A DEFENCE
OF
THE CONGRESS-LEAGUE SCHEME.
(A Study in Comparative Politics.)

Being a reply to the official criticism with reference to the constiiutions of British Colonies and European and American countries.

BY

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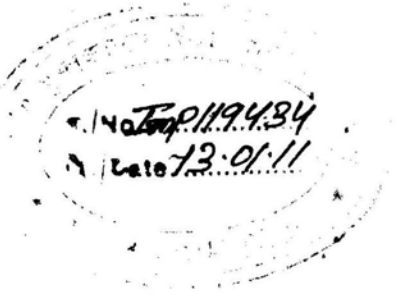
PUBLISHED BY
SAHITYA PROCHAR SAMITI LD.
24, Strand Road, Calcutta.

Price Re. 1.

PRINTED BY S. C. CHOWDHURY,
THE PHŒNIX PRINTING WORKS,
29, Kalidas Singha Lane, Calcutta.



PREFACE.

In this book I have tried to meet the criticism of the Congress-League Scheme, contained in the "Report on Indian Constitutional Reforms", from the stand-point of Constitutional Law and Political Science.

In *Part I.*, I have dealt with the principles of constitutional development in the British Colonies. I have also shown that the form of government in the major provinces of India, corresponds to that of the highest class of British Crown Colonies and that further development can only be in the line of the constitution of the self-governing colonies.

In *Part II*, I have dealt with the objections to the main principles of the C. L. Scheme which demands an elected legislature having (1) Power over finance, (2) Power over legislation subject to veto, and (3) some direct control over administration through resolutions binding on the executive. According to the official critics these proposals are without any precedent, unworkable in practice, and unsound in principle. I have demonstrated that the main principles of the C. L. Scheme were embodied in the constitution of England up to 1832, and of the self-governing colonies up to 1846; and that even to-day they form the ground-work of the constitutions of the British Crown Colonies of the highest class, of the United States and of the German Empire. I have also dealt with the question from the stand-point of Political Science and demonstrated that these principles are the foundation for a proper system of control over administration, which is to be found in every system of representative government

In *Part III*, I have dealt with the proposal of the C. L. Scheme for election of half the members of the executive councils by elected members of the legislature. The official critics have characterised this proposal as unsound, unworkable and without precedent. I have demonstrated that the executive is constituted on this principle of election in the provinces of South Africa, and in Switzerland, where this system has produced the best possible results. I have further demonstrated that this proposal of the C. L. Scheme falls far short of a demand for responsible ministry and only constitutes the first step towards responsible government; and that it is thus a natural method of progressive realisation of responsible government which is promised to us in the Parliamentary announcement of August 20.

In *Part IV*, I have dealt with the objections to the immediate grant of representative government to India, based upon the special conditions of Indian Society. According to the official critics India is not yet fit for self-government as the percentages of urban, industrial or literate population, are very small, and as Indian Society is divided by races, creeds and castes. I have demonstrated that even though some of these objections may be based upon facts, the picture is over-drawn and erroneous in many particulars. I have shown that the ideal conditions can not be realised in far less than one thousand years, at the present rate of progress in India; that representative government is a necessity for removing these evils, and not a mere luxury to be enjoyed by highly advanced communities; and that it was only through representative government that other

countries suffering from like evils advanced to their present condition. By way of illustration, I have described in the last two chapters, the social conditions in America on the eve of her independence, and in Canada at the time of the grant of self-government.

If my arguments be found faulty or my method of treatment, imperfect, my apology is that I have tried to present the case of India from a new point of view, namely, that of Comparative Politics, which, so far as I am aware, has not yet been adopted in any work dealing with the political problems of India. If this humble work, however imperfect it may be, stimulates the enquiry of my countrymen in this new direction and leads them to study the problems of India from the point of view of Comparative Politics, I shall consider my labours amply repaid.

In conclusion I must apologise to my indulgent readers for two other things in connection with this book. I formed the project of publishing this work, only towards the end of last July, and then again I wanted to bring it out before the special session of the Congress. Owing to the shortness of available time, I had to finish both the writing and the printing hurriedly. I had not therefore the time to improve either the language or the get-up of the book. This is my only excuse for the imperfections of language and typographical mistakes in the book, which I now place before the public.

Bhowanipur, Calcutta,
24th, August, 1918.

PROKASH CHANDRA MAZUMDAR.

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CHAPTER I.

INTRODUCTORY.

The Resolution on the Reform Scheme which has now become well-known as the Congress-League Scheme, was adopted by the Indian National Congress and the All-India Moslem League in 1916. Both these bodies re-affirmed their adherence to the scheme in their next sessions held in 1917. It was proclaimed in no uncertain terms from the platforms of both these assemblies that the scheme embodied the irreducible minimum of our present demand in the direction of complete self-government. This view also finds expression in the resolution of the Congress which affirms "That this Congress demands that a definite step should be taken towards Self-Government by granting the reforms contained in the scheme &c."

The importance and the authoritative nature of the Congress-League Scheme are also admitted by the authors of the official scheme, and we find the following remarks in their Report, "This was the latest, most authoritative presentation of the claims of the leading

Indian political organisations ; and as such it was the first to require attention in the course of our inquiry. We found that it commanded so large a measure of support that we are entitled to regard it as disposing of earlier constitutional essays on somewhat similar lines."

The Report in Chapter VII. deals with the Congress-League Scheme and sets forth the objections which the authors of the official scheme feel to some of its features and why, though they make suggestions similar to other features of it, the principles on which its main proposals are based, seem to them essentially unsound.

Now then there are two schemes before the country, the popular scheme framed by the two most representative political organisations of the country and the official scheme drawn up by the two highest Government officials connected with India. The popular scheme is condemned on the ground that its main proposals are based on principles essentially unsound and the people are asked to accept the official scheme in its stead. Common sense and a sense of common decency demand that to be logical and consistent, and to show any sense of self-respect, the people of this country must first satisfy themselves that the scheme put forward by their representatives, is really unsound on principles, before they can think of ignoring their own scheme and of accepting the official scheme ; and it is therefore of the utmost importance that the official criticism of our scheme should be carefully analysed before we can decide to give it up and accept the official scheme.

Any scheme of Administrative reform can only be properly judged by the standard of the general principles of political Science and Constitutional Law, based upon a comparative study of the constitutions and administrative systems of modern progressive states.

But there may be special conditions, limiting the application of these general principles in respect of any particular country. We propose, therefore, in the first place, to judge the merits of the C. L. Scheme and its official criticism by the standard of general principles, and in the second place, to examine any special conditions limiting the application of these general principles.

Now let us try to determine some of the most important general principles of Constitutional Law or practice governing the relations between the United Kingdom and the other units of the British Empire. As the general public in this country is not familiar with these constitutional principles, and as any intelligant criticism of constitutional reforms involves the application of these principles, it becomes necessary to deal with them in some detail here.

CHAPTER II.

IMPERIAL CONSTITUTION OF THE BRITISH EMPIRE.

Viewed from the stand-point of Political Science the imperial constitution of the British Empire may be analysed as follows.

All the different units of the British Empire form one State, being subject to one sovereign authority. The organisation of the State which exercises its sovereign power is the House of Commons in England, because it is the House of Commons which in extreme cases can override the vetoing powers of the House of Lords and of the Crown. Therefore the sovereign authority of this State is limited to and exercised by the voters who can elect representatives to the British House of Commons, and is thus confined to the people of Great Britain and Ireland. The constitution of the British Empire as a State, therefore, is oligarchic, although the constitution of Great Britain itself is highly democratic. Every modern progressive state is tending towards a democratic basis, and the present organisation of the British Empire as a state is unstable and transitional and must undergo a radical change in this respect. The ultimate solution will perhaps be found in the federalisation of the Empire as a State.

The United Kingdom, as the sovereign part of the State of the British Empire, now exercises, in theory, full control both in internal and external affairs of all other units of the Empire, called dominions or possessions, about 51 in number, comprising over 11,400,000 square miles of territory, and a population of over 410,000,000. These dominions are divided into two classes owing to the legal definition of the terms "Colony" and "Possession." A British "Possession" is defined by the Interpretation Act of 1889 as being any part of His Majesty's dominions outside the United

Kingdom which forms a separate community. The term "Colony," according to the same Act, means any part of the British dominions exclusive of the British islands, comprising the United Kingdom, the Channel Islands and the Isle of Man and of British India. We thus get a geographical division of British possessions outside of the United Kingdom into two main classes (1) Colonies, (2) Possessions other than colonies, namely, the Channel Islands, the Isle of Man and British India.

CHAPTER III.

Special Relations between the United Kingdom and the Self-Governing Colonies.

Most of the British possessions being included under the class of Colonies, it is only natural that the constitutional relations between the United Kingdom and the possessions, and the different constitutional types of government evolved by the political experience of Britain, can best be studied in connection with the colonies.

(*a*) *Classification of Colonies.*

Sir William Anson in his treatise on the "Law and Custom of the Constitution" adopts the following classification of the colonies of Great Britain based upon the different modes of Government obtaining in them.

Class I. Colonies in which the legislative power is vested in a Governor alone, while the executive power

is also exercised by him either alone or in conjunction with an Executive Council, the members of which are nominated by the Crown e.g, Gibraltar, Labuan, St. Helena.

Class II. Colonies in which the legislative power is vested in a Governor and a nominated Legislative Council and the executive power lies with the Governor and a mominated Council. e. g. the Gold Coast, Scychelles, Trinidad and Tobago.

Class III. Colonies in which the legislature contains a Representative Assembly, all or a majority of whose members are popularly elected, while the executive consists of the Governor and a nominated Executive Council or Committee e.g. Barbados, Bermuda, British Guina, Cyprus &c.

Class IV. Self-Governing Colonies, that is, colonies possessing responsible government e.g. Australia, Canada, South Africa, New Zeland and New Foundland.

(*b*) *Special features in the Government of self-governing Colonies.*

(1). **The position of the Executive.** "A colony reaches the highest stage of development when it becomes self-governing. The essential difference between self-governing colonies and all others is in the position of the Executive. In the first three classes of colonies all the members of the Executive council are appointed by the Crown, and hold office during its pleasure. In self-governing colonies of class IV. possessing what is called Responsible Government the

Governor is empowered by his intructions to appoint and remove Members of the Executive Council, *"it being understood that Councillors who have lost the confidence of the local legislature will tender their resignation to the Governor or discontinue the practical exercise of their functions in analogy with the usage prevailing in the United Kingdom."* In other words, the Executive in self-governing colonies is, according to constitutional usage, if not according to strict law, appointed and dismissed by the Legislature. The executive power is vested in the Governor, but is exercised by the ministers who depend upon the vote of the majority of the popularly-elected assembly and are responsible to it i.e. liable to lose office if they cannot retain its confidence."

(2). **The Governor.**—"The only officer appointed by the Home Government in self-governing colonies is the Governor, or Governor-General, and any particular person will not be intruded as such upon a self-governing Colony if it objects to him. Thus Queensland refused to accept Sir Henry Blake as Governor in 1888, and he was in consequence made governor of Jamaica."

There are various extreme views about the constitutional position of the Governor. The following is a moderate estimate in accordance with the view of a great authority on the subject, Sir Henry Jenkyns: "We have to distinguish the Governor in his two capacities, (1) as an imperial officer and (2) as a local officer. In imperial matters, such as granting pardon

in cases where it might affect the empire, or any country beyond the colony, by letting go a dangerous criminal, or in assenting to measures affecting imperial treaties, the Governor, although in constitutional practice bound to consult his ministers, need not follow their advice. But in purely local matters he ought almost invariably to follow the advice of his Ministry. They, and not he, are responsible in such cases. He must not act contrary to law, as by assenting to a bill which it is beyond the powers of the colonial legislature to pass. But generally speaking, he is in the hands of his ministers, and this is growing more and more to be the constitutional practice, extending even to imperial matters. Thus in Canada at the present day, the Governor-General never vetoes a bill."

(3). **Powers of Changing the Constitution**:—An important feature in the legislative power of self-governing colonies is that generally speaking their legislatures have the power of changing their constitutions, though in the case of some colonies this power does not exist. The Colonial Laws Validity Act, 1865, an Act which Professor Dicey calls "the Charter of Colonial Legislative Independence" provides in section 5. that "every representative legislature shall, in respect to the Colony under its jurisdiction, have, and be deemed at all times to have had, full powers to make laws respecting the constitution, powers, and procedure of such legislature; provided that such laws shall have been passed in such manner and form as may from time to time be required by any Act of Parliament,

Letters Patent, Order in Council, or colonial law for the time being in force in the said colony." According to Section I. a "representative legislature means any colonial legislature which comprises a legislative body of which one-half is elected by inhabitants of the colony."

The above summary about the organisation of the British Empire and the constitution of the different classes of units has been principally taken from "Government of Greater Britain" by Trotter and "British Rule and Jurisdiction bayond the Seas" by Sir Henry Jenkyns.

CHAPTER IV.

CONSTITUTIONAL POSITION OF INDIA COMPARED WITH THAT OF SELF-GOVERNING COLONIES.

In Chapter II. we have studied the general organisation of the British Empire divided into the United Kingdom as possessing the sovereign power, and the other units treated as her dominions.

In Chapter III, we have examined the classification of the colonies of the empire, based upon the modes of government obtaining in them, and the special relations between these and the sovereign unit, modifying the general relations in some respects. In the light of the above studies we must next examine the constitutional position of India as it is, before we proceed to discuss the scheme of reform, the object of which is to make substantial improvement in its present mode of government towards a responsible form.

It will be remembered that excepting British India and some small islands, the Isle of Man and the Channel Islands, which are of minor importance, all the other British dominions are styled colonies. In these colonies we find various types of government, representing the various stages towards the highest form of responsible government, evolved by the political experience of Britain.

These various types of government have been classified into four classes by Sir William Anson. In Class I. we find no legislative council and no executive council in many cases, the legislative and executive powers being vested in the Governor alone. In Class II, we find a nominated legislative council and a nominated Executive Council. In Class III, we find a Representative legislature with an elected majority and a nominated Executive Council. In Class IV, we find responsible government with a representative legislature and an Executive council or cabinet of ministers practically appointed and dismissed by the Legislature.

Now, if we compare the existing form of Government in India with the above, we at once find that the form of the provincial Government in some of the major provinces corresponds to that of Class III, whereas the form of the India Government corresponds to that of Class III, more that of Class II, in as much the Legislature consists of elected members who are not in a majority. If we examine the above classification, we find further that India in the course of her political evolution under British rule, has during the last 100 years,

successively passed through the first and second stages, and parts of it through the third stage also.

If there is to be any genuine and substantial advance upon the present form of Government in India, in the light of the particular political experience of the British Empire, that can only be achieved by raising it to the level of Class IV—self-governing Colonies. Why should the result of political experience gained through centuries by the first Democracy in the Modern World be denied to India alone of all her important dominions ?

Let us examine the announcement of August 20, which lays down the policy of British rule in India to be progressive realisation of responsible Government, in the light of the above classification. In the first place, we find that what is promised to India is "substantial steps in the direction of responsible government to be taken as soon as possible." That is to say, India is to be advanced from Class III to Class IV by gradual steps only, a first substantial step being taken immediately. In this respect the stages of political evolution observed in the cases of self-governing colonies have been denied to India. There is no instance in British Colonial History in which responsible government was granted to any colony of Class III in progressive stages like that proposed in the case of India.

In the next place, accepting the annoucement as the basis of any scheme of reform, we are entitled to expect that it should contain measures marking a substantial advance upon the present state of things

and towards a responsible form of government. With reference to the above classification we may say that India at present occupies a position in Class III and that under the announcement it is to be advanced to Class IV by substantial steps. Therefore it follows that the substantial steps leading India from Class III to Class IV must be marked by some of the essential features of the Government of Clause IV.

In discussing the special features of the self-governing colonies we have seen that the essential difference between these and all others is in the position of the executive, or in other words, in the peculiar relation between the legislature and the executive, This relation may be summed up as the responsibility of the heads of the executive departments or ministers to the elected assembly. If we analyse the growth of the legislature, we find that it begins as a nominated body in Class II. At this stage its only power lies in influencing the course of administration by criticism and expression of opinion which the executive head is not bound to accept. In class III, we find the legislature developed into a representative assembly with increased powers. In the first place, it gives the final shape to the laws relating to all matters which do not affect imperial interests. In the second place, "The budget has usually to be approved by the Representative Assembly." (See Trotter, "Government of Greater Britain" page 51). At this stage, the legislature does not possess any direct control over the executive, except an indirect control through its power over legislation and over budget.

Until 1846, no British Colony had passed this stage of government, as the following extract from "British Rule and Jurisdiction beyond the Seas" by Sir Henry Jenkyns will show :—

"Until 1846, no colony was a self-governing Colony with responsible Government, though at that time, the majority of the Colonies had legislatures with an elective assembly having taxing powers; but in all, the executive administration was carried on by a Governor with the aid of a council, the members of which were nominated by and responsible to him alone."

"A colony reaches the highest stage of development when it becomes self-governing." The author quoted above, explains the significance of this proposition as follows :—

"Such a colony has more than representative government. Its characteristic feature is not merely control of local taxation and an influence over legislation exercised by a popularly-elected chamber. Such a colony has also responsible government *i. e.*, the heads of administrative departments form a ministry which continues in office so long as it commands the confidence of the legislature."

It will be seen from the above that the development of a government into a higher type is associated with the growth of the legislature. The legislature is first developed into a representative assembly with powers over legislation and budget and lastly gains the power over the executive when the latter is made responsible to it.

Now, if we apply these principles of development in

the case of colonies to the present condition of India we find that the line of development should be this Firstly, in the case of those provinces which have got nominated legislative councils, the legislatures should be made representative by increasing the proportion of elected members to at least half the total number. As the Government of India also belongs to this type, the same improvement should be introduced in it. Secondly, as the control over the budget is associated with all representative assemblies in the colonies of class III this power should also be extended to the representative Indian legislatures. Thirdly, according to the principle of progressive realisation of responsible government in the provinces with existing representative assemblies, substantial steps towards the goal should be taken by making the executive responsible to the legislatures to some extent, in some shape.

We logically arrive at the above conclusions from a study of the principles applied in the case of colonies. Two things are quite clear from the above analytical study. First, that the power over budget is associated with a representative assembly of Class III, and that it is a power which precedes the grant of responsible government. Second, that the essential feature of responsible government is the power of the legislature for all practical purposes to appoint and remove the heads of the executive departments.

Having now determined the general principles underlying the relation between the United Kingdom and her possessions and also the general principles accord-

ing to which the forms of governments in the dominions have been developed in the past, and which should be applied to the case of India also, we can now proceed to examine the reform schemes placed before the country in the light of the above principles.

PART II

Objections to the main principles of the C. L. Scheme

The main objections of principle to the C. L. Scheme according to the authors of the official scheme relate to

I. Power of the legislature over Finance.

II. Power of the legislature over legislation.

III. Power of the legislature over the executive through Resolutions.

CHAPTER V.

Financial Powers of the Legislatures.

(*a*) *The Objections.*

In paragraph 165 of the Report we read : "Where we next find ourselves at variance with the draughtsmen of the scheme is in their claim to control completely the provincial finances. It may be that constitutional practice elsewhere has not been fully appreciated. In England it is a well-established rule that the Government only can propose fresh expenditure ; no amendment can be moved to increase a grant or alter its destination.....But we need hardly lay stress on matters of form when there is an objection of principle. Finance

is the vehicle of Government; and unless the executive can raise money for its needs and lay it out as it pleases, it cannot continue responsible for the administration. The power to refuse vote, or to refuse to grant the resources required for it paralyses the Government's hands. In the hands of a legislature which chooses its own executive, such power is natural and appropriate .....But so long as the executive remains nominated and irremovable, it must be in a position to secure the money necessary for its essential purposes. The Congress-League proposal is compatible with parliamentary Government, but fundamentally incompatible with an executive which retains any responsibility towards the Secretary of State and Parliament. In this respect therefore it is inconsistent with itself."

The objections under this head therefore are two-fold :—

(1) According to constitutional practice the British Parliament does not propose any fresh expenditure or increase any grant in connection with the budget.

(2) Complete control of the legislature over the budget is inconsistent with the existence of an irremovable executive and paralyses its activities, or in other words, the combination of irremovable executive with an elective assembly having real control over finance is unsound in principle.

The first objection is entirely fallacious. The British cabinet is composed of the leaders of the party in majority in the House of Commons and remains in power so long as the party can retain its majority.

Where the ministers are the leaders of an organised party forming the majority in the House, it is very difficult to conceive how under normal conditions the House can pass any proposal making any fresh expenditure or increasing any grant against the wishes of the Government. In reality, all items of the budget proposed by the cabinet are passed by the majority in the House supporting the ministry. Therefore in ignoring this forbearance of the House to interfere with the budget, which is only apparent but not real, the authors of the C. L. Scheme, certainly, have not betrayed any ignorance, or want of appreciation of the constitutional practice in England.

The second objection raises a very fundamental principle of constitutional history and practice. Let us see how far this objection is supported by history and constitutional practice. We have to separately consider two elements first, the growth of the power of the legislature over finance, and secondly, the growth of the form of responsible Government or ministry removable by the legislature.

From a study of these two questions we shall see the historical relation between the power of Parliament over finance and its power of appointing or removing ministry.

(b) Growth of the Power of Parliament over Finance.

Let us turn to the history of the Mother of Parliaments, the British Parliament, which has served as the model for all the representative assemblies of the world in modern times. We find that the foundation of

Parliamentary life was established by the Great Charter of 1215, which provided that, "no scutage or aid shall be levied in our realm save by the common council of the realm." After several centuries of struggle, in 1641 again the Long Parliament reaffirmed this inalienable right of the people by passing a statute "declaring the ancient right of the people that no taxes should be levied without the consent of the Parliament." It was the vindication of this great principle that led to the Great Civil War. Lastly, "Parliament finally regained control over it in 1689 after the Revolution, when the first Act of the new legislature was to restrict the grant of the royal revenue to a term of four years" It was this Act of the Parliament which elicited the bitter remark of King William III:

"The gentlemen of England trusted King James who was an enemy of their religion and their laws, and they will not trust me, by whom their religion and their laws have been preserved." (See "A Short History of the English People" by Green, pp. 129, 538, 689).

Up to the above stage in the history of the British Parliament, it had not acquired the power of appointing and removing a ministry.

(c) *Growth of Responsibility of Ministry to Parliament.*

Let us next consider the growth of the form of responsible Government. The following quotation from Lowell's "Governments and Parties in Continental Europe" Vol. I, page 3, bears directly on the points:

"By degrees the House of Commons acquired the

right of originating all bills for raising or spending money and hence its support became essential to the Crown. But its members were independent, and on the whole less open to Court influence than the peers. They felt under no obligation to support the policy of the Government, or to vote an appropriation, unless they understood and approved the purpose for which it was to be used; and King William III, during his wars with France, found them by no means as easy to manage as he could wish. Hitherto his ministers had been selected from both parties, and hence were not in harmony with each other and were unable to exert an effective influence in Parliament; but between 1693 and 1696 he dismissed the Tories, and confided all the great offices of state to the Whigs, who had a majority in the Commons.....This was the origin of the practice of selecting ministers from the leaders of the majority in Parliament, a practice which at a latter time crystalised into a principle of the British Constitution."

The following extract from Burgess on "Political Science and Comparative Constitutional Law" Vol. II. pp. 211-212, throws further light on the subject:

"King William III led the way to the solution of the question when he took his ministers from among the dominant party in the Parliament. His intention in having the Crown represented in the Parliament by ministers who were the leaders of the majority, at least in the House of Commons, was undoubtedly to gain a strong hold upon the Parliament and secure a more ready and generous vote of supply to the Crown. What he really did was much more than this: it was to lay

the ground-work both for the responsibility of the Ministry or Cabinet to the House of Commons and for party government. He seems to have subsequently discovered these tendencies himself. He abandoned the policy in the later years of his reign. The policy, however, was one demanded by the spirit and conditions of the age. It reappeared under the Hanoverians ; and since 1832 it has been the unquestioned custom of the constitution."

(*d*) *Power over Finance first, then responsibility of ministry.*

Thus it will appear that in England where representative and responsible forms of Government had their birth, the complete control of the legislature over finance was gained first, some centuries before its power over the executive through a ministry responsible to it was gained.

It will also appear from the extract quoted before from Jenkyns on "British Rule and Jurisdiction beyond the Seas," that this constitutional precedent was followed in the British Colonies. A part of the passage will bear repetition here :—

"Until 1846, no colony was a self-governing colony with responsible government, though at that time, the majority of the colonies had legislatures with an elective assembly having taxing powers, but in all the executive administration was carried on by a Governor with the aid of a council, the members of which were nominated by and responsible to him alone."

Even at the present time, in the case of colonies of

class III popularly called Crown Colonies, we find that although the executive is not removable by the legislature, "the budget has usually to be approved of by the Representative Assembly." (See Trotter, "Governmetn of Great Britain" p. 51 and "An Analysis of the Systems of Government throughout the British Empire" pp. 104, 110 and 112 published by Mc. Millan & Co. Ld. 1912.).

(e) Combination of irremovable executive with elective assembly.

In discussing the objections to the proposed legislative powers, the authors of the Report in para. 166 observe: "But it is also defended by those who point out that the combination of an irremovable executive with an elective assembly, *alien as it is to English political ideas*, is already found in suceessful operation elsewhere. Non-parliamentary executives flourish in the United States and Germany. *But in America, both the executive and the legislature are ultimately responsible to the people, and in Germany the system appears to us only to be possible because military obedience rather than political instinct is the guiding principle of German political life.*"

(f) If alien to English Political Ideas.

In reply to the above, firstly, whoever those gentlemen may have been, who expressed the opinion that the combination of an irremovable executive with an elective assembly having real powers either over finance or legislation, is alien to English political ideas, they certainly betrayed an ignorance of the constitutional history of England. Far from this principle being alien

to English political ideas, we have seen above that it originated in England, was the foundation of English Parliamentary life, was applied in practical politics for several centuries until 1832, and was extended to the self-governing colonies before they obtained responsible government after 1846; and that it is still applied at present in some of the Crown Colonies of class III.

Secondly, the combination of an irremovable executive with an elective assembly is actually to be found in existence in the constitutions of the United States and Germany. As regards these cases, the authors of the scheme have sought to distinguish them, very much in the manner, in which a lawyer, having to defend a case opposed to established principles, seeks to distinguish the inconvenient precedents by saying that those are not on all fours with the case in hand.

(g) *The cases of America and Germany.*

Let us first examine the case of the United States. The authors of the report seek to distinguish it on the ground that "in America both the executive and legislature are ultimately responsible to the people." In the first place, the question of responsibility in connection with the proposition under discussion is not the question of responsibility of either the executive or legislature to the people, but the question of responsibility of the executive to the legislature as the direct "connecting rod between the executive and the legislative wheels of the machine which will ensure that they will work in unision", in the language of the authors of the Report in para. 167.

(h) *Relation between Executive and Legislature in Parliamentary and Presidential forms of Government.*

In systems of Parliamentary Government obtaining in England and France, the unision is sought to be effected by making the executive ministry directly dependent upon the support of the legislature. But in the system of presidential form of Government obtaining in the United States and Germany, the fundamental political idea underlying the constitution is entirely different. These constitutions give full recognition to the theory of separation of powers, executive, legislative and judicial and construct the machinery of government on the principle that for the purpose of good government and for security of the liberty of the individual, these powers should be entrusted to bodies independent of one another so that each may serve as a check on the others. This is the radical difference in principle between Parliamentary and Presidential forms of Government. According to the supporters of the presidential form, the combination of the legislative power with the executive power in the legislature renders it autocratic, very like the absolute monarchy of old, and under this form there is no sufficient guarantee for individual liberty, whereas, in the presidential form, each body being independent of the others serves as a check upon the activities of the others tending to encroach upon the domain of individual liberty. For instance, if the executive shows any such tendencies, an independent legislature will put a curb upon it and an independent judiciary will give protection to the individual against

the arbitrary acts of the executive, as in the United States. But, under the English parliamentary system the executive ministry controls the legislature and can have any laws or ordinances passed to arm it with what powers it pleases, entirely disregarding the liberties of the individual, and the legislature being subordinate to it affords no check to this autocratic exercise of power. If the British cabinet at any time choose to exercise its undoubted autocratic powers, seriously encroaching upon the domain of individual liberty, as many Englishmen think it is doing now during the course of the present war, the only protection under the British constitution is afforded by the dissolution of the Parliament by the Crown, which again can only be done in accordance with the strict rules of constitutional practice.

(1) *The principle of harmony between Executive and Legislature.*

Thus we see that the English idea of responsibility of the Executive to the legislature is quite foreign to the constitutions of the United States and Germany, the fundamental principle recognised by these constitutions being that the two bodies should remain independent of each other. The principle of harmony between the two branches of the Government is sought to be realised in different ways in the two systems. In the parliamentary system this is worked out by making the executive a part of the legislature and responsible to it. In the presidential form this principle is established upon the fundamental unity in the purpose of good

government which must be kept in view by each branch of the machinery. We find therefore that in the presidential form of government obtaining in the United States and Germany, the executive is in theory and practice independent of the legislature, and the legislature is given the control of the finance with the express object of keeping the executive in check, preventing imposition of excessive burden of taxation on the people at the sweet will of the executive, securing economy in expenditure, and laying out money for purposes which the representatives of the people assembled in the legislature, and not the executive, deem expedient.

(f) Uncontrolled power of Executive over Finance.

The authors of the Report in para 165 remark in this connection : "Finance is the vehicle of the Government, and *unless the executive can raise money for its needs and lay it out as it pleases, it cannot remain responsible for the administration.*" One wonders how, of all persons in the world, two English statesmen could have the heart to express such an opinion. It is enough to turn in their graves the illustratious dead who were the founders of representative government in England, and thus in the world. It is enough to fill with remorse and shame the spirits of Pym and Hampden, of old Baron Simon de Montfort and of even the barons of Runnymede ! It is the eternal cry of the Plantagenets, of the Tudors and Stuarts of all countries and ages ! !

In the first place, the principle embodied in the above proposition is the negation of the first principle of representative government, as understood in England. The

great constitutional struggle waged for centuries in England resulted in the final establishment of the principle that "the executive *cannot* raise money or lay it out as it *pleases*" but only as the representative assembly of the people *pleases*. The combination of the executive with the majority party in the House of Commons since 1832, only apparently obscures the real nature of the embodiment of this principle in the constitution of the British Government. The English Ministers, as party leaders, represent the voice of the majority and it is this voice which exercises control over finance.

In the next place, the proposition is the negation of the first principle of good government, as understood by Political Science. The executive branch of the Government exercises the actual powers of the Government vitally affecting the well-being, liberty and prosperity of the people. Exercise of power without control is apt to run to excess and to degenerate into despotism. It is therefore the first principle in the construction of the machinery of Government that the three branches of Government should be a mutual check *i. e.* exercise mutual control over one another. Financial control of the legislature over the executive is of the very essence of good and efficient government, and until this is established in any system, there is not even the beginning of representative government, far less of responsible government, which is the ultimate form. The above principle is also embodied in the constitutions of the United States and Germany.

So we see that the manner in which the cases of

the United States and Germany have been sought to be distinguished by the authors of the report are unsound in principle and opposed to the fundamental political idea of the constitutions of these states.

(*k*) *The German political life.*

Next, the reference to the political life of Germany needs a few remarks. That we are now at war with Germany, is no reason why we should decry everything German without any examination. We have seen above that the German constitution with regard to the relation between the executive and legislature is in close agreement in fundamental principles with the constitution of the United States, the greatest republic that the world has ever seen. On closer examination it will be found that what is now termed the greatest military autocracy in the world, and what is known as the greatest republic in the world, exhibit strange family likeness in many vital aspects of their constitution. The present German constitution was given the final shape by Bismarck, throughly imbued with liberal ideas, and was modelled on the English constitution ; and perhaps in the not distant future, British imperial constitution at present in a nebulous form, will have to find ultimate solution upon the model of the German imperial constitution.

The authors of the Report in the passage already quoted say that, "in Germany the system appears to us only to be possible because military obedience rather than political instinct is the guiding principle of German political life." We have seen above how the German

system is similar to the system in the United States, and is based upon sound principles of political science. Now, let us examine how far, military obedience rather than political instinct, is the guiding principle of German political life. The meaning of the above sentence is that in political life the German people are not guided by so much political instinct as by a habit of military obedience to the arbitrary commands of the Emperor or of his Chancellor. Now, the records of the Reichstag, the representative assembly of the empire, will show that the facts are quite otherwise. Instead of being a docile body, obeying the commands of the Chief, it has exhibited a spirit of keen struggle with the Chancellor all along. Even the Iron Chancellor, Bismarck, found it difficult to manage the Reichstag on many occasions. He had to use the power of dissolution to break down the opposition of the Representative Assembly on three occasions. The following extracts from Lowell on "Government and Parties in Continental Europe" will remove all doubts on the point :

"It (the power of dissolution) has been used on three memorable occasions: first, in 1878, when the Reichstag refused to pass a bill for the repression of agitation by Socialists; afterwards in 1887, when it refused to pass the bill fixing the size of the army for seven years; and again in 1893, when it refused to sanction change proposed in the military system" Vol. I p. 257.

The following passage from the same book relates to the case of the Prusian Parliament :

"In 1859 they (the liberals) had obtained a majority

in the lower house of the Prussian Parliament and had very soon become involved in a quarrel with King William over re-organization of the army, on which he had set his heart. In 1862, the King turned to Bismarck and made him the President of the Council. Bismarck submitted to the chamber a budget containing the appropriations for the military charges, and when the chamber refused to pass it, he withdrew it, and governed without any budget at all. This he was enabled to do, because the taxes were collected under standing laws which required no re-enactment, and in fact could not be changed without the consent of the Crown, and because a doctrine was developed that in case the King and the two houses were unable to agree upon appropriations, the King was entitled to make all those expenditures which were necessary in order to carry on the government in accordance with the laws regulating the various branches of the administrations" Vol I. p. 239.

"The bitter conflict between the King of Prussia and the House of Representatives, which reached its height shortly after Bismarck became chief of the cabinet in September, 1862, and lasted for the next four years, consolidated the different political elements in the Chamber into two hostile bodies...the supporters and the opponents of the Government. The former, who shrunk at times to a mere handful of members, were called the conservatives while their enemies belonged for the most part to a new organisation known as the Fortschritt or party of Progress" Vol. II p. 8.

It is needless to quote further extracts in order to

refute the proposition with regard to the want of political instinct in German political life. Any one who reads Chapter VII of Lowell's book will be convinced that the Germans have shown as keen interest in political life as any other people in the nineteenth century. The passages quoted above will show how the representatives of the people in the popular Chamber opposed the Government in the matter of repressive laws for the suppression of political agitation, as also respecting bills fixing the size of the army and for changes proposed in the military system. Surely these do not support the theory of military obedience on the part of the popular representatives to the wishes of the Government.

(*l*) *How dead-lock is prevented.*

The above passages have been quoted for another purpose also. We have been told that financial control in the hands of a representative assembly which does not possess the power of appointment or removal of the ministry is sure to lead to a dead-lock. But the above passages show that even while the German Government was lavishing money for perfecting the formidable German Military Machine, there was no dead-lock, inspite of strong opposition in the House of representatives. The second extract quoted above shows the way in which a dead-lock can be prevented, and how the rejection of a budget does not necessarily bring the machinery of Government to a stand-still. As in Germany so in India, the taxes are collected under permanent laws and do not require re-enactment and

the Executive will be entitled "to carry on the Government in accordance with the laws regulating the various branches of the administration."

This principle has been adopted in the constitution of Japan and there is nothing to prevent its adoption in India.

(*m*) *The example of Germany.*

One other pertinent question arises upon a consideration of the case of Germany. Germany is said to be the strongest military autocracy in the world. Now, if such a state can carry on the Government with a representative assembly possessing complete financial control, inspite of bitter opposition in the Chamber, how is it that the British Government, which entered upon the present war with the avowed object of freeing the world for ever from the iron grip of that military autocracy, is reluctant to grant this power even to the provincial legislatures of India, who will have nothing to do with military or Imperial matters ?

(*n*) *The proposals of the C. L. Scheme and the Official Scheme.*

We hope that the above discussion will make it quite clear, that in respect of the proposal for financial control by the legislature, it is not the Congress-League scheme but its official criticism, that is really unsound in principle and contrary to the teachings of history.

The C. L. proposal is almost the same in respect of financial powers for both the provincial and the Indian legislatures. Hence the above arguments apply

with equal force in both the cases. Now it will be interesting to note here the proposals of the official scheme on this point which may be summarised as follows ;—

(1) In respect of the Indian Legislature, it is not to have any power over the budget.

(2) In the provincial legislatures, the budget is to be altered in accordance with resolutions of the legislature in respect of allotments only, except in so far as the Governor-in-Council may choose to restore the whole or any part of the original allotment in the budget proposals for the "reserved" subjects, by the certificate procedure.

The real financial power of the provincial legislatures under the official scheme may be gathered from the followiug statement in para 256 of the Report read along with the above.

"The first charge on provincial revenue will be the contribution to the Government of India, and after that the supply for the "reserved" subjects will have priority. The allocation of supply for the "transferred" subjects will be decided by the ministers. If the revenue is insufficient for their needs, the question of new taxation will be decided by the Governor and the minister."

From the above, the position of the provincial legislature in respect of finance may be summarised as follows :—

(1) The contribution to the Government of India to be the first charge on the provincial revenue.

(2) Upon the balance remaining thereafter, the demands of the executive council for "reserved" subjects will be the next charge.

(3) The remainder left over will be at the disposal of the ministers for the "transferred" subjects; with regard to the allocation of this balance only, the legislature will have full control.

(4) If the balance from the old sources of revenue after meeting the first two charges is found insufficient then the question of new taxation will be decided, not by the ministers alone, but by them and the Governor who is not bound to accept the decision of his ministers. (See paragraph 219).

(5) The provincial legislature will have no right to vote by resolution against new taxation in the budget, such right being only limited to allotments. (See para. 256).

So in the scheme of reconstitution of the provincial governments which is supposed to provide for a "substantial" step towards responsible government, the representative assembly is not to have any power over new taxation in the budget and its only effective power will be in respect of allotment for transferred subjects. Every representative assembly in the world, whether inside the British Empire or outside of it, before it was granted power over the executive through a responsible ministry, enjoyed a complete control over finance. This is what the C. L. Scheme demands, and yet according to the authors of the official scheme, it is essentially unsound in principle.

CHAPTER VI.

LEGISLATIVE POWERS OF THE LEGISLATURES.

The proposals of the C. L. Scheme with regard to the legislative powers of the legislatures are as follows:—

(a) *Re. Provincial Legislative Council.*

(1) A Bill other than a Money Bill, may be introduced in Council in accordance with rules made in that behalf by the council itself, and the consent of the Executive Government should not be required therefor.

(2) All Bills, passed by the council shall have to receive the assent of the Governor and will be subject to the vote of the Governor before they become law.

(3) When the Crown chooses to exercise its power of veto in regard to a Bill passed by Provincial Legislative Council or by the Imperial Legislative Council it should be exercised within twelve months from the date on which it is passed, and the Bill shall cease to have effect as from the date on which the fact of such veto is made known to the Council concerned.

(b) *Re. Imperial Legislative Councils.*

The proposals are similar to the above.

(c) *The Objections.*

The objections of the official critics to the above proposals regarding the powers of legislation may be analysed as follows :—

(1) Until the executive is made responsible to the legislature it can not be invested with powers of legislation over all subjects, subject only to the veto.

(2) Combination of an irremovable executive with

such a legislature is without any precedent, is contrary to the experience of history, and results in want of harmony between the two and leads to deadlock.

(3) The combination of an alien Governor with such a legislature is a contrivance for fomenting dissensions and making them perpetual.

(4) The combination of an irremovable executive with such a legislature may paralyse the executive; the legislature may refuse to pass the laws it wants, and can restrain its activities by inserting special clauses in Acts and can indirectly assume charge of the Administration.

While dealing with the question of the Financial powers of the legislature we have seen that the real objection is based on the principle that the executive must have power "to raise money for its needs and lay it out as it pleases." Now in regard to the question of the legislative powers of the legislature we again meet with the same plea of uncontrolled power for the executive to pass what laws it pleases. But this plea is here clothed with the fine garments of abstract arguments.

Let us now examine the objections.

(1) *Power to legislate over all subjects, Subject to the veto.*

(i) *In Crown Colonies.*

If we examine the constitution of the Crown Colonies of Britain of Class II and Class III, we find that the very powers demanded by the C. L. Scheme for the Indian legislatures are enjoyed by the legislatures of these colonies. In support of this Proposition

reference may be made to the Chapter on the "Reservations and Restrictions on Powers of Crown Colony Legislatures" in the book "An Analysis of the System of Government throughout the British Empire" from which we quote the following passages :—

"Subject to these controls, through the composition of the Legislature, the Governor's power of disallowance, and the power of disallowance of the Secretary of State, a Crown Colony Legislature has very wide powers of legislation and it can legislate in theory on any topic whatever which can be considered as falling under the heading "peace, order, and good Government" p. 103.

In some of these colonies, *e. g.*, Bahamas, the King in Council has not reserved power to legislate. Money votes can be proposed in the lower House without the Governor's consent and the Legislature possesses the power to alter the constitution of the colony. In the colony of British Guiana possessing one Legislative Chamber with an elected majority, ordinances increasing or diminishing the number, salary, or allotment of public officers do not require to be reserved for the Royal pleasure.

It should be borne in mind, as we have shown under the classification of Colonies, that Crown Colonies do not enjoy responsible Government, that is to say, the members of the executive council are nominated by the Governor. Thus the combination of irremovable executive with elected legislature, as in Crown Colonies of Class III, possessing such wide powers of legislation, exists inside the British Empire itself.

(ii) *In British India.*

Next let us turn to the existing powers of the Indian Legislatures. Section 65 of the Government of India Act 1915 gives the widest powers to the Indian Legislative Council to make laws "for all persons, for all Courts, and for all places and things within British India." Section 79 of the same Act gives similar powers to the local legislatures subject to the previous sanction of the Governor-General in specified cases. We thought that we were going forward under the new Reform Scheme, but are we to go backward in order to reach the goal of Responsible Government? One is forcibly reminded of the arithmetical puzzle of school days, as to how long it will take a snail to reach the top of a pole, when it crawls up one foot in the day time and crawls down two feet during the night.

(iii) *In America, Germany and Switzerland.*

Lastly, let us consider the powers of a legislature in other states outside of the British Empire, where the executive is not removable by the legislature. The two most progressive states of the modern times where we find this condition, are the United States and Germany besides Switzerland which is considered as possessing the ideal form of Government. In the United States the executive does not possess any right to initiate legislation. In the other countries the legislative measures proposed by the executive are sometimes not passed by the legislature, but the executive does not resign on that account, and has to bow down to the legislature In the previous section we have fully discussed the falla

cies in the arguments of the authors of the Report, seeking to distinguish the cases of the United States and Germany, so we need not repeat the discussion here.

Above all things one must remember that the British Parliament, the mother of all modern Parliaments, possessed these extensive powers of legislation for centuries before the executive was made removable by it.

(2) *Such combination is without precedent &c.*— In the above discussion we have clearly demonstrated that it is not the proposal of the C. L. Scheme for the combination of an irremovable executive with such a legislature, but the official objection thereto, that is "without any precedent and is contrary to the experience of history."

(i) *Haromony between Executive and Legislature.*

A few words are needed with regard to the official apprehension about the prospect of want of harmony between the executive and the legislature leading to a deadlock. The official idea about establishing harmony is by making the legislature subordinate to the executive. The only plea for it would appear to be that like a spoilt child the Indian executive has never learnt to be submissive to any authority or control. But a legislature subordinate to the executive is the very negation of the first principle of representative Government or good Government. History points out that all the world over the combination of an irremovable executive with representative assembly did and does actually work in harmony for all practical purposes without leading to a deadlock.

(ii) *The higher basis of harmony.*

Now, why should it be otherwise in India? What is the reason for this apprehension? In order to understand this, we must try to understand how the principle of harmony is realised in different forms of Government. In the parliamentary form of Government obtaining in England and France this principle of harmony between the executive and the legislature is realised by making the executive a part of the legislature and subservient to it. In the presidential form of Government obtaining in the United States and Germany, the principle of harmony rests upon a higher basis, inasmuch as the executive and the legislative are independent of each other. This higher basis of harmony between different branches of the Government, is the common object, and the only object which legitimises the existence of Government, namely, the welfare and the good of the people. Now in the United States and Germany, harmony is possible and is actually realised between the executive and the legislature which can not remove it, because both these bodies have the aforesaid ultimate object in view and are actuated by it.

(iii) *Its realisation in India.*

It therefore follows that there need be no apprehension about the want of harmony in India also, if the irremovable executive and the assembly of the representatives of the people both keep this ultimate object in view and are actuated by it. There is no earthly reason why the representatives of the people,—who are identified with the people, who have all political interests in common with the masses, and who live, move and have their being in

the same society to which they belong,—should not keep this ultimate object in view, should not be actuated by it and further should not be amenable to the superior wisdom of officialdom supported by good reasons, in cases of their mistakes through inexperience. Therefore the only factor likely to lead to want of harmony or deadlock will be the executive consisting of alien bureaucrats, if they do not keep in view the ultimate object of the welfare and the good of the people of this country and are not actuated by this object, for interested motives of their own. In such a case the blame would be theirs for leading to a deadlock, and it is quite fair and reasonable for peace, order and good government, that such an executive should be compelled under the system to submit to the representative assembly. The proposals of the C. L. Scheme try to secure this condition in the above way, but the official critics would solve the problem by making the legislature subservient to such an executive. What can be a more monstrous or preposterous idea than this? And to support this preposterous idea they resort to arguments more monstrous still. Throughout the Report will be found passages scattered broad-cast, suggesting that the educated classes in India, who will monopolise the seats in the legislatures, are not the true representatives of the people and will set up a tyranny for their own interest over the masses of the country. Such a statement which is without any precedent or parallel in History, scarcely needs any refutation. It is illogical, inhuman and monstrous. It is the grossest libel on Indian Character that ever appeared in print.

(3) *The combination of an alien Governor with such a legislature is a contrivance for fomenting dissensions and making them perpetual.*—The arguments under the previous heading are quite enough to dispose of this fanciful objection. It is only another illustration of the theory of harmony according to Indian bureaucracy. One only shudders to think if things have really come to such a pass in Britain. Has Great Britain, governing the largest empire in the history of the world, really become so bankrupt in statesmanship and manly character, that she can not find governors for India who will be able to keep in view the welfare and the good of the people, as the object of British rule in this country?

(4) *The combination paralysing the executive &c.* :—The next and the last objection as to the possibility of the combination of an irremovable executive with such a legislature paralysing the executive, is only a further illustration of the theory of harmony according to the authors of the scheme. It is therefore disposed of by the true interpretation given above of the theory of harmony as it is understood all over the the civilised world. Now it is difficult to understand how this condition of paralysis may possibly overtake the executive in India. In the first place, for any emergency there is the ordinance power of the Viceroy which the C. L. Scheme does not propose to take away. In the second place, for the purposes of carrying on administration under normal conditions, the statute book of India is voluminous enough and the armoury of the executive is full of repressive measures

already, for all sorts of conceivable purposes. We are not going to establish a new government with a blank statute book, so that every piece of necessary legislation will have to be carried through a perverse legislature. Nor does the C. L. Scheme propose that all the existing laws should be expunged from the statute book of India and should be re-enacted. Then why this fear of paralysis in season and out of season? It is because of the peculiar theory of harmony; or the fear of a possible want of harmony under certain circumstances, which we have dealt with before.

We have discussed above the possibilities of the refusal of the legislature to pass any law desired by the executive. Now let us take the converse case of the legislature passing disagreeable laws. One wonders how this can be physically possible with three successive vetoes in the case of a provincial law and two successive vetoes in the case of an Act by the Indian Legislative Council. But the authors of the Scheme are not assured by even so many safe-guards and speak of the possibility of Acts being passed with clauses by which the legislature can indirectly assume charge of the administration. The psychology of the official mind is inexplicable. How is it possible that Acts with such clauses should receive the assent of the Governor which is provided for in the C. L. Scheme, or escape disallowance by the Viceroy and that by the Crown within twelve months after the passing of the Act, which is also provided for in the scheme? The Indian Legislatures with elected majorities, have heretofore passed many repressive measures at the instance

of the Executive and it was only fair to expect that such doubts should not have been entertained about their attitude in matters affecting peace, order and good government of the country. On the other hand it is almost certain that such a legislature, having to depend for passing every Bill upon the sweet will of an irremovable executive composed of alien bureaucrats, will have to swallow many a bitter pill, and will have to digest many kinds of disagreeable legislatation, as a compromise for having a simple piece of legislation allowed, that may be urgently needed for such purposes as santitation, education &c.

CHAPTER VII.

POWERS OF THE LEGISLATURE OVER THE EXECUTIVE THROUGH RESOLUTION &C.

Let us now pass on to the next objection of principle about the power of the legislature over the executive through resolutions &c.

(*a*) *The Proposals of the C. L. Scheme.*

The C. L. Scheme proposals on this point are as follows :

(i) *Re. Provincial Legislature.*

(1) "Resolutions on all matters within the purview of the Provincial Government should be allowed for discussion in accordance with rules made in that behalf by the council itself."

(2) A resolution passed by the Provincial Legislative Council shall be binding on the executive Govern-

ment, unless vetoed by the Governor in Council, provided, however, that if the Resolution is again passed by the Council after an interval of not less than one year, it must be given effect to.

(ii) *Re. Imperial Legislative Council.*

(1) Identical with No. (2) above.

(2) The Imperial Legislative Council shall have no power to interfere with the Government of India's direction of the military affairs and the foreign and political relations of India, including the declaration of war, the making of peace, and the entering into treatities.

(*b*) *A Fundamental Principle of Constitutional Goverument.*

The above proposals of the C. L. Scheme are based upon a fundamental principle recognised in the constitution of all progressive states that the legislature should have some direct control over the administration with a view to keep it within the law and to remedy special administrative abuses.

"In all countries the action of the executive is subject to the control of the legislature. In the first place, the legislature has the power to lay down norms in accordance with which the executive is to act. Further, besides regulating the action of the administration, the legislature exercises in all countries a direct control over the administration to keep it within the law." Goodnow, "Administrative Law" vol. I pp. 31, 33.

This power of direct control exercised by the legislature over the executive is termed "Parliamentary or Legislative Control."

The above proposals of the C. L. Scheme only lay down a particular method in which this legislative control is to be exercised by the Indian Legislatures, this power being an essential attribute of all modern legislatures. But the authors of the report charactarise these proposals as " without any precedent " and " fatal to good government." It is therefore necessary to deal in some details with the history of the legislative control and its modern developments.

(c) *History of Legislative Control.*

" The history of the legislative or parliamentary control must be studied in the history of English institutions, since England developed the modern legislative body. In the historical sketch that has been given of the English administrative organisation, it was seen that there gradually developed by the side of the absolute Norman king a body composed...finally of the representatives of the entire population of the kingdom. One of the most important functions of this body, the Parliament, was from the earliest times to redress grievances. Even so late as the latter part of the middle ages much of the time of the Parliament, was taken up in the discharge of this function. The grievances which the Parliament sought to redress, not only were notable abuses in the government but were found *in the most minute details of the government.* Indeed, at first the main means of controlling the administration, not only in the interest of society at large, *but also in that of individual right*, was to be found in this parliamentary control. As a result of the Government of Stuart kings

two facts, however, became apparent. The first was that the party conflicts which are so apt to arise in Parliament made it an improper authority for the exercise of such an extended control; the second was that the Parliamentary control was altogether insufficient for the protection of individual rights against an arbitrary and corrupt administration."

(i) *As modified by local autonomy and judicial control.*

"These defects in the system of control over the administration were remedied by increasing the independence of the local organs and of the Courts, and the consequent increase of the Judicial control over the administration. The Parliamentary or legislative control was in this way reduced to the position of a subsidiary but at the same time a necessary control. The general redress of grievances was therefore made by the Courts, and Parliament redressed only grievances of an extraordinary character.....At the same time Parliament began to exercise control over administration in other directions. Thus it began to specify in its appropriation acts the purposed for which money might be spent by the administration.

(ii) *As modified by complete control over the budget.*

The spending of money had been before 1676 altogether an affair of the Royal prerogative with which the Parliament had not interfered. But it was led to assume this power as a result of the wasteful administration of the kings and as a result of the fact that through this power it could exercise a very efficient control over the general policy of the executive. Fur-

ther, in order that this power might be of any value it was necessary for the Parliament to assure itself in some way that the administration had conformed in its actions to the provisions of the appropriation acts. It therefore, somewhat later, began to examine the accounts of the administration. Again while the Parliament still retained its former power of impeaching the ministers of *the Crown in case of their continued and wilful disobedience of the* resolution of Parliament and violation of the law of the land, it added very much to its powers of control by insisting that the ministers of the Crown should be such persons as could obtain and retain the confidence of Parliament. The result of the development of this principle of the responsibility of the Ministers led to a further increase of the control of the Parliament, which is not capable of exact juristic determination, and which has practically resulted in the abandonment of the power of impeachment.

(iii) *Present form.*

"*The formerly all-embracing Parliamentary control* has been reduced thus practically to the exercise of three powers, which are largely subsidiary to the other methods of control. These three powers are first, the power to remedy special abuses in the interest of the social well-being by entertaining propositions *de lege ferenda* and by investigating the conduct of the administration; second, the power of controlling the general policy of the administration through the voting of the appropriation and the examinations of the accounts of the administration after the execution of the budget, in

order to see whether the provision of the appropriation acts have been observed ; and third, in the extraordinary power of impeachment, to be made use of only when all else fails to bring the administration within the bounds of the law. This power is supplemented by the principle of the responsibility of the ministers to Parliaments and is largely replaced in actual practice by that principle."

Goodnow " Administrative Law " Vol. II pp. 262—265.

(*d*) *Development of Legislative Control in England.*

If we analyse the above sketch, the development of the legislative control in England may be divided into the following stages :—

I.—FIRST STAGE.

(*a*) *General political condition of the country :—*

(1) No popular control over local administration, (2) No independent judiciary, (3) Parliamentary control over taxation but not over budget appropriation, (4) No Ministerial responsibility to Parliament.

(*b*) *Forms of legislative control.*

The Parliamentary control is all-embracing. (1) One of its most important functions is to redress grievances not only notable abuses in the Government, but also found in the most minute details of Government, not only in the interest of society at large but also in that of individual rights. (2) Impeachment of ministers.

II.—SECOND STAGE.

(*a*) *General political condition.*

(1) Increased popular control over local adminis-

tration, (2) Independent Judiciary, (3) Complete Parliamentary control over finance, (4) No ministerial responsibility.

(*b*) *Forms of legislative control.*

Legislative control reduced to the position of a subsidiary but necessary control. (1) The general redress of grievances is made by Courts and Parliament redresses only grievances of an extraordinary character. (2) Petitions for redress of grievances from this time on took on the character more of propositions *de lege-ferenda*. (3) Impeachment of Ministers.

III.—THIRD STAGE.

(*a*) *General political condition.*

(1) Popular control over local administration, (2) Independent Judiciary, (3) Control of Legislature over Finance, (4) Ministerial responsibility to Parliament.

(*b*) *Forms of legislative control.*

Through the exercise of three powers:—

(1) The power to remedy special abuses in the interest of the social well-being by entertaining proposition *de lege ferenda*, and by investigating the conduct of the administration, (2) the power of controlling the general policy of the administration through the voting of appropriations and examinations of accounts after execution of budget, (3) the power of impeachment to be made use of when all else fails to bring the administration within the bounds of law, this power being largely replaced in practice by the principle of the responsibility of ministers to the Parliament.'

IV.—Later Developments.

"Since the passage of the reform bill of 1867, however, the House of Commons has shown a disposition to encroach more and more upon the sphere of Government. *It regards any matter as the proper object for its censure. Resolution after resolution* is proposed with the object of expressing the disapproval of Parliament of some particular administrative practice or measure, and if the result of such a resolution is the disapproval of Parliament, according to May, "Ministers must conform to its opinion or forfeit its confidence." Many of the precedents cited by Mr. Todd (in his "Parliamentary Government in England") go however to show that Parliament does not always in unimportant matters, even in the case of its disapproval, go so far as to force the ministry to resign or even to conform to its views." (Note.—This explains the fate of the resolution of the House of Commons approving of simultaneous Civil Service examination in India quoted with great relish in paragraph 169 of the Report.)

"Of late years it has become a common practice for Parliament to appoint what are known as select committee for the purpose both of acquiring information with a view to legislation and of examination into the constitution and management of the various departments" Ibid, pp. 273-274.

(e) *If resolutions of Parlinment bind the Ministry.*

In para. 169 of the Report we find that "it is not in accordance with modern English constitutional practice that resolutions of the assembly as distinct from laws

should bind the executive." And again "in practice the Government decides whether the house intends the resolution to be taken seriously and is prepared to enforce it by any of the other means open to it of making its will felt." The meaning of the second passage is rather obscure. It either supports the first passage about the general practice or contradicts it. However that may be, the extracts given above from Goodnow, who is a great American authority on the subject, supported by the quotation from May, the greatest authority on Parliamentary practice, establishes in clear terms the proposition that resolutions are moved and passed in the House of Commons expressing disapproval and that it is not the Government but the House that decides whether the ministry should be forced to resign or to conform to its views. This view of the question is conceded towards the end of the para. 169 of the Report. But the general impression which is left in the mind of the reader is quite otherwise on account of the round-about way in which various statements have been made, and specially when reference is made to the marginal note "proposals without precedent."

(*f*) *Time of Parliament spent in discussing Resolutions.*

In this connection it will be interesting to refer to the table showing the amount of time spent on the routine work of the sessions 1904-1908 by the House of Commons, given in "An Analysis of the system of Government throughout the British Empire" published by McMillan & Co., Ld., London.

Notices of motion.	Average No. of days per year.
Address	9·1
Adjournments under S. O. 10 ...	2·6
Private members' motions ...	9·2
Adjournments (Easter, Whit Sun-tide, &c.)	2·1
Declaratory resolutions, votes of consure &c.	3·1

The total under the head of notices of motion thus comes to 26 days out of 139·2 working days per year.

The time of the House was occupied by business under three heads in the following manner—

(1) Legislation	...	70·9 days
(2) Finance	...	39·8 „
(3) Motions	...	26·1 „
TOTAL	...	136·8 „

2·4 days being shown in the table as days unavailable for business.

Thus it is quite clear that one of the main items of business of the Parliament is discussion of resolutions, by whatever conventional names these may be described. The above analysis of business further shows how the House is occupied during the year in exercising its three great powers (i) over legislation (2) over Finance & (3) over general administration.

It may be hoped that the above discussion will leave no doubt in the mind of any unbiassed reader, that the proposals of the C. L. Scheme in regard to the exercise

of control by legislature over the executive through resolutions is certainly not without precedent so far as England is concerned.

(g) *Legislative Control in other countries.*

It may be accepted without any further authority that this English practice hss been adopted by other countries, also, where representative government exists, as English Institutions were the model for these. However the following quotations from Goodnow will settle all doubts about it :—

"*The power of the legislature to remedy special administrative abuse* :—The exercise of this power may result from petitions which have been sent to the legislature by individuals. For almost all constitutions guarantee to the individual the right to address petitions to the government, and the legislature is the place where most of such petitions go. *The legislature may further act of its own motion as it is generally on the watch for administrative abuses.* The means of exercising this control are the resolutions condemnatory of the administration, the putting of question or interpellation to the administration, and, in case, satisfactory answer is not made by the administration, the undertaking on the part of the legislature, through committees appointed by it, of investigations which may have in view either the unearthing of abuses which have been suspected, or obtaining information *de lege ferenda*." Vol. II, p. 266.

(*h*) *Then forms of legislative control.*

From the above, we find that in general the legislative control is exercised in three forms or ways.

(1) Resolutions condemnatory of the administration.

(2) Interpellation or putting of questions to the administration.

(3) Appointment of select committees for investigations having in view either the unearthing of abuses suspected or obtaining information *de lege ferenda*.

"In the United States and Germany this control is exercised in all the ways which have been mentioned. In Germany it is, however, more efficient than in the United States." Ibid Vol. II, p. 267.

"The rules of the Reichstag (representative assembly of the German Empire) provide for interpellations..... In form, therefore, interpellations are adressed to the Bundesrath, but in fact they are communicated to the Chancellor, who usually answers himself, or allows one of his subordinates to do so. A debate may ensue if demanded by fifty members, but it is not followed by an order of the day expressing the opinion of the House and, indeed, interpellations have no such importance as in France and Italy, because the parliamentary form does not exist, that is, the Chancellor does not resign on an adverse vote of the Reichstag, nor does he feel obliged to conform to its wishes."

"A resolution can of course be moved in accordance with the ordinary rules of procedure, and this was done on the occasion of the expulsion of the Poles in January 1886." Lowell Vol. I, p. 258.

"In neither Germany nor in the United States do resolutions condemnatory of the administration have any political or legal effect, though in both countries the legislature has the right to pass such resolutions.

All the control that the legislature can exercise over the administrations in the United States and Germany, other than the moral one just alluded to, is to be found in the powers of standing committees which from time to time may be appointed. In the United States there is usually one such standing commitee for each administrative department. The main function of such administrative committee is to scrutinize carefully the way in which the business of the particular department is transacted." Goodnow Vol. II, p. 268.

(*i*) *A fourth form where executive not removable by legislature.*

From the above we see that in the United States and Germany where the executive is irremovable by the legislature, the legislature exercises its direct control over the administration through resolutions. In England and France where the ministry is responsible to the legislature, such resolutions condemnatory of the administration result in the resignation of the ministry. Therefore, in this sense, the resolutions passed by the legislatures of the United States and Germany have not the legal or the political effect of the resolutions of the legislatures of France and England. To supplement this weakness of the form of legislative control through resolutions, we find a fourth form of control in the appointment of standing committees for scrutinising carefully the way in which the business of the administrative departments is transacted.

So we see that legislative control over administration is exercised in four forms :

(1) Resolutions. (2) Interpellations. (3) Appointment of committees of investigation. (4) Appointment of standing committees in connection with administrative departments,—the first three in all countries, the fourth in countries where the ministry is not responsible to the legislature.

We have further seen that the object of interpellations is primarily to obtain information about administrative abuses and this may lead to the passing of a resolution condemnatory of the administration. The resolutions may be condemnatory or for the appointment of a committee of investigation. In some States in America these committees have, "Full power to punish witnesses for contempt who refuse to answer questions put to them. But even if the legislature does not possess this power, still as a matter of fact the officers of the administration will usually comply with the summons of investigating committees of the legislature and will answer all reasonable questions put to them since "desiring legislation and always desiring money (they have) strong motives for keeping on good terms with those who control legislation and the purse."

"It would seem that the German law recognises as belonging to the legislature a similar control over the administration through the appointment of investigating committees." Goodnow Vol. II, pp. 270,271.

(j) *Different kinds of control by legislature over the executive.*

We have tried to explain above the necessity of legislative control over the executive, the recognition

of this principle in the most advanced States, and the forms in which they are exercised, as also the manner in which its various forms are rendered effective under different constitutions. We have also explained above how one of the universally-recognised forms of control is by "Resolutions" of the legislatures ; and also how these resolutions are condemnatory or for appointment of committees of investigation. It will also appear from the above discussion that the conditions for rendering this control effective in constitutions where the ministry is not removable by the legislature are :

(1) Complete control of the legislature over Finance, through power over taxation, appropriation and examination of accounts.

(2) Control of the legislature over legislation in the sense that no law can be passed except with its consent.

(3) Standing committees for carefully scrutinising the way in which business is conducted by administrative departments.

(4) Interpellations.

(5) Resolutions.

(6) Committees of investigation appointed by resolutions.

(*k*) *Necessity of and relation between different kinds of control.*

It is to be noted that the first two conditions are essentially necessary to render the executive amenable to the influence of the legislature and to give the legislature a control over the general policy of administration, and that the last four conditions render the con-

trol of the legislature effective over the details of administration with a view to remedy special administrative abuses. If the first two conditions are absent, then the representative assembly has no control over the general policy of administration, and there is not even the beginning of representative government. Without these conditions the last four forms of control lose their real significance and effect. When the first two conditions are present, then the last four conditions are necessary to render the control of the legislature effective over the details of administration and to remedy special administrative abuses. When these last four conditions are also present we have representative government in a complete form.

(*l*) *C. L. proposal of legislative control an essential feature of representative government.*

The Congress-League Scheme is essentially a scheme for representative Government. Its demand falls short of responsible Government in as much as it does not go to the length of asking for the appointment and removal of the ministry according to the wishes of the majority of the represantative assembly. The essential feature of responsible government is this power of the legislature over the ministry. It is in this sense only that responsible government is a more complete from of Self-Government than representative government. It therefore follows that responsible Government is representative government and something more than this, having a legislature with power over the appointment and removal of the ministry. The official Reform scheme

proposes to give some elements of responsible government at once. Is it not, therefore, quite logical that under this scheme, representative government in its complete form should be at once granted, and something more besides, towards giving the legislature power over the appointment and removal of the ministry? A step beyond representative government is promised and how can this promise be fulfilled unless the condition precedent, namely, complete representative government is established first? Is it not therefore to be expected that the proposals of the C. L. Scheme, so far as they are compatible with the essential features of representative govenment, should have been conceded without any demur?

But as we have said before the psychology of the official mind is inexplicable. Far from conceding without demur, the official critics have objected to every essential principle upon which the Congress-League Scheme is based. The three fundamental principles for which the C. L. Scheme stands are the powers of the representative assembly (1) over finance (2) over legislation (3) over administration directly through resolutions. In the two previous sections we have dealt more fully with the first two principles and we have established that these two are essential principles of a representative form of government. In the present section we have shown, how, besides these two principles a third principle must also be recognised to make representative government complete, by giving the legislature a direct control over the administration exercised in certain forms such as resolution &c.

(m) *The underlying principle of criticism—independence of executive of all kinds of control.*

It is unnecessary to deal with the various specific objections taken in the Report to this essential principle of the C. L. Scheme, as these are mostly disposed of by the general discussions in connection with Financial Power and Legislative Power. But before we conclude this section we must discuss certain general aspects in regard to the nature of the official criticism.

Para 170 of the Report, contains the following staatements:

"If we compel the executive to carry out instructions from the legislature, we bring the Government to an end by destroying its right of action. No Government can consent to remain in office and to put into effect orders of which it disapproves."

In essence the above objection is based upon the peculiar official theory about harmony and good government which, in its complete form as developed hereto, may be stated thus: that the executive must have power to raise money and to lay it out as it pleases; the executive must have power to pass what laws it pleases; and, lastly the executive in the exercise of these powers must be allowed to do as it pleases without any control or check from the legislature. This theory is the very negation of the first principles of representative government, and has been fully discussed before.

(n) *Proper scope of resolutions.*

In form the present objection has got a plausible appearance owing the fact that the C. L. Scheme does

not define the nature and scope of the resolutions. This has given the loop-hole to the official critics. It is a common tactics in polemics to ascribe to your opponent the motives which he did not entertain and then to attack him violently for these. This is what the official criticism does. It first ascribes the widest and the most absurd meaning to the proposals of the Scheme about the resolutions which the framers of the Scheme could never have intended, and then it proceeds to expose the absurdity of such motives by queer arguments.

When the C. L. Scheme omits to define the exact scope and nature of the resolutions, it would have been only fair and just to interpret these according to the constitutional practice in England or elsewhere. But this the official critics could not afford to do, for then they would have no case at all. Therefore, with a view to make out a case against the C. L. Scheme, they have to ascribe to these proposals all sorts of unjust and absurd intentions.

We have seen above that, according to constitutional practice, resolutions in the first place are condemnatory of the administation and that in constitutions where the ministry is not removable, these resolutions do not and cannot lead to the resignation of the ministry. So far there can be no objection to the proposals of the C. L. Scheme. In the second place, we have seen that by resolutions special committees for investigation may be appointed either for obtaining information *de lege ferenda* or for inquiring into any special administrative abuse. How can there be any objections to this even?

But the passages, quoted above, from the Report

would seem to suggest that these resolutions are intended to make the government impossible and to "bring it to an end by destroying its right of action." How can this be effected in all human possibilities? Is it to be supposed that by resolutions the Indian Legislatures will effect the dismissal of the Viceroy and Governors or their ministers? Or is it to be supposed that by resolutions the legislatures will suspend the operation of the standing laws of the country? These interpretations are too absurd to be entertained by any body.

It is quite clear that the resolutions must be confined to particular administrative acts or measures which are in the nature of abuse of authority or of discretionary power. Even then there is a further limitation imposed by constitutional practice and common sense alike, that no resolutions can have the effect of going against any standing law or exceeding the constitutional power of the legislature. Take for instance the case of a District Magistrate who, in the opinion of the legislature, has been guilty of gross abuse of power. The legislature may pass a resolution condemnatory of his conduct, may even appoint a committee to investigate the charges against him. But, certainly the legislature can not pass a resolution binding the executive to dismiss the District Magistrate, if under its constitution, it has not the power of appointment and dismissal of district officers. Such a resolution, by its very nature exceeding the constitutional power of the legislature, will have the effect of a recommendation only. The Indian legislatures cannot be sovereign legislatures of the type of the British Parliament but will only be authorities of

enumerated powers, exercising such powers as are granted to them by Parliamentary Statutes. These limitations also could not have been unknown to the great official critics.

What can then be the reason for the vehement protestations against the C. L. Scheme on this point, covering four paragraphs of the Report? The objections then, under the circumstances, must be taken to be really directed against the normal powers possessed by every legislature to pass binding resolutions against the administrations within the limits laid down by their constitution. If they are to be denied even these normal powers, then, what is the good of creating these shams?

If any government is to be made representative, the legislature must be given the three essential powers demanded by the C. L. Scheme. The legislature must have complete control over finance, it must have control over legislation subject to veto, and further, it must have some direct control over administration, through resolutions etc. And we have demonstrated it clearly that according to the British constitutional practice with regard to the meaning and the grant of responsible government, this is something more than representative government and is only granted after the latter form is first established.

(o) *A general impression of the criticism.*

After having reviewed the main objections of principle to the proposals of the C. L. Scheme with regard to the three essential features of representative government, which is the limit of its demand, one

cannot but give expression to a most painful feeling of disappointment at the nature of the criticism levelled against it. We have seen that in connection with each of these three great principles, it is not the C. L. Scheme, but the official criticism that is essentially unsound and opposed to all precedents and teachings of History. The criticism, thus, leaves a painful impression in the mind, because, all the time that we analyse and expose its hollowness, we are conscious that we are not dealing with the arguments of an opponent before an impartial tribunal, but with the decisive opinion expressed by the Judges themselves, against whose decision there is no further appeal. It leaves a feeling of disappointment in the mind, when we see that in addition to bad logic, our official crities are proclaiming to the world that they are going to give us much more than the C. L. Scheme demands, although they are not really giving us even what we demand in this scheme. And this feeling of disappointment grows more and more bitter when we see the jubilations around us, and the wild dances of joy and the flourishes of trumpets with which the official scheme is being hailed by some of our own country men.

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