

FEDERAL CONSTITUTION  
FOR  
INDIA

THREE LECTURES  
AT THE  
MADRAS UNIVERSITY

By  
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# COMING FEDERAL CONSTITUTION FOR INDIA \*

## I.—RESPONSIBILITY AND RESERVATIONS

When I accepted the very kind invitation of the University Extension Lectures Board to deliver these three lectures on the coming Federal Constitution, I did so for two reasons. In the first place, I felt that it was a subject of study that University students on the threshold of their career and face to face with a new political era, whatever it might be, that will soon be upon them, could not afford to neglect. It is a subject in which they cannot be content with such superficial ideas and thoughts as they may obtain from comments and summaries that have already been published. In particular students of history and political science at the University, I thought, would do well to clarify their ideas in regard to the various issues that will arise for decision on the publication of the White Paper at the end of next week and that will soon be decided when the Constitution is enacted by Parliament and put into operation.

### AN APPROACH TO THE STUDY OF THE WHITE PAPER

There can be no doubt that this White Paper will contain announcements of a most important character. It is equally certain that it will constitute a document that will evoke fierce controversies on many outstanding issues—controversies that may be settled so far as Parliament is concerned by the final statute that would be passed by it, but so far as India is concerned by the extent to which the country will accept and work the Act both in the normal administration of the country and also as a means of developing in full the constitutional powers

and status on which it may be assumed it would be based. And that brings me to my second reason for my three brief discourses to you this week.

Whatever the White Paper may or may not bring, it must necessarily proceed to erect the Constitution on certain accepted fundamental principles and their necessary political and constitutional consequences. It would be a good piece of preparatory work, I thought, not merely for my younger hearers here to-day but also for all those who were vitally interested in the problems that would arise for solution, if they would dispassionately examine what had so far been discussed or decided in the three Round Table Conferences, and make for themselves a correct analysis and estimate of the main proposals that would be before them at the time when the White Paper is actually issued. There have been vigorous attempts on the one hand to speak of the achievements of these conferences as epoch-making and the like on the platform and in the Press. There have been on the other hand even more vigorous efforts to depict the efforts of these conferences not only as a futility and a failure but as a covert attempt to put off India's national demands.

Standing before you to-day as a student of politics, I have to ask you to identify yourselves neither with the

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bombastic school nor with the pessimistic school. It may be that even when a dispassionate study is attempted, one may find it temperamentally difficult to get rid of either a cheery optimism on the one hand or of a healthy scepticism on the other. All the more is it necessary therefore before we proceed to a reasoned judgment on the problems involved to clarify the issues betimes, to sift the facts and to apply the correct political principles in forming our conclusions. I am not of those, and I hope you are not, who would assign undue importance to political mechanics without due regard to the social and political influences on which their driving force depends. Political science properly conceived, as Lord Morley observed long ago, must realise that "the value of political forms is to be measured by what they do. They must express and answer the mind and purposes of a State in their amplest bearings." It is from this true and high standpoint that I would ask you to study the coming Federal Constitution.

Without any more preface let me say at once that such observations and comments as I may make on the plan and structure of India's Federal Constitution need not be considered as either comprehensive or conclusive. They are only intended for the purpose, as I hope, of guiding you to a closer study of the various aspects of the scheme to which I desire to draw attention and to enable you to pursue them further and form for yourselves correct conceptions of their ultimate import and value.

### SOME FUNDAMENTAL CONSIDERATIONS

The outlines of the Federal Constitution discussed at the three sessions of the Round Table Conference, and such

details as have been so far expounded are by no means complete. To adopt some of the metaphors that were sported during the sessions of the Conference, "much remains to be done to complete the picture" and "many tentative conclusions have been expressed by those concerned on the footing that they should be open to reconsideration when the picture is completed;" "many 'loose ends' remained to be tied up at the conclusion of the Second Round Table Conference and many still remain to be tied up at the conclusion of the Third." It is therefore not possible for us to picture the Constitution in its entirety at any but the final stage and this is a matter of particular disadvantage to students of political institutions in their efforts to study their import in actual working. What has, however, taken place is that certain general principles, conditions and qualifications have been either evolved by agreement or set out as the British Government's conclusions in framing the Constitution. They have a vital bearing on the scheme that may be set out in the White Paper as well as on the final Constitution to be evolved. Therefore, it would be useful as well as fruitful at this stage to examine their general implications and import and in the light of test the soundness and efficacy of the more concrete proposals that will soon be disclosed.

We may begin, therefore, with the universally accepted proposition that the coming Indian Constitution will be based on the three principles that indeed formed the basis of the Gandhi-Irwin Pact, namely, Federation, Responsibility, and Reservations and Safeguards. We have to proceed to quote the words of the Federal Structure Committee report, on the footing that our future Constitution which will be federal in form will rest "on the basis assumption that the Constitution will recognise the principle

that, subject to certain special provisions, more particularly specified hereafter, the responsibility for the Federal Government of India will, in future, rest upon Indians themselves."

### THE PRINCIPLE OF RESPONSIBILITY

Of the three catch-words, then, of this accepted formula, you will notice, as students of political institutions, that it is really the transfer of responsibility from Britain to India in the future Constitution of this country, that is the central principle of the whole scheme to which the Federal form and the transitional reservations are a qualification. The final test therefore of the ultimate form and content of the Constitution would be whether it has provided, to quote the words of the Prime Minister as well as of Lord Sankey, "the assumption by India of all the powers and responsibilities which have hitherto rested on Parliament." If this purpose is not secured in the event, it is obvious that the scheme of Constitution has failed of its purpose. If this is secured, then the questions relating to the forms and adjustments of federal authority and to the nature and extent of the safeguards are bound to assume a secondary importance.

In dealing therefore with the issues arising out of the structure of Federalism, and the provisions as to safeguards, we have to be constantly reminding ourselves of the existence of this central principle, namely, the maintenance of responsibility in the Indian people themselves for their government through a Parliamentary executive in vital and effective operation. Those who demanded the creation of a Federation as the *sine qua non* of such transfer of responsibility may have done so from various motives. Many of them perhaps honestly believed that the bringing in of

the Princes and States into the Indian Federation would afford that guarantee for a balanced Constitution and that safety against the democratic domination and deluge that they were nervous about. There may be some who had hoped that the difficulty of bringing the Princes into the Federation would operate eventually against the grant of a responsibility which they did not want but which they could not in the face of declared British policy openly resist. There are still others in this country that think that the attempt to bring the Princes into a scheme of responsible Government for India will necessarily throw back British Provinces from a developed democracy into the units of a half-baked Federation. But as students of political institutions, our business is to accept the broad general recognition by all sections interested in the problem, that British India and Indian India with all their millions of people cannot remain separated and must rapidly realise the evolution of a common Indian nationality and a common national Constitution based on common national culture, aims and ideals, and that the one essential condition of their realisation is to demand and obtain the transference of responsibility for the Government of this country from British to Indian hands.

### SAFEGUARDS DURING TRANSITION

Similarly as to safeguards. There may be many who honestly desire that effective safeguards must be provided for various purposes during a period of transition when the transfer of power is in actual operation. There may be others who may consider that the safeguards should be so devised that while the form of transference is in existence, the substance of power and responsibility should continue more or less as heretofore, at

any rate for an indefinite period of time. Here again, as students of political institutions, we must take official and public statements at their face-value and not seek to dive into their motives, and treat these safeguards as essential as much in British or other interests as in Indian interests. The success of the process of transference from British to Indian hands and the realisation of a free national Constitution for India do depend on a proper conception and provision for transitional safeguards, so long as they are sound in principle and constitutionally workable to the end that responsibility may become real and effective and safeguards might no longer be demanded of the stable and successful national government in India, that will then exist.

The problem, then, as it seems to me, wholly revolves round this question of responsibility. What then are the primary implications of this transfer of responsibility to the people of India from the British Parliament? From the point of view of political theory and principles, it is a development from representative to Responsible Government. It is not a mere devolution of plenary powers of legislation to representative Indian Legislatures—for legally and constitutionally that already exists in India, but it is the establishment of the principle that the Executive Government of this country should be made responsible to those duly elected and representative legislatures in their several grades. Professor Lowell in his "Government of England" long ago elucidated what is indeed a principle of universal application which has been at work throughout the history of the evolution of the British Commonwealth. "A colony", he said, "can be governed by its own people or it can be governed by the mother-country. But under ordinary conditions it cannot be governed successfully by a combination of the two."

Much more so would it be impossible for the British to govern India by any such combination.

#### THE FEDERAL STRUCTURE COMMITTEE'S VIEWS

The first test, therefore, of the plan proposed would be whether it secures in substance that this responsibility is really lodged in Indian Ministers and is not divided between Indian or Provincial Cabinets responsible to Indian and Provincial Legislatures and a British Cabinet—acting through Governors, Governor-General or Secretary of State—responsible to Parliament. So far as the principle of it is concerned, it seems to me that it has been correctly enough laid down in paras 9 and 10 of the Federal Structure Committee's second report as follows:—

"In the opinion of the Sub-Committee the proper method of giving effect to this principle is, following the precedent of all the Dominion Constitutions, to provide that executive power and authority shall vest in the Crown, or in the Governor-General as representing the Crown, and that there shall be a Council of Ministers appointed by the Governor-General and holding office at his pleasure to aid and advise him. The Governor-General's Instrument of Instructions will then direct him to appoint as his Ministers those persons who command the confidence of the Legislature, and the Governor-General, in complying with this direction, will, of course, follow the convention firmly established in constitutional practice throughout the British Commonwealth of inviting one Minister to form a Government and requesting him to submit a list of his proposed colleagues."

Paragraph 10 says:

"The Governor-General, having thus chosen as his Ministers persons who possess the confidence of the Legis-

lature, it follows that they will retain office only so long as they retain that confidence. This is what the Sub-Committee understand by the responsibility of Government to Legislature, in the sense in which that expression is used throughout the British Commonwealth. The expression also implies in their view that the Ministry are responsible collectively and not as individuals, and that they stand or fall together."

### THE IMPLICATIONS OF GRANT OF RESPONSIBILITY

Let us try to follow out the consequences which the establishment of such a Ministry involves whether in the provinces or in the Centre. Under the present Government of India Act, except to the extent to which power is devolved on Ministers in transferred subjects in the provinces the superintendence, direction and control of the Civil and Military Government of India is legally and actually vested in the Governor-General-in-Council and Governors in Council acting under the supervision and direction of the Secretary of State who is responsible to Parliament. This Parliamentary responsibility of the Secretary of State for India is to-day essentially different from that of the Secretary of State for the Dominions in relation to every one of the Dominions and in every aspect of Government, internal or external. Whatever power is exercised by Ministers or Governments, in India, they are only by way of delegation and are always subject not merely to the theoretical but to the actual ultimate control and intervention of the Secretary of State. When, therefore, phrases are used by some in current discussions that Britain cannot surrender its responsibility either for the protection of particular British, or other interests, or that Britain is under a solemn trust, which Providence has placed in its hands, to the masses of this country for the main-

tenance of peace and tranquillity and so forth, it is clear that either they are using the word "responsibility" in a non-political sense or that they do not realise that the primary foundation of the new plan is that such responsibility for the Government of India which, we presume, includes the maintenance of peace and tranquillity, is to be transferred from Parliament to the people of British India. If this is sufficiently realised by those who emphasise the safeguards, the nature and extent of any special or exceptional responsibility which Parliament or its agents in the person of the Governor and Governor-General should bear in this behalf, can be more clearly defined. If the transfer of responsibility to Indians is real, it is clear that pro-tanto the retention of responsibility in the hands of Parliament's representatives should disappear. Otherwise, the foundation of the whole structure is undermined.

So far as the primary and normal function of Civil Government including the maintenance of law and order, peace and tranquillity are concerned, it follows that only in the event of the inability of those to whom this power is transferred to discharge their duties could this intervention *ex hypothesi* arise, i.e., in the event of an actual breakdown whether in the provinces or in the Centre. I shall revert to this subject again, when I deal with safeguards.

There is another sense again in which the word "responsibility" is used. That is, that those who have entered into contractual or other relations with the Indian Government or acquired vested rights under its particular protection have done so, it is urged, in the belief of the continuance of the British Government in perpetuity and are therefore entitled to obtain from the successors of the British Government to whom it is

proposed voluntarily to hand over their responsibilities, guarantees for the fulfilment of the obligations arising therefrom. These so-called responsibilities that have thus been incurred by the British Government in these respects have been variously classified and put forward. They range from the maintenance of treaty rights and obligations with Indian States to the payment of compensations to officials for existing and accruing rights as well as expectations. They range again in the financial field from the demand of securities for the payment of British Bond-holders to guarantees in the future for British traders and commercial corporations of continued and equal opportunities of expansion and exploitation with the people in India. There are a number of these demands which obviously the Indian Government under the new Constitution will be justly bound to honour as other Dominions have honoured. There are many others which would never have been thought of in the case of other Dominions but which in the circumstances in which India is placed and the relations which have developed between her and Britain, are confidently asked for.

It will not be my purpose to ask you to examine and discuss them. There will be plenty of politicians to do that in due course. But my purpose in referring to them now is to show that any responsibility that may be incurred or recognised by the British or India Government in these and other matters is entirely different from the political concept of responsibility, that is, of the principle of parliamentary responsibility of the executive to the legislature in the Constitution that is to be established in India. Whatever the reservations and safeguards, political responsibility of this character is one and undivided and that, at any rate, it cannot be shared as between the British Cabinet at home and the Indian Cab-

nets in India owing duties to different Legislatures and peoples. If we may adopt the latest Dominion phraseology, His Majesty's Government in Great Britain and His Majesty's Government in India will *ex hypothesi* be essentially distinct political entities in the same way in which His Majesty's Government in Canada, Australia or South Africa are. Whatever powers may be reserved to His Majesty's Government in Britain for the time being, in any particular sphere of executive authority, they will not be by reason of the fact that they have a power of either normal or ultimate control over the Cabinet or Cabinets of India but by reason of the fact that the Constitutional Statute may lodge specific powers in them during the transition period.

The responsibility of the Indian Government should then, if it is to be in terms of Parliamentary responsibility, be neither divided nor concurrent. It was because of the incompatibility of representative with responsible Government that most of the conflicts and deadlocks ensued in British colonies which so rapidly developed Responsible Government and Dominion Status. It is because responsibility cannot be divided, that dyarchy with all its ingenious artifices has failed to work in India, although it was an honest attempt to find an intervening stage between representative Government and full responsible Government.

#### THE QUESTION OF RESERVATIONS

If I have succeeded in bringing before you these fundamental implications of responsibility, as the central feature of the coming Constitution is called, I shall not find much difficulty in explaining to you what, from that standpoint, would be the relation of reservations and safeguards thereto. According to authoritative definitions of these reservations and safeguards, His Majesty's Government while accepting the principle of responsibility of the Executive to the Legislature

in the Central Government, constituted on an All-India Federal basis, stated that it was subject to the qualification that in the existing circumstances Defence and External Affairs must be reserved to the Governor-General, and that in regard to Finance such conditions must apply as could ensure the fulfilment of the obligations incurred under the authority of the Secretary of State and the maintenance unimpaired of the financial stability of and credit of India, together with such guarantees as are required by the Minorities to protect their political liberties and rights, while a power in the Governor-General for ultimately maintaining the tranquillity of the State was also mentioned.

The questions that have arisen in connection with all these qualifications have indeed been many and varied and the prolongation of discussions on them at the R. T. C. have only led to the expansion and elaboration of guarantees and safeguards which have been demanded in all conceivable forms. For the purposes of analysis and study, it is necessary for us to classify them with reference to their nature and content. There are, in the first instance, reservations properly so called which exclude from the purview of responsibility as has been assumed during the transition period—Defence and External Relations including the relations of Indian Princes with the Crown. There are in the next place safeguards which are to be enforced through provisions in the Constitution itself whether through the medium of Federal Courts and authorities or through the powers that are to be lodged with the Governor-General or Governor for the purpose, such as, for instance, of safeguards for Minorities in political and religious matters or in commercial matters against discriminatory legislation—safeguards for the carrying out of financial obligations, safeguards for the pro-

tection of the Services and so forth. All these categories of demands are described either as guarantees, laying down the obligations involved, or as safeguards where the machinery for the discharge of such obligations is dealt with. These elaborate and complicated suggestions on these several matters, I may assure you, only introduce and exaggerate elements of confusion in various ways. If the essential political principles involved are examined and set out with clearness and precision the actual measures needed can be easily evolved and agreed to.

### RESPONSIBILITY AND PARLIAMENTARY SOVEREIGNTY

Before I deal briefly, then, with the reservations coming under the heads of Defence and External Relations, I have to ask your attention to one or two definite changes in political and constitutional ideas that have become established in the study of British political institutions. Students of politics at the present day have travelled a long way both from the Austinian doctrine of sovereignty in British jurisprudence and from the concept, legal and political, of the sovereignty of Parliament and the people which Professor Dicey elaborated over a generation ago. The doctrine that sovereignty is one and indivisible has been modified not only by the principles of Federalism and the separation of powers which the American Constitution exemplified but also more directly by the evolution of Federal types on the basis of Parliamentary responsibility within the British Commonwealth. Further successive and somewhat rapid developments have taken place in recent years in the evolution of national and dominion sovereignties within the British Commonwealth, as Professor Keith calls them, of which the enactment of the Statute of Westminster in December 1931 is so far the final embodiment. If, therefore, Parliamentary sovereignty outside the United Kingdom has been broken up

into what has been statutorily defined as "the free association of the British Commonwealth of Nations", it need not be a matter of surprise that Parliamentary responsibility viewed under British conceptions as one and indivisible should also be sought to be divided by means of reservations, safeguards and the like.

But though legal impediments may not exist in respect of the division of executive powers between responsible British and responsible Indian authorities, the political incompatibility of such division except as a temporary though inevitable anomaly seems, so far as present political ideas go, equally obvious. If the doctrine of Parliamentary sovereignty can be replaced by the doctrine of national sovereignty or Dominion Status, within the Commonwealth, it is plain that the elements of such national sovereignty will be dissolved if executive powers derived under such sovereignty are shared with any authority outside the nation that constitutes the sovereign authority. It is of course one proposition that within the ambit of the national sovereignty the division of powers and the relations that subsist between the Legislature and the Executive may be on a Parliamentary system as in the British Federations or on a Presidential system as in the American or German Constitutions. But it is incompatible with the conception of Dominion Status which has been indubitably declared to be the aim and intention of British policy in India, or even of responsible Government as in the Dominions, which has been the accepted basis of discussions in the three sessions of the Round Table Conference, to conceive or lay down a scheme in which reservations, whatever they may be, can be otherwise than temporary or other than intended directly to lead to the realisation of full responsibility, or, as I would put it,

national sovereignty. The declaration to this effect has been repeatedly made that it will be a primary concern of His Majesty's Government to see that the reserved powers are so framed and exercised as not to prejudice the advance of India through a new Constitution to full responsibility for her own Government.'

### CONTROL OVER DEFENCE

Let us take the reservation implied under Defence and the powers reserved to the Governor-General, acting, we presume, under responsibility to His Majesty's Government, for exercising the same. The facts and contentions that have arisen on this issue are such that the cleavage of opinion is fairly definite as between the British and the Indian standpoint. It would perhaps facilitate a proper understanding of the matter if I set out what is common ground on both sides and state the position on each side from its extreme standpoint. It is an accepted proposition that self-Government without self-defence would be a truncated, if not unmeaning, conception of full responsible Government. It is also agreed that the defence of India is to-day the concern of the British War Office and the Committee of Imperial Defence and that in spite of the delicate relations of the Commander-in-Chief to the Government in India and the War Office (in England) the reality of ultimate power resides in the latter, in that it is able through the British Cabinet and the Indian Secretary of State to compel the Government of India to carry out their policies, and find whatever funds they desired from the Indian Exchequer. It is also an accepted fact of the present position that although two-thirds of the Indian Army consist of Indian units, the rest of the army consist of British units and the control and discipline of the entire army, military, naval and

air forces is in the hands of British officers and under the control of the British War Office. Experiments, as the Commander-in-Chief described it in the Council of State last week, are being made with the policy of Indianisation but the process is anything but directed towards the immediate object of creating that position of self-defence which is a necessary concomitant of self-government.

The position therefore taken by British exponents of military control put in its extreme form amounts to this. That the army in India, British and Indian, cannot be by mere alteration in Statute converted into an Indian Army controlled by an Indian Government responsible to Indian opinion, that, as a high authority put it in one of the informal conferences in London in 1931, it is an unalterable proposition of British policy that no British military unit will accept or obey other than British Orders and that the continuance at any rate of British units in India and of British officers on an Indian footing—put brutally as mercenaries—is unthinkable. The control of defence therefore should continue indefinitely in the hands of His Majesty's Government until the time—which is no doubt contemplated in the declarations of His Majesty's Government but which must necessarily take long in coming—when it can pass into Indian hands. The Constitution now to be promulgated should therefore give the necessary powers to the Governor-General as to other authorities to see that this position is maintained. The political necessity and soundness of this demand is also sought to be reinforced by the alleged needs of India herself where, it is said, the continued presence of British troops at least for a fairly long period is necessary for the purposes of internal tranquillity in the midst of communal difficulties and clashes and also for the

security of many British officials and vested interests.

An equally important though less openly avowed ground for the retention of British troops in India is the Imperial Military need arising from the disposition of British and British Indian troops along the frontiers of the Empire. The Simon Commission have emphasised this aspect of the matter and have gone so far as to suggest that the burden of Imperial frontier defence is a common one of which Britain should bear a just part but that the maintenance of British troops under Imperial control in India should continue indefinitely.

The stand taken, on the other hand, on the Indian side is equally clear and unambiguous. India has been by British policy deprived of the means of developing her self-defence and her fine Indian troops have been deliberately deprived of the means of developing their own higher military staff and organisation. The acceptance of the policy of responsible Government imposes by necessary implication upon the British Government the duty of quickening the pace of the Indianisation of the Army and other Services of Defence that has so far been most reluctantly and grudgingly undertaken and carried out. While the process of this Indianisation can be accomplished quickly—at the most in 20 years—British military calculations postulate a period of anywhere between 40 and 60 years. While it is no part of the demand of any section of political opinion in India that the British section of the Army in India should be withdrawn as a direct consequence of the establishment of responsible Government, the British Government ought not to make the so-called reluctance of British soldiers to take orders from Indians while accepting Indian pay, as a pretext for the establishment of irresponsibility in respect of defence policy

or expenditure. Britain, it is urged, is bound to right the wrongs of the past in this respect by agreeing to accept the immediate constitutional implications compatible with the establishment of responsibility in India. Otherwise not only will the principle of responsibility be nullified in a most important respect, and the continuance of the British Army in India will be on the footing on which it is to-day, namely, as Mr. Jinnah once aptly described, an army of occupation sustaining the authority of the British Raj over the people of the country, and not an army which is at the disposal of the Government of the country for the purposes of internal peace and external defence.

The gap then, to put it crudely, between the theory of an Army of occupation on the one hand and an Army of mercenaries on the other has been sought to be filled by various valuable discussions at the conferences in various stages, but the unwillingness to face facts and enter into frank discussions arose as much from the attitude of military authorities who were reluctant to discuss what they deemed matters of military technique with laymen as from the general unpreparedness on the side of laymen to do so.

I do not desire to drag you further into the discussion of details pertaining to this matter but I would desire you to examine the purely constitutional implications of the problem, particularly in relation to responsibility. Granted that the control, from the point of view of discipline and administration, will in a large degree have to rest in British military authorities for the time being, the fact nevertheless remains that the Indian taxpayer has to find the money for the maintenance, control and mobilisation of the Indian Army as part of the British Imperial forces. The history of military finance in India is one of a long and vexed controversy and is one of the few matters in which the

injustice done to the Indian Exchequer and through it to the Indian tax-payer has provoked the protests of the bureaucratic Government of India and the India Office alike. India's grievance as to the unfair incidence and imposition of the military burden for over sixty years needs to be attested only by the fact that only in January of this year did the Capitation Tribunal present a divided report to the Premier on one of the most important questions relating to the apportionment of charges between England and India. Its disclosure and discussion in India constitute still a question for prudent policy on the part of the Indian Government.

The responsibility of the future Indian Cabinet—even if technical and expert military control is placed beyond their purview for the present—would be absolutely unmeaning if financial control over military expenditure is not in some manner or other effectively established in the immediate present and if provision is not made in due course for control both over Indian military policy and expenditure, apart from Imperial policy, on the part of the Legislature through its responsible Cabinet. Various proposals in this behalf were discussed in the Round Table Conferences and it seemed as if at one stage a definite breakdown on that matter was imminent between Indian and British sections. But this was eventually averted by the promise of the Secretary of State to examine some of the proposals further, particularly those relating to the association of the Indian Cabinet in the preparation and discussion of the military budget and the settlement of the military expenditure by periodical contracts and the provision of facilities for the Indian Cabinet to have a policy of rapid Indianisation carried out and the like.

Such are the problems in brief of defence as a reserved subject and I would

now ask you to examine the White Paper and find out what solutions have been proposed.

#### EXTERNAL AFFAIRS

It is unnecessary to discuss at length the nature and categories of subjects that will come under the reservation of external affairs. In so far as they include the relations with the Princes and Indian States, as I have said, they will more properly be dealt with in my next discourse on the division of powers under the Federal Constitution, although issues analogous to those of foreign relations are claimed to be implicit in them. The reservation of external affairs from the ambit of responsible Government may, in a sense, be argued to be more compatible with the establishment of Dominion Status than the reservation of defence, because the powers which Dominions have now acquired within the British Commonwealth in respect of foreign and external affairs are of recent origin and have been the outcome mainly of the war and its sequel. Prof. Keith has, in his latest Collection of Documents on the British Dominions, set out the stages by which the acquisition of these powers has been achieved. For the purposes of the examination of the coming Indian constitution, it is only necessary to realise, he has pointed out, that before the outbreak of the War, "British Dominions had almost unfettered autonomy in internal affairs but that in foreign relations they were only entitled to have their interests consulted to the fullest degree by the Imperial Government and in matters of foreign commerce they enjoyed almost unlimited freedom of action, though in a manner and degree their international status received a tentative recognition in certain conferences."

The result of the war was, no doubt, to quicken the demands based on the principles subsequently evolved for equal rights and responsibilities in respect of foreign rela-

tions with Britain, in so far as the Dominions were affected thereby. The present position of the Dominions in this respect has been described by Prof. Keith to be that of "sovereign international States in the sense that the King in respect of each of these Dominions is such a State in the eye of international law." Therefore, whether in respect of international status in the League of Nations or in separate negotiations or in respect of treaty-making powers or the establishment of foreign embassies and the like, the Dominions have obtained practically all that they demanded.

If we examine the position which India occupies to-day in this respect, it will be found that so far as the forms of international status go, the Indian Government, as such, both at the League of Nations, and at the Imperial Conferences, has been accorded individual, if not independent, status. India is technically an original member of the League of Nations and was one of the signatories to the Versailles Treaty. In theory, the position of India's representatives is, except in one or two matters, equivalent to that occupied by the representatives of the Dominions in the League of Nations and other international conferences. It is however, one thing to possess the forms of international status but quite another to possess the substance of independent action. That India has so far not possessed it at the League or elsewhere, except for one or two remarkable exceptions, that she has been compelled to follow the lead of British representatives, is well-known. This arises not from the character and choice of the personnel sent to represent India, but from the fact that the Indian Government itself, which sends these representatives, is subject to the constitutional and political authority of the Secretary of State and Parliament.

If, then, transfer of responsibility to Indian hands takes place it follows that

the forms of international status must assume a reality that they do not now possess and India need not go through all the stages of the fight which the Dominions had put up to obtain in full all the elements of real power in external affairs, which Dominion Status implies. The particular manner, therefore, in which reservation of foreign affairs will operate in regard both to the form of international status and the substance of international powers was not in fact, fully discussed but in the nature of the case, the acquisition of "unfettered autonomy" as Keith puts it, should inevitably lead to the elimination of this reservation.

#### INTER-IMPERIAL RELATIONS

The other aspect of external affairs pertains to the status of India within the Commonwealth and comes under what are called, inter-Imperial relations. To some extent, the Reforms scheme of 1919 gave India's Government some voice in shaping her fiscal policy, within and without the Empire. A tentative recognition was made of the right of India to carry out her own fiscal policy, where the executive government and the legislature agreed without dictation from the British Government. But, so long as the Executive Government of India continued subor-

dinate to the Secretary of State, the value of this so-called fiscal freedom based on a so-called convention remained in doubt and has been wholly fitful in operation. It has very often become a matter of controversy and conflict between the Legislature and the Government. It remains to be seen how far the so-called financial and commercial reservations will affect the development of this fiscal freedom in the new regime.

There is one other aspect of inter-Imperial relations that has always been unsatisfactory. That is with regard to the rights of Indians in other parts of the Empire. But, that, however, raises questions of inter-Imperial relations in which the Indian Government has so far striven their best to help the Indian point of view. The equality of status and national sovereignty, as it is now described, of the Dominions interpose difficulties which it will be only possible to remove by the acquisition of a similar degree of equality of status and sovereignty on the part of the responsible Government in India.

The reservation of external affairs then, you will find, offers on the whole a much simpler problem than either the reservation of defence or the provision of safeguards and guarantees.



## II.—DISTRIBUTION AND DEVOLUTION OF POWERS

Before I proceed to deal with these important issues I think it may perhaps facilitate my task if I indicate to you at this juncture the two other angles from which the coming Federal Constitution has to be viewed. As you know my next discourse will be on safeguards and guarantees which are closely related to the group of subjects dealt with by me. Taken together, they are less concerned with the forms of the Constitution than with the substance of the powers that are transferred, withheld or distributed among the several organs or institutions that will compose it. The Constitution, however, has also to be viewed from the standpoint of its forms when it is brought into existence and the instruments and mechanism by which they will be made to work.

Questions therefore connected with what are known as franchise, methods of representation, the several parts and divisions of the legislative and executive machinery and the relation of the administrative machinery to the constitutional framework—are all of intense interest but for the purposes of my immediate objective may be left over for your study and scrutiny till after you have understood and appreciated the nature and principles of distribution and organisation of the political and constitutional powers that must underlie the Federal Constitution.

Besides, I have always been impressed by the profound observation of a great political thinker who said "Popular government, or any other for that matter, is no chronometer, with delicate apparatus of springs, wheels, balances, and

escapements. It is a rough heavy bulk of machinery, that we must get to work as we best can. It goes by rude force and weight of needs, greedy interests and stubborn prejudice; it cannot be adjusted in an instant, or it may be in a few years, to spin and weave new material into a well-finished cloth."

Necessary, therefore, as it is, to examine questions relating strictly to the structure and mechanism designed—such, for instance, as the questions that arise as to the constitution of a single or two or more Chambers, the relative advantages of communal or territorial representation, of joint or separate electorates, with or without reservations, weightage and the like, of the practicability of immediate adult suffrage, of the protection of particular minorities or interests through electoral arrangements and the like, are no doubt important and I suppose will be fiercely contested in the discussions that will soon be upon us. But the field in this respect is too wide and diffused to permit of such concentration in the discussion of principles and methods which it is my main object to ask you to undertake. I have therefore to leave over for some future occasion, if I get it, their elucidation.

### REPRESENTATION FOR MINORITIES

From the standpoint of a student of politics, the building up of such complicated machinery to provide for a perfect instrument of popular government may or may not proceed on the principle which Mill and other rationalists of an earlier day profoundly believed in, namely, that there exists in every com-

munimity a grand reserve of wise, thoughtful, unselfish, long-sighted men and women, who, if you could only devise electoral machinery ingenious enough, if they had only parliamentary chance and power enough, would save the State. It would be felicity indeed that such a reserve should exist, observed Mill's great disciple and commentator of a later day: "That such a reserve should exist, should acquire and exert its influence, should spread the light, is felicity indeed. More than felicity, it is an essential. It must be the main text of every exhortation to a University. But this is not to say that the State will be fortified in its tasks by special electoral artifices, with a scent of algebra and decimals about them. These are not easily intelligible either in principle or working to plain men; they are more likely to irritate than to appease. to throw grit instead of oil among the huge rolling shafts and grinding wheels of public government."

Therefore, I would prefer for instance, a scientific scheme of proportional representation to a scheme of reservation for communities with percentages or weightages, calculated upon clever devices; though, for instance, I feel that a scheme of adult suffrage is not a necessarily impracticable proposal in India, as the Lothian Committee felt. Though I have in this sense several other ideas and proposals of interest to you which I may discuss, I have postponed them to the consideration of what I think are the more urgent issues that arise from the distribution and devolution of powers from England to India under the Federal Constitution.

### FEDERAL FINANCE

The other angle from which the Federal Constitution has to be viewed is in connection with what all constitutional students would consider vital; namely, the power of the purse. The questions,

however, connected with Federal Finance have already been dealt with by me in an address to the Economic Association, which I delivered about a year ago at the conclusion of the Second Round Table Conference. The principles which I then sought to emphasise should continue, in my view, to govern the general scheme of federal finance, but I am aware that the Indian States have pressed for alterations which under certain circumstances might seriously vitiate their operation. The details of this matter, however, are still unsettled and uncertain and beyond referring you to the lecture that I delivered. I do not think I need at this juncture deal with them further. The constitutional questions connected with responsibility in Finance are, however different and to the extent to which safeguards and reservations affect them, they were indicated in my lecture yesterday and will be further dealt with when I discuss Financial Safeguards.

At the very outset of the Round Table Conference, the decision was taken with the full assent of the representatives of the States and of British India as well as of the representatives of the British nation; that "the future Constitution of India should be on a federal basis" and that "the new Federal Constitution should embrace both British India and the Indian States." The Federal Constitution, therefore, by common consent, has to be brought into existence in two ways. As the Federal Structure Committee put it, "the process of Federation will involve the creation of a new State which will derive its powers (a) in part from the powers which the States will agree to cede to the Crown to be placed at the disposal of the new Federation and (b) in part from the transfer to it of such of the powers of the Central Indian Government and also, it may be, of the Provincial Governments as may be agreed to be necessary

for the purposes of the Federation." Before dealing with the particulars of the powers that are thus to be ceded or transferred as the case may be, the purposes of the Federation that by agreement it was decided to create seem to me to require clear comprehension.

### OBJECTS OF THE FEDERATION

In the first place, we have to be clear that this Federation is not to be, to adopt the German terminology, a *statin bund* or a bundle of States confederating for certain strictly limited purposes, but a *bundestat* or a composite state of units with a distinct political entity. In the next place, we have to be clear whether the political entity thus created is not a subordinate unit of the British Commonwealth, but is a federal organism—based, as the Princes also demanded—on Central Responsibility and possessing, in due course, the same status of nationality and equality which other Dominions possess therein—namely, to quote the words of the Balfour Report of 1926, that of being “autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations.” We have, thus, to examine whether the Federal Constitution is designed to place India, apart from temporary, transitional arrangements, in the position to achieve that national sovereignty within the British Commonwealth which has been achieved by the other Federations therein. If the declared policy of His Majesty’s Government, if the declarations of Princes and their Ministers alike at the Conference and of India’s representatives have any meaning, it seems to me that the Federal Constitution has been expressly designed for the purpose of consolidating India’s national unity and develop-

ing its political status into one not merely of full Responsible Government, but of full Dominion Status as above described.

Let us then, as students of political institutions, see whether the powers scheduled for transfer to the Federation from the present Governments in India, who are responsible to Parliament, and the powers scheduled for cession by the States to the Crown to be placed at the disposal of the new Federation, are not only adequate for the immediate purposes of the Federation but also for its admitted aims and objects as I have above outlined. You will find the details of these schedules in the published reports of the Conference and I shall not attempt to analyse or classify them for you to-day. Before, however, you can usefully examine the distribution of powers and subjects between the central federal authority and the units that compose the Federation, you will have to see what powers have been withheld from them and reserved in the hands of the British Government and Parliament, of the British Crown in relation to the Indian States or Rulers, in other matters. There are also certain special responsibilities, as they are called, that are lodged with the Governor-General and Governors which normally would pertain to the federal or provincial authority, as the case may be. There are, again, all those powers of sovereign authority—residual or otherwise—which may not be specifically ceded by the Princes to the Federation and there are powers relating to what is called paramountcy and other subjects regulating the relations of the Princes with the Crown of England. There is lastly that very small ambit of purely imperial authority and responsibility—which even in the case of other Dominions the British Parliament and the British Government have to shoulder.

## DISTRIBUTION AND DEVOLUTION OF POWERS

The distribution and devolution of powers is one of the most interesting and complicated questions in a study of the Federal Constitution. But in the Indian scheme it has to be studied after making what I would call certain deductions from the powers which are implied in the attainment of Dominion status or national sovereignty. As will be seen from the above enumeration, you will find these deducted topics dealt with under different categories at successive sessions of the R. T. C. In the latest Report you will find them discussed under the heads of discussion (B and C) and (G and I) of the third Conference.

Under head G, for instance, the report deals with the powers of the Indian Legislature vis-a-vis Parliament. It lays down that "the existing classification and devolution of powers under the Government of India Act is in a form that would be inappropriate for adoption as part of the Constitution now contemplated,—a Constitution very different in character from that of which they originally formed part, and would, therefore, in substance, be unnecessarily rigid." It next proceeds to point out that there are certain matters which, without question, the new Constitution must place beyond the competence of the new Legislatures and which must be left for Parliament exclusively to deal with, namely, legislation affecting the Sovereign, the Royal Family and the sovereignty or dominion of the Crown over British India. Moreover, the Army Act, the Air Force Act, and the Naval Discipline Act, which, of course, apply to India, must be placed beyond the range of alteration by Indian legislation. It may also be found necessary to place similar restrictions on the power to make laws affecting British nationality. Barring these matters then, the powers of the

Indian Legislatures will be plenary to the extent of affecting Acts of Parliament with the previous sanction of the Governor-General. The reservations, thus made on behalf of Parliament in respect of military, naval and air forces, necessarily involve also the reservation of executive authority there *ancient* in the responsible British Cabinet, exercisable directly or through the Governor-General or Commander-in-Chief.

## POWERS OF THE STATES

The next category of deductions from federal powers which we should note is that involved in the quantum of powers possessed by the Indian States joining the Federation. In their case no question of the competence of Parliament to legislate can arise having regard to their treaties. But the competence to legislate on federal subjects is to be accorded to the new federal authority in India in consequence of the accession of the States to the Federation. The Instruments of Accession that will be concluded with them will define the terms and conditions of this cession and they would necessarily limit the powers of the federal authority in this behalf.

The question next for your examination is whether the powers thus obtained by these instruments of accession individually or jointly, as the case may be, and vested in the federal authority, coupled with the powers transferred from the existing Central or Provincial authorities in British India, together make up a totality of governmental authority that could legitimately be deemed as adequate for the purposes of the federation and its creation. So far as British Indian provinces are concerned, the process of federalisation, though seriously affected by the reservations in favour of Parliament and by the special responsibility of the Governor-General and Governors to which I shall presently

refer, may be treated as real at any rate to the extent to which, for instance, the Federation of Canada was accomplished in the sixties. Both the experts as well as the publicists at the first Round Table Conference held the view that the powers ceded by the Princes would be similarly adequate for the purposes of the Federation. The report of the latest Sub-Committee dealing with this matter, presided over by Lord Irwin, contains a significant clause by which I think you can test the actual schedules of powers that will be found in the White Paper. There was a definite understanding, we are told, "that there could be no question of a State so restricting the transfer of powers as to render its adherence to the Federation ineffective." If this formula therefore applies to the claims of individual States, it follows that it should apply also to the States as a whole and that the schedule of federal subjects should also be such as not to render Federation itself ineffective as a political organism. The manner, however, in which, whether in regard to financial proposals or proposals of legislative and administrative jurisdiction of the federal authority, some of the States' representatives contested the cession or exercise of powers, often showed an inadequate perception on their part of these fundamental principles of the federating process.

Many of the issues connected with the accession of the Princes to the Federation are still nebulous and indefinite, and it would be useless for me or for you to examine this matter further. All that can be predicted in such a situation is that if British India and the British Government decide to go ahead with Central Responsibility with or without the Princes, with the Princes if possible, without them if necessary, the resultant political anomaly must eventually lead to their

coming into the Federation as early as possible. There is, however, this to be remembered in the stand taken by the States, viz., that they would consent only to federate with and be part of a Government of India which is not the subordinate or the agent of the British Government, but which is itself a Responsible Government, a responsibility of which they will be equally the sharers.

#### SPECIAL POWERS OF THE GOVERNOR-GENERAL & GOVERNORS

The next deduction from or restriction on the legislative and administrative competence of the Federation and its units is one which also, in my opinion, must be deemed to be a derogation from the rights of national sovereignty pertaining to India's Dominion status. I shall discuss their exact constitutional implications later, but the deduction is implied in the "Special powers and Responsibilities of the Governor-General and Governors." In this category come six items as set out by the Secretary of State for India at the third R. T. C.:—

- (i) the prevention of grave menace to the peace or tranquillity of India or of any part thereof;
- (ii) the protection of minorities;
- (iii) the preservation of the rights of the Public Services;
- (iv) matters affecting the administration of the Reserved Departments;
- (v) the protection of the rights of the States; and
- (vi) the prevention of commercial discrimination.

For purposes of the distribution and devolution of powers, their existence in authorities outside the federal and provincial legislatures and their executives has to be reckoned. We have then to assume that the Federation can function efficiently with all

these reservations and under all these limitations and safeguards. Whether it can do so or not is a matter on which we have to form our own judgment when we complete our examination of them. In the meantime, we shall, on the assumption that it will, proceed to consider one or two questions connected with the distribution of the whole group of ceded and transferred powers between the Centre and the Provinces that are dealt with in one of R. T. C. reports by the Committee on "Distribution of legislative powers," at the third Conference.

The tentative schemes of distribution adopted in the two previous Conferences took the schedules of the present Devolution Rules under the Government of India as a guiding basis. But it has now been found necessary that a much more careful and scientific definition of each subject in the Federal Structure Committee's lists should be undertaken by experts. Even here the difference in treatment of subjects scheduled as between the Provinces and the States appears to have introduced complexities. In regard to subjects agreed to as federal for policy and legislation by the Princes, in some cases they felt that such powers, for instance in regard to railways, should be confined to matters connected with safety, maximum and minimum rates, interchange of traffic or the like, and that the other questions of powers of jurisdiction, acquisition of land and the like in railway matters should be dependent upon negotiation and agreement and not on cession.

It would, thus, appear that the powers possessed by the Federal Legislature would not only vary as between Provinces and the States in respect of subjects of legislation, but also of the extent of legislation. Such marked variations of competence of the federal authority in relation to the

States and the Provinces may perhaps be inevitable in the existing state, but it is obvious that, unless the area of this variation is soon sought to be narrowed down and eliminated by confidence and agreement on both sides on all but fundamental matters, the working of the Federal machine will be uncommonly creaky.

The necessity for levelling down in some cases and levelling up in other cases, the spheres of Central legislation on the one hand and of Provincial and State legislation on the other,—with a view not merely to remove anomalies, but also to place the Federation upon sound principles of equal and not differential action between them,—must indeed be obvious to every constitutional student. I may exemplify it by what I believe may be done in dealing with the special powers of the Governors and the Governor-General for the protection of grave menace to peace and tranquillity of India or of any part thereof and his powers of intervention where a breakdown of the constitutional machinery has occurred.

I shall discuss in my next lecture as to why I consider in the plan proposed that there is no need to provide for special powers for the prevention of grave menace to the peace or tranquillity of India or of any part thereof, apart from the power to intervene in the event of a breakdown, which it will be conceded on all hands—it has been conceded in the Nehru Report itself—is a power which the Central or other authority should assume and exercise in such emergencies. But to illustrate the point I have in view, what I want to point out is that if the powers of intervention in the Governors or the Governor-General are limited in the manner that I have mentioned, they would then be assimilated—not technically but in substance—with the power for instance which the Governor-General as the representative of the Crown would possess under the head

of paramountcy to intervene in Indian States in cases of gross mis-government or rebellion. If such approximations take place, one fruitful source of confusion and difference between the position of a State and of a Province would disappear and the equality of status and powers of the units of the Federation would be visibly promoted.

### CONCURRENT POWERS OF LEGISLATION

As regards the actual division of powers as between the Provinces and the Centre my views on them may perhaps have been known to some of you for some time past. When Indian publicists were dealing only with the constitution of the provinces of British India into a Federation I held uniformly the view, the virtues of which Sir John Simon appears to have perceived later, that the plan of concurrent powers of legislation coupled with the power of previous sanction in the Governor-General and the exclusion of certain subjects from the provincial spheres, was a mechanism well suited for modification and adaptation to Federal conditions and possessed the advantage of eliminating the interminable resort to Courts in the decision of the spheres of Federal and State legislatures that occurred under other Constitutions. However this may be, the present reconstruction of the Indian Constitution should involve no more than the minimum disturbance of the administrative tradition and methods of the existing machinery, Central and Provincial, in the process of establishing responsibility and securing a correct distribution of concurrent and residuary powers. This has been recognised by the Committees of the Conferences as well as by the Government. Questions relating to the exercise of powers of previous sanction and the lodging of residuary power, have had thus to be discussed in a new light, but for all the attempt made to schedule subjects exhaustively and exclusively as

Central or Provincial, the necessity for the continuance of concurrent powers and the allocation of residuary powers, could not be got over.

### RESIDUARY POWERS

The question whether residuary powers should rest with the Centre or with the units has been a much-discussed one though its importance, in my opinion, has been exaggerated and there is much confusion of thought in the conception of these residuary powers. In the first place, it is impossible to exhaust by anticipation all powers till now undefined or unforeseen. Such cases will inevitably arise and be dealt with when they do. The latest view taken in Federal countries as to the manner in which their allocation should be made is to go upon the intelligible principle that this allocation should depend on the nature of the power itself and its relation to the general character of Federal or Provincial functions respectively under the Constitution. If the nature of the new power acquired or subject is such that it must naturally fall within the ambit of Provincial administration or would more properly fall to be administered by it, the authority invested with the jurisdiction in this behalf should so decide it, where the schedules as must be expected cannot throw any light. The question as to whether this authority should be a court or a Governmental authority, has been answered, so far as the R. T. C. is concerned, in favour of the latter. But opinion appears to have been divided on the ultimate question as to where the ultimate residuary power should lie under the Indian Constitution. Sir Tej Bahadur Sapru and those who supported him strongly held the view that it must be with the Centre while others, especially those who were nervous on communal grounds of Central intervention, held the

view that it must be with the Provinces. The proposal that the Governor-General should be left to decide in each case as it arose was a compromise suggestion but was not finally accepted. From the tenor of the Secretary of State's reply it is apparent that he was much attracted by the compromise, and we may perhaps expect it to be embodied in the White Paper. There is, however, another sense in which the term residuary powers is used, namely, in the sense of emergency powers in unforeseen circumstances. Those who discussed the frame of the Indian Constitution at the last R. T. C. appear to have agreed that for exercising such emergency powers—so far as they relate to the maintenance of peace and tranquillity, law and order or the carrying out of any of the categories of safeguards for minorities and the like proposed at the conference,—the authority should lie at the Centre and not with the units. It is difficult to reconcile this readiness to invest this large power of intervention in the Central authority in respect of autonomous provinces, with

the demands made for the allocation of all residuary powers in Provinces to an extent that would have levelled them up in their powers to the status of Indian States, whose claims to residual powers based on internal sovereignty, have been fully conceded. The fact that this Central intervention is to be at the instance of the Governor-General or His Majesty's Government, and not the Federal Government of India, may be comforting to these people, but it is, from the constitutional standpoint, irrelevant to the question of the allocation of powers as between the Provinces and the Centre and it certainly implies far greater Central control than is implied by the allocation of residuary powers in the Centre.

In the same way, the question of the power of intervention of the Governor-General on the plea of paramountcy is, from a constitutional standpoint, not different from the power of the Governor-General to intervene in case of an actual and complete breakdown of the administration of Provincial Governments.



### III.—SAFEGUARDS AND GUARANTEES

I propose to-day to deal with what is the last category of questions that arise from the fundamental principle of the Constitution, namely, the transference of the responsibility for the future Government of India from the British Government and Parliament to the Federal Government and Legislatures in India; and those are the proposals compendiously put together under what are known as safeguards and guarantees.

The principles upon which the imposition of these safeguards and guarantees on the coming Federal Constitution have been advocated or justified are many and various but all of them, like the Reservations with which we dealt with in the first lecture, partake of this essential characteristic, namely, that they are to be wholly transitional in character and intended to carry over the Federal Indian Constitution safely through the period of transition—a period which may be quite short or long according to opinions, and which, it is admitted equally on the Congress as on the diehard side, is involved in the process of this transference. While Reservations are in the nature of temporary exclusions of certain subjects from the process of transfer of subjects like Defence and External Relations,—safeguards are in the nature of exceptions permitting restrictions or intervention even within the ambit of transferred powers, in certain situations or eventualities by an outside authority in the process of their actual exercise by responsible Indian Ministers.

#### PREMIER ON THE NATURE OF SAFEGUARDS

They are, therefore *ex hypothesi* not of the kind that are intended to be in

normal operation and this seems to me to be the vital political test by which we should examine either the need or the sufficiency of such safeguards as have been discussed, namely, whether their creation impinges in substance on the normal operation and execution of the actually transferred powers in such a manner as to reduce the quality as well as the quantity of responsible government which should lie at the basis of the Federal Structure.

Perhaps the clearest exposition from the point of view of those who have accepted the principle as I have stated above, was that made by the Prime Minister at the conclusion of the first R. T. Conference and as it also gives us a correct and convenient classification of these safeguards, I shall make no apology for citing to you at length from it.

Said the Prime Minister:—

“There is a word which, when used in politics—and, some of my friends here also know in economics—I detest, and that is ‘safeguarding.’ That is one of my sins, I suppose. Safeguarding—I do not like the word. To you, especially, it is an ugly word; it is a word which quite naturally rouses great suspicions in your hearts. It is a word the aspects and the meaning and connotation and the associations of which are rather forbidding. Let us apply commonsense to it. The safeguards that have been suggested here fall under three categories. One category is a group of reserved powers given to somebody—Governor, Governor-General, the Crown or somebody else, and that category of safeguards you will find either expressed or implicit in every free constitution from the rising sun to the setting sun. That category includes

powers which may be put into operation by somebody authorised, somebody in authority, somebody in a distinguished position, in a powerful position in the State, put into operation by him in the event of a breakdown of the ordinary normal operations of Government. And, my Indian colleagues, you can twist and you can turn, you can turn a blind eye to this and a blind eye to that, you can draft with care and you can hide up what really is the substance of your draft, but if you were drafting your own constitution, without any outside assistance or consultation, you could not draft a constitution without embodying safeguards of that kind in it.

“Then there is the second category of safeguards, and there are two sections of that. The first covers guarantees made by the Secretary of State, or made by the British Government or the British Crown, for which we, by virtue of contracts that we have made in your behalf, remain responsible under a new constitution just as under the existing one. The typical instances of that are finance and also the existing Services. Those guarantees, in the interests of India herself, have to be made clear to the world. It is not that we want to interfere; it is not even that we want the money; it is that if there were any doubt at all about India shouldering those obligations and responsibilities, the moral status of India would be deteriorated, and, in spite of the materialism of this age, there is far more materialist power resting on moral foundations than many of you wot of. It is to put India in a moral position in the eyes of the rest of the world that that section of reserved subject is required.

“Then there is another section. There are matters not solely Indian, owing mainly to India's history, and requiring some time for a change. Do not be afraid of time. I know your patience has

been tried; I know you have waited long; but, nevertheless, when you are going fastest you have not to be too penurious of time, because that which is built, I do not say unnecessarily slowly, but that which is built calmly and steadily step by step, endures, whilst that which is built in a hurry wastes away and comes to ruin.

“Then there is the third category of safeguards relating to communities. Now I repeat what I have said to you so often regarding that; if you fail to agree to set up your own safeguards, to come to a settlement between yourselves regarding those safeguards, the Government will have to provide in the constitution provisions designed to help you; but do remember the best of all is your own, and we do not propose to lose a grip of you, we do not propose to let you go as though you have said the last word here, because we do not believe you have said the last word.

“Communities small and great, must be safeguarded in the Indian Constitution—in the terms of the constitution, but the content of those terms, the details of those terms, a settlement that satisfies those terms—my Indian friends, are you to allow them to pass away from your own hands, and ask anybody outside yourselves to do for you what you declare you are not able to do for yourself?

“There is one great danger inherent in these safeguards which I will mention, because it is of the utmost importance in the working of the constitution. Ministers responsible must not shield themselves from taking upon their own shoulders their responsibility when it is unpopular by leaving the Viceroy or the Governor to put into operation his reserved powers.

“Moreover, we have this problem in front of us too: in Executives, in particular, there must be unified responsibility. I am not going to push that observation to any more pointed conclusion, but the

great task in forming an Executive is not so much to give it responsibility (which is the peculiar characteristic of legislatures) but it is to secure for the Executive the confidence of the Legislature, together with its own united working in policy."

### ANOTHER ASPECT OF THE SAFEGUARDS

There is also another standpoint from which the safeguards may be classified, that is, (1) safeguards which are asked for in the form of the constitution itself, such, for instance, as the provision of two Chambers in the Centre and in the Provinces, provision for securing due representation of minorities, particular interests and the like, (2) safeguards which may be provided in the legal and constitutional definition of rights and duties, responsibilities and obligations, imposed upon the several legislative executive and judicial authorities under the Constitution and the means devised in the constitutional machinery for enforcing them, such as, for instance, declarations of fundamental rights, of guarantees for the protection of particular rights or interests or for the performance of particular obligations, financial and political, communal, religious or other to the extent to which by the provisions in the Constitution itself they could be secured. (3) Safeguards which require or which under the demands made are to be carried out by a process of external intervention with the exercise of powers by the responsible Government under certain conditions, the authority so intervening owing responsibility not to a judicial or federal authority in India but to the Government of Great Britain and Parliament, that is, concretely, the Governors and the Governor-General.

Bearing these in mind, let us go into some detail with the principle of these safeguards, in the order in which the Prime Minister stated. The first cate-

gory is the group of reserved powers given to somebody, Governor, Governor-General, the Crown or somebody else. It may be conceded that they will be found, either expressed or implicit in most free constitutions, but comprehend only those which the Prime Minister himself has stated correctly as those which will be put into operation by him "in the event of a breakdown of the ordinary normal operations of Government." So far as this is concerned, there will be very little dispute as to its need though opinions may vary as to the 'exalted authority' with whom it should be lodged.

### THE GOVERNOR-GENERAL'S POWERS

According to the scheme as expounded by the Secretary of State at the last Conference, this power is to be lodged in the Governor-General or the Governors as the case may be who, to quote his words, should "possess plenary authority to assume all powers that he deems necessary for the purposes of carrying on the King's Government where a complete breakdown of the constitutional machinery has occurred." If I may for a moment turn your attention to the Nehru Constitution, the need for the exercise of this power is equally recognised and provided for. The difference is that the authority with whom the Nehru Constitution proposed to lodge it was the Central Government and Parliament who should intervene and assume powers in the province or provinces concerned. The clause is as follows:

"In cases of grave emergency and in matters of serious controversy between provinces and a province and an Indian State, the Central Government and Parliament shall have all the powers necessary, and ancillary, including the power to suspend, and annul the Acts, executive and legislative, of a Provincial Government."

"The Supreme Court shall have no jurisdiction in cases where the Commonwealth Government or Parliament has acted in exercise of the powers under the preceding sub-clause."

The authors of the Nehru Report, in setting out the *raison d'être* for this clause, point out:

"The necessity for the clause will be quite evident. We find something similar to it in almost every written constitution. The clause no doubt confers extraordinary powers but no Central Government can be carried on without those powers. What is important for the safety and security of the people is that such powers should be under the control of Parliament and not merely in the hands of the Executive Government. We have taken care to establish such control."

It will be seen from the text of the draft in the Nehru Constitution that, though the authority to exercise the emergency powers in the event of a breakdown in provinces is vested in the Centre, the actual authority has to be a Federal Government and not the Governor-General or Governor treated as possessing powers to carry on the King's Government independent and outside of the Federal Government. In the second place, what is more important, no provision has been actually made for cases of breakdown in respect of the Federal Government itself. One reason for it, of course, must have been that the authors of a Swaraj Constitution framed by a National Convention could not contemplate the breakdown of what they create or provide for the intervention of an outside authority. What I think is far the more probable reason is that while the duty of dealing with the breakdown in provincial administration which is the normal authority for the primary governmental functions of law, order and

civil government, should be declared to inhere in the new Federal authority, the duty of providing for the breakdown of the entire Federal State Constitution is inherent in the British Government, when India is a part of the British Commonwealth and needed not to be provided for in the Federal Constitution.

#### "SPECIAL RESPONSIBILITY" TO PRESERVE PEACE

I shall presently go further into this question of what the position is or should be when this breakdown of constitutional machinery does occur. But I must tell you at the outset that another category of powers has been tacked to it at the last Round Table Conference, namely, what has been described as a special responsibility for the prevention of grave menace to the peace or tranquillity of India or of any part thereof". It is unfortunate that there was no discussion on this important clause. The report thereon proceeded on the footing, as stated in it, "that the necessity of the first three items was accepted with a unanimity which makes further elucidation unnecessary and that they followed as a matter of course from recommendations made at previous conferences." It must be noted that they cannot follow as a matter of course, and that the Prime Minister had no conception even of its possibility in 1931 or 1932 till it was set out by Sir Samuel Hoare in November last. The powers for the prevention of this grave menace, etc., are indeed described as distinct and separate from breakdown powers. We have therefore to examine as to what this power actually comprehends and how it would be exercised. The Secretary of State has explained that "it is not contemplated that the Governor having been vested with special responsibility of the kind indicated will either wish or find it necessary to be constantly overruling the Ministers' proposals." "The

discussions at the Conference," he agreed, "have proceeded on the basic assumption that every endeavour will be made by those responsible for working the Constitution now under consideration 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 special responsibilities into play."

Now applying these authoritative declarations of the scope of special responsibility to the case of grave menace to peace and tranquillity, whether in the provinces or in the Centre, concretely to the provisions involved, it follows that when such a menace is anticipated or apprehended, the Ministers should primarily act; and if they felt it was an emergency in which emergency legislative action was also required and there was no time to summon the Legislature, the scheme contemplates that they would themselves apply to the Governor or the Governor-General to issue a temporary ordinance for the purpose which should always be subsequently confirmed by the Legislature. Only when the Ministry fails or neglects to take such measures to meet an apprehended emergency, can the Governor's or Governor-General's intervention be contemplated. In such a case the disagreement between the Ministry and the Governor must be found to be incapable of adjustment and it must be assumed, therefore, that in the stand the Ministry then take they would have the support of the Legislature on whose confidence they hold office. The Governor, therefore, has open to him even then the option of asking for their

resignation and finding out whether there are others who will shoulder the responsibility of meeting the menace by the measures which he thinks are necessary, and whether if they are called upon to take office they would adopt those measures and would be prepared to take office and face a dissolution in which the country could be expected to support them in what was, in the eye of the Governor, so obviously necessary an emergency measure. If he could find none such, it is plain that the emergency measures that he proposes are not of the character that could be acceptable either to the country or to any Legislature that might be elected on a dissolution or to any group of publicists that may be called upon to take office. We must assume that only after he has exhausted all these possibilities of constitutional action in facing the emergency, would he be justified in exercising his own emergency powers to deal with the menace as he conceives it. Any elementary student of political institutions will see at once that that is a state of things in which the Governor has made up his mind that the Constitution has become unworkable, in other words, that it has broken down. If that is so and those are the necessary conditions that will arise when he decides to set aside the definite advice of his Ministers on a matter of emergency and menace to the peace and tranquillity of the province, he should honestly and firmly take the full responsibility of declaring a breakdown of the constitution and assuming the powers that are with him in that event.

As the Secretary of State himself observes: "The necessity for the exercise of special responsibilities will not arise in the great bulk of cases" and therefore the cases left over really must inevitably resolve themselves into cases of breakdown of the constitution. Unless the intention to allow

legitimate parliamentary responsibility to function normally is not genuine, it seems to me even speaking wholly from the strictly constitutional standpoint, that there is absolutely no case for the insertion of this power in the Secretary of State's new list. It is not merely a needless addition to what the *Primo Minister* himself clearly declared to be only an inherent incident of all constitutions, namely, the provision for a breakdown, but, if used, it will go far to negate the principle of responsible Government whether in the provinces or elsewhere.

### THE GERMAN EXAMPLE

We have been told by optimists in this respect that no Governor or Governor-General would, as things go, ever take a responsibility whose implications are so far-reaching as I have elaborated above. If there is no real need for it, its existence on the Statute will itself be an invitation to create the need for its exercise and the example of what has happened to Article 48 in the German Constitution is sufficient to show how it can and may be abused by Executive heads in India who cannot always be relied on to keep British traditions of Dominion policy, and recent bureaucratic traditions of ordinance rule will not reassure constitutional critics.

Let me quote to you the text of this German Article under which as you know from the news in the papers Herr Hitler has been able to rise to a virtual dictatorship in Germany to-day. The Article is as follows:

"If a State fails to carry out the duties imposed upon it by the national constitution or national laws, the President of the Reich may compel performance with the aid of armed force.

"If public safety and order be seriously disturbed or threatened within the German Reich, the President of the Reich may take the necessary measures to

restore public safety and order; if necessary, with the aid of armed force.

"The President of the Reich must immediately communicate to the Reichstag all measures taken by virtue of paragraph 1 or paragraph 2 of this Article. On demand of the Reichstag these measures must be abrogated.

"If there be danger in delay, the State ministry may, for its own territory, take such temporary measures as are indicated in paragraph 2. On demand by the President of the Reich or by the Reichstag such measures shall be abrogated."

No such provision for abrogation was even discussed at the last Round Table Conference. But even this ultimate protection through the Parliament itself has proved wholly futile. When it was feared that the Reichstag might call for the abrogation of repressive ordinances the Reichstag was dissolved and when the appeal to the people resulted in a Reichstag which did not give a majority to a Cabinet the President kept in office a Cabinet responsible only to him. When the Reichstag called for the resignation of the Cabinet, the President decided on a second appeal to the people and in the meanwhile the Government proceeded on something like the mandate given by the Roman Senate to the Consuls "to see that the Republic took no harm." And so on, throughout the past few years the principles of this protecting clause were wholly set at nought and successive periods of emergency rule have been going on in Germany *pari passu* with a number of general elections and all the rest of the turmoil of which you are aware.

### THE "EMERGENCY BAROMETER"

Three distinguished Professors of America have examined in a recent number of the *Political Science Quarterly*, the working of the Weimar Constitution and the entire political and constitutional

bearings of these happenings. They point out that the process by which an Ordinance regime has been legalised by this constitutional provision has turned out to be a far more intolerable system than the previous imperial regime in which, when an emergency arose, there was a frankly declared state of siege in which the analogous British principle of *inter arma silent leges* applied and that at any rate it proceeded on the admitted footing of an emergency and therefore was bound to have a termination when the emergency ceased. The Weimer Constitution, on the other hand, has, by giving the appearance of constitutionality to such a state of emergency, tended to perpetuate the regime. Indeed, the resort to Article 48 began from the very outset of the German Constitution and the ordinances issued related not merely to questions of public order as at the outset they were; but on the theory that the threat or disturbance to public order and safety could be economic in character, economic ordinances and ordinances which regulated so many aspects of the ordinary business, financial and economic life of citizens came in profusion. The frequency and nature of their use, we are told, are registered on what has been called the "emergency barometer" of German public life from 1920-25 because of the Ruhr invasion, the Hitler putsch and other things till about a year ago when the Papen-Hitler trouble arose because of the economic crisis. In all, down to September 1932, 233 ordinances had been issued.

I shall not weary you with any further discussions of this topic. I shall only invite your attention to what Professor Keith has said as to the futility of attempting to control responsible Government in India by such safeguards, especially on this primary question of law and order. I must I have said sufficient to show that you as students, and pub-

licists all over the country, should bestow the closest attention on this part of the provisions of the coming Federal Constitution. I can only trust, when this issue is fairly discussed before the Joint Select Committee, this contemplated provision will be found unnecessary, and in conflict with the fundamental principle of responsibility and accepted British parliamentary conceptions.

### PROTECTION OF MINORITIES

Let me say just a few words now on the category of safeguards, dealing with the protection of minorities. The general method of protection agreed to be effected first of all by electoral methods of representation in the Legislatures, will be found in the Communal Award, as modified by subsequent agreements. The next method is by declarations of fundamental rights in the Constitution itself and by provisions which will provide special methods of procedure for the protection of minorities in respect of legislation where issues affecting any particular minority communities as such are involved. On the question of fundamental rights, the Conference seemed to me indeed to have taken an inconsistent as well as inconclusive stand. Impressed by Sir John Simon's British objection to the value or legal effect of declarations of fundamental rights, into which I need not enter, they proceeded to the conclusion that though these declarations are of great moral value, their legal protective value was not great and they might as well be embodied in other formal documents such as the Royal Proclamations that might be issued in connection with the Constitution. Whether those who have pressed for the full protection of minority rights under the constitution would be content with this method is not clear from the proceedings; but apparently one of the foremost advocates of minority

rights has been a party to this report. I personally feel, however, that a declaration of fundamental rights, even though in other circumstances it may not have been necessary, has become necessary for India for two reasons,—firstly because the nature and character of the Constitution set up is a Federation of Indian States and provinces, and the nature and extent of the primary rights of citizens has by no means been uniform or clear in the units and legislation and ordinances affecting these rights have been far too numerous in recent times—in particular, the deprivation of such public rights as the rights of free speech, liberty of the press, the right to freedom from arbitrary arrest and detention, the right to be free from executive sequestration of property and the like. The more important reason is that apart from its legal value, its political and moral value as an accepted article of faith of the State is bound to react on the authorities enacting or administering the laws of the land 'in the future.

I do not think it is useful to deal further with the details of other safeguards relating to minorities.

#### **SAFEGUARDS FOR MAINTENANCE OF EXISTING CONTRACTS**

Let us take the categories of safeguards then relating to what the Prime Minister calls contracts of the existing Government, namely, the guarantees made by the Secretary of State or the British Government in regard to financial obligations and the obligations to the Services. It will be readily agreed that the guarantees in this behalf, as the Prime Minister puts it, in the interests of India herself have to be made clear to the world. "It is not that we want to interfere; it is not even that we want the money; it is that if there were any doubt at all about India shouldering those obligations and responsibilities, the moral

status of India would be deteriorated, and, in spite of the materialism of this age, there is far more materialist power resting on moral foundations than many of you wot of. It is to put India in a moral position in the eyes of the rest of the world that that section of reserved subject is required."

The real question then is not whether such guarantees should be set out in the constitution but whether and if so what are the safeguards or methods by which the guarantees are to be carried out. It is here that the difficulty arises. Leaving the question as to whether the total of the Indian Government's financial obligations, guaranteed by Parliament requires examination and revision, at this juncture—a question which as it has been raised, it would be only wise for the British Government to take up and settle—the duty of the Indian Government to see that the British Government's guarantee is fulfilled by the future Indian Government honouring them in full has not been disputed. It goes therefore without saying that both in this matter and in regard to the Services, civil and military, the constitutional statute will declare that the payment of the national debt would be the first charge on the revenues of India and that the other consolidated fund charges in respect of the Services and the like will also be made a charge on such revenues. But what has been claimed and demanded in the way of safeguards in this matter is not the recording of this solemn undertaking in the Articles of the Constitution but the investment of a power in the Governor-General, outside the Constitution, to find the necessary funds for it himself by certificated legislation in case the ministry is unable or refuses to implement this guarantee.

Lord Reading put it frankly when he said that it is not enough to declare the liability but a provision should be

made to see that the money is in the till for the purpose. Now let us, as dispassionately as we can in the circumstances, examine what this demand really implies. It implies, in my opinion, a belief in anticipation that there will arise fairly frequently occasions, and Lord Reading did not disguise his apprehension in this respect, when the coming Indian Cabinets will refuse to carry out their guarantees or solemn promises on the ground, may be, of inability or incompetence or sheer cussedness, defiance or worse. It seems to me that only two situations are possible in which this could happen. One is where as a matter of fact with the best will and for all the efforts they make they are unable really to find money to meet all their obligations. But this has happened in so many well-governed western States during the past two years—and was very imminent event in Great Britain itself in 1930—many Governments had to declare insolvency in respect of obligations and time and concessions had to be given. If in India such a situation arose, then to demand that whatever might be the effect of the operation the Governor-General should by exceptional and extraordinary measures obtain funds for the British Services and for the payment of interest on British debts, seems to be a proposition which I am hopeful the conscience of the British nation will not eventually endorse. The only other situation in which it might happen seems to me to be that in which the Indian Ministry is guilty of bad faith or deliberately and with the set purpose of repudiating its obligations or of getting out as it were of the Commonwealth begins by repudiation of fundamental constitutional obligations. Such a hypothesis is wholly inconsistent with the primary assumption that all are agreed upon the structure of an Indian Federation within the British Commonwealth. As a remote pos-

sibility, a possibility of rebellion which is inherent in all political institutions and no guarantees or safeguards are going to hold in such a case. Surely the height at which India's credit stands to-day in the British market despite all the capital that was made of so-called repudiation of obligations among extreme politicians in India hardly warrants any such assumption.

The demands for financial guarantees in respect of British capital invested in Indian bonds and of British officials in the services in India have, however, been not merely for specific legal provisions which can be met but for other novel rights based upon apprehensions and fears and they have been unfortunately pushed far beyond their limits at the last conference. The claim has been made that the British investor has always relied upon the Secretary of State and Parliament and that unless both are indemnified against their guarantees by proper securities Parliament cannot permit the transfer of financial responsibility to Indian hands. The demand has also been made that the maintenance of India's credit in the London market or elsewhere cannot be assured unless the present control of currency and exchange is put into the hands of a properly constituted Central Reserve Bank and until this is done the financial control could not be made over to Indian hands. I do not know exactly how the position was elucidated in this respect by the London City magnates who discussed the position with Indian representatives of the R.T.C. in December; but it is obvious that they had viewed the question from the exclusive standpoint of a creditor that is in possession of securities and is unprepared to part with them without substituted securities that in his view are equally good. Into the economic and financial issues that arise over the creation of the Reserve Bank I shall

not enter to-day. But the demand that India should go on meeting all sorts of extravagant demands, if backed by those who are in a position of political authority in Britain is certainly one which the Joint Committee cannot in reason or justice countenance for a moment. Sir George Schuster one of the most influential city men, is in charge of the Indian Finance portfolio to-day and says that the economic and financial position of India to-day is incomparably better than that of most European countries and that India has shown a power of resistance and a power of balancing her budget in a manner far superior to them. This should be a sufficient answer to them all if their apprehensions or their difficulties are real. If, however, all these proposals are put forward not in a spirit of obtaining reasonable guarantees or safeguards such as I have referred to but for the purpose of putting off, if not denying the transfer of responsibility to India, then of course the proposition is beyond our purview.

### RIGHTS OF THE SERVICES

Similar considerations apply to the so-called rights of the Services where also the demands have been stated in some quarters in a manner that ignores the fundamental assumptions of the transfer of responsibility. A very illuminating address was delivered before the East India Association in December by the late President of the Public Services Commission in India, Sir Ross Barker, in which he has authoritatively as well as fairly set down the demands of the Services. Summarised in his own words, the claim is as follows: There are thousands of Europeans serving the Government of India and in spite of reassuring utterances, they are seriously alarmed as to their prospects. For the most part they came at the age of 22 with every prospect of a settled

career receiving salaries by annual increments. It is not enough to say that their rights are secure in 1932 or 34. It is necessary to look to a far more distant future. The officer who has recently joined the Service will not ordinarily leave till 1960 and the pension rights of himself or his family may survive till the end of the century. Even Sir Ross Barker with all his experience and ability in this particular matter has utterly failed to indicate how such remote liabilities of the Government of India can be safeguarded. Indeed, it is only necessary to put the question, how any reasonable man can expect such guarantees in perpetuity from those responsible in 1932-34 to answer for those who may become responsible in 1960-62, or how the Secretary of State and the British Parliament and we ask how even those whom they now trust can answer for what might happen during all this period when they had themselves to go to Parliament to sanction cuts in statutorily guaranteed salaries and the like. No such proposition will be entertained in Great Britain or any other Western country. But India is asked to face it on the ground that, while the British officials are prepared to take the risk with their own Governments, they are not so prepared to do so in respect of the coming Indian Government. Such uneasiness for the interests or conditions of India on the part of those who are carrying on their duties with distinction and devotion and are handsomely paid out of her revenue is, I am sure, a caricature of the general attitude of the British officials; but is only an exhibition of the distress of die-hards or their desire not to face the change of masters from British to Indian hands which the new constitution necessarily involves.

Sir Ross Barker, however, puts it fairly when he says that the European

officer demands (1) security of tenure, subject to good conduct, (2) pay on scales not lower than that current when he entered service, (3) normal opportunities for promotion, (4) the continuation or no considerable reduction of the ordinary amenities hitherto enjoyed by the European in India, (5) a self-respecting and honourable career, a sense that the work of the labourer is not entirely scrupulous. He then proceeds to picture what the attitude of the Indian Minister to these demands will be, without comment, criticism or praise. He says it is largely the result of history that his point of view should differ widely from that of the existing rulers of India. He is apt to regard the presence of the European officer in India as a regrettable necessity or a thing which, if necessary once, has now ceased or nearly ceased to be necessary. He naturally desires to replace the European element in the services; and if he had no such desire, the electorate which stands behind him in his country where the passion for Government employment has always been extravagant would not be slow to force this policy on him. He thinks that the salaries scales and emoluments of European officers are extravagant and especially objects to overseas pay. Sir Ross Barker adds that "he is unwilling to honour the commitments in respect of salaries which are connected in various service rules—rules in the making of which he had no part and some of which he vehemently resisted."

This statement, however, I think, is far too broad to be fair or just to any Indian.

In so far as these commitments arise from statutory or other obligations based on an honourable fulfilment of express or implied promises, there has been no disposition anywhere other than that of scrupulously honouring them. In so far as these Service Rules are capa-

ble of legitimate and reasonable amendments in the interests of retrenchment, no reasonable man in the present economic conditions in any country will object to the efforts of Cabinets in this behalf. In respect of promotion, the claim now made is not merely that the time scales should be honoured, but that higher posts which carry additional and special remuneration should be compensated for if the unquestioned right—and necessity under the new constitution—to diminish the number of such posts by abolition is exercised. Amenities in particular, to European medical aid is a vexed question and I shall leave to my friends in the medical profession to examine the claims in this behalf. In regard to self-respecting and honourable career, every officer who in his own judgment, feels that the orders he is asked to carry out are either detrimental to the interests of India as he conceives them or to involve injustice to him or to the Service of which he is a member, he should be permitted to resign and be compensated for existing and accruing rights.

#### SIR ROSS BARKER'S VIEWS

Assuming then that we come to a settlement as to the actual quantum of guarantees that may be granted and as I suggest the Constitution itself will provide for a charge on the revenues for the payment of statutory obligations for the Services in these matters, the question remains as to how these safeguards are to be provided. The proposals discussed involve statutory safeguards on most of these matters. Sir Ross Barker thinks that though the Constitution will contain such safeguards, their sphere will not only be narrow but their actual operation will be ineffective. "Administration is a day to day affair," he says, "largely opportunist and governed by the exigencies of the moment, and it would be a matter of extreme difficulty for

Parliament to pass any Act which guarantees a certain proportion of Europeans in the Services, assuring them of certain salaries, prevent the reduction or abolition of any officers and safeguard the interests of the Europeans in matters of promotion. Unexpected emergencies have occurred and will occur and it is difficult to believe that the Indian Government will be willing to be shackled by Parliamentary restrictions in a matter which so intimately concerns them. And Parliament will find itself unable to enforce any injunctions it may give." The plight of the Secretary of State also in this respect will be similar to that of Parliament. He will in the future be at the disadvantage, that he will be to a great extent cut off from the sources of information he at present possesses and will not have the knowledge which will enable him to enforce his opinions in small matters of Administration. "If the Indian Government proposes that this or that post shall be abolished, that some scale of salaries shall be revised, that there shall be a cut or super-cut in emoluments or that A shall be promoted instead of B, they will be proposing things which have been frequently done in the past by the Secretary of State on the advice of the Government of India and for which there is ample precedent". The future Secretary of State will be unable to control such things in detail.

But while Sir Ross Barker naturally believes that a more soundly devised plan of an independent Public Service Commission would be better than the plan of the Round Table Conference and that the reservation of powers with the Secretary of State or with the British Parliament will soon prove ineffective and illusory, the Secretary of State on the other hand has expressed the view that something more than a Public Service Commission is neces-

sary for the protection of the services. These extensions of demands for guarantees that are happening daily make it more clear that the ultimate guarantee for all of them, the ultimate security against all natural and reasonable apprehensions, lies in a spirit of frank and open trust and a spirit of co-operation and confidence and not of distrust and suspicion and a genuine faith in the great experiment of transferring responsibility from British to Indian hands. It is only reliance on this ultimate factor that will prove valuable and not paper safeguards or extreme demands that can only provoke extreme attempts to repudiate them and in the result create more serious crises than have risen so far.

#### COMMERCIAL SAFEGUARDS

I have not left myself time to deal with the issues regarding commercial discrimination. It arises out of the general constitutional issue of the protection of minority. But the issues involved are not minority issues but the question of the nature and extent of protection which should become not so much to the already existing vested interest of British capital, commerce and trade in India but the extent of protection which they demanded against the danger of discrimination against them when responsibilities transferred to Indian hands. The clause which was put down at the first Conference read as follows:

"At the instance of the British commercial community the principle was generally agreed 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, and that an appropriate convention based on reciprocity should be entered into for the purpose of regulating these rights."

As its terms were felt to be unsatisfactorily and hastily adopted at the last stages of the Conference they were again further discussed at the second Conference. But it is remarkable that matters were again left in doubt in spite of the efforts of Sir Purushothamadas to clear them up. The Second Round Table Conference adopted four more paragraphs in the Federal Structure Committee's Report, namely, paragraphs 18 to 23 in the Committee's fourth report which extended this discriminatory protection not only to measures of legislation and taxation but to acts of administration also, in a fairly comprehensive form. Even the accepted interpretations of these paragraphs were subsequently altered by correspondence and matters once again came up for discussion in the Third Round Table Conference.

All these proposals amount to a definition of citizenship far wider than that originally contemplated so as to confer equality of rights and opportunities with the Indian-born citizens to Britishers temporarily resident in India for the purpose of trade, business, or other occupation. It is now also demanded that such rights should inure not only for absentee capitalists, individuals or firms or corporations that send their capital to India for the purpose of profit and for the very large interests of British companies who have instituted themselves in India. It goes therefore further than what is always conceived as the fundamental principle of citizenship, namely, naturalisation of individuals, not of corporations, by laws of citizenship based upon residence and the like. Dominion citizenship in all other parts of the Commonwealth has been allowed to be defined and restricted in a far stricter manner than that which Indian representatives were prepared to concede at the Conference, but this was not sufficient for the

interests which Lord Reading and others represented at the Conference. They wanted a definition of citizenship and protective bar for maintaining the rights of British non-Indian citizens in a manner different from what constitutional provisions would permit. I regret time does not enable me to examine these interesting questions and I have to refer you to the published literature and discussions on the subject.

#### THE PROPER APPROACH TO THE PROBLEM OF SAFEGUARDS

I shall therefore sum up these lectures with just a few observations which I trust my younger hearers here as well as other friends interested in these absorbing public questions will take in the spirit in which I make them. Those who have been insistent on the multiplication of safeguards whether for minorities, or for British or other Indian interests apparently demand it from various motives. We may rule out those that proceed from a desire to render responsibility nugatory or distant. With that class of safeguards no believer in the policy that we must presume should animate the White Paper will identify himself; but safeguards are demanded by all those who agree to this policy—(a) by way of abundant protection; (b) owing to nervousness and apprehension or suspicion and distrust based racial or communal grounds or in a distrust of democracy in general and of democracy in India in particular, (c) safeguards which are really required during a transitional period and for the very purpose of making the transfer of responsibility from Britain to India a reality and a success. I have pointed out that so far as the last category is concerned not only will they be found in the transitional and permanent provisions of most constitutions, but that Indians of all parties have most readily conceded it since the days of the Gandhi-Irwin Pact. I have also examined the nature and actual extent to which they should

go, and no further, if responsibility is to be real and if the aim of Dominion Status is to be sincerely pursued.

My plea therefore is that those who are keen upon safeguards should not allow themselves to be influenced or obsessed by prepossessions born of reluctance, or unjust suspicions born of ignorance or excitement but they should honestly attempt at the forthcoming Joint Select Committee deliberations to implement the solemn pledges and policies. If the need for reservations and safeguards has been conceded, if, for instance, a provision for the breakdown of the Constitution has to be made, if guarantees and assurances found in all Constitutions have been promised, the means of doing so should, in my opinion, be faced and not shirked by those who represent the Indian standpoint.

#### NEED FOR SETTLEMENT

It is perfectly true that many of the extreme demands for them have to be given up where they conflict with the fundamental grant of responsibility or have to be modified where they go even a whit beyond what are demonstrably necessary in Indian interests. But there must be specific and concrete alternative proposals and those of them which were made to this end on the Indian side at the last conference or earlier should be examined from this helpful standpoint. An optimist as I am, I am not sure whether the Government do yet want that the coming Indian Federation should be rendered workable by the co-operation of all the parties that accepted its fundamental basis in 1931. If they do want it, I shall think agreed settlements are possible on many large issues. A great American political philosopher has said: "Let us never forget that the responsible State is not an abstraction. It is a politically organised people and a politically organised people is a body of citizens. If the State is efficient it is because they

are competent." I desire that both from the British and the Indian side, the implication of this profound statement should be accepted. The British people, should be perfectly clear in their minds that the future Indian State is not a mechanism with checks, balances, restrictions, that may now be provided, but should be the politically organised people of India and it is the effort to create and sustain power in that politically organised people that alone will make for the success of the Constitution and the prosperity of both countries within the British Commonwealth.

On the Indian side, the implication is equally plain. It is not by electoral artifices or by various complicated arrangements, necessary as they are, and sound as they must be, that the ultimate success of Swaraj in India depends. It is the organisation of the people of the country into a body of worthy and efficient citizens, that will make for the elevation and the progress of this country.

"Political arrangement", said Burke, "as it is a work for social ends, is only to be wrought by social means. Mind must combine with mind." The fundamental necessity of the situation in this respect is that we should sink our differences and co-operate in the fullest measure for the achievement of our ends. Both on the British and on the Indian side, therefore, risks will have to be taken and if they are taken in the spirit in which I have asked they should be, I am confident of success. It was King Solomon who said that "he that considereth the wind shall not sow and he that looketh to the clouds shall not reap." We should, therefore, proceed to sow with courage and determination and we may be sure that we can reap with confidence and in abundance.

Mr. Rangaswami Iyengar concluded by expressing his thanks to the University Extension Lectures Board for having

given him the opportunity to address them on this important subject.

### DR. A. L. MUDALIAR'S REMARKS

Dr. A. Lakshmanaswami Mudaliar conveyed to him the gratitude of the Board as well as of those who had attended his lectures. The object of the Board in organising those lectures was to present to students and the public in general a dispassionate view of great and important questions. That object, the Board had eminently achieved, as Mr.

Rangaswami Iyengar's lecture had been marked by a deep and thorough study of all aspects of the question. He had avoided what was bombastic without being unduly pessimistic and at the same time presented to them the problem in all its bearings as a student of politics would do. He was sure the public had been immensely profited by the lectures. He also thanked Mr. Iyengar for kindly expressing his readiness to place printed copies of the lectures at the University office for perusal by students and others.

The meeting then came to a close.



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