriding power of the Government of India?—They have a certain amount of overriding control. As regards research, they have the entire direction. At the request of the Provinces, they take up any research and see how it should be arranged, and they also arrange for the Provinces to a considerable extent the way in which they can market their products, which can be done much better by the Government of India than by any Province. Those are two directions in which they can help the Provinces very greatly without actually giving them orders.

339. *Marquess of Reading*: Of course, you changed the expression (I am not saying it in criticism, but really so as to understand) just this moment; when you said "control", you then said "or guidance"?—That is a better expression, I think.

340. That is what I was going to suggest?—It is more modern, is it not?

341. What I gather from the last observations you made is that you meant that there is in the Central Authority greater power of concentrating knowledge as to the effect of research, and consequently you want the Central Government to have the advantage of giving that to the Provinces which the Provinces are not in the same position to acquire for themselves?—That is what I mean.

342. Exactly how it is to be done, of course, you do not say, but you do want the Provinces not to be shut off from the Government of India?—Exactly.

343. Which has this advantage of the general knowledge which has been acquired?—Yes.

344. *Sir Austen Chamberlain*: I do not know whether you would think it proper for me to put this question, my Lord Chairman, but Sir Alexander spoke of the kind of valuable assistance which came from the present

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control or guidance. He illustrated that by "marketing". What does the Government of India do for marketing?—At present?

345. Yes?—The Government of India have a Timber Advisory Officer in the office of the High Commissioner for India, and this officer will take up any point for any of the Provinces that he is asked to do.

346. It is not what in terms of modern English politics we call a marketing scheme—a general control of marketing?—No; it is not a marketing scheme.

347. *Marquess of Lothian*: Sir Alexander, I am still not quite clear about the first stage of this, the recruiting. Is it your suggestion that all officers who will go to the senior positions should be recruited and trained by the Government of India, that the Provinces should have to select their officers alone from that pool, and should have no power of selecting officers except from people who are certified as having passed the necessary examinations, and having the necessary qualifications?—I think that is desirable.

348. In other words, the Government of India would be the training organisation, but the Provinces would select from that pool such officers as they thought fit?—As had been done until the Indian Forest Service College was closed down quite recently.

349. And I understand while the admistration of the Provinces through such officers would be Provincial, some organisation whereby on technical matters the Provinces should be kept in touch with Dehra Dun should be established?—Perhaps with the Government of India; I will not say with Dehra Dun.

350. That would almost invariably be voluntary rather than control?—Yes, but it might be under the control of some sort of Board. We had until recently a body which was called the Board of Forestry, which consisted of a Forest Representative from every Province, and was summoned from time to time as necessary, and their discussions were almost entirely technical.

351. That body should have put in front of it (I do not know how you could make it compulsory) the plans for forest development throughout the whole of India, to comment upon them?—That might be done as far as the Provinces would agree. That was done to a certain extent before recent developments.

352. That is just the point, can you do that?—Yes.

353. *Marquess of Zetland*: Sir Alexander, with regard to the College at Dehra Dun which trains the gazetted officers?—May I say I am afraid it is closed now. It was open until a year or two ago, but, owing to the present position in which the Provinces are, awaiting instructions or knowledge of their position, there have been no candidates, so the Indian Forest Service College has had to be closed, I believe. I know that in the last year of its existence there were only two students.

Mr. Butler: May I just say that the reason for the temporary closing of the College is retrenchment and the slump in timber prices which has naturally affected the whole of the Forestry of India. Recruitment for the Indian Forest Service has been temporarily suspended since 1931, owing to the slump in prices and the depression, which has naturally affected the position of the Dehra Dun College.

354. *Marquess of Zetland*: There is only one other question I would like to ask Sir Alexander, and that is with regard to the cadre of Forest Officers in Bombay, which is a Province in which Forestry has been transferred. Have they a regular self-contained cadre of Forest Officers in Bombay?—Yes.

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355. They do not recruit by contract for particular posts?—The only post which I can think of at the moment which was recruited in that way was a forestry engineering post, but that is not done now for anything so far as I am aware. There were one or two posts of Forestry Engineers.

356. That being so and there being a self-contained cadre in Bombay, does that mean that the Conservator in Bombay must be appointed from the Bombay cadre?—Yes.

357. It does?—Yes.

358. Even though there may not be a man who is really fit to fill the post?—They have had men so far. There is a Chief Conservator and three or four Territorial Conservators in Bombay, so there is a large administrative staff there. They have a Chief Conservator, and under him he has either three or four Conservators.

359. Do you happen to know whether those posts are filled by Indians or by Europeans?—At present, I think they are filled by Europeans. I do not think there are any Indians senior enough. I have not seen the Civil List for some time, but I do not think there are any Indian Conservators in Bombay at present. There are in Madras.

360. Can you tell us whether, since Bombay started on its own, they have been recruiting Europeans, or whether they have been recruiting Indians? —I think there has been hardly any recruitment at all, and, to the best of my knowledge, I think about two Indians have been recruited and no Europeans; but I will not be perfectly certain about that.

361. That is since 1923?—Yes.

362. Will not the cadre become very much depleted if they never recruit? —That is what I believe.

Marquess of Zetland: What is to be the remedy?

363. *Chairman*: Do you feel able to speak with confidence about these matters of detail which have taken place since you left?—No; I left nearly four years ago.

Marquess of Zetland: I will not press it, but I think it is not a matter of detail. If every Province is to have a self-contained cadre and they cease to recruit, I do not see what is going to happen to the Forestry Service of India; but I will not press that.

364. *Marquess of Salisbury*: When did you leave India, Sir Alexander?— Three-and-a-half years ago.

365. Up to that time, within your knowledge (I am not speaking of anything which you do not know) was the recruiting going fairly well? —Yes.

366. Was recruiting to the Forest Service popular in India?—Yes.

367. Among both Europeans and Indians?—There were no Europeans recruited in India. The Europeans were recruited at home.

368. Of course they would be, but you would know that, of course, being a very important person, if I may say so, in the Forestry Department: Was the Forestry recruiting in England popular?—Yes.

369. And it all worked quite well?—Yes.

370. And this arrest of all recruiting has taken place since you left India? —Yes.

371. You were surprised when the Under-Secretary of State said that it was merely due to economic reasons?—I recognised that that was part of the reason.

372. You thought it was part of the reason?—That is what I thought.

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CONSULTATION BETWEEN THE COMMITTEE AND SIR ALEXANDER RODGER, O.B.E.

373. Was there any other reason besides that?—I had an idea that the Provinces were waiting to see what would be the outcome of the present deliberations, but I may be wrong about that.

374. At any rate, that was a view which many gentlemen who have great experience of India would have held at that time?—I think so.

375. *Marquess of Salisbury*: I suppose the administration of the Forest Department presents a certain amount of difficulty on the side of public feeling. Are not there difficulties of people who complain that the grazing facilities in India are limited by the Forestry Department?—Yes.

376. And does that occasionally create a certain amount of friction in the administration of the Forestry Department?—It depends a good deal upon the political feeling in the Provinces. For instance, a few years ago, in the Central Provinces, there was a good deal of trouble in that way, and at the time of the trouble in India, I think it was in 1920, there were a great many incendiary fires in certain of the forests in India.

377. To what did you attribute those fires?—Political unrest, I think.

378. And connected with the grazing, was it?—Partly.

379. The grazing being, of course, part of the difficulty in India and the cattle?—Yes.

380. The religious element comes into it?—I do not know that the religious element comes into it. The Indian villager keeps a large number of cattle and he wants enough grazing for his animals.

381. At any rate his feeling is sometimes in conflict with the wishes of the proper administration of the Province?—Yes. On the whole, of recent years, there has been very little trouble.

382. But at the same time he would have a certain temptation in that direction, would he not?—Do you mean to graze where he is not allowed to, and so on?

383. Yes?—Yes, there is a certain amount of temptation.

384. What would be of importance to know would be whether these elements of friction, to which we have called attention, exist more or less in Bombay, where the forests have been transferred, than they do in the rest of India?—Are they more operative in Bombay, or less operative?—I do not think so, not to my knowledge.

385. Of course, you have naturally and very properly a very high opinion of the enormous importance of the value of forests in India?—Yes.

386. Do you think that there is any risk, by slack administration, of their deterioration?—I do.

387. And do you anticipate that there may be slack administration in the future?—I think in certain provinces it is quite a possibility.

388. You have not formed any definite opinion upon it? Do not answer if you do not wish to; I do not want to press you, of course?—I think there will be a danger in the smaller Provinces of the Forestry administration becoming less efficient than it is at present.

389. *Sir Austen Chamberlain*: A small Province cannot in the nature of things be efficient, it could not have a large enough staff?—If the recruiting is entirely on their own, they cannot hope to recruit as efficiently as if they were combined with some others.

Sir Austen Chamberlain: That is what I understood.

390. *Marquess of Salisbury*: You have answered to some extent this question, I think, but what power in the future should actually be retained by the Central Government? First of all there is what you have told us, recruiting, that is to say, all senior officers should be recruited centrally?—Yes.

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CONSULTATION BETWEEN THE COMMITTEE AND SIR ALEXANDER RODGER, O.B.E.

391. When you say "centrally" do you mean under the control of the Government of India, as it will be then, or under the control of the Governor-General, or of the Secretary of State? Which of the three? There are the three things we always have to have before us in this Inquiry. There is the Central Government as represented by the new Constitution, the Ministers, then there is the authority of the Governor-General himself and then there is the authority of the Secretary of State, the two last being very nearly allied. When you say you want the recruiting in the hands of the Central Government, which of those three do you mean?—The Governor-General in his discretion.

392. Then the same authority would control, would he? From time to time there are questions of deforestation in India?—Yes.

393. As to whether that should take place or not would be a matter for the Governor-General?—I should like to see that power retained.

394. And I think you have already said that you think the central inspection ought to be retained?—Yes.

395. All these things should be matters for the Governor-General?—Yes.

396. *Lord Rankeillour*: Sir Alexander, how many of the Provinces, or perhaps all, show a surplus on their working of the forests?—You are aware of course that we have had a slump in the Forest Department in India recently, just as in every other trade, but in 1932 there was only one which showed a deficit out of my list of about ten or eleven.

397. *Lord Eustace Percy*: Is that 1931 to 1932?—1931 to 1932, I think. They all showed a small profit.

398. *Lord Rankeillour*: Then the revenue from forests is a very important part of the revenue of those Provinces?—Very, yes. There was in 1926-27 or 1925-26, a surplus of 263 lakhs.

399. And you are afraid that under bad administration that revenue might fall off?—Yes.

400. Do the Forestry Department do all the operations themselves or are there any cases of concessions or leases to individuals?—There are many leases.

401. Does that work as well as direct operation?—Yes. Besides, we have not the staff to work it all ourselves.

402. If there were deterioration of the staff, these leases and concessions to private individuals would very likely increase. It is the easiest way of doing it, I suppose?—There is no objection to leases increasing if they are properly supervised; none whatever I should say.

403. Do you think that there is any danger of those leases in the future being rather casually granted on private solicitation?—Yes.

404. Now, when you were Inspector-General and you found anything wrong or slack, what measures did you take to put it right?—It was largely a personal matter.

405. You had to make private representations?—I used to go round on tour, see the forests with the men and write a note for the Government of India which they sent on with their remarks to the Province concerned.

406. But if the Province did not take notice of it, had the Government of India any means of compelling them to?—No.

407. And they will not have in the future?—I do not know, that we can say that.

408. Rather less. How do you think the Central Control can be exercised in the future? Even as things were in your time it could only be by remonstrance?—There is more than that. For instance, the Government

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of India can exercise a very important measure of control in research, marketing and education. That is very important indeed.

409. But, if a Province in the future showed great slackness in its administration, the Central Government would have no power, except by remonstrance, of pulling them up, would they?—I think that could be managed by the personal touch between the Inspector of Forests, if retained by the Government of India, and the local Forest Officers. It always has been so to a great extent in the past and I think it is most desirable it should be in the future.

410. But do local forest officers have to report to their Provincial Department at present?—Certainly they have, but the technical efficiency and the technical management could be modified and improved to a great extent perfectly well under the auspices of the local government on the advice of the Inspector-General.

411. But if the local government itself got slack or wished to economise on forests, no amount of advice from the Inspector-General or the Central Government would help?—It always has helped a great deal in the past.

412. Have they economised lately?—Every Province has had to economise.

413. On forests?—I am afraid so, yes, on the expenditure side.

414. Do you know of any difficulty with what is so acute a question in Cyprus, the browsing of goats?—The browsing of goats and an excessive number of cattle in certain parts are a great trial in Upper India.

415. And that resolves itself into a political question, I think you said, sometimes?—Yes.

416. *Sir Reginald Craddock*: Sir Alexander, before you were Inspector-General of Forests, you were Chief Conservator, were you?—No.

417. You were never Chief Conservator?—No.

418. But you had special work in Burma?—I was Research Officer in Burma, and then a Conservator in Burma.

419. But you had special work with reference to the commercial aspect?—Yes.

420. During the war?—Yes.

421. And you were in charge of all the timber required?—I was under the Indian Munitions Board for three or four years.

422. Therefore you have had considerable experience on the commercial side of the working of forests?—Yes, I have.

423. Do you think that it would be correct to say that the various Provinces differ with reference to the relative commercial importance, that is commercial forestry, and with reference to the agricultural demand for forest products, that is to say, for example, in the Central Provinces the supply to the whole of the agricultural population is one of the chief aspects. The commercial forests are comparatively limited. While in Burma there is so much forest and waste available for the people, that the commercial side of the forests is by far the most important?—That is right.

Sir Austen Chamberlain: Would Sir Reginald make clear what exactly is the distinction he is drawing between commercial forestry and the supply of the needs of a Province?

424. *Sir Reginald Craddock*: There is sometimes a conflict between the commercial and scientific aspects, and the need for providing local people with sufficient grazing, fuel and small timber. A very keen forest officer might not want to sacrifice some of his scientific aims to mere concessions to the people. For example, in the Central Provinces the revenue officer was very closely connected with working plans; all working plans went through district officers and commissioners in order that they might comment upon

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them and see how far they fulfilled the needs of the agricultural people, to see that the forest officer had not, in his enthusiasm for the most scientific forestry, overlooked or not paid sufficient regard to the interests of the people. In Burma, however, the working plans were strictly commercial and technical and there was so much waste available for the people that there was no such necessity?—Not everywhere, Sir Reginald, but in the greater part.

425. Yes, in the greater part. As regards those two aspects, the complete transfer of forests might have a different bearing as regards Provinces in which the commercial forests were the most important, and Provinces in which the agricultural forests, those specially required for agriculture, were most important?—Certainly.

426. Then the working plans to which you have referred always went up to, or were seen by, the Inspector General of Forests?—Yes, in the old days, always.

427. Up till when was that?—I do not know the date; I cannot give you the date, but in the early days their working plans were controlled; but then everything was very much smaller in those days and there were many fewer working plans.

428. Of course; but as regards Bombay and Madras, they were always independent as you have said?—Yes.

429. If you sent the Inspector General of Forests there they did not like him?—No, I cannot agree.

430. But if you left it to them, they invited him to help, they were very ready to seek his advice?—That is my experience.

431. Provided he came at their own instance?—That was a personal matter again, Sir Reginald, very largely.

432. *Chairman*: I did not quite gather at what point it was you disagreed. Did you disagree with some point that Sir Reginald put to you?—He said that the Madras and Bombay Governments objected to the Inspector General.

433. *Sir Reginald Craddock*: I was saying that was the usual difficulty?—There was a certain amount of friction in the old days.

434. When you have been in Bombay and Madras, has that been at your own volition, or simply at the invitation of the Governments?—The invitation was arranged for me.

435. Anyhow you did not find any more difficulty in Bombay and Madras in getting your views listened to by the Governments concerned—no more difficulty there than in the United Provinces?—Not the slightest.

436. So that although they had their own staff there it was still useful to have the Inspector General of Forests to come and advise the local governments?—They were very pleased.

437. I wanted to bring that out because I wanted to get your concurrence in the importance to the local governments, especially local governments such as Bihar and Orissa, of having some outside advice available to them?—That is what I am very strong about.

438. Now, as regards education, most provinces have their own educational institutions and schools?—Only for the lowest grades.

439. That is for rangers?—No, not for rangers, lower than rangers.

440. Foresters?—Foresters.

441. But have you no rangers who go through some course there? You have got a good many rangers who will be promoted men and do none of the forest schools nowadays give some teaching to rangers?—They were going to begin in Bengal; they were talking about it, but up to date, I

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believe, the only two schools for rangers are one at Dehra Dun and one at Coimbatore in Madras, as far as I remember.

442. You have one in Burma?—Yes, another in Burma, of course, a very good one there.

443. With this complete lull in recruitment for the Indian Forest Service, is there not considerable risk that rangers who are not quite up to the work will have inevitably to be promoted and to assume charge of forest divisions?—If they are promoted to the Provincial Forest Service; I believe that has actually happened in one or two cases already.

444. Of course it is more likely to happen when you get a hiatus in the recruitment of higher forest officers?—Yes.

445. Do you find, or did you find, that the Indians with the highest qualifications and general education and so forth were as keen upon entering the Forest Service as other Services in India?—No, I would not say that, because few of the educated Indians, whom I have met, had a real liking for the life.

446. I mean there is a distinct tendency among those graduates of universities, and so on, for a more sedentary life than is afforded to them in the forests?—Yes.

447. But at the same time among your students at Dehra Dun had you got some really first-class men too?—Yes, a few.

448. Have you been able to watch the careers of any of these Dehra Dun men?—That College was started under me and they were just leaving when I left India. Very few of them had gone into the regular Service when I left, so I could not really say anything about that. I have not been able to follow their future careers.

449. I wondered if in the course of touring the Provinces you had been able to see how these men had come up?—Some of them were beginning quite well.

450. Sir Peter Clutterbuck was one of your predecessors?—Yes.

451. He was fairly enthusiastic about his men when he gave evidence before the Lee Commission, and I wanted to know from you whether in your experience the class of candidate has improved?—They have improved, I think.

452. Were you out in India during the Civil Disobedience Movement?—I was in Burma. It did not bother us.

453. Not in 1931-2?—No.

454. Where were you in 1931-2?—I had retired.

455. You retired just before then?—Yes, I retired in 1930.

456. In the original Civil Disobedience Campaign in 1921, you were in Burma?—Yes.

457. As regards British recruitment you say before the Dehra Dun College was closed that had diminished considerably?—It was 25 per cent.

458. But was that 25 per cent. ever reached?—I think it was until 1930. They had rather intricate calculations adjusting one year against another.

459. In the matter of Conservators, when the Conservators were sent from other Provinces by the Government of India, directly they came under the local administration they were just part of the ordinary machine. The Government of India had no further intimate control over their work?—That is correct.

460. That was entirely Provincial?—Yes.

461. When you spoke of guidance or control it was very largely guidance all along?—Yes.

462. The control consisted merely in the selection of Conservators, research, and a certain amount of guidance over working plans?—Yes, and education

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463. Would you say that was a correct description of what it used to be?—Yes; in the old days the Inspector-General had to sanction the working plans for the whole of India.

464. But now he merely gives some advice on them?—Yes.

465. And it rests with the Local Government whether that advice is accepted or not?—Yes.

466. *Mr. Davidson*: Sir Alexander, there are large forests in the Indian States, are there not?—Yes, two or three of them. Some of them have very good forests.

467. Is it the case that in some cases the boundary between a particular State or States and the British Indian Province runs through a mutual forest?—Yes, I believe it is.

468. Were you ever invited to go to any State?—I did a long tour in Kashmir at the request of the State Government.

469. I think in answer to a previous question you said the Indian States had taken advantage of the Dehra Dun Training Colleges?—Very largely.

470. Do they also ask the Research Institute to undertake any research on their behalf?—Yes.

471. Did they ever submit working plans or ask for advice?—They asked for advice about any technical thing. The Government of India's Institute and College are only too pleased to help them in any technical matter which may come up.

472. *Lord Hardinge of Penshurst*: Sir Alexander, there is only one question I wish to ask you: Since Bombay and Madras have been separate from the supervision of the Forest Department, did you find that there had been any serious deterioration in the forests?—No, Sir.

473. None?—No.

474. Was that due, do you think, in any way, to the fact that there was a considerable European element in the cadre?—Yes.

475. *Lord Hutchison of Montrose*: As regards Dehra Dun, when the recruits come in from the Provinces do they go back to those Provinces?—They do not really come from the Provinces. They were recruited by a Central Examination from the whole of India.

476. That is the present procedure?—Yes, and when the Government of India allots the students at the end of their course, as far as possible they give men who are suitable their own Provinces, but it is not always possible. We have had a Madrasi go to Upper India or a man from the Central Provinces go to Madras, which they do not like.

477. Do you foresee under the new arrangements for autonomous governments in the Provinces any change in that system?—No; I think something of the sort will have to go on.

478. *Lord Hutchison of Montrose*: To what extent in your view can Indianisation of the Service generally throughout India be carried out with safety?—The present arrangement is 25 per cent. European and 75 per cent. Indian, and I think that will have to be maintained in the future.

479. *Lord Hutchison of Montrose*: Can you foresee any direct control from the Government of India over the Provincial forests, especially when you have the commercial interests of the forests so closely bound up with the Provinces?—No.

480. Then it can only be an advisory control?—Yes.

481. In answer to Lord Salisbury you made a point that you thought that the Governor-General ought to deal with the recruitment. He might act in consultation with his Ministers?—I agree with that. I think that is perfectly sound.

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Consultation between the Committee and Sir Alexander Rodger, O.B.E.

482. *Major Attlee*: Sir Alexander, have you had any experience of the working of the Forest Punchayet system in Madras?—Not personal experience.

483. It has worked well, has it not?—Some of it has been successful, yes.

484. In regard to reconciling the interests of cultivators and farmers?—Yes, village management.

485. Would you tell me this: In the consideration of working plans in your time was there liaison with the Irrigation Authorities? The cutting of Forests in one Province might affect the water supply in another Province?—Yes.

486. How was that liaison effected in your time?—The touch between them was very close. In Hill ranges which were of importance from an irrigation point of view we always carefully conserved, as far as it was possible to do so.

487. Do you think there is a danger, if you do not have any central connection and allow the Provinces to manage their own forests, that there might be commercial exploitation for profit of forests in one Province which might seriously injure the water supply of another area in an adjoining Province?—That is possible.

488. How do you suggest that can be got over: by Central control of working plans?—Perhaps not Central control, but by guidance from a Board of Forestry, or something of that sort, under the Government of India. It would be quite capable of doing that.

489. Would that be a Board imposed on the Provinces?—No; it would be a representative Board; we have had one already.

490. And that worked all right?—Yes.

491. Was it a Board composed purely of Technical Officers?—Yes.

492. There was no one representing the financial interests of one Province as against another?—No; I do not think we ever had to tackle anything of that kind—at least, not in my recollection.

493. Do you think the same thing would be possible where you had the forest policy under the direction of a Minister: that these matters would be able to be settled by Technical Officers on technical considerations, without having any discussion between Ministers on the political considerations?—I think it would be always advisable for the Technical Head of the Forestry Service in the Province to be in touch with his Minister in such matters, and I think he would certainly be so.

494. *Lord Eustace Percy*: Returning to the question of recruitment for one moment: In the first place, I do not know that I ought to put this question to you, Sir Alexander, but has the shutting down of recruitment been confined to the Service in Bombay, or has it extended to recruitment over all the Provinces which are still under Central control?—Bombay, since 1923, has recruited very few indeed, I believe, and the other Provinces, owing to the reasons which Mr. Butler has stated, have, in the last few years, done very little recruitment. I think I am correct in that.

Mr. Butler: Yes. It is recruitment of the Indian Forest Service, as a whole, which has been suspended.

Lord Eustace Percy: Therefore, when Mr. Butler said economic reasons were the reasons for the suspension, he was not talking merely speculatively as to what he believed to be the reason of the Bombay Government, he was talking as to what was actually the reason of the Government of India.

Mr. Butler: Yes, for the suspension of recruitment to the Indian Forest Service.

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CONSULTATION BETWEEN THE COMMITTEE AND SIR ALEXANDER RODGER, O.B.E.

495. *Lord Eustace Percy*: At the present moment recruitment to the Forest Service in India is carried out by the Governor-General. How is that done? On the advice of the Central Public Services Commission?—The Central Public Services Commission holds the examination; as a matter of fact, I held the first examination, and they took it over afterwards.

496. And you would propose, naturally, that if Central recruitment continues, it should still be through the Public Services Commission?—Yes.

497. In England would you propose that the recruitmtnt of English personnel should be carried out by the Secretary of State?—Yes.

498. By the Secretary of State?—Yes.

499. That is the case at the present moment?—There is a very parallel case in the Colonies, where the Secretary of State for the Colonies carries out the recruitment. It happens that I have been Chairman for their recruitment for a couple of years.

500. *Marquess of Reading*: I suppose that is at the request of the Dominion concerned?—Of the Colonies.

501. *Chairman*: Is not that for the Crown Colonies only and not for the Dominions?—Yes; I think it is for the Crown Colonies only.

Marquess of Reading: That makes a difference.

502. *Lord Eustace Percy*: One other point on the question of control: Do you know what the actual position is with regard to the forests in Bombay to-day? The Forest Service in Bombay has become a Provincial Service?—Yes.

503. But are the forests, as property, vested in the Provincial Government?—Yes.

504. They are?—Yes.

505. The Government of India retains no ownership in them?—No.

506. *Viscount Halifax*: There are only one or two things I wanted to ask Sir Alexander. What you say in your paper and what you said this morning with great force may really be summed up, may it not, in saying that what you are concerned about for the future really falls under the three heads of management, recruitment, and research? Would that be a fairly true summary of your general feeling?—Yes, I think so.

507. And that, as regards research, the Committee need anticipate no particular difficulty, because, on the assumption that the research part of Dehra Dun will continue, that will cover the research field, and the results of that work will be available for all Provinces?—Yes.

508. With regard to management, and by management I mean working plans, administration, and the technical side of forest working, I suppose it would be true to say, would it not that the key to that is really getting the right man as Conservator at the head of the Provincial Forest Service?—Yes.

509. Therefore, the problem before the Committee very much revolves round the question on which you have laid a great deal of emphasis, namely, the question of recruitment?—Yes.

510. Now, having regard to the present position in the Provinces, where the transfer has taken place, would you anticipate that there would be difficulty in attempting so far to reverse that system as to place recruitment entirely under the Government of India or the Governor-General, without reference to the Provinces, with a scheme of general Provincial Autonomy in being?—In answering that, Sir, may I refer as I did before to Burma and Bombay separately? Burma has at the present moment about 200 out of 630 of the gazetted staff of the whole of India, so that it is in a very different position from any other Province; and I think that

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CONSULTATION BETWEEN THE COMMITTEE AND SIR ALEXANDER RODGER, O.B.E.

Burma is fit and is quite capable and should be allowed to recruit its own officers; but I think it would pay Bombay and I think it would pay every other Province in India to come into some unified system of recruitment.

511. What I really had in my mind was whether you could develop a little bit the idea that you suggested in answer to one or two questions of the possible use that might be made of this Board of Forestry? Do you think, pursuing what you said just now, I think in answer to Lord Hutchison, that it was very difficult in view of present circumstances to conceive a system of direct control over Provinces it would be possible to conceive a plan by which the advantages of wider recruitment could be made clear to the Provinces and with their general assent this Board of Forestry could be utilised as a body in which the Provinces would feel that they had their part to advise the Central Recruiting Agency under the Government of India? Would you think that might be a plan of meeting the natural *amour propre* of the Provinces and at the same time do what you deem to be of importance, namely, secure some central machinery for recruitment?—Yes. I may say the Board of Forestry has been accustomed to meet every three or five years to discuss purely technical matters between Provinces, and has not as far as I remember dealt at all with recruitment; but the suggestion you make appears to me to be a very good one in this way, that the Provinces could co-operate very well and put their views together as regards the methods of recruitment and the control of the education of the higher grades after recruiting, and the allotment of the various recruits, when trained, to their Provinces. I think that might be very well and efficiently done by some Board of the nature that you mention. We have had, and I have always sat, since recruitment was started in India, on the Selection Board, and this Selection Board might possibly and suitably be appointed by the Board of Forestry, and they could advise the Public Service Commission, who carry out the examinations, in regard to forestry recruitment.

512. I was a little bit encouraged in that view by something you said to Sir Reginald Craddock as to the way in which Bombay, for instance, had always welcomed the technical assistance of the Inspector-General, and that if you could get over the jealousy that the Provinces might perhaps feel if they thought that something was being withheld from them, you might not find it impossible to get their quite willing co-operation in something that would be so obviously for their benefit?—I think so, yes.

513. Only one other question. Under the state of affairs that we may contemplate in the future, would you anticipate any difficulty in the Dehra Dun Institute keeping touch in future, as it has been able to do up to now, with forestry developments in foreign countries?—No, Sir, none at all; I do not think it would alter the scientific co-operation in any way.

514. *Sir Reginald Craddock*: There is one question I want to put to Sir Alexander. You have laid stress on recruiting and research, but the selection of Conservators strikes me as a difficult matter. The Provinces would, no doubt, want to select their own Conservators, and the Central Forestry Board, or the Government of India as it will be constituted will therefore have no voice in the selection of Conservators. Would you think that a difficulty?—I think it might be a difficulty, Sir Reginald, but I do not really see how it is to be got over at present. I think the Provinces would want, as you say, to select their own Conservators from the list.

515. *Lord Rankeillour*: There is one point I should like to ask. I think, Sir Alexander said in answer to Lord Salisbury, that this control over recruitment should be exercised by the Governor-General in his own right

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and discretion, but when Lord Hutchison asked you something, I am not sure that what you said seemed quite clear about that point?—I think the Central Government, the Viceroy acting with the advice of his Ministers, should exercise control.

516. *Marquess of Reading*: What you said was in consultation with his Ministers?—Yes.

517. *Lord Rankeillour*: Should he have the right in the end to determine himself after consultation? You see, in the ordinary constitutional language here, when you say the King on the advice of his Ministers, it means in working practice the Minister himself. That is rather the crux in India, whether it would be really the Viceroy in his knowledge and discretion with or without consultation with the Minister, or whether it would be the Minister?—I think in general he would take the advice of his Ministers.

518. But he need not be obliged to?—Well I cannot answer that, Sir; it is rather beyond my province.

Chairman: By leave of the Committee I should propose, with our best thanks for his kindness in coming here, to ask Sir Alexander to withdraw.

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JOINT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM

(Session 1933-34)

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