incompatible with a Federal form of Government. It must be borne in mind that as a nation may be found in being, so also a nation, may be brought into being. In a Federal Government there may be at the start no nation, it may be a collection of heterogeneous communities. But it is possible to have in the end a nation even under a Federal Government. The most striking case is that of the United States of America. Mr. Bryce relates a story which is both interesting as well as instructive. This is the story and I give it in his own words. "Some years ago the American Protestant Episcopal Church was occupied at its triennial Convention in revising its liturgy. It was thought desirable to introduce among the short sentence a prayer for the whole people; and an eminent New England Divine proposed the words, 'O Lord, bless our nation'. Accepted one afternoon on the spur of the moment, the sentence was brought up next day for reconsideration, when so many objections were raised by the laity to the word 'nation', as importing too definite a recognition of national unity, that it was dropped, and instead there were adopted the words, 'O Lord, bless these United States.' Notwithstanding this prayer to the Lord, notwithstanding the reluctance to encourage the idea of a nation over against the idea of the states and notwithstanding the federal form oi Government the United States is a nation. That it is a nation in the social sense of the word is incontrovertible."

How has this happened in the United States ? Can we hope to see this happen in India under the Federal Scheme ? Bryce explains how this happened in America. He points out that in America "The Central or National Government is not a mere league, for it does not wholly depend on the component Communities which we call the States. It is itself a Commonwealth as well as a Union of Commonwealths, because it claims directly the obedience of every citizen, and acts immediately upon him through its Courts and executive officers". It can tax him, make law for him and judge him. In short it is the process of Government which is responsible largely if not wholly for moulding the Americans into a nation and that this was possible because in the Federal Form of Government of the United States there is a direct contact between the National Government and the individual.

Is this possible under the Indian Federal Scheme ? My answer is that such a thing is not possible. The people in the Indian States remain the subjects of the States. The Federal Government cannot deal with them directly. Everything has to be done through the State. There is no contact between the two, not even for purposes of taxation. How can a feeling that they belong to the national Government grow in the subject of the Indian States if they are excluded from any and every influence and are not even made to feel the existence of the National Government ? I am afraid this United States of India will not be more than a mere body

of United States. It has no potentiality of forging a nation out of these States and probably the framers of the Scheme have had no such intention at all.

2. Democratization of Autocracies

The other advantage of the Federal Scheme which is claimed by its protagonists is that it brings beneath the dome of a single political edifice the new democracies of British India and the ancient autocracies of the Indian States and that by bringing the two under one edifice it provides contact between democracy and autocracy and thus enables the democracy in British India to democratize the autocracies in the Indian States. To examine this argument and to see how much force there is behind it, it is well to note that the Indian States and the British Indian Provinces are geographically contiguous. There is regular intercourse between them. The people of British India and those of the Indian States racially, linguistically and culturally form parts of one whole. With all these contacts and with all the unity of race, religion, language and culture British India has not been able to influence at all the forms of government which are prevalent in the Indian States. On the contrary while British India has advanced from autocracy to democracy, the Indian States have remained what they were with their fixed form of government. Unless therefore there is something special in the Act itself which enables British India to exercise its influence on the Indian States through the legislature and through the executive, this argument can have no substance at all. Is there anything in the Act which gives British India power to influence the States ? In this connection reference may be made to section 34(*1*) which deals with the procedure in the legislature with respect to the discussion and voting of the Budget estimates.

From an examination of this Section it will be clear that the estimates relating to para (*a*) and para (*f*) of sub-section (*3*) of section 33 cannot even be discussed by the Federal legislature. Para (*a*) of sub-section (*3*) refers to the salary and allowances of the Governor-General and other expenditure relating to his office for which estimate is required to be made by Orders in Council, and para (*f*) relates to the sums payable to His Majesty under this Act out of the revenue of the Federation in respect of the expenses incurred in discharging the functions of the Crown in its relations with the Indian States. Another section which has a bearing upon this point is Section 38. Section 33 is a section which deals with the making of the rules by the Federal legislature for regulating its procedure in the conduct of its business. While this section permits the Federal legislature to make its own rules it allows the Governor-General to make rules —

(*c*) or prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter with

respect to which the Federal legislature has power to make laws for the State, unless the Governor-General in his discretion is satisfied that the matter affects Federal interest or affects a British subject and has given his consent to the matter being discussed or the question being asked ;

(*d*) For prohibiting —

(*i*) the discussion of, or the asking of questions on, any matter connected with relations between His Majesty or the Governor-General and any foreign State or Prince ; or

(*ii*) the discussion, except in relation to estimates of expenditure of, or the asking of questions on, any matter connected with the tribal area or the administration of any excluded area; or

(*iii*) the discussion of, or the asking of questions on, the personal conduct of the ruler of any Indian State, or of a member of the ruling family thereof;

and the section further provides that if and so far as any rule so made by the Governor-General is inconsistent with any rules made by the Chamber, the rules made by the Governor-General shall prevail.

Another section having a bearing on this point is section 40. It says: "No discussion shall take place in the Federal legislature with respect to the conduct of any judge of the Federal Court or a High Court in the discharge of his duties and provides that in this sub-section the reference to a High Court shall be construed as including a reference to any court in a Federated State which is a High Court for any of the purposes of Part 9 of this Act." Similar provisions are contained in that part of the Act which relates to the constitution of the provincial legislatures. Section 84 is a counterpart of section 38 and prevents any member of a Provincial legislature from asking any question with regard to the personal conduct of the ruler of any Indian State or the affairs of a State. Section 86 is a counterpart of section 40.

Now it is obvious that the two most important ways open to a Legislature for influencing the conduct of the administration is by discussion of the Budget and by asking questions. The discussions on the budget had its origin in the theory which postulates that there can be no supply given to the executive unless the grievances of the people were redressed. The slogan of democracy has been : Redress of grievances before supplies of moneys. The discussion on the budget is the one opportunity of placing the grievances of a people before the executive. It is therefore a very valid privilege, as will be seen from section 34, the legislature is prevented but from placing the grievances of the subjects of the States before the executive on the floor of the House. Similarly, the right to interrogate and ask questions

is also valid privilege, but that also is denied. The right to criticise on a proper motion the conduct of the judiciary is always open to the legislature, but that also has been excluded. It is difficult to see exactly in what way the Federal legislature could influence the internal administration of the Indian States. Not only the representatives of British India are prevented from asking any question or moving any resolution with regard to the internal administration of the States, but the same disability is imposed upon the representatives of the States themselves who are the victims of this maladministration.

Compare with this the influence which the Federated States are in a position to exercise over British India.

In the first place there is no restriction on the representatives of the Federated States in the matter of asking any question or raising any matter in the Federal Legislature. The fact that the question or matter touches British India and relates to internal administration of British India is not a bar against the representatives of the Federated States from raising such an issue.

Secondly, there is no restraint upon the representatives of the Federated States in the matter of discussing and voting upon the financial proposals of the Federal Government. The fact that any such proposal affects British India only and does not affect the States can cause no legal impediment in their way.

Thirdly, in the matter of Legislation the Representatives of the Federated States are free to vote upon any measure brought before the Federal Legislature. There are two lists over which the legislative authority of the Federation extends—The Federal list and the Concurrent list. The provinces are wholly bound by the Federal List. A Federated State is not wholly bound by it. The provinces are wholly bound by the concurrent list. A Federated State may not be bound at all. Yet the State represenatives have a right to vote upon any measure falling under either of the two lists. In other words the Federal Scheme gives the States the right to legislate for British India, while British India gets no such right to legislate for the States except to the extent to which the States choose to subject themselves to these two legislative lists.

The scope of this Legislative influence by the States over British India is by no means small nor is it inconsequential. To Confine to the Concurrent list only, it includes 36 subjects. Among the 36 are such subjects as, Criminal Law, Criminal and Civil Procedure, Professions, Newspapers, Books and Printing Press etc. It is clear that these subjects are vital subjects. They affect the liberties of the people in the Provinces. Now as the States have a right to participate and vote upon all legislation within the Concurrent list, the Indian States will have the right and the authority to pass legislation affecting the rights, privileges and liberties of British Indians in the Provinces.

Further in the Legislative sphere, so far as it relates to the Concurrent List the States have obtained authority without any obligation. They are free to legislate and need not consider their own case in doing so because they are not bound, by the laws they make. Their conduct can be as irresponsible as they may choose to make it.

It is however an understatement to say that the States have only a right to influence administration and Legislation in British India. The truth is that the States can dominate British India because they can maintain in office a ministry in the Federal Government although it is defeated by a majority of the representatives of British India on a matter purely affecting India. This is because they have a right to vote upon any motion including a non-confidence motion irrespective of the question whether the motion relates to a matter which affects them or not If this does not vest control over British India in Indian States I wonder what will.

The injustice and anomaly of the States taking part in the discussions of the internal affairs of British India while the representatives of British India having no corresponding right to discuss the affairs of the States was sought to be remedied by limiting the rights of the States to discuss and vote upon such questions as did not relate to internal affairs of British India, but the Princes and their representatives have always been against such distinction being drawn and they insisted that on any matter on which the fate of the Ministry depended they must have the right to decide upon the future of that Government. The constitution has given effect to the point of view of the Princes and set aside the point of view of British India.

This comparison shows that the States are placed by law in a position to control the affairs of British India and by the same law British India is disabled from exercising any influence over the States. That this is the true state of facts must be admitted by all. In other words the Federal Scheme does not help, indeed hinders British India from setting up in motion processes which would result in the democratisation of the Indian States. On the other hand it helps the Indian States to destroy democracy in British India.

3. Federation and Responsibility

Let us examine the plea of Responsibility. From the stand-point of British India it is of more decisive importance than the two other pleas and must be scrutinized more carefully.

It cannot be denied that the Federation has some degree of responsibility. The question is what is the degree of that responsibility and whether within its sphere it is a responsibility which can be called real.

Let us ask, how much responsibility is there in this Federation ? To be able to answer this question, you should read sections 9 and 11 together,

By reading them together you will get an idea of the extent of this responsibility. According to these two sections the field of Governmental Authority is divided into two categories. In one category are put four subjects (1) Defence, (2) Ecclesiastical affairs, (3) External affairs, and (4) the Administration of Tribal Areas. The rest of the subjects within the executive authority of the Federation are put in another and a separate category. The executive authority for both these categories is vested in the Governor-General. But a distinction is made between them in the matter of Governmental Authority. The Governmental Authority in respect of the four subjects falling in the first category is under the Act the Governor-General in his discretion. The Governmental Authority in respect of the rest of the subjects put in the second category is under the Act, the Governor-General acting on the advice of the Minister. In the case of the first four subjects the Government is not responsible to the Legislature, because the Governor-General in whom the Governmental Authority in respect of these four subjects is vested is not removable by the legislature. In the case of the rest of the subjects the Government is responsible to the Legislature, because the ministers on whose advice the Governmental Authority is exercisable are removable by the Legislature. The responsiblity in the Federal scheme is therefore a case of limited responsibility. The responsibility does not extend to Defence and Foreign Affairs which after all are the most important subjects from social, political and financial point of view. The scheme has a close resemblance to dyarchy with the division of subjects into Reserved and Transferred such as was the basis of the Montagu-Chelmsford Reforms, which was embodied in the Provincial Constitution under the Government of India Act of 1919. The scheme of resposibility in the Federal Constitution under the Act of 1935 is an exact replica of the scheme of responsibility in the Provincial Constitution under the Act of 1919.

Is this responsibility real ? My answer is in the negative. I will give you my reasons. Firstly the field of responsibility besides being limited is not a free field of activity for ministers. To realize how fettered this limited field of responsibility is, we must note certain restraints which have been imposed upon the powers of the Ministers when acting in the field of responsibility.

The first set of restraints imposed upon the authority of the Ministers when acting in the field of responsibility arises from what are called the special responsibilities of the Governor-General.

There exist another set of restraints on the authority of the Ministers while exercising the Governmental Authority in respect of transferred subjects. To understand this you must understand one special feature of this Federal constitution. The constitution classifies subjects from the stand-point of

Governmental Authority and that this classification has resulted in that division of subjects which for brevity's sake may be designated as Transferred and Reserved. The Constitution does not stop here. It goes further and proceeds to divide the category of Transferred subjects into two classes. (1) subjects over which the Ministers' Governmental Authority carries with it administrative control and (2) subjects over which the Governmental Authority of Ministers does not carry with it administrative control. As an illustration of this classification may be mentioned the case of Railways. Railways are a transferred subject. The Governmental Authority of the Ministers extends to Railways. But the Ministers have no right to exercise any administrative control over the Railways. The administrative control over Railways is vested in what is called the Railway Authority. The distinction between Governmental Authority with Administrative Control and Governmental Authority without administrative control is not a distinction without difference. On the other hand the difference between the two positions is very real. That difference is made clear in sub-clause (2) of section 181 in the matter of Railways. That distinction is the distinction between authority to lay down a policy and competency to act. It is for those who plead for this Federation to say whether there is reality of responsibility in a Scheme of Government where there is a divorce between competence to act and authority to lay down policy.

Two things are clear in regard to this Responsibility in the Federal Scheme. First is that this responsibility is limited in its ambit. Secondly it is not real because it is fettered by the restraints arising from the special responsibilities of the Governor-General and from the withdrawal from the Ministers Governmental Authority of their competence to act in certain subjects such as the Railways, although they are Transferred subjects.

I have stated that the system of responsibility in the Federal Scheme resembles the system of dyarchy introduced into the provinces under the Act of 1919. But if the Scheme of responsibility in the Federation was compared with the system of dyarchy introduced into the Provinces it will be found that the former is designed to yield less responsibility than the latter. There are two things introduced in the Federal Scheme which were not to be found in the dyarchy in the Provinces and there existed one thing in the dyarchy which is absent in the Federation. The presence of the two and the absence of one makes this dyarchy in the Federation worse than the dyarchy in the Provinces.

Of the two things that are new in the Federal Scheme one is the principle of special responsibilities of the Governor-General in respect of the Transferred field and the other is the separation between Governmental Authority from administrative control in respect of matters falling within the Transferred field. These two are new things and did not exist in the dyarchical constitution in the provinces.

It may be said that the special responsibilities of the Governor-General is simply another name for the Veto power, that is the power to overrule the Ministers and that even in the English Constitution the King has such a Veto power. On the face of it, this view of special responsibilities of the Governor-General appears to be correct. But in reality it involves a misconception of the conditions and circumstances under which the King's Veto power can be exercised.

To my knowledge no one has explained the relationship of the King and his Ministers in a system of responsible Government better than Macaulay. To use his language—

> "In England the King cannot exercise his Veto power unless there is some Minister to take responsibility for the King's act. If there is no Minister to take responsibility the King must yield, fight, or abdicate." The Governor-General stands in a different position. He need not yield. He can act even if there is no Minister to take responsibility for his act. That is the difference between the King's Veto and the Veto of the Governor-General. What is however more important to note is that this Veto power exists in respect of the Transferred field. In the dyarchical constitution in the Provinces the Transferred field was not subject to such a Veto power of the Governor. In other words there were no special responsibilities of the Governor. If the Governor-General can overrule Ministers even in the Transferred field, question is what substance is there in Ministerial responsibility. I see very little.
>
> The second thing which is new is the separation between Governmental Authority and administrative control. Such a provision did not exist in the dyarchical constitution in the Provinces. In the dyarchical constitution of the Provinces when a subject was transferred both Governmental Authority as well as Administrative control was transferred to the Minister. You will ask yourself what substance is there in Ministerial responsibility if a Minister can only issue directions and cannot control the action taken thereunder ? I see very little.

The provision which existed in the dyarchical constitution of the Provinces and which has been omitted from the Federal Constitution relates to the financing of the Reserved subjects. Section 72D of the old Act of 1919 and sections 33 and 34 of the present Act may be usefully compared in this connection. Section 72D, sub-section (*2*) reads as follows:

> "The estimates of annual expenditure and revenue of the Province shall be laid in the form of a statement before the Council in each year, and the proposals of the local Government for the appropriation of provincial revenues and other moneys in any year shall be submitted to the vote of the Council in the form of demands for grants. The Council may assent, or refuse its assent, to a demand, or may reduce the amount therein referred to, either by a reduction of any of the items of expenditure

of which the grant is composed." Compare with this section 34 of the present Act of 1935 ; sub-section (*1*) of section 34 reads as follows:

> "So much of the estimates of expenditure as relates to expenditure charged upon the revenues of the Federation shall not be submitted to the vote of the Legislature, but nothing in this sub-section shall be construed as preventing the discussion in either chamber of the Legislature of any of these estimates other than estimates relating to expenditure referred to in paragraph (*a*) or paragraph (*f*) of sub-section (*3*) of section 33."

According to section 33 expenditure charged on the revenues of the Federation includes expenditure on the reserved subjects. On a comparison between the provisions of the two Acts, it is clear that under the old Act no distinctions were made by section 72D between Transferred and Reserved subjects, so far as the powers of the Legislature in regard to the granting of supply were concerned and the expenditure on Reserved subjects was not only open to discussion but was also subject to the vote of the Legislature. Under the provisions of section 34, of the new Act the Federal Legislature can only discuss the expenditure on the reserved subjects but cannot vote upon it. This is a very important distinction. Under the old constitution even the reserved subjects were amenable to the financial powers of the Legislature. Under the present constitution they arc independent of the financial powers of the Federal Legislature. It is true that in the provincial Constitution the vote of the Legislature with regard to expenditure on reserved subjects was not final. That under a proviso to section 72D the Governor was given the power "in relation to any such demand to act as if it had been assented to, notwithstanding the withholding of such assent or the reduction of the amount (by the Legislature) if the demand relates to reserved subject, and the Governor certifies that the expenditure provided for by the demand is essential to the discharge of his responsibility for the subject". It is also true that in the Government of India Act, 1935 the amount of expenditure on reserved subjects is fixed to 42 crores. But the same difference exists, namely that under the old constitution the reserved subjects were amenable to the financial control of the Legislature while in the new constitution they are not. This difference is not a small difference. The power to grant supplies is the most effective mode of enforcing the responsibility of the executive. The power of certification might have deprived the Legislature of control of the reserved subjects. But it did not altogether destroy its influence. Under the present constitution the Legislature has not only no control over reserved subjects but also it cannot have any influence over them. There can therefore be no doubt that there was more responsibility in the dyarchy in the old Provincial Constitution than there is in this dyarchy in the Federation.

The fact that the Executive is not responsible to the Legislature is simply another way of stating that in the Federal Scheme the Executive

is supreme. This supremacy of the Executive may be maintained in various ways. It may be maintained by curtailing the powers of the Legislature or it may be maintained by planning the composition of the Legislature in such a way that the Legislature will always be at the beck and call of the Executive.

The Federal Scheme adopts both these means. In the first place, it limits the powers of the Federal Legislature. I have already described how greatly the Federal Scheme curtails the financial powers of the Federal Legislature. The Federal Legislature has no right to refuse supplies to any expenditure which is declared to be a charge on the revenues.

The Federal Scheme also curtails the Legislative powers of the Federal Legislature. These restraints are specified in section 108 which reads as follows :

"108. (*1*) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in, either Chamber of the Federal Legislature, any Bill or amendment which—

(*a*) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ; or

(*b*) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any ordinance promulgated in his discretion by the Governor-General or a Governor; or

(*c*) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion; or

(*d*) repeals, amends or affects any Act relating to any police force ; or

(*e*) affects the procedure for criminal proceedings in which European British subjects are concerned ; or

(*f*) subjects-persons not resident in British India to greater taxation than persons resident in British India or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein ; or

(*g*) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom.

(2) Unless the Governor-General in his discretion thinks fit to give his previous sanction, there shall not be introduced into, or moved in a Chamber of a Provincial Legislature any Bill or amendment which—

(*a*) repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ; or

(*b*) repeals, amends or is repugnant to any Governor-General's Act, or any ordinance promulgated in his discretion by the Governor-General; or

(*c*) affects matters as respects which the Governor-General is by or under this Act, required to act in his discretion ; or

(*d*) affects the procedure for criminal proceedings in which European British subjects are concerned ;

and unless the Governor of Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill or amendment which—

(i) repeals, amends or is repugnant to any Governor's Act, or any ordinance promulgated in his discretion by the Governor; or

(ii) repeals, amends or affects any Act relating to any police force.

(3) Nothing in this section affects the operation of any other provision in this Act which requires the previous sanction of the Governor-General or of a Governor to the introduction of any Bill or the moving of any amendment."

The Federal Scheme does not stop with merely curtailing the power of the Federal Legislature as a means of maintaining the supremacy of the Executive. Under it the composition of the Federal Legislature is so arranged that the Legislature will always be at the beck and call of the Executive. In this connection it is necessary to bear in mind what the actual composition of the Federal Legislature is. As has already been pointed out there are 375 members in the Legislative Assembly and of them 125 have been assigned to the Indian States and 250 to British India. In the Council of State the total is 260 and of them 104 are assigned to the States and 156 are alloted to British India. The seals assigned to the States are to be filled by the Princes by nomination. The scats assigned to British India are to be filled by election. The Federal Legislature is therefore an heterogeneous legislature partly elected and partly nominated.

The first question to be considered is how the Princes' nominees in the Federal Legislature will behave. Will they be independent of the Federal Executive or will they be subservient to it ? It is difficult to prophesy. But certain influences which are likely to play a part in the making of these nominations may be noted- It is an indisputable fact that the British Government claims what are called rights of paramountcy over the States "Paramountcy" is an omnibus term to denote the rights which the Crown can exercise through the Political Department of the Government of India over the States. Among these rights is the right claimed by the Political Department to advise the Indian Princes in the matter of making certain appointments. It is well known that what is called "advice" is a diplomatic term for dictation. There is no doubt that the Political Department will claim the right to advise the Princes in the matter of filling up these places. Should this happen, what would be the result ? The result would be this that the Princes' representatives would be simply another name for an official block owing allegiance, not to the people and not even to the Princes, but to the Political Department of the Government of India. Two things must be further noted. First is that Paramountcy is outside the Federal Government.

That means that the Ministers, will have no right to give any advice in the matter of the nomination of the Princes' Representatives and the Legislature will have no right to criticise it. They will be under the control of the Viceroy as distinct from the Governor-General. Secondly, this official block of the Princes is not a small block. In the Lower House a party which has 187 seats can command a majority. In the Upper Chamber a party which has 130 seats can command a majority. In the Lower House the Princes have 125 seats. All that they need is a group of 62 to make a majority. In the Upper Chamber they have 104 ; all that they need is 26. All this vast strength the Executive can command. How can such a Legislature be independent ? The Reserved half can control the Transferred half with this strength in its possession.

How will the representatives of British India behave ? I cannot make any positive statement. But I like it to be borne in mind that in some States there is no such thing as a regular budget and there is no such thing as independent audit and accounts. It would not be difficult for the Princes to purchase support from British India representatives. Politics is a dirty game and British India politicians cannot all be presumed to be beyond corruption and when purchases can be made without discovery the danger is very real.

Look at the Federal Scheme any way you like and analyze it as you may its provisions relating to responsibility, you will see that of real responsibility there is none.

VII

THE BANE OF THE FEDERAL SCHEME

There is no one who does not recognize that this Scheme for an All Indian Federation is full of defects. A difference of opinion arises only when the question is asked what shall we do about it. The answers given to this question by prominent Indians from time to time disclose that broadly speaking, there are two quite different attitudes to this Federation. There is the attitude of those who think that bad as it is, we should accept the Federation and work it so as to derive whatever good it can yield. On the other hand, there is the attitude of those who think that certain changes must be made in the Constitution of the Federation before it can be accepted and worked. It is agreeable to find that both the Congress as well as the Liberal Federation are one on this issue. Both have declared that certain changes must be made before they will accept to work the Federation.

That this Federation is not acceptable to a large majority of the Indian people is beyond question. The question is in what respects should we require the Constitution to be amended ? What are the changes which we should demand ? We may take as our starting point the resolutions passed by the Congress and the Liberal Federation relating to this question.

The Congress at its session held at Haripura in 1938 passed the following resolution:

"The Congress has rejected the new Constitution and declared that a Constitution for India, which can be accepted by the people, must be based on independence and can only be framed by the people themselves by means of a Constituent Assembly, without interference by any foreign authority. Adhering to this policy of rejection, the Congress has, however, permitted the formation in provinces of Congress Ministries with a view to strengthen the nation in its struggle for independence. In regard to the proposed Federation, no such considerations apply even provisionally or for a period, and the imposition of this Federation will do grave injury to India and tighten the bonds which hold her in subjection to imperialist domination. This scheme of Federation excludes from the sphere of responsibility vital functions of Government.

The Congress is not opposed to the idea of Federation ; but a real Federation must, even apart from the question of responsibility consist of free units enjoying more or less the same measure of freedom and civil liberty, and representation by the democratic process of election. The Indian States participating in the Federation should approximate to the provinces in the establishment of representative institutions and responsible Government, civil liberties and method of election to the Federal Houses. Otherwise the Federation as it is now contemplated, will, instead of building up Indian unity, encourage separatist tendencies and involve the States in internal and external conflicts.

The Congress therefore reiterates its condemnation of the proposed Federal Scheme and calls upon the Provincial and Local Congress Committees and the people generally, as well as the Provincial Governments and Ministries, to prevent its inauguration. In the event of an attempt being made to impose it, despite the declared will of the people, such an attempt must be combated in every way and the Provincial Governments and Ministries must refuse to co-operate with it. In case such a contingenncy arises, the All India Congress Committee is authorised and directed to determine the line of action to be pursued in this regard.".

The resolution passed by the National Liberal Federation at its last session held in Bombay was in the following terms:

"The National Liberal Federation reiterates its opinion that the Constitution, especially as regards the Centre as embodied in the Government of India Act, 1935, is utterly unsatisfactory and in several respects retrogade. While the National Liberal Federation accepts a federal form of Government for India as the only natural ideal for our country, the Federation considers that vital changes are required in the form of the Federation as laid down in the Act

especially in the direction of (*a*) clearing up the position of the Princes and securing the subjects of States the right of election of States' representatives, (*b*) doing away with the safeguards regarding the monetary policy and commercial discrimination, (*c*) introducing direct elections for the members of the Federal Assembly by the Provinces and (*d*) making Constitution sufficiently elastic so as to enable India to attain Dominion Status within a reasonable period of time.

The National Liberal Federation considers that the present position when there is an irresponsible Government in the Centre coupled with responsible Governments in the Provinces is altogether untenable and earnestly urges on Parliament to make immediate changes in the Federal part of the Constitution so as to make it generally acceptable.

The Federation is further of opinion that these modifications are essential for the successful working of the Federal Constitution."

Should these changes demanded by the Congress or by the Liberal Federation suffice to alter the present attitude of rejection into one of acceptance of Federation? Speaking for myself I have no hesitation in saying that the changes asked for in these Resolutions even if they are made will not convert me. To my mind whether the British Parliament is prepared to alter this, that or the other detail of the Federal Scheme immediately is a very unimportant consideration. In the view I take of the matter the objections to the Federal Scheme will not be removed in the least even if the British Parliament will be ready to grant every one of the demands contained in these Resolutions. To me the fundamental question is whether this Federal Scheme is capable of so evolving that in the end India will reach her goal and it is from this point of view that I want you and every one interested to examine the Federal Scheme.

What is the goal of India's political evolution? There does not seem to any fixity or definiteness about it. The Congress which claims to voice the political aspirations of the Indian people began with good Government as its goal. It moved from good Government to Self-Government or Responsible Government ; from Responsible Government to Dominion Status and from Dominion Status it advanced to Independence. There the Congress stopped for some time in a mood of self-examination. Then there was period of vaccilation. Now it seems to have come back to Dominion Status and we shall not be very wrong if we take that to be the goal of India according to the Congress. Now the question is, can the Federal Scheme blossom in due course into Dominion Status ?

Many Indians seem to think that the question of Dominion Status is a matter of gift which lies in the hands of the British Parliament. If the British Parliament were to make up its mind to grant it, nothing can stand

in the way. They contend that if India has no hope of Dominion Status, it is because the British Parliament refused to grant it. In support of their opinion they refer to the refusal of The British Parliament to add a Preamble to the Act of 1935 declaring Dominion Status as the goal for India.

It must be granted that the demand for such a preamble was a very proper one. In 1929 Lord Irwin with the consent of all the political parties in the British Parliament declared that the goal of India's political evolution was Dominion Status. What the Indians therefore wanted was not new. It had already been so stated authoritatively by the Governor-General and Viceroy, but the British Government refused to put such a preamble. The refusal was therefore a strange piece of conduct on the part of the British Government. But the grounds urged in support of the refusal were stranger still. The British Government sought to justify their conduct in not having a preamble in those terms on various grounds.

The first ground was that a preamble was a futility and that it had no operative force, but that argument was easily met. All Acts of Parliament have had Preambles expressing the purpose and the intention of Parliament. It is true that it has no legal effect, but all the same Courts have not held that a preamble is a futile thing. On the other hand, wherever there is any doubt with regard to the wording of a section, Courts have always resorted to the preamble as a key to understand the purpose of the enactment and made use of it for resolving any doubtful construction. Driven from this position, the British Government took another position and that was to repeal the Act of 1919 but to retain the Preamble to that Act. This again is a very queer thing. In the first place if the Preamble is a futility, there is no necessity to save the Preamble enacted as part of the Act of 1919. Secondly if the Preamble to the Act of 1919 was a necessity, it should have been enacted afresh as a part of this Act of 1935, which the British Government would not do. Instead it preferred to present the strange spectacle of the head separated from the trunk. The head is now to be found in the repealed Act of 1919 and the trunk is to be found in the present enactment of 1935. In the third place, what the Indian people wanted was a preamble promising Dominion Status and that is what the declaration of Lord Irwin contained. The preamble to the Act of 1919 speaks only of Responsible Government. It does not speak of Dominion Status and the retention of the Preamble to the Act of 1919 was to say the least the silliest business possible.

Why did the British Parliament refuse to enact a Preamble defining Dominion Status as the goal ? Why did the British Parliament run from pillar to post rather than grant the demand ? The explanation offered is of course the usual one namely, the perfidy of the Albion ! My own view is different. The British Parliament did not promise Dominion Status by

enacting a preamble because it realized that it would be beyond its power to fulfil such a promise. What the British Parliament lacked was not honesty. Indeed it was its honesty which led it to refuse to enact such a preamble because it knew that it could not give effect to such a preamble. What it lacked was courage to tell the Indians that the Federal Scheme left no way for Dominion Status.

Why is Dominion Status impossible under the Federal Scheme? It is impossible because it is not possible to have Responsible Government. It must be borne in mind that to reach Dominion Status, India must first attain Responsible Government. To attain Responsible Government the subjects which are reserved must become transferred. That is the first stage in the process of evolution towards Dominion Status.

Some of you will want to know the reasons why I say that the reserved subjects cannot become transferred. They are sure to recall that there were Reserved subjects in the Provincial Scheme as they are in the Federal Scheme and will ask that if the reserved subjects have become transferred in the course of say 20 years what difficulty can there be in the similar things happening in the Federation. As the question is important, I proceed to give my reason. In the first place, the analogy of the Provinces is false. It is important to note why the analogy is false. It is false because in the Provincial Scheme the distinction between the reserved and the transferred subjects was based upon the requirements of administrative efficiency. That the distinction between the reserved and the transferred subjects in the Federal Scheme is based upon legal necessity and not upon administrative efficiency needs no proof. One of the reasons why the Simon Commission did not recommend dyarchy at the Centre was that it felt that administratively it was not possible to divide subjects into two water-tight compartments, one reserved and the other transferred, without affecting the efficiency of all ; and the Government of India's despatch on the Simon Commission entirely agreed with the view. The division, therefore, is not administrative in its basis. It is the result of a legal necessity. This is a fundamental distinction and ought never to be lost sight of.

How does this legal necessity arise? I say the legal necessity for treating certain subjects as reserved arises because of the Indian States. I go further and say that there would be necessity for treating certain subjects as reserved if the Federation was confined to the British India Provinces only. The reservation of certain subjects is a direct consequence of the entry of the Indian States into the Federation.

What is it, in the position of the Indian States which compels certain subjects to be treated as reserved ? To be able to answer this question I must first draw your attention to section 180 of the Government of India Act. Section 180 says —

> "Any contact made before the commencement of Part III of this Act by or on behalf of the Secretary of State in Council solely in

connection with the exercise of the functions of the Crown in its relations with Indian States, shall, as from the commencement of Part III of this Act. have effect as if it had been made on behalf of His Majesty and references in any such contract to the Secretary of State in Council shall be construed accordingly."

This section gives statutory form to the contention put forward by the Princes before the Butler Committee and accepted by them, that the treaties of the Indian States were with the Crown of England as such and not with the Government of India.

The next step is to note what follows from this theory. Now what follows from this theory is very crucial, but has been unfortunately allowed to pass without due care and attention. The Princes have contended that as treaty relations of the Indian States are with the Crown of England, the duty and responsibility of fulfilling the obligations arising under those treaties lay solely upon the Crown of England and the Crown of England must at all times maintain itself in a position to fulfil those obligations.

What is the obligation which the treaties with the Princes impose upon the Crown of England ? The Principle of obligation imposed upon the Crown of England and which the Crown of England has undertaken by the treaties is to protect the Princes from internal commotion and external aggression.

How can the Crown fulfil this obligation ? The only way, it is argued, that the Crown can fulfil this obligation is to reserve external affairs and the Army under its exclusive control.

You can now understand why I say that the necessity of reserved subjects is due to a legal necessity. That legal necessity flows from the treaty obligations of the Crown and so long as the basis of the treaty relations remains what Section 180 says it is, the reserved subjects cannot become transferred subjects. And as the reserved subjects cannot become transferred, there is no scope even for Responsible Government much less for Dominion Status.

From the analysis I have made of the Constitution, from the stand-point of the ultimate goal, few, I believe, will have any hesitation to say that this Constitution is a fixed and rigid constitution. It cannot change and therefore it cannot progress. It is a constitution which is striken at the very base and it is for the people of India to consider whether they will accept it.

I have examined the Constitution from the stand-point of our goal at so considerable a length that I feel I owe you an apology for tiring you. But the attitude of some people towards this question must be my excuse

for entering into this subject at such great length. I realize that no Constitution is a perfect constitution. Imperfections there are bound to be. But I think a distinction must be drawn between imperfections and inherent and congenital deficiencies. Imperfections can be removed. But congenital deficiencies cannot be supplied. The demands made in the resolutions of the Congress or of the Liberal Federation, even if granted, will remove the imperfections. But will they remove the deficiencies ? I would not mind the imperfections if I was assured that there are no deficiencies. The greatest deficiency in the Constitution is that it will not lead to Dominion Status. Neither the Congress nor the Liberal Federation seems to be aware that this deficiency exists. Their demands have no relation to the goal of India's political evolution. They do not even mention it. It is surprising that Congressmen should have become so enamoured of the prospect of seizing political power that their demands against the British Government should not even contain a declaration from the British Government in this behalf. But if Congress forget, the people of India cannot and should not. To do so would be fatal. It would be fatal as much for an individual as for a people to forget that a stage on the way is not the home and to follow the way without knowing whether it leads homewards or not is to misdirect one-self and fall into a ditch.

You must not misunderstand me. I am not an impatient idealist. I am not condemning the gradualist, who is prepared to wait and take thing by instalments, although the gradualist, who has a valid claim for a rupee, demands an anna and proclaims a great victory when he gets a pie, must become an object of pity. All I want is that if circumstances force us to be gradualists we must not fail to be realists. Before accepting an instalment we should examine it carefully and satisfy ourselves that it contains an acknowledgement of the whole claim. Otherwise, as often happens what is good for the moment turns out to be the enemy of the better.

Some of you will ask, how can India secure Dominion Status. My answer is India will get Dominion Status only if the Princes who join the Federation, consent to its being granted. If the Princes object to the grant of Dominion Status to India, then India cannot get Dominion Status. The Federation places the strings of India's political evolution in the hands of the Princes. The destiny of India will be controlled by the Princes.

This view of the future will strike as very strange to a great many of you. We are all saturated with Dicey's dictum regarding the Sovereignty of Parliament. We all have learned from him that Parliament is supreme, that it is so supreme that it can do anything except make man a woman and woman a man. It would not be unnatural if some of you ask how can the Princes stand in the way when the British Parliament is supreme. It will take some effort on your part to accept the proposition that the British Parliament has no supremacy over the Indian Federation. Its authority to change the Federal Constitution now embodied in the government of India Act is strictly limited.

Indian politicians have expressed their sense of sorrow and resentment over the fact that the Indian Legislatures have not been given by the Act any constituent powers.

Under the Government of India Act neither the Federal Legislature, nor the Provincial Legislature have any powers of altering or amending the constitution. The only thing, which the Act by virtue of section 308 does. is to permit the Federal Legislature and Provincial Legislature to pass a resolution recommending any change in the constitution, and make it obligatory upon the Secretary of State to place it before both Houses of Parliament. This is contrary to the provisions contained in the Constitutions of the United States, Australia, the German Federation and Switzerland. There is no reason why constituent power should not have been given within certain defined limits to the Legislatures in India when they were fully representative of all sections and of all interests. Be that as it may, the fact remains that the Indian Legislatures cannot make any changes in constitution, not even in the franchise, much less in making the reserved subjects transferred. The only authority which can change the Constitution is of course the British Parliament. But very few seem to be aware of the fact that even Parliament has no powers to alter the Federal Constitution. This, however, is the truth and the sooner we all realize it the better.

From this point of view the importance of Schedule II cannot be overestimated. I am sorry, it has not received the attention which it deserves. Schedule II is not only a charter but is also a chart along which the Constitution can move. The whole Schedule is worth careful study. What does Schedule II say ? Schedule II says that certain provisions of the Government of India Act may be amended by Parliament and that certain other provisions of the Act shall not be amended by Parliament. That is simply another way of saying that Parliament is not supreme and that its right to alter the Constitution is limited.

What would happen if Parliament did amend those provisions of the Act which Schedule II says shall not be amended by Parliament ? The answer, which Schedule II gives, is that such an Act will have the effect of 'affecting' the accession of the States to the Federation, which means it will have the effect of destroying the binding character of the Instrument of Accession. In other words, if Parliament amended any of the provisions of the Act, which Schedule II says shall not be amended, the Princes would get the right to secede from the Federation. I am aware that some eminent lawyers have taken a different view. They hold that the Princes, once they come into the Federation, cannot go out of it. I have mentioned my view for what it is worth and I will say that my view is not altogether baseless.

At any rate the Solicitor-General and Secretary of State gave the same interpretation, as I am giving, in the House of Commons, when the Government of India Bill was being discussed.