LAW FACULTY LIBRARY



You are Advised to check the pages and illustrations in this

B.U.P 372—8-2000 - 5,000

LAW FACULTY LIBRARY

DUE DATE SLIP

TEXT BOOK

Cal. No. VI:2:N3 Date of rel

Ac. No. 38374

This book should be returned on or before the date last st
below. An overdue charge of Re. 1/- per day will be el
for the book is kept overdue.

Book on Modern Constitutions

BY

RAM LAL, BHATIA, B.A. (C.H.S) **M.A.** (Econ & Pol.)

University Record Holder in Politics

Professor, D.A.V. College, **Jullundar City.**

1937

DOABA HOUSE;

NEW & SECOND HAND BOOKSELLERS,

Mohan Lal Road, Lahore.

. Som Datt Puri of Doaba House,
& Second Hand Book Sellers & Publishers,
Mohan Lal Road, Lahore.

Printed by
L. Sahib Ditta M
at the Jagjit Electi
Mohan Lal Road

	Pages
English Constitution.	1—192
The United States of America.	1—116
Canada Constitution.	1— 64
French Constitution.	1—124
Govt. of India with India's new Constitution	1—264

The British Constitution.

POLITICAL SCIENCE

THE BRITISH CONSTITUTION

Q. 1. "The English Constitution does not in reality exist"—(De Tocqueville). Discuss. *(P. U. 1935).*

Ans. This famous aphorism of Alexis De Tocqueville, the eminent French student of Foreign Governments, is based on a wrong interpretation of the word *'constitution.'* The *misunderstanding* arises due to the fact that a Frenchman (and an American) understands by the term constitution some written constitutional document not alterable by the ordinary legislature. Why is this? Because a Frenchman is accustomed to a long succession of written constitutions, self contained, complete and coherent. For him Englishmen have no constitution because :—

Interpretation of the word constitution by Americans and Frenchmen.

(*i*) Their governmental system is not embodied in written constitution.

Reasons for this wrong view.

(*ii*) Their governmental machinery depends partly upon Statute Law, but more largely upon Common Law, and upon precedents, conventions, and understandings.

(*iii*) Parliament can, by process of ordinary legislation, make any change, at any time, in the country's fundamental laws. This in fact was the opinion of De Tocqueville.

Parliament changes it too often.

(*iv*) The English constitution is neither definite and concise in form nor orderly in arrangement.

Nothing definite and orderly.

(*v*) Not a single document approaches even remotely a constitutional instrument. "The English," writes Boutmy in his *Studies on Constitutional Law*, "have left the different parts of their constitution just where the wave of history had deposited them; they

It cannot be understood from statutes.

have not attempted to bring them togetner, to classify or complete them, or to make a consiste it and coherent whole. It is scattered ; constitution gives no hold to sifters of texts and seekers after difficulties."

No wonder then, if De Tocqueville declared in a famous assertion, "In England, there is no constitution."

But we are not justified in making this sweeping statement because :—

Arguments against De Tocqueville's opinion.

(*a*) "Although an infinitely complex amalgam of institutions and principles, the British constitution is perfectly intelligible."—Josef Redlich.

(*b*) A constitution is something established as the legal basis of government—whether by a constitutional convention or by process of evolution. The British constitution does provide a legal basis of Government.

(*c*) "It is the result of a process in which charters, statutes, decisions, precedents, usages, and traditions have piled themselves one upon the other from age to age. Or, to use Sir William Anson's metaphor, it is a rambling structure, to which successive owners have added wings and gables, porches and pillars, thus modifying it to suit their immediate wants or the fashions of the time. Its architecture bears the imprint of many hands.....It is a mediæval edifice which has been renovated and modernized." —Munro.

Some of the statutory enactments which make the English constitution a written one.

(*d*) We can call the English constitution at least partly written it based upon statutory enactments such as :—

(*i*) The Statute of 1707—defining the relations of England and Scotland.

(*ii*) The Statute of 1800—defining those of Great Britain and Ireland.

(*iii*) The Great Statute (the Habeas Corpus Act) of 1679—defining and maintaining personal liberty.

(*iv*) The Great Charter of 1215—curtailing the prerogatives of the Crown.

(*v*) The Petition of Right (1628), the Bill of Rights (1689), the Act of Settlement (1700) —all aiming at curtailing the prerogatives of the Crown.

(*vi*) The Acts of 1832, 1867, 1884 and 1885—giving the qualifications of Parliamentary Electors and the number and limits of the Parliamentary constituencies.

(*vii*) The Statutes of 1835, 1888 and 1894 –for the Local Governments.

Although they cover only a small fragment of the whole ground, yet they convince us of the true characteristics of the English constitution.

For a constitution a political sentiment is needed. It is present in the English constitution

(*e*) What we have to recognise is that it is not a necessary character of a constitution that it should consist of formal and precise code of laws, made and changeable in a manner peculiar to themselves. The boundaries of the constitution are set by a certain type of political sentiment called the "constitutional sense" of the nation. This 'constitutional sense' of Englishmen is evidenced by the fact that they have (*i*) Rules of law ; (*ii*) Rules of the common law ; (*iii*) Rules of statute law ; (*iv*) The Privileges of Parliament ; (*v*) The 'conventions of the constitution' and (*vi*) The principles relating to the liberties of the subject ; (*vii*) Mass of precedents ; (*viii*) Authoritative sayings of great lawyers and statesmen.

It is not necessary that it should be in a documentary form.

(*f*) Sir William Anson remarks, "The constitution must be found by those who seek it, in statutes, in udicial decisions; in custom, in convention ; it is not set forth in text books ; it may be learnt in its important features by the observation of the course and conduct of politics ; but in authoritative documentary form it is not to be found."

(*g*) Some unwritten and flexible elements are present in every constitution. To-day the American

constitution includes also many statutes, judicial decisions, usages and 'customs' of the constitution. Thus the distinction between the English and French and American constitutions, if rightly understood and grasped, is only apparent and not real and fundamental.

Thus De Tocqueville erred when he remarked that, "Englishmen had no real constitution."

Q. 2. What are the various elements which constitute the English constitution? *(P. U. 1935).*

English constitution consists of:

Ans. The elements which constitutes the English constitution fall into, some five main categories or groups :—

(A) Great charters and other landmarks.

Great charters and landmarks.

These consist of certain charters, petitions, statutes, historic documents embodying solemn agreements, or engagements at the times of political crisis or change, and other great constitutional landmarks. The following are the examples :—

(*i*) Magna Carta (1215).

(*ii*) The Petition of Right (1628).

(*iii*) The Agreement of the People (1647).

(*iv*) The Bill of Rights (1689).

(*v*) The Act of Settlement (1701).

(*vi*) The Acts of Union with Scotland (1707). and with Ireland (1800).

(*vii*) The Great Reform Act (1832).

(*viii*) The Parliament Act (1911).

(*ix*) The Government of India Act (1919) and that of 1935.

(*x*) The Government of Ireland Act (1922).

All of these do not make a comprehensive code and cover a very small portion of the fabric of British constitutional law.

(B) Statutes.

Statute.

These are ordinary statutes which Parliament has passed from time to time. These define the powers of the Crown, guaranteeing private rights, regulating the sufferage, establishing the courts, creating other Governmental machinery, conducting the elections, defining the powers and duties of public officials and the routine methods of Government.

The various reform acts from 1832 to 1918 and the following are the examples

(*i*) The Habeas Corpus Act of 1679.

(*ii*) The Septennial Act of 1716.

(*iii*) The Municipal Corporations Act of 1835.

(*iv*) The Parliamentary and Municipal Elections Act of 1872.

(*v*) The Judicature Acts of 1873-76.

(*vi*) The Local Government Acts of 1888, 1894 and 1929.

(*vii*) The representation of the People Act of 1918.

(*viii*) The Equal Franchise Act of 1928.

(C) Judicial Decisions.

Judicial decisions.

These decisions of the Law Courts have helped tremendously in the development of the English Constitution. Whenever any doubts have arisen regarding the provisions or the true meaning of charter and statutes, the decisions of competent judges have rightly interpreted them and explained the scope and limitations of their various provisions. Thus they form a body of written constitutional law by themselves and are an important element of the English Constitution.

Examples are:—

(*i*) *The decision in Bushell's case (1670)* which established the independence of juries.

(ii) *The Decision in Howell's Case (1678).*

This established the immunity of judges.

(D) The Common Law.

The Common Law.

By Common Law is meant that body of legal rules which grew up in England apart from any action of Parliament and got recognition. They, in fact, grew up on the basis of usage. The following are the examples:—

(i) Ancient promises of Kings.

(ii) Immemorial rights and liberties like freedom of public meetings, freedom of person and speech.

(iii) The right to a jury trial in criminal cases.

(iv) The right to redress for toruous actions of Government officers.

(v) The prerogatives of the Crown, etc.

The common law is continually in process of development by judicial decision. The rules of the Common Law have not been reduced to writing except as are to be formed in reports, legal opinions, formal decisions of the courts, etc.

(E) Conventions and Understandings.

Conventions and understandings.

"Any one who desires to know the British constitution must study the conventions as carefully as the positive rules of Law."—Dicey.

And he is right. These conventions exert a subtle influence in various branches of the Government, because the English constitution is much older than others and the usages have had influence from times immemorial. A large part of the British Governmental system depend upon custom rather than upons laws or judicial decisions.

What are these conventions then ?

Conventions defined. Ogg defines them.

(i) These consist of understandings, habits, or practices or usages or customs which by their sole authority regulate a large proportion of the actual day-to-day relations and activities of even the most important of the public authorities.—Ogg.

Or (*ii*) We can describe them in the words of Dicey as customs or understandings which give us the mode in which the several members of the sovereign legislative body should exercise their discretionary authority, whether it be termed the prerogative of the Crown, or the privileges of Parliament. Or, we can say that they can tell us how the discretionary power of the executive is to be employed. Dicey defines them.

(*iii*) These conventions are not recorded by any institution Nevertheless they have been understood with fair exactness, and have been followed scrupulously by ministers in their correspondence and speeches and even written down by such authorities such as Anson, Dicey, Bagehot, May and Hearn. Other writers have followed them.

Examples of Conventions.

(*i*) A Ministry, which is outvoted in the House of Commons, is, in many cases, bound to retire from office. Examples of conventions.

(*ii*) A Cabinet, when outvoted in any vital question, may appeal once to the country by means of a dissolution.

(*iii*) If an appeal to the electors goes against the Ministry, they are bound to retire from office, or have no right to dissolve Parliament a second time.

(*iv*) The Cabinets are responsible to Parliament as a body for the general conduct of affairs.

(*v*) The party, who, for the time being, command a majority in the House of Commons, have a right to have their leaders placed in office. The most influential of these leaders becomes the Premier.

(*vi*) Treaties can be made without the authority of any Act of Parliament, but the Crown ought not to make a treaty which will not command the approbation of Parliament. The same applies to foreign policy and the proclamation of war.

(*vii*) If there is a difference of opinion between the House of Lords and the House of Commons, the

House of Lords ought at one point to give way ; otherwise the Crown is to create or threaten to create enough new peers to over-ride the opposition of the House of Lords and thus accede to the wishes of the House of Commons. This prerogative was actually exercised in 1711 and 1832 and 1911.

(*viii*) Parliament ought to be summoned for the despatch of business at least once a year.

(*ix*) All measures passed by Parliament must be assented to by the Crown.

(*x*) A bill must be read three times in each House before being passed and going to the King for signature. This convention has been modified by the Parliament Act.

What is the sanction by which obedience to the conventions is enforced

Sanctions behind these conventions.

(*a*) Some writers think that obedience is ultimately enforced by the *fear of impeachment*. This view is not tenable. Impeachment has grown out of use. It is obsolete.

Fear of impeachment.

Force of public opinion.

Dicey differs from Ogg, Lowell and Sir Maurice Amos.

(*b*) Some writers think that obedience is ensured by the *force of public opinion*. But 'public opinion' is a vague term. Sometimes public opinion condemn war but war does follow. This is Dicey's opinion.

But Ogg following Lowell and Sir Maurice Amos supports the contention that the force of public opinion ensures the obedience of conventions. 'Conventions are observed because they are a code of honour. They are, as it were, the rules of the game, and the single class in the community which has hitherto had the conduct of English public life almost entirely in its own hands is the very class that is peculiarly sensitive to obligation of this kind. It is a kind of trust to be held by the party in power. The nation expects their observance and the nation's feelings form the strong support for their obedience."

Force of the Law.

(*c*) However, Dicey differs from all and think that obedience is enforced *by the power or the force*

of the Law. The breach of the conventions and their underlying principles will immediately bring the offender into conflict with the courts and the law of the land.

He gives an example : Parliament is to assemble at least once a year. Suppose it does not assemble and it is not called for two years. The consequences would be that the Army Act or the Mutiny Act would expire and the Government would lose all disciplinary authority over the troops.....Also large portion of the taxes would cease to be legally due and could not be legally collected. Thus the Ministry would be brought directly into conflict with the law of the land and involved in inextricable embarrassments.

An annual meeting of Parliament is therefore a practical necessity. Without it, public officials would find themselves performing illegal acts.

Conclusion.

Conclusion

The British constitution thus "is an infinitely complex amalgam of institutions, principles, and practices ; it is a composite of charters and statutes, of judicial decisions, of Common Law of precedents, and usages and traditions. It is not one document, but thousands of them. It is not derived from one source, but from several. It is not a completed thing, but a process of growth. It is a child of wisdom and of chance, whose course has been indifferently guided by accident and by high design."

Q. 3. Distinguish between Conventions and Laws of British constitution.

(A) Difference between Conventions and Laws.

Conventions and Laws differentiated.

For conventions read Q. 2. Also read the following :—

Laws proper are :—

Laws.

(*i*) A set of laws.

(*ii*) Recognised and enforced by the Courts.

~~Constitutions~~ *are* :—

Conventions.

(*i*) A body, not of laws, but of constitutional or political ethics.

(*ii*) Neither recognised nor enforced by the Courts.

English Constitutional law defined.

English constitutional Law may be defined as that branch of law which treats of all those rules which directly or indirectly affect the exercise or distribution of the sovereign power in the State. *Laws regulating Local Government are not usually regarded as constitutional matter.* So far as English Constitutional law is concerned, these rules can be divided into two classes.

Constitutional Law in the real sense.

(*i*) Rules which are enforced by the courts and are in the strictest sense Laws—termed the Law of the Constitution.

Examples.

Examples are:—

(*a*) "The King can do no wrong." The King cannot be held responsible for any Act performed in his name. There is no process known by which he could be brought to trial.

(*b*) "There is no power in the Crown to dispense with the obligation to obey a law."

(*c*) "Some person is legally responsible for every act done by the Crown."

(*d*) "The right to personal liberty."

(*e*) "The right of public meeting."

(*f*) The order of succession to the throne, the powers and duties of many of the departments of State, the duration of Parliaments, the qualifications of Parliamentary elections, the tenure of office of the judges—all matters are regulated by the statute.

(*ii*) Rules consisting of conventions, understandings, usages, habits and practices, which though they may regulate the conduct of the several members of the sovereign power, of the ministry and of other officials, are not in reality Laws since they are not enforced by the Government are called the Conventions of the Constitution. Thus the ***distinction between these and the Laws.***

When constitutional laws become conventions.

For their illustrations see Part first under conventions and understandings and also:—

"*There is no power in the Crown to dispense* with the obligation to obey a law." This is stated in the Bill of Rights. The Government would be acting illegally if it does not recognise the validity of a law existing in a statute book.

"*A Parliament having been in existence for five years must be dissolved.*"

Conclusion.

Thus we may conclude:

Constitutional Law proper comprises laws cognizable and enforceable by courts of justice and is to be found in Acts of Parliament and decisions of the law courts. The Acts of Union with Scotland and Ireland, and the Act by which he vacates a seat in the Commons when a member accepts an office of profit under the Crown, are instances of constitutional statutes. The decision in Somerset's case, where it was held that slavery could not exist in England, and that a slave became freeman as soon as he touched the English shore, established an important constitutional doctrine.

With regard to Constitutional Law.

They are in the process of a pure national growth in all possible directions. They are, for the same reason, somewhat unprotected against premature and ill-considered change.

The conventions of the constitution, on the other hand are customs and traditions which are not enforced by the courts, but which, through conti-

With regard to conventions.

nual usage, have obtained nearly the force of law. They form part of the constitutional unwritten laws.

One writer goes so far as to say that "The English constitutional law is no law at all but only a cross between history and custom."

This expression consists of two parts. The *first part viz.*, the English constitutional law is no law at all, is *hardly correct.* Because the English constitutional law consists of two parts, *viz.*, (*i*) the rules embodied in statutes, or in fundamental or organic laws enacted by the supreme legislative power and (*ii*) the conventions which though they have no legal sanction are equally obligatory.

The second part of the expression, *viz.*, the English constitutional law is only a cross between history and custom, is partially true. It is most true that it has originated from history and custom. That is why the English constitution can be traced from a time when the King did everything, until at present day he does nothing personally. And the rule that a ministry must resign on an adverse vote in the House of Commons is a customary rule.....

But it cannot be wholly true that it is a cross between history and custom as the English constitution is also based upon statutes, quasi-statutes, judicial decisions, which have legal sanction and can be enforced by judicial authority.

Q. 4. "The conventions of the constitution are based upon and secured by the law of the land." Discuss.

Ans. See Answer to Q. 2 under, "Sanctions which enforce conventions."

Q. 5. What are the chief characteristics of the English constitution?

The chief characteristics of the English Constitution.

Ans. (*a*) The chief characteristics of the English constitution are:—

(*i*) **"The English constitution has not been made but has grown."**

The English constitution is the outcome of gradual growth and development. "No precise date could be named as the day of its birth ; no definite body of persons could claim to be its creators ; no one could point to the document which contained its clauses—it was in short a thing by itself."

It has not been made but has grown. It is a thing by itself.

"It is somewhat rambling structure, and, like a house which many successive owners have altered just so far as suited their immediate wants or the fashion of the time, it bears the mark of many hands."

It is a rambling structure.

"Feudalism depicts the infancy of the English constitution ; Magna Carta is, as it were, the baptism of the infants; the Revolution has imparted the strength of manhood; and in an extended system of representation, England has discovered the political elixir that confers vigour and immortality."

(*ii*) It is an unwritten constitution

It is an unwritten constitution.

(See Q. 1 and 2.) Because no single document contains the entire constitution it is argued that there is no constitution. This was the implication of De Tocqueville's famous aphorism already discussed but it must be remembered that the English constitution has some written laws or statutes which have very considerably modified the constitution, such as, the Bill of Rights (1689), the various Franchise Acts of the 19th and 20th centuries and especially the Parliament Act of 1911.

(*iii*) The English constitution is flexible.

It is flexible

The unrestricted legal supremacy of Parliament, the power to amend the constitution by the process of ordinary law making, have given the British political system a degree of flexibility. *Walter Bagehot* wrote that Parliament could abolish trial by jury, pass bills of attainder, confiscate prospects without compensation, take the suffrage away from all but tax-payers, and sell off the British Dominions. This flexibility is due to the fact that (*i*) the provisions of the English constitution whether written or unwritten are broad enough to permit considerable changes; (*ii*) the traditions of the English people make it such.

It bends but does not break.

The constitution bends but does not break. It is less susceptible to revolution. 'In France' said Napoleon III, 'we make revolutions but not reforms.' In England they make reforms but not revolutions.

There is unbroken continuity.

4. *There is unbroken continuity* of the English constitution due to (*a*) the geographical isolation of England, (*b*) the racial genius of the British people, (*c*) and the constitutional flexibility of their constitution. The continued national life of the English people has remained unbroken for fourteen hundred years.

(*v*) Legality and Impartiality.

Its legality and impartiality.

There is supremacy of law, *i. e.*, (*a*) no man is punishable except for a distinct breach of the law and this breach must be proved in the ordinary courts of the land ; (*b*) There is one law for all ; (*c*) the rights of individuals are maintained.

(For further discussion see Q. 32).

(*vi*) There is difference between constitutional theory and governmental practice as exists in no other country.

In theory it is something else but in practice it is quite different. That is why we say in the British constitution "nothing is what it seems or seems what it is." For example :—

(*a*) The cabinet is to be appointed by the King but in actual practice it is the prime minister who chooses his cabinet colleagues.

(*b*) Parliament is to be dissolved or summoned by the King, but it is the Prime Minister who actually decides for such actions.

(*c*) By the constitution things are assumed to be done in one way; the officials do them in another way. "There is nothing which the King cannot do in England ; but in actual practice, even his formal speech at the opening of a Parliament is written only on the advice of the Ministry.

(*vii*) The conventions of the constitution depend upon the law of that land.

Conventions and Law go together.

(*viii*) The English constitution is convenient rather than symmetrical.

It is convenient.

Q. 6. What are the chief merits of the English constitution ?

Ans. The merits of the English constitution are :—

Its merits.

(*i*) England is the home of parliamentary institutions ; she was the first to develop this form of Government.

Home of Parliamentary institutions.

(*ii*) It had a peaceful development. Here there had been reforms and less revolutions.

Peaceful development

(*iii*) **The system of Bicameral legislature first developed here.**

Bicameral system developed here.

That is why Bagehot says that the English constitution serves as a place to preserve national dignity and aristocracy without permitting to do mischief.

(*iv*) **The cabinet is the central wheel.**

Cabinet is the real wheel.

The excellence of the British constitution consists in the nearly complete union of the executive and the legislative powers which is proved by the position of the cabinet.

(*v*) It contains an efficient simple part for the real work of Government. It is the House of Commons.

Its efficient simple part is the House of Commons

(*vi*) It has a dignified part :—

Its dignified part is the House of Lords and Monarchy.

'historical. complex, august, theatrical and adapted to the capacities and feelings of the masses.' It consists of the House of Lords and the Monarchy.

(*vii*) There is best guarantee for the people's liberties through the development of the *Rule of Law and the Common Law.*

People's liberties guaranteed.

(*viii*) It is a unitary Government having a non-federal form because all power is concentrated in single Government, centring at London.

(*ix*) *There is the supremacy of the Parliament* which is given unlimited ordinary legislative and constituent powers.

Under the English constitution, the King is a nominal head ; Parliament is practically the legal sovereign ; the electorates the political sovereign.

The checks and balances keep it going.

(*x*) The system of checks and balances keep the English constitution going.

(*xi*) The different parts of its administrative machinery are so closely adjusted that they can act and reach on one another so as to produce a harmonious result.

Q. 7. "By the passage of the Parliamentary Act in 1911, the British Constitution has become a partially written one." Criticise this statement.

English constitution is called an unwritten one because of its conventions and customs.

Ans. A written constitution (as that of countries like U. S. A., France etc.) gives us definite provisions which lay down powers for the different constituents of the Governmental machinery and for its own amendment. But the English constitution is more permeated by custom and convention than any other. The fundamental political institutions of Great Britain are not set down in writing in any formally accepted document or documents. They are regulated by judicial decisions and a series of understandings or conventions.

The constitutional history, however, gives another picture. The Parliamentary Act of 1911 shows the other side.

But to say for that reason that the English constitution has ever remained an unwritten one, is to remain in the dark and to be oblivious of the true history of the growth of the English constitution.

In fact, the Parliamentary Act of 1911 has gone a long way to remove that misunderstanding. This Act definitely and unequivocally asserted the supremacy of the House of Commons—the supremacy which has remained unchallenged up to this day.

The English constitution with its flexibility has given the English people a guarantee for

their liberty through the Rule of Law, the Common Law, the House of Commons and the development of the cabinet system. The panacea for the evils of despotism or an irresponsible bureaucracy have been found in Parliamentary government. England was the first to develop this form of Government and credit for it must rightly be given to it. This Parliamentary sovereignty is its chief merit which has distinguished it from other rigid constitutions. And the Act of 1911 has given England her true Parliamentary sovereignty through a written enactment. The whole English constitution being dependent upon the Parliamentary sovereignty and the latter having its full life through the Parliamentary Act of 1911, we can very well say that the Act of 1911 has given England a partially written constitution.

The parliamentary sovereignty, the back bone of the English constitution is strengthened by the Act of 1911.

How is the Parliamentary sovereignty affected by the Act of 1911? This is seen by the leading provisions of the Act.

Provisions of the Act show its effects.

(*i*) In respect of any Money Bill, the Act takes away all legislative power from the House of Lords.

(*ii*) In respect of any Public Bill (not being a money Bill or a Bill extending the maximum duration of Parliament beyond five years), the Act takes away from the House of Lords any final veto, but leaves or gives to the House a suspensive veto.

(*iii*) The House of Commons can, without the consent of the House of Lords, present to the King for his assent any Bill whatever which has complied with the provisions of Section 2 of the Parliament Act.

(*iv*) Nothing in the Act diminishes or qualifies the existing rights and privileges of the House of Commons.

(*v*) Five years shall be the maximum duration of Parliament instead of seven years.

The consideration of its provisions as given above clearly shows that it has greatly increased than before

The Act establishes the supremacy of the House of Commons and thereby of the English people.

the share of sovereignty possessed by the House of Commons and has greatly diminished the share belonging to the House of Lords. Formerly, no Bill could become an Act, unless it had received the assent of the House of Lords. But the Act takes away that power of the latter House.

In fact the Act of 1911 has definitely laid down the respective powers of the two Houses and has given a new bent to the Constitution of England and has thus made it a partially written one. It has changed some of the conventions relating to the two Houses into 'enacted conventions' and more accurately speaking, an 'enacted constitution' instead of an unwritten one is given to the English people.

The other side of the picture.

But to say, that since the passage of the Parliament Act of 1911, the British constitution has become a written one, is to ignore the great mass of Laws which helped to mould the constitution before that time. If it is now, since 1911, partially written, it was also partially written before that time.

For instance.

The written English constitution of 1649.

(*i*) The first attempt at a written constitution was made in England in 1649. The agreement of the people, a document drawn up and approved by the Council of Officers of the Parliamentary Army, ran: "We are fully agreed and resolved, God willing, to provide, that hereafter our Representatives be neither left to an uncertainty for times nor be unequally constituted, nor made useless to the body for which they are intended. In order whereunto we declare and agree....."

The written one of 1653.

(*ii*) In 1653 the Protectorate was organized by the Instrument of Government made by Cromwell and His Officers. *The Instrument* defined the powers of protectorate and Parliament.

"The country which was to be the most conspicuous example of an "unwritten" system was,

however, the mother of written constitutions." The above examples amply assert and demonstrate that.

Other Examples.

Other statutes and documents which make the English constitution a written one before the Act of 1911.

There are statutes and documents which must from their special significance be more particularly studied in connection with the development of the English constitution. Conspicuous among them are.—Magna Carta (1215); Edward the First's Summons to Parliament (1295); the Apology (1604); the Petition of Right (1628); The Bill of Rights (1689); the Act of Settlement (1701); the Reform Acts of 1832, 1867, 1884, 1885, 1918; The Act of 1911.

These documents afforded a specific remedy for a specific grievance as did the Act of 1911.

These documents are not like the written constitutions of America, of Switzerland, of Belgium etc. The reason is not far to seek. None of these goes much, if at all, beyond the immediate necessities of the hour. "Not one of them (except Cromwell's almost still-born constitutions) approaches, even remotely, a constitutional code or instrument. But a specific grievance has manifested itself and a special remedy has been applied. The Parliamentary Act of 1911 did apply a special remedy for a specific grievance; the other Acts previous to that of 1911 also rendered that service. If the Act of 1911 provided a partially written constitution, the others too? If the *English constitution is now, since 1911, partially written, it was also partially written before that time. The Agreement of the People (1649)* and the two written constitutions of the Protectorate set the ball rolling; they did not endure; the Act of 1911 brought the culmination in a written form."

Q. 8. "English constitution is highly flexible."—Marriot. Trace the growth of the British Constitution and show from its history to what extent we are justified in describing it as such.

It is flexible

Ans. The English constitution is undeniably and characteristically flexible. Without any special machinery for making changes, the process of

change goes on almost imperceptibly. It is difficult to indicate with precision the moment at which the changes occurred. But perpetual modification is, as a matter of fact, taking place. *For instance, Bagehot* writing in 1863 was right in laying emphasis upon the subordination of the Executive to the Legislature. But circumstances so changed that the Executive could not remain so. Either its programme was to be fully acquiesced in or it would resign. That is why Lowell was compelled to assert that the Legislature should be subordinate to the Executive. This is clearly the tendency in Parliament at the present day. This change depicted above admirably illustrates the extreme flexibility.

Causes of flexibility

Causes. These changes in the English constitution have been the result of (*i*) a gradual and imperceptible modification of usage, (*ii*) a prolonged process of evolution and (*iii*) the acceptance of the doctrine of the omnipotence of Parliament.

The prolonged process of evolution is best described by Freeman in his *English Constitution* when he writes that: "The continued national life of the people has remained unbroken. At no moment have Englishmen sat down to put together a wholly new constitution, in obedience to some dazzling theory. Each step has been the natural consequence of some earlier step. Our progress has in some ages been faster, in others lower; at some moments we have seemed to stand still, or even to go back; but the great march of political development has never wholly stopped."

Palgrave wrote thus:—

Palgrave follows suit.

"By far the greatest portion of the written or statute laws of England consist of the declaration, the reassertion, repetition or the re-enactment of some old laws, either customary or written, with additions or modifications. The new building has been raised upon the old ground work; the institutions of one age have always been modelled and formed from those of the preceding, and their lineal descent has

never been interrupted or disturbed."

The flexibility is mainly due to the good national character, geographical situation and the peculiar genius of the people. The legal right to make extensive changes has long existed and has not been abused.

Parliamentary sovereignty has kept the flexibility.

Secondly, the Parliamentary sovereignty has kept its flexibility: –

(*i*) There is no law which Parliament cannot make.

(*ii*) There is no law which Parliament cannot repeal or modify.

(*iii*) There is under the English constitution no marked or clear distinction between Laws which are not fundamental or constitutional, and laws which are. "The English constitution may seem to be more or less in flood, owing to the crumbling of the banks and the water poured into it from millions of drain pipes." —Maine.

Maine describes its flexibility.

"We have a kind of unbroken continuity in this flexibility. The constitutions of other countries have been called 'made' constitutions because they were the offsprings of revolutions, whims and turmoils. "But the English constitution is not a pudding to be made at will from a receipt." It had a constant and continuous growth and continuity. "English people are far less exposed to violent cataclysm, and far more immune from revolutions imposed from without"

Thus Marriot is right when he says that English constitution is highly flexible. Legally it is undeniably the most flexible on earth.

Marriot is right if his statement is taken in a legal sense. Ogg thinks that actually the English constitution is less fluid.

Ogg, however, thinks that actually the English constitution is considerably less fluid than might be inferred from what the writers say. He takes shelter behind history and says that history shows that few systems of Government are more grudgingly and conservatively reconstructed by deliberate legislative act. And the English constitution is, therefore, less fluid

because it has depended upon deliberate legislative act and not upon the political temperament of the people.

People have surrendered wholly.

People have "not only wholly surrendered to the Government the exercise of constituent powers, or, to speak more correctly, have acquiesced in the complete exercise by that body of constituent powers but have imposed upon that body no obligation to exercise these powers in any manner different from that followed in the enactment of ordinary law."

We cannot agree with Ogg.

But we cannot agree with Ogg. History shows that the English constitution has legally and actually remained flexible and fluid. Let us trace the growth of the British constitution and see how far we are justified in describing it as such.

The five epochs.

We can summarise the growth of this flexible constitution through five epochs, suggested by Maitland, as follows :—

First period upto (1307).

(*i*) *From the earliest times to the death of Edward I (1307).* Anglo-Saxon methods of Government under went considerable change after the Norman conquest (1066) owing to the systematisation of feudalism under William I and his successors. In this period there was the concentration of Government in the hands of the King and the baronial power was being crushed. Thus from 1066 ensued a struggle between the King and the Barons and the culmination was the Magna Carta under John and the establishment of Parliament by Edward I in 1295.

(*ii*) *To the death of Elizabeth 1307—1603.*

Second period (1307-1603)

In the first part of this period, the Parliamentary experiment broke down. The Lancastrian Monarchy (1399-1461) had to leave because of the failure of the Parliamentary system. This, later on, gave rise to the War of Roses. However, under the Tudors (1485-1603) order was restored. Their monarchy was despotism, but it was veiled in the cloak of constitutional forms. This marked the true beginning on the convention of Parliamentary Government if

England. And thus, unconsciously the Tudors brought in a conflict between the Crown and the Parliament.

(iii) To the death of William III (1603-1702) During this period, the issue between Crown and Parliament was fought out. A series of documentary constitutions emanated. The Bill of Rights was the most important and this came after the dethronement of James II as a result of the Revolution of 1688-9. The Bill of Rights established the supremacy of Parliament over the monarch, though in form it left the sovereignty of the state in the hands of the King in Parliament. This Bill of Rights was soon followed by the Act of Settlement (1701) which emphasised the triumph of Parliament over the Crown.

Third period (1603-1702).

(iv) To the passage of Gladstone's Reforms Act (1884-5). In this period (1702 1885) came the full establishment of the cabinet system and of modern Parliamentary procedure. Some of this belongs to the conventions, some to unwritten law, and some to statutes. The most important statutes were the Septennial Act of 1716 and the Reform Acts of the 19th century (1832, 1867, 1872, 1884, 1885) concerning the franchise, the ballot and the distribution of seats. In this period there were also treaties, with Scotland, Ireland, and certain colonies.

Fourth period (1702-1885)

(v) The last period belongs to our own times. The great constitutional Act of this period is the Parliament Act of 1911. The other great statutes of this period were the representation of the People Act of 1919, which enfranchised a large number of women, and finally, the Act of 1928 granting women the vote on the same terms as men. There were many treaties too.

Fifth period upto (present times).

Conclusion.

The history traced above shows that the peculiar strength of that constitution lies in its great flexibility. The original prerogatives of the Crown of Eng-

Conclusion.

land have in the course of centuries been overlaid in practice so that they now remain only in a form of words. Thus nominally the United Kingdom remains a monarchy, and this nominatism is followed by a change in the words of the latest statutes which are utterly meaningless and entirely out of accord with the facts of the moment.

"The English constitution has thus permitted change without great crisis and development without much violence, enabling to shape itself to the dynamic needs of our society without out-raging that conservative sentiment which is the expression of its static self."—Strong.

The story of the growth of the British constitution is the story of a continual series of adaptations to existing needs and that is its flexibility. It has been rightly called the most flexible constitution on earth.

Q. 9. "The flexibility of the English constitution is at once its glory and danger." Discuss.

Ans. Read Q. 7 and also the following:—

The English constitution, being essentially a flexible constitution, has both its advantages and disadvantages.

Merits.

(*i*) Its glory lies in the fact of its adaptability to changed circumstances. (*ii*) The elasticity of the English constitution led to the popular control over matters which were at first almost wholly in the hand of the King. (*iii*) Another advantage is that it reflects the material outgrowth of the national life. (*iv*) It also makes constitutional reforms easily possible and revolutions unnecessary.

Its danger lies in the fact that—

Demerits.

(*i*) In England the legislature being a sovereign body is able to destroy the whole fabric of the constitution by a single enactment. (*ii*) The flexibility of the English constitution enables a powerful minister to change the whole system of Government. At the same time the necessity for securing popular support

for every step is said to render Ministers timid, time-serving, and short-sighted. (*iii*) It provides no safe-guard against premature and ill-considered changes. (*iv*) There is no guarantee of solidity and permanence. (*v*) The constitution being easily alterable it is not recognised as particularly sacred by the people.

But history has shown that the flexible constitution of England has stood the test of times well. It has represented organic growth and not a manufactured product.

"The advantage of the flexible British constitution is that errors may be reversed by an ordinary majority. What is fundamental, in short, is left to the people to decide, and they are also left to decide whether this shall be amended. They are expected to control themselves instead of being controlled by the constitution. It is as easy to remedy mistakes as it is to make them. Is it worth while then (*a*) to set up a special amending process as in other countries to declare Parliament's resolutions invalid? This would have serious effects upon the whole tenure of English political behaviour *and organization.*" "My personal view is," writes Dr. Fineer, "that it is not worth while to go to these lengths in order to safeguard against remote and rare possibilities engendered by the flexibility of the English constitution. It is good that the responsibility should rest heavily upon Parliament, that it should therefore rest heavily upon the people themselves."

Q. 10. Point out the chief landmarks in the English Constitutional History from

(*a*) the early times upto 1688.

(*b*) since 1688.

Ans. (*a*) The great statutory landmarks of the English constitution, are (*a*) The Magna Carta (1215), the Petition of Rights (1628) from the early times up to 1688 and (*b*) the Bill of Rights (1689), the Act of Settlement (1701), and the Parliamentary Act of 1911—since 1688.

The chief landmarks upto 1688.

(*a*) The chief landmarks from the early times up to 1688.

(*i*) The Magna Carta (1215).

On June 15, 1215, the Barons who had renounced their allegiance and taken up arms in order to enforce a settlement of their grievances met King John at Runnymede, and presented articles containing an outline of the concessions required. The King accepted the terms contained in the articles, and executed the great charter in which these terms were embodied on the same day.

Its provisions.

The principal provisions of the charter were as follows :—

1 Heirs were to enter upon their possessions upon payment of the customary relief, and infants upon coming of age were not to pay either relief or fines.

2. Land was not to be taken in execution for debt if sufficient chattles were to be found.

3. No scutage or aid was to be imposed without the consent of the Commune Concilium (Parliament), except the three customary feudal aids which were :—

(*a*) ransoming the King's person, (*b*) making his eldest son a knight, and (*c*) marrying his eldest daughter.

4. The city of London was to enjoy its ancient customs and liberties.

5. To the Commune Concilium, to be held for the purpose of assessing aids and scutages, were to be summoned the following persons :—(*i*) The Archbishops, Bishops, abbots, earls and greater barons by *individual writs* addressed to the sheriff.

6. The Common Pleas were not to follow the King's Court, but were to be held in a fixed spot.

7. Fines were to be regulated according to the magnitude of the offence, and earls and barons were not to be fined except by their peers,

8. No sheriff, constable, coroner, or other officer of the Crown was to hold pleas of the Crown, *i. e.*, Crown cases or trials in more than important offences.

9. No freeman was to be arrested, imprisoned, put out of his freehold, outlanded, exiled, punished, or put upon in any way, except by the lawful judgment of his peers or the law of the land.

10. Justice was not to be sold or denied to any one, or to be delayed.

11. Merchants were to be free to enter and leave the kingdom, and to remain there for purpose of buying and selling, subject only to the customary tolls.

12. Officers of the Crown were to be appointed from upright persons possessing knowledge of the law.

13. All lands afforested in the reign of King John were to be forthwith disafforested.

14. The forest laws were to be reformed.

15. On the restitution of peace, all foreign troops were to be sent out of the country.

16. All persons within the realm, whether clergy or lay-men, were to observe the laws and customs of the land.

17. Twenty-five barons were to be chosen as representatives of the nation to see that the terms of the charter were enforced and observed.

(*ii*) The petition of Rights (1628).

The Petition of Rights 16

The Petition of Rights was drawn up by the House of Commons of the Third Parliament of Charles I after several conferences with the House of Lords. Charles I had dismissed the first two Parliaments, because they made the grant of supplies dependant upon the redress of grievances. But to the third Parliament he gave way.

After reciting the various statutes by which the liberties of the subject had been assured and the various infringements of those statutes which formed

the present subject of the grievances, the petition humbly prayed His Majesty as follows :—

Its provisions.

1. That no man should be compelled to make or yield any gift, loan, benevolence or tax without common consent by Act of Parliament.

12. That no freeman should be forejudged of life or limb or imprisoned or detained against the form of the Great Charter and Law of the Land.

13. That soldiers and marines should not hence-forward be billeted upon private persons.

14. That commissions should not be issued to try persons according to the martial law as is used by armies in times of War.

The Bill of Rights 1689.

(*B*) (*iii*) The Bill of Rights (1689).

The convention which met soon after the flight of James II passed a Declaration of Rights, reciting the fact of his abdication. This convention then offered the Crown to William and Mary, who accepted it. In January 1689, the convention was turned into a Parliament which converted the Declaration of Rights into a Bill of Rights.

Its provisions.

Its chief provisions are :—1. That the pretended power of suspending of laws or the execution of laws by regal authority without consent of Parliament is illegal.

2. That the pretended power of dispensing with laws or the execution of laws, as it had been assumed or exercised of late is illegal.

3. That the commission for erecting the Court of Commissioners and courts of like nature are illegal and pernicious.

4 That buying money for or to the use of the Crown by pretence of prerogative without grant of Parliament for longer time or in other manner than the same is and shall be illegal.

5. That it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal.

6. That the raising or keeping a standing army within the kingdom in time of peace, unless it be with consent of Parliament, is against law.

7. The Protestant subjects may have arms for their defence suitable to their condition and as allowed by law.

8. That the election of members of Parliament ought to be free.

9. That freedom of speech and debates, or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament.

10. That jurors ought to be duly impanelled and returned.

11. Excessive bail ought not to be required nor excessive fines imposed nor cruel and unusual punishments inflicted.

12. That all grants and promises of fines and forfeiture of particular persons before conviction are illegal and void.

13. That for redress of grievances and for the amending, and preserving of laws, Parliaments ought to be held frequently.

14. That any papist or person marrying a papist should be excluded from inheriting, possessing or enjoying the Crown.

The Act of settlement (1701).

(iv) The Act of Settlement 1701, By this Act the Crown was settled upon Electress Sophia of Hanover and her heirs because she was the nearest Protestant heir to the throne.

Its provisions

The provisions of the Act were : 1. That matters of state should be discussed in the Privy Council, and that the Ministers who approved the policy should sign their names to the resolutions adopted.

2. It forbade all pensioners and holders of places of profit under the Crown to hold seats in the House of Commons.

3. It made the judges practically independent of the King or his Ministers. They were henceforth to retain their office on good behaviour and not on the pleasure of the King. The independence of the judiciary, secured by this Act, is the cornerstone of the liberty of the subject.

4. That no pardon under the Great Seal should be pleadable to an impeachment by the Commons in Parliament.

5. That no person, born outside the United Kingdom, shall be capable to become a Privy Councillor or a member of either House of Parliament, or to enjoy any office or place of trust or to have any grant of land.

6. That in case the Crown goes to an outsider, the nation shall not fight without the consent of Parliament.

7. That any person inheriting the Crown who professed the Roman Catholic religion or would marry a papist, was to be excluded from enjoying the throne or the Crown.

(v) The Parliament Act of 1911.

The Parliament Act of 1911

This measure of great importance was the outcome of political conflict which originated with the rejection by the lords of the Finance Bill or Budget of 1909.

The provisions are: 1. In respect to any Money Bill, *i. e.*, a bill authorising either taxation or expenditure, the Act takes away all legislative power from the House of Lords. The House may discuss such a bill for a calendar month but can not otherwise prevent beyond a month the Bill becoming an Act of Parliament.

2. In respect of any public bill (not being money bill or a bill extending the maximum duration of Parliament beyond five years), the Act takes away from the House of Lords any final veto, but leaves or gives to the House a suspensive veto.

(*i*) Any public bill, other than the money bill, becomes a law on receiving the assent of the Crown if passed by the House of Commons in three consecutive sessions even if rejected by House of Lords in each of three successive sessions.

(*ii*) That the bill shall be sent up to the House of Lords at least one calendar month before the end of these sessions.

(*iii*) That in respect to such bill, at least two years shall have elapsed between the date of the second reading of the bill in the House of Commons during the first of those sessions and the date on which it passes the House of Commons in the third of such sessions.

(*iv*) That the Bill presented to the King for his assent shall be in every material respect identical with the Bill sent up to the House of Lords in the first of the three successive sessions except in so far as it may have been amended by or with the consent of the House of Lords.

3. The House of Commons can, without the consent of the House of Lords, present to the King for his assent any bill whatever which has complied with the provisions of Section 2 of the Paliament Act and which is endorsed by the Speaker of the House of Commons.

4. Nothing in the Act diminishes or qualifies the existing rights and privileges of the House of Commons.

5. Five years shall be the maximum duration of Parliament instead of seven years.

Q. 11. Enumerate the circumstances favouring the early development of popular Government in England?

Reasons for the smooth development of early popular government in England. Her geographical isolation.

Ans. The following are the reasons which account for the remarkable smoothness with which the course of British constitutional development has run.

(i) Her Geographical Isolation.

(*a*) A narrow strip of channel separates England from the continent and this has afforded a great measure of defence.

It is a safe island.

The land, then, of which England occupies the greater part is an island and being such has, save for insignificant raids, escaped foreign invasions for nearly nine centuries and had rarely to concern itself with a great danger.

Thus no need of a large standing army

(*b*) The elimination of the danger from outside has obviated the need for a large standing army and thus the liberty of the people has not been crushed by the Kings of England who were deprived of the power to maintain a standing army by the Bill of Rights. This would not have happened if her geographical position had not been helpful in dispensing with a great army. The liberty of the people developed the popular Government.

The size of the country helped in cancelling the rebellious elements.

(*c*) The size of the country is small and this had made it easier for the King's visit to run in all parts of the realm, in making attendance at the National Council a less intolerable burden, and in enabling great men to stand with one foot on their estates and the other in the King's Court.

Shakespeare described the geographical position.

(*d*) The Good geographical position is well described by Shakespeare. "This previous stone set in a Silvery Sea, which serves it in the Office of wall, or as a moat defensive to a house—Against the Envy of less happier lands.

The country is closely knitted together.

(*e*) Thus the country is closely knitted for political purpose. Men can meet together more easily for common concerns and thus create a stable society.

(*ii*) Accidents of History.

Historical accidents which saved England have also helped in the development of popular Government in England. Accidents of history.

The accidents are :—

(*a*) The Norman conquest. This secured for the country a United Kingdom under a vigorous and gifted race of rulers. The Norman conquest and its good effect.

(*b*) The defeat of England in the Hundred Years' War saved their country from sinking to the position of a mere satellite in the troubled system of the Anglo-French continental monarchy. *The defeat saved it from becoming a second class Anglo-French Monarchy.* The Hundred Years' War saved English monarchy.

(*c*) Cornwallis's surrender at Yorktown averted another danger to English liberties. Cornwallis' surrender saved English liberty

(*d*) If England had not left the American colonies to their fate, American wealth would have unduly influenced British politics. English saved from the botheration of American colonies.

(*e*) "The defeat of Spanish Armada and that of Napoleon saved England from Spain and France for her constitutional development." *Treveleyan.*

These accidents of History show how far England attained a striking measure of the common objects of national ambition - power, wealth, culture, freedom. Only those accidents are mentioned which gave the nation a smooth development of her constitution and thus all round progress. The defeat of Spanish Armada helped England.

(*iii*) National Character.

(*a*) "The Englishman, as a political animal, is said to be law-loving, loyal to his leaders, indifferent to equality, deferential, a lover of liberty, sectarian, individualist, zealous for business, apt for self-government, a lover of compromise, a fertile maker of rules, indifferent to logic, respectful of precedent."—*Sir Maurice Amos.* National character. Sir M. Amos's opinion

They have a strange assortment of qualities.

(*b*) Englishmen are conspicuous for their strange assortment of qualities. Their political character has been slowly hammered into shape on the anvil of their own experience. The establishment of the Jury, Parliament, the office of Justice of the Peace and the Non-Confirmist Sect—all have been due to the past political experience of English people and due to their nationalist qualities of head and heart.

The genius of race.

(*iv*) The genius of the race.

The blood mixture.

(*a*) We see in Englishmen—the fusion of racial strains—Celt, Saxon, and Norman, Dane. This fusion has produced such people in whom enthusiasm for free political institutions was enduring and strong.

Munro

(*b*) "Englishmen and their descendants have always been hostile to improvised, uncertain, or dictational Government ; on the other hand they have displayed a loyal respect for political authority that is based upon their own consent."—*Munro.*

Her constitutional flexibility.

(*v*) Her Constitutional flexibility.

Development of many an institution of popular Government would have been greatly thwarted if the English constitution would not have been flexible. That is why English people have kept their constitution flexible, unmodified, indefinite and without any stereotyped form. They do not look for logic or comprehensive system because they are not worried by political inconsistencies or anachronism. For further discussion on flexibility and its advantages for the early development of her constitution, see Q. 8 and 9.

Policy and Law.

Policy and Law.

Love for these have endangered liberty and political progress.

(*vi*) *The achievement of the English constitution all along has been in the reconciliation of two distinct and almost inevitally conflicting things—policy and Law.* These two have been kept for public purposes, such as national aggrandisement, the establishment of true religion, or the realisation of Utopia. Such a society is chiefly inspired by the ideal

of stable Law. "It was reserved for the English people, in the slow and chequered progress of conflict and experiment which made their political life, to work out the solution of the problem how so to conduct the affairs of the nation as to combine the benefits of a vigorous and purposeful administration with a diligent solicitude for principle and private right. The rules and institutions by which this balance is secured and expressed have been inherited from the elders in the early development of our kingly democracy and these have made up our Constitution."—*Sir M. Amos.*

Q. 12. A courtier of Charles II once wrote on the royal bed chamber :—

"Here lies our sovereign Lord the King,
Whose word no man relies on,
He never says a foolish thing,
He never does a wise one."

Elucidate this dictum, and briefly sketch the position of the King in the English constitution. *(P. U. 1935).*

To this dictum Charles himself replied.

Ans. To this dictum, Charles himself replied that it was *all very true in as much as his sayings were his own whereas his acts were the acts of his Ministers.* In the making of laws the king is a participant, but his participation can be neither wise nor foolish, as he assumes no responsibility for it.

President Lowell wrote thus:—

President Lowell: "the Ministers decide."

"According to the earlier theory of the constitution the Ministers were the counsellors of the King. It was for them to advise and for him to decide. Now the parts are almost reversed. The King is consulted, but the Ministers decide."

Sir John Fortescue: "the King cannot alter laws of the land."

According to Sir John Fortescue, "A King of England cannot at his pleasure make any alterations in the laws of the land, for the nature of his Government is not only regal but political. "*He is supported*

Hooker supports him.

by Hooker who wrote that the King's grant of any favour made contrary to the law is void ; what power the King hath he hath it by Law, *the boundary and limits are known*:—

The King's positive control over public affairs—appointments, legislation, military 'policy, the church, Finance, Foreign relations, is almost nil.

Why the change?

What accounts for this change?

There was a time when his power in all great fields was practically absolute. It was certainly so under the Tudors, in the 16th century. But

(*i*) The Civil War cut off large personal prerogatives.

(*ii*) The Revolution of 1688-89 severed many more. Down to this Revolution, England was ruled by Kings.

(*iii*) The apathy and weakness of the early Hanoverians cost much.

(*iv*) The drift against Royal control continued even under the superior monarchs of the last hundred years.

The 'King changed into a constitutional Monarchy' or more aptly became a 'Crown' with the accession of George I.

The King reigns but does not govern.

Thus according to the classic aphorism of M. Thiers, the King, thereafter, reigned but did not govern.....He became a mere figure-head, a rubber stump, an instrument of signature.

What does this change imply ?

Ministers make appointments.

(*i*) When we say that the Crown appoints public officers we mean that Ministers themselves make the appointments.

King's speech written by them.

(*ii*) When, on the opening of Parliament, the King reads the speech from the throne, that is one written by his Ministers.

(*iii*) "Government" measures are framed and executive acts are performed in the name of the

Crown; but the King may personally know little about them or even be strongly opposed to them.

Executive acts at the will of the Ministers.

(*iv*) The King may not perform Public acts involving the exercise of discretionary power, except on advice of the Ministers with their countersignature.

Public acts on the advice of the Ministers.

(*v*) By every public act performed by or through them these Ministers are singly and collectively responsible to Parliament.

Ministers responsible for every thing.

(*vi*) "The King can do no wrong," because he is not responsible for any public act but his Ministers are. This means that the King can do nothing, because Ministers do the acts and take the responsibility.

"The King does no wrong."

His Legal and Real Powers.

His legal and real powers.

Walter Bagehot wrote thus about the powers of the Crown :—

"The Queen (Victoria) could disband the British Army, could dismiss all the officers and the sailors. She could sell off all her ships of war and all her naval stores and could make a peace and begin a war and cede territory. She could make every citizen in the United Kingdom, male or female, a peer and every parish in the United Kingdom a university. She could dismiss most of the civil servants and pardon all offenders. In a word the queen could by prerogative upset all the action of Civil Government, could disgrace the Government by a bad war or peace, and could, by disbanding our forces, whether on land or sea, leave us defenceless against foreign nations."

According to the letter of the constitution, Bagehot was correct. But in practice, the monarach *has been bereft of almost all political power*.....The Bill of Rights settled certain fundamental principles which bound the will of the monarch. It declared illegal the suspension or execution of Laws by Royal authority without the consent of Parliament. The Monarchy since that time has never had the same power which it claimed and possessed before. Now,

the real power of the Monarch is almost inappreciable as compared with the generally recognized powers of the cabinet.

Actual Powers of the Grown.

His actual powers. Judicial.

1. **Judicial.** Though the courts of justice are His Majesty's Courts of Justice, the judges are His Majesty's judges, yet in practice, the King neither appoints them nor dismiss them. It is the Parliament and the courts that settle the procedure of courts of justice. The King cannot interfere in the process of prosecution, trial, sentence and the other incidents of the administration of justice. The King only exercises the prerogative of mercy but he does so through the Home Secretary.

Legislative.

Legislative.

The King opens and dissolves Parliament but he cannot do so at his own discretion. In fact, Parliament must automatically be called every year because it is necessary to vote supplies and provide for the discipline of the army. The length of the life of the Parliament is determined by the Parliament Act of 1911. Parliament itself decides its own Sessions.

In fact, "There is no way in Law whereby the King can open or dissolve Parliament without the initiative and the motive power coming from sources outside himself, though in regard to dissolution, the case is different."

The King's assent to Bills which have been passed by the House of Commons and the House of Lords is necessary to make them valid statutes. But the King does not refuse the assent ; in fact, it has never been refused since 1707.

Executive.

Executive Ministers do it for the King.

The Crown appoints Ministers but who shall be appointed s decided by the condition of parties, and by the relaitive political strength and reputation of the leading members of the majority party. By the

devise of counter-signature, these ministers take responsibility for every action of the Crown which may be deemed political. Ministers remain in office until they lose the confidence of the House of Commons. It is not constitutional for the Crown to dismiss a Ministry at its own will.

He survives. Why? The king has still a position. Why?

Yet we cannot minimise the importance of English monarchy because :—

(*i*) The King still personally performs certain definite acts ; he receives foreign ambassadors even in the presence of a Minister.

Receives ambassadors.

(*ii*) He only can call upon a political leader to make up a Ministry.

Makes a ministry.

(*iii*) He only can assent to a dissolution of Parliament, entailing a general election.

Can dissolve Parliament.

(*iv*) He is the general adviser and friend. "*He has the right to be consulted, the right to encourage, and the right to warn.*" "A King of great sense and sagacity would want no others" (no other powers).

He is consulted encourages and warns.

(*v*) He wields influence directly upon the deliberations of the ministers as a body, keeps in close touch with the Prime Minister, and is a great force at cabinet meetings where important politics are to be formulated.

Keeps in touch with the Ministers.

(*vi*) Peel once remarked, "A King ought to know more about the Government than any other man in the country."

That is why the King's suggestions and advice on matters of public policy must be acted upon. Ministers will be slow to disregard them. He can take a dispassionate and impartial view of matters as his personal fortunes are less affected by party politics. He can think in terms of the best interests of the nation as a whole.

The king's advice and suggestions are acted upon.

(*vii*) The monarchy serves still other important purposes. It furnishes a leadership for British society.

He provides leadership for the society.

The golden link of Empire.

(*viii*) It provides a symbol of Imperial Unity. In the words of H. G. Wells, "The British Crown— The golden link of Empire— stands as a symbol of Imperial Unity in diversity as no other Crown."

Dicey writes;.....,the King is what the Imperial Parliament has never been, the typical representative of Imperial Unity throughout every part of the Empire."

His picturesqueness catches the peoples's mind.

(*ix*) " The King supplies the personal and picturesque element which catches the popular imagination for more readily than constitutional arrangements which cannot be heard or seen ; and a king or queen who knows how to play this part skilfully, by a display of tact, graciousness, and benevolence, is rendering priceless services to the cause of contentment and good Government."—*Jenks.*

Influence in religion, etc., is great.

(*x*) "Their influence in matters of religion, morality, benevolence, fashion and even in art and literature, is immense."—*Jenks.*

King-ship is not expensive.

(*xi*) (*a*) The continuance of kingship has been no bar to the progressive development of democratic Government.....(*b*) The Royal establishment does not cost the nation much. (*c*) The cabinet system nowhere, has been successful without the presence of some titular head, some dignified and detached figure whether a King or a President. The King of England is better than the changing presidents of other countries.

He is the chief of the Army, Navy, Air Force, etc.

(*xii*) The King is the Official Chief of the Army, the Navy, Air Force and the Civil Service. The oath is taken to the Crown and this evokes loyalty to an unchangeable symbol of the State.

Foundation of honour.

(*xiii*) He is the foundation of honours and the chief of the social edifice.

Fountain of Justice.

(*xiv*) He is the fountain of justice. In the case of those issues which come before the Judicial Committee of the Privy Council, the Crown still functions as a court of last resort.

(*xv*) The King's private secretary is his own choice and does not change with the advent of a new Ministry. He is a very useful channel of communication between the King and the cabinet on confidential matters.

He can chose his private Secretary to have a link with the cabinet.

(*xvi*) The Crown is also the treaty-making authority, and all international agreements are made in its name. Treaties can be drawn, ratified, and put into operation without Parliamentary concurrence, provided, of course, they do not stipulate for the cession of territory, or the payment of money, or for some other action which only Parliament can authorize. Thus the Crown possesses all the executive powers that are vested in the President of the United States, and more besides.

He is the treaty-making authority.

(*xvii*) *In Civil Administration*, the Crown has the sole and exclusive power of appointing all officials of the Government and of removal (except in the case of judges). It has also the power to create new offices and to determine the amount of remuneration which shall be attached to them.

He appoints and dismisses officals except judges.

Lastly. It was Sir Sidney Low who wrote "the British Crown is merely a convenient working hypothesis," but it would seem to be a good deal more than that. A Government cannot be conducted by hypothesis. The Crown governs England, it may be, with the approval of the House of Commons."

"The direct power of the King of England is very considerable. His indirect and far more certain power is great indeed." —*Burke*.

Q. 13. Write a short note on the importance of British monarchy.

Ans. See Q. 12 for full discussion. Also read the following quotations:—

"The executive part of Government.....is wisely placed in a single hand by the British constitution for the sake of unanimity, strength and despatch. The King of England is therefore, not only the chief but, properly the sole Magistrate of the nation ; all others

Blackstone

acting by Commission from and in due subordination to him."—*Blackstone.*

Gladstone.

"Little are they who gaze from without upon long trains of splendid equipages rolling towards a palace conscious of the meaning and force that live in the forms of the monarchy, probably the most ancient, and certainly the most solid and most revered in all Europe .....The Acts, the wishes, the example of the sovereign in this country are a real power. An immense reverence and tender affection wait upon the person of the one permanent and ever faithful guardian of the fundamental conditions of the constitution."—*Gladstone.*

The King is still the "Great Leviathan, embodying in his person the dignity and the Unity of the State.

Bagehot.

Bagehot describes the Crown as a pivot of the 'dignified part of the Constitution.' It is an intelligible headpiece and consequently calls forth feelings towards the Government which no form of republican institutions can evoke.....the Monarchy strengthens the English Government with the strength of religion. It appeals to sentiments which are not the less real and not the less strong because they are impalpable. It is valuable, also, as excluding competition for the headship of society and, above all as the guardian of the mystery of the constitution It acts as a disguise ; it enables the real English rulers to change without heedless people knowing it.'

Eliot.

Sir John Eliot observes :—

"Parliament is the body ; the King is the spirit; the author of the being of Parliament. What prejudices or injury the King shall suffer, we must feel."

Labour party and Kingship.

Even the leaders of the labour party 'republicans in principles' are agreed that the monarchy must be retained in the present form, because it is to bring in insuperable difficulties if a new elective headship becomes an alternative.

The views of the masses of the people

"The masses of the people have come to realise that the monarchy, seated above the turmoil of personal and partisan strife, neutral in politics and with no ambitions to gratify, lending dignity to Government but not standing athwart the path of the public will .....they have come to recognize that whatever may be the causes of their varied troubles, the monarch is not one of them. If the Crown, as has been well said, is no longer the motive power of the ship of state, it is the spar upon which the sail is bent, and as such it is not only a useful but an essential part of the vessel." —*Munro.*

His influence is not on the wane

"If, then, there has been during the last half-century some contraction in the influence of the Crown upon domestic politics, the contraction in one direction has been more than compensated by expansion in another, a wider and an even more important sphere." —*Marriott.*

Monarchy is indispensable.

The English Monarchy is the symbol of unity of English masses, of English nation and of the English Empire. It is the symbol of progress alround—growing stronger as the democracy spreads. English monarchy is indispensable.

The King and the Crown live.

"The King is dead; long live the King." What this announcement of a Royal demise really means is: "The King is dead: long live the Crown; long live the office which one Monarch has passed on another." The English monarchy has a great significance. It is never desired that it should be dead.

Q. 14. Distinguish between the nominal and real powers of the Monarch in the English constitution.

Perogative is the sum total of executive powers not mentioned in the constitution.

Ans. See question 12.

Q. 15. What do you understand by the expression "Royal Prerogatives"? Classify them. What is the present position of the King as a person?

Ans. The prerogative is the sum-total of those executive powers of the Crown which are not covered by the written part of the English constitution.

Besides the ordinary powers (legislative or executive) vested in the Crown, certain extraordinary powers, chiefly executive, are reserved for the King under the general name of the Royal Prerogative.

Finch. *Finch* defines it as: "It is that Law in the case of the King which is no Law in the case of the subject."

Dicey. *Dicey* defines it as "The residue of discretionary power left in the hands of the Crown, whether such power be in fact exercised by the King himself or by his Ministers."

Blackstone. *Blackstone*: "It is special pre-eminence which the King hath over and above all other persons, by virtue of the common law, but out of its ordinary course, in right of his royal dignity."

Kelke. *Kelke* describes it as the non-Parliamentary power of the Crown-in-council.

Sources of Prerogative.

Its sources are three in number: Tribal chieftaincy.

Three Sources:

(*a*) The executive powers of the King can be traced to the system of *tribal chieftaincy*.

Feudal Chieftaincy

(*b*) The privileges in respect of the doctrines of allegiance and treason are due to feudal chieftaincy.

(*c*) Several attributes invested on the King as a dignified being are the result of various legal maxims *e. g.*, the King never dies.

How the kings use it.

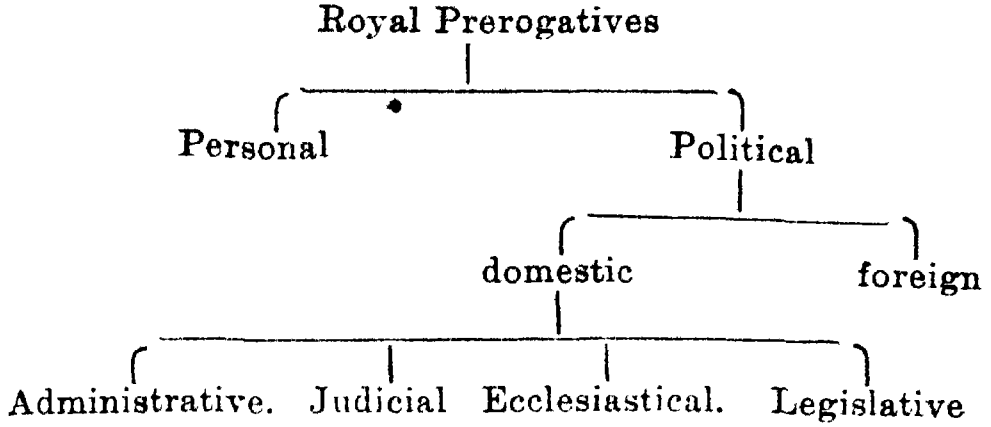
How the Kings use it.

The magnitude of the Royal prerogatives has been different with the kings of different ages. James I and Charles I regarded themselves as perfect and irresponsible beings holding office by Divine Right. This *view was called "High Prerogative View."*

High Prerogative view.

The present prerogatives may be classified as:—

Classification of Perogatives. Classification.



(1) PERSONAL PREROGATIVES.

Personal prerogatives.

(A) "The king can do no wrong" :—

Broom gives this maxim two meanings:—

(*i*) It means that the King in his personal capacity is not answerable to any earthly tribunal—neither can his blood be corrupted.

(*ii*) That the prerogative of the Crown extends not to any injury, because, being created for the benefit of the people it cannot be exercised to their prejudice.

Prof. Dicey says that this maxim means that the King is not liable for any act of his Ministers but Ministers are liable for all Royal acts.

Not only can the King do no wrong but he can think no wrong.

(B) The King never dies.

The King has the attribute of immortality. The demise is immediately followed by the succession. There is no interval; the sovereign always exists, the person only is changed."

(C) "The King is God's minister on earth."

Everybody is under the King but he is under nobody but God. The King's title and style are

are as follows;— "King of the United Kingdom of Great Britain and Ireland and of the British dominions beyond the Seas, defender of the Faith, and Emperor of India."

(*D*) **"Lapse of time will not, as a rule, bar the right of the Crown to sue or prosecute."**

Time does not run against the King as it does against the subject. But the limitations are:—

(*i*) The right of the Crown relating to land is barred if a subject holds the land by adverse possession for sixty years.

(*ii*) Indictment for treason (except an attempt to assassinate the King) is barred after three years from the commission of the offence.

(*E*) **"When the rights of the King and the subject conflict, the subject's right must give way to the King."**

(F) **"The King is not bound by statutes unless expressly named therein."**

(G) **"The King is never infant."**

An infant King's royal grants or his assent to statutes are valid. However, the custom is to appoint a regent under the Regency Act to do the work of the King till the latter is of age.

POLITICAL PREROGATIVES.

Political prerogatives. Domestic.

Domestic.

Administrative Prerogatives.

These consist in the creation of peers; the appointment of Ministers and other Government officials. The King's signature is essential. He also signs several orders-in-council.

2. Judicial.

2. Judicial Prerogatives.

The King is the fountain of Justice, the reservoir for right and equity through proper channels.

The King alone has the right of creating courts of justice.

Pardon is a part of the Judicial prerogative. It is for the King to pardon in the legal sense but for the Home Secretary or any other royal servant in the conventional sense, at any time. Pardon.

The King cannot pardon a libel or a slander or remit a recognisance to keep the peace.

3. Ecclesiastical Prerogatives.

The King as the supreme head of the Church of England, appoints on the recommendation of the Prime Minister, archbishops, bishops and others. Ecclesiastical.

All appeals relating to ecclesiastical courts are heard by the King-in-Council *i. e.*, the Judicial Committee.

The King also convokes, prorogues and dissolves the two Houses of Convocation of Canterbury and York.

4. Legislative Prerogative.

(*i*) No Law can be binding which has not received the Royal Assent. Legislative

(*ii*) The Crown has the sole power of summoning, proroguing and dissolving the Parliament.

(*iii*) The Crown has legislative powers for conquered and ceded colonies until he sanctions a constitution.

(*iv*) He has legislative powers for settled and Mandatory Colonies (under the covenant of the League of Nations).

5. Foreign Prerogatives.

(*i*) *Issue of letters of marque and reprisals.* Foreign.

When a nation manifests general hostility, the King issues such letters and reprisals.

(*ii*) *Right to make War and Peace.* The

King can declare and make war. He can order his subjects to arm. He can do everything to face this war menace.

(*iii*) *The right to receive and send ambassadors from and to foreign countries.* He can refuse objectionable ambassadors.

III. REVENUE PREROGATIVES.

3. Revenue.

By virtue of the fact that he was once the paramount feudal Lord and the universal land-owner, the King enjoys certain revenue prerogatives for *ordinary* revenue coming from times immemorial and for extraordinary revenue consisting of contributions by subjects for Crown purposes.

C. Statutory Limitations on the Prerogatives

Limitations on them; the great landmarks.

The result of the long struggle between the Crown and the nation are the four great statutory landmarks *viz.*, Magna Carta, the Petition of Right, the Bill of Rights and the Act of Settlement.

Their general effect is to limit, principally, the exercise of the royal prerogative. In fact their sanction is the will of the people.

D. The Exercise of the Prerogative.

The exercise of power by the King, the Executive and the House of Commons.

In theory the King is the head of the State for all actions. But practically the prerogative is no longer the personal prerogative of the King. All public acts are done by the Crown on the advice of the Ministers of the Crown. These privileges arising out of the prerogatives are of the executive and ultimately of the House of Commons.

(*i*) If war is to be declared, the sanction of the Commons is essential. The Commons can refuse war supplies.

(*ii*) The King can appoint Ministers but constitutional practice is that the Minister who is censured by the Commons should resign.

(*iii*) The King can only express his will by certain formalities *e. g.*, the use of the Great Seal; and the seals are in the custody of his Ministers, on whose advice he must act.

Q. 16. "The whole development of the British Constitution has been marked by a steady transfer of powers and prerogatives from the King to the Crown." Comment.

Ans. In early days, all the powers of Government were centred in the man who wore the Crown. In the course of English Constitutional History those powers have been almost entirely transferred from the King to the Crown itself, a complicated impersonal organisation consisting of Parliament, the Ministers, and the King, the latter bereft of all important powers and becoming only a ceremonial head of the state. The Crown became the 'Constitutional Monarchy.'

The Crown becomes the constitutional monarchy.

The changes from personal rule to Constitutional Monarchy have not been sudden. They are almost invariably the result of gradual evolution :

Gradual evolution brings the change.

(*i*) **The Anglo-Saxon age.** In this period the King was the supreme legislator, the supreme executive and the supreme Judge. *But he was not absolute in power.* He had to carry on his functions with the counsel and consent of the Witan. The sphere of King's activity was limited, as most of the work of administration was carried on in the local courts.

The Anglo Saxon age. The King was supreme.

(*ii*) **With the conquest of William of Normandy,** kingship became absolute and despotic. Parliament was always ready and anxious to assert those prerogatives which had been kept with rare discretion.

With the conquest of William the King became absolute.

(*iii*) **The fourteenth and fifteenth centuries:**

(*a*) In these, the Courts of Common Law (the King's Bench, the Common Pleas and Exchequer) and the Chancery were separated from the King's Council.

The 14th and 15th centuries.

The Norman and the Plantagenet Kings checked the power of the barons and the clergy.

(*b*) **The Norman and the Plantagenet Kings** checked the power of the barons and the clergy. But they never ceased to call the Great Council, in which new laws were made and extraordinary taxes were voted. The Great Council was changed into Parliament in order to check the power of the barons and to facilitate the raising of taxes.

Climax in the reign of Richard II.

(*c*) When the absolutism of the Plantagenets reached its *climax in the reign of Richard II*, Parliament asserted its authority, deposed the King and called in the Lancastrians to rule the country.

(*d*) **The Lancastrians stood for a Constitutional Programme.** From 1404 to 1437 the King's Council (a form of cabinet) was not merely dependent upon Parliament, but was actually nominated by it.

(*e*) The result of all these experiments was a dismal failure. The country had not as yet developed a democratic consciousness and the nation 'was not yet ready for the efficient use of the liberties it had won.' The weak and nerveless rule of the Lancastrians produced social confusion; baron fought with baron, county with county, town with town. *Then emerged out of this chaos the Wars of the Roses with all its miseries.*

The Tudor dictatorship. Liberty of the people.

(*iv*) **The Tudor Dictatorship.** In the Tudor period, the evolution of the Parliamentary machinery was temporarily arrested. But their reign prepared the people for their liberties as the establishment of peace and order by the Tudors increased their political intelligence and the social development.

The Stuart period.

(*v*) **The Stuart Period.**

The apology for having privileges.

(*a*) Thus, the Stuarts faced a changed nation. The 'Apology' drawn up by

Parliament in 1604 sufficiently attested this. In this document it asserted that the people were no longer disposed to acquiesce in the virtual suspension of their privileges and authority.

(*b*) People avoided troubles in the reign of Elizabeth 'in regard of her sex and age.' — Nothing in the reign of Elizabeth.

(*c*) But in the next reign people renewed the struggle. James I and his son tried to stem the tide in vain. — James I and son tackled.

(*d*) The first act of the drama closed with the concession of the Petition of Right (1628), with the dissolution of Charles's third Parliament (1629), and the death of Sir John Eliot (1633). — Petition of Right and the death of Sir John Eliot.

(*e*) From 1629 to 1640, no Parliament met.

(*f*) Then came the Long Parliament and the Grand Remonstrance. The latter document (1641) demanded the restoration of the full powers of Parliament. Statesmen like Bacon, Stafford, Pym, Hyde joined in these demands although Pym liked to have for Parliament a complete control over the executive. — The Grand Remonstrance demanded full powers for Parliament.

(*g*) **The Civil War ensued.** The king paid the penalty by his death. *The Monarchy was abolished.* — The Civil War: The monarchy was abolished.

(*vi*) **The Cromwellian Protectorate.** The "Instrument of Government" provided, in his reign, for the election of a single chambered legislature. But he was not disposed to subordinate the Executive to the Legislature and was not even willing to concede Parliament constituent powers.

A second attempt, to please the people, was made with a rennovated 'Upper House,' but with no better results. Cromwell, in fact, wanted to give a subordinate place to Parliament.

The Restoration. It marked the triumph of the monarchical Parliamentary principle. It also marked an emphatic repudiation of Government by the sword. "No Bishop, no King," "No King, no Parliament" were the constitutional slogans. But the kings remained *autocrats.*

(*viii*) After the Revolution of 1588.

(*a*) William III and Anne, though compelled to take Ministers, themselves guided the policy of the State.

(*b*) But George I and George II being ignorant of English politics, allowed the Prime Minister to rule the country.

(*c*) For a short period George III was able to revive the powers of the Crown by means of Parliamentary conception and with the a of "Kings' friends."

But with the accession of Younger Pitt to power George III's personal rule came to an end.

(*d*) This Glorious Revolution struck a blow—

(*i*) to the theory of Divine Right of Kingship.

Thus Parliament became supreme.

(*ii*) The '*succession power*' came in the hands of Parliament, and this established its supremacy. The Act of Settlement recognised it.

(*iii*) *The Mutiny Act* brought another blow. It provided that for maintaining and governing the standing army, Parliamentary authorisation would be necessary every year. This Act secured the annual meeting of the Legislature.

(*iv*) The mode of supplying revenue (drawn up in the *Civil list*) to the King further subordinated the King's Executive to the Legislature. A definite sum was appropriated to the civil expenditure of the Crown. Thus the King surrendered all those sources of revenue which had so long remained beyond the control of Parliament.

The civil list was left to Parliament.

(*v*) *Then the executive power fell in the hands of Ministers.* The long ascendancy of Walpole consolidated the principle of cabinet government.

The executive power came in the hands of Ministers.

(*ix*) **Concluding Remarks.** The cumulative effect of all these struggles has been, that down to the Revolution of 1688, England was ruled by Kings. Thereafter "The King reigned but did not govern." The constitutional progress has brought a constitutional monarchy; the 'Crown' takes the 'headship' of the King away. The 'Crown' is the Parliament, the Ministers, with a nominal King. The King is in an "honourable captivity."

The King reigned but did not govern. He is in honourable captivity.

Then the King has not altogether disappeared. He is still the pivot of the 'dignified part of the constitution', 'an intelligible head piece', 'a Government in which the attention of the nation is concentrated', 'a monarchy that strengthens the Government', 'a guardian of the mystery of the constitution acting in disguise and enabling the real rulers to change without heedless people knowing it.'

But still he has not disappeared

Bagehot rightly remarked that "when history is written, our children may know what we owe to them."

Mr. Gladstone voices the feelings of many English writers when saying, "Although the admirable arrangements of the constitution have now completely shielded the sovereign from personal responsibility they have left ample scope for the exercise of a direct influence in the whole work of Government.....The King is the symbol of Unity and of Law; he is by Law

the source of power. Parliaments and Ministers pass, but he abides in lifelong duty ; and he is to them as the oak in the forest is to the annual harvest in the field."

(For the present position of the King see Question 13 and 15).

To sum up.

Parliament has enchained the Crown. The powers are transferred from a personality to an institution.

"Parliament has left the personal status of the King untouched : he has always been and still is above the Law ; but Parliament has enchained the Crown and has bound it to definite modes of procedure. By this process the official acts of the King have been brought within control of the laws and customs of the realm. This gradual establishment of parliamentary control over the Royal prerogative covered a long period ; it began with Magna Carta or earlier, and was not fully completed until well in the 19th century. The issue, indeed, was much in doubt prior to the expulsion of James II but at that point the crisis passed. The Revolution of 1688 involved more than the substitution of one King for another. It marked a very important stage in the transfer of political functions from a personality to an institution." *Munro.*

Q. 17. "There is no distinction more vital to the practice of the British Constitution than that which exists between the King and the Crown, between the monarch as an individual and monarchy as an institution." *Gladstone.* Comment.

Ans. What is the Crown ?

Low : A convenient hypothesis. "a Myth"

(*i*) Mr. Sidney Low says it is "a convenient working hypothesis." But that is not satisfying.

(*ii*) He also calls it a 'myth'.

"The Nation.'

(*iii*) Then he calls it "The nation, or the will of the people, or any other suitable abstraction."

But all these definitions are erroneous and vague.

(*iv*) **Briefly and correctly** : "It is the supreme executive and Policy-framing agency in the Government, which means, practically, a subtle combination of sovereign, ministers (especially cabinet members) and to a degree Parliament. It is the institution to which substantially all prerogatives and powers once belonging to the King in person have gradually been transferred."—*Ogg.*

The true definition: Ogg.

(*v*) (*a*) Originally, the Kings were elective and if one died, there was a cessation of all Government. However, in the 12th and 13th centuries and in the days of feudalism Kingship became hereditary and a continuous institution. When a King was dead, there was no elimination of Government. "The King is dead, long live the King" was the doctrine.

Originally with the death of the King, the Government ceased.

(*b*) "He had thus become a link in the chain, a part of a continuous political system, custodian of the heritage of his predecessors and bound by their acts." *People became accustomed to a distinction between the King as an institution and King as a personality.*

But gradually he became a link in the chain.

(*c*) Thus in the 17th and 18th centuries powers of legislation, administration, and finance were taken away from the King as an individual and put beyond his control in the hands of the King as an institution—what we call to-day the Crown.

Since the 17th and 18th centuries, the King has been bereft of all powers.

(*d*) For further elucidation about the change from the 'King tot he Crown', read Question 16.

(*vi*) Literally, the "crown" is an inanimate object but if we use a capital letter in writing it, we make it stand for the Kingship as an institution.

(*vii*) The King is a natural person. The Crown is a bundle of sovereign powers, prerogatives, and rights—a legal idea. Historically, the rights and powers of the Crown are the rights and powers of the

The King is a natural person ; the Crown the sovereign power.

King. But now these powers and rights are to be exercised not by the King personally, but by his Ministers.

(*viii*) For the powers of the King as an individual see Q. 14 and 15.

(*ix*) The King as a natural person has property and revenues from those of the Crown land. But Parliament now, at the begining of each reign, grants to the King, for his life-time, an annual provision for his Crown and dignity, which is at his absolute disposal. In exchange for this grant, the King "places at the disposal of his faithful Commons in Parliament assembled" certain hereditary revenues to the "Crown" than to the King personally.

The Statute of 1495 differentiates between the King and the Crown.

(*x*) In the year 1495, a remarkable statute was passed which provided that "obedience to a King *defacto*, but not *de jure*, shall not expose his adherents to the punishment of treason when the rightful King re-establishes himself." This statute "may be regarded as the earliest recognition to be found in English Law of a possible difference between the office and the person of the King."

Legally the King and the Crown have same powers. Both are above law.

(*xi*) "In several note-worthy respects the 'Crown' is placed by law in a position of privilege or advantage in its relations with the subject. For all practical purposes these privileges are of importance only because the Crown means the Government; ***but every advantage which the general 'Crown Law' gives to*** the Crown is of necessity also given to the King as a person. That is why the old maxim 'King can do no wrong."—*Sir Maurice Amos.*

Thus the Crown and the King both are above law.

The King is the highest official.

(*xii*) The King is the first and highest of the officials of the Crown—if we use a somewhat paradoxical phrase. The King is thus an agent through whom the functions of the Crown are performed. ***His legal rights may be great but actual powers depend upon Parliament.***

(*xiii*) The distinction between the King and the Crown is most effectively expressed by the saying "The King is dead. Long live the King." This means now "The King is dead; long live the Crown: long live the office which the King occupied. The powers, functions, and prerogatives of the Crown are not suspended by the death of the King even for a single moment." Thus the King as a person is dead but monarchy as an institution is immortal. The Crown never dies.

"The King is dead; long live the Crown."

(*xiv*) The distinction reconciles the omnipotent powers of the Crown with the virtual importance of the King.

Reconciliation between the two.

(*xv*) The whole development of the British constitution, in fact, has been marked by a steady transfer of powers and prerogatives from the personal King to the impersonal Crown. See Q. 16.

Q. 18. Trace the growth of the cabinet system in Great Britain.

Ans. "The history of the growth of the cabinet system in Britain is one of the most instructive studies in the whole realm of the science of Government." We do not find the term cabinet referred to in any legal document, statutory or otherwise. It is the result of a number of accidents and usages and conventions.

The 'term cabinet' not to be found in any document.

(*i*) At first, the early Kings used to have councils instead of cabinets. Out of this system of councils emerged the Privy Council system.

(*a*) Under William I, in England, the *Great Council* was organised to assist the King. This body of barons has been the basis of modern English institutions. By almost imperceptible stages of modification and growth, the whole effective organization of the present Government of Britain has evolved.

William I and the Great Council.

(*b*) Out of the *Great Council* emerged a *special group* for constant session. This was called the Permanent Council.

Then came a special council.

Out of the special council, emerged the Privy Council.

(c) But this special council was too unwieldy and in that reign of Henry VI (1422-1461) it was superseded by another inner circle of councillors, called the Privy Council which now became the chief executive body of the realm.

(*ii*) **Under the Tudors.** Under the Tudors, this Privy Council was remoulded and its powers passed to yet another inner circle of itself. This special "interior council" as Macaulay calls it, met the King not in the usual council chamber, but in a "cabinet" or Smaller Room set apart for the purpose. This stage had been reached by the reign of Charles I (1625-1649).

The earliest mention of the term "cabinet" is however, in Bacon's essays.

(*iii*) In the time of Charles II it consisted of five members and was known as the "cabal".

But this virtual superseding of the Privy Council was not liked by Parliament. The House of Commons looked upon it as an attempt "to introduce a tyrannical and arbitrary way of Government and adopted the weapon of impeachment.

This principle was definitely established in 1679 when Parliament removed one of the King's most trusted counsellors, Earl of Danby, despite Charles II's best efforts to save him. No Minister, henceforth, could shelter himself behind the legal immunities of the throne.

(*iv*) As early as the reign of Charles I, Parliament had expressed the view that "the King ought to employ such counsellors only...as Parliament may have cause to confide in."

But Charles I, Cromwell, Charles II and James II disregarded it.

The House of Commons, however, continued the struggle and in the end its resistance was rewarded.

William and Mary, on their accession to the throne in 1688, conformed to the demand and "the doctrine that the King's ministers are responsible to Parliament has not been seriously disputed since that time."

(*a*) The above feature became firmly established in the reigns of George I and George II who were Germans by nationality. They could not speak in English and had no interest in English politics. Thus they thought it boring to attend the meetings of the cabinet council.

(*b*) Two very important results followed from this:– *Firstly*, the Ministers could debate more freely among themselves and present to the King a common concerted plan... *Secondly* in the absence of the King, they had to select a President to preside over the meetings of the cabinet. This president became their recognised chief and was known as the Prime Minister.

Sir Robert Walpole was the First statesman under whom all characteristics of Cabinet Government developed.

(*v*) In 1760, George III again tried to wrest powers from Parliament with regard to the Cabinet but he failed miserably and the cabinet re-appeared with great force. By 1784 the essential principles of Cabinet Government were well nigh settled.

Pitt perfected the Cabinet system by driving out the household officers of the King like the chamberlain from the Cabinet at the end of the 18th century.

Prof. Trail thus sums up the History

To sum up, in the words of Prof. Trail, the history can be divided into *four periods* :

(*a*) **First Period : condition before the reign of Charles I.**

It consisted of persons of the King's choice. These men had to agree with the King in everything. They gave the sovereign private advice, but performed no

executive functions. During this period, the inner council had no particular name.

(*b*) Second Period : The reign of Charles I and Charles II.

In this period this inner body of councillors is the *cabinet*, "but it did not displace the Privy Council from its position as *de jure* as well as *de facto* adviser to the King."

(*c*) Third Period.

In this period the Cabinet was unknown to the Law, but it became the *de facto* adviser to the Crown vice the Privy Council, though not adviser *de jure*.

(*d*) Fourth Period : George I and after.

(*i*) During this period "under the long political rule of Walpole the cabinet system received the impression that it still bears in our time.

(*ii*) Towards the close of the 18th century we note the emergence of the modern conception of the Cabinet. The Cabinet has descended thus :

The present position of the cabinet.

The cabinet has been a body necessarily consisting (*a*) of members of the legislature, (*b*) of the same political views, and chosen from the party possessing a majority in the House of Commons, (*c*) prosecuting a concerted policy, (*d*) under a common or joint responsibility to be signified by collective resignation in the event of Parliamentary censure, and (*e*) acknowledging a common subordination to one chief Minister."

Q. 19. Summarize the main features of Cabinet Government as it exists to-day.

Ans. (A) What is a Cabinet ?

"While every Act of the State is done in the name of the Crown, the real executive head of England is the Cabinet."—*A. V. Dicey.*

The Cabinet is the pivot on which the whole machine of British Government revolves.

Bagehot calls it "a committee of the legislative body selected to be the executive body." Bagehot.

Some writers (like Hearne) call it a committee of the Privy Council because all the members of the Cabinet are also members of the Privy Council. Hearne.

But it is more than any kind of Committee. It is the guiding and directing force in Government.

Thus according to Lowell: "*It is one of the wheels within wheels; the outside ring* consisting of the party that has a majority in the House of Commons; the next ring being the Ministry, which contains the men who are most active within that party; *and the smallest of all* being the cabinet, containing the real leaders or chiefs. By this means is secured that unity of party action which depends upon placing the directing power in the hands of a body small enough to agree, and influential enough to control." Lowell.

Thus it is an informal body whose business is to bring about co-operation among the different forces of the state without interfering with their legal independence.

"According to the conventions of the constitution, the Cabinet is the responsible executive, having the complete control of administration and the general direction of all national business, but exercising these vast powers under the strict supervision of the representative chamber to which it is accountable for all its acts and omissions."—*Sydney Low*. Sidney Low

Munro defines it a body of royal advisers chosen by the Prime Minister, in the name of the Crown, with the approval of a majority in the House of Commons." Munro.

(B) Thus its main aspects are :—

It consists of the Principal Ministers of the Crown.

(*i*) The Cabinet consists not of all, but only of the principal Ministers of the Crown. All the Ministers, together with the Under Secretaries and Parliamentary Secretaries form the Government or the Administration.

Majority support.

(*ii*) The Cabinet depends upon the support of the majority in the House of Commons.

Drawn from one party (except in a crisis).

(*iii*) It is drawn from one party (except occasionally at times of crisis, when there is a 'National Cabinet'). Cabinet Government means party Government.

Prime Minister gives it solidarity.

(*iv*) The position of the Prime Minister gives it solidarity.

Cabinet not known to Law.

(*v*) Neither the Cabinet nor the Office of Premier is known to the Law.

Privy Council of no significance.

(*vi*) The body known to the Law, namely the Privy Council, to which all Cabinet Ministers past and present belong, has no real significance left.

The Legislature supreme.

(*vii*) The prerogatives of the Crown together with the whole of the executive power, have passed into the control of the legislature.

No minutes are taken.

(*viii*) The British Cabinet is so informal a body that ordinarily no minutes are taken and as a practice none are kept.

It meets at the Foreign Office.

(*ix*) The members of the Cabinet meet, as a rule, at the Foreign Office, and not, like council, at Whitehall or wherever the sovereign happens to be.

Political unanimity.

(*x*) **Political unanimity.**

Cabinets are constructed upon some basis of Political Union to which the members on appointment all agree.

Unity of Ministerial responsibility.

(*xi*) **Unity of Ministerial Responsibility.**

The party frame their policy of action in concert, and in case of an adverse vote against a Minister, not

only that individual minister is to resign but the whole body of Ministers is to resign together.

In addition to that, English Ministers are responsible to the King. It is only a formal responsibility.

Also the members are responsible to one another to achieve solidarity. The fault of one brings the downfall of all. 'It either reaches heaven or sinks down like a boat.'

(*xii*) There is concerted action.

Concerted action.

The Prime Minister pulls the whole team together. The various departments have come to be co-ordinated and the present system, of united deliberation and action has become the uniform principle.

(*xiii*) There is the Secrecy of the Cabinet.

Secrecy.

Bagehot remarks · " the meetings of the cabinet are not only secret in theory but secret in reality." It meets in private but works in close and guarded secrecy.

(*xiv*) There is subordination of all Ministers to the Prime Minister.

Subordination of Ministers to the Prime Minister.

Woodrow Wilson remarks, " Consistency in policy and vigour in administration on the part of the Cabinet are obtained by its organization under the authority of one first Minister."

Prof. Trail sums up.

Prof. Trail sums up the political conception of Cabinet thus :—It consists (*a*) of members of the Legislature, (*b*) of the same political views, and chosen from the party possessing a majority in the House of Commons, (*c*) prosecuting a concerted policy, (*d*) under a common responsibility to be signified by collective resignation in the event of Parliamentary censure, (*e*) and acknowledging a common subordination to one Chief Minister.

In short, the Cabinet represents the ideas of homogeneity, solidarity, and common loyalty to a Chief.

(*xv*) The Cabinet has responsibility to the King and to Parliament (See Q. 23).

General Principles.

(C) General Principles of Cabinet Government.

The following principles are accepted.

Co-ordination between the Legislature and the Executive.

(*i*) Close correspondence between Legislature and the Executive.

The Cabinet must be selected from the party which holds the majority in the House of Commons.

Moreover, members of the Cabinet must have seats either in the House of Commons or in the House of Lords, in order to answer questions regarding their departments and to control Parliament as well.

Exclusion of the sovereign.

(*ii*) The sovereign is excluded.

This peculiar custom owes its origin to the habitual absence of George I and George II from the Cabinet. If the King be present in the Cabinet meeting, some degree of responsibility attaches to him, so it is necessary to exclude the King from Cabinet meetings.

Political Homogeneity.

(*iii*) Political Homogeneity of the Executive.

All the members of the Cabinet must belong to the same party and hold the same political opinion. This is necessary for maintaining unity in counsel. Walpole did something to establish this principle, but it was not fully recognised till the formation of the Rockingham Ministry of 1782.

Collective responsibility.

(*iv*) Collective Responsibility.

Prof. Hearne is of opinion that the principle of collective responsibility and corporate unity was recognised for the first time in 1782 when the Rockingham Ministry was formed.

Lord Morley.

Lord Morley : "As a general rule, every important piece of departmental policy is taken to commit the entire cabinet and its members stand or fall together. The Chancellor of the Exchequer may be

driven from office by a bad despatch from the Foreign Office, and an excellent Home Secretary may suffer from the blunders of a stupid Minister of War." All the members of the Cabinet resign when an important measure is defeated in the Commons or a vote of censure is passed against the Cabinet.

(v) Subordination to the Prime Minister.

Subordination to the Prime Minister.

Prime Minister is the visible symbol of Unity of the Cabinet. "He is the keystone of the Cabinet arch." If a member persists in holding a different opinion from him, the Prime Minister asks him to resign.

The King chooses the Prime Minister.

(*vi*) The King has the exclusive power of choosing the most leading figure in the Parliament as the Prime Minister and asks him to select his colleagues.

The Prime Minister picks up his team.

(*vii*) The Prime Minister is to pick up any number of his lieutenants between 10 and 20 to help him in running the Government. The King invariably approves of this choice.

(D) Its accessory factors.

Its accessory factors

The Cabinet system could not work beneficially were it not for certain accessory factors, and these are :—

Neutrality and anonymity of the Civil Service.

(*i*) The neutrality and anonymity of the Civil Service. "If the Civil Service were to change with every Government, dire confusion would be produced upon every occasion of the assertion of the principle of responsibility."

Secretariate for organized arrangement.

(*ii*) The organized arrangement of the Cabinet work by a secretariate.

(*iii*) The aid of special experts in the development of policy.

These may be called Technical Factors. There are others which may be called Party Factors.

(*iv*) Party control.

(*v*) The continuous existence of an 'ex-Cabinet,' composed of the leaders of the opposition.

Its functions.

(E) The Cabinet's functions.

The Cabinet as a political body directs the general policy of the Government. It creat a consistent and organic policy of the Government. *Bagehot* rightly remarks that "It is a combining Committee, a hyphen which joins, a buckle which fastens the legislative part of the state to the executive part."

Bagehot.

(*i*) Legislative Functions.

The Cabinet takes initiative in legislation and thus shapes the course of legislation at every stage. If the cabinet desires to dissolve the Commons, it can easily do so. Practically it is the agent of the legislature and then it shares in the sovereignty of Parliament.

Executive functions.

(*ii*) Executive Functions.

It is the supreme motive power in the executive. The heads of the departments carry on its collective responsility as the cabinet working together formulates the general policy of the state and sees that it is properly executed.

Ogg.

"The Cabinet Ministers formulate the policy of the nation on every question that arises, and ask of Parliament only that it should take whatever action is requisite to enable this policy to be carried out. So necessary to the system is it that the Ministers shall have their way that any check or rebuff at the hand of the House of Commons considered by them to be serious precipitates a political crisis—a change of Ministry, or even a general election."—*Ogg.*

Its weakness and difficulties.

(F) The Cabinet with its good features has weakness and difficulties.

Finer sums up these into six categories :—

1. There is the unfortunate effects of the large size of the Cabinet upon the ability of each Minister to participate effectively in the formulation of policy. The amount of work to be done by the Cabinet and the tremendous burden upon each Minister, Depart-

mentally, Parliamentarily, Electorally and Socially have the further effect of foreclosing any thought beyond the immediate tasks.

2. Participation in world affairs imposes upon several Ministers rather long occasional absences from the country, or from current domestic business. — Absence from the country.

3. Some of the spontaneous and valid creativeness of the House of Commons is dissipated by the threat of the Cabinet to dissolve if it is overcome upon matter it deems vital. — Threats by the Cabinet hinders the work of Commons.

4. The Cabinet is too large for prompt and effective discussion and decision. — It is too large for prompt and effective discussion.

5. The system divides the country into a set of men who strive their utmost to get things done and another set who do their utmost to obstruct them. — The system produces two armed camps.

6. The efficiency of the Cabinet as a governing council is limited by the cardinal and decisive condition of its responsibility to Parliament and the electorate. — Itsefficiency is limited because of its responsibility to Parliament.

Q. 20. "A Cabinet is a hyphen which joins the legislative part of the State to the executive part of the State." (*P. U. 1935*). Discuss.

Ans. Cabinet is a Committee of the legislative body formed to act as an executive body and to be a connecting link between the legislative part of the State and executive part of the State.

As a 'committee of the legislative body' it must be selected from the party which holds the majority in the House of Commons. Owing to the recognition of this principle, the Cabinet, which is the executive, can work *in harmony* with the House of Commons which is the most influential part of the Legislature. — It works in harmony with the Commons.

Moreover, members of the Cabinet must have seats either in the House of Commons or in the House of Lords, in order to answer questions regarding their departments and to *control Parliament*. — There is correspondence between the two.

Thus there is close relationship between the Cabinet, the Executive part, and Parliament, the legislative part of the State.

Laski explains how executive and administrative functions are combined together.

To clear the above point, we can read Laski with advantage. He gives us three aspects of executive :—

1. It is a committee of the party in power in the legislative assembly, offering proposals to that assembly, and holding office upon the condition of winning assent to those proposals.'

2. **'It is an administrating body applying legislation.** It has to manage the vast body of officials who are necessary if the work of administration is to be efficiently carried out.''

3. 'It is in continuous relationship with the mass of citizens through its function as administrator.'

Thus executive functions includes the administrative functions.

The Cabinet ministers guide Parliamentary work.

(B) In Parliament, the Cabinet Ministers create a complete nexus when they guide and control the work of Parliament in both branches—executive and legislative.

The speech from the throne in which the state of the country is reviewed, is prepared by the Ministers. At the opening of every Parliamentary Session a programme of legislation is set forth and that is the difficult task of the executive. Legislative measures upon all manner of subjects are formulated, introduced explained and pressed for adoption by the Ministers. Private bills by non ministerial members, however serious they may be, do not receive serious attention unless they have the moral or active support of the Cabinet. "For weeks at a stretch the Cabinet demands and is allowed, practically all of the time of the House of Commons for the consideration of the measures in which it is interested."

The ministers have their way

Thus the Cabinet formulates the administrative policy of the nation and Parliament demonstrates acqueiscence to enable that to be carried out. Ministers

have their way or there is a political crisis. This agreement between the Cabinet and Parliament shows that the executive part and the legislative part are interlinked together.

This fusion is clear when we see that the cabinet is responsible to the legislature.

(C) This fusion between the two parts is further evidenced by the fact that the Cabinet is responsible for its every action to the Legislature. "Parliament makes or unmakes the Ministers, it revises their actions. Ministers may make peace and war, and they do so at pain of instant dismissal by Parliament from office ; *and in affairs of internal administration the power of Parliament is equally direct.* It can dismiss a Ministry if it is too extravagant or too economical ; it can dismiss a Ministry because its Government is too stringent or too lax. It does actually and practically in every way govern England, Scotland and Ireland."

How the Commons have control over the Executive part.

The House of Commons can criticise the Cabinet through (*a*) amendments to their measures, (*b*) notice of motion, (*c*) adjournment of the House, (*d*) a vote of want of confidence, (*e*) by refusing supplies, (*f*) by re-asking questions relating to any department of the State.

Thus the legislature and the Executive go together.

In its origin the Cabinet belonged to the executive part, but now there is fusion.

(E) The Cabinet in its origin belongs to the executive part of the State. Now in its function it belongs to the legislative part of the State.

The history of the development of the Cabinet system shows so. (See Question 18). As a body for administrative purposes, it sprang from the Privy Council in the 17th and 18th centuries. *Now it becomes*, if not in legal theory, a body which advices and directs and governs. There is a fusion between the two parts of the State—the Executive and the Legislative. The Cabinet is 'the hyphen which joins and a buckle which fastens them.'

Gladstones opinion.

In the words of Gladstone "The Cabinet is the three-fold hinge that connects together for action the

British constitution of King or Queen, Lords and Commons like a stout buffer-spring, it receives all shocks, and within it their opposing elements neutralise one another.

Although this fusion has produced a legislative dictatorship, yet it is the happiest dictatorship for the nation.

Altogether this fusion has resulted in a good deal of legislative dictatorship and has also produced many weaknesses and difficulties (as shown in Question 19) yet "the fusion has created a remarkable system in which Cabinet has become a unit—a unit as regards the sovereign (executive), and a unit as regards the legislature." – *Lord Morley.*

And thus the English Government goes, establishing a link with the King, the Crown and the Nation. It is a happy legislative and executive dictatorship.

Q. 21. How is the Cabinet formed? Who constitute the Cabinet? How is it dissolved?

Ans. A. Formation of the Cabinet.

Formation of the Cabinet.

There are four occasions when a new Cabinet is formed :–

(*i*) When a new Parliament is selected after the statutory time limit of five years.

(*ii*) When an adverse vote takes place against the existing Cabinet and it has to go.

(*iii*) When an existing Cabinet is defeated and it dissolves the Parliament and holds new elections.

(*iv*) After the resignation of a Prime Minister.

On any of these occasions the King sends for the leader of the party commanding the majority in the House of Commons. If there is no single party, he calls upon some leader who can form a coalition or otherwise can assure him of a majority on important measures.

Sometimes the King on the advice of the retiring Prime Minister sends for the leader of the political party which has a majority in the Commons and asks him to form a Ministry.

When the King has chosen the Prime Minister, the latter proceeds to select both the Ministers and the

Cabinet Ministers. In spite of the fact that he has a free choice in making his elections, yet certain considerations of a practical nature are taken into account by him. These serious considerations are :—

Serious considerations that weigh with the Premier in selecting Ministers.

(*a*) He must see that various interests are represented. For example, he cannot select all the ministers from the Commons. He must take some from the House of Lords too. Both peers and Commons have been figuring in every British Ministry. Peers are generally numerous in Conservative than in Liberal or Labour Cabinets.

Representation of various interests.

(*b*) All Ministers must have seats in one or the other of the two houses of Parliament. But this does not mean literally that every man appointed to a ministerial post must be a member of Parliament at the time of his appointment. If there is a strong desire to include a person who does not belong to either house, arrangements are made for him by making him a peer. The usual procedure is to open a constituency by asking some member (who is sometimes rewarded for his generosity by being made a peer himself or by being given some dignified office which does not require of him a sitting in the Parliament) of the Commons to vacate his seat for the newly-appointed Minister. Bye-election is held in the 'safe' constituency and the newly-appointed Minister gets himself nominated and is usually elected.

Ministers must have seats in Parliament.

(*c*) To fill the various posts, the Prime Minister must bring together the best men he can secure—not necessarily the ablest, but those who will pull together effectively—with only secondary regard to whether they belong to Manchester or London.

Best men to be taken.

(*d*) The coming Prime Minister must observe party solidarity in making up both the Ministry and a Cabinet. For that the new premier has to draw his Ministry from his own party.

He must keep party solidarity.

(*e*) Surviving members of past Ministries of the party, if they are in active public life and desirous of appointment, are given preferential consideration.

Old ministers of the same party to be given preference.

Young experienced members not to be overlooked.

(*f*) Also there are the young men of the party who have made reputation for themselves in Parliament, and consequently have claims to recognition. A certain number of them must be taken.

Experienced officials.

(*g*) Also men who had had long experience in official life must also be considered.

Geographical considerations.

(*h*) Regard must be had also for geographical considerations ; there must be Ministers not only from England but from Scotland, Wales etc.

Groups within the party.

(*i*) Groups within the party and their leading men are considered.

Critics considered.

(*j*) Those who have been the most effective Parliamentary critics of an outgoing Cabinet are entitled to places in the incoming one.

Disaffected elements.

(*k*) Even disaffected elements must be placated. Social, economic, and religious groupings throughout the nation must be borne in mind.

Wishes of the monarch.

A. Wishes of the Monarch is an indirect iufluence.

Thus his problem is to select from among the availables those *whom he thinks can be woven into a well-balanced unit.* In the words of Lowell, his task is apt to be "like that of constructing a figure out of blocks which are too numerous for the purpose, and which are not of shapes to fit perfectly together."

Distribution of Portfolios.

Distribution of portfolios.

After the selection of Cabinet, the Premier proceeds to assign portfolios to each one of its members. It is a difficult task. He has to see the ability, fitness, and personal wishes of the member concerned, the needs of the country and the Government, the general strength of the Cabinet, and the plain logic of the situation.

When the list is completed, the Prime Minister submits it to the King. Then an announcement takes place in the London Gazette to that effect. There is

no mention of the Cabinet; for the Cabinet is unknown to the Law.

B. The composition of the Cabinet.

The composition.

The composition is purely a matter of convention and long practice. There is no fixed principle as to how many members will constitute the Cabinet. Walpole had seven. In 1916 it stood at 21. In 1916 Lloyd George reduced it to 5 or 6. Again it went up to 20 or more. The holders of the following offices are invariably taken into the Cabinet.

First Lord of the Treasury.

(1) **The First Lord of the Treasury.** The Prime Minister generally holds this office.

(2) **The Lord High Chancellor.**

Lord High Chancellor.

He is the President of the House of Lords, the head of the judiciary, the guardian of the Great Seal and the chief adviser of the Crown. He appoints the Judges of the High Court, the country court and all the Justices of the Peace.

(3) **The Chancellor of the Exchequer.**

Chancellor of the Exchequer.

He is the working head of the Treasury. His Chief duty is to adjust the National income to its expenditure. He frames the budget, in which he estimates what will be the expenditure for the year, and suggests in what way the income to meet it shall be produced.

Six Secretaries of State.

(4) to (9) The six principal Secretaries of State, *i e.*, for the Home Department, Foreign Affairs, the colonies, war, air and India. The duties of the Home Secretary are largely concerned with maintenance of order and administration of justice. He is also responsible for the industrial organisation and general well-being of the community. The titles of other secretaries largely explain their duties.

Fist Lord of Admiralty.

(10) **The First Lord of Admiralty.**

He is responsible for all the business connected with the navy. He has the duty of general direction and supervision of the naval department.

(11) The Lord President of the Council.

Lord President of the Council.

He presides over the Privy Council. But the meetings of the Privy Council are now only formal in character.

(12) The Lord Privy Seal.

The Lord Privy seal.

All the duties of the post were abolished in 1884.

(13) The Chancellor of the Duchy of Lancaster.

Chancellor of the Duchy of Lancaster.

He is formally responsible for the management of the estates and revenues of the Crown within the Duchy of Lancaster.

The Lord President of the Council and the Lord Privy Seal of the Duchy of Lancaster have got no real administrative duties to perform. These posts are given to some distinguished statesmen who are incapacitated for some administrative work or are unwilling to take any, but their advice and experience are highly valued.

(14) The Secretary for Scotland.

Secretary of Scotland.

He has general control over Scottish administration.

While the holders of these (14) posts are invariably taken into the Cabinet, the following are frequently but not invariably admitted into that body.

President of the Board of Trade.

(15) The President of the Board of Trade. He is chiefly concerned with the regulation of trade. The Board at present is organised in two main divisions : (*a*) the Department of Public Services and Administration and (*b*) the Department of Commerce and Industry.

President of the Board of Education.

(16) The President of the Board of Education. His principal duty is to control the elementary education in England and Wales, and to inspect the Secondary Schools.

These two Boards never meet. The presidents alone carry on the functions of the Board with the help of assistants.

(17)—(21) The Ministers of Health, Labour, Transport, Agriculture and Fisheries, and Pensions. Labour etc.

(22) The Post Master General. Post master General.

(23) The First Commissioner of Works. He is incharge of Government works, public buildings and royal parks. One member may take charge of two of these Departments. Commissioner of Works.

C. Dissolution of the Cabinet.

Its dissolution

The following are the causes:—

(1) When the Premier thinks that the existing House of Commons does not represent the people, he may advise the King to dissolve the House of Commons. Causes.

(2) The resignation of the Prime Minister.

(3) When an important or a constitutional question is at issue, the Premier though he may have a clear majority may advice the King to dissolve the legislature.

(4) On the expiry of the tenure of life (five years) of the Commons.

(5) When there is a deadlock between the House of Commons and the House of Lords.

(6) Repeated defeats of Government nominees at bye-elections forces the Prime Minister to seek for a general election.

(7) When the Premier has no clear mandate from the people on some fundamental changes.

(8) Attempts at domination of the Cabinet by the Crown. But such attempts are unknown to-day.

Q. 22. Write a comprehensive note on the position of the Prime Minister in the British Cabinet.

Ans. *Evolution of the post of Prime Minister.*

Evolution of the post of Prime Minister. Recognised in 1905.

(*i*) The position of the Prime Minister was officially recognised only in 1905. But some of the functions of the Prime Minister have been exercised by one person or another since the Norman Conquest. Thus Ralph Elambard under William II, William Longchamp under Richard II etc. had some of the attributes of a modern Prime Minister. But all of them were servants of the Crown and not of Parliament and none of them was at the head of a council of Ministers.

Clarendon and Danby.

(*ii*) *The impeachment of Clarendon and Danby reveal the tendency* of Parliament to control Ministers of the King.

In the reigns of George I and George II. prime ministership began.

(*iii*) However, it was in the reign of George I and George II that the post of the Premier was created. The respective kings would not attend the Cabinet council and one of the Ministers known as the chairman or the Premier conducted the proceedings.

Walpole, the first real Prime Minister.

(*iv*) *Walpole* was the first statesman to exercise all the functions of a Prime Minister. He would drive away all those Ministers who dared to oppose him. The people hated the title of a Prime Minister and that is why Walpole emphatically denied that he was the Prime Minister.

(*v*) In course of time people became familiar to the idea of a Prime Minister. In 1803 the Younger Pitt said that "there should be an avowed and real Minister, possessing the chief weight in the council and the principal place in the confidence of the King."

Peel and Gladstone perfected the system.

(*vi*) *Sir Robert Peel* raised the office of the Prime Minister to the zenith of its power.

Gladstone in his first ministry tried to achieve a position equal to that of Peel.

The position of Prime Minister as the leader of the predominant party in the House of Commons has now been fully recognised.

Position and functions of the Prime Minister.

His position and functions.

(A) His Powers.

The Prime Minister is the predominant leader of the predominant party in the predominant branch of the legislature (House of Commons).

Lord Morley remarks that " He is the keystone of the Cabinet arch."

Morley

Bagehot calls him " The head of the efficient part of the constitution."

Begehot

Mr. Sidney Low : "He is more powerful than the German Emperor or the American President or all the chairmen of the Committees in the United States Congress, for he can alter the laws, he can impose taxation or repeal it, and he can direct all forces of the State.

Low

Marriott calls him "The political ruler of England."

Marriott.

(*i*) He is the chairman of the Cabinet unless prevented by illness or other engagements.

Chairman of the cabinet.

(*ii*) He is leader of Parliament now-a-days, most usually of the House of Commons.

Leader of Parliament

This means that questions on non-departmental affairs and upon critical issues are addressed to him. The principal announcements of policy and business are made by the Premier. He has immediate authority to correct what he considers to be errors inferable from any of his colleagues statement's whether in or out of the House.

'Generally the House looks to the Prime Minister as the ultimate oracle in the matter of doubt where Ministers do not give it satisfaction, and as the fountain of Policy.'—*Gladstone.*

He keeps a general watch on the progress of all Government bills and is expected to speak not only on all general questions, but on all the most important Bills.

Thus he represents the whole Cabinet in the Commons when political battles are fought. He can

be rightly called the chief spokesman of the Government, and commonly bears the brunt of debate from the Government benches.

Channel of communication with Crown.

(*iii*) He is the chief channel of communication with the Crown on general policy. "What it means is, that the reports of the Cabinet councils are made by the Prime Minister, and that this account is not revised by his colleagues, and that, in emergencies, the Crown will first consult the Prime Minister." —*Gladstone.*

He puts Government affairs before the sovereign in a cabinet and systematic manner. Thus his association with the King gives special weight to his opinions and personality.

"As the Cabinet stands between the sovereign and the Parliament, and is bound to be loyal to both, so he stands between his colleagues and the sovereign yand is bound to be loyal to both."—*Gladstone.*

He is Imperial Chancellor.

(*iv*) *Thus he is the Chief adviser of the Crown, not only in the affairs of the United Kingdom, but also in those of the British Empire* for which the Crown needs responsible advice. It follews that the Premier is acquiring *the attributes of an Imperial Chancellor.*

Leader of the party.

(*v*) He is the acknowledged leader of the party and the embodiment of the highest political power.

There is many years loyalty, a great complex of feelings and ideas—resulting in such inertia that a leader like him cannot be easily dislodged ; he *goes only when he removes himself.*

"No one knows, and no one cares, where other Ministers dwell, but the fool of fools knows the meaning of 10 Downing Street." The Prime Minister has tremendous authority over his colleagues. They are in detail severally responsible to him—the embodiment of Cabinet Unity and Supremacy.

Moreover he is ex-officio Chairman of the Committee of Imperial Defence and at Imperial Conferences.

First among equals.

(*vi*) *He is primus inter pares*, that is first among equal. "This rests upon the observed facts in most of the Cabinets since Walpole's time, that one man is called upon by the Crown to form a Cabinet, that he makes the Ministry and distributes offices, presides over Cabinet meetings, and that if he decides to resign for any reason of policy, as distinct from personal incapacity, the Cabinet breaks up."

Within Ministry and Cabinet alike, the Prime Minister is the key man. "He exercises a general surveillance and co-ordinating influence over their work. He presides at cabinet meetings, and counsels continually with individual members, encouraging, admonishing, advising, and instructing. He irons out difficulties arising between Ministers or Departments."

He can secure the removal of a Minister for insubordination or any other offence, from the Crown. Thus he is the recognised leader of the Ministeral group and their spokesman.

Most hard worked man.

(*vii*) He is the most hard-worked man and always pressed for times.

He has to go through numberless papers, endless correspondence; he has to attend countless callers; he has to confer with individual Ministers, visit and submit reports to the sovereign, hold cabinet meetings, spend time in Parliamentary debates, ever ready to answer questions, deciding points of technical procedure put up to him by his colleagues; he meets the social demands; groups of constituents will occasionally expect to be taken to the public galleries or entertained to tea on the Terrace overlooking the Thames. — *Ogg.*

His patronage.

(viii) He exercises a good deal of patronage. He appoints all the Ministers and under-secretaries. All the higher ecclesiastical offices are filled up with his advice. He can confer peerage and other honours.

His legal status.

(*B*) His legal Status.

He was unknown to the law until 1906 and even now his position is indirectly recognised in law. A Royal Proclamation of December, 1905, gave place, and precedence to the Prime Minister next after the Archbishop of York.

He has no salary as Prime Minister and has no statutory duties of Premier. He assumes another office generally that of the First Lord of the Treasury and receives a salary for holding that post. "Nowhere does so great a substance cast so small a shadow, nowhere is there a man who has so much power, with so little to show for it in the formal title or prerogative."—*Gladstone.*

(*C*) Certain drawbacks.

Disadvantages of his post.

Finer sums them up as follows :— (*i*) "The prestige attaching to the office may on occasion result in an undue demand for deference to the opinion of the man, and a too narrow view of the extent of loyalty to be expected from Ministers, so that independent views may almost be forbidden.

(*ii*) "This had occasioned much distress to some cabinets and it has deprived the country of the benefits of collective wisdom.

(*iii*) "An ideal Prime Minister would put into the common stock his own real individual inventiveness and feeling, without forcing the situation by appeal to his position no more than, in the last resort, to avert an actual split, so that the diverse views on the public good should be fully and maturely weighed against each other and the contingency which they are to meet.'

Q. 23. "Responsibility of the cabinet is of two kinds, *viz.* (*i*) technical or moral and (*ii*) real or political." Explain.

Ans. No principle is more firmly established and none is of more far-reaching importance than the principle of Ministerial responsibility as it is in British Government.

The principle of ministerial responsibility is very important.

Responsibility means that a position of trust is held. that is, that power can only be used within certain defined limits.

(*i*) Technical or moral Responsibility. *Examples.*

Technical or moral responsibility

1. When a Minister assumes office, he considers himself morally bound by the acts done by his predecessor.

2. Also if he knows that something has been done in his department without his consent and if then he continues in office, he is deemed morally or technically responsible for those acts or decisions or ommissions or commissions.

3. When a new Cabinet is in the making, ministers are responsible technically for every act of the King.

4. That is why we say that the responsibility of Ministers to the King is a merely technical responsibility. The King cannot dismiss a member of the Cabinet and so long as that Minister possesses the confidence of the Premier and the Commons, he remains in office. Thus Ministerial responsibility to the King is not a very serious affair.

(*ii*) Real or Political Responsibility.

Real or political responsibility.

It arises from the fact that the Ministers are responsible for everything that the King does as the King can do no wrong. It has three phases:—

Responsibility to the King.

1. Responsibility to the King. Although (as we have noted above) it is only a technical responsibility, yet it becomes a real responsibility when it is

asserted that the monarch must be kept informed. Queen Victoria once rebuked Lord Palmerston for not keeping her informed of what passed between him and Foreign Ministers before important decisions were taken.

Gladstone wrote that the monarch's "entire disconnexion from the bias of the party" gave her undeniable claim to be consulted.

Thus the monarch by exercising his informal rights of being consulted, of warning and encouraging can render much valuable service to the state. The Cabinet considers the advice of the King to be of great value because of his experience, position and influence. That is why they have some political responsibility towards him too, though it is mainly a technical responsibility.

Responsibility to one another.

2. **Responsibility of the Ministers to one another.** This is an intra Cabinet responsibility. This responsibility arises from the fact that solidarity is the essence of the Cabinet system and that is to be kept "So it is a matter of each for all and all for each." Every Minister is to seek the opinion of his colleagues before taking any action that may bring any criticism afterwards.

This principle was seen established in 1851 when Lord Palmerston did not consult his colleagues in an important matter and was dismissed from the Ministry.

Responsibility to the Commons.

3. **Responsibility to the House of Commons.** This is what the term Ministerial responsibility really means. The Ministry must always have a majority in the Commons and thereby demonstrate that it possess the confidence of the House, otherwise they lose their office and must resign. The Duke of Devonshire was right when he said: "Parliament makes and unmakes our Ministers, it revises their actions. Ministers may make peace and war, but they do so at pain of instant dismissal by Parliament from office; and in affairs of internal administration

the power of Parliament is equally direct. It can dismiss a Ministry if it is too extravagant or too economical; it can dismiss a Ministry because its Government is too stringent or too lax. It does actually and practically in every way govern the Empire." Thus the Ministry must command the confidence of the House of Commons which is the sole representative of the nation.

Q. 24. Write short notes on (*i*) the Ministry and (*ii*) the Privy Council.

Ans. (*i*) The Ministry.

The Ministry.

"It is composed of an inner part that formulates the policy of the Government and an outer part that follows the lines laid down." *Lowell.*

The inner part contains the members of the Cabinet, while the outer part consists of the heads of the less important departments, the parliamentary under secretaries, the whips, and the officers of the royal household.

Ogg.

"Thus the Ministry comprises the whole number of Crown officials who have seats in Parliament, are responsible to the House of Commons, and hold office subject to the approval of the working majority in that body. Besides, the Ministers are those officers of the Crown who have to do with the formulation of the policy and the supreme direction of carrying it out."—*Ogg.*

Difference between the Ministry and the Cabinet.

Ministry and Cabinet differentiated.

The Cabinet is something else. It consists of such members of the Ministry as the Prime Minister invites into the 'charmed circle.' All cabinet members are Ministers, but not all Ministers are Cabinet members.

Ministry is thus a wider term.

What constitutes a Ministry?

What constitutes a Ministry?

In addition to the Secretaries of State and the Political heads of other Government Departments the Ministry consists of:—

(1) The Lord Chancellor, (2) the Chancellor of the Duchy of Lancaster, the Minister of Pensions, the First Commissioner of Works, (3) the Junior Lords of the Treasury, the Financial and Patronage Secretaries of the Treasury, the Pay-Master-General; the Financial Secretaries to the Admiralty and War Office. (4) The Parliamentary Under-Secretaries of State. (5) The Parliamentary Secretaries to the Board of Trade, Department of Overseas Trade. Board of Education, Ministry of Health, Ministry of Agriculture and Fisheries. (6) Secretary of Mines. (7) Attorney General, Solicitor General, Lord Advocate for Scotland, Solicitor General for Scotland, and (8) Various Officers of the King's Household, *e. g.*, the Lord Steward and the Chamberlain.

(2) The Privy Council.

The Privy Council.

It is one of the most venerable parts of the constitutional system.

Its Evolution.

The Evolution.

(*i*) Its remotest ancestor was the Great Council of the Norman and Angevin Kings.

(*ii*) Its immediate ancestor was the Curia Regis and still more immediate ancestor is the Permanent Council out of which it emerged in the 15th century.

(*iii*) "It was the final product (later on giving place to the Cabinet) of that oft-repeated process of sub-division and devolution by which the functions of advising the King and carrying on the Government in his name were kept in the hands of a relatively small and workable body." [We have shown this development in the history of the evolution of the Cabinet.]

Its position to-day.

Its position to-day.

(*i*) Now it has some three hundred and forty members. The two archbishops and the Bishop of

London, higher judges and retired judges, many eminent peers, a few colonial statesmen and varying numbers of men of distinction in literature, Art, Science, Law and other fields are members of the Privy Council.

(*ii*) Generally all members of successive cabinets are appointed as Privy Councillors.

(*iii*) "It is only as a Minister that a man can be legally placed in charge of a high Government post and only *as a Privy* Councillor that he can be required to take the historic oath of secrecy for his Office."

(*iv*) Once a Privy Councillor, he remains so for the rest of his life.

(*v*) Every Privy Councillor has a title of 'Right Honourable.'

(*vi*) Except when a new King is to be crowned, or some other solemn ceremony is to be performed, the general bodp of the councillors is never called together.

(*vii*) Meetings are held commonly (of only active Cabinet members) at Buckingham Palace with the King. The Lord President of the Council is also present, and also the Clerk of the Council who issues the summons and is the secretary of the Cabinet.

At such meetings, Ministers take their oath of office ; sheriffs receive their formal appointments ; 'Orders in Council are issued *e. g.* proclamations summoning, and dissolving Parliament, orders relating to the Government of the Crown colonies, concerning grant of Royal charters to municipal corporations and other bodies, affecting the Permanent Civil Service, war time orders for neutral trade and blockade and orders on subjects like health and education.

(*viii*) But the Privy Council is not an advisory or deliberative body. Those functions of advice and deliberation have passed to the various departments and the Cabinet. The Cabinet group decides what

orders shall be given and those are given by the Privy Council.

(*ix*) The Privy Council has a Judicial Committee which gives final judgment on all appeals from ecclesiastical courts, admiralty courts, and courts in India, the dominions, and the colonies.

Other Committees are on the Channel Islands (belonging not to the King of England but to the Duke of Normandy) and for the Scottish Universities and the Universities of Oxford and Cambridge.

The Board of Trade and the Ministry of Education originated from the Privy Council as Committees.

Q. 25. Trace the history of House of Lords and explain its existing powers.

Ans. *I.* History of the House of Lords.

(*i*) Its origin.

History of the House of Lords. Its origin.

The origin of the House of Lords can be traced to the Commune Concilium which in its turn may claim descent from the Anglo-Saxon Witenagemot. This Great or Common Council (the latter being the name in Magna Carta) of Chief Barons and High Church dignitaries met three times a year in the reign of the Norman Kings.

(*ii*) From 1295 to 1534.

1534 to

In the Modern Parliament of 1295 Edward I grafted on this body two knights from every shire and elected representatives from certain cities, towns and boroughs. For a time they all sat together, but they were essentially two Houses, and what distinguished them was the method by which they were summoned. The Lords and Church officials were called individually whereas the Commons were called through the Sheriffs.

In the reign of Edward III, they definitely took to meeting in separate chambers.

Dukes were first created by Edward III, *Marquesses* by his successor and the *Viscounts* in the fifteenth century. Besides *Bishops, Abbots, and the various grades* of the lay peerage there were (as are at present) in the House of Lords, Judges and the great Law Officers of the Crown to give advice upon legal affairs.

(*iii*) From 1534 to 1832.

1534-1832.

The introduction of the Reformation and especially the dissolution of the monasteries profoundly affected the constitution of the House of Lords. The Tudors created the lay peers who came to have preponderance over the spiritual Lords. The lay peers were lavishly created and this increased the size of the House of Lords.

A new element was created by the Acts of Union with Scotland and Ireland and thus 16 peers from Scotland for a single Parliament and 28 for Ireland were elected for life.

In 1649 the House of Lords was *abolished* following the execution of Charles I. This was during the Commonwealth.

But it was *restored* with the Restoration in 1660. After the Restoration the House of Commons manifested unprecedented jealousy to the House of Lords in matters of taxation and exercise of judicial function.

However the House of Lords attained the zenith of its power in the period between the Revolution of 1688 and the Reform Act of 1832. The Crown was the only rival of the peerage in the 18th century. Queen Anne struck a blow by creating 12 new peers in one batch in order to faciliate the task of the Tories in concluding the Treaty of Utrecht.

Earl of Sunderland introduced the peerage Bill in 1719 and 1720 in order to check the power of the Crown but he was defeated by the efforts of Walpole.

(*ii*) It has the power of the trial of a peer for treason or felony under the presidency of a High Steward appointed for the purpose. The Court consists of all Lords of Parliament excepting the Bishops.

Thirdly.

(3) It has the right to remonstrate, the right to criticise, the right to deal freely with all measures (excepting those that involve the fate of parties), the right to formulate emphatic protest against legislation of which it disapproves, and the right to compel a Government to submit its controversial proposals to more than two years of public discussion before it could pass them into law. It thus questions the Government and debates its policy.

Q 26. How is the House of Lords constituted? Explain its importance in the British Political system.

Ans. *I* Composition of the House of Lords.

Composition of the House of Lords: Lords spiritual and Lords temporal.

The House of Lords is composed of two of the estates of the Realm, *the Lords Spiritual and the Lords Temporal.*

(*a*) The *Lords Spiritual* are the archbishops of Canterbury and York and 24 Bishops of the Church of England; in all 216.

(*b*) *The Temporal Lords are* :—

(*i*) hereditary Peers of the United Kingdom, about 600.

(2) *sixteen* representative Peers of Scotland. They are elected by the Scottish Peers immediately after every General Election.

(3) *Twenty-eight* representative Peers of Ireland selected for life. After the creation of Irish Free State, it was declared in April, 1923 that if a future vacancy occurred among the representative Peers for Ireland, it would not be filled up; but that existing representative peers retain their right to sit.

(4) The Lords of Appeal in ordinary of whom there may not be more than *seven* appointed, enjoy the dignity of a baron for life.

N.B.—The British Peerage consists of many ranks: Dukes—20; Marquises—28: Earls—130 Viscounts—70 and Barons—400.

II. **Its importance.**

Its importance. J.S. Mill.

(*a*) It was J. S. Mill who remarked that "the same reason which induced the Romans to have two consuls makes it desirable that there should be two chambers; that neither of them may be exposed to the corrupting influence of undivided power, even for the space of a single year."

It is the oldest legislative body.

(*b*) This upper house is the oldest legislative body in the world. It has had a continuous existence, with a single brief interruption, for more than ten centuries. It has become an integral part of the British political and judicial systems. So to say it has woven itself deeply into the British political constitutional system. It is the most weighty part of that system. In several respects, it is the most interesting upper house in the world.

Disraeli

"The King of England," said Disraeli, "may make peers, but he cannot make a House of Lords. The order of men of whom such an assembly is formed is the creation of ages." It has a character of its own which it is impossible to impart to any artificially constructed second chamber.

Its influence and importance due to its wealthy intellectual heads.

(*c*) "The House of Lords has the influence which belongs to wealth, to high rank and ancient lineage, to landed property, to ideas and sentiments, which have been interwoven into the texture of English society, and to traditions, and usages, and habits of mind, which are the growth of ages. No synthetic process could quite reproduce this curious and complex result of time and chance."

Men like Salisbury, Lansdowne, Grey, Balfour, Asquith, Birkenhead, Reading, Tennyson, Bryce, Lister, Curzon, Milner, Kitchner, Rothschild, Beaverbrook

Its great members have increased its importance.

and Passfield had been its members. That is why the House of Lords has been called "the Westminster Abbey of living celebrities." Industry, finance, agriculture, commerce, law, religion, and scholarship get representation in this house, in the absence of which they would have hardly been represented at all.

It is a ventilating chamber.

(*d*) The House of Lords is a *ventilating chamber*. It is an admirable arena for the discussion of those large questions of public policy—questions of imperial interest or of social and economic reform—which the Commons, absorbed in the exigencies of the passing hour, dismiss as irrelevant or academic.

It is a reservoir of Cabinet ministers.

(*e*) The House of Lords is a "*reservoir of Cabinet Ministers.*" Some Cabinet Ministers are taken from the House of Lords. Ministers for foreign affairs are generally selected from the House of Lords, because a Lord is not to seek election and so is not under the necessity of giving an account of his administration of foreign affairs, which ought to be kept secret.

It is a revisory chamber.

(*f*) It is a *revisory chamber* and by delaying or refusing to give assent to a Bill coming from the House of Commons, it affords time to the public and the Government for a cool deliberation of the subject.

Bagehot: It is an index that revolution is unlikely.

(*g*) Bagehot thinks that if the House of Lords is not a *bulwark to keep out revolution, it is at least an index that revolution is unlikely.*

"Resting as it does upon old deference and inveterate homage, it shows that the spasm of new forces, the outbreak of new agencies, which we call revolution, is for the time simply impossible. So long as many old leaves linger on the November trees, you know that there has been little frost and no wind just so while the House of Lords retains much power, you may know that there is no desparate discontent in the country, no wild agency likely to cause a great demolition."

(*h*) The Lords have cool and disinterested and independent judgment. They are not accessible to any social tribe. They have no constituency to fear or

wheedle. They have leisure to revise intellectually. Thus the House of Lords have the greatest merits which such a chamber can have." It is possible, we cannot get a revising assembly in its place. It is impossible to find a class of respected revisers."

Their cool, disinterested, independent judgments increase the importance of the House.

Q. 27. How are peers created ?

Creation of Peers. By the Crown.

Ans. (*i*) They may be created *by the Crown* at any time and without any limit as to number on the advice of the Prime Minister. Members of the party and the Cabinet suggest the names to the Prime Minister.

Peerages have been created at different rates during the reign of different monarchs. George III created 116 peers; George IV and William IV added 60 more; Queen Victoria created 373 more peers. Since then the annual average has been somewhat higher.

By inheritance.

(*ii*) With the death of peers, male heirs inherit the peerages. It is extinguished in the absence of any eligible male heir. It is not necessary that there shall be sons left to inherit the title ; in most cases the peerage will pass, in default of sons or grandsons, to brothers or even to cousins.

In some cases, women have inherited rank in the peerage and a few got the peerage in their own right, but none of them have yet been allowed to sit in the House of Lords. In 1926, an attempt was made to give them that privilege but in vain.

Peerage cannot be resigned or relinquished.

A peerage cannot be resigned or relinquished by the heir who must accept it whether he likes it or not. If he is under 21 when he inherits the title, he does not take seat in the House of Lords till he attains the majority. A peerage of grant (and offer of a new peerage) can be declined but not a peerage of inheritance.

Peerage customarily given.

(*iii*) There are people who are customarily given rank in the peerage. For example, a Prime Minister, or a speaker of the House of Commons, on retirement from office, is offered a peerage. Similarly the ministers who render a great service to the nation

are also offered peerage. Thus William Pitt, Disraeli, Chatham, Balfour were created peers.

Peerage for various distinctions.

(*iv*) Distinction in fields like the military and naval service, literature, art or science brought the peerage to many, *e. g.* the Duke of Wellington and the Duke of Marlborough got the peerage for military and naval services ; Tennyson, Bryce, Lister got the peerage for their distinctions in literature or art.

Philanthropics given peerage.

(*v*) "Munificent gifts to hospitals, educational institutions and philanthropic enterprises, contribution to the party campaign funds and other forms of largesses have also brought the peerages for many. There are certain who got their peerage by reason of their wealth."

Peerages on important anniversary occasions.

(*vi*) New peerages are usually granted on certain important anniversaries or occasions like the King's birthday or New Year's day.

From baronetsy to peerage.

(*vii*) Men who are already baronets or knights are sometimes promoted to the peerage, but this is not the usual course.

Peerage for six lords of appeal.

(*viii*) By statute it has also been provided that six "Lords of Appeal" shall be appointed peers for life and have seats in the House of Lords. They are chosen from the famous jurists of the Empire.

From amongst Bishops.

(*ix*) Among the Bishops, the Bishops of London, Durham and Winchester are always included ; the remaining 21 seats are allotted among the remaining bishops in order of seniority. When a bishop retires, he loses his right to a seat in the House.

N. B.—Certain classes are ineligible to sit in the House of Lords such as (*i*) persons under 21 (2) aliens, (3) bankrupts (4) persons serving a sentence on conviction of felony or treason, and (5) women.

Their privileges.

Their special privilege.

(*A*) *Their special privileges.* (*i*) The right of voting by proxy. But this has practically been given up.

(*ii*) The right to be tried by his fellow peers only. In the case of misdemeanours, however, a peer may be tried in the ordinary courts.

(*iii*) The right of receiving individual writs of summons.

(*iv*) The right of originating peerage Bills.

(*v*) The right to record a formal protest against any decision of the majority in the journals of the House.

(*vi*) Collectively, the Lords can exclude any undesirable person.

Their common privileges.

(B) *Privileges* enjoyed in common with the House of Commons :—

1. The right of free access to the sovereign. The Lords are individually entitled to have access to the sovereign but the Commons only enjoy the right as a body.

2. *Freedom from arrest.* During the sitting of Parliament and 40 days before or after the Session (except in the case of felony and treason, etc.) members of both Houses are free from arrest.

3. *Freedom of Speech.* They have perfect freedom of speech and debate in their respective houses. If, however, they get their words or speeches published, they are subject to prosecution like any other person.

4. They have the right of demanding from the sovereign the most favourable construction upon everything said or done in either House.

5. They have the right of settling the order of business in their respective Houses.

III. Their disabilities.

They suffer from certain disabilities *e. g.*, they cannot offer themselves as candidates for Parliamentary elections, nor can they vote at any of these elections.

Thus on succeeding to the title, the Lord must vacate his seat in the lower chamber. The disability exists for the holder of the title.

Q. 28. What do you know of the sessions and procedure observed in the House of Lords.

Ans. I. Sessions of the House of Lords.

Sessions of the Lords.

(*a*) The House of Lords meets in its own chamber at Westminster which is lavishly furnished.

Coincident with those of the House of Commons.

(*b*) Its sessions are coincident with those of the House of Commons. With the cessation of the session of the Commons, the House of Lords also ends its session ; but each house can adjourn separately.

Presided over by Lord Chancellor.

(*c*) Its sessions are presided over by the Lord Chancellor who is appointed by the Crown upon the advice of the Cabinet. He gets a pension of five thousand pounds for life, even if he holds the office for a few months only. When he leaves this office, he continues to serve as a Lord of Appeal.

He sits on a large couch called the "Woolsack" and puts motions. He is not given any disciplinary powers and does not even have the power to recognise peers who desire to speak. The House decides whom it will hear, if more than one rise simultaneously.

His inferior power is perhaps due to the fact that he used to be an officer of the King's household who himself was not even a peer. Still he holds the most exalted position ; he is the President of the Lords and recommends to His Majesty the names of persons for the highest judicial appointments.

II. Its Procedure.

Its procedure; meets on Tuesdays, Wednesdays and Thursdays; only a few attend.

1. The House of Lords meets regularly on Tuesdays, Wednesdays, and Thursdays. Often, sessions are held on Mondays also but seldom on Fridays.

The sittings do not last for more than an hour or two. The attendance is generally poor. Only 30 or 40

members usually attend out of 700.

Three form a quorum.

2. Three members form a quorum for the business to begin. However it is required that thirty should be present to pass any law.

Usually the proceedings are dull. Few questions are asked. "There are no estimates of expenditures to be discussed ; and the recommendations of Committees are ordinarily accepted with little or no dissent."

Rules are liberal.

4. But the rules of the House are so liberal that a full debate at any time and on any matter of public importance may be initiated by merely "moving for papers" *i. e.*, by asking that certain official documents be laid before the House.

No Standing Committee for public Bills.

5. There are no standing committees for public Bills. All Bills, after two formal readings, are debated in Committee of the whole house before being read a third time.

There is no closure in debates. When an amendment is adopted, the Bill is sent to the House of Commons for approval, and if that is not obtained, the Bill stands as rejected by the body.

Speeches not for the press gallery.

6. Speeches in this House are not made with a view to humour the gallery or nurse a constituency. The peer represents no one but himself and the conservative element is in an overwhelming majority.

There are also sessional and select committees, a standing committee for textual revision, made up at the beginning of each session, to which every bill after passing through the Committee of the whole, is referred unless the House orders otherwise.

Sessional and Select Committees

7. Sessional Committees are created for a Session. Some of these are:—(1) The Committee of Privileges to which the house refers questions pertaining to orders, customs, and privileges and claims of peerage and precedence; (2) *The Appeal Committee* which hears such petitions relating to judicial business;

(3) *The Standing Orders Committee* which deals with the standing orders of the House relating to private bills; (4) *The Committee of Selection.* This proposes names of persons to form the Standing Committee and certain select committees; (5) *Sessional Committee* on the journals and on the offices of the Chamber.

Select Committees are named by the House itself. The Standing Committee is chosen by the Committee of Selection.

Various officers keep it going.

8. The clerk of the Parliaments keep the records; the Seargent at-Arms attends the presiding officer and acts as the custodian of the mace; the Gentleman Usher of the Black Rod summons the Commoners when their attendance is required and attends other ceremonial occasions; the Lord Chairman of the Committees presides in Committees on private Bills.

Opening ceremony like that of the House of Commons

9. The opening ceremony in the House of Lords is approximately the same as in Commons, ecclesiastical members taking turns in reading prayers.

Q. 29. Write a note on the future of the House of Lords.

It is a deep-rooted institution and cannot be eliminated.

Ans. I. John Bright thought "a hereditary House of Lords cannot endure for ever in a free country like England." But Englishmen have never agreed with him. For them, there is no good alternative for the upper house and so long as this is the position, the House of Lords shall remain. It has become a deep-rooted institution. Englishmen think it indispensable for the representation of 'gilded gentry' and of various conflicting interests. They cannot make it like that of the United States or that of the German Reichsrat because England is not going to have federal type of government. They do not want to copy the French Senate as it is not a model worth copying for them.

The critics for its abolition have failed.

II. The critics who have cried for its abolition have miserably failed.

The labour representatives in their resolution in the House of Commons in 1907 were of the opinion that "The Upper House, being an irresponsible part of the legislature and the representative only of interests opposed to the general well-being, is a hindrance to national progress and ought to have no future and be abolished." The Labour party kept up the agitation in vain. Their arguments have not appealed to the English public.

The Labour in 1907 wanted its abolition.

The arguments, they and others advance, are the following:—

(*a*) That "in a democratic State, there is no place for the House of Lords which should cease to exist as a part of the legislature." *The Webbs.*

(*b*) That it has no important function and is a useless body.

The Webbs: (a useless body)

(*c*) The nobility in the House of Lords sits for no other reason except the accident of their birth. This is shocking to the principles of true democracy and against the popular Government.

Its nobility due to accident of birth.

(*d*) That it is more needed in a new born Government or in a federation where various elements are to be reconciled but in England no such conditions or elements exist.

It can have a place in federation or in a new born state but not in England.

(*e*) That it stands for stagnation against reform and progress, for representation of vested interests against nationalism, for birth against initiative, for status against innovation.

It is reactionary.

(*f*) It is predominantly hereditary, has scant attendance at sittings; members are more concerned about the interests of certain groups like the landowners, the established church etc., and are wedded irrevocably to the principles and policies of only a single political party *i. e.*, Conservatives. Thus this House creates dissatisfaction in an average English mind.

It has various drawbacks.

(*g*) "In these hundred years or more the country has undergone drastic changes of political opinion and

The country is changing, It also requires changes.

organization without any corresponding shift of base on the part of the upper Chamber."—*Ogg.*

The conclusion of the critics: British likes it because :—

The conclusion of the critics, then, is that the Upper House is useless and it should be abolished altogether. But, as we have said above, they have not so far been successful and they cannot be as the general body of *British opinion is undoubtedly favourable to a second chamber.* The reasons are not far to seek :—

It is an old institution ;

1. It is a very old institution and commands great respect in the eyes of an average Englishmen.

a harmless body ;

2. It is considered as a harmless body with limited powers.

can render important services. Bryce Committee held that—.

3. It can render very important services.

Bryce Committee arguments for revision of Bills.

(*a*) The House of Commons having much pressure of work, the Upper House can well do the task of revising Bills brought from the Lower House.

For initiation of Bills

(*b*) Some of the Bills of non-controversial nature can be selected and initiated in the Upper Chamber. The Lower House being too busy, it is better if the Upper Chamber discharges this responsibility.

For competent and sound discussion

(*c*) The House of Lords consists of eminent politicians and men of experience and their detailed discussions with great experience can be of immense use to the Government and the nation.

Interposes useful delay.

(*d*) The existence of the second Chamber interposes an amount of delay in the passing of a bill into law. During this, internal passions and excitements can subside and the crystallised opinion of the nation may be obtained.

Strong thinks it indispensable.

(4) Prof. C. F. Strong says : Firstly that no great State to-day is satisfied with a unicameral legislature;

secondly, that the more the choosing of the Second Chamber is out of popular control, the more it tends to become detached from the realities of politics and thus to lose vitality; *thirdly*, that when this is the case, there is consciousness, not that the Second Chamber should be allowed to fall in desuetude, but that it should be made alive again by reform.

Attempts at Reform.

Proposals of the reformists.

Reformists have put forth various proposals from time to time:—

Earl Russel in 1869.

(1) Earl Russel introduced in 1869 a life Peerage Bill to empower the Crown to create 28 life Peers.

Lord Rosebery in 1884.

(2) In 1884 Lord Rosebery moved for the appointment of a Select Committee "to consider the best means for promoting the efficiency of the House of Lords." He suggested the representation in the House of Lords of the Churches, of the professional, commercial and labouring classes, of Science, Art, Literature and of Colonies.

(3) In 1888, he renewed the proposal.

Lord Salisbury.

(4) In the same year, Lord Salisbury introduced a Bill empowering the Crown to appoint as life peers judges of High Courts, Rear Admirals or Privy Councillors. He suggested that not more than five life peers should be appointed in one year.

Lord Newton.

(5) In 1907 Lord Newton introduced a Reform Councillor Bill and a Committee was appointed to consider the suggestions for increasing the efficiency of the House of Lords.

Parliament Act of 1911.

(6) In 1911 Parliament Act simply restricted the power of the House of Lords without changing its composition.

Lansdowne plan.

(7) *Lansdowne Plan.* According to this plan the membership was to be reduced to 330 only and the members were to be secured in the following manner:—

(*a*) One hundred peers to be chosen by all peers.

(*b*) One hundred from peers or non-peers to be appointed by the Crown.

(*c*) One hundred and twenty to be elected by members of the House of Commons sitting in regional groups.

(*d*) Five bishoprics were to be chosen by the whole body of bishops.

The proposals being too complicated, were dropped.

The Bryce Plan.

(8) *The Bryce Plan.* Lord Bryce was appointed in 1918 as the President of a Committee of both houses to suggest a scheme of reforms of the Upper House. It recommended that:—

(*a*) The size of the Upper House should be reduced (700 to 400).

(*b*) It should consist of two elements *viz.* one-third chosen by the Peers and two thirds chosen by members of the House of Commons, voting according to regional groups.

(*c*) The term of the members was to be 12 years. One-third of them was to be chosen every year.

(*d*) In cases of disagreement between the two Houses, it proposed a joint conference made up of 30 members from each House.

This plan also failed.

The Resolution of 1622.

(9) *The 1922 Resolution.* In 1922, the Cabinet independently appointed a Committee and submitted five resolutions to the House of Lords. The Lords did not approve of those and the matter was dropped.

Baldwin Ministry's proposal.

(10) *Baldwin Ministry's Proposal.* It proposed an Upper House of 300 members, one-half of which was to be composed of elected peers and another half of peers to be nominated by the Crown.

The Bill proposed to withdraw all handicaps against election of peers to the Lower House. But the Labour and Liberals opposed the scheme an the scheme would have deprived the Lower House of its own men.

Thus the position today is :—

Labour. Labour says : "Abolish the second Chamber altogether." But they are divided then selves.

Liberals. Liberals say : "Reform the membership but keep the Chamber weak, chiefly by continuing the restrictions placed by the Parliament Act on its power of veto.'

Conservatives. *Conservatives* say : "Reform the membership if you please, but give back the powers taken away in 1911."

Fair minded people, however, consider that whatever may be the reforms, the Upper House must be reformed after all. It ought to be made up in such a manner as to give it the greatest possible amount of industriousness and intelligence. "The House of Lords has served the British Nation well in the past. If it is reconstructed, its usefulness ought to increase rather than diminish in years that lie ahead."—*Ogg.*

Q. 30. Outline the history of political enfranchisement in Britain and show the position as it exists to-day. Also state the position regarding nominations and elections.

Ans. The history of political enfranchisement in Britain can be divided into the following periods:—

(1) Saxon Period.

Saxon period. In the period the Witan was the only Parliament allowed by the Saxon Kings. For this Parliament only the magnates of the realm had a right to vote or, had a right to representation. However, in the local councils (the township and shire-motes) the free men could give their votes; they had manhood suffrage.

Norman period.

(2) Norman Period.

The Norman Great Council called 'Councilium' gave representation only to great men summoned by the King.

Unlike Saxon period, the freemen were deprived of their right to elect the representatives for the Local bodies due to the growth of feudalism.

Thirteenth century.

(3) Thirteenth Century.

We find, in this period, popular representation in the Great Council. The freemen were given right to choose. It may be noted here that the Great Charter (Magna Carta) of 1215 did not extend the suffrage to anybody.

Simon's Parliament of 1265 was the first occasion when certain members to the House of Commons were elected. This practice became an established fact by 1295 when Edward I called his Model Parliament.

Fifteenth century.

(4) Fifteenth Century.

In this period, franchise was restricted and thus suffrage was narrowed. In the reign of Henry VI, a Statute was passed restricting the county franchise to such residents as possessed "free land or tenement" which would rent for as much as 40 shillings a year above all charges. This brought disfranchisement as the majority had a rental value of less than 40 shillings.

In the boroughs also, the qualifications were so raised that many went without a vote. Between the 15th and the 19th centuries, the borough suffrage everywhere grew more restricted. The King deliberately did this in order to have full control over the House of Commons. This he could do by having a few rich voters in the towns.

Prior to 1832.

(5) Period prior to 1832.

(*a*) We find chaotic conditions of franchise. There was no fixed law for the counties and the boroughs. On the average few people in fact looked upon the suffrage as something worth fighting for.

The election went to any one who could pay his own expenses in and out Parliament. The reason was that Parliament possessed little power and its membership brought no profit or prestige to the member. Communication was not complete.

(*b*) Representation was not adjusted to population. Only one-fourteenth of the population enjoyed the right to vote. Although the Industrial Revolution readjusted population from village to town, yet there was no readjustment of representation. The 'rotten' or 'pocket' boroughs enjoyed franchise but not the progressive boroughs. The landed aristocracy controlled the votes and thus had made representation in the House of Commons a farce. The House of Commons was only 'the best club in the world.'

(*c*) Thus there was Government by the few; inequality of representation was the feature of the day; there was speculation in seats side by side with electoral corruption.

6. Period of Reforms.

Period of reforms before the 19th century.

(*a*) *Before the Nineteenth century.* In 1780 and 1781 the "Society for Constitutional Information," carried agitation for universal manhood suffrage but it was a voice in the wilderness. The French Revolution gave it a setback as it had struck terror into the hearts of many good Englishmen. The close of the Napoleonic Wars brought conservatism and autocracy and thus no political reforms could be had.

(*b*) *The Nineteenth century reforms.*

19th century Reforms. The Act of 1832.

1. The Great Reform Act of 1832. This Act remedied most of the glaring evils.

(*i*) Franchise was extended by reducing the property qualifications so as to include the whole of the rich middle class. It added more than half a million voters to the lists, thus nearly doubling the total number.

(*ii*) Seats were also re-distributed—nearly 150 seats were obtained by the elimination of the pocket

and the rotten boroughs and also by reducing the member of representatives from smaller towns. These seats were given to the new populous cities.

(*iii*) The artisans were completely excluded from voting.

2. The second Reforms Act of 1867.

Act of 1867.

(*i*) Votes for the artisans in the factories were secured.

(*ii*) Property qualifications were reduced and this allowed the factory labourers a voting strength.

(*iii*) There was redistribution of seats which allowed greater representation to the Towns. It extended the suffrage in both counties and boroughs.

(*iv*) It added nearly a million voters to the electoral lists.

Act of 1872.

3. The Act of 1872 introduced secret ballot. Elections were confined in each constituency to a single day.

4. The Act of 1883.

Act of 1883.

It was a drastic law for the suppression of corrupt practices.

5. The Reforms Act of 1884.

Act of 1884.

It granted further extension of the suffrage. It added twice as many voters as were created by the Act of 1867. In 1886 the number of registered electors stood at approximately four millions.

6. The Redistribution Act of 1885.

Act of 1885.

It brought a considerable redistribution of seats.

On the eve of the 20th century, women had no right of voting. There was a cry for that before the Great War and it grew stronger after the War. Also a large proportion of the male population went unrepresented.

The 20th century.

(*c*) *The 20th Century Reforms. Position To-day.*

Act of 1918.

1. The Peoples Representation Act of 1918.

(*a*) It abolished the old distinction between county and borough suffrage. The suffrage qualifications became uniform in both.

(*b*) *It gave voting rights to all adult male citizens* of 21 years of age or over who had lived in any constituency or near any constituency for at least six months prior to the compilation of the voters' list or had an office, shop or any other business premises in the constituency though non-resident.

(*c*) The Act limited plural voting. None could vote in more than two constituencies.

(*d*) *It gave the Universities representation.*

It allowed all those who had degrees (except honorary) to vote in the University constituency and also in the constituency where they resided (but not as occupants of business property).

(*e*) *It gave voting rights to women over thirty years.*

One could vote in two constituencies if business occupant in one and resident in another. Moreover women university graduates were given an additional vote on the same terms with men.

2. The Act of 1929.

Act of 1929.

The voting age for women was reduced to 21 (like men) and all other legal differentiation between male and female suffrage was eliminated. This Act gave votes to 1½ millions of women and to 12½ millions of men in all.

In this Act, the total electorate was brought up to 27 millions or more than half the entire population. The women outnumber the men by about 2 millions as voters.

Disqualifications.

Disqualifications. The following people are exeludedfrom suffrage :

1. Minors, criminals, idiots, aliens, bankrupts, lunatics, and English and Scottish Peers.

2. No one who is not enrolled as British subject by birth or naturalization.

3. Voters may be disfranchised by the Courts on conviction for certain corrupt practices at elections.

4. Ministers of the Church of England, the Church of Scotland and the Roman Catholic Church.

5. Government contractors, sheriffs, and returning officers in the localities in which they act.' Thus there is slow and steady march to democracy. The Act of 1832 brought one voter to every 50 male population. In 1918 it was one in every three; the equal Franchise Act of 1928 brought it to more than one-half (male and female).

Regarding representation, the present quota is one representative for every 70000 of the population.

Nominations and Elections.

Nomination and elections. Constituencies.

The country is divided into constituencies each sending one member. If these are to be changed, this is done through the redistribution by a commission whose recommendations are embodied in an Act. There are also University Constituencies too for which graduates only vote and they can send their votes by post.

Candidates.

If a man wants to stand as a candidate, he is only to get the support of 10 qualified voters on his nomination paper and is to deposit 150 pounds as security. He may stand from any constituency he likes.

Polling.

The polling is held on the ninth day after the nomination (which are made on the 8th day after the date of the Royal proclamation summoning a new Parliament) between 8 A. M. or one hour earlier or late.

In the University constituencies, however, polling goes on for several days.

There is a voters' register which is always kept ready and up-to-date all the time, and is revised twice a year (January and July). Voters register.

For each constituency there is a registration officer who enlists the voters through his canvassers and then publishes a provisional list which becomes the final one when objections are taken and appeals decided in the Courts regarding one's right to vote. This list has also the names of absentees like the military or naval officers. Registration Officer.

The voting is by ballot. The absentees can vote by appointing proxies or by sending the ballot by mail. Voting by ballot.

Thus the voters exercise their right of enfranchisement amidst the party animosities, manifestoes, meeetings, placards, posters, cartoons and personal canvassing, etc., etc.

Q 31: Trace the history of the House of Commons and explain its power since the passing of Parliamentary Act of 1911.

Ans. I Early origin.

Historically, the House of Commons originated, like most representative bodies in monarchical countries in the need of the monarch for funds. The Parliaments of the Plantagents were summoned in order that their members might pledge their constituents to pay taxes for the upkeep of the realm, to finance wars and to make provision for the Royal house. The business of supply is the most ancient business of the House of Commons. This supply was conditional on the redressing of certain stated grievances ; and it is from the petitions of redress which early Parliaments presented to the King that all the multifarious business of present-day Parliaments ultimately derives. Early origin.

King John used to invite four Knights for this purpose to attend a National Council (at St. Albans). Thus began the county and borough representations in the central assembly of the nation.

1213 to 1295.

II. Between 1213 and 1295.

We have this period of somewhat confused experiment.

Barons (who brought the House of Lords) were against the representation of Knights (who were to be representatives of the counties etc.). Henry III could not check their onslaughts. He was a weak King. But in this struggle emerged Simon De Montfort, with whose efforts, the Knights were given representation again to the famous Parliament of 1265. *Simon has been styled as the "Founder of the House of Commons."*

In the *council of 1283*, *Knights* were also summoned.

In that of 1295, Edward I followed suit.

With this council of 1295 we reach the close of the experimental period and the real beginnings of regular parliamentary history.

The Model Parliament of 1295 gave a full and perfect representation.

1295 to the Middle Ages.

III. From 1295 to the Middle Ages.

(*a*) It was in the early years of Edward II's reign that the final culmination of the struggle between the barons on the one hand and the knights of the shire and the burgesses on the other took place.

The result was that Parliament was definitely divided into two chambers—the House of Commons, consisting of the knights and the representatives of the burgesses—and the House of Lords consisting of the barons.

(*b*) In the course of the 14th century, the Commons shared equally with the Lords, three fundamental rights ;—the control of taxation ; a concurrent right of legislation : and the right to criticize and to control the doings of the Executive.

(*c*) *Since 1395*, grants to the King began to be made by the Commons with the advice and assent of the Lords spiritual and temporal. *The Lords thus*

took an increasingly subordinate position in regard to taxation.

(*d*) The claim of the Commons to initiate all money grants (money bills) to the Crown was established by King Henry IV.

(*e*) The door effectually to direct taxation without parliamentary control had in fact been closed in 1340 when a specific statute was passed to that effect. Customs were still left to the King from the merchants directly ; but these too were taken away by the legislation of 1362, 1371 and 1387.

Thus by the end of the 14th Century there was to be no taxation without the consent of Parliament.

(*f*) In the matter of making laws, the Commons were at first inferior to the King who made them with the *assent* of the Magnates at the *request* of the Commons who were mere petitioners. Not until the reign of Henry VI did the Commons obtain any really effective control over legislation.

The right of initiation was secured to the Commons concurrently with the Lords ; the Crown was restricted to a right of veto or assent.

But the King still issued ordinances. *This right went to the Commons after the Restoration.*

The Commons had some control over the Agents and Ministers but still not a full control over the executive.

III. Under the Tudors and the Stuarts.

Tudors and Stuarts.

The War of the Roses followed and there was chaos around.

Still the Tudors gave some stimulus to Parliament- any repre-entation. (This is Marriott's view ; other writers differ). More English counties and boroughs were given franchise through the efforts of Henry VII and Henry VIII, Edward VI and Mary. Queen Elizabeth exhibited a similar solicitude for the House of Commons. No fewer than 60 new

members were added during her reign to the House of Commons.

Thus during four Tudors' reigns, 166 members were added to the Commons.

James I gave representation to the Universities of Oxford and Cambridge. Charles I and Charles II added further counties and boroughs. Thus the total Stuart addition was 51, making for the 16th and 17th centuries a grand total of 217. The 17th century under Stuarts brought a struggle between the King and Parliament. The King tried to use his prerogatives, ordinances, taxation power but ultimately with the Bill of Rights (1689) the power of Parliament was established.

Since 1688.

IV. The House of Commons since the Revolution of 1688.

The House of Commons emerged triumphant over all rival bodies in the constitution. The House got control over the revenue and expenditure.

The gradual organization of political parties, and the evolution of the Cabinet system also contributed powerfully to the practical ascendancy of the Commons in England.

The 18th Century.

18th & 19th centuries.

The Acts of Union with Scotland (1707) and of Ireland (1803) increased the number of the Commons.

Their privileges were extended. But the Commons required reforms and these were secured through the various Acts of 1832, 1867, 1884 and 1885. The principle of democracy was substituted for that of aristocracy by these Acts.

The Act of 1911 marks the culmination and it made the House of Commons all supreme.

The Reform Act of 1918 swept away the old qualifications based on local occupation or residence in county or borough and established the principle of manhood suffrage.

The Act of 1928 assimilated the franchise for men and women.

Its Powers. (See the Parliamentary Act of 1911 given in Question 10.) Its powers

I. Law-making Power.

"The House of Commons though a clumsy machine, yet it works, and on the whole it turns out a good deal of work." The work is that of law making with the help of Ministry. Each bill (Public, Private, Money) has a definite procedure and passes through a most careful and detailed examination (See Question 32).

II. It has the control over the state finance. The raising of money is done by a Bill passed yearly, called the Finance Bill or the Budget The House of Commons grants to each department the money for its expenses for one year. Money can only be spent by the Department for the precise purpose for which it has been voted by Parliament. Over Finance.

III. It has the control over the Executive. (See Question 33). Every Act of the Executive can be challenged, approved or condemned by the House of Commons, and if condemned, it has to be changed.

IV. It can call attention to abuses and demand the redress of public grievances. This is done firstly by putting questions to Ministers. If the Commons are dissatisfied with the answer on an important topic, any member may ask permission to move the adjournment of the house on a matter of urgent public importance.

Thirdly, any member may have printed on the order paper a notice that he purposes to call attention to some matter of grievance or criticism and to move a resolution on a certain fixed day. Lastly, any suspected delinquencies of a department can be attacked. (See Question 33)

V. The House can have men of ability without anxious search or perilous trial, for serving the nation.

It has the power of expressing the mind of the English people through these selected and able officers.

Different kinds of Bills.

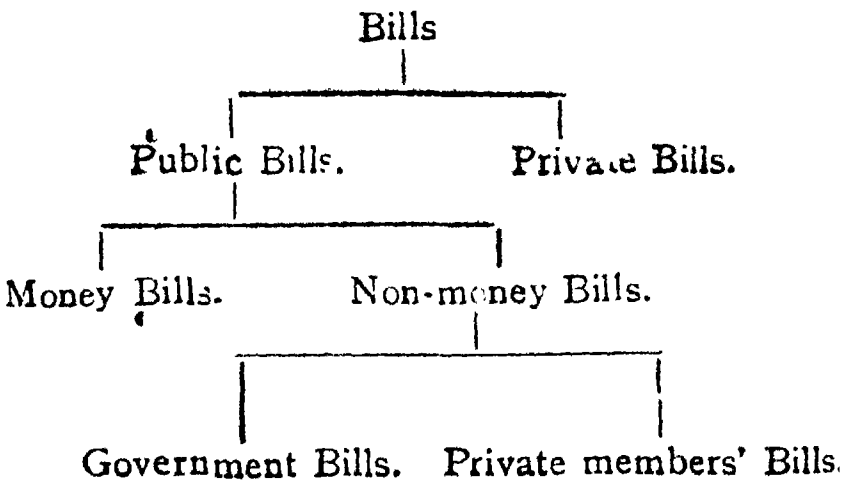
"These are the persons who rule the British Empire—who rule England,—who rule Scotland—who rule Ireland,—who rule a great deal of Asia,—who rule a great deal of Polynesia.—who rule a great deal of America, and scattered fragments everywhere."—*Bagehot.*

Q. 32. Give briefly the procedure for the passage of Bills into legislation in England. (For money bills, see answer to Q. 36 also).

Ans. There are Public Bills and Private Bills. Public Bills are of two kinds: (*i*) Money Bills and non money Bills. *The former* are those which relate to the raising of revenues or expenditure of public funds. The latter are those which are not money Bills.

Non-Money Bills may be Government Bills or Private members' Bills. *Private Bills* are Bills for the particular interest or benefit of individuals or corporations, such as Railway Bills or those giving special power to Municipal corporations.

Public Bills are those which deal with matters of general importance and which when enacted, constitute the general law of the country.



To discuss the procedure for the passage of Bills, we take into consideration only Public Bills, Private Bills and Money Bills. There is different procedure for these different Bills.

(A) There are six stages for Public Bills :— Public Bills.

(*i*) **First Stage**:—*Introduction of the Bill and its First reading.*

Any Minister or member who wishes to introduce a Bill in the Commons must first of all given notice of his desire to the house. This notice is printed in the "Orders of the Day." When the mover is called upon by the Speaker, the former hands over the Bill to the Clerk of the House who reads the title of the Bill aloud. If the Bill is not in a finished form, the Clerk is given a dummy bill with nothing but the title written down.

In any case the house, without debate or discussion, accepts this "first reading."

If it is a Government Bill, the Minister in charge, while introducing a Bill, gives the House a brief summary of its provisions.

(*ii*) **Second Stage or Second Reading.**

When the 'first reading' is over, the Bill is printed and placed on the calendar to await its turn to be called up.

On a day fixed in advance by an order of the House, the introducer of the Bill moves that it be "read a second time." Then a debate on the principles of the Bill follows.

The bill cannot be altered at this stage, but the House can either pass or reject the measure.

If the opposition wants to obstruct its passage, it can move that "the Bill be given its second reading this day six months"—or some other time at which the House is expected not to be in session. This means an indefinite postponement.

Also the Bill can be obstructed by offering some resolution which is hostile to the general tenor of the Bill.

Debates are followed by a vote or division as it is called and this shows whether the House approves or disapproves the principles of the Bill. If it is a Government Bill and is disapproved, it means a lack of confidence in the Ministry and resignation follows under normal conditions. But the Government generally succeeds through this attack. Only there takes place the death of private member's Bills.

(*iii*) Third Stage or the Committee Stage.

Now comes the Committee Stage. The Bill either goes to the committee of the whole house or to any one of the six Standing Committees. The Committee goes through the Bill clause by clause, discussing any amendments that may be proposed and determining each clause how it should be amended.

(*iv*) Fourth Stage or the Report Stage.

When the discussion in the Committee Stage is finished and the whole Bill is gone through, the chairman of the Committee makes a single report to the Speaker merely stating that the Bill has been amended or not. The House then discusses and determines whether any further alterations or additions should be made.

(*v*) Fifth Stage or the Third Meeting.

The final stage in the House of Commons is the third reading. The House considers the Bill as a whole and determines whether in its opinion the measure ought or ought not to become a law.

If it is desired to change the substance or phraseology of a clause, even slightly, the Bill must go back to Committee ; rejections at this stage seldom take place.

(*vi*) Sixth Stage : in the House of Lords.

The Bill after the 'third reading' goes to the House of Lords for concurrence. Then it passes through similar stages in a similar process.

The House of Lords may reject an ordinary Bill or introduce into it substantial amendments. If the Commons refuse to accept these amendments or if it is rejected, the Bill is dead for that session. But if the House of Commons wishes it to become law and passes it twice again through all these stages in two years, it goes to the King for his approval.

When a bill receives the Royal assent, it becomes law.

N. B.—Private members are also responsible for a great many public bills. They put their cards in a box at the Clerk's table, and the Clerk draws them out one by one. The member who is first drawn gets the opportunity to introduce his bill on the first Friday of the session ; the second member gets the second Friday, and so on till the Fridays of the session are exhausted – 12 or 15 of them in all.

(B) Procedure for Private Bills.

Procedure for private Bills.

(*i*) These private bills are presented in the form of petitions with the Bills attached.

They must first go before two parliamentary officials (one from each House) known as the Examiners of Petitions for Private Bills. Copies of notices of such petitions are published for the information of those whose private interests may be affected by the bill, and also to the Government departments concerned *e g.* to the Board of Trade or the Ministry of Transport.

(*ii*) If passed by the examiners, it is sent to the House and read a first time.

(*iii*) After second reading, it is referred to a small committee of *disinterested members* (usually of 4 members appointed by the Committee of Selection from lists prepared by the party whips) who hear its

promoters and also those who can show that they have a right to object.

(*iv*) When a private Bill has been reported on by a Committee, the report is considered by the House and the Bill is read a third time and passed, as in the case of a public Bill.

(*v*) It then goes through the same stages in the other house, and finally becomes law with the assent of the King.

Money Bills.

(C) Procedure for Money Bills. (See answer to Q. No. 36).

All such legislation (embodied in the money Bills) must be founded on resolution passed by a committee of the whole house on the recommended petition or motion.

The revenue and expenditure are settled in the following way. The Ministers of the Crown put forward resolutions stating how money shall be allotted for the national expenditure and how it shall be spent. These estimates are discussed by the house in what is known as Committee of Supply. Other resolutions are also passed by the house in what is known as Committee of Ways and Means, and these determine whence the money voted in supply shall be drawn. When these various resolutions have been agreed to they are embodied in Bills which are expressed in the usual way. But before a money Bill can become a law, it has to be passed by the Lords and receive the Royal assent.

According to the Parliamentary Act of 1911, the Lords can neither reject nor delay a money Bill.

Another important point to be noted is that the proposal for the grant to be made must come from the Crown through its Ministers. This is a convention of the constitution.

Q. 33. How is the House of Commons constituted? Describe the methods by which the House of Commons controls the Executive ?

The composition

Ans. (I) The Composition of the House of Commons.

Its total number of members is 615, of whom 492 sit for English constituencies, 36 for Welsh (strictly for Wales and Monmothshire), 74 for Scottish, and 13 for Irish.

The present membership of the House can be classified as follows:—

	County members.	Borough members.	University members.	Total.
England	230	255 .... (including 2 for the City of London which is not technically a borough.)	7	492
Wales and Monmothshire	24	11	1	36
Scotland	38	33	3	74
North Ireland	8	4	1	13
	300	303	12	615

N.B.—All British subjects, of either sex, and from whatever part of His Majesty's dominions they may come, are eligible for election to the House of Commons, provided they are not:—

(1) minors and lunatics; (2) bankrupts; (3) persons convicted of treason or felony and sentenced to more than twelve months' imprisonment (until they have purged their sentence, or been pardoned; (4) parliamentary candidates who have been found guilty of corrupt practices They are for ever disqualified for the constituency where the offence was committed, and for seven years for anywhere else; (5) clergy of the Church of England. the Church of Scotland and the Roman Catholic Church; (6) peers of England, Scotland, and the United Kingdom (but peers of Ireland are not disqualified for sitting for constituences

in Great Britain, if they are not representative peers having seats in the Lords; (7) the holders of certain offices under the Crown or Government contractors or judges.

Otherwise there is universal adult franchise.

(II) The methods by which the Commons control the Executive.

Control over the Executive.

(*a*) It has a negative voice in regard to the appointment of Ministers and copious if not complete powers of dismissal.

Seeley calls it a 'Government making organ.'

"The presence of Ministers in the English House of Commons is at once the symbol and the seal of the control of the Commons over the Executive." —*Marriott.*

Only those Ministers are appointed who have the confidence of the House of Commons. These Ministers owe a responsibility to the Commons and if they are defeated on any important measure in this House, or if any vote of censure is passed upon them in this House, they must resign and other Ministry must be formed which is in accord with the new majority..

Criticism of the conduct of the Cabinet.

(*b*) The House criticises the conduct of the cabinet in the past freely and constantly. The House has mainly four opportunities for doing so:—

(*i*) An amendment may be put down to the address of the King, delivered by the Prime Minister at the beginning of each session; (2) a private member can put down a notice of motion; (3) he can rise to move the adjournment of the house 'for the purpose of discussing a definite matter of urgent public importance.' If 40 members rise in their places to support him, he can bring forward his motion; (4) the leader of the opposition can at any time claim to move a vote of want of confidence. In such a case the judgment of the house is passed not upon any one act or question of policy, but distinctly upon the record of the

Ministry as whole. The real check upon a gross misuse of power by the Ministry or the Cabinet is thus the salutory fear of public opinion which the Commons represent.

Commons can compel the Ministry to resign.

(*c*) According to constitutional theory the House of Commons can compel the resignation of a Ministry or of the executive by refusing supplies. This rarely happens but it is at the same time a check of the Commons upon the Executive.

Right of asking questions to expose the Cabinet.

(*d*) Any and every member of the House of Commons has a right to ask questions relating to any department of the State and thus can draw attention of the public to a particular question and check the Cabinet autocracy to a considerable extent, because it prevents Ministers from working entirely in the dark.

Committee system for the redress of grievances.

Thus by attacking a department, the confidence can be withdrawn and this means an effective control of the Commons over the Executive. A vote of censure is inescapable.

Its rules and orders govern the executive.

(*e*) After twenty days devoted to the discussion of the estimates, the Commons can go into Committee for the purpose of financial legislation for four days. This is for the discussion of general grievances in regard to administration.

N. B. The Commons have devolved to the Executive Departments a large part of secondary or departmental legislation which is made in the form of Rules and Orders. In 1928, there were 800 rules and Orders in Great Britain.

Different committees

(*f*) The system of having different Committees in the Commons itself is a method of control over the Executive and its departments. The Committees are :—

(1) The Committee of the whole House. (2) Select Committees on Public Bills. (3) Sessional

Committees on Public Bills. (4) Standing Committees on Public Bills. (5) Committees on Private Bills.

The Truth of the Effectiveness of Administrative Control.

But actually there is little effective control.

The control of the Commons over the Executive is of small importance. The British Executive is more free from legislative control than is either the President of the United States or the Ministry in France. "The House of Commons provides the money required for administrative purposes by authorizing taxation; it appropriates, with more or less particularity, the purposes to which the money so provided is to be applied; it criticizes the mode in which money is spent and in which public affairs are administered; its support is indispensable to those who are responsible for administration; *but it does not administer.*"

The House of Commons does not regulate administration nor ask how the departments shall be organized. It keeps hands off the executive and administrative machinery.

The thing that the House of Commons is supposed to do is to furnish criticism that will keep the Ministers and their subordinates alert. It only surveys the things which have already been done. "A strong executive Government, tempered and controlled by constant, vigilant, and representative criticism" is the objective.

The Ministers now care more largely for what seems to be public opinion and if they satisfy it, they little care for what is said or done in the House of Commons.

"The truth is that scarcely a Ministry in fifty years has been turned out of office by a hostile Parliament because of its executive acts; and the chances of such a thing happening have, of late, been steadily diminishing."—*Ogg.*

Q. 34. "Parliament can do everything but make a woman a man and a man a woman." Discuss the nature of Parliamentary sovereignty in England. What are the limitations on Parliamentary sovereignty?

Ans. The quaint expression of De Holme that "Parliament can do everything but make a woman a man and a man a woman" has become almost proverbial for summing up the supreme legislative authority of Parliament or what we call Parliamentary sovereignty. De Holme.

The expression means that the Parliament can do whatever it likes except what is naturally impossible or we can say that it can make and unmake all laws within the limits of physical possibility.

By Parliamentary sovereignty we mean *firstly* that the King, the House of Lords and the House of Commons have the right to make and unmake any law whatsoever and further, that no person or body is recognised by the law of England as having a right to over-ride or set aside the legislation of Parliament. Secondly that this authority of Parliament extends to every part of British Dominions. Definition.

Its two aspects :— *Positive and Negative.*

I. By Positive Aspect of Parliamentary sovereignty, we mean that any act of Parliament or any part of an act of Parliament will be obeyed by the Courts. Positive aspect.

Thus it has "uncontrollable authority in the making, confirming, enlarging, restraining, abrogating, repealing, revising, and expounding of laws, concerning matters of all possible denominations, ecclesiastical or temporal, civil or military, maritime or criminal."

From this we can understand the true significance of De Holme's above-said expression.

Illustrations.

(*a*) *Parliament can regulate the succession*

to the Crown. This was done in the reign of Henry III and William III by the Act of Settlement (1700). At first, succession to the throne was by the Bill of Rights. But the Act of Settlement took that power away and gave the power to Parliament to decide about succession. Parliament with this new power settled the succession upon Princess Sophia and heirs of her body.

(*b*) *Parliament can change and create a fresh constitution of the kingdom and of Parliament.* It was done by the Acts of Union with Scotland in 1707 and with Ireland in 1808. By these Acts, Scotland and Ireland lost their separate political existence. Their Parliaments were dissolved, and the constitution, from being English, became British.

By the Septennial Act of 1718 and by the Parliament Act of 1911, Parliament varied its own life. This shows the legal supremacy of Parliament.

(*c*) *It can interfere even with the private rights of its subjects.* By 'Local and Private Act' Parliament can adjudge an infant or minor of full age, naturalise an alien and make him a subject born, bastard a child that by law is legitimate or legitimatize one that is illegitimate. It can enable heirs of a person to inherit during the life of the ancestor; it can absolve a man of treason after death, some hing which is against all notions of criminal justice.—*Dicey.*

(*d*) *Its Acts of Indemnity.* It can make illegal transactions legal afterwards, or can free individuals who have broken the law.

II. Negative aopect of Sovereignty.

Negative aspect.

It means that no person or body of persons can make rules which override an act of Parliament.

The King, each House of Parliament, the electorate, the Law Courts and the dominions have sometimes claimed independent legislative power but we will presently see that none of these rival bodies can make its claim good.

(*i*) *Parliament vs. The King.* The King has been bereft of all powers by the "Proclamation" of 1611 and the Act of Indemnity (this is considered by Dicey as the final legislative disposal of any claim on the part of the Crown to make law by force of proclamations. The Royal proclamations have in no sense the force of Law unless imposed by common law or by Act of Parliament.

(*ii*) *Parliament vs. Each House.* No single house of the legislature can, by an assertion of its alleged privileges, alter, suspend, or supersede any known law of the land or bar the resort of any Englishman to any remedy or his exercise and enjoyment of right by that law established.

A case for libel.

The House of Commons tried to show its supremacy in the case of Stockdale *vs.* Hansard—Stockdale, a publisher against Hansard, official printer to the House of Commons—on the ground that a book published by him had been described or represented in certain Parliamentary Reports printed by the Officer in charge as obscene but failed before Court of Law.

(*iii*) *Parliament vs. The Electorates.* Electorate have no legal means or power of sanctioning or of repealing or overriding the legislation of Parliament. No Court of Law will consider for a moment the argument that a law is invalid because it is opposed to the opinion of the electorate. *Their opinion can be legally expressed through Parliament and through Parliament alone.*

(*iv*) *Parliament vs. The law Courts.* A large proportion of English Law is in reality made by the judges. But judges do not make law or repeal statute: they only interpret it. Judicial legislation is subordinate legislation carried on with the assent of Parliament.

(*v*) *Parliament vs. British Empire Unity.* All Empire Unity exercise their legal sovereignty under the nose of Parliament.

Thus, to secure Parliamentary sovereignty, the King, the House of Lords and the House of Commons go together.

Limitations on Parliamentary Sovereignty.

Limitations

The following are the alleged limitations:—

1. Ancient. 2. Legal. 3. Actual.

Ancient limits.

1. Ancient Limits.

The King's old powers of suspending and dispensing of any Parliamentary statute were considered as limitations on the Parliament. But these powers are no more in existence.

Legal limits.

2. Legal Limits.

Morality.

(*a*) *Moral Law. Parliament cannot violate the ordinary rules of morality, private and public.*

(But this is not so. Good as well as bad laws are not to be endorsed by the courts. Divorce Law, many people think, contravenes both divine and moral law, but the courts must enforce just as they enforce other laws).

International morality.

(*b*) *International Law.* It is said that Parliament cannot legislate against international law or international morality.

(But this is not true. If any Act of Parliament contravenes any principle of international law, the only remedy is by diplomatic action on the part of the state which may be injuriously affected.)

Royal prerogatives.

(*c*) *Royal Prerogatives.* It is said that a statute cannot interfere with or derogate from the *Royal Prerogative.*

This is not a fact. Parliament has full power to control or abolish any prerogative. The Act of Settlement is an answer to this contention.

Preceding Acts of Parliament.

(*d*) *The Preceding Acts of Parliament.* This means that one Parliament can make laws which cannot be touched by any subsequent Parliament. (The attempts of a Parliament to tie the hands of its successor have, however, ended in failure. Thus the

Act of Union with Scotland (1707) and Ireland (1800) have been repealed by later Acts like Universities (Scotland) Act 1853 and the Irish Church Act (1869).

Actual Limits.

Actua limits.

Dicey says that by Parliamentary sovereignty, he means only legal sovereignty and not political sovereignty. The latter, therefore, mentions the following actual limits:—

External limits.

(*i*) *External Limits.* It consists in the possibility that the subjects or a large number of them will disobey or resist the laws if oppressive.

Internal limits.

(*ii*) *Internal Limits.* This arises from the fact that sovereign power is moulded by the times and circumstances under which it exists For example, it is extremely unlikely that a modern Parliament would venture to tax a colony without its consent.

The electorate.

(*iii*) *The Electorate.* They are the political sovereign and can enforce their will.

(*iv*) Leagues for political purposes. This concerns the right of association for political purposes. These association influence the policy of Government.

League of Nations.

(*v*) *League of Nations.* According to Asquith, this sways the minds of members of either House and can impede their judgment.

(But this contention does not seem to hold good.)

Free press.

(*vi*) *A Free Press.* It can ventilate its opinion fearlessly and the publicity of all proceedings, including Parliamentary debates, influences Parliament and perhaps somewhat fetters its action.

Power of the Executive.

(*vii*) The growth of the power of the Executive (*i. e.*, the Cabinet) which now practically monopolises legislation.

Q. 35. Write a comprehensive note on the position of the Speaker in the House of Commons. How can membership of the House of Commons be resigned ?

The Speaker. Origin.

Ans. A.(*i*) No one can definitely tell when the office of the Speaker originated. The first to bear the title of Speaker was Sir Thomas Hungerford in 1376. English constitutional history recalls the names of Sir Thomas More, Sir Edward Coke and Sir William Lanthal (the latter kept the privilege of the House before angry Charles I).

The Speaker got his title from being the spokesman of the House in its dealings with the Crown.

Selection.

2. In earlier days the King appointed the Speaker. After that the King would "name a discrete and learned man" whom the Commons would proceed to elect. The choice, to this day even, is subject to the approval of the King.

In fact, the Prime Minister finds out the most acceptable man. The nomination being made and seconded by two private members, the House and the King approve.

The Speaker who has served in the preceding Parliament, is re-elected, even though the Ministry has changed. This is the usual custom. Even in his constituency, the Speaker is usually returned unopposed.

When the House is to elect, the Clerk starts the proceedings. He, keeping mum, points with his right forefinger at the man who has given a motion to choose a Speaker. That person then rises and moves that so-and-so "do take the chair of the House as a Speaker." Then the silent Clerk again points at a member on the opposition to second the motion. The Speaker chosen then rises and takes the chair midst cheers.

He is a non-party man

(*iii*) From the moment he is selected, he becomes a non-party man and neutral in politics. In all his decisions he must act with the impartiality of a chief justice.

That is why great prestige attaches to the office of the Speaker. "He receives a liberal salary (£5000

a year) and an official residence in Westminster and a pension and a peerage when he retires.....He is the most conspicuous figure in the Commons, able, vigilant, imperturbable, tactful, stately and well-spoken."

(*iv*) 1. He decides who shall have the floor. All speeches and remarks are addressed to him and not to the House. His duties.

2. If there are any disorderly members, he warns them at first and if the conduct is persisted in, he suspends them from sittings. With the help of the Sergeant-at-Arms, he keeps the privileges and the dignity of the house.

3. He interprets and applies the rules. He puts questions and announces the results of votes. He is thoroughly conversant with the technicalities of procedure and with dignity and coolness decides points of order. His rulings are final.

4. He decides whether a particular bill is a Money Bill or non-money one.

5. He also appoints sometimes the members of great conference or commissions.

6. He is the mouthpiece of the house in its relations with the House of Lords and with the King.

7. In matters of a tie he is to give his vote. But the custom is that if there is a proposal to adjourn the debate, he must vote "No". If his affirmative vote would prolong its consideration, he always votes "Aye". If he is in doubt, he consults the Clerk of the house who is a great experienced Parliamentarian.

8. He is the protector of private members against the abuse of the powers of the leaders, in Government and opposition blocs.

(*a*) He never votes except when he is to break a tie. His negative duties.

(*b*) He is not to discuss or voice any opinion on party issues publicly.

(c) He never attends a party meeting ; has no connection with party newspapers.

(d) He never gets a foot in a political club.

(e) He makes no campaign for his own re-election.

B. How membership of the House may be resigned.

A member of the House of Commons is not permitted to resign in a direct and simple fashion. According to a rule which dates back to 1632, no member can resign his seat.

Yet there is a round-about-way of resigning from the membership. It is provided by the Placemen Act of 1705. By this Act, any member of the House who accepts an office of profit from the Crown must *ipso facto* vacate his seat.

Now there is an ancient office in the gift of the Crown, known as the stewardship of the Chiltern Hundreds (three parcels of land in Buckinghamshire). When therefore a member wants to resign, he applies to the Chancellor of the Exchequer for appointment to this nominal post. The request is always granted and the notice of appointment is duly published in the official gazette. The Speaker, therefore, declares him disqualified. If he is a bankrupt, then the request is refused.

Otherwise strict restriction on resignation is felt to be necessary because if members are freely allowed this right, the opposition can resign in party to bring in a new election.

Q. 36. "It is a fundamental principle of sound public finance, generally recognised in all civilized countries that no taxes shall be levied or expenditure authorized without specific action by the representatives of the people. This principle is strictly observed in England." Explain.

Ans. This principle has been observed in England for many centuries. Since the reign of William III, we see it meticulously observed. Parliament decides about the revenue and expenditure. People's representatives in the Commons tax their own people and are obeyed without a murmur. "Who holds the purse, holds the power," and that is true of the Commons. Let us see how it is done.

The British Treasury

(*i*) **The British Treasury** is the most powerful financial institution. There is a Treasury Board consisting of a First Lord of the Treasury (the Prime Minister), the Chancellor of the Exchequer and several Junior Lords of the Treasury, all being members of Parliament and of the Ministry, aided by the Parliamentary and the Financial Secretaries and Permanent Secretary. But all these officers except the Chancellor of the Exchequer are silent partners. The Chancellor regulates the public income and expenditure, taxation, public debts, annual budget, collection of revenue, public service funds, currency and banks. He is the central office around which the whole financial system of Great Britain revolves.

Preparation of the estimates.

(*ii*) Every year there is the compilation of estimates with the help of the financial officers in various departments. All fixed charges or charges upon the Consolidated Fund, interest on the national debt, the salaries of the judges, pensions, etc., are prepared separately and are not mixed with the yearly estimates.

Similarly expenditures are estimated. The Chancellor has got a great power over other financial bodies. He is assisted by the Prime Minister or his Cabinet if any dispute between him and the financial heads of the departments arises.

Conferences on estimates.

(*iii*) When the Estimates are prepared, they are checked up with figures of the preceding year and possible reductions are made in various conferences held by the Chancellor of the Exchequer and the departmental heads. Figures of probable revenue and expenditure are worked out and laid before the

Cabinet which after approval, authorizes the Chancellor of the Exchequer to place the final estimate before Parliament.

The budget speech.

(*iv*) When they are placed, a budget speech is made by the Chancellor of the Exchequer, reviewing the finances of the Government, their revenue and expenditure, debts, the surplus or deficit, taxes, increases or decreases, etc. The budget speech is made to the House sitting in Committee as a whole.

The House 'in supply.'

(*v*) The House debates the estimates as a Committee of the whole House "in supply" and provides funds as a committee of the whole House "in ways and means." The estimates are presented in sections and they are voted upon. The Financial Secretary of the Treasury places the civil estimates; the Secretary of State for War places the Military estimates, similarly other heads who know most about these. Amendments are made to strike out or decrease any item but not for increase or new insertions.

Changes made by the House,

(*vi*) The influence of the House is restricted to eliminations and reductions only. The Ministry yield on minor items but when it involves a big item they appeal to the majority or call for vote of confidence and thus the estimates go through without any major changes. However, grievances are ventilated. Debates in supply except the supplementary estimates must conclude within twenty days.

The Revenue and Appropriation Bills.

(*vii*) All this is embodied in two bills, the Finance Bill and an Appropriation Bill. The former asks for new taxes or changes in the old rates; the latter brings in the agreed expenditure. Through the usual stages they are passed by the House.

These Bills, then, go to the House of Lords and they are passed without any amendment (Parliament Act of 1911). Then there is the Royal Assent.

After this the Commons pass 'Consolidated Fund (No. 1) Bill' early in the Session, providing a sufficient

grant of money to cover any deficit during the previous fiscal year and money to carry on the Government.

The centralization of responsibility for British national finance.

Thus the Chancellor of the Exchequer, the Cabinet and the Commons combine to prepare and approve of the budget or we say that there is complete concentration of financial responsibility in the representatives of the people. The opposition even gets an opportunity of criticising the general policy of the Government.

There is no constitutional provision to explain the rule allowing insertion of new items in the estimate or any other amendments, but it has become a self-imposed ordinance for the House of Commons for the sake of the representatives of the people.

The control of disbursements.

Before any transfer of money to the Paymaster-General is made, it must be approved by the Comptroller and Auditor-General, an officer of high standing who is head of the exchequer, independent of the Treasury and responsible to Parliament alone. His duty is to ascertain that an appropriation to cover the expense has been made by Parliament.

How emergencies are handled.

Even emergencies are controlled by Parliament. The expected, unforeseen and urgent calls for more money are to be reported to Parliament and repaid out of the appropriations of the next fiscal year or out of any surplus funds available at the moment in a particular department for which the money is required ; or if the emergency is to be met at once, then in that case, Parliament must be hurriedly summoned and asked to make new appropriations.

Three general principles governing the financial action.

Thus we find that one of the chief functions of the House of Commons (consisting of the representatives of the people) is to control the expenditure and to raise the revenue. The general principles which govern the financial action of Parliament are the following :—

The first principle.

The first rule regulates that the executive cannot raise money by taxation, borrowing or otherwise spend money without the authorisation of the Parliament.

The second rule.

The Second rule is that House of Lords has got only the power to assent to money bills, but its refusal is of no consequence.

The third rule.

The third rule is that the House of Commons cannot vote money for any purpose whatsoever nor can impose a tax except at the demand and upon the responsibility of Ministers of the Crown.

"Thus it has become a fundamental principle of sound public finance with the English Government that all taxations and expenditures are at first placed before the Commons and when approved of by this House consisting of the representatives of the people, are enforced for the benefit of the country."

Munro answered.

Munro says, "The budget debates are dry. Millions are voted without any Parliamentary discussion at all. It is a fair criticism of the British House of Commons and one often voiced by its own members, that inadequate discussion is devoted to the financial problems of a great empire which is hard pressed to raise the four billion dollars that it now spends each year," yet it is all the more true that the whole financial policy, with discussion or no discussion, is conducted by the representatives of the people. If the members of the Commons do not take any active part in the debates, it is because they confide in the Cabinet which consists of those who are finally elected by them through their confidence and are given full powers to conduct their government. If it is not the House of Commons that discusses the budget, it is true that the representatives of the people do it through their 'selected few' in the Cabinet.

Q. 37. Describe the organisation of Courts in England.

Ans. In England, the *Civil Courts* comprise (*a*) the County Courts, (*b*) The High Court of Justice

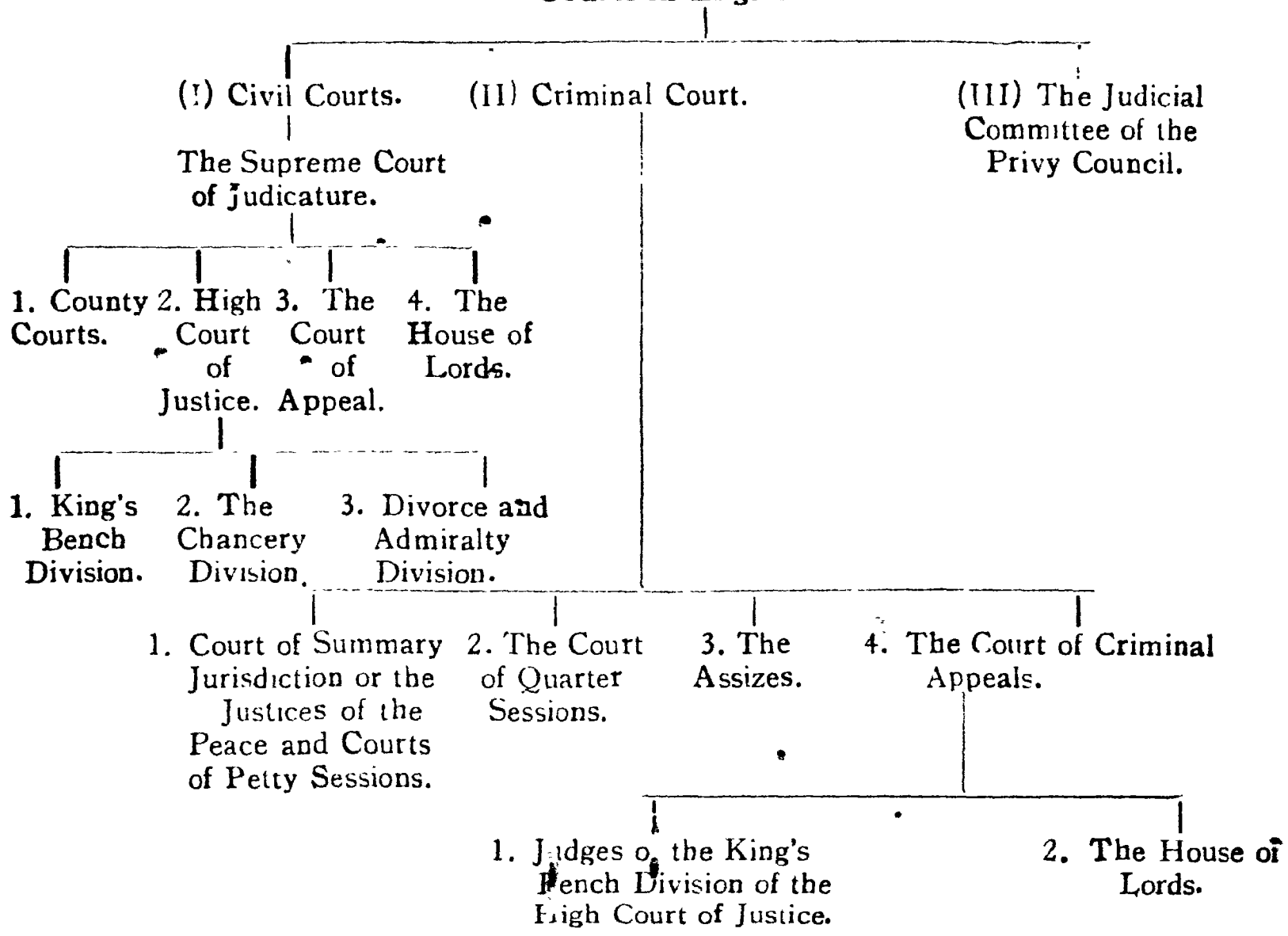
(having the King's Bench Division, the Chancery Division, the Probate, Divorce and Admiralty division), (*c*) the Court of Appeal and (*d*) the House of Lords. The High Court and the Court of Appeal form the Supreme Court of Judicature.

Civil and criminal courts and the Judicial Committee of the Privy Council.

(*ii*) *Criminal Courts* such as (*a*) Courts of Summary Jurisdiction or the Justices of the Peace, (*b*) the Court of Quarter Sessions, (*c*) the Assizes, (*d*) the Court of Criminal Appeals (Judges of the King's Bench division of the High Court of Justice and finally the House of Lords) and

(*iii*) *The Judicial Committee of the Privy Council.*

Courts in England.



I. Civil Courts.

Civil Courts are for civil action which is "a proceeding brought by a private citizen, or by an official in his private capacity, to obtain redress from another person, official or private, for a wrong (slander, trespass, breach of contract, etc.) alleged to have been committed against the bringer of the action called the 'Plaintiff' by the person against whom the action is brought called the 'Defendant."

These courts in point of jurisdiction are:—

(*a*) The County Courts.

The County Courts.

These courts are for petty cases. If the case is for less than £100 or the case of property worth £500, then the County Court would hear.

For such petty cases, England is divided into one hundred districts, each having a court called a *County Court*. Although they are called County Courts, yet they are no part of the organisation of a county. Their area of jurisdiction is a district which is smaller than a county.

These courts are presided over by the judges (one for each) who are appointed by the Lord Chancellor, from among barristers of at least seven years' standing.

Appeals from these courts lie to the High Court and from thence may be carried to the Court of Appeals.

(*b*) The High Court of Justice.

The High Court of Justice has three divisions.

If the amount involved in a case is sufficiently large, the case comes before the High Court in the first instance and does not go to the County Court.

It is the Lower Chamber of the Supreme Court of Judicature (this is the technical name given to its two chambers, namely, the Court of Appeal and the High Court).

It is organised in three divisions :—

The King's bench division.

(*i*) *The King's Bench Division* :— It is composed of the Lord Chief Justice and 15 other judges

appointed by the Crown on the Lord Chancellor's advice. It is concerned with every class of Common Law actions. It has civil, criminal and appellate jurisdiction and supervisory power over inferior courts and judicial bodies.

The Chancery Division.

The Chancery Division. It is composed of six judges with Lord Chancellor as the nominal president.

A bench of two of these judges hear appeals from county courts in cases relating to equity and bankruptcy.

It hears cases relating to partnership, trust, mortgages etc.

An appeal from this Division lies to the Court of Appeal.

The Probate, Divorce and Admiralty division.

(3) The Probate, Divorce and Admiralty Division. It is composed of the president and two judges. On the Probate side, this division grants Probates of Wills and Letters of Administration.

On the divorce side, it gives matrimonial remedies. On the Admiralty side, it deals with maritime matters.

Appeal from these divisions go to the Court of Appeal and finally to the House of Lords.

The court of appeal.

(c) The Court of Appeal.

It is the upper chamber of the Supreme Court of Judicature.

It consists of five Lords Justices of Appeal, the presidents of three Divisions (the King's Bench, the Chancery and the Probate etc.), the Master of Rolls, Ex-Lord Chancellors, the Lord Chief Justice, the Lord Chancellor. The latter presides over this Court. They are appointed by the Crown on the advice of the Prime Minister.

To this court are brought appeals from divisions of the High Court in all civil cases and from the assizes in criminal cases.

Appeals from the decisions of this Court lie to the House of Lords.

(*d*) The House of Lords.

The House of Lords.

In theory, all the members of the House are entitled to sit and vote to conduct the judicial business. But in practice, only the six Law Lords and the Lord Chancellor hear these appeals.

Besides these appeals the House has the right to try peers and to hear impeachments brought forward by the House of Commons.

The House of Lords is the supreme tribunal of England, Wales, Scotland and Northern Ireland.

II. Criminal Courts.

These courts are for criminal cases (which are those in which the King *i. e.*, the Government prosecutes a person who is alleged to have committed an offence, such as murder, theft or forgery, in order that the accused, if found guilty, may be punished). These Courts are :—

(*a*) The Justices of the Peace.

The Justices of the Peace and court of Petty Sessions.

Their courts are for summary trials of petty cases or offences. In larger towns, magistrates constitute such courts.

These Justices of the Peace are, like our Indian Honorary Magistrates, not paid for their services. They are appointed by the Crown in each county and for certain boroughs on the advice of the Lord Chancellor. Certain officials such as the chairmen of county and district councils, mayors and ex-mayors of boroughs are ex-officio Justices of the Peace.

Court of Petty Sessions.

Offences, other than those of a very trivial character are tried by two or more Justices of the Peace, called a *Court of Petty Sessions.*

Appeals from these Courts lie to the Quarter Sessions and in certain cases on the point of law to the High Court of Justice.

(*b*) The Court of Quarter Sessions.

The court of Quarter Sessions.

These are of two kinds :—(*i*) A county court of Quarter Sessions consisting of all the Justices of Peace

in the county and presided over by a lay chairman. At the transaction of business, at least two justices must attend and (*ii*) a Borough court of Quarter Sessions for large cities, presided over by a salaried barrister who is the sole judge and is popularly known as a Recorder.

These courts have both appellate and original jurisdiction. The latter extends over all criminal cases except over offences which are of a most serious character. These original cases are tried with the help of juries.

Appeals from the decisions of Justices of the Peace and the Courts of Petty Sessions lie to such courts and are tried without juries.

From these courts appeals lie to the King's Bench Division of the High Court or to the Court of Criminal Appeal according to the nature of the case.

(c) The Assizes.

The Assizes

It is a court which is held periodically in each county and in each large town, by a judge of the High Court of Justice. England and Wales are divided into seven districts, each containing several counties; one or two judges of the King's Bench Division are assigned to each circuit and they hold such courts twice in a year.

The Assizes try civil and criminal cases. These try serious criminal cases with the help of a jury.

The King's Bench Division acts as a Court of Assize for London and Middlessex.

(*d*) The Court of Criminal Appeals.

The Court of Criminal Appeals.

Appeals from the foregoing courts may be taken to such a court. This court consists of an odd number of judges of the King's Bench Division of the High Court of Justice chosen by the Lord Chief Justice. It usually consists of three Judges.

(e) The House of Lords.

Appeals from the Court of Criminal Appeals lie to the House of Lords but only with the permission of the Attorney-General. The House of Lords.

N. B. In relation to death sentences, the prerogative of pardon rests with the Crown. It is, however, in practice, exercised by the Home Secretary.

III. The Judicial Committee of the Privy Council.

It is one of the sub-committees of the Privy Council and is the final court of appeal for cases from India, British Dominions and colonies and from the ecclesiastical courts in England, and from the Protectorates and Mandated territories. It is also concerned with the general matters specially referred to it by the Crown.

It consists of the Lord Chancellor, ex-Lord Chancellor, six Lords of Appeal, Lord President of the Privy Council and other members of that body, a dozen privy councillors from India and the Dominions appointed due to their legal knowledge—in all about twenty eight members.

But the actual work is done by the Lord Chancellor and the six Law Lords with the help of oversea Privy Councillors in different cases.

The Committee does not pronounce judgments but merely advices His Majesty who considers their report, acts upon it but gives the judgment himself.

Q. 38. What do you understand by Habeas Corpus? How are the elementary rights of individuals secured in England?

Ans. By the word "Habeas Corpus," we mean "*you are to produce the body*" *i.e.*, the accuser is to bring before the judge the body of the accused for trial and judgment. The order is served in a writ (of Habeas Corpus) to a jailor to produce the body of one detained in prison, and to state the reasons of Definition.

Taken in two senses.

such detention. It is taken in two senses : (*a*) *Writ of Habeas Corpus*, (*b*) *Habeas Corpus Acts*.

(A) Writ of Habeas Corpus.

Writ of Habeas Corpus.

It is designed to secure personal liberty. Any one taken to prison can apply for and obtain such writ. Upon service of the same, the person who has the person in custody is to bring him bodily before a judge, and state the cause of his detention. No one, therefore, can be imprisoned on mere suspicion. This writ is called a prerogative (issued from the King's Bench), because when the application for it proves a *prima facie* case for the applicant, the writ ought of right to be granted to him and not as a matter of favour.

Nature of the writ.

Nature of the Writ. (1) It is the only available remedy against the Crown and the most important remedy for the personal liberty of the subject.

2. It is granted not as a matter of favour but as a matter of right.

3. It is issued on the application either of the prisoner himself or of any person on his behalf to the Lord Chancellor to any of the judges.

4. It is obtained upon motion or demand from a court of competent jurisdiction, and it may be issued in vacation.

5. It directs an immediate release or a speedy trial of the prisoner, and disobedience to the writ may be punished.

6. It is a Common Law writ and of immemorial antiquity and is a great check on the abuse of power by the Executive.

7. It is not issued :—

(*a*) When a person is committed for treason or felony and the writ of commitment shows so. (*b*) When a person is undergoing a legal sentence. (*c*) When a person is residing abroad. (*d*) When a person is on board a foreign man-of-war. (*e*) When an alien has been detained in England either in the

foreign embassy or in a legation of his own country. (*f*) When a person is committed for the breach of its privileges by either House of Parliament.

8. *It was granted* (*i*) to set free slaves during the period when slavery was lawful in England and is granted now; (*ii*) to determine the rights of a parent over a child or of a guardian over a ward ; (*iii*) to test the validity of the warrant or order of a naval, military or ecclesiastical court when a person is detained or imprisoned.

It is suspended in cases of rebellion or foreign invasion on the ground of public safety.

B. Habeas Corpus Acts.

Habeas Corpus Acts.

The Habeas Corpus Acts are really Acts of procedure and are merely a means to enforce the acknowledged Common Law right to personal freedom.

These acts neither lay down any new principle nor create any new right but are only a method by which the Common Law right is regulated.

Act of 1640.

(*i*) *The Habeas Corpus Act of 1640* provided for the immediate issue of a writ when a person was illegally detained by the order of the Crown or the Privy Council.

Act of 1679

(*ii*) *The Act of 1679* refers to criminal commitments.

Acts of 1803 and 1804.

(*iii*) The Acts of 1803 and 1804 enable prisoners to be called as witnesses.

Act of 1816.

(*iv*) The Act of 1816 extends the writ to all illegal confinements so as to make it applicable to all kinds of detention in civil cases (expect at the instance of a creditor) and available during vacation and operative in the Isle of Man.

Act of 1862.

(*v*) *The Act of 1862* provides that the writs shall not run out of England in colonies or dominions which have proper courts.

The effect of the Habeas Corpus Acts.

The effects of these Acts.

Their aim has been to meet all the devices by which the effect of the writ can be evaded, either on the part of the gaoler or other person, who has the prisoner in custody. This is applicable both to an Englishman and a foreigner.

At the present day, therefore, the securities for personal freedom in England are as complete as the law can make them. The right to enjoyment of liberty is absolutely acknowledged. An invasion of the right entails either imprisonment or fine of £500 upon the wrong doer payable to the person aggrieved. This right belongs to every person for the time being in the United Kingdom.

It has invested the judges with the means of supervising the whole administrative action of the government and of at once putting a veto upon any proceeding not authorised by the letter of the law. It has deprived the Crown, which now means the Ministry, of all discretionary power.

Every such Act is for one year and it must be renewed year by year.

Liberty of Englishmen. Its possible meanings.

(C) **To an Englishman liberty has the following meanings:—**

Political liberty.

(*i*) *Political Liberty i. e.* Parliamentary Government; and the limitation of the prerogatives. These have already been dealt with in the foregoing pages.

The rule of law.

(*ii*) *The Rule of Law* (dealt with elsewhere).

Personal liberty.

(*iii*) *Personal Liberty i. e.* Liberty of every individual in mind, body, and, estate. There is freedom in opinion, in contract, trade, social habits and religion. There is complete *laissez-faire* in other departments of life. Every one can use force (necessary and reasonable) in self-defence.

Personal freedom is secured by means of the writ of the Habeas Corpus (this is already explained).

(*iv*) *Liberty of Discussion.* Every man is at liberty to speak and publish whatever he pleases provided that he does not commit offences of defamation, sedition, blasphemy and obscenity. Liberty of discussion.

The writ of Habeas Corpus has been made use of to restrain the rights of a parent over a child and of a guardian over his ward. There is, therefore, the freedom of the press.

(*v*) *The Right of Public Meeting.* It is a rule of English law that any person can not meet any other person or group of persons at any appointed place so long as the law is not thereby broken. People have the liberty of meeting at any place provided they do not become a nuisance to others or break the law or become an unlawful assembly (commit a breach of the peace, commit a crime by open force and incite disaffection among the Crown's subjects etc.) Liberty of meetings.

(*vi*) *Martial Law.* This law is utterly unknown to the English constitution. Liberty from Martial Law.

(*vii*) *The freedom of property.* A citizen enjoys his property free from disturbance. Not only that: "the Executive has no power, apart from statute, arbitrarily to invade the property of the subject for the purpose of arrest, search or other interference. It can only encroach on it for taxation and for public good. Liberty for the maintenance of property.

The constitutional safeguards of Liberty are the following:— Constitutional safeguards of liberty.

1. The Magna Charta (1215) which provides that no free man shall be taken, imprisoned or sent out of the realm except by the lawful judgments of his equals, or by the law of the land. The Magna Carta. 1215

2. The Petition of Right (1628) which declares that no freeman shall be imprisoned or detained without cause shown, to which he may make answer according to law. The Petition of Right. 1628.

3. The Habeas Corpus Act (1679)—already dealt with. The Habeas Corpus Act 1679.

The Bill of Rights 1689

4. The Bill of Rights (1689). This prevented the evasion of the Habeas Corpus through an unreasonable demand of bail or sureties for the prisoner's appearance. It also put to an end to the extraordinary fines or punishments.

The Act of Settlement 1701.

5. The Act of Settlement (1701). It restored the independence of the judges and ensured a free administration of justice.

Besides that, in England, the liberties of the subject are sufficiently protected by the Common Law.

Remedies when deprived of liberty.

The following are the remedies when a subject is deprived of liberty:–

(*a*) He can bring a civil action for damages in respect of malicious prosecution, false imprisonment or assault.

(*b*) He can bring a criminal action for assault, battery or false impersonation.

(*c*) He can take summons to recover costs incurred while defending irregular and unjustifiable procedings.

(*d*) He can secure release by means of Habeas Corpus.

(*e*) He can obtain a *writ of certiorari* or a *writ of prohibition* in certain cases.

(*f*) He can prefer a criminal appeal if convicted.

Q 39. What is meant by the term "Rule of Law." Show how it operates in England. Discuss the comparative advantages and disadvantages of Rule of Law in England with Administrative Law in France.

Ans. By the term "Rule of Law" in England, we understand :—

Meaning of rule of law.

1. *In the first place* that there is the absolute predominance or supremacy of regular law, as opposed to the influence of arbitrary powers, and excludes the existence of arbitrary powers or prero-

gative or even of wide discretionary authority on the part of government. Englishmen are ruled by the law above all ; a man can be punished for a breach of law and for nothing else.

That is why the paradoxical assertion of Tocqueville that "taken all in all, England seemed to be much more Republican than the Helvetic (Swiss) Republic" is not incorrect, but contains a substantial truth.

2. *Secondly.* It means equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts. Thus officials and others are not exempted.

Exceptions to this meaning are the following:—

(*a*) The Crown is a partial exception, for under the maxim that the Crown can do no wrong, no one can sue the king. If a subject has a claim against the king, he must proceed by way of a Petition of Right and this remedy is available as of grace and not as of right.

(*b*) Similar is the case against the ministrial subordinates, the Ministers and the Government Departments as servants of the Crown in their official capacity.

(*c*) Judges are exempt for all acts done in their official capacity, whether maliciously or not, and this exemption extends the acts done outside their jurisdiction, unless they had the knowledge that the act complained of was outside their jurisdiction.

(*d*) The Justices of the Peace and in certain cases mayors, constables and other officials are exempted for their acts done in their official capacity.

(*e*) Trade Unions enjoy many privileges.

(*f*) Public Authorities Protection Act 1893 and other Acts such as the Constables Protection Act (1750) the Criminal Justice Act (1925), the Customs Consolidation Act 1876), the Lunacy Act (1890)—all these

protect various classes of His Majesty's subjects against others and create a privileged community.

3. *Thirdly.* The third meaning of the expression "The Rule of Law" is that the rules of the constitution in England are the result of judicial decisions determining the rights of private persons in particular cases brought before the Courts, whereas, under foreign constitutions, the security given to the rights of the individual flows from the general articles of the constitution.

4. *Fourthly.* "The Rule of Law" secures the following (through the constitution).

(*a*) The right to personal freedom (redress for unlawful arrest and imprisonment and deliverance from unlawful-imprisonment by means of the writ of Habeas Corpus).

(*b*) The right of freedom of discussion (except libel against others and the Government).

(*c*) The right of public meeting (except of an unlawful assembly).

(*d*) The responsibility of the Ministers to Parliament.

(*e*) Right of self-defence when the defence used is necessary, reasonable and proportionate.

Parliamentary sovereignty and rule of law.

5. "*Parliamentary sovereignty*" *versus* "*The Rule of Law.*"

(*a*) The sovereignty of Parliament favours the supremacy of the law of the land. Parliament though supreme does not interfere in the regular course of law ; its sovereignty has been fatal to the growth of administrative law *i. e.*, it has never protected its officials against their private or ordinary liabilities.

Also Parliament has protected the independence of the judges who can only be removed on an address of the two Houses.

(*b*) Supremacy of the law necessitates the exercise of parliamentay sovereigntry. The rigidity of the

law hampers the action of the executive. Therefore executive must look to Parliament for true interpretation in emergencies such as war, riots etc.

It is at he base of the constitution

Thus Rule of Law in England is at the base of the British Constitution ; the constitution has gradually grown up out of the constant recognition of it. As Dicey puts it, "The rules which in foreign countries naturally form part of a constitutional code, are, in English-speaking States, not the source, but the consequence of the rights of individuals, as defined and enforced by the courts." This rule, then, places the judiciary in a position of independence and positive superiority since " every official from the Prime Minister down to a constable or a collector of taxes is under the responsibility for every act done without legal justification as any other citizen." The rights of Englishmen are secured by Magna Carta (1215), the Petition of Right (1628), and the Hebeas Corpus Act (1679) etc. This Rule of Law is transferred to all British Colonies and is hence the basis of the legal system to-day in all the self-governing Dominions of the British Crown (and of the United States of America).

Administr tive Law.

(B) Comparative merits and demerits of Droit—Administratif and Rule of Law. *Dicey sums up as follows :—*

Administrative Law and Rule of Law. A comparison : merits of the Rule of Law.

(*i*) *Rule of Law—its merits.* (*a*) Individual freedom is more thoroughly protected in England from oppression by the Government than in any other European country. The Habeas Corpus Acts aim at this liberty ; Martial Law itself is reduced within the narrow limits and subjected to the supervision of the courts.

(*b*) An extention of judicial power represents the august dignity of the State and of the Crown thereby.

(*c*) Trial by jury, under the Rule of Law, has produced popular confidence in the judicial bench.

(*d*) The House of Commons shows the feeling of the electors, and has handed over to the High Court of Justice the trial of election petitions.

(*e*) In the bitter disputes which occur in the conflicts between capital and labour, employers and workmen alike often submit themselves to the Rule of Law. Arbitration Boards (often consisting of judges of the High Court) help in this to maintain the Rule of Law.

In short, reverence for the supremacy of the law is seen in its very best aspect when we recognise it as being in England at once the cause and the effect of reverence for our judges.

Its demerit

Demerits. (*i*) Courts cannot without considerable danger be turned into instruments of Government.

(*ii*) Respect for law, moreover, easily degenerates into legalism which from its very rigidity may work considerable injury to the nation.

(*iii*) The refusal to look upon an agent or servant of the State as standing, from a legal point of view, in a different position from an ordinary servant of any employer or ordinary citizen, has also in more ways than one been injurious to the public service.

It is possible too that derelictions of duty on the part of public servants which in some foreign countries would be severely punished may still in England expose the wrong-doer to no legal punishment if left to the mercy of the courts.

Merits of Administrative Law

Merits of Administrative Law or Droit Administratif. 1. It has been constructed, step by step, in accordance with the needs of the times. It has grown and is not created by the action of any parliament or legislature. It is not fixed or stereotyped.

2, It has wide range, dealing not only with the liability of the State and its subordinate divisions for injuries done to private individuals or their property, but with the rules relating to the validity of administra-

tive decrees, the methods of granting redress when public officials exceed their legal authority, the awarding of damages to private individuals for injuries which result from faults of the public service, etc.

3. "Frenchmen consider it as a palladium of their liberties, a protection against arbitrary Governmental action."—*James N. Garner.*

In it, a method of redress is open free of charge to all who consider themselves aggrieved by an act of the public authority.

4. "No jurist can fail to admire the skill with which the Council of State, the authority and the jurisdiction whereof, as an administrative court year by year, receives extension, has worked out new remedies for various abuses which would appear to be hardly touched by the ordinary law of the land." *Dicey.*

The Council has created and extended the power of almost every individual to attack any act done by any administrative authority in excess of the legal power.

5. It has carried the ingenious distinction between damages resulting from the personal fault (violence, etc.) and negligence of an official. It has created a sense of responsibility in officials.

6. It is specially needed in France because France is a Republic with a highly centralized administration. The system of Administrative Law and Administrative Courts is a counterpoise to centralization.

Demerits. 1. The restrictions imposed by Droit Administratif on the authority of the courts have diminished the moral influence of the whole judicial body, and deprived the French judiciary of that dignity which the English Bench have derived from their undoubted power to intervene in matters of State.

Demerits of Administrative Law. Effect on position of judges.

2. Bonafide obedience to the commands of superiors, even though that involves a breach of law, is a

complete exemption, and the civil courts' jurisdiction is ousted. The agents of the government in the bona-fide discharge of their duties do not receive any protection from the ordinary law courts.

French law recognises a large list of state-acts bearing on matters of policy, which do not fall in the control either of the administrative or other courts.

3. The administrative courts, cannot from their very nature, give that amount of protection to individual freedom which is secured to every English citizen, and indeed to every foreigner residing in England.

4. There is bound to be a conflict of jurisdiction between two sets of courts operating in France, the Court of Causation which is the tribunal of last resort in all ordinary cases and the Council of State which is supreme in all administrative controversies. Neither of these two courts is superior to each otner; each is supreme within its own sphere. Although there is the Court of Conflicts to settle such disagreements, yet the jurisdiction of each is over-ridden by the other.

Thus the Administrative Law is law for all State officials. In this sense there is no such law in England where Common Law prevails for all; the Administrative Law contains the rules which regulate the relations of the administrative authority towards private citizens. Englishmen are ruled by the law alone. In France, the officials can be tried only in the special court but not in England; under the Rule of Law the rights of the individuals are more jealously protected than under the French law. The Administrative Law grants special privileges to officials for illegal acts done by them in their official capacity but in England tnese privileges are not afforded.

Present position of the two.

Present position of the two.

As regards the Rule of law: It remains to this day a distinctive characteristic of the British constitu-

tion. But the ancient veneration for it is on the wane. The truth of this is proved by:—

(1) Actual legislation, (2) the existence among some classes of a certain distrust both of the law and the judges and (3) a marked tendency towards the use of lawless methods for the attainment of social or political ends. This is due to the spread of the democratic sentiment and the misdevelopment of party government.

As regards the Administrative Law : It is becoming more judicialised. Thus the Council which is the great Administrative Court of France, cannot now be presided over by the Minister of Justice who is a member of the cabinet. Yet the French law is superior because unlike English judges, the members of the French Council of State are dismissible; a kind of authority attaches to the Government and to the officials in France such as is hardly present in England. The state accepts liability for all wrongs done by officials and this gives them independence.

Q. 40. What do you know of the increasing tendency in England in recent times to legislate by executive action?

Ans. In recent times, it is becoming manifestly clear that Parliament is giving full freedom to the Executive for legislative purposes. It has participated in the act of infringement of its own legislative monopoly. For every law passed today there are issued at least hundred Administrative Orders by the Executive. That is why the President Lowell remarked as follows:—"There has been real delegation of authority of the Parliament in favour of the Administrative Departments of the central government and involves a striking departure from Anglo-Saxon traditions with a distinct approach to the practice of continental countries."

Executive becoming stronger and stronger in legislation.

Lowell.

Marriott bears him out when he says that "it is true that Provisional Orders require statutory confirmation but Statutory Orders become operative after

Marriott

lying on the table for a given number of days. In both cases, of course, Parliament retains formal control."

Marriott gives the following reasons for this tendency.

Marriott gives the following reasons for this tendency to legislate by executive action and for the weakening of Parliamentary control:—

(*i*) Thers is increasing complexity of industrial and social conditions.

Fabian Socialism.

(*ii*) The subtle influence of Fabian Socialism is being seen on the members and this increases the power of the Executive.

Abandonment of *laissez faire* principle.

(*iii*) There is general abandonment of *laissez-faire* principle.

Cry for government guidances. More legislative work.

(*iv*) There is growing demand for governmental guidance and control in all the affairs of life.

(*v*) There is sheer despair of the possibility of coping with the insistent cry for legislation.

Department left to make Laws by the issue of administrative Orders.

(*vi*) Many modern statutes are mere cadres, giving no adequate indication of their ultimate scope. They lay down general rules and leave it to the departments concerned to give substance to the legislative skeleton by the issue of Administrative Orders.

Thus the tendency is that Parliament has maintained a disposition to leave more and more discretion to the administrative department.

We may add more:—

Cabinet becoming powerful day by day.

(*vii*) The cabinet is becoming more powerful day by day and has drawn many attributes not possessed by the Commons.

Ministry make the laws.

New laws are really made by the Ministry—the limited few of the House who form the inner ring of the cabinet for the time being. "Even a Bill to regulate the placing of street letter-boxes, or to amend the Midwifery Act, requires the consent of the Minister in charge of the Department, whose attitude can allow the Bill to proceed or be dropped or be modified in his own way."

Mill even concedes this right.

Ministry initiates legislation *and this right is conceded to the Government by even Mill*, the champion of representative government, and now it has become the characteristic part of the English system.

Delegation system weakens Parliament.

(*viii*) Legislation by delegation is weakening Parliament. The various committees to consider the Bills work under the very nose of the Executive.

Government absorbs more time for its own laws.

(*ix*) The tendency is for the Government more and more to absorb the time of the House and to demand priority for their own legislative proposals. "With the increasing complexity of public business, the ever-widening responsibilities of the House of Commons, and the growing demand for legislation on every conceivable topic, this tendency is irresistible."

Parliament deprived of the power of criticism and amendments.

(*x*) To an increasing extent, the House of Commons is being deprived of its historic rights of criticism and amendment.

Lowell show how.

Lowell brings this point out clearly by tabular demonstration. He shows that whereas in 1851, nine amendments in Government Bills were carried against the Government, seven in 1854 and seven in 1856, not a single such amendment was carried from 1874 to 1878, nor in 1880-1, 1889, 1890, 1897-1900. From 1874 to 1906 the aggregate number of such amendments was only 23. This proves the increased subserviency of the House of Commons to the cabinet.

The alteration of Standing Orders and other ways are depriving the members of the opportunities of criticizing both the proposed legislation of the Government and its administrative action. "The House of Commons is finding more and more difficulty in passing any effective vote except a vote of censure. It tends to lose all power except the power to criticise and the power to sentence to death."—*Lowell.*

The House of Lords ignored for legislation.

(*xi*) There appears to be an increasing reluctance to utilize the House of Lords for purposes of initiation. Money Bills are not initiated at all ; Private Bills are initiated reluctantly too.

Erskine May : legislative control by the Executive in Money Bills.

(*xii*) Erskine May writes thus of Money Bills in Parliament and thereby of the Executive power. "The Crown demands money, the Commons grant it, and the Lords assent to it; but the Commons do not vote money unless it be required by the Crown ; nor impose or augment taxes unless they be necessary for meeting the supplies which they have voted or are about to vote, and for supplying general deficiencies in the revenue. The Crown has no concern in the nature or distribution of the taxes. But the foundation of all Parliamentary taxation is its necessity for the Public Service as declared by the Crown (now executive) through its constitutional advisers.

(*xiii*) The House of Commons had no power to 'make governments', but it has virtual powers of dismissal only. Thus it makes the Executive all the more a dictator in the task of legislation. "This is the nice equipoise, the delicate balance of the forces (the executive and the legislature) which control the working of that complex organism—the English constitution —permitting a wide discretion to the Executive."

Executive is supported by the majority and thus Parliament cripples itself.

(*xiv*) The majority party chooses the Executive and they allow it full freedom in the legislative work thinking that the Executive feels the pulse of the nation because it belongs to the majority of the representatives of the nation.

Summing up.

All this shows that there is an increasing tendency in England in recent times to legislate by Executive action. Several proposals have been put forward to break this autocracy, such as *Referendum* (or the reference of legislative projects or Bills to the direct vote of the electorate), through group representation (through Trade Union Congress, Co-operative Congress, Chambers of Commerce etc.) and direct action by the masses of the nation—but all these have proved a failure. In a country like England where Parliament has stood the tests of time, and where the Executive represents the majority, tendency shall remain more and more towards Executive action in legislation. Other countries are drifting towards dictatorship ;

England cannot leave its established and well tested dictatorship of the Executive in legislation.

Q. 41. Trace briefly the history of the development of English political parties and give its present position.

"The English Prime Minister knows the leader of the Opposition better than does his own wife." *Bernard Shaw.*

Comment.

(A) Historical growth.

(i) Early growth.

Historical growth. Early growth.

Ans. 1. The party system of Great Britain dates back to the Elizabethan age, when the Puritans opposed the Crown. The Puritans could not tolerate the arbitrariness of James I and Charles I. They struggled and in the end succeeded in getting seats in the Long Parliament of 1641 and here we see the first example of real parliamentary parties. This opposition later on resulted in great Rebellion and civil war ended in 1649 with the execution of Charles I. The supporters of the King were called the cavaliers, and the supporters of the parliamentary government were called Roundheads.

Tory and Whig parties.

2. *Tory and Whig Parties.* Under William III, Cavaliers were replaced by the Tories and the Roundheads by the Whigs. They began to fight each election on party principles. The Whigs controlled a majority in the House of Commons during William III's reign ; then the Tories replaced them for the most part until 1714. After that the Whigs were the masters up to 1761. Towards the end of the 18th century the Tories again became powerful and kept their strength upto 1832.

The 19th century.

3. *Parties since the Reform Act of 1832. The 19th century* : Tories and Whigs changed their designations. Conservatives and Liberals replaced them.

It was in the middle of the 19th century that English party lines became well defined and consolidated.

The Conservatives supported the Crown, the House of Lords, the Established Church, the Landowners, the industrial employers and British Imperialism. The upper social strata of the kingdom gave them the real strength.

The liberals had the supporters in the middle class. They wanted changes in Government and in industry where they liked free, trade free competition and *laissez-faire*. They also cried for universal suffrage.

Under Disræli (the son of a middle class Jew) *and Gladstone* (the son of a Knight, a Conservative), the Conservatives and Liberals grew strong in two party systems respectively. They would not care for their principles but would care more for the two great camps ranged against each other.

The Split of 1886. A considerable breakdown and re-shuffling took place in 1886 on the Irish question. There grew up a group of Irish members calling themselves Nationalists and demanding 'Home Rule' for Ireland.

In Gladstone's ministry of 1886, a Home Rule Bill was introduced and this brought a split in the Liberal party itself. Those who were against the Bill joined hands with the Conservatives and the new combination was called the Unionist Party. The term Liberal Unionist was also used for many years.

The Unionists were in power from 1886 to 1892, the Liberals from 1892 to 1895 ; the Conservatives from 1895 to 1905, the Liberals once more after 1905.

The 20th century

4 *The 20th century. (a) Rise of the Labour Party.* In 1892, the British Trade Union Congress tried for more Labour candidates in Parliament. In 1900, with its efforts a federation of trade unions, co-operative societies, socialist organizations and other bodies co-operated and all brought forth the labour

Representation Committee which became a few years latter the Parliamentary Labour Party. In 1906 they could get 29 seats but they were as yet a weak party organization and did not rank as a third party.

In the Coalition Cabinet of the War, the Labour Party was given one member. Later on, Labour withdrew its participation and joined with the Liberals to strengthen the opposition. The Conservatives (called Unionists) held the field.

In 1922 these Unionists even left Lloyd George and got more seats by putting their programme of old-fashioned Conservatism. But the Labour also got double the seats, and later on in the election of 1923 became the second largest party in the House of Commons and could get through a vote of non-confidence against the Baldwin Ministry. Ramsay Macdonald became the Prime Minister with the help of the Liberals.

(*b*) In 1924, however, the Liberals again precipitated a crisis by withdrawing their support to the Macdonald Ministry, but they received a set-back in the election of 1924 that followed. The Labour Party also lost ground and the Conservatives carried more seats than the two other parties put together. Then followed the Baldwin Ministry. It advised a dissolution of Parliament in 1929, and the election followed at once.

(*c*) In the election of 1929, the Conservatives lost heavily but remained the largest single group in the House; the Labour Party was second and the Liberals held the balance of power. The Labour Ministry was the result and it hanged on till the National Government of all parties was formed.

(B) The Political Parties as they stand to-day.

The Liberals.

(*i*) *The Liberals.* (*a*) 'It is traditionally a party of reform, of free trade, *laissez-faire*, and individualism.' But at the same time it is swinging over to a policy of Government control. Liberalism to-day wants (*i*) improvement in the management of present

State-operated undertakings *e. g.* Railway Transport, (2) the taking over by public authority of important enterprises not well run by private ownership, (3) nationalization of coal deposits and royalties and the amalgamation of mining operations for greater efficiency ; and (4) adoption of a nation-wide integrated policy for industry as a whole along with a policy to lessen unemployment through national development of public works, to have large use of national savings in home development to have improvement in industrial relations, to have national minimum wage, to have thorough publicity of accounts in all big business and to have checking of the exploitative power of monopoly over consumers. They also want an Economic General Staff and a National Council of Industry.

(*b*) They take the existing system of national taxation as well as conceived and would like to tax inheritance more heavily. They desire that the State should remove possession of specified types of land and give that to cultivating tenants for the advantage of the community as a whole.

(*c*) They do not admit the thesis of a dying party and are bent upon going their own way.

They have tried to stand in the middle of the road. "The Liberal following is now rather a residuary collection of elements which cannot find a comfortable home in either of the two extremes, much of its present strength coming from the traditionary allegiance once given to freedom and harmony as applied to the Church, foreign affairs, tariffs, and the franchise. There is still a powerful attraction in Lloyd George as a fighting figure, and as an advocate of the interests of the Law." His new Deal brought him again in the limelight for sometime.

The Labour Party.

(2) *The Labour Party.* Their programme is tinged with Socialism. They want to "abolish the capitalist system, and want to secure for every producer his (or her) share in the fruits of industry and most equitable distribution of the national wealth." It likes a democratic control of all economic activities and for

that it likes nationalization (government ownership and operation) of railroads, mines and power plants and other public utilities.

In fact they want the Socialist State, having group control for individualist exploitation. They want re-adjustment of taxes (especially inheritance and income taxes) so that the rich may be taxed more.

It also likes the abolition of the House of Lords, and the reduction of the House of Commons to half its present size. They want a 'social Parliament' for a fixed term and not subject to dissolution.

There are two wings of the Labour Party, one moderate and the other radical. The former is led by Ramsay Macdonald. This party is drawing closer to Conservatism. It is a party of reform and not of reconstruction, leaving the radicals to have wholesale changes according to the Webb Plan (monarchy : no House of Lords ; Commons for a fixed term ; Social and political parliaments etc.).

Still it has a wide appeal and has a constructive programme and a spirit of idealism.

The party draws its strength from the lower social and economic strata ; but its leadership and its intellectual strength comes mainly from higher up.

(3) *The Conservative Party.* 'Its appeal is to the vested interests, the industrial corporations, the big income-tax payers, the small manufactures, tradesmen, 'shopkeepers.' The Conservative Party

They draw from all elements in the British electorate, but ite main strength lies in the upper ranks of the social and economic scale.

They advocate national and imperial unity. They have a faith in the superiority of their own political institutions and traditions. They believe in the mission of their race to carry out the civilization of other people. The social institutions favoured by them are Crown and Church, a powerful governing class and the freedom of private property

from state interference. They favour the interests of the Established Church.

They do not want free trade and regard protection as the only way of reviving industrial prosperity.

They want to go cautiously in the matter of social legislation, such as old age pensions, health insurance and unemployment insurance. They do not like extensive nationalization prospects. They would like the continuance of industry on an individualist basis.

They would keep the tax system substantially as it is with occasional readjustment.

Its programme of national recovery looked, rather, to the rehabilitation of industry and trade, leaving the land situation in pretty much the same form which the 19th century gave it.

(C) Their organisation.

Their organisation in parliament.

(*i*) *In Parliament.*—It consists of three agencies or groups: the group of party members in Parliament, known as the Parliamentary Party; the leaders within the group and the *whips*.

The Parliamentary Party chooses the leader who, if the party is in power, becomes the Prime Minister or the leader of opposition when the party is not in power. The group as a whole is free to determine its course of policy and action without caring for the outside members *This is mainly true of the Liberal and Conservative parties.* But the Labour Party has to keep in touch with the National Party executive.

Outside of Parliament.

(*ii*) *Outside Parliament.* The two great organizations of the Liberals and the Conservatives are (*a*) *the National Liberal Federation and* (*b*) *The National Conservative Union.*

Each party has its central office in London, and these headquarters keep in close touch with the local associations of the constituencies. In each polling

district of parliamentary constituency, there is an organisation of the active adherents of a party. This body elects representatives to a party council of a whole constituency, and from this constituency council, representatives are sent to the county or borough council. Finally, this last council elects representatives to the central body at London; the party leader in the central office who usually holds office in Parliament or the Cabinet dictates the policy of the party by 'open letters or addresses and formulates its platform. On the approach of an election, they raise funds for election expenses, provide speakers to the constituencies where necessary, recommend names where suitable local candidates are wanting, and distribute campaign literature.'

For the Labour Party, the supreme governing authority is the conference selected by the National Executive. On it are represented all affiliated bodies.

The National Executive has the central office in London and from this office it directs the party activities, recommends candidates, provides speakers, apportions funds, distributes campaign literature, helps to support the party newspapers and does so many other things.

In the constituencies (with a few exceptions), there is a Labour association representing the producers 'by hand or brain.' These associations select the Labour candidate in each constituency and form a Labour Conference or congress of delegates, with the help of the Trade Unions. The Labour Conference chalks out the party programme and is the ultimate authority.

Many outside the organizations help the various parties; the *Primrose* League help the Conservative Party; there is a Women's National Liberal Federation for the Liberal's help; the Fabian Society and the Independent Labour Party assist the Labour. There are hundreds others which become active at the time of election. These are called auxiliary organizations.

(D) Law controls the practices of the parties.

Law controls the practices of the party.

The Corrupt Illegal Practies Act of 1883 penalises the corrupt practices of the parties. Corrupt practices include (*a*) Bribery, (*b*) Treating (providing) entertainments, (*c*) Undue Influence. (*d*) Personation and (*e*) Unauthorized expenditure.

The expenses of the candidates were limited by the Act of 1853 and now, after the passage of the Reform Act of 1918 and 1928, stand at 5 *d.* per elector in a county constituency.

Prime Minister and the opposition leader.

(**E**) The leader of the opposition is an important figure in the Commons. He voices the views of those who do not see eye to eye with the majority and his criticism weighs with the Government. He is consulted by the Prime Minister when national and imperial issues require a united front.

The Prime Minister knows that one day he may have to exchange his place with the leader of the opposition who is a strong rival in and out of the Commons because the opposition maintains an identity.

He can not disregard the opposition leader even if the Cabinet is in absolute majority *i. e.*, if there is absolute majority of party. But if it is based on coalition, then the opposition leader is usually consulted.

But the growth of the party system in England shows that the Government depends upon majority party and the opposition cannot compel it to an involuntary course. It may give concessions to the opposition as a matter of policy or grace. It can, however. if it so chooses, disregard the opposition.

"The British system is, *in fact*, perfected party Government. Party is an integral part of the fabric of the English Government."

Q. 42. What is the function of the Civil Service in the modern state? Describe its general nature and its development in Great Britain?

Ans. The function of the Civil Service in the modern state is to improve and carry on the real Government. Its numbers are a measure of the activities of the state and an indication of its nature. Real Government, the actual and immediate application of political power to cases varying from one person to the whole population, is carried on by the Civil Service and not by the people, Parliament or Cabinet. That is why *Weber* says :—

It is to improve and carry on the real government.

"In the modern state, the real government effectuates itself neither in Parliamentary debates nor in royal proclamations, but in the exercise of administration in daily life, necessarily and unavoidably in the hands of the Civil Service.

"Like all other political institutions, the Civil Service is also the product of the spiritual and mechanical facts of Western Civilization. From Government, Parliament, Cabinet, they come to the mechanism of the Civil Service to have the whole machinery of the state going. It was a political rationalism, so to say. Contributory, in the second place, to this growth of the modern apparatus of administration, was the realization of the social advantage of division of labour. The modern state, thus employs a large number of people who make the service of the State a life-long professional matter."

Ministers work through the civil service people.

The Ministers are not chosen for their expert knowledge or professional excellence. Responsibility, not expertness is their critorion. Under the responsible Ministers come thousands of officials and these make up the British Civil Service and they give them their expert knowledge with which the Ministers run the Government. In the words of Ramsay Muir, "*The power of the bureaucracy, the permanent Civil Service*, is to be found not only in administration, but also in legislation and finance ; it not only administers the law, it largely shapes them; it not only spends the proceeds of taxation, it largely decides how much is to be raised and how it is to be raised."

These Civil Service officials are not politicians; they do not sit in Parliament, and are choosen for their administrative capacity alone. "Numbering nearly three hundred thousand, and ranging from high administrative officers down to typists and clerks,—these men and women collect the revenue, keep the accounts, compile the reports, enforce the laws, maintain the public institutions, and translate policy into action throughout the realm. Together they make up the Civil Service."

They are a far more potent and vital element in the system of Government. *The real Government is run by the Civil Service.*

The nature of the civil service. Features summed up by Finer.

(B) The Nature of Civil Service activity.

The following features reveal the true nature of the Civil Service. Finer sums up :—

Urgency of State Services.

1. *The Urgency of State Services.* The State requires many works to be urgently done and hence the special emphasis upon continuity in the Public Service.

Monopoly and no price.

2. *Monopoly and no price.* The services are completely, or almost completely, monopolies, and charge the consumer a price, or a direct *quid pro quo* for value received. The Public Service operates, fundamentally, to make universal provision of a necessary service to all who need it.

Equality of treatment.

3. *Equality of Treatment.*—Side by side rendering services without much compensation, the treatment meted out to every one is the same.

Large scale organization.

4 *Large-scale Organization.*—Civil Service activity is usually of a vast wholesale quality, both in terms of the members with whom it deals and the extent of the area over which it rules.

Public accountability.

5. *Public Accountability.*—Civil servants are public servants. They may be called upon to answer for any of the thousands of actions undertaken every day.

6. *Limited Enterprise.*—The Civil Servant's enterprise is not free; he does not possess all the opportunities of initiative, or the incentive thereto. Limited enterprise.

7. *Establishment.*—The Civil Service is a carefully-graded hierarchy, a kind of 'establishment' with number of posts, duties and salaries to match. Establish ment.

8. *Direct governors.*—They are called 'direct governors' since they are concerned with the direct execution of Government in relation to the citizens. (This is a 'contemptuous term used by the people.) Direct gove nors.

9. *Not Ruthless.*—The services do not act primarily to make a profit. Ruthlessness is banished because it is believed that the State ought to be a 'model' employer, and further, the established nature of the services tend to exclude personal competition. Not ruthless

10. *Anonymity and Impartiality.* The civil servants to do their work without caring for public blame or praise and act with impartiality. Anonymity and impartiality.

11. *Aloofness from Politics.*—They do not take any active part in the politics of the country. Aloofness from politics

12. *They are appointed on the result of an open competitive examination* and get promotion on the basis of merit. As a result of competitive examination.

13. *Once appointed, they continue in office permanently.* Permanent service.

(c) *The development of the Civil Service in England* :— The development of the Civil Service.

1. *Origin. It is the outcome of Indian experience.*—The East India Company used to employ a large number of British young men Good salary and the lure of "shaking the pagoda tree" had attracted many. Through the influence of the stock-holders and of the Company's higher officers, the incompetent began to be demoralized. Origin.

Haileybury experiment.

2. *Haileybury Experiment.*—To improve upon the situation, a training school was opened at Haileybury and it became the only door to appointments. Though this School, the best young intellects began to proceed to India to serve the Company. The School soon had a much higher standard than those of Oxford or Cambridge.

The change of 1853.

3. *The change of 1853.*—When the expansion of territories in India began to take place, posts multiplied and the British public clamoured for a fair competition for the various services. Therefore, in 1853, Parliament abolished the Company's right to make these appointments and provided that an open competitive examination should be held. Macaulay was largely responsible for this.

The Civil Service examinations were inaugurated in 1855.

Adoption in England.

This system penetrated into England too. Before this, all appointments in England were made on the choice of the Ministers concerned. The spoils of victory were distributed among the personal and political friends of the Ministers. The competence or fitness of the candidates was not considered at all.

Protests from the public began to rain upon Parliament.

The Civil Service Act of 1855.

5 *The First British Civil Service Act, 1855.*—In 1855, a Civil Service Commission was appointed to enquire into the matter and suggest remedies. It reported in favour of open competitive examination in the *Home Services* in England.

The act of 1859.

6. *The Superannuation Act of 1859.* It provided that thereafter no person, with certain exceptions, should be entitled to a retirement pension unless he should have been admitted to the Civil Service with a certificate from the Commissioners.

In 1870.

7. *In 1870* an order in council made open competitive examinations obligatory practically through out the service.

"From 1870 onwards it was a matter merely of studying and experimenting with modes of bringing the system up to the desired efficiency and keeping it abreast of times."

Enquiry through commissioners.

8. Searching enquiries in this system were made by successive Commissions, notably in 1875, in 1884-90, 1910-14, and in 1918, and a large number of orders-in-council were issued: One of 1910 repealing previous orders and consolidating those remaining, and another of 1920 largely superceding the measure of ten years before.

The position to-day

9. *The Position To-day.* To day all the Civil Service officials are choosen under Civil Service rules *i. e.*, on the basis of open competitive examinations.

To this rule the following are exceptions:— (*i*) where a direct appointment is made by the Crown, (*ii*) where situations are filled by nomination, (*iii*) where professional or special qualifications are required, (*iv*) in the case of menial staff, *e. g*, peons, manual workers, etc, (*v*) officials like permanent under-secretaries, the assistant secretaries, the chief of bereaus or branches and the principal clerks.

Gradation.

Gradation in the Service.—Permanent Under-Secretary is at the head with one or more assistant under-secretaries and chief of branches.

Then come (*i*) the principal clerks, (*ii*) the first class clerks, (*iii*) the clerks of the second division, (*iv*) the Assistant clerks, (*v*) the Boy clerks,

Appointments and promotion

The first are appointed by nomination, the second from the first class clerkships, and the rest on the result of open competitive examination under different qualifications and conditions. *Promotion* takes place on the basis of seniority, service records, and the appraisal of general ability by the departmental heads for the higher grades.

Examinations.

The Examinations.—These are very stiff; the standard is high and the competition for the higher posts is very keen.

For the lower grades, the examination is like that of the Secondary School Examination. Only persons between 22 and 24 years of age are eligible for higher examinations.

Pensions etc.

Retirement, Pensions.—Retirement and retirement allowances, or pensions are regulated broadly by act of Parliament, but in all details by the Treasury, and the system is administered by Treasury Commissioners. The normal retirement age is 60 (or before, due to physical or mental unfitness).

Organization.

Organization.—The spirit of organization has spread to all ranks. Now-a days we find the following associations :—

(*i*) The Civil Service Confederation, with 60,000 members; (*ii*) the Union of Postal Servants with 90,000, (*iii*) the Institution of Professional Civil Servants 10,000.

The first two comprise the principal organizations of middle and lower grade employees. The right of civil servants to form associations is fully recognised.

There are Whitley Councils in the Civil Service, such as (*i*) Departmental Councils, varying from department to department and (*ii*) a National Council of 54 members, half appointed by the Civil Service associations grouped in certain ways.

"The business of the councils is to consider matters relating to recruitment, tours, promotion, tenure, discipline, and remuneration, to devise ways of better utilizing the training and experience of the staff; to encourage the further education of staff members; and to propose remedial legislation. Many decisions can be put into practice by simple council agreement or by the permission of the departmental head, by the Treasury

or even by Parliament. Official side enjoys the greater power."

Defects and Merits.

Its defects and merits.

Defects are red-tapism, evils of patronage and examination system.

Merits are : (*i*) It secures the best stuff in the country. (*ii*) Men enter the service early and by dint of labour and ability rise in the official ladder. (*iii*) The employees are not condemned to one kind of work all through their life (*iv*) There is excellent moral which the service displays and the interest in and sense of responsibility for its own improvement. (*v*) It is not thought by Englishmen as constituting a bureaucracy. They are simply ingredients in a political system in which " the calm assurance was long ago planted that the citizen is the master of the Executive". (*vi*) Its permanence is its greatest feature. (*vii*) English system is for general intellectual attainments while the American accepts special qualifications.

Q. 43. Discuss the present British system of colonial administration. In what respects do Crown colonies differ from responsible colonies? *(P. U. 1934).*

Administration in the hands of three ministers.

Ans. For the administration of Colonial Empire, the British Cabinet has three Ministers.

(1) The Secretary of State for Colonies.

The Secretary of State for Colonies.

His office, known as the Colonial Office, manages the business of the dependant Empire and deals with it in various departments divided geographically. They are :—

(*a*) The West Indian Department.

(*b*) The Far Eastern Department, dealing with Honk-Kong, Wei-Hai-Wei, the Straits Settlements, the Malaya States, and business connected with Sarawak and North Borneo.

(*c*) The Ceylon and Mauritius Department—St. Helena and other small Pacific Islands.

(*d*) The Gold Coast and the Mediterranean Department.

(*e*) The Nigeria Department.

(*f*) The East Africa Department.

(*g*) The Tanganyika and Somaliland Department.

(*h*) The Middle East Department, dealing with the business of Palestine, Iraq, Aden and areas under British influence. The affairs of each party of the dependant Empire are thus dealt by experts, and above all is the General Department which is concerned with the management of the colonial service and with all questions of general bearing.

The Secretary of State for India.

(2). The Secretary of State for India through his India Office.

The Secretary of State for India has a Parliamentary Under-Secretary, a Permanent Under-Secretary, assistant secretaries, and others to help him. He has also a council to advise him. The Indian Office, since the Reforms, is not much concerned with the details of Government in India. It now mainly deals with the broad questions of policy. The Secretary of State for India, however, is still responsible for the good Government of India. It is on him that the responsibility of justifying the policy adopted falls.

The Secretary of State for Dominions.

(3) The Secretary of State for Dominions through his Dominion Office.

The Dominion Office deals with business connected with the Imperial Conference and Overseas Settlement and with Canada, Australia, South Africa, New Zealand, the Irish Free State, Newfoundland, Southern Rhodesia, Basutoland and other South African territories outside the Union, and Nawrun Island in the Pacific over which a mandate from the League of Nations is held jointly by the British Government, Australia and New Zealand.

Responsible Colonies.

Responsible colonies.

The position of responsible colonies *i.e.* the colonies in which self government has been attained (the dominion of Canada, the Australian Commonwealth, New Zealand, Union of South Africa and Newfoundland) was thus defined at the Imperial Conference of 1926 : "They are autonomous Committees within the British Empire, equal in status, in no way subordinate to one another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations. The Common characteristics of the constitutions of all the self governing colonies is that they have a form of government in which executive is responsible to the popularly elected legislature.

The Crown Colonies.

The Crown Colonies.

The Crown Colonies are under the autocratic rule of the Colonial Officer in Whitehall. They have no responsible government. They range in organization all the way from mere military administrations, such as have been established in St. Helena and Gibraltar, through those which, like Trinidad and the Strait Settlement have both a nominated Executive and a nominated Legislative Council, and those like Jamaica whose nominated Executive is associated with a Legislative Council in part elected, to those like the Bahamas and Bermuda, in which the councils are altogether elected, but which have no responsible Ministry.

Q. 44. Give a brief history of the evolution of Local Self-Government in England.

Four periods.

Ans. The history of Local Self-Government in England may be divided into *four periods*:—

(I) First Period : This is the Anglo-Saxon age.—

This period was called the "Golden Age of Local Government." The King was not strong and the centralized government was absent. The whole

country had shires, hundreds, townships, and boroughs with their elected or appointed local governments. These were based on democratic principles and were full of vitality

Second Period. The Norman and Angevin Period.

(II) Second Period : The Norman and Angevin Period.

This is a period of strong and centralized monarchy.

In this period, shire became the county, "The hundreds" disappeared, townships became feudal manors.

But feudalism was checked by the Kings. They increased the powers of the Sheriff and placed the county courts at his disposal for the peace of the local areas.

There also sprang up parishes which became areas of civil government.

Thus, under the central monarchy, the Local Self-Government advanced through the sheriff and the parishes.

Third period: From 14th century to 18th century.

(III) Third Period : From the 14th century to the 18th century.

This was an *aristocratic period.* (*a*) In this period, the county, the borough and the parish were the principal areas of Local Government. These local authorities continued even under the strong autocracy of Tudor and Stuart monarchies.

(*b*) In this period, we find too, the decline of the sheriff. ', The Justices of Assize," " The Inquest of Sheriff in 1170," " The growth of manorial jurisdiction," " The Magna Carta " and " The Justices of the Peace "—all were responsible for weakening the position of the Sheriff.

Parishes and the Justices of the Peace in this period.

(*c*) Also we find that the Tudors reorganized the Local Government through the parish (as their administrative unit) and the Justices of the Peace (as their man-of-all-work).

These justices of the Peace were the judge, police man, administrator, responsible for the trial of criminals, for the maintenance of order, for social and economic legislation, for fixing the rate of wages for servants and labourers, for the apprentices, for fixing the prices of commodities etc., etc. They did the work admirably and the social order was gradually evolved out of confused conditions of the 15th, 16th and 17th centuries.

The Tudors also grappled with the problem of pauperism, vagrancy and unemployment through the parishes by means of a series of poor laws such as those of 1601, 1723, 1782 (Gilbert's Act) etc., in the 17th and the 18th centuries.

Effects of the Industrial Revolution of 1688.

(*d*) In this period, conditions were effected by the Industrial Revolution of 1688. From 1688 to 1888 the Country Magistrates had it all their way in the local administration and the work was admirably done.

The fourth period: since the 19th century.

(III) The Fourth Period : Since the 19th century.

It is a period increasingly democratic in tendency.

In this period we find the following changes in the Local Self-Government:—

(*a*) A Lord Lieutenant" had taken the place of the Sheriff in the county.

Chaos of local governments.

(*b*) Local Government was sinking into a chaos. As Goschen says, "there was in this period a chaos of authorities, a chaos of jurisdiction, a chaos of rates, a chaos of franchises, a chaos worst of all of areas."

The reason was that many independent local authorities such as Counties, Municipal Boroughs, Improvement Districts, Urban Sanitary Districts, Port Sanitary Districts, High Districts, etc. etc., had emerged. In 1883 there were about 27,069 independent local authorities.

The parishes.

(*c*) *The Parishes* were almost committed to an overwhelming burden of a poor rate for a system in which those who worked supported those who were idle. The Poor Laws were enforced through these parishes.

The shires.

(*d*) *The Counties or Shires* were controlled by the Justices of Peace appointed for life by the Crown, combining the work of administering justice with that of maintaining Local Government.

Boroughs.

(*e*) *Boroughs* were governed by corporations or municipalities. The administration was at once corrupt and inefficient.

Parliamentary reforms.

(*f*) To remove the above-said defects and to have the concentration of authorities and the readjustment and simplification of areas, Parliament took to reforms for the Local Government in England, cautiously and step by step. The following are the important reforms acts:—

The Act of 1833.

(1) *The Act of 1833* reformed the boroughs of Scotland.

The Act of 1835.

(2) *The Municipal Corporations Act* (1835) was passed for the boroughs. It gave them a uniform style of organization and a scheme of local Government which they have kept to this day. These corporations were to be elected by the people and for the people. The governing body was a council composed of town councillors chosen for three years by all the inhabitants who had paid poor rate during the three years preceding...The town councillors elected aldermen and the mayor for one year. The council worked through various committees such as the Statutory Watch Committee to deal with the Police, the Education Committee, the Sanitary Committee, etc. ect.

The Act of 1888.

(3) *The Local Government Act of 1888*.—This divided all England into administrative counties, either entire counties, or divisional counties.

In each administrative county was set up a Council like that of a corporate town; and it consisted of

councillors for three years and co-opted aldermen chosen by the rate payers.

The administrative functions of 'Quarter Sessions' were transferred to these councils.

The control of education was entrusted to it by subsequent Acts of 1889 and 1902.

(4) *The Parish Council Act of 1894.* Under this Act, every county is divided into districts, urban and rural, and every district into parishes. The district and rural parish had an elected council which was given all civil functions of the 'vestries' or parishes, control of property, charities, foot-paths etc., and the power of providing the parishes with libraries, baths, light, etc. The Act 1894.

The District Council controlled the sanitary affairs and highways.

The council for Rural Districts also acted as Poor Law Guardians for parishes.

(5) *The Local Government Act of 1929.* It establishes the central control over local government in legislative, judicial, financial, and administrative matters. "The Act lessened the number of local authorities by abolishing the chief of the authorities administering a single service (Poor Law) and concentrating functions in the county and county borough councils; it also imposed financial provisions which gave the central government a stronger hold upon expenditure." *Wade & Phillips.* The Act 1929.

Q. 45. Describe the chief organs of Local Self-Government and their functions? How does the central Government exercise control over the Local Government ?

Ans. There are five chief organs of Local Self-Government. Five ch organs.

(1) County Government.

(2) The Rural District Government.
(3) The Urban District Government.
(4) Parish Government.
(5) Borough Government.

ne county.

1. The County.

There are two kinds of counties : (*a*) the Historic County and (*b*) the Administrative County.

ne histor-
county.

(*a*) *The Historic County.*—There are fifty-two historic counties of England and Wales coming from Saxon Shires. In 1888 administrative counties were created but the historic counties were left unchanged. The historic counties are not for local administration and are only famous for parliamentary elections because they serve as county constituencies. These are also conspicuous for petty Justice, the Lord Lieutenant (for records etc.,) the sheriff and for the Justices of the Peace. The Sheriff is for conducting Parliamentary elections, receiving and attending judges on circuit, summoning juries and for executing the civil and criminal judgments. He is for one year with no salary. The "clerk of the peace" and the coroner help him in his work.

ne administrative
unty.

(*b*) *The Administrative County.*—The Act of 1888 created 63 of these counties in England and Wales (including the county of London) along with a number of boroughs with the status of counties for administrative purposes and free from the jurisdiction of the administrative county.

It has an elected county council consisting of a chairman, alderman and councillors sitting as one body. They are assisted by clerks, and other permanent officials appointed by the council.

ne
uncillors.

The councillors.

They are elected by the qualified voters of the county and hold office for a term of three years. The county is divided into electoral districts, one councillor being chosen by each district.

The number of councillors varies with the population of the county. The suffrage qualification is the same as for municipal elections.

The Aldermen.

The Aldermen.

They are one-sixth as many as the councillors in number, are elected by the councillors, either from their own number or from the qualified voters outside, and hold office for six years, one-half of their number, however, retiring every three years, in rotation.

The Chairman.

The Chairman.

This single-chambered council of Aldermen and councillors elects its own chairman to serve for one year, and pays him such compensation as it deems sufficient. He has the presidential but no independent executive powers and is authorized to act as a Justice of the Peace along with the rest of the 'commission of the county'.

The average number of councillors is 75. (Lancashire has a council of 140 members.)

Their powers.

Powers of the County Council:

(1) The council holds and administers all county property and may purchase or lease land or buildings for county uses.

(2) It has full control over the paupers, lunatic asylums, industrial schools, education and reformatories.

(3) County bridges and roads are under the council.

(4) It administers statutes affecting the contagious diseases of animals, destructive insects, weights and measures, etc.

(5) It appoints the County Treasurer, the County Coroner, the Public Surveyor, the County Analyst, and all other officers paid out of the county rates.

(6) The fees of the coroner are determined by the council and the division of the county into coroner's districts are controlled by it.

(7) Polling Districts and voting places are fixed by it, and the registration of voters are supervised by it.

(8) It sees to the registering of places of worship, of the rules of scientific societies, of charitable gifts, etc.

(9) It grants licences to music and dancing halls, to houses meant for public performances of stage plays and for keeping of explosives.

(10) It has extensive financial powers—determines, assesses and levies the county, police and hundred rates. It can borrow money to pay off the debt or can incur any expenditure for public use. It has its own budget.

(11) The Police Powers are exercised by a Joint Committee of Quarters Sessions and the County Council.

(12) It manages old age pensions, child and maternity welfare work.

For the use of all these powers, it meets four times a year and has Sub-Committees. The County Council and the Sub-Committees lay down the general policy and the general principles. The details are worked out by the permanent officers chosen on merits and non-political basis, consisting of the county clerk, treasurer, surveyor, health officer and others.

rural rict rnment

2. The Rural District Government.

The rural district has a council of its own elected by the voters. Subject to the general control of the council this rural council has control over water-supply, sanitation and public health. It has power to levy rates and appoints and controls a clerk, treasurer, surveyor, medical officer, sanitary inspectors and other permanent salaried officials.

There are 663 of these rural districts in England and Wales, some with only a few hundred men, others more than 50,000.

3. The Urban District Government.

The urban district government.

These districts are more thickly populated. Eighty percent of the people live in these and the boroughs. When the area is governed according to the Act of 1824, it is an *Urban District; if an area is granted a Municipal charter, it is a borough.*

If the County Council thinks that the area has special needs such as water-supply and fire protection etc., it erects that area into an Urban District. Unlike the Rural District it is given special powers over sanitation, housing, licensing, and other matters.

Its district council consists of councilors and a chairman (and no aldermen). The councillors are chosen by the municipal voter and the chairman is elected by the councillors.

4. Parish Government.

Parish government.

It is the smallest unit of local government. If it has got a small population, say less than 300 men, then all meet together to manage their affairs. If the population is larger, they have a council consisting of 5 to 15 persons, elected for 3 years. There is an elected chairman too. The council appoints the "managers" of public elementary schools, the clerk, the treasurer and other officers. They meet twice a year. Property, sanitation, public libraries, recreation grounds and village greens are looked after by the council.

5. Borough Government.

Borough government.

A Municipal borough is governed under the Municipal Corporations Act of 1835 and its various amendments are codified in an Act of 1882. If the inhabitants want a borough, they send a petition to the Privy Council through the County Council and the Privy Council grants a charter and endorse it with superior powers. Thus boroughs are those Urban Districts which have been granted a Municipal charter.

There are more than 300 boroughs in England.

Their council.

Their Council. The borough government machinery is worked by a single elective body called the Council. It consists of (*i*) Councillors, (*ii*) Aldermen, (*iii*) and Mayor sitting as one body.

The councillors.

(*i*) *The Councillors* are elected directly by the rate-payers for three years, one-third going out in rotation every year. The larger councillors are divided into wards and the councillors are chosen under the ward system.

The aldermen.

(*ii*) *The Aldermen.*—The Councillors choose aldermen, one third of their own number for six years, one half retiring every three years, by rotation. These aldermen, experienced as they become, are much useful to the council.

The mayor.

(*iii*) *The Mayor.* He is elected by the Councillors and the Aldermen for one year. He receives no salary like others.

He is merely the presiding officer of the council and the official representative of the borough on ceremonial occasions. He cannot appoint or remove officers, control the departments or veto ordinances. He is often a person of wealth and of leisure. He may be re-elected a number of times.

Their powers.

Powers of the Council.

(*i*) *It has legislative, financial and administrative powers.*

(*ii*) It makes bye-laws or ordinances relating to Streets, Schools, Police, Health, Traffic control etc.

(*iii*) It controls the borough fund, public property, franchises, fines, fees etc.

(*iv*) It levies borough rates for additional revenue.

(*v*) It draws up its own budget and makes all appropriations. It borrows money to meet its debts.

(*vi*) It exercises control over all branches of strictly municipal administration through its clerk, treasurer, engineer, public analyst, chief constable, medical officer.

Its Committees.

Committees

It does its administrative work through committees elected by the council and presided over by chairmen selected by the committees themselves.

There are Statutory Committees (compulsory by law), Finance Committee, a committee on education, a committee on old age pensions, a committee on maternity and child welfare. These may be more than 25. All matters which come up to the council are at first referred to some committee and then passed by the councillors.

In the English municipalities, there is no spoils system. Officials are appointed on merit and hold office permanently.

B. Central Government control over the local government.

Central control over the local government

Full municipal corporations look partly (as in sanitation matters) to the Local Government Board as a central authority exercising powers of supervision and also partly to the Home Office, and partly to the Board of Trade. Urban Districts have, however, a single central authority set over them — the Local Government Board.

There is a uniform control by the Central Government over the local bodies. Thus there are *six departments doing this business* : The Ministry of Health, the Home Office, the Board of Education, the Ministry of Transport, the Board of Trade and the Electricity Commissioners doing inspection and inquiry. The Ministry of Health looks after the Poor Relief. 'Social Insurance'. Public Health, 'auditing of

accounts and local borrowing'. The Home Office controls the local police and inspects factories. The Board of Education sees to the needs of the Local Schools. The Ministry of Transport supervises tramways or street railways etc. Electric lighting falls to the lot of the Electricity Commissioners.

The Government also adopts other methods to keep control such as :—

(*i*) It institutes regular enquiries. (*ii*) It is to be asked beforehand for certain permissions for certain things. (*iii*) It makes rules and regulations for the local bodies. (*iv*) It insists on a certain standard of efficiency if it gives grants-in-aid or other monetary assistance.

Thus the central control is legislative (enacting laws as prescribing areas of units, granting charters etc.).

Judicial (cases arising between public officials and corporations or private citizens are tried and decided in Courts belonging to the national judicial establishment), *financial* (grants are given out of the national exchequer) and *Administrative* (every important act of a local government authority is subject to the supervision, review and positive control of the central departments).

The central departments advise, inspect, regulate, give approval or withhold approval. They supply information, they hear complaints ; they lay down rules and regulations ; they audit accounts, they have ample control over "municipal trading" (public ownership, tramways, electricity etc).

But in no case are these central departments expected to perform the duties of the local bodies directly. The central control is more of an administrative character and is extremely flexible. The Local Government enjoys complete freedom in its own spheres.

Q. 46. Describe the Government of London.

There Londons

Ans. There are three *Londons* for purposes of al Government :—

1. The city of London.
2. The county of London.
3. The London Metropolitan Police District.

The City of London Government.

City of London.

The city of London has a municipality within a icipality, government of its own though it covers a small part of London and has an area of about square mile with a population of only 13,7000.

Its govern ment.

It is governed by a Mayor and three "Courts" or ncils :—(*i*) a Court of *Alderman* elected for life by eemen and liverymen of the 26 wards. (*ii*) "*a rt of Common Hall*" which is a primary assembly e freemen, liverymen, and municipal officers with es of an elective nature only and (*iii*) *the Court ommon Council*, consisting of the Lord Mayor, aldermen and 206 councillors. It is the real ortant authority working through several com- ees.

Lord Mayor

The Lord Mayor. The Lord Mayor is the rmost amongst the aldermen having prestige and monial splendor about him. But he has no inde- ent powers.

He is chosen by the Court of Common Hall and e president of the three councils and is the repre- ative of the city on ceremonial occasions. He ves a salary of £10,000 a year. His official ence is the Mansion House. If he is to give a ly banquet or a gorgeous pageant, he does so at wn expense. He receives knighthood if he has

The city is well governed, its tax rate is low.

2. The County of London.

The county of London.

The Act of 1888 combined all small parishes in the administrative county of London. It covers an area of 117 square miles.

Its Government. It has 124 elective councillors and 20 aldermen and has an elective chairman. The councillors are elected for three years and the aldermen for six years. Both of these choose the chairman.

Its chairman is quite overshadowed by the mayor of the city on ceremonial occasions.

Its powers.

Powers. It has powers similar to those of County Councils.

It is the chief authority for main *sewers* and *sewage* disposal, fire protection tunnels and ferries and bridges and for street improvements. For health regulations it has to take the permission of the Ministry of Health. Housing schemes, the upkeep of parks and places of recreation, public education, whether elementary, secondary and or technical, street railways, theatres, buildings laws, lodging inspections, and relief institutions—all are looked after by council of the county.

Its revenue.

Its revenue—It has three chief sources of revenue (*i*), grants-in-aid made by the national government (*ii*) income from tolls, rents, fees and other payments and (*iii*) local rates or taxes. It can borrow money with the permission of Parliament.

It has no mayor. The chairman is not an executive officer. He only presides. The County Council has real powers which it exercises through 18 committees and permanent officials.

The Boroughs.

(B) The Boroughs.

The Administrative County of London is a federation of boroughs, unequal in size.

The county is divided into 28 boroughs. Each ough has a local government consisting of elected rmen (by the council), elective councillors and ayor (elected by the council). The system of elec- is the same as prevailing in other boroughs.

The Borough Councilwith powers.

The borough councillors have powers over ds, sanitation, public health, libraries, local burial nds, electric plants, public baths, warehouses, kmen's dwellings, street-building, paving, lighting, ning machinery, local cemeteries, etc. In fact have less powers than those of other es.

The system works fairly well. Although the sion of responsibility between the county and ough councils and the absence of a sufficiently ed population and other handicaps produce difficul- yet the work is done admirably well.

The Metropolitan Police District.

The Metropolitan Ploice District.

The city of London has its own police. But ounding the city is the Metropolitan police district ering an area of 700 square miles This police rict includes the whole of the county of London and ts of several other counties. There is a Commis- er of Police at its head and a police force 20,000 strong of all ranks.

The financial administration is in the hands of a ceiver appointed by the Crown who manages all ce stations, contracts, supplies and other matters. erwise the Police Commissioner is the chief hority for law and order.

Thus the City of London, the County of London the metropolitan boroughs) and the Metropolitan ce District govern London.

Q. 47. Summarise briefly the main facts ut the British Constitution.

Ans. It was De Tocqueville who said, 'the ish Constitution does not exist'. It is true that Great

Great Britain has no written constitution.

Britain has no written constitution as can not changed by ordinary procedure. The constitutio Great Britain is made up of judicial decisi common law, statutes passed by the British Par ment, Great Charters and established usages customs. Any change in the interpretation of l by the courts or change in usage or a new act by Parliament may change the constitutional practic Great Britain. There is no separate Constitu Assembly; the Parliament is all Supreme. No tinction exists between ordinary law and constitutio law in England. "Strictly speaking, it is possible to act unconstitutionally in Great Britai is only possible to act illegally. The word 'unconst tional' in this country is a term of political ab and implies that the political opponents of the wr or speaker are acting or are about to act in a man which he considers at variance with the traditi al usages of British politics. These traditional usa are deeply founded in British political practice much so in fact that some of the most important British political institutions, such as the position of Prime Minister, have no legal basis whatsoever. proposal that the Prime Minister should be appoi by the Trades Union Congress, or the Federation British Industries, or the National Temperan League, would not be in the least unconstitutional would merely be shocking."

The House of Commons.

The House ofCommons

The Parliament of Great Britain consists of House of Commons and House of Lords. The Ho of Commons is elected for five years though the K may agree to dissolve it sooner on the advice of Prime Minister. Every adult is allowed the right vote. There is universal suffrage. Bankrupts, cler men, peers and persons holding certain appointme are debarred from voting. Since the passing of Parliament Act of 1911, the House of Commons come to have final voice in matters of legislation. the case of non-money bills, the House of Lords

sesses only a suspensory veto. A bill must be read three times in the House before being passed on to the House of Lords. Ministers must resign if they have ceased to command the confidence of the House. The House elects its own Speaker.

The House of Lords.

The House of Lords.

Under the Parliament Act of 1911, a money bill even if rejected by the House of Lords becomes law after the expiry of one month. An ordinary bill goes straight to the King for signature if passed by the Commons in three successive sessions (provided two years have elapsed in the process) even if it is rejected by the House of Lords each time. The House of Lords include all the peers of England and Wales, with a few elective peers from Ireland and Scotland. Besides this, it includes the two Archbishops of Canterbury and York, twenty-four other bishops and Law Lords. The King can create any number of peers and thus increase the size of the House. It is dominated by the Conservative Party and hence has always a conservative outlook.

The Crown.

The Crown.

Inspite of innumerable legal powers of the Crown, the real powers are few and these are even exercised on the advice of the Prime Minister. For instance, though the Crown can veto any act, in practice, the power has never been used since a long time. The Crown is also a golden link between Great Britain and the self governing Dominions The Dominions of Canada and Australia, New Zealand, the Union of South Africa owe their allegiance not to the British Parliament but to the British Crown. The Crown is the emblem of empire unity.

The Cabinet.

The Cabinet.

Great Britain has a parliamentary executive. It remains in office only as long as it can command the confidence of the House of Commons. The King calls upon the leader of the majority party in the

House of Commons to form a government and he chooses his own colleagues. The cabinet is jointly responsible to the Parliament. It is the entire cabinet which has to resign for the faults of any of its members. The members, except in a coalition government, belong to the same party. It is a united team.

The Judiciary.

The Judiciary.—Cole divides British Justice into two parts—High Justice and Low Justice. High Justice includes the High Court in its various divisions, the Courts of Appeal and the House of Lords as a final Appeal Court. They not only enforce the law but also interpret it. Low Justice includes the county courts and the courts of the magistrates, paid and unpaid. Paid judges preside over the county courts. Benches of honorary Justices of Peace dispense local justice.

Local Government, Civil Service, and parties

Local Government.—Members of the local bodies are elected on a very wide franchise. These wield considerable power and the Central Government possesses no general right of interference in their actions The three important parties in Great Britain are : The Conservative, the Liberal and the Labour. The Liberal Party is losing its hold on the people. The British Civil Service, which is recruited by competition, is perhaps the best in the world. Civil Servants have a permanent tenure of office.

THE CONSTITUTION OF U. S. A.

Q. 1. Write a brief note on the origin and development of the Constitution of the United States of America.

Ans. The States that came to be known as the United States of America, thirteen in number, were separate British Colonies before the War of Independence. Some of these Colonies were founded under charter by the Crown (Massachusetts, for example) ; some were governed by companies located in England under royal grant (Virginia, for instance) and a few were proprietary colonies (Maryland, Pennsylvania and Delaware) which were owned by individual proprietors by royal grant. Though each colony had distinct history and antecedents, yet they developed along parallel lines. The government in each colony was carried on by a governor appointed by the crown assisted by local assemblies in the work of legislation. Early Colonial period.

By the close of the seventeenth century and the beginning of the eighteenth century, the system of government in these colonies had taken a form which could easily be recognised as federal in nature. Federalism implies division of power between different authorities in a manner that both the authorities are simultaneously brought into direct contact with the citizens, though each has its own separate sphere. The Imperial Government had charge of foreign affairs, the navy and army, war and peace, the collection of custom dues, the management of unsettled lands, and the relations with the Indian tribes on the frontier. The elected Legislative Assembly did not interfere in these matters. Each colony managed its own internal affairs—local trade, police, raising of taxes for local purposes—according to the provisions of the charter granted to it by the Crown. The system was no doubt complex but it was flexible. The colonists acquired valuable experience in self-government during this period.

"During the period down to 1763, the external menace of the power of France and Spain, with whom the colonists might at any moment find themselves at war, kept them from any sustained protest against the exercise of the Imperial power. There were constant petty disputes especially about constitutional rights in the West Indies, but there was a general acquiescence in the system as it had grown up. The Imperial government had such engrossing problems to handle in copying with rebellion and maintaining English interests in Europe, that no attempt could be made to systematize colonial government or do more than deal with practical problems as they arose. On several occasions during the first half of the eighteenth century, proposals were made for a systematization of the relations between the continental colonies, but they never obtained any considerable measure of support. The colonists recognised that they had many common interests and valued their association as members of the Empire, but they had not yet such a sense of community of danger from without as to be willing to relinquish any of their autonomy."

After the cessation of the Seven Years' War, an attempt was made to reorganise the colonial governmental system. Two theories, one held by the majority of the members of the British Parliament and the other held by the dominant party in the colonies, arose out of the constitutional wrangles that continued for a pretty long time. According to the extremists among the colonists, the British Parliament could not assert its sovereignty in the colonies; it was the King in the elected assembly of the colonies in whom the sovereignty rested. Nothing should be done without the assent of the majority of the assembly of the colony concerned. They brought a severe indictment against the king and the parliament and pointed out how authority has been flagrantly abused in many cases. The upholders of the opposite theory, however

pointed out that the King-in-Parliament was supreme throughout the king's realms and the setting up of assemblies in the colonies was no derogation of his rights. Assemblies were set up simply for practical convenience and were necessarily subordinate to the Imperial Parliament. The advocates of the two theories failed to arrive at an agreement, and the differences grew deeper and the relations between the colonies and the British government got still more estranged.

Early attempts at union and the Philadelphia Congress of 1774 and 1775.

Though the colonies differed in 'origin, in economic and physical conditions, in social structure' in political opinion and in religious sympathies, yet attempts were made on different occasions to bring about some kind of union. "Yet differing between themselves, each colony had its counterpart in some section of society, some ecclesiastical persuation, some commercial interest, some political party at home. Maryland, for instance, was the home of the Roman Catholics and maintained close relations with fellow religionists at home; Virginia and the Carolinas with their large slave-worked plantations, their big country-houses, their devotion to the Crown and the Church of England, inherited the traditions of Cavalier England and reproduced many of the characteristics of English country-life. New England, on the other hand, Puritan in origin, temper and creed, and extorting a more grudging subsistence from a less genial soil, was in close sympathy and communication with the middle classes at home. To bring together communities so diverse in origin and so, divergent in outlook would have been impossible save under the pressure of military necessity. Yet the idea of union was not unfamiliar, and more than one attempt had been made to realize it."

The New England Colonies entered into a Confederation in 1643 for mutual defence when faced with the great danger of attack by Indian tribes. This Confederation, however, left no permanent

trace behind it as it was short-lived, the danger from Indians being removed too soon. The individual Colonies again asserted their independence. A plan for union was prepared by William Penn and submitted in 1697 to the Board of Trade and Plantations. Another scheme of union drawn up by Franklin in 1754 was not adopted at that time as each Colony jealously guarded its own independence and was not willing to relinquish any authority in the larger interest of the union. Matters, however, took a different turn with the intensification of the quarrel with England over the commercial policy and the loss of Florida by Spain and Canada and Louisiana by France. The delegates of the different colonies met at Philadelphia in 1774 and 1775, not with a desire to secede from the Empire but with a sincere desire to request England to recognize the right of self-taxation. The second Congress at Philadelphia (1775) also appointed George Washington as the Commander-in-Chief of the army who, however, soon found that it would be impossible to fight the Imperial armies without external aid. France was prepared to help the Colonies provided they declared independence. There was no time to choose and the thirteen colonies formally declared their independence on July 4. 1776 in the following words :—

Declaration of Independence July 4, 1776.

"We hold.....that all men are created equal: that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness, that to secure these right, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

"Prudence, indeed, will dictate that governments long established should not be changed for light and transient causes: and accordingly, all experience hath shown that mankind are more disposed to suffer while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute depotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future security. Such has been the patient sufferance of those colonies; and such is now the necessity which constrains them to alter their former systems of government. The history of the present king of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute tyranny over these states. To prove this, let facts be submitted to a candid world. He has refused his assent to laws the most wholesome and necessary for the public good. He has forbidden his governors to pass laws of immediate and pressing importance, unless suspended in their operation till his assent should be obtained; and when so suspended, he has utterly neglected to attend to them.....

"We, therefore, the representatives of the United States of America, in general Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do in the name and by the authority of the good people of these colonies, solemnly publish and *declare that these United Colonies are, and of right ought to be, free and independent states; that they are absolved from all allegiance to the British Crown, and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved; and that, as free and independent*

states, they have full power to levy war, conclude peace, contract alliances, establish commerce and to do all other acts and things which independent states may of right do. And for the purpose of this declaration, with a firm reliance on the protection of Divine Providence, we mutually pledge to each other our lives, our fortunes and our sacred honour."

Articles of Confederation, November 5, 1776.

A new constitutional machinery was supplied by the Articles of Confederation prepared by the Continental Congress immediately after the selection and finally agreed upon on November 15, 1777. They were ratified by each State of the thirteen States at various times. The State of Maryland was the last to ratify them on March 1st, 1781. A new body described as Congress was instituted. It marked an advance upon the previous Confederations in so far as more power was vested in it. The Colonies pledged themselves to carry on the scheme of common action determined by the Congress which was also endowed with certain administrative powers under the stress of war. The Congress was not a sovereign power but only an international conference of delegates meeting annually. The powers delegated to the Congress were those relating to currency, postage, Indian affairs, army and navy, foreign affairs, peace and war. No doubt was left as to the sovereignty of the individual state as is clear from the first three Articles of the Confederation:

"(1) The style of this Confederacy shall be 'the United states of America.'

"(2) Each State retains its sovereignty, freedom and independence, and every power, jurisdiction and right which is not by this Confederation expressly delegated to the United States in Congress assembled.

"(3) The said states hereby severally enter into a firm league of friendship with each other for their common defence, the security of their liberties, and their natural and general welfare; binding themselves to assist each other against all force offered to, or

attacks made upon them, or any of them, on account of religion, sovereignty, trade or any other pretence however."

The rigidity of the Constitution is clear from the provision that each state was required to abide by the decision of Congress and the Articles of the Confederation could only be changed by the Congress on approval by the legislature of each state. "The fundamental defect of the new constitution was, according to Jefferson, that Congress was not authorized to act immediately on the people. Their power was only requisitory and these requisitions addressed to the several legislatures to be by them carried into execution without other coercion than the moral principle of duty. It allowed, in fact, a negative to every legislature and to every measure proposed by Congress; a negative so frequently exercised in practice as to benumb the action of the Federal Government, and to render it inefficient in its general objects, and more especially in monitary and foreign concerns. Moreover, for lack of a federal executive and judiciary, the Congress was compelled, to the profound disgust of the American disciples of Montesquieu, to exercise judicial functions in addition to those of legislation."

So long as war continued, the Confederation held together due to the exigencies of the situation. The defects of the constitutional machinery were recognised only after Great Britain had acknowleged the independence of the colonies by the Treaty of Versailles in 1783. The colonies held together between 1765 and 1782 as all of them were interested in opposition to the Imperial Government and the desire to achieve military success in war. They ungrudgingly transferred their obedience from the Crown to the leaders of the revolutionary period. General Washington received whole-hearted support of all the colonies in the common defence of their rights. But with the conclusion of the peace treaty in 1783, fissiparous tendencies once again asserted themselves and each state

tried to escape from the common burdens which the Confederation involved. The Confederation, after the cessation of the war, could not evoke sentiments of loyalty of the citizen of the different states.

Things went from bad to worse. Economic and financial ruin followed in the trail of war. Both foreign and domestic affairs were in a state of embarrassment. The country was drifting towards chaos and anarchy. Colonies, exercising their independent sovereignty, began to levy duties against each other and thus hindered trade.

Annapolis Conference September 14, 1786.

The continuous efforts of a few enlightened statesmen ultimately brought about a change in the narrow outlook of the separatists. The abolition of the thirteen states and creation of a new single state seemed to be the only solution of the difficulties to men like Hamilton. A conference met at Annopolis on September 14, 1786 to discuss the commercial situation. The states represented in that conference (Virginia, Delaware, Pennsylvania, New Jersey and New York) decided to use their endeavours to procure the concurrence of the other states, in the appointment of commissioners, to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the federal government adequate to the exigencies of the union ; and to report such an act for that purpose to the United States in Congress assembled, as, when agreed to by them, and afterwards confirmed by the legislature of every state, would effectually provide for the same.

The Congress, on February 21st, 1787, declared that the Confederation and perpetual union between the states had not proved adequate to the exigencies of the government and the preservation of the union and therefore thought it expedient that on the second Monday in May next a convention of delegates who

should be appointed by the several states be held at Philadelphia for the sole and express purpose of revising the Articles of Confederation and reporting to Congress and the several legislatures such alterations and provisions therein as should when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of government and preservation of the union.

The Constituent Convention at Philadelphia May 25, 1787.

The result was that at the Constitutional Convention which met at Philadelphia on May 25th, 1787, seven states out of the thirteen independent states were represented by their delegates. Later on, all the states were represented except one— Rhode Island. George Washington was chosen President of the Convention. Fifty-five delegates atttended of whom some had been governors of their respective states, some had been delegates of the Continental Congress and others had had actual experience in the legislative assemblies of the colonies. The foremost men were Hamilton, Randolph, Franklin and Madison.

The Convention decided to go out of its terms of reference and draw up a new constitution, complete by itself, instead of revising the Articles of Confederation. It further decided that the constitution, instead of being ratified by the Congress or the legislatures of the states, should be directly ratified by the people themselves in each state. The Constituent Convention was thus converted into a Constituent Assembly without sovereign rights to impose a constitution. The last word rested not with the Assembly but with the people of the states. They took four months to complete the important task entrusted to them as the Conference continued to sit until September 17, 1787. Three different schools of thought were represented in the Constituent Convention. There was a group, led by Hamilton, who was in favour of forming a new government pervading the whole United States with complete sovereign powers. It advocated the annihilation of state distinctions and building up of a new unitary type of government. The views of this

school were influenced by the success which followed the Union of England with Scotland. According to Hamilton, federal government was essentially a weak government. He thought the British Constitution provided the best form of government in the world.

The leaders of the opposite school were keen on preserving the political identity and independence of the states. They were not prepared to go much beyond the Articles of Confederation though they did not object to minor amendments for strengthening the Central Government. They thought that the Congress should be merely a federal diet. There was another party, called the "National Party", which identified itself with neither of the two schools mentioned above. It took a middle line. Neither did it go so far as to advocate the annihilation of state distinction and establishment of a new government nor did it wish that the union should remain a mere treaty between sovereign and independent states. It desired to bring the people of the United States in direct contact with the Central Government who "by a majority of votes could give to the Central Government a more powerful sanction." It would mean the substitution of a right type of Federation for the old confederacy. The "National party" advocated retention by the states of all the old colonial powers and vesting in the elected executive, judiciary and legislature of the new Central Government all those powers which the states were accustomed to see wielded by the Imperial authority. The advocates of the first two schemes naturally failed to convince each other and the victory rested with the national party which was for a compromise. The powers which had hitherto been exercised by the Imperial Government were almost *in toto* passed over to the federal executive, legislature and judiciary.

The Constitution evolved by the Assembly was signed by a majority of members—thirty-nine in number. The Constitution was then sent to the

Congress. The following resolution was attached to it.

Resolution of the Federal Convention submitting the Constitution to Congress, 17, 1787 :—

PRESENT
THE STATES OF

"New Hampshire, Massachusetts, Connecticut, Mr. Hamilton from New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia.

Resolved—

"That the preceding Constitution be laid before United States in Congress assembled, and that it is the opinion of this Convention that it should afterwards be submitted to a Convention of Delegates, chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification : and that each Convention assenting to, and ratifiying the same, would give notice thereof to the United States in Congress assembled.

"Resolved that it is the opinion of this Convention, that as soon as the conventions of nine states shall have ratified this constitution, the United States in Congress assembled should fix a day on which electors should be appointed by the states which shall have ratified the same, and a day, on which the electors should assemble to vote for the president and the time and place for commencing proceedings under this constitution. That after such publication, the electors should be appointed and the Senators and Representatives elected ; that the electors should meet on the day fixed for the election of the president, and should transmit their votes certified, signed, sealed and directed as the Constitution requires, to the Secretary of the United States in Congress assembled ; that the Senators and Representatives should convene, at the time and place assigned ; that the Senators should appoint a president

of the Senate for the sole purpose of receiving, opening and counting the votes for president; and that after he shall be chosen, Congress, together with the President, should, without delay, proceed to execute this Constitution.

"By the unanimous order of the Convention,

G. Washington, President.

W. Jackson, Secretary."

The draft of the Constitution, along with the resolution and a covering letter from the President, was directed to be despatched by the Congress on September 28, 1787, to the several legislatures in order to be submitted to a Convention of Delegates, chosen in each state by the people, in conformity with the decision of the Convention.

It took about nine months before the Constitution was ratified by the ninth state. Ninth ratification was obtained in June, 1788. The Constitution had been ratified by the following eleven states before the fourth of March, 1789—the day fixed for inaugurating the new constitution :—

Delaware, December 7, 1787.
Pennsylvania, December 12, 1787.
New Jersey, December 18, 1787.
Georgia, January 2, 1788.
Connecticut, January 9, 1788.
Massachusetts, February 6, 1788.
Maryland, April 28, 1788.
South Carolina, May 23, 1788.
New Hampshire, June 21, 1788.
Virginia, June 26, 1788.
New York, July 26, 1788.

The states of North Carolina and Rhode Island held out for some time. The former, however, ratified the Constitution on the 21st November, 1789 and the latter on the 29th May. The State of Vermont was admitted to the federation on the

19th February, 1791 by an Act of Congress after it had ratified the Constitution. To persuade the states to ratify the constitution drawn up by the Constituent Convention at Philadelphia, several essays were issued on the new constitution. Those essays have now been embodied in a separate volume 'The Federalist.' Of the eighty-five essays contained in the Federalist, fifty-one are said to have been written by Alexander Hamilton, fourteen by James Madison, five by John Jay, and three by Hamilton and Madison together. As we have seen, the essays served their purpose, though not without difficulty.

Several amendments were proposed by the states when adopting the constitution. In fact they transmitted a request to that effect along with their resolution of acceptance. Some of these—ten in numbers—were adopted in 1791. These amendments betray fears of the states about their rights. They, however, left no loophole for possible conflict of authority. Article ten provides that the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Constitution, a treaty

Constitution, a treaty. Commenting on the nature of the Constitution Marriot writes : "The American Constitution was not the product of the ordinary legislative body, but of a constituent assembly convened for the sole and specific purpose of drafting what was in effect an interstate if not an international treaty Moreover, the terms of that treaty were to have no validity until they had been ratified by at least two-thirds of the parties thereto. Once more, for the purpose of ratification, the ordinary state legislatures were not permitted to suffice ; the treaty was submitted in each state to Constituent Conventions, which, like the National Convention itself, were specially summoned for this exclusive end. No precaution was, therefore, omitted which could either appease jealousy

dispel suspicion, or emphasize the all-important truth that the authority to make, as to amend, the constitution was vested in no delegates, Congress or Convention, but exclusively in the sovereign people of the United States." Proceeding further, the same writer observes, "Nevertheless, the precautions, though ample and precise, were not deemed sufficient. It was and is a fundamental doctrine of the American Constitution that the National Government possesses only such powers as are delegated to it by the states or conferred upon it by the people. By Article 1, Section 8, of the Constitution, certain powers are, by enumeration, conferred upon the Congress; by Section 9, certain other things are prohibited; Section 10 lays certain limitations upon the states. But the jealous fears of the people were not allayed, and during the process of ratification, no fewer than six states proposed amendments dealing with the delegation of powers. The result of the agitation is seen in the ten amendments which were embodied in the Instrument by 1791. Of these, Articles IX and X are, in this connection, especially noteworthy.

Plainly, unmistakably, the residium of powers was to be vested, not in Congress nor in any branch of the National Government, but in the states and the sovereign people. The principle enunciated with so much emphasis is indeed vital to true federalism. Sovereignty rests with those in whom is vested residual authority. It may, as in Switzerland, or Australia, or America, be the states, or it may, as in Canada, be the Federal Legislature—or ultimately the Imperial Legislature; where it is there is sovereignty. The sphere of federal activity was clearly demarcated from that of the state. The national government was to concern itself mainly with political affairs, with foreign relations, national defence, and so forth; while social and domestic questions, the relations of citizen and citizen, were for the most part reserved to

the states. The instrument itself was indeed intended not to embody a code of laws but rather to create a political system; and the great bulk of its articles are taken up, therefore, with description of political system. But within its own appropriate sphere, the Federal Government is supreme. Although, the American Constitution appears to be rigid in form, yet, in practice, it has not proved to be very rigid. The present form of government in the U. S. A. is not exactly similar to the one laid down by the framers of the original constitution. It has been developed not only by judicial and administrative decisions but by changes in law, subsequent amendments (twenty-one in number up to date) and usage have also played very important part in its development.

(1) **Development by law.** The Constitution did not settle the details of the government but left them to the future Congress or the legislatures of various States. It was impossible to frame uniform rules of government for all the States and to provide for all contingencies. The structure of the subordinate federal courts, the succession to the presidency, if the vice-president is not available, organisation of various executive departments and the president's cabinet, the procedure for the determination of the validity of the votes of the presidential electors, the method of governing territories and insular possessions and the legislative procedure have all been determined by subsequent state or national legislation.

(2) **Judicial and administrative decision.** The interpretation of the laws is the proper and peculiar province of the courts. It belongs to the courts to ascertain the meaning of the Constitution and to give to it the right interpretation. The constitution, for instance, declares that Congress shall have power to raise and support armies, it shall also have power to regulate commerce. It is now difficult to define

what the framers of the constitution included in the terms 'power', regulate, raise and support. "In matters of trade and industry, the United States has been moving forward with phenomenal rapidity, each year bringing new problems concerning the relation of government to business. It has been the work of the Supreme Court, through its power of judicial interpretation, to twist and torture the term commerce so that it will cover them all. It has held at various times that the commerce power of Congress extends not only to the transportation and freight and passengers, but to many other things as well. What, "*again, does the constitution mean by the* words to regulate"? By its regulating power, may it tax, may it even prohibit? The Supreme Court has answered that "it may do either or both." A general survey of the judicial decisions shows that the Courts have put a very liberal interpretation on the powers assigned to the National Government and have considerably widened them. In fact, they have carried them far beyond what the makers of the original constitution must have thought of. The doctrine of implied powers accepted by the Supreme Court has meant the transfer of all collateral authority necessary for such general power as the Congress has given to the Federal government to the same authority.

(3) **Amendments.** Important changes have been introduced in the original constitution by twenty-one subsequent amendments. The first ten amendments were introduced in 1791. They further safeguard the liberty of the citizens and provide for the resting of the residuary powers in the States. The twelfth amendment deals with the mode of electing the President: The seventeenth amendment provides for the election of members of the Senate by the people of the State. The eighteeth amendment prohibits the sale of liquor and the nineteenth amendment removes sex discrimination in matters of voting.

Usage. Custom and usage have also modified the Constitution. The Constitution, for instance, assured the meeting of the presidential electors in several States to survey the whole field of possibilities before casting their votes. But, by usage, they have lost all their power and have become merely automatons with a purely mechanical function. That no person is eligible to the office of President for more than two terms is not a constitutional requirement but depends upon the precedent set up by President Washington in declining re-election after eight years.

From what has been written above, it is clear that the Constitution of 1789 has undergone great changes. "There has been," wrote Dr. Wilson in 1884, "a constant growth of legislative and administrative practice, and a steady accretion of precedent in the management of federal affairs which have broadened the sphere and altered the functions of the Government without profitably affecting the vocabulary of our constitutional language." The same authority wrote : "Ours is. scarcely less than the British, a living and a fecund system. It does not indeed find its rootage so widely in the soil of unwritten law ; its tap root at least is the constitution ; but the Constitution is now, like Magna Carta and the Bill of Rights, only the sap-centre of a system of government vastly larger than the stock from which it has branched.

Q. 2. What are the characteristic and distinctive features of American Federation ?

Ans. The American Federation is based upon the following principles :—

(1) Separation of Powers
(2) Supremacy of the Judiciary
(3) Vesting of residuary powers in the states
(4) Provision of ample safeguards for individual liberty.

1. Separation of Powers. The Constitution divides the powers conferred upon federal government among three departments : legislative, judicial, and executive. The opening sentences of the three articles relating to the executive, judicial and legislative branches run thus : The executive power shall be vested in a President of the United States.....The judicial power shall be vested in one supreme Court and such inferior courts as the Congress may from time to time ordain and establish .....All legislative powers herein granted shall be vested in a Congress of the United States.

The doctrine of separation of powers was first formulated by the French philosopher, Montesquieu, in its present form who, in turn, had derived this idea from his reading, or more correctly. mis-reading of the English Constitution. The idea was borrowed and given a practical shape by the framers of American Constitution. But even they realised that the idea, though in abstract unexceptionable could not be translated into practice. Numerous illustrations can be given to show that in U. S. A. the executive, judiciary and legislature are not entirely unconnected with one another. The appointing power of the President is shared by the Senate. The treaty-making power—legislative in character—is divided between the President and the Senate. On the other hand, the President shares in legislation through his veto power and his right to send as many messages as he chooses. Even the judiciary which is created by the constitution, lies at the mercy of the Congress, for the Congress may prescribe the number of the judges, fix their salaries subject to certain restrictions, and create inferior courts.

2. Supremacy of the Judiciary. In U. S. A. The judiciary is supreme over other branches of government in matters relating to the liberty of the individuals and their right of private property. Judiciary upholds the constitution and this fact invests it with great power. Every act inconsistent with the

constitution, whether of the President or the Congress, can be treated as void by the judges. "This judicial supremacy says Bugess "is the most important product of modern political science. Upon it, far more than upon anything else, depends the permanent existence of republican government ; for elective government must be party government—majority government ; and unless the domain of individual liberty is protected by an independent, unpolitical department, such government degenerates into party absolutism and then into cæsarism." The attempts of the different departments of government to invade the liberty of individuals or their right of private property or the constitution are foiled by the judges of the federal courts—or for matter of that—by the judges of the state Courts.

3. Vesting of residuary powers in the states. Whereas the powers of the states are inherent, those of the federal authority are delegated by the constitution. The federal government has been given only such powers as are absolutely necessary for the proper discharge of its functions and the rest of the powers are secured to the federating units. Thus the powers of the constituent states are left undefined whereas the powers of the federal government are strictly defined. The constitution contains three lists of powers :—

(*a*) Powers to be exercised by the federal government.

(*b*) Powers forbidden to the federal government.

(*c*) Powers forbidden to the state.

To prevent any misunderstanding or assumption of excessive powers by the United States, the tenth amendment (carried in 1791) states that " the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people." This leaves the independence of the states intact as they can exercise any

power not directly granted to the United States whereas the United States can claim no other powers except those granted to it by the constitution.

But we should not press this point too much as the powers granted to the federal government are often set forth in general terms; and Congress is specifically authorized to make all laws "necessary and proper" for carrying into execution the powers directly conferred—a provision which takes some of the sting out of the word "delegated." Furthermore, there appears to be practically no limit to the purposes for which Congress may appropriate money, and under that head it may do and has done many things not expressly covered in any other part of the constitution."

4. Provisions of ample safeguards for the protection of individual liberty. The first amendment to the Constitution carried in 1791 states that the Congress can make no law respecting the establishment of a religion, nor it can interfere with the freedom of a religious worship; the second amendment (1791) secures to the people the right to keep and bear arms; the third amendment (1791) prohibits soldiers to be quartered in any house without the consent of the owner in time of peace and even in time of war only in a manner prescribed by law; the fourth amendment (1791) states that the right of the people to be secure in person, house, and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation. The fifth amendment (1791) provides that no one can be compelled to be a witness against himself in a criminal case nor can be deprived of life, liberty, or property, without due process of law; the sixth amendment (1791) secures to the people the right to a speedy and public trial by an impartial jury of the state; the seventh amendment (1791) states that in suits at common law, where the value in controversy exceeds twenty dollars, the right of trial by jury shall be

preserved : the eighth amendment (1791) provides that excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishments inflicted and the ninth amendment (1791) makes it clear that the enumeration in the constitution of certain rights shall not be construed to deny others retained by the people. The Constitution of the United States thus 'establishes limited government by imposing positive restraints on all public authorities, high and low, in the name of personal liberty. In some matters the individual is protected against the Federal Government, in others against the state, and in still others against both. These limitations are more than political theories and vague declaration of rights ; they are rules of law expounded and applied by the courts, enforced by proper executive authorities and respected as a creed.'

Q. 3. Describe the qualifications and the method of election of the President of the United States.

Ans. The President of the United States of America is elected for four years. He is not, however, elected directly by the voters, but by an electoral college, consisting of representatives of every state to a number equal to the whole number of senators and representatives to which that state is entitled in Congress. The Constitution does not lay down the precise method for the election of the electoral college. Originally, the legislatures in some of the states selected the presidential electors but this method was gradually given up and now in all the states, they are directly elected by the people. These electors are chosen on the Tuesday following the first Monday in November in the year which immediately precedes the year in which the term of their president comes to an end. On the second Monday of the ensuing January, they assemble in the several state capitals to cast their votes for the president. In fact, electors simply register party decisions made during the

Method of election in practice.

previous summer in national conventions. Candidates for Presidency and Vice-Presidency are nominated by the party delegates at these conventions. These party conventions meet in June, some five months before the election of the presidential electors. The candidates of the party which gains the most electors in the November elections succeed as the votes are cast in obedience to the decisions of the party conventions.

We may thus distinguish five stages in the process of the presidential election, *viz.*—

(1) Search for the candidates.

(2) Propaganda in their favour.

(3) Obtaining their nomination at the National Party Conventions in June of the year preceding the termination of the Presidential term. Though the Constitution makes no mention of the Party Conventions, yet these are the most important part of the machinery of election.

(4) Election of presidential electors on the Tuesday following the first Monday in November of the year which immediately precedes the expiration of a presidential term.

(5) Voting for President and Vice-President by presidential electors. The candidate that gets majority of votes is declared elected. The votes are counted in the Houses of Congress sitting in joint session on the second Wednesday of the following February. The electors may not be members of the Congress nor hodlers of any federal office. If, however, no candidate for the Presidency has a clear majority of the electoral college, the House of representatives decides between the leading candidates. As the electoral colleges do not consider the candidate on merit and simply register the opinion as recorded in the National Conventions, the House of Representatives has never been called upon to perform this task.

The method of election as laid down in Section 1 of Article 2 of the Constitution was altered by the twelfth amendment to the Constitution in 1804. The Constitution as amended in 1804 lays down the following procedure for the presidential election:—

The method of election as laid down by the constitution.

(1) Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the Congress; but no senator or representative or person holding an office of trust or profit under the United States shall be appointed an elector.

(2) The electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom at least shall not be an inhabitant of the same state with themselves: they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President and of all persons voted for as Vice-President, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of the Government of the United States, directed to the President of the Senate; the President of the Senate shall, in the presence of the Senate and the House of Representatives, open all the certificates, and votes shall then be counted; the person having the greatest number of votes for president shall be the president, if such number be a majority of the whole number of electors appointed; and if no person has such majority, then from persons having the highest numbers, not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately by ballot, the President. But in choosing the President, the votes shall be taken by states, the representatives from each state having one vote; a quorum for this purpose shall consist of a member

of members from two-thirds of states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a president, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice-President ; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of the President shall be eligible to that of the Vice-President of the United States.

The inauguration of the presidential election takes place on 4th March. The twentieth amendment to the constitution now provides that the President should assume office two months and not five after election. Delay in assuming office resulted in uncertainty and confusion. "Its serious possibilities were illustrated in 1860-61 when President Buchanan played a supine role during the closing months of his administration. He permitted several southern states to secede without taking any action, and left the country in chaos." He, however, justified his conduct on the ground that it was not proper for him to involve his successor, Lincoln, in a desperate situation created by desperate measures ; but this afforded the U. S. A. people no consolation.

Qualification for President.

Qualifications for President. According to Section 1 of Article 2 of the Constitution, the President must be—

(I) a naturul born citizen.

(2) not less than 35 years old.

(3) a resident of U. S. A. for at least fourteen years.

A convention has, however, grown up (which has become almost as important as the provisions of the constitution) that no person is eligible to the office for more than two terms, at all events in succession. This doctrine rests upon the example set by Washington in refusing re-election after having served as president for two terms, *i. e.*, a period of eight years. His example has been always followed.

Q. 4. What are the powers, duties and privileges of the President of the United States? Compare his powers with those of the

(a) Prime minister of the United Kingdom.

(b) President of France,

(c) Governor-General of India and

(d) Governor-General of Canada.

Ans. The formal functions of the President according to Section II of Article II of the Constitution are the following :—

Formal powers of the President as laid down by the Constitution.

(1) He is the Commander-in-Chief of the Army and Navy of the United States and of the militia of the several states when called into the actual service of the United States.

(2) He may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective office.

(3) He has the power to grant reprieves and pardons for offence against the United States, except in cases of impeachment.

(4) He has the power, by and with the advice of the Senate, to make treaties, provided two-thirds of the Senators present concur.

(6) He nominates and appoints, with the advice and consent of the Senate, ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not otherwise provided for.

(6) The Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of the departments.

(7) The President has the powers to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which expires at the end of their next session.

(8) He is entitled to give to the Congress, from time to time, information of the State of the Union and recommend to their consideration such measures as he judges necessary and expedient.

(9) He may, on extra-ordinary occasions, convene both houses, or either of them, and in case of disagreement between them with respect to the time of adjournment, he may adjourn them to such time as he thinks proper.

(10) He receives ambassadors and other public ministers.

(11) He is responsible for the faithful execution of the laws of the United States.

(12) He commissions all the officers of the United States.

He can only be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

Real powers.

Powers of the President as enumerated above and as provided by the Constitution are *real* powers which are actually exercised by the President. Much, however, depends upon the personality of the President, though, in all cases, these powers are likely to become even greater in times of crisis.

The powers as enumerated above and actually exercised by him may be classified as follows:—

Executive Powers. The President is the chief executive authority of the United States. He is the head of the national administration and it is his duty to see that the Constitution, laws and treaties of the United States and judicial decisions of the Federal Courts are duly enforced throughout the country. All the officers in the national service of the United States—about 600,000 in number are either appointed by the President with the advice and consent of the Senate or by the President alone, or by the heads of the department or courts according as Congress decides. In the first category fall the appointment of the members of the cabinet, ambassadors, ministers, consuls, judges, court officials, members of the various federal commissions, such as the interstate commerce commission, the federal commissions, the tariff commission, the federal reserve board, the federal farm board and postmasters, collectors of custom, officials responsible for the collection of revenue and so on. Promotions above a certain rank in army and navy are also similarly made. This group, in fact, embraces all the higher officers of the United States. Taken together, they constitute "an official army" numbering thousands of persons. Their salaries amount to millions of dollars a year. In making some appointments, the president exercises his own judgment as the Senate usually ratifies his nominations, as for example, members of the cabinet are President's personal selection. The Senate, however, mainly controls the appointment of important officials scattered among the states, as a result of time-honoured practice known as "Senatorial courtesy." Selections, in these cases, are made or at least approved in advance, by the Senators of the State in which the official is to be appointed. Nomination by a local officer is not confirmed by the President unless the nominee is satisfactory to the Senators from the state : provided of course, the

Executive powers.

Senators belong to the same political party to which the President belongs. In the case of minor offices such as postmasters, revenue clerks and so on, the appointment is made either by the President alone, or by the heads of departments or courts.

Powers of removal.

The constitution is silent on the power of the President to remove the officers appointed by him. It was, however, provided by an Act in 1867 that no person holding a civil office to which he was appointed with the ratification of the Senate could be removed by the President without the consent of the Senate.

Commenting upon the taxing nature of these appointments, Beard writes as follows :—

" It is obvious that the appointment and removal of federal officers consume a large share of President's energies, especially just after his inauguration. The rush of office-seekers in 1841 contributed to the illness and death of the first Harrison : the second Harrison declared that he spent about half his time for the first two years of his term haggling over patronage. Of course, the task is made far from easy by the necessity of consulting Senators and Representatives, hearing complaints from them, considering their suggestions, and allaying their grievances. It has been proposed therefore, that nearly all the offices now filled by President and Senate be placed under civil service rules. This would require in some cases a constitutional amendment and in others changes in law calling for a self-denying ordinance on the part of the Senators."

The President and legislation.

(2) *The President and legislation.*— The President has power to send messages, oral or written, to the Congress, giving information on the state of the Union or recommending certain measures which he thinks necessary as laid down by the Constitution. Washington and Adams sent oral messages whereas Jefferson substituted written messages. The general practice is to send message to the Congress in

the form of a state paper. These messages are of great political importance, are printed verbatum in every newspaper and discussed threadbare by the public.

The President can also veto acts of the Congress. All bills, resolutions, questions of adjournments must be presented to the President. Constitutional amendments do not fall in this category. A bill becomes a law if signed by the President. If he disapproves, the bill is returned to the house in which it originated. The President appends a statement of the reasons that led him to send back the bill for reconsideration. The bill then is reconsidered and can become an act in the original form over the veto of the the President if it is passed by two-thirds vote of both the Chambers. It becomes a law even without the signature of the President if he fails to sign it within ten days after it is presented to him.

'Taken in connection with the message and the appointing power,' the veto is an effective political instrument in the hands of the President. By threatening to use it on other measures, he may secure the passage of bills which he personally favours. By holding up appointments to federal offices, he may bring additional pressure to bear on Congressmen. At all times, in considering important proposals, they must keep in view the possible action of the President, especially when a party question is involved and a correct altitude before the country is indispensable.'

(3) *The President and foreign affairs.* 'The Constitution authorises the President to appoint ambassadors and consuls. It is he who negotiates treaties and receives ambassadors and ministers from abroad. In fact, he acts as the chief spokesman of the United States in international affairs and is primarily responsible for the foreign policy and its results. He may recognise a new government which

The President and foreign affairs.

His military powers.

may have rebelled against the legitimate government and thus provoke a war. As he is the head of the Navy, he can send the fleet to any part of the world and as head of the army, can order the stationing of troops anywhere. If actual hostilities have opened, he can exercise all the powers of a Commander-in-Chief to overcome the enemy. It was under this general power that President Lincoln, during the Civil War in America, suspended the writ of Habeas Corpus in states even outside the theatre of war, emancipated the slaves in sections in arms against the Union, arrested those charged with giving aid and comfort to the Confederacy, established the blockade of southern parts, and, in short, brought the whole weight of the North, material and moral, to bear in the contest.'

President and pardoning power.

4. The President and Pardoning power. The Constitution gives to the President the power to grant reprieves and pardons for offences against the United States. He can exercise this power before or after the conviction. He can commute a death sentence into a term of imprisonment or can order complete freedom to the convict. He can remit fines though he cannot restore the offender to his original position in case he has lost his office as a penalty. Power of pardon cannot be exercised in cases of impeachment or in case of offences against the laws of any state. The pardoning power generally is exercised on the advice of the attorney-general.

President's privileges and his political influence.

(5) *The President's privileges and his political influence.* The President cannot be sued in any court of law. He cannot be arrested for any crime. He can be impeached, while in office, by the House of Representatives before the Senate for treason, bribery or other high crimes or misdemeanors but only one President, Andrew Johnson, was actually impeached, and in his case, the impeachment failed. His liberty cannot be restrained in any way until judgment has been pronounced against him. The

Salary of the President which was fixed at twenty-five thousand dollars in the beginning but which is seventy-five thousand dollars now, cannot be increased or decreased during the term for which he is elected. He can receive no other emoluments from the United States or from any other state. He gets allowances for contingent expenses, and resides in a palatial building. He exercises unfettered discretion in spending huge sums of money put at his disposal during war time.

The President wields tremendous amount of influence in the country. He keeps in constant touch with the press and through it with the millions of people who look up to him for guidance on the issues that are being debated in the Congress. By the advertisement that he is able to secure for his views, he is enabled not merely to take the lead in legislative policy and to set the people in his own favour, but also win the confidence of the people. He speaks for four years with the authority derived from an extra-ordinary state of popular belief in him. The eyes and expectations of the whole people are focussed upon him as a saviour. He is in fact a monarch without a dynasty. "He is the nearest and dearest substitute for a royal idol which the Americans possess and much of the fateless snobbery which in Europe has so long invested royal actions with a blinding halo has in the U. S. A. affixed itself to the Presidency."

The personality of the President and his influence.

The influence and power of a President mainly depends upon his personality, the strength of the leadership in Congress, the circumstances of war and peace, his capacity for managing men and the effectiveness of party forces which support him. He may take a narrow view of his prerogatives; as did Buchanan in 1860 when he declared that the Southern States had no right to secede, but that he had no power to hold them in union by force. He may take wide view of his function as the head of the State ; as did Roosevelt when he said that his powers were not limited to the

matters expressly mentioned in the Constitution but extended to every question of public welfare not excluded by constitution.

Q. 5. Explain the constitution and the system of representation in the House of Representatives.

Provisions relating to numbers.

Ans. The number of the members of the House of Representatives is determined by the actual enumeration of population made at the decennial census. The only provision laid down by the Constitution (Article I Section 2 (3) in this respect is that the number of Representatives shall not exceed one for every thirty thousand and that each state must have at least one Representative. As a courtesy, certain possessions of the United States are permitted to send delegates to the House of Representatives, who may speak but cannot vote.

The present House consists of 435 members, or the average number of inhabitants for each congressional district is more than two hundred and eighty thousand. Originally, the number of representatives was sixty-five (Hampshire 3 ; Massachusetts 8 ; Rhode Island and Providence Plantations 1 ; Connecticut 5 ; New York 6 ; New Jersey 4 ; Pennsylvania 8 ; Delaware 1 ; Maryland 6; Verginia 10; North Carolina 5; South Carolina 5. and Georgia 3), and the average number of inhabitants for each Congressional district was thirty-three thousand. With the growth of population, the proportion of population to the members has thus decreased.

Creation of Congressional constituencies.

The Federal law requires every state which sends more than one member to create a congressional district for each member allotted to it. "All districts must be composed of contiguous and compact territory containing as nearly as practicable an equal number of inhabitants," and only one representative is to be chosen in each district. Nevertheless, if the state ignores this provision with respect to new seats assigned to it after a reapportionment, the additional

members to which it is entitled shall be elected at large." There is a good deal of gerrymandering and discrimination in the distribution of Congressional seats decided by the legislatures of the States. By gerrymandering, the dominant political party makes an attempt to win as many seats as is possible with its votes. To attain this end, the voters of the opposing party are massed in a few districts, giving them overwhelming majorities in each, and it so distributes its own voters that they can capture maximum number of seats by slight majorities. As the result of gerrymandering, political opinion in the country is not faithfully represented in the House of Representatives. "There is always a large minority in each state which is not fairly represented ; in 1920, for example, the Republicans cast one million one hundred fourteen thousand votes in the congressional elections of Pennsylvania and won thirty-five Representatives, while the Democrats and the minor party voters, numbering about six hundred thousand in all, elected only one Representative. On the other hand, in 1924, the Republicans received one million six hundred thousand votes in the congressional election in New York and carried only twenty seats while Democrats with a vote of one million three hundred thousand in round numbers secured twenty-two Representatives. Nothing but a complete programme of proportional representation can cure the evils of gerrymandering and the district system, but that reform is not at present within the realm of practical politics. Perhaps in the long run, the discrepancies offset one another and a rough-hewn justice is attained."

Gerrymandering and its evils.

The state legislatures, according to the constitution, determine the time, place and manner of holding elections. Such regulations can, however, be altered by the Congress. The qualifications of voters are also fixed by the state legislatures but this is subject to the constitutional provision that all those persons in each state who are qualified under the

Qualifications of voters.

constitution and laws of the state to vote for members of the larger of the two houses of the state legislature may vote also for members of the *House of Representatives.* Fifteenth amendment to the *constitution (1870)* provides that the right of the citizens of the United States shall not be denied or abridged by the United States or by any State on account of race, colour, or previous condition of servitude. The Southern States have tried to evade this provision by imposing *educational tests* or *requiring property qualifications.*

Every member must be—

(*a*) A citizen of the United States of at least seven years' standing.

(*b*) He must not be less than twenty-five years' old.

(*c*) He must be an inhabitant of the State in which he is chosen.

(*d*) He can not hold a position of trust under Federal Government.

(*e*) He cannot be at the same time a military or civil officer of the United States.

(*f*) Legislatures of certain states have provided that each Representative must be a resident of the district in which he is elected.

The House of Representatives is virtually a body of delegates.

The rule that the member must be a resident of the state or even district in which he is chosen makes the House of Representatives much more a body of delegates than the British House of Commons ; it also makes it impossible for a party leader, unseated in his own state, to find, as British Cabinet Ministers have again and again found, a seat in another part of the country. It practically prevents a Democrat living in Massachusetts or a Republican living in Pennsylvania to contest a seat from any other state except that in which he resides. Herein, it will be seen, the Federal system is a bar to free popular choice of any public politician

but the President. It also leads, in some States, to a sort of rotation of office of Congressman, which generally encourages mediocrity.'

James Bryce summarizes the reasons for this general custom as follows :—

(1) Local pride will prevent a district from seeking its Representative outside its borders.

(2) The member of the House is relatively well paid. (*A Representative receives a salary of 10,000 dollars a year, with an addition of 1,500 dollars for 'clerk hire,' mileage, and free postage*), and the party machine does not want to waste the post on strangers, preferring to reserve it to strengthen the local organization.

(3) The Representative in Congress is expected to know local needs and to secure special favours for his constituents.

(4) Americans regard the Representative as a spokesman of local interests rather than as a statesman formulating reason and justice into law.

The House of Representatives is the sole judge of the qualifications, elections and returns of its members. Brigham H. Roberts in 1900 and Victor L. Berger in 1918 were excluded from the House, the former because he was alleged to be a polygamist and the latter because he was found guilty of carrying on propaganda against the Government in the prosecution of the World War.

The House of Representatives is elected every two years. Arguments advanced in favour of this short duration are, firstly, the House should have an immediate dependence on and intimate sympathy with the people and, secondly, frequent elections are unquestionably the policy to ensure responsibility on the part of the members. The brevity of tenure is a drawback also in so far as the members cannot master the 'mysteries of business procedure' within so short a time. Duration.

The members enjoy the following privileges :—

Privileges.

(1) Exemption from arrest when attending Session of the House.

(2) Salary for their services.

(3) Freedom of speech in the House.

(4) Members are free to the business procedure.

(5) Right to elect their own speaker.

Q. 6. Describe the organisation of the House of Representatives and the various stages through which a bill passes before it becomes an act in the U.S.A. What are the functions of the Speaker of the House of Representatives ? Compare his position with that of the Speaker of the House of Commons.

Ans. Article 1 Section 5 of the Constitution lays down the following rules for the organisation of the House for the conduct of the legislative business:—

Rules laid down by the Constitution.

(1) The House shall be the judge of the elections, returns, and qualifications of its own members, and a *majority* of each shall constitute a quorum to do business ; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members in such manner and under such penalties as it may provide.

(2) The House may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two-thirds expel a member.

(3) The House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy ; and the yeas and nays of the members of the House on any question shall, at the desire of one-fifth of those present, be entered on the journal.

(4) Neither House, during the session of the Congress, shall, without the consent of the other,

adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

When a newly-elected House meets, the oath of office is then administered to the members. After that, the House elects the Speaker, Sergeant-at-Arms, Clerk and Door-keepers. The President is then notified by the House and the Senate that these bodies are ready to receive any communication from him.

Committees

The House of Representatives has regular committees, forty-six in number, though out of these, only a dozen have some important work to do. The leading committees are on—

1. ways and means.
2. appropriations,
3. rules.
4. banking and currency,
5. interstate and foreign commerce,
6. rivers and harbours,
7. military affairs,
8. naval affairs,
9. post-offices and and post-roads,
10. public lands,
11. labour and
12. pensions.

Committees and their importance.

Formerly, it was the prerogative of the Speaker to nominate the committees. But this prerogative was taken away from him in 1910-11 when the House decided to take upon itself the responsibility of electing members to the committees. 'Although the transfer of the appointing power from the Speaker to the House asserted the authority of the latter, the change in practice was more apparent than real.' Most of these appointments are determined by the party conferences before the Congress meets, and the party caucus simply ratifies the assignments determined in the earlier meetings. The

representatives of the minority party do not influence the course of legislation to an appreciable degree. The only custom that is respected when recommending appointments, is the 'seniority rule.' Important assignments are made among the members according to the length of service. All bills and resolutions go to the appropriate committees. Only those measures which receive favourable consideration from the committees have any chance of success in the House. It is seldom that a bill opposed by the committee is passed by the House. A bill buried in the committee can only be brought before the House if the majority of representatives put in their signatures. 'These committees in fact are miniature legislatures. Thomas B. Reed, a famous Speaker, called these committees 'the eye, the ear, the hand and very often the brain of the House.' The committees are inevitable stages in the progress of the bill. No bill can be acted upon by the House unless the Committee reports upon it. If the committee refrains from reporting on any bill, it is automatically killed. It is very rarely that a bill is directly called from the hands of a committee. 'Favourable action by a committee does not, of course, mean that a bill is assured of a passage; but adverse action, which is no action at all, becomes a sort of automatic asphyxiation. Most bills are smothered by the committees, as they indeed ought to be. The committees of the Congress are therefore the lubricants of the legislative machine. Without them the introduction of bills would have to be rigidly limited or the whole mechanism of law-making would become hopelessly clogged.' These committees, however, entail a lot of expenditure. Commenting upon this aspect of the system, Beard writes: Each committee has a well-furnished office and many perquisites which are not despised by members of Congress; that is, it has an allowance for secretaries, stationary, and other purposes. Often members employ their wives or relatives as clerks

and assistants. Undoubtedly a great deal of money is wasted in useless activities, especially in connection with the minor committees, but the criticism of the system falls on deaf ears. Although efficiency calls for pruning the outlays of committees, the necessity of having assignments for all members and jobs for their constituents makes economy in this relation well-nigh impossible.

The process of law-making :—A bill may be presented by any member of the House. Similarly, petitions may be presented for various projects by different members or propositions may be forwarded by the various departments of the Federal Government, by the White House or by the other Chamber. It is, however, the majority of the members of the various committees in charge of different subjects which frames measures of real importance. Thus the bills may be introduced in any one of the above-mentioned ways. Thousands of resolutions and bills are introduced in the early days of each session by members either for themselves or on the request of organisations which have their support.

The process of law-making.

1. Introduction of bills.

After being introduced, each bill is referred to the appropriate committee by the Speaker. Important bills are assigned to various sub-committees by the committee to which they are referred for careful examination of different parts.

2. Reference of bills to committees.

Those who want to speak in favour or against the bill are given hearing by the committee or sub-committees. "This is done as a matter of courtesy, not of constitutional or legal right ; but the opportunity to be heard is practically never denied to anybody." The committee may not amend the bill and report it favourably or it may introduce certain changes in the bill and report it in a new form or it may report unfavourably. In certain cases, the committee may not report at all. "On the average, a committee report about five per cent

3. Holding of hearings by the committee.

4. Action taken by the committee.

of the bills referred to it; the other ninety-five per cent go into the pigeon-holes of the chairman's desk, where they repose for a while and are then carted down to the capitol furnaces. The simplest way to kill any measure is, therefore, to have a committee refrain from reporting it, because no bill can be acted upon by the House until a committee sends it up."

5. The calendars. After a bill has been reported to the House, it finds its place on one of the three calendars—bills relating to revenue, appropriations etc., are placed on the Union Calendar; other public bills on the House Calendar and bills of a private nature on the Private Calendar.

6. Calling up bills. General bills are called up for consideration by the committees at every daily session in the morning hour. The appropriation bills are discussed by the House going into committee of the whole.

7. The three readings. The first and the third readings are by title only, while the second is a reading of the whole measure when amendments may be offered. After the third reading, the bill reaches the final stage of being formally passed. One-fifth members of the House has a constitutional right to get the yeas and nays recorded.

8. Debates. The proceedings in the House are, in fact, formal. There are seldom full dress debates. "Debates in the House of Representatives are often perfunctory, seldom animated, and very rarely have material effect upon its conclusions. With respect to important bills before it, decisions have already been made by party leaders; accordingly there is little to be said on such measures by members of the dominant group, except by way of explanation. The opposition, of course, is allotted a certain amount of time as a matter of form, but no one expects criticisms from that quarter to produce any surprising results.....Many speeches that appear in the pages of the congressional record are delivered to

empty benches during sessions of the Committee of the whole, or not delivered at all."

9. Transmission of bill to the Senate.

A bill when passed by the House goes to the Senate. If approved and carried by the Senate in the original form, it goes to the President of the United States for signature. If the House and the Senate disagree over the bill, it is referred to representatives of both the bodies appointed by the presiding officers for arriving at an agreed solution of the disputed points.

10. Signature of the President.

If the President approves the bill, he signs it and the bill is transmitted to the State department for official publication. If he vetoes the measure, it is returned to the House in which it originated along with President's objections. The House enters the objections in its Journal and again considers it. If after such reconsideration, two-thirds of that House agrees to pass the bill, it is sent, together with the objections, to the other House, by which it is likewise reconsidered; and if approved by two-thirds of the House, it becomes a law. In all such cases, the votes of both Houses are determined by yeas and nays, and the names of the persons voting for and against the bill are entered in the Journals of each House respectively. If any such bill is not returned by the President within ten days (Sundays excepted) after it has been presented to him, it becomes a law as if it was signed by him, unless the Congress by their adjournment prevent its return, in which case it does not become a law.

The position and the functions of the Speaker.

The Speaker of the House of Representatives is a party man. He is chosen by a party caucus and it is, therefore, very difficult for him to sit passively and watch measures advocated by his party being defeated. His position is of greatest importance as there is no other acknowledged leader of the House. In England, the power of leadership is vested in the hands of the Prime Minister who chooses his own colleagues. But in the United States, the leadership of the House is not vested in any one person or a

group of persons by law or custom. This leadership is thrust upon the Speaker. "His position," writes an eminent writer, "is, nevertheless, one of great dignity ; in the official hierarchy, he stands next to the President himself, and his powers, though somewhat diminished, since 1911, are immense. His tenure, however, is brief, being limited to two years' duration of the House, unless his party secures re-election In that case, but not otherwise, his tenure may be prolonged. Like his English prototype, he presides over debates, maintains order, decides disputed points, arranges the business of the House, and determines, within limits, the order of speaking by recognizing the members who desire to address the House. Until recently, he exercised the still more important function of nominating the members of all Committees and appointing their chairmen. This function has now, it has been said, transferred to the House itself, and with the consequential result that the Speaker's undivided and unquestioned leadership is now shared to some extent with the Chairman of the Committee on Ways and Means and the Chairman of the Committee on Rates. These functionaries like himself are party nominees and party leaders and with him may be said to constitute a triumvirate leadership of the House. The Chairman of the former committee now generally, acts as the 'Floor leader' of his party, and is virtually, therefore, leader of the House, while the minority have in their own floor leader a leader of the opposition."

Speaker of the British House of Commons.

The Speaker of the House of Commons, on the other hand, from the day he is elected to the office, ceases to be a party man. He is neutral in politics and is seldom opposed for re-election in his constituency. He never takes part in the debates. The Speaker of the House of Representatives is generally re-elected if the same political party controls the House but if a change takes place in the relative strength of the parties as the result of election, the

new party in power is likely to have its House leader (when it was in minority) elected as the Speaker. Moreover, the Speaker of the House may himself participate in the debate, and vote, but in that case, he will have no casting vote in case of a tie. The Speaker never does so in England.

Q. 7. Give a broad outline of the method of representation, constitution, and organisation of the American Senate.

Ans. Article I Section III of the original Constitution provided that the Senate of the United States should be composed of two Senators from each State, chosen by the legislatures of those States, for six years and that each Senator should have one vote. Seventeenth amendment made in 1913, however, alters this provision in so far as it requires that the Senators should be chosen, not by the legislatures, but by the people of the States and further lays down that the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature. Duration and memership.

The Constitution directed that immediately after election they should assemble and divide as equally as may be into three classes. The seats of the Senators of the first class should be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third might be chosen every second year. If vacancies happen in the representation of any State in the Senate, the executive authority of each State is required to issue writs of election to fill such vacancies provided that the legislature of any State may empower the executive authority of the State to make temporary appointments until the people fill the vacancies by election as the legislature may direct. The result is that the Senate has a sort of continuous life—no one election year affects the seats of more than one-third of its members. One-third of the members of the Senate a continuous body.

Senate are elected after every two years. Four very important points to be noticed about the constitution of the Senate thus are :—

Four important points.

(1) *Equal representation of the states in the Senate.* This practice conforms more to the strictly federal principle than the unequal representation of provinces in the Canadian Senate. Originally the number of states was thirteen and the total membership amounted to twenty-six ; now the number of States being forty-eight, the total number of the members of the Senate is ninety-six. Relatively to size and population of the country, American Senate is the smallest Second Chamber in the world, the number of members of the House of Lords being more than seven hundred ; of the French Senate three hundred and fourteen, of the Canadian Senate ninety-six, of the Australian Senate thirty-six and of the South African forty.

(2) The membership is neither hereditary as in the case of the House of Lords in England (though there is a tendency in some States, such as Winconsin since the rise of the La Follettes, towards the emergence of a hereditary principle) nor are the members nominated as in the case of the Canadian Senate but are elected.

(3) It has a continuous existence. This has been brought about by the fact that one-third of the membership of the Senate is renewed every two years. All the members are neither elected at the same time nor leave simultaneously : 'Stability and continuity' are secured by the fact that two-thirds of the members are always old.

(4) Senators representing a state are not required by the Constitution to vote jointly. Each Senator is deemed to represent his State singly and not in partnership, with the other Senator. This practice, however, is less consistent with the idea of State representation (the Senate being a federal house of

Congress where the constituent states are represented by their members) than the rule that the representatives of each State must vote together. This rule was observed in the German *Bundesrat*.

President of the Senate.

The vice-president of the United States is the President of the Senate but has no vote unless the Senate is equally divided over a bill. The only other function of the Vice-President of the United States (who is not a member of the Senate, though its President) is to take up the Presidency of the Union if the President dies, or resigns, or is removed from the office or is unable to discharge his duties. The Senate chooses also President *pro tempore* who has to exercise the functions of the President in his absence.

Qualification for membership

No one can be a member of the Senate if he—

(1) is below thirty years in age

(2) has not been a citizen of the United States at least for nine years and

(3) is not an inhabitant of the State from which he seeks election.

Rules, proceedings, and sessions.

The legislature of each State determines the time, place and manner of holding elections. The Congress may at any time by law make or alter such regulations except as to the places of choosing Senators. The Constitution requires the Senate and the House of Representatives to assemble at least once in every year. No State can be deprived of its equal sufferage in the Senate without its own consent. The Senate determines its own rules of procedure and keeps a Journal of its proceedings. If desired by one-fifth of the members present, the yeas and the nays of the Senators on any question are entered on the Journal of the Senate. The Senate can punish its members for disorderly behaviour and with the concurrence of two-thirds expel a member. It is the sole judge of the elections, returns and qualifications of the members. A majority of members constitutes a quorum to do business. A smaller number may adjourn from day to

day and may be authorized to compel the attendance of absent members in such manner and under such penalties as the House may provide.

Committees of the Senate.

The members of the Senate are divided into standing committees and each one of these committees is 'entrusted with the preparation of a certain part of the Senate's business.' The leading committees are on—

(1) appropriations, which advises the Senate on the spending of money,
(2) finance, which considers questions affecting the revenue,
(3) foreign relations, which considers foreign relations,
(4) judiciary,
(5) military affairs,
(6) naval affairs,
(7) interstate commerce and
(8) pensions.

From time to time, the standing committees are supplemented by the select committees chosen for some particular function and dissolved when they have fulfilled their duties. Various proposals made in the Senate are referred to appropriate committees which consider those questions by looking into merits and demerits. The committees then report to the Senate. Report may be favourable or unfavourable. Commenting upon the influence of the committees, Wilson writes thus in 'The State' :—

Influence of Committees.

'Its standing committees have a very great influence upon the action of the Senate. The Senate is naturally always inclined to listen to their advice, for each committee necessarily knows much more about the subjects assigned to it for consideration than the rest of the Senators can know. Its committee organization may be said to be of the essence of the legislative action of the Senate : for the leadership to

which a legislative body consigns itself is of the essence of its method and must affect, not the outward form merely, but the whole character also of its action. Under every great system of government except our own, leadership in legislation belongs for the most part to the ministers, to the executive, which stands nearest to the business of governing; it is a central, and, as evidenced by its results, extremely important characteristic of our system that our legislatures lead themselves, or, rather, they suffer themselves to be led along the several lines of legislations, by separate and disconnected groups of their members.'

Q. 8. "Of all the second Chambers, the American Senate is perhaps the strongest and the Canadian Senate the weakest." Discuss.

Ans. 8. "The power exerted by the Senate in U. S. A. is indeed very great. The Constitution has endowed the Senate with important executive, judicial and legislative powers. The executive power enjoyed by the Senate has specially lifted it above the second Chambers of the world and accounts for its strength and influence. The Constitutions of France, Britain and Canada will not be much disturbed even if the second chambers in these countries were to be lifted out of the governmental scheme, but to take away the American Senate is 'to eviscerate the Federal government.' The secret of the strength of the Senate, as already mentioned, is to be found in the executive power which it enjoys.

Senate exercises important legislative and executive powers.

The two important executive powers enjoyed by the Senate are that

(1) its consent is necessary for nominations made by the President of the ambassadors, public ministers, consuls, judges of the Supreme Court and all other officers of the United States.

Executive powers of the Senate.

(2) A treaty signed by the President needs ratification by at least two-thirds of the Senators present.

Appointments.—Certain nominations made by

Appointments.

the President, for instance, of the members of the Cabinet, ambassadors etc. are usually assented to by the Senate. But when offices to be filled in are in the States, the 'Senatorial courtesy' requires that the President will choose those men only for such positions whom the Senators or the Senator representing those states recommend.

'Senatorial courtesy' is the legitimate expectation of every Senator that the President will choose as incumbents of certain civil service positions only those persons who politically or socially satisfy the Senators from the State in which the offices are located, or whence the candidates come. There are two reasons why even strong Presidents like Wilson and Roosevelt had to bow before this practice. Firstly, the President must secure the support of the Congress and this seems to be the only course that can help him to that end and secondly, the number of appointments to be filled in being very large, the President must depend upon the man 'on the spot' who knows the candidate personally or, at any rate, more intimately.

This power of sharing the responsibility for making appointments with the President was conferred upon the Senate by the framers of the Constitution so that the President might not become an autocrat. But now it is realised that the best method would have been to institute a public services commission for making such appointments as the present practice has simply developed into 'a simple engine of Senatorial rapacity, very expensive to the nation.' Even appointments of Cabinet officers, though generally immune from Senatorial interference, are sometimes interfered with as was the case when the Senate repeatedly rejected President Coolidge's candidate for attorney-generalship. As to the power of the President to remove an officer, a judgment delivered in 1926 favoured his right to do so.

Treaty power.

Treaty power.—As already mentioned, Article 2, Section 2 (2) requires that a treaty signed by the

President must be ratified by at least two-thirds of the Senators present. This power was conferred on the Senate as it was intended by the framers of the Constitution to act as a council, qualified by its moderate size (the Senate then consisted of twenty-six members) and the experience of its members, to advise and check the President in the exercise of his powers of appointing to office and concluding treaties. Roosevelt found the attitude of the Senate on foreign policy so obstructive and provocative that he took to concluding "agreements" instead of formal treaties ; but that policy cannot be applied in all cases and the fate of Versailles Treaty in the Senate shows the great power it enjoys in this sphere. Though the initiative lies with the President, yet he has all the time to look to the Senate as ultimately he will have to turn to it for approval. The influence of the Senate has always been powerful in foreign affairs and the Senator who is elected the chairman of the Committee on Foreign Affairs is indeed a very powerful personality. This power raises the Senate much above the House of Representatives in prestige.

Power of impeachment a judicial power.

Impeachment—A judicial power.—Article 1, Section 3 (6) of the Constitution confers the sole power of impeachment on the Senate. The Senators are on oath, when sitting for that purpose. The Chief Justice presides when the President of the United States is tried. No person can, however, be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment, however, cannot extend further than to removal from office and disqualification to hold and enjoy any office of honour, trust, or profit under the United States but the party convicted is liable and subject to indictment, trial, judgment and punishment according to law. Four federal judges and one President have been impeached up till now of whom two federal judges and the President were acquitted. In addition to these, a Secretary for War and a Senator have also been impeached.

Legislative Power.—The Senate exercises co-ordinate powers with the House of Representatives except that money bills must originate in the House of Representatives. It is a severe check on the Lower House. In case of disagreement between the House of Representatives and the Senate, a compromise is achieved by means of a mixed committee but 'that compromise is usually dictated by the Senate.' Though the Senate has no power to originate money bills yet it can amend and reject such bills coming to it from the Lower House. Sometimes the Senate actually converts this power of rejection and amendment into the power to originate. 'The Tax Laws of 1921 were introduced by the House, but the Senate substituted its bill in 833 amendments, and won completely on 700 of them and compromised on most of the others.' Finer gives the following causes which have enabled the Senate to acquire this strength :—

(1) Longer term,

(2) Continuous existence,

(3) Progress of congressmen from the Representatives to the Senators.

(4) The connection of the Senate with the political machinery,

(5) Small size.

(6) Absence of closure.

The complete freedom of debate in the Senate under which any single Senator may keep the floor as long as he desires and may discourse upon any subject enables the Senators to obstruct legislation. Speech in the Senate may mean life or death to the project and hence people are interested in such debates. Since 1917, however, a very mild form of control has been introduced by which two-thirds of the Senate can impose the closure.

Strong comments on the powers of the Senate are as follows :—

"The powers of the Senate are very great. Probably no second chamber in the world to-day has an influence so real and direct, not only in the most obviously national concerns, such as foreign affairs, but down to the minutest business of legislation, including finance. So powerful is the Senate, indeed, that Professor Laski regards it as the sole effective Federal Chamber in the United States. Certainly nothing that either the executive or the House of Representatives is legally empowered to do can modify the rights which the Senate not only constitutionally possesses, but actually enjoys. Through the standing committees into which it divides itself it is able to cope with the multifarious questions, which come before it, and to keep in touch with the executive department which works in isolation from the legislature. The most powerful of all the committees is the Committee on Foreign Affairs, for in this department (excepting an actual declaration of war) the Senate alone ultimately controls the actions of the President. Treaties are ratified not by the Congress as a whole, but by the Senate, and this is perfectly legal, for in the House of Representatives the States are represented in the most diverse proportions. At no time was the diplomatic power of the American Senate more clearly manifested than at the end of the Great War, when the work of President Wilson, who had signed at Paris all the Treaties and the Covenant of the League of Nations on behalf of the United States, was entirely undone by the action of the Senate, which unqualifiedly refused to honour the President's signature to any one of the instruments of peace."

The House of Representatives and the Senate compared.

Beard thus compares the House and Senate.—The Senate is the smaller body, being composed of ninety-six members, as against 435 in the House of Representatives. Generally speaking its fellowship includes statesmen older in years

and wider in political experience. Frequently the Senators have previously served in some branch of State Government or in the House of Representatives. As their term is longer and the chances of re-election greater, they are usually better acquainted not only with the problems of law-making but also with the inner working of the Federal administration.

"The influence of the Senators, due to age and experience, is augmented by their position as party leaders within their respective states. Through their right to pass on many presidential nominees, they have a large power over appointments to federal offices; sometimes they are able by this means to construct political machines of extraordinary strength. Their command over party resources within their states enables the Senators to bring more or less pressure on the members of their party in the House of Representatives.....Owing to the almost unlimited freedom of debate in that chamber, each member can block some bills indefinitely and force the consideration of others. Although the Constitution provides that revenue bills must originate in the lower chamber, the Senate, in practice, pays little attention to that mandate. Seldom does a debate in the House attracts the attention of the press throughout the country, but Senatorial discussions frequently break into front-page news. Whether on its merits or not, it completely overshadows the House in both government and politics. There is more independence in the Senate. The Senators care less for party bondage and are not very conservative."

For Canadian Senate, see Canada.

Q. 9. How is the American Cabinet constituted? Describe the relation of the Executive to the Congress in U. S. A.

Ans. The only provisions made by the Constitution about the relation between the President and

his executive is :— The President may require the opinion in writing of the principal officer in each of the executive departments upon any subject relating to the duties of their respective offices. The constitution is silent over the way in which President's cabinet is to be constituted. As a matter of fact, it is the Congress which has created the various departments one after the other.

Appointment of the heads of the departments.

The three departments of State, of the Treasury and of War were created by the first Congress in 1789. The departments of Navy, Post-office, The Interior, Justice, Agriculture, Commerce and Labour were created in 1798, 1829, 1849, 1870, 1889, 1903 and 1913 respectively. The heads of the departments are known as the Secretaries of those Departments. Attorney General is the head of the department of Justice. There are thus at present ten executive departments.

The heads of the departments are chosen by the President. Consent of the Senate is required but that is practically formal as the Senate seldom interferes with the President's nominations to such offices. The Senate, however, asserted itself in 1925 when it humiliated President Coolidge by the repeated rejections of his candidate for the Attorney-Generalship. The Senate did this deliberately as 'Mr. Warren's past was alleged to have been not such as to warrant a belief in his zeal to prosecute Trusts.' Though the President can choose anybody he likes as the head of the department, yet, in practice, he takes only the members of his own political party.

Other considerations are : regard for proper geographical distributions (vigorous protests would be made by the unrepresented areas), desirability of conciliating the different factions of the party, reward for the supporters in the election, personal friendship and the candidate's fitness for the job and experience. Andrew W. Mellon, for instance, was taken in three successive cabinets by President

Harding (1921), President Coolidge (1925) and President Hoover (1921). This was, however, possible because all the three Presidents belonged to the same political party.

Relation with the President.

The work of the head of the department, however, is not prescribed by the President, but is defined by acts of the Congress. The President nevertheless, sees that the duties assigned by law are faithfully executed. The President is not bound to consult his cabinet nor does he need its approval for any action. The cabinet, however, meets twice in a week—on Tuesdays and Fridays—and discusses matters placed before it by the President. "Sometimes the President has already made up his mind and merely brings a matter before the cabinet for suggestions as to details. Lincoln, for instance, did not consult his cabinet on the Emancipation Proclamation until he had himself decided that it ought to be issued. On many other important matters, he left them in the dark. Andrew Jackson, a generation earlier, found his cabinet an encumbrance upon his freedom of decision and for nearly two years called no meetings at all.... In general, there has been a world of difference in the personality of the Presidents and hence in their relations with their respective cabinets. Four or five members of his cabinet virtually controlled President Buchanan during the latter part of his term. Buchanan became a sort of regent while the cabinet conducted the Government of the country.....The relation of the President to his immediate advisers is a matter on which it is impossible to generalise, for no two Presidents have done exactly alike." The heads of the departments, according to some writers, are simply glorified clerks who can be removed by the President if he finds any one of them avowedly opposed to the policy he wants to follow with respect to any matter. The chief administrative functions of the head of the department are to make appointments and removals the chief legislative functions

are to prescribe regulations for the government of his department, to suggest legislation on the basis of the work of his department, and to help legislation by appearing before Committees and writing to the Senators and the Legislators in favour or against any proposed measure ; and finally, the quasi-judicial function of the head is to hear cases carried up from the lower administrative divisions under control. His decision is final if within law.

Functions of departments.

As already mentioned, there are ten executive departments ; their functions are given below.—

Department of State.

I. Department of State.—It corresponds to what is known as the Foreign Office in other countries and is concerned with the relation of the United States with foreign countries. There is, in addition to the Secretary of State, Under Secretary, Assistant Secretaries, Economic Adviser and Historical Aviser.

Divisions are—

1. International Conferences and Protocol.
2. Current Information.
3. Treaty.
4. Foreign Service Personnel.
5. Far Eastern Affairs.
6. Latin-American Affairs.
7. Western European Affairs.
8. Near Eastern Affairs.
9. Mexican Affairs.
10. Eastern European Affairs.
11. Passport Control.
12. Foreign Service Administration.

II. Department of Treasury.—

Its functions are :—

Department of Treasury.

(1) The collection of the public revenues.
(2) The disbursement of revenues collected.
(3) The auditing of accounts of all departments.

(4) The supervision and regulation of the national banks and of the currency of the United States.
(5) The coinage of money.
(6) The collection of certain industrial and other statistics.

Department of War.

III. Department of War.

The main divisions are :—

(1) Personnel Division.
(2) Military Intelligence Division.
(3) Operations and Training Division.
(4) Supply Division.
(5) War Plans Division.

It is in charge of all the arms—infantry, cavalry, field artillery, coast artillery, engineer corps, air corps, signal corps and military training schools aided by the Congress. To this department are also attached bureaus of Insular Affairs and Militia.

Department of Navy.

IV. Department of Navy.

Divisions are :—

(1) War Plans Division.
(2) Ship Movements Division.
(3) Intelligence Division.

It is in charge of all the naval forces of the United States and the Naval War College. To this department are attached the bureaus of Navigation, Yards and Docks, Ordnance, Construction and Repair, Engineering, Supplies and Accounts, Medicine and Surgery and Aeronautics.

Department of the Interior.

V. Department of the Interior.

It has the charge of :—

(1) General Land office which is concerned with the management of the public lands.
(2) Office of Education.
(3) Indian affairs.
(4) Geological Survey.

(5) National Park Service.
(6)* Patent office which issues and records patents and preserves the models of all machines patented.
(7) Alaska Railroad.
(8) Keeping and distributing of public documents.
(9) Howard University.
(10) Administration of Alaska, and Hawaii.
(11) Reclamation and
(12) Payment of pensions and distribution of bounty lands.

Department of Justice.

VI. Department of Justice. The Head of the Department is not known as the 'Secretary' as is the case with other departments but is known as Attorney General. There is also a Solicitor General and Assistant Attorneys General in charge of Customs Cases, Taxation, Claims against the United States, Finance and General Litigation, Public Land Cases, Criminal Practice and Procedure. To this department are attached the bureaus of Prisons and Investigation. There are Solicitors for departments of Treasury, Commerce, Labour and States. In fact, it is this department from which the federal authorities receive legal advice and which supervises the conduct of all litigation in which the United States is a party. The department has been called the lawyer force of the government.

Department of Labour.

VII. The Department of Labour was created in 1913. The bureaus of Labour statistics, Immigration, children, Women, Naturalization, Industrial Housing and Transportation are attached to this department. The duty of the department is to look after the welfare of wage-earners.

VIII. Department of Agriculture. The duty of the department is to promote and encourage scientific research in agriculture, to look

after the agricultural interest of the country and to collect statistical data pertaining to agriculture. To this department are attached the bureaus of Weather, Animal Industry, Dairy Industry, Plant Industry, Chemistry and soils, Entomology, Biological Survey, Public Roads, Agricultural Economics and Home Economics.

Department of Commerce.

IX. Department of Commerce. The Department of Commerce and Labour was created in 1903. Later on, in 1913, a separate Department of Labour was established and the Department of Commerce was left with the duty of furthering and promoting the foreign and domestic commerce, mining, shipping, fishing and manufacturing industries. In addition to it are attached the bureaus of Census, Standards, Light-houses and Navigation. This department is also in charge of Coast and Geodetic Survey and has a Radio Division and an Aeronautics Branch.

Post-Office Department

X. Post-Office Department. The Head of the Department is known as Postmaster General. He has four Assistant Postmasters General incharge of different divisions. The Department is concerned with the carrying and delivering of letters, and parcels and arranges for the transmission of money from one place to another. The work is divided into different divisions, for instance, Railway Mail Service division, Air Mail Service division, International Postal Service division and so on.

This account of the organisation of the executive departments shows the complicated nature of administrative machinery. More than five million persons are employed in various capacities.

The Executive and the legilature.s

The Executive and the Legislature :—"In all other modern Governments, the heads of the administrative departments are given the right to sit in the legislative body and to take part in its proceedings. The legislature and the executive are thus

associated in such a way that the ministers of state can lead the houses without dictating to them, and the ministers themselves be controlled without being misunderstood,—in such a way that the two parts of the Government which should be most closely co-ordinated, the part, namely, by which the laws are made and the part by which the laws are executed may be kept in close harmony and intimate co-operation, giving coherence to the action of the one and energy to the action of the other." In U. S. A., however, the three branches of the Government, *viz.*, the Executive, the Judiciary and the Legislature are independent of one another and are constitutionally shut off from any kind of effective and useful co-operation. The legislative power is vested in the Congress ; the executive power in the President and the judicial power in the Courts. The theory of Separation of Powers advocated by Montesquie to be the only safeguard of the liberty of the citizens is carried to its logical end in the American Constitution. Neither the President nor the members of his Cabinet can sit in the House and the Senate. The executive and the legislature were made independent of each other. Criticising this arrangement, Finer observes : It destroyed the concert of leadership in government which seems so important in an age of ministrant politics. The framers of the Constitution separated the executive sources of knowledge from the legislative centre of their application ; severed the connection between those who ask for supplies and those who have the power to grant them ; introduced the continuous possibility of contest between two legislative branches : created in each the necessity for separate leadership in their separate business, and made this independent of the existence and functions of the executive.

As a matter of fact, it has been found both impracticable and undesirable to keep the departments separated. The indirect relation between the legis-

lature and the executive has been established by the following customs and official actions :—

(1) Party is the greatest political tie that binds the executive branch of administration to legislative branch. 'The President is regarded as the leader of his party, and it is to him, rather than to the Congress that the people look for the enforcement of specific promises contained in the platform or made officially during the presidential campaign. The Congress can not, therefore, ignore the leadership of the President, and however sharply it may oppose him on occasion, it must give heed to those propositions on which he has unquestioned national support.'

(2) The Constitutional provision that the President shall from time to time give to the Congress information of the state of the union and recommend to their consideration such measures as he shall judge necessary and expedient, brings the two branches of Government closer. These communications to the Congress may be spoken addresses or written messages.

(3) The fact that the President has to consult the Senate in important appointments and get its approval, constrains him to pursue a policy agreeable to the Senate ; otherwise the Senate may hold up the confirmation of his nominees.

(4) The practical necessity of co-operation in formulating and enforcing laws compels the Congress to ask the executive to supply documents and papers and allow officials to appear before the Committees.

(5) The help of the departmental heads is invoked in the framing of bills.

(6) The Congress is empowered by law to call upon the treasury department for financial information.

(7) The use of President's veto on Congressional bills also bridges an important gap.

(8) Influential individuals and Associations, with their particular programmes try to bring about closer relations between the executive and the legislative, by insisting on united action on the part of all the organs of the federal government.

Q. 10. Compare the Presidential system of Government in U. S. A. with the Parliamentary System of Government in Britain and discuss their relative merits and demerits.

Ans. Lord Bryce thus analyses the distinguishing features of the Presidential and Parliamentary Systems of Government :— Lord Bryce's analysis of the systems

Presidential System.—(1) An Executive Head of the State, elected by the people for a term of years, removable by impeachment for grave offences, but otherwise irresponsible to the legislature but entitled to address it, empowered to appoint and dismiss the chief officials and to conduct the external affairs of the country, though in these two functions, one branch of legislature is associated with him. Presidential System in U. S. A.

2. A group of Ministers, called the Cabinet, appointed and dismissed by the President, acting under his orders and responsible to him but not to the legislature, and incapable of sitting therein.

3. A legislature, consisting of two Chambers, elected by the citizens, for a term of years and not dissoluble by the President. Their power of passing resolutions or statutes is subject to a veto by the President, but any enactment so vetoed can be repassed and so becomes law by a majority of two-thirds in each Chamber.

Parliamentary System.—(1) A (titular) Executive Head of the State, hereditary and not elected, who is not responsible to the legislature nor removable by it. Parliamentary System in Britain.

(2) A group of Ministers, virtually, if not formally, selected and dismissible by the House of

Commons, and responsible to it. This group, constituting the working executive, is called the Cabinet, and its members must be members of the legislature.

(3) A legislature, of two Chambers, one of them elected by the citizens for a prescribed term of years and the other hereditary, but liable to be dissolved by the executive head which means in practice the Cabinet.

Which system is the better ?

Much can be said both in favour and against each system but it must be admitted that each is the product of its environment and if transplanted in the country, may not work smoothly. Discussing their merits is "like engaging in a debate upon the relative powers of an elephant and a whale. 'Each is fitted to its own element and would make a ludicrous showing were it to change habitats. Both the English and American cabinet systems have served satisfactorily, each in its own political sphere, and the adaptation of the agent to its environment is as essential in the body politic as in living organisms. If the American system shows its weakness in the defective co-operation which it provides between the two great arms of Government, it has an off-setting merit in the protection which it affords against any undue gravitation of power into a few hands."

Nevertheless, we may note the following more important points about each system :—

The Presidential system as it operates in U. S. A. :—

Merits and demerits of Presidential System.

(1) The Constitution of the United States is based on an attempt to make a sharp separation between the executive and legislative powers. This was done with a view to secure the liberty of the citizens. The power of the House of the Representatives is considerably diminished by the fact that it is

elected only for two years, is in recess for a large part of the year and in fact begins its session long after the election has taken place. The President on the other hand is elected for four years and may remain in office for eight years. But the President himself may by confronted with a hostile party in the House in the latter years of his administration. Thus neither the President nor the Congress can exercise its powers autocratically for a long time.

(2) The executive and the legislative work goes on smoothly, uninterruptedly and without any distraction as the work of the one cannot be upset by the other.

(3) Party division is less rigid. In America, in both parties, both the progressive and conservative elements are to be found and membership of the one or the other is far more a matter of locality and chance than of deliberate choice on political grounds. The party discipline is not so strict and legislatures are dominated to a lesser degree by the parties than is the case in Britain. Parties do not stand for different political principles but are simply organised to make workable the system of Government based on the theory of separation of powers.

(4) There is a greater sense of stability as the changes in the personnel of the governmental machinery (executive head and legislative) take place only at stated intervals.

(5) There is less danger of hasty legislation and unwise action as the legislature can withhold funds and thus check the executive in any project which it considers risky and similarly the executive can check dangerous legislation by exercising the power of veto.

(6) As Lord Bryce puts it, under this system, 'the moderate elements in the country need not fear a sudden new departure ; the demagogue cannot carry his project with a run.'

(7) The Presidential system makes for safety though it lacks promptitude.

On the other hand,

(1) The Presidential system is rigid and inelastic.

(2) The administrative and financial difficulties with which the executive is sometimes faced make for delay and unsatisfactory administration.

(3) Under the Presidential system, the nation has no influence except at the time of election. As the President and his Cabinet is not responsible to the elected representatives of the people in the legislature, they need not care for them.

(4) The President cannot compel legislation by the threat of resignation or the threat of dissolution.

(5) In case difference of opinion arises between the legislature and the executive, the former is forced to fight the latter and the latter is forced to fight the former and " so very likely they contend to the conclusion of their respective terms."

(6) The separation of powers in America has resulted in working at cross purposes and delay and confusion has sometimes been the result. " The Separation of Powers has for some purposes turned out to be not the keeping apart of things really distinct but the forcible disjunction of things naturally connected. There is no certainty that the legislature will carry out the wishes of the administration, however reasonable. They may even decline to pass the statutes needed to give effect to treaties duly ratified."

"(7) Finally, as Lord Bryce writes it, " the Presidential system leaves more to chance than does the Parliamentary. A Prime Minister is only one out of a Cabinet, and his colleagues may keep him straight and supply qualities wanting in him, but everything depends on the character of the individual chosen to be President. He may aim at standing above party

and use his authority and employ his patronage with a single eye to the nation's welfare, or may think first of his own power and his party's gain, and play for his own re-election. The re-eligibility of the President has so often been supposed to unduly affect his action that many Americans think that he should be legally disqualified for a second continuous term of office."

Parliamentary system (as it works in Britain).— (1) If the ministers are defeated on any important measure in the House of Commons, or if any vote of censure is passed upon them in that House, they resign and another ministry is formed which is supported by the new majority. This practice secures the responsibility of the executive to the elected representatives of the people. The executive must carry out the wishes of the people whom the nation has returned in majority.

(2) The executive can appeal directly to the nation at a general election against the legislature. If a defeated ministry think that the House of Commons in its unfavourable vote has not really represented the opinion of the constituencies, they can advise the Sovereign to dissolve the House and order a new election. Such advice is usually accepted by the Sovereign.

(3) The responsibility for the actions of the Crown is accepted by the ministers inasmuch as they are required to countersign all the public acts of the sovereign. This lifts the Sovereign from the sphere of party politics and enable him to exercise a steadying and unifying influence. This role cannot be effectively filled in by an elected President.

(4) The measures of the Cabinet are taken in concert as the members are jointly responsible and must resign together. This secures the fullest responsibility of Cabinet to the Parliament as otherwise if only the member condemned were to

be thrown out by the executive, the Parliament will not be able to exercise an effective control.

(5) The Cabinet has a very effective control over the time of the House and can decide the priority of business and the amount of time to be allowed to the discussion of each topic.

(6) The legislative programme is determined by the Cabinet which can, therefore, bring into closer relationship its general principle with the advice given by the administrative experts.

(7) As the responsibility for financing the government rests in the Cabinet, it can easily correlate its ways and means to expenditure.

(8) The presence of the ministers in the legislature has two attendant benefits. "Being in constant touch with members of the opposition Party as well as in still closer contact with those of their own, they have opportunities of feeling the pulse of the Assembly, and through it the pulse of public opinion, and can obtain useful criticism, given privately in a friendly way, of their measures, while the members can by their right of questioning ministers call attention to any grievances felt by their constituents and can obtain information on current public questions. Like other things, the right to interrogate is frequently abused, but any one who has been a minister in the British House of Commons values the means it gives him of correcting or contradicting erroneous statements, of repudiating calumnies, of explaining the reasons for his administrative acts without being obliged to seek the aid of the newspapers."

(9) The Cabinet system secures promptitude and vigour in action. It enables the nation to fix responsibility. Moreover, as Lord Bryce writes. The alternation of power from one party to another provides in the leaders of the opposition men who can criticize with knowledge the policy of their successors, and who if

called upon to succeed those successors, bring in their turn some experience with them.

(10) "On the whole," writes Dr. Finer, "with the exceptions here and there, the British Cabinet system offers quick, vigorous, thoughtful and responsible leadership; it is controlled, but not stultified; threatened but not executed; questioned but not mistrusted; politically partisan but not personally malicious; restrained as much by the spirit of responsible power as by its institutions and sanctions, and Janus-like, it looks, at once to the people and to the Senate."

On the other hand, one may notice the following shortcomings of the system :—

(1) The fact that the Cabinet is responsible to the House of Commons which may overthrow it at any moment shows that the latter may compel that body to allow its measures to be guided not always by wise judgment but by craze for popularity. The principle of popularity which lies at the root of government sometimes results in a lowering of the standard of efficient statesmanship.

(2) The working of Parliamentary system depends essentially on the organisation of party system. In Great Britain, two party system has no doubt facilitated the working of the parliamentary institutions and has resulted in the existence of stable government. The average length of a Cabinet in England, from the Grey Ministry to the end of the Baldwin Ministry in 1929, has amounted to an average of three and three quarter years. But the position is weakened when there is a good number of parties in the country. Group alliances lead to weak and unstable governments as has been the case in France. This weakness of the Government as a body, and the weakness of party formations, tends to add to the importance of the individual member, who holds his seat far more on grounds of personality than in countries where the party system is stronger.

(3) Ministers cannot devote their attention uninterruptedly to the executive work as much of their time is taken up by the Parliamentary work.

(4) Some of the ministers, *e. g.*, the Prime Minister, the Secretary for Foreign Affairs, the Chancellor of the Exchequer, the Secretary for Colonies have to go out of the country frequently to participate in the world conferences and world affairs. This results in the neglect of current domestic business.

(5) The power of dissolution possessed by the cabinet sometimes leads the members to acquiesce in certain measures which in reality they do not approve of. Dissolution of the House means new election, expenses, uncertainty and all other usual worries.

(6) "Parliamentary system," writes Lord Bryce, "intensifies the spirit of party and keeps it always on the boil. Even if there are no important issues of policy before the nation, there are always the offices to be sought for. One party holds them, the other desires them, and the conflict is unending, for immediately after a defeat, the beaten party begins its campaign to dislodge the victors. It is like the incessant battle described as going on between the red corpuscles and the invading microbes. In the legislature, it involves an immense waste of time and force. Though in theory, the duty of the opposition is to oppose only the bad measures and to expose only the misdoings of the Administration, in practice it opposes most of their measures and criticizes most of their acts. Legislation is, either as in France, apt to be sacrificed to 'interpellations' intended to damage the Cabinet, or, as in England, to be delayed and clogged by the interposition of party conflicts."

(7) Debates are often deliberately prolonged by the opposition in order to obstruct the passage of certain bills which it does not like.

(8) If Parliament completely dominates the ministry, the latter loses the respect of the nation and

if the ministry dominates the Parliament, the consequences are still more disastrous as it strikes at the root of democracy.

(9) The promptitude and vigour of action possible under this form of government is not without its disadvantages. It is often secured at the cost of due deliberation and may result in errors.

(10) According to some writers, the size of the British Cabinet is too large for effective discussion. It makes it almost impossible for each minister to contribute his best and participate fully in the formulation of policy. Even otherwise, the Cabinet is over worked.

Q. 11. Describe the power and organisation of judiciary in U. S. A and examine the part which the Supreme Court plays in the American governmental system. Contrast the position of judiciary in U. S. A. with the position of judiciary in England. Explain the term unconstitutional.

Ans. Article III of the Constitution defines the judicial power of the United States. According to Section II of that Article, the judicial power of the United States extends to all cases—

(1) arising under this Constitution,

(2) arising under the laws of the United States,

(3) arising under the treaties made by their authority,

(4) affecting ambassadors, or other public ministers and Consuls,

(5) of admiralty and maritime jurisdiction,

(6) of controversies to which the United States is a party,

(7) of controversies between two or more States,

(8) of controversies between a State and citizens of another State,

(9) of controversies between the citizens of the same state, claiming lands under grants of different states and

(10) of controversies between a State, or the citizens thereof, and foreign States, citizens or subjects.

Eleventh amendment carried in 1798, however, changed the scope of the federal judiciary to some extent inasmuch as it provided that judicial power of the United States would not extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State.

The Constitution does not specify which of the federal Courts shall have jurisdiction over any particular matter except with regard to two classes of cases, *viz.*, cases affecting ambassadors, other public ministers and Consuls, and those in which a State is a party. The organisation and distribution of the judicial powers among the Courts has been settled by the successive Judiciary Acts passed by the Congress beginning in 1789.

Its main traits.

The following are the main traits of the American judicial system :—

The Supreme Court.

The Supreme Court. (1) At the head of the Supreme Court, consisting of nine judges, a Chief Justice and eight Associate Justices. The Chief Justice is paid twenty thousand five hundred dollars a year and Associate Justices receive twenty thousands dollars a year. The Supreme Court holds its session in Washington from October until May. As we have already seen, it has, according to the Constitution, *original* jurisdiction in all cases affecting ambassadors, other public ministers and Consuls, and those in which a

State is a party and *appellate* jurisdiction in all other cases. The decisions of the Supreme Court which for a term may fill three or four volumes are published in the United States Reports. They throw a flood of light on the present status of Constitutional law and its historical development. The Supreme Court has played a very important part in the settlement of controversies between two or more States. Its authority has been evoked in thirty-nine cases and its judgments have been respected and peacefully carried out. "Such a Court, with such functions," writes Dr. Finer, "is the most original, the most distinctively American contribution to Political Science to be found in the Constitution. It is even more. It is the cement which has fixed firm the whole Federal structure. Or, to change the metaphor and to use Jefferson's quaint words, it is a kite to keep the henyard in order. Every federation must have such a Court, although it may be organized in different ways. For, in a federation, the right to make war is denied to the States, often they have no more than a small force of militia, and they are forbidden from making treaties without federal consent. Therefore they must come to judgment."

Circuit Court of Appeals.

Circuit Court of Appeals.—Below the Supreme Court is a Circuit Court of Appeals. Formerly there used to be two sets of Circuit Courts and the United States was divided into nine circuits for this purpose. Two circuits a year were held by each Judge of the Supreme Court assigned to a circuit. In 1869 ,nine Circuit Justices were appointed as 'the duty was found intolerable' by the Judges of the Supreme Court assigned to the circuits. In 1911, however, a Circuit Court of Appeals was created in each circuit, the ordinary work of the Circuit Courts having been handed over to the District Courts. Now the United States is divided into ten great circuits in each of which there is a Circuit Court of Appeals. The Circuit Court of Appeals consists

of three to five judges according to the amount of litigation. A Supreme Court Justice is assigned to each of the ten circuits but in practice he never attends. The Circuit Court has *appellate* jurisdiction over cases decided by the District Court except those in which appeals and writ of error may go directly from the District Courts to the Supreme Court. The Courts have no *original* jurisdiction. They are Courts of last instance for all cases arising under a large number of Federal laws and the extent of this final jurisdiction has been extended in the measure in which it was desirable and necessary to free the Supreme Court for more important matters mainly for cases in which the Constituitionality of Federal State statutes and actions were in dispute.

District Courts.

District Courts.—At the bottom of the regular Judicial hierarchy is the Federal District Courts. The Congress has divided the country into eighty-one districts for this purpose; the lar er states are sub-divided into several districts and each state constitutes at least one district. The President of the United States with the advice and consent of the Senate appoints the District Judges just as he appoints Judges of the superior Federal Courts. The number of Judges assigned to a District Court varies according to the amount of litigation from place to place. Big districts are laid out into divisions and the Court holds term in each of them at stated times of year. The matters that can be brought to trial in a Federal District Court include all crimes and offences cognizable under the authority of the United States. A suitor may proceed in the District Court in cases involving the Constitution, treaties or Federal laws, or citizens of different states, or citizens of a state and foreign states or citizens, under the postal laws, interstate commerce laws, national banking associations, internal revenue and copyright laws, proceedings in bankruptcy and actions involving

the laws which govern contract, labour and monopolies in restraint of trade. "The matters" writes an eminent authority, 'which may be brought to trial in a Federal District Court are so various in character and so complicated that they can only be successfully mastered by the practicing lawyer whose duty it is to discover the proper forum into which his client's business may be taken and reviewed."

The importance of the Supreme Court in the Constitutional machinery of U. S. A.—

The importance of the Supreme Court.

The powers of the Supreme Court as set out in the Constitution give little clue to the real importance of that institution. Its real importance lies in the fact that it is the final Court of review of Constitutional law. If it thinks that a law is contrary to the Constitution, it must declare it void. It, however, can't do so on its own initiative but only when a case is brought before it. As the Constitution is drawn upon very broad outlines, there is a large field for political interpretations of it by the Supreme Court.

Out of 1183 cases involving the constitutionality of a Federal or State Statute brought before the Supreme Court before 1911, in 279 cases, the laws were held to have violated the Constitution and were therefore nullified, while in 904 cases, the objections were not upheld. The most famous decision of the Supreme Court was given in the Dred Scott case which was one of the proximate causes of the Civil war.

Jefferson protested against policy of giving power to the Supreme Court over acts of state government. He thought that this reduces the states to mere administrative divisions as the Federal Government then possesses the power of defining its own sphere of sovereignty. But he could suggest no better alternative for adjusting disputes between Federal

authorities, and state governments. His characterisation of the Federal Judiciary as the subtle corps of sappers and miners constantly working underground to undermine the foundations of Constitutional fabric can only be regarded as the result of his antagonism to Chief Justice Marshall.

Position of Judiciary in England and U.S.A.

Judiciary in England and in U. S. A.—Sir John Marriot writes as follows about the position of Judiciary in England and in U. S. A. :—

"In England, the judges can under no circumstances entertain the question as to the competence of the legislature to enact a given law. If it is on the Statute-book, it is binding on them until it is amended or repealed. In America, the judges are constantly compelled to entertain this question ; they must ask not merely whether the law is on the Statute-book, but whether it has a right to be there. The distinction is fundamental. It is true that in both cases, the Court is performing a judicial function ; that in both cases, it is interpreting law ; but in England, it has only one law to interpret, in America, it must have two and may have four. There are probably many laws upon the Statute-book in America, the provisions of which, if challenged, would be pronounced *ultra vires*, and therefore invalid by the Courts. So long as they are unchallenged, they are cheerfully obeyed. Nor is it the duty of the Courts to interfere. Their function is in no sense revisional but purely judicial : to act, indeed, as interpreters of the Constitution. The only difference, indeed, between the English Courts and the Federal Courts is that in England, all laws are of equal validity, whereas in America, there are four different kinds of law, with four graduated degrees of authority, namely,

(1) The Federal Constitution,
(2) Federal Statutes,
(3) State Constitutions and
(4) State Statutes.

"The Federal Constitution prevails, in thee vent of conflict, over all other laws ; Federal Statutes, if within the competence of the Federal Legislature, prevail alike over State Constitutions and State statutes ; the state constitutions prevail over State statutes. Another point to be noticed is the different meanings given to the term 'unconstitutional' in the two countries. In England, the term unconstitutional is a term of abuse and implies that the law is at variance with the traditional usages of British politics. In America, when applied to an act of the Congress, the term means that the act is one beyond the power of the Congress and is, therefore, void. As Dicey shows, the word does not convey a sense which purports to be a censure. An act passed by the Congress may be a good law, yet it may be unconstitutional. In England, an act may be illegal but it cannot be unconstitutional in the sense in which it may be so in America. A proposal that the House of Commons should consist of the eldest sons of the peers would not be unconstitutional though it may be shocking. The difference is due to the fact that whereas America has a written Constitution, the English Constitution, though dating back to antiquity, is still largely unwritten." Meaning of unconstitutions.

Q. 12. State how constitutional changes can be effected in the United States of America ? How many amendments the U. S. A. Constitution has suffered uptill now ?

Ans. The United States Constitution was purposely made most difficult to amend. The passionate attachment of the States to their individual independence made them afraid to grant to any central authority an absolute power to change the Constitution. Article V of the Constitution lays down the following procedure for the amendment of the Constitution :—

Constitutional provision for amendment.— The Congress, whenever two-thirds of both Houses Constitutional provision for amendment

shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress ; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the Ninth Section of the First Article ; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate."

Thus, the Constitution mentions four possible processes of amendment :—

(1) two-thirds of both Houses may propose amendments, or

(2) the Legislatures of two-thirds of the several States shall call a convention for proposing amendments, and ratification shall take place by

(3) three-fourths of the Legislatures of the several States, or

(4) by conventions of three-fourths of the several States.

Changes introduced by the first ten amendments (1791)

In practice, all the amendments—twenty-one since 1789—have been the result of proposals by the Congress and ratification by the Legislatures of the States. These twenty-one amendments fall into three classes. The first ten amendments which were made in 1791 add to the Constitution what was omitted when the original was adopted in 1787. These guarantee to the people right to keep arms ; freedom of speech, press, peaceful meetings and religion ; sanctity of private premises ; right to be secured against unreasonable searches and seizures ; right of the people not to be

deprived of life, liberty or property without due process of law and to receive compensation for property to be taken for public use ; the right to a speedy and public trial by an impartial Jury of the State in all criminal prosecutions ; the right of trial by Jury in suits at Common law where the value in controversy exceeds twenty dollars ; immunity from excessive bail, fines and cruel and unusual punishments ; enjoyment of all other rights retained by the people even though not enumerated in the Constitutions and enjoyment by the States of all those powers which are not delegated to the United States by the Constitution nor prohibited by it to the States. Similarly amendments XI (1798) and XII (1804) which also fall in the same category add to the scope of the Federal Judiciary and reorganise the Presidential elections.

By amendments Nos. XI (1798) and XII (1804).

The Second group which comprises XIIIth XIVth and XVth amendments (made in 1865, 1868 and 1870 respectively) introduced certain Constitutional changes as the result of the Civil War. Amendment XIIIth abolished slavery : XIVth amendment provided for a basis of equality for all the citizens and XVth amendment states that the right of the citizens of the United States shall not be denied or abridged by the United States or by any State on account of race, colour, or previous condition of servitude.

Amendments Nos. XIII (1865); XIV (1868) and XV (1870).

The Third group comprises the remaining amendments and is concerned with different subjects. XVIth amendment (1913) gives the Congress power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States and without regard to any census or enumeration ; XVIIth (1913) deals with the Constitution of the Senate and establishes state-wide election ; XVIII prohibited the manufacture, sale, transportation and import of intoxicating liquors in the United States ; XIXth amendment gives universal suffrage by providing that the right of the citizens of the United States to vote shall not be denied or abridged by the United States

XVIth, XVIIth, XVIIIth, XIXth, XXth and XXIst amendments.

or by any State on account of sex.' Twentieth amendment abolished the ridiculous and "lame-duck" session of the Congress by providing that the President should assume office two months and not five, after election. As the eighteenth amendment enacting prohibition proved unworkable, it was repealed by the twenty-first amendment. That the American Constitution is not easily altered is proved not only by the fact that during the hundred and forty-seven years of its life, only twenty-one amendments have passed (of which ten were passed immediately after it took effect and of the rest four are of minor importance and were only directed at removing certain inconveniences) but also by the fact that it took ten years of agitation to pass the twentieth amendment which as we have seen introduced a very minor change.

Rigidity of American Constitution.

Commenting upon the rigidity of the American Constitution, Finer writes as follows :—

Finer on the disadvantages of amending process as obtains in U. S. A.

"There are two great political disadvantages attending the U. S. A. amending process. The first is the difficulty of amendment itself. This means that even a serious need for change may be thwarted, and the Constitution loses touch with the life of the society it is supposed to serve. From this follow conscious evasion of its clauses, and the hazards of judicial interpretation ; when these do not adapt the Constitution to modern needs, and this often happens, there is social suffering and stress.

"But there is another result, the importance of which ought to be realized. It necessarily requires such political behaviour as to bring settled, composed and rational government under a severe strain every few years. If the amending process were less difficult, it would not be necessary to convince people by methods which make opponents and even supporters, of a change, ultimately feel betrayed and cheated. Obedience is not likely to be given whole-heartedly when there is such a feeling, and the law loses its sanctity as a moral obligation for this depends not

only upon its being part of the Constitution, but upon the sentiment of fairness in the process of its creation. Then, when the amendment is made, it is impossible to modify it as a result of valid second thoughts produced by experience, without the same quantity and quality of propaganda used to secure its acceptance.....Too difficult an amending process necessarily requires, if not the killing of the body then the killing of the mind." There is no doubt that of all the democratic Constitutions in the world that of U. S. A. is most difficult to alter. (For Constitutional amendments in Canada, Australia, France and United Kingdom, see their Constitutions dealt with elsewhere. Amendment of Australian constitution is dealt with under Canada).

Q. 13. What is the position of the States in the American Union ? What are their powers ? State some of the points of resemblance between State Constitutions and the Federal Constitution.

Ans. The Constitutions of forty-eight States in the American Union, though varying in minor matters on account of difference in economic and social conditions, have important points of resemblance, both with one another and with the Federal Constitution.

Points of resemblance between State and Federal Constitutions.

The following are the main points of resemblance between the Constitutions of the States and the Federal Constitution :—

(1) The Constitutions of the States, just like the Federal Constitution are written and are superior to the laws passed by their Legislatures. These Constitutions, in most cases, lay down not only the framework of the government but also incorporate Bills of Right.

(2) The Constitutions—all of them—provide for the separation of powers—judicial, executive and legislative.

(3) They all have, though under different names, a Supreme Appeal Court which stands in the same

relation to other organs of the Government as does the United States Supreme Court in relation to the different organs of Union Government. In some States, Judges are appointed by the Governor, in others they are elected by the Assembly or directly by the people. In some States, the tenure of the Judges is fixed and is as short as two years, while in other States, the tenure is during good behaviour.

(4) All the States have an elected Governor who possesses wide powers—though not as wide as the President of the Union. He can considerably influence the Legislature by the exercise of a veto on legislation and by means of messages to the Legislature. Though the power of appointment and dismissal of all the State officers is not vested in him, yet he wields considerable patronage as he can appoint and dismiss many of them.

(5) All the States have an elected Legislature of two Houses. They are not sovereign law-making bodies as laws passed by them cannot override the Articles of the State Constitution and the Federal laws. There is no uniformity in the method and term of election of these Houses, their constitution, duration and method of representation vary from State to State though on the whole, there is a tendency for the over-representation of rural areas. In Georgia, for example, every one of the counties is given the same weight in Senatorial elections. The average county population is 18,000 but Fulton County, which contains Atlanta, has 300,000, with the same representation. The farmers, however, owing to the operation of the general property tax, contribute heavily to the upkeep of the States. The social enmity between city and rural areas has been, for some time, one of the realities of American political life ; it gains force from the fact that the immigrant, particularly the poor immigrant, generally settles first in the cities, and the hatred shown by the country voter for the wicked

city is one aspect of Americanism. It was probably, one of the forces in the enactment of prohibition. The steady growth of the cities, however, is a fact which no exercise of votes can stop, and with the closing down of immigration it may be that this particular issue is destined to become of gradually decreasing importance. This does not imply that the small farmer is on the decline. He is one of the major factors in American economics ; all that is meant is that the cultural divergence between him and the city dweller seems likely to diminish." The Senators are generally elected for four years and the representatives for two years. There is no basic principle distinguishing the function of the one from the other. The work in the Legislatures is done through Standing Committees.

Points of differences.

The following are the main points of differences between the State and the Federal Constitutions :—

(1) The Constitutions of the States, though theoretically as difficult to amend as the Federal Constitution, are in fact more frequently amended.

(2) The Constitutions of most of the States embody provisions for some kind of direct popular control in legislation by such devices as Referendum and Initiative. The principle of Recall of Officials has also been adopted by the ultra-democratic States in matters of Legislature, Executive and even Judiciary.

(3) Whereas the chief executive officers are appointed by the President in the case of the Union and they are responsible to him, in the States, it is not the Governor who appoints the chief executive officials but the people who elect them. The executive officers are, therefore, responsible neither to the Legislature nor to the Governor but to the people.

These are the main differences ; otherwise what is true of the Federal machinery applies equally to the Governments of the States save that "as the issues are State issues, except when it is a question of

Constitutional amendment or the giving of an opinion or some Federal question, the debates in State Legislature are of less consequence and attract less political talent than those in Congress.'

Limitations on the Powers of the States.

Limitations on the Powers of the State.—According to the Constitution, the Congress can exercise those powers only which have been expressly delegated to it and the States get whatever is not expressly taken away. So the States are limited only by the powers which the Constitution has conferred on the Federal Government. The following powers are exclusively conferred on the Congress by Section 8 article I :—

(1) the power to lay and collect taxes, duties, import, and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imports and excises must be uniform throughout the United States :

(2) to borrow money on the credit of the United States ;

(3) to regulate commerce with foreign nations, and among the several States, and with the Indian tribes ;

(4) to establish a uniform rule of naturalization, and uniform laws on the subject of bankruptsies throughout the United States ;

(5) to coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures ;

(6) to provide for the punishment of, counterfeiting the securities and current coin of the United States ;

(7) to establish post offices and post roads ;

(8) to promote the progress of science and useful arts, by securing for limited times to authors

and inventors, the exclusive right to their respective writings and discoveries ;

(9) to constitute tribunals inferior to the Supreme Court ;

(10) to define and punish piracies and felonies committed on the high seas, and offences against the law of nations ;

(11) to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water ;

(12) to provide and maintain a navy ;

(13) to raise and support armies, but no appropriation of money to that use must be for a longer term than two years ;

(14) to make rules for the government and regulation of the land and naval forces ;

(15) to provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions ;

(16) to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by the Congress ;

(17) to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of the Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings ; and

(18) to make all laws which are necessary and proper for carrying into execution the foregoing powers, and all other powers vested by the Constitution in the government of the United States, or in any department or officer thereof.

The powers enumerated above in eighteen clauses in fact exceed that number as some of the clauses convey more than one power though they are generally referred to the eighteen powers of the Congress.

Powers forbidden to the States

Section 10 of article I forbids the following powers to the States.—(1) No State can enter into any treaty, alliance, or confederation; grant letters of marque and reprisal: coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

(2) No State can, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws: and the net produce of all duties and imposts laid by any state on imports or exports, are for the use of the treasury of the United States; and all such laws are subject to the revision and control of the Congress.

(3) No State can, without the consent of the Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded or in such imminent danger as does not admit of delay. There are certain powers which are forbidden both to the States and the Federal Government, *e. g.* the power to pass bills of attainder, or to enact *ex post facto* laws, or to deprive any one of his life liberty or property without due process of law, or to grant titles of nobility.

There still remain a number of powers which are on the borderline of uncertainty. It cannot be said definitely in the case of certain subjects placed under the jurisdiction of the Federal Government whether the States are entirely excluded from acting in specific ways. The matter is decided by judicial ruling and practice. Even in a wide range of operation in which the States possess a concurrent power—for example, the power to tax, to borrow money, to promote education, to encourage agriculture, to charter banks and other corporations, to establish and maintain Courts—they are greatly restricted in the exercise of the rights they enjoy. This blurs the boundary line between local and federal jurisdictions. "Both the Congress and the States, for instance, have the power to tax; they may even tax the same objects, let us say, incomes. Yet by judicial interpretation, the States are forbidden to tax the instrumentalities of the Federal Government, and hence the incomes of its officers derived from their salaries. Again the Congress can make laws on bankruptsy; but, subject to their limitations or in the absence of congressional action, the States are free to legislate in this connection."

As to what extent Federal Statutes supersede State Statutes, commentator Story remarks, "It would be impracticable to lay down any universal rule as to what powers are, by implication, exclusive in the general government, or concurrent in the States; and in relation to the latter, what restrictions either on the power itself, or on the actual exercise of the power, arise by implication. In some cases, as we have seen, there may exist a concurrent power, and yet restrictions upon it must exist in regard to objects. In other cases, the actual operations of the power only are suspended or controlled when there arises a conflict with the actual operations of the Union. Every question of this sort must be decided by itself upon its own circumstances and reasons."

The multiplication of the activities of the citizens which know no territorial limits have further made it difficult to draw a hard and fast line between the powers and functions of the States on the one side and those of the Federal Government on the other. The business transactions in any one community cannot be separated from the national commerce as the large corporations control industries in many States and sell goods throughout the Union. With the advent of railways, telephones, telegraph and radio which have annihilated distance, it has become difficult to distinguish between intrastate and interstate traffic. Co-operation of the States is also needed to combat certain contagious diseases which know no boundaries. Similarly, the affairs and policies of one State in social sphere cannot help influencing the same in the other. A backward State adversely affects the general level of civilization in the other. Sometimes, a joint institution is created by mutual consent to bridge the gulf and make possible some effective action.

Powers of the States.

It is difficult to enumerate the exact powers of the States. All the residuary powers vest in them. This has been made clear by the tenth amendment which runs: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people. Residuary powers cover a vast field and include the whole field of civil and criminal law, control over local government, chartering of corporations, conduct of elections, maintenance of order, regulation of commerce and industry within the State, control of education, protection of the life, health and morals of the people, in fact the general administration of nearly everything that touches the people in their lives.

Q. 14. Describe the organization of the local government in the United States of America.

Ans. The local Government in the United States of America consists of the

(*a*) Cities and

(*b*) County districts.

Cities

Cities.—In the later colonial period, the government of the cities was modelled on the English plan. There was a unicameral city Council, with Common Councillors and alderman. Later on, after the Revolution, new schemes were adopted, most common features of them being bi-cameral Legislatures and the election of members from districts by popular vote. The system, however, encouraged irresponsibility and led to confusion and, therefore, was gradually given up by all the great cities—Philadelphia surrendered the system in 1920 and Baltimore in 1923. Only a few small cities in New England and some other important cities have clung to this system.

The plan of district election, however, has been retained by New York, Chicago, Philadelphia and Detroit, even though the practice has come in for severe criticism on the hands of the people all over the country.

Government of cities by

The government of the cities, now-a-days is of three main types, *viz.*,

(1) of a Mayor and Council,

(2) of an elected Board of Commissioners.

(3) of a City Manager who is himself generally chosen by a small elected body.

Mayor and the Council

Mayor and the Council.—Of the largest cities in U. S. A., in fact more than one half, including San Francisco, New York, St. Louis, Boston, Detroit, Philadelphia, have retained the mayor and council plan of government. Cleveland is the only city with a population exceeding 500,000 which has not retained this plan and has taken to the city manager plan. All other cities with a population exceeding five lacs

have still the mayor and council plan of government. This plan is thus the most widely adopted system of city government.

The executive functions of the government under this plan are performed by the Mayor, directly elected by the people, and departmental heads usually appointed by the former. The term of the Mayor varies from one to four years. It is four years in Boston, Chicago, and New York, two years in Baltimore and Milwaukee and one year in the smaller towns of New England.

The powers of the Mayor are not confined to the executive sphere only, these extend to legislative and financial fields also. In the legislative sphere, he can influence the course of events by his power of veto, his right to recommend measures to the city Council and his power to change the appropriation bill by deleting single items. The Council in many cases can override the veto by simple majority and in others by two-thirds majority. His recommendations are referred to the appropriate Committees and if his party is in the majority in the Council, these stand a fair chance of being adopted.

The financial powers of the Mayor differ in scope from city to city. He can veto financial measures and control to a great extent the preparation of the city budget. In some cities, for example Boston, the budget is prepared by the Mayor himself. He possesses the sole right to initiate proposals of expenditure. The Council may reduce any item but it cannot increase or insert new items. In Baltimore and New York city, the Mayor is a member of the board of estimate.

Formerly, the various officials of the city government—the treasurer, comptroller, city attorney, police commissioner, superintendent of streets—were usually directly elected by the people and in some cases selected by the city Council but now this practice is being gradually given up and the power

of the Mayor is increasing accordingly. In New York, all the heads of the important branches of administration are appointed by the Mayor. He can also dismiss the municipal officers, the exceptions being the judges, the members of the boards of education and a few others. Other cities have not followed this example in its entirety as in most cases the officers cannot be dismissed by the Mayor unless the Council concurs.

The Council, a deliberative body, is also elected by the voters. It lays down the policy and carries on legislative work. The members are elected from one to four years. The election is either by wards, or by the voters at large, or by some combination of these two plans. In some cities they are elected by the system of proportional representation.

The Council can exercise those powers only which are granted to it by the Constitution and the laws of the State. Their chief functions, however, are:

(1) to make ordinances relating to parks, buildings, fire protection, health, beggars, vagrants, intoxication, fighting and disorder in the streets, public amusements, markets, gambling, bathing places, suppression of immorality and vice, the use of fire arms and fire crackers in the streets, parades, steam vessels, advertisements, circuses, obnoxious industries, weights, measures and bill bonds. Ordinances, however, should not be inconsistent with the State law and be within the powers conferred on them.

(2) to levy taxes, make appropriations and incur debts if need arises. The Council, however, works under strict limitations in this regard as the nature of the taxes is determined by the State law. It can, however, fix the rate. The approval of the city Council is essential if the list of appropriations prepared by the board of estimate or the Mayor is to become effective. State legislation however determines the manner, time and form of making appropriations. The amount of

money which it can appropriate is fixed at a certain percentage of the assessed valuation of the property within the city limits. In so far as incurring of debts is concerned, the amount, the term of the loan and the rate of interest to be paid is determined by the Council.

(3) to grant franchises to public service corporations such as lighting, telephone and street railway companies.

Other miscellaneous powers are "the purchase of land for public building, deciding the location and naming of new streets, the approval of certain important contracts, the approval of salaries and pensions of public officials, the fixing of water rates, and the acceptance or rejection of permissive State legislation, in other words, of laws which are passed by the Legislature with a provision that they will go into effect in any city whenever the city Council accepts them."

Board of Commissioners.

Board of Commissioners.—The Commission plan originated in Galveston with the reconstruction of its Government after the great storm of 1900. A Mayor and four Commissioners were elected at large by the citizens of Galveston and all the rights, duties and functions of the Mayor and the Council were vested in them. They thus combined both the legislative and the executive powers, throwing to winds the doctrine of the separation of powers. The plan worked very well inasmuch as the city was soon restored to its former position both economically and otherwise. Other cities also began to clamour for the new system of Government and consequently general acts were passed authorizing the commission plan for adoption. Hundreds of cities adopted the plan within a few years, the most important of them being New York, New Orleans, Portland and St. Paul. A few others, for example, Buffalo, Denver, Nashville and Lowell gave up the plan after trying it and took to city manager scheme or reverted to the mayor and council plan. In some cities, as for example in Iowa,

the system of Recall has been established under which twenty-five percent of the voters, if they dislike the policy of any Commissioner or believe that he is not discharging his functions honestly and efficiently, may petition for his removal and compel a new election. If the Commissioner is re-elected, he retains his position and if defeated, his place is taken up by his successful rival.

Munro mentions the following merits and demerits of the Commission plan :—

Merits.—(1) The responsibility has been centralized in a small group of officials who are constantly before the public.

(2) It produces a scheme of government that is intelligible to the ordinary citizen.

(3) The system co-ordinates the taxing and spending power.

(4) It has made it impossible for unscrupulous municipal authorities to hoodwink the public any longer.

(5) It has enabled the municipal work to be carried on business lines.

(6) It has made for harmony, promptness, and publicity in the municipal service.

(7) It has tended to improve the quality of elective office-holders.

Demerits.—(1) As each Commissioner is head of a separate department, the system has failed to provide a unified executive.

(2) It has encouraged log-rolling.

(3) The system is inadequately representative.

(4) The Commissioners chosen are seldom expert in their departments, hence the system does not promote expertness in administration.

(5) Too much power is concentrated in a few hands.

(6) The system has not always led to internal reforms.

City manager plan.—Sumter in South Carolina was the first town to adopt this plan in 1913 though the first large city that adopted this plan was Dayton, City manager plan.

Ohio (January 1, 1914). Among the other large cities that adopted this plan subsequently are Cleveland, Cincinnati, Kansas city, Rochester, Springfield and Indianapolis.

The outstanding features of the plan are the following :—

(1) There is a Commission or Council (usually five or seven members though Cleveland in 1921 provided a Council of twenty-five members) elected by the voters of the city. The main functions of the Council or the Commission are to determine the policy, to make ordinances, to grant franchises, to authorize borrowings, to make appropriations and decide sundry questions. It has no executive authority. It does not enforce the ordinances. Its business is simply to legislate and scrutinize.

(2) There is a chief executive officer known as City Manager who is appointed by the Council or the Commission. He may not be a resident of the city and may be selected from some other on the grounds of technical fitness. The four main duties of the City Manager are :—

(1) to direct various branches of municipal work ; for example, he takes responsibility for the proper conduct of the departments of Finance, Public Works, Water Supply, Public Health, Public Safety, Law, Education and so on.

(2) to work as the chief advisory expert of the Council or the Commission. He attends the meetings and takes part in the discussion though he is not entitled to vote.

(3) To enforce the ordinances enacted by the Council or the Commission. He may be summoned before the Council to render an account of his work.

(4) Though he is appointed by the Council and may be dismissed by it, other municipal officers are not appointed by this body. It is the City Manager who

appoints, and can remove all municipal officials subject, however, to the rules of the civil service.

Merits of the plan.—

(1) It simplifies and centralizes the responsibility.

(2) It provides unifying influence and tends to eliminate friction among the various departments.

(3) It secures an expert in municipal training to conduct the city affairs by a democratic process.

(4) It widens the field of choice for the city Council.

(5) It shifts public attention from personalities in election to issues and

(6) it removes political influences from technical administrative work.

Demerits.—

An eminent authority thus discusses the shortcomings of the system. It makes no provision for political leadership in the highest sense of the word. The City Manager is a technician. Strictly speaking, it is not his business to formulate controversial public policies, to bring them before the people, to propose radical innovations, to carry on vigorous battles against opponents, to win the support of the voters and the Council for large undertakings calling for vision and great energy. If a Manager should oppose the Council, he might be removed by it and could not appeal to the voters for support. Besides, by taking part in such controversial matters he would cease to be an administrator.

Rural Government.

Rural Government.—Every State in America is divided into Counties except Louisiana which is laid out into parishes. In more than half of the total number of States, Counties are divided into townships. Villages or boroughs are the more thickly populated centres in rural districts erected into separate corporations. We have thus three units of local rural government : Counties, townships, villages.

Counties.

Counties.—There are about three thousand Counties varying in size. Whereas the County of Bristol in Rhode Island contains twenty-five square miles, the County of Custer in Montana and San Bernardino in California embraces more than twenty thousand miles each. They differ in population also. Whereas New Yark County has a population of about two million inhabitants, there are also small Counties with a population of a few hundreds only. Texas has 253 Counties while Delaware has three only.

County Board is the chief administrative organ of a County. Professor Porter divides the County Board into five classes from the point of view of their organization :—

(1) The relatively large Board composed in most cases of representatives elected from the townships.

(2) The small Board of from three to seven members elected at large from the whole County or from districts.

(3) The ex-officio Board made up of the County Judge and the Justices of the Peace or some other Judicial officers.

(4) The hybrid Board composed of the County Judge and a few specially elected members and

(5) Miscellaneous, to be found in a few States including, among others, Connecticut where the Board consisting of three is chosen by the Legislature, and Georgia where there are only special Boards for certain functions such as road and revenue and administration.

There are groups of officials, in addition to the County Board, elected by the people. They are independent of one another. In about one-third of the States, each County has a separate Judge and Court. The following are the main functions of the Board :—

(1) to levy taxes and make appropriations for expenditure,

(2) to construct and arrange for the upkeep of roads and bridges.

(3) to provide public works, for example, the courthouse, the County Jail, the house of correction and the registry of deeds.

(4) to arrange for poor relief.

(5) County Boards in many cases have charge of elections.

(6) Miscellaneous other functions include appointment of some County officers, granting of charter of incorporation to benevolent institutions, the extermination of noxious animals, the regulation of schools for tenants, the licencing of pedlars and so on.

In addition to the County Board and the Judge of County Court, other officials of the County are the sheriff, the coroner, the prosecuting attorney, the treasurer, the auditor, the assessor, the clerk, the registrar etc. etc.

Governments of townships, villages, boroughs vary greatly from place to place. Each State completely controls the details of organization.

Difficulties of Municipal Administration in U. S. A.— Difficulties of Municipal Administration in U.S.A.

Lord Bryce described the government of cities as the one conspicuous failure of the United States of America. Dealing with this indictment, an American writer mentions the following special difficulties of municipal administration in America: The great masses that have crowded into these growing cities have been as a rule without experience and without traditions in urban government. They embrace shrewd and ambitious Americans who have flocked in from the farms in pursuit of employment, careers, and fortune. They embrace millions from foreign countries, mainly peasants, or at best people who had little or no share in the government of cities in their native lands. It is not an uncommon thing to find that one-fourth or one third of the inhabitants of a great city are of foreign origin. The percentage tends to decline with the decline in immigration, but the proportion is still striking and significant. To the

alien groups of every race and language must be added the Negro population which in some Southern cities is fifty per cent of the whole. The decendants of slaves, the Negroes too are without historic experience in the arts of self-government.

The State and the Municipal Government.

The State and the Municipal Government.—The same writer thus sums up the relation between the State and the Municipal Government :—

"In principle, the city is completely subject to the control of the Legislature except in so far as it is protected in its behalf. In other words, there are no such things as inherent rights of local government. The charter of the city establishing its form of government and defining its powers is merely an act of the Legislature. And the charter is only the beginning, for it is supplemented by innumerable acts, general and special, affecting the form and functions of municipal government. Between 1901 and 1921, at least 550 amendments were made in the charter of New York city by the State Legislature, and 1002 special acts relating to the city were passed in addition to the formal amendments. To these Statutes must be added general election, education, transit, civil service, and other measures affecting the powers and duties of the city government."

Four kinds of checks have been proposed to be placed on the power of the Legislature to control municipal affairs.

(1) It has been proposed, firstly, that the Legislature should pass only general laws applicable to all cities and should not resort to special legislation of every kind.

(2) Another check suggested is to forbid special legislation except when approved by the city concerned.

(3) That the cities should be allowd to determine their own *form* of government is the third suggestion. A city may choose the mayor and the

council form, the city manager form or the Commission type.

(4) Another device suggested to restrain the control of Legislature is the 'Home rule' method. The cities should be allowed to frame charters of their own government subject to the condition that they must be consistent with the Constitution and the laws of the State. The Missouri Constitution of 1875, for example, provided that the Board of freeholders elected by the qualified voters of the city should draft the charter which should then be placed before the voters and adopted if four-sevenths of the votes are given in its favour.

Q. 15. Trace the origin and growth of political parties in the U. S. A. Why has the American system opened the way to the greatest political abuses ?

History of Political Parties.

Ans. In America, there are two great parties : the Republicans and the Democrats. In fact, almost from the foundation of the Federal Government in 1789, there have been two principal parties in U. S. A. though their names have frequently changed. Party divisions appeared first during the Constitutional Convention of 1787. The delegates were marshalled into two groups by Edmund Randolph and William Paterson. " These two groups crystallized into permanent form when Alexander Hamilton lined up one half of the country against Thomas Jefferson and the other half, during Washington's first administration. The breach widened during the next ten years and by 1800, the country had a party system which, in all its essentials, was exactly as we have it today."

Jefferson was followed by those who advocated the right of the constituent States to reject federal legislation that was not to their liking (which drove them in the end to uphold slavery)—the Southern planters, the grain growers, the small tradesmen. Hamilton, on the other hand, was followed by the upholders of federal idea—the merchants, the bankers,

the shipbuilders, principally located along the North Atlantic Coast. Jefferson's party came to be known as the Democratic Republican party or simply Democrats, and Hamilton's followers were organized as Federalists. Jefferson's party remained in power right up to 1824 while disintegration set in the Federalist party which ultimately went out of existence by the end of the first quarter of the nineteenth century.

Then began the socalled era of good feeling. But it was soon clear that though one party had completely swallowed the other, yet seeds of divisions were still there. "The signs of division showed themselves among the Democratic Republicans even before the celebration of their unparalleled victory was over. The leaders could not act together, each carrying a section of the party with him. Clay, Calhoun, Crawford, Jackson, Dewitt Clinton and John Quincy Adams all had their enthusiastic followers. Party politics, for a time, gave way to personal politics, which assuredly was no improvement. It was for this reason that the people failed to give any presidential candidate a majority in 1824 and thus compelled the House to make the choice. Nobody relished this new era of fractional politics and after a brief interval, the various elements once again became united into parties—one of them calling itself National Republicans (later Whigs) and the other Democrats. The former supported John Quincy Adams for re-election to the presidency in 1828, while the latter chose Andrew Jackson as its standard bearer. Jackson won."

The election of General Jackson is a landmark in the history of American political parties. He made a clean sweep of the officials who did not belong to his party and replaced them from the ranks of the faithful. The spoils system really dates from their clean sweep. The Democrats remained in ascendency until 1841. After that followed an era of alterations. Both the parties, however, were destroyed by the slavery issue. The Whigs were destroyed in 1852

by their policy that the Fugitive Slave Law was final, that the system was essential to the nationality of the Whig party and the integrity of the Union. The *raison detre* of the Democratic party was cut away with the defeat of their claim in the Civil War.

The new Republican party, formed in the main out of a combination of Unionists and anti-slavery men treated the South in a spirit which 'suggests the treaty of Versailles' and the effect, therefore, of this treatment was that the Democratic party was preserved as a sullen beaten minority. It drew its main support from States which had to readjust themselves to a new system of economy based on wage labour and which were almost ruined by the Northern Republicans sent down to organise the negro and 'poor white' vote. They had to free a party equally sectional, but based mainly upon the New England and other Northern manufacturing States, whose wealth had been growing by leaps and bounds even during the Civil War. They bided their time and waited for the day when they would be strong enough to get the revision of the power and profits. It was, however, not until 1884 that the Republican hold on the presidency was relaxed and a Democratic President was elected. Up till 1912, the cleavage between the two parties related to the tariff than to any other issue. This issue dropped later on and the main topic before the people was whether or not U. S. A. should take part in the Great War. Republicans remained in power from 1920 to 1932. So, up till the present, the Democrats have been the party of the Outs, hoping some time to get in, and the voting strength and distribution of the two parties has remained basically what it was in 1876 or thereabouts.

Their programme and policies.

There is no clear cut division between the programmes and policies of the Democratic and Republican parties. The issues which excite public interest cut right across party affiliations and the various groups

which are formed from time to time often tell their adherents to vote Republican or Democrat as seems best in the several States. The reason why there is no definite and continuous divergence of mind is not far to seek. A number of issues on which parties have been divided in the European countries had already been settled by the Constitution. "European parties have fought bitterly over the questions of Church and State, public education, freedom of opinion, property and the individual; the extent of Democratic government and hereditary second chambers; monarchy, equality before the law; military service and standing armies". These questions, however, were settled by the Constitution in the case of U. S. A. As Constitution can be amended, those questions have not been taken wholly out of the field of controversy, yet considering the difficulty the process of amendment involves, slight alterations suggested have not been worth their while. The objects of difference being very few, it is no wonder if the division into parties and programme is not so complete as, for instance, in England.

On the whole, we may say that the Republican Party embodies the conservative tradition and the Democratic Party embodies the liberal tradition. But then, the generalization is not absolutely true as it was the Democratic party which stood for slavery while the Republican party was opposed to it. It is again true on the whole that the Republicans have tended to put up the tariff, and the Democrats to favour the farmers and currency policies that would please the farmers, but the Democrats have always advocated a tariff for revenue purposes. Again, Republicans are regarded the party of "Big Business," yet, it were Republicans who passed the Sherman Anti-Trust Laws. With exceptions now and then, broadly speaking, it may be said that the Democrats have been opposed to while republicans have generally supported high protective tariffs for American industries, centralized banking, a currency based on gold, ship

subsidies, a strong navy, internal improvements, commercial enterprise and light taxation on great fortunes.

The two parties are mainly sectional by States and are not rigidly divided by policy. It is the individuals and groups, not always working within the party group, that have led great movements and fought battles of policy. The parties have merely been fighting for the right to govern and to acquire the power to dispose of the public offices. The Socialist party which has kept itself separate since 1900 and the Communist party since the close of the World War do not count for much. The Socialist and the Communist vote over the country is very small. There are only two effective parties—Republicans and Democrats in U. S. A., though occasionally the Socialists and Communists have polled as many as a million votes, thus making a great inroad on the former. "The federal system of America," writes Dr. Finer, "causes American federal politicians to have very little to advocate, deny or defend. The party is therefore a kind of *cadre* or skeleton without spirit, flesh or blood. It stretches everywhere and touches nothing ; it grasps at everything and leads nowhere. It cannot even base itself on the substantial potentialities of the States' reserved and residuary powers, because the States have made unto themselves Constitutions excluding important subjects from the field of politics, and their geographical and economic conditions are such that the party is obliged to straddle in order to hold them together in a common allegiance."

Party Organisation.

Thorough organisation of voters is essential in a country like U. S. A. where political system is so largely directed by votes. There are so many elections in American life—that of the President, the Congress, Federal Judges, Governors, State Legislatures, State Judiciary, Municipal Councils, Mayors and a thousand others—that it is absolutely necessary that

the voter is brought safely in the proper fold and accordingly strong party machines have been evolved by both the parties in all the different centres to collect and poll the voters. Wealthy supporters of the party finance and pay the party machines. They also get reward for their services from those who are elected to offices by their support. In fact, no one can hope to be elected to office to-day without being nominated by a political party. The victory of candidates depends upon the campaign conducted by the party and naturally the candidates help to pay the legitimate expenses of the organisation. "It is a regular practice, therefore, for party organizations, State and local, to collect tributes from candidates for nomination as well as from nominees to office—ordinarily in proportion to the value of the places they seek." Businesses corporations also contribute to the expenses of the political parties though the practice is illegal.

The causes of the wide ramifications and the power of the American parties may be summarized as follows :—

1. There are so many elective officers that the vast mass of voters, without proper organization, cannot effectively take part in selecting candidates and running political machinery.

2. In the United States, the legislative power is separated from the executive power ; hence some organization outside the written law is needed to effect union between these two important branches of government.

3. Party machine is strengthened by the vast patronage which the successful canddiates can exercise. There are thousands of offices and positions adopted to party purposes.

4. Party machines are further strengthened by the vast resources placed at their disposal by their supporters.

5. Lastly, " parties are strengthened by various aids rendered to voters. Political leaders and workers favour the poor by a thousand charitable acts. They give outings, picnics, clambates, and celebrations for them; they help the unemployed to get work, they pay the rent of sick and unfortunate persons about to be dispossessed and so on.

The Party Conventions and the Primary

The Party Presidential Candidate is selected by the National Party Convention which also draws up the platform upon which the Presidential election is to be fought. The selection of candidate is preceded by bargaining between the bosses who control big State blocks of delegates. The man chosen is generally one whose personality easily influences the voters. Besides National Conventions, State Conventions and district or county Conventions of delegates are also regularly called for nominating persons to less august offices. The methods of choosing delegates have been altered at various times, though the general outline has remained the same since Jackson's time. A nominating Convention is usually accompanied by processions, shouting and singing and is a far less serious affair, at least to outward appearances, than such a procedure is in England. " These Conventions ", writes Munro, " have become fixtures in the American political system. With their ballotings and ballyhoo, their key-noting and cohoopee, their dark horses and favourite sons—these national party conventions are the most characteristically American of all America's contributions to the science of politics. They are our quadrennial reminder how vociferous the Jacksonian brand of democracy is.

The Primary.—The Primary is also a purely American institution. It is through it that the public can cantrol to some extent the choice of candidates for offices, otherwise a few houses would be able to have their own way and thus flout the public opinion. Local Conventions no longer, in majority of States, nominate

delegates to the national party Convention or select party candidates for offices. It is now compulsory for the parties to hold preliminary elections, under state-made rules, at which the delegates or candidates are voted upon. The rules are not the same in all States. Candidates defeated in the primaries may run at the election as independent if they choose. In Winconsin, Montana and Colorado, in the open primaries, the primaries of all parties are held together and voter is free to mark the ballot paper of any party. The case is different in close primaries. The voter, in close primaries, can take part only in the primary of a single party. The voter's name must be on the party register or he must promise to vote for the party candidate. This curious device of a primary enables the voters sometimes to serve his party by voting for the most unpopular candidate of the opposite party.

The Spoils System.

The party system has produced a great deal of corruption in U. S. A., for instance the spoils system, the distribution of public contracts, the graft in public offices, and "the sheer handling-out of dollops of public money, as for instance, in Civil War Pensions." There was a time when all positions in the federal civil service were to a large extent given to party workers without special regard for their competence and without any test in efficiency. It was Andrew Jackson who on being elected as President in 1828 ousted from office all the old incumbents and appointed his own supporters. The practice, however, is older than that, as it was Jefferson who in 1801 cancelled the appointments made by his predecessor but as a system, it dates from the clean sweep made by Jackson.

The system continued to reign in its most shameful form for about fifty years. The governmental posts were distributed by favouritism and patronage, and not by technical tests of ability regardless of party affiliation. The full number is not exactly

known, but there are at least 20,000 offices worth over £ 400 per year in the Federal "Spoils" alone, and this is nothing compared with the thousands of States and city spoils. The practice is defended on the ground that the service would be more efficient if there were frequent changes in the office-holders since long and fixed tenure causes the growth of indifference. There are others who see nothing wrong in the principle that to the victor belong the spoils of the enemy, that to the successful must go the advantages of the success and that the defeated should retire from office.

"Under the spoils system, the whole public service became demoralized; important positions were everywhere bestowed upon hungry office-seekers who possessed no fitness for the work which they were supposed to do. Men who could not hold their jobs or make a living in any private vocation turned to the government service as their logical career. A large part of the President's time was taken up by Senators and representatives who came to the White House in endless succession seeking jobs for the pay-roll-patriots of their own States and districts. Then, in turn, these Congressmen gave most of their energy to the task of pacifying avaricious supporters whose main ambition in life was to fatten themselves on the national treasury. It was political beggary on a huge scale and dulled the self-respect of every one concerned in it."

The only advantage of the system to the President was that he could subdue some troublesome group in his party by threatening to withhold patronage from its friends. But this advantage is no consolation when we consider that the system forced an altogether undesirable amount of the President's time and attention to be spent on seeing that plums are tidily distributed and that no important interest is left out in the cold.

There have been great efforts in the last two generations to root out this evil but the success is far

from completion. Public opinion eventually began to change after the magnificent corruption of General Grant's administrations and from 1877 onwards, more and more offices were removed from the sphere of appointment and filled by competitive examination. The public consciousness was suddenly roused by the assassination of Garfield by an office-seeker who could not get the job. The Congress passed the Pendleton Act in 1883 to reform the system of appointments.

The American Civil Service.

Note.—The Pendleton Act is still the fundamental law governing appointments which are filled only by persons who have complied with the requirements of certain examinations or standards. There is a Federal Service Commission of three members appointed by the President and the Senate in accordance with the provisions of the Act. Not more than two members can belong to the same party. The Commissioner frames rules for competitive examinations to judge the fitness of the candidates for classified appointments—about 80 percent of all the national government appointments—are received by the Commission; the examination is held and as a vacancy occurs, the name of the successful candidate standing at the head of the list is communicated to the appointing authority. The examinations are widely advertised. The examination is designed to test the general ability of the candidates but their technical fitness for the job. It gives an advantage who though a mediocre in general ability, is familiar with the special routine. The English system, on the other hand, is designed to test the general ability and broader intellectual capacities of the various applicants. "This method of selection on a merit basis has been of great advantage to the public service. It has deflected the opportunities of office-seekers and given to the President time for other things than the distribution of loaves and fishes. The civil service system has not given complete satisfaction in all quarters but it has greatly improved the standards of work in all

federal offices." The American Civil Service has less power and prestige than that British Civil Service.

Q. 16. Write a brief note on direct popular government in American States.

Ans. The Initiative and Referendum were first made state-wide in application in South Dakota in 1898 as the result of a Constitutional amendment. The idea spread rapidly and by 1912, the following States had introduced the system: South Dakota, Oregon, Idaho, Missouri, Montana, Utah, Maine, Oklahoma, Nevada, Arkansas, Colorado, California, Washington, Nebraska, Ohio, and Arizona. Since then, three other States have adopted the system: Michigan, North Dakota and Massachusetts. There are other States which have adopted referendum only. In all, about half the States have taken to direct legislation in one form or the other.

In the case of initiative, a petition is made proposing a certain law in relation to labour, agriculture, prohibition and so on. The petition must be signed by a certain percentage of voters—generally from 5 to 10 percent—the percentage required is higher in the case of Constitutional amendments. The petition is submitted to some State official who checks the names. The measure is placed on the ballot at the next regular State election or at a special election. The measure once adopted by the people at the poles cannot be ordinarily mended by the Legislature. It can neither be vetoed by the Governor. In the case of referendum, the petition is not for enactment of a new law but for submission of a measure already passed by the State to the voters before putting it into effect. The question is put on ballot and if the majority of the voters cast their votes in its favour it becomes law; if the case is otherwise, the measure becomes invalid.

Munro mentions the following points in favour and against such devices:—

Merits.—

1. Government is made more Democratic.
2. It trains the voters and makes them take interest in civic affairs.
3. The ordinary citizens can make their influence felt.
4. Legislative bodies are more cautious when busy with the process legislation.

Demerits.—

1. Direct legislation weakens the civil rights of the individuals by almost removing the distinction between laws and Constitutions.
2. As all the voters do not cast their votes, direct legislation sometimes leads to law-making by a minority of the people.
3. Public opinion is not faithfully represented by such devices as the people have no other alternative except to say yes or no for the proposal.
4. An added burden is placed on the voters by such devices.

Recall is another device advocated by the supporters of direct popular government. "The device is a plan whereby a certain number of the voters, whenever they are dissatisfied with the services of a public officer (usually elective officers only) may, on petition force a new election and thus submit his right to continue in power to the judgment of the electors." Recall began in the city of Los Angeles in California, was incorporated in the Constitution of Oregon in 1908 and later on was adopted by California for state-wide purposes in 1911, Arizona, Idaho, Washington, Colorado and Nevada in 1912, Michigan in 1913, Louisiana, North Dakota and Kansas in 1914 and Winconsin in 1926. Recall, however, has not been as extensively used as initiative and referendum. The system is designed to remove abuses which might arise in practice and make possible the retirement of officials going against the public opinion.

Q. 17. Summarize the main facts about the American Constitution.

Ans. The Federal Constitution was drafted in 1787, eleven years after the Declaration of Independence, and came into effect in 1789. It recognizes three separate and independent bodies : The President, the chief executive ; the Senate and the House of Representatives—the legislative bodies and the Supreme Court—the highest Judicial Tribunal.

The President holds his office for four years and is elected, not directly by the voters, but by an electoral college, consisting of representatives of every State to a number equal to the whole number of Senators and Representatives to which that State is entitled in the Congress. No person except a natural born citizen is eligible to the office of President. He must be at least thirty-five years of age and must have been a resident within United States for at least fourteen years. The Vice-President who is also elected along with the President becomes President in case the President is removed from office or dies. The President is Commander-in-chief of the army and navy of the United States and has the power to grant the pardons for offences against the United States, except in the cases of impeachment. He has the power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur, and to nominate ambassadors, other public ministers and consuls, and Judges of the Supreme Court, and all the officers of the United States. He has no Constitutional control over the Congress but he can send messages and veto within ten days any Congressional Legislation. His veto can be overridden by a two-thirds vote of both the Houses. He appoints the members of his Cabinet and can remove them. He can be impeached, when in office, by the Senate. There is no other means of controlling him ; he is a monarch within the limits of the Constitution—though a monarch with- The President.

out dynasty as he can be elected to the office for more than two terms.

The Congress.

The Congress consists of two Houses—The House of Representatives is composed of members chosen every second year by the people of the United States. The number of the representatives appointed to each State is roughly in proportion to population. No person can be a member of the House who has not attained the age of twenty-five years and been a citizen of the United States for seven years. He must be an inhabitant of the State in which he is chosen. The House chooses its own speaker and other officers and has the sole power of impeachment. The Congressmen cannot hold any executive office. The Congress has regular committees for the consideration of measures initiated by the members. The President or the members of his executive, are not entitled to sit in the house. The House determines the rules of its proceedings, punishes its members for disorderly behaviour and, with the concurrence of two-thirds, expel a member. All bills for raising revenue must originate in the House of Representatives. The present House consists of 435 members and the number of Committees is about sixty. The Committees are no longer appointed by the speaker as was the practice before 1911. The debates are more restricted than they are in the Senate. There is an air of unreality about them as the real work is done by the Committees.

The Senate

The Senate is composed of ninety-six elected persons, two from each of the forty-eight states. One-third of the members retire every second year. Just as the House of Representatives represents the nation, the Senate represents the federal principle. No person can be a Senator who has not attained the age of thirty years and has not been a citizen of the United States for at least nine years. He must be an inhabitant of the State from which he is elected. The Vice-President of the United States is the president of the Senate but has no vote unless

the Senate is equally divided. The Senate has the sole power to try all impeachments. The Chief Justice presides when the President of the United States is tried. No person can be convicted without the concurrence of two-thirds of the members present. The Senators, just like the members of the House of Representatives, are privileged from arrest during their attendance at the session and for any speech or debate in the House. The Senate possesses the right of confirming the appointments of all persons nominated by the President to act as ambassadors, Judges of the Supreme Court, Executive Councillors, Consuls and other officers. It also possesses the right to concur in the making of treaties. "The complete freedom of debate in the Senate, under which any single Senator may keep the floor as long as his breath holds out and may discourse upon any subject under the sun—though since 1917, a very mild form of control has been introduced, by which two-thirds of the Senate can impose the closure—together with the necessity of securing two-thirds majority of the Senate for the endorsement of treaties, has given more external interest to the debates in the Upper House; and the provision of the Constitution under which Presidential appointments, including those of Judges of the Supreme Court, must be made 'with the advice and consent of the Senate' provides that body with a direct interest in administration." Some writers regard the American Senate as the only effective second chamber in the world.

The Judicial power of the United States is vested in one Supreme Court and in such inferior Courts as the Congress may from time to time establish. The Judges of the Supreme Court hold their offices during good behaviour. The Supreme Court has original jurisdiction in all cases affecting ambassadors, other public ministers and consuls, and those in which a State is party, and appellate jurisdiction in other cases. The real importance of the Supreme Court lies in the fact that it is the final court of review of

The Supreme Court.

Constitutional law. If it decides that a certain State or Federal law is repugnant to the Constitutional provision, the law is nullified. The Supreme Court has played a very important part in the building of the present Constitutional machinery. It has, more often than not, put a liberal interpretation on the provisions in the Constitution relating to the powers of the Federal Government. Below the Supreme Court, there are the Circuit Court of Appeals and District Courts.

Amendment of the Constitution.

The process of amendment is not easy. The Constitution has suffered only twenty amendments during last century and a half. Of these 21 amendments, ten were carried in 1791—two years after the constitution began to operate. Article V lays down the amending process. According to it, a proposition to amend the Constitution may be adopted by the Congress, with the approval of two-thirds of both Houses, and may be ratified by the concurrence of the Legislatures, or of Conventions, as the Congress provides, in three-fourths of the States. States can also take the initiative as on the application of two-thirds of them, the Congress must call a national Convention for the purpose of drafting amendments, which are adopted when ratified by Conventions, or by Legislatures, in three-fourths of the states.

Party Organisation, Local government and State Constitutions.

There are two major parties in U. S. A., the Democratic party and the Republican party, but they are not divided by any considerable difference of programme and policy. The party organisations are very strong. The main reason for the existence of strong party organization is the separation of executive and legislative powers. "If popular government is to function freely and smoothly, law-making and law-enforcing should be in the same hands, lest the one defeat the other. In England this fact is frankly recognized, for the executive cabinet, composed mainly of departmental heads, is selected from the party in the ascendency in the House of Commons. Those who formulate policy and those who carry it out belong to one fellowship. In the United States, however, the

Union of the Legislature and the executive must be secured outside the written law, and the party system alone makes it possible. It is the party that assures the nomination of the candidates who are in a fair degree of harmony with one another, and who, if elected, can work together in legislative and executive positions to realize the will of the voters."

Party system is closely associated with the 'spoils system.' The government of the cities is of three main types, *viz.*,

1. the Mayor and the Council Form,
2. the City manager type,
3. the Commission type.

All these bodies are elected by the people. The Counties are governed by County Boards which are elected. There are township meetings or Councils in the older States.

The State Constitutions, like the Federal Constitution are written Constitutions and provide for separation of powers. States also have Supreme Appeal Courts, elected governors, and bicameral system of legislation. The state Constitutions, however, have proved less difficult to amend, provide for direct legislation in some cases and establish the system of 'Recall' in a few cases.

The Constitution of Canada

THE CONSTITUTION OF CANADA

Q. 1. Write a brief historical note on the process of constitutional development in Canada.

Quebec Act of 1774

Ans. The Quebec Act of 1774, the Canada Act of 1791, the Union Act of 1840 and the British North America Act of 1867 mark four important stages in the constitutional development of Canada.

The Quebec Act of 1774.

The Dominion of Canada is now formed of the nine provinces of

1. Ontario.
2. Quebec.
3. Nova Scotia.
4. New Brunswick.
5. British Columbia.
6. Prince Edward Island.
7. Manitoba.
8. Saskatchewan and
9. Alberta, together with the Yukon and North West Territories.

Its area is 3,729,665 square miles and population 8,772,000.

Originally, Canada was a French colony, founded in 1608 but passed under the British rule with the fall of Quebec and Montreal in 1759 and 1760 respectively. The change was formally recognised by the Treaty of Paris in 1763. Canada now became the province of Quebec.

Provisions.

Things went on smoothly for some time but soon difficulties arose with the growth of a small minority of British settlers. They claimed ascendency in political matters over the French and thought they only should be entitled to advise the Governor. This led to the passing of the Quebec Act in 1774.

Under this Act –

1. All the territory held by the Provinces of Quebec and Ontario was included in the Province of Quebec.

2. A nominated Council was set up with membership of not more than twenty-three and not less than seventeen.

3. A modified oath rendered it possible for the Roman Catholics to be admitted.

4. The whole body of French civil law was revised.

5. The Roman Catholic Church was given a legal status by the provision that titles could be collected from its members by due process.

6. The Council was given no power to levy taxes. The regulations for taxation supplementary to the Act were embodied in a statute of the following year and only imposed duties similar to those under the French regime.

7. The ordinances of the Council had to be referred to England.

Criticism.

The Act favoured the French and may be summed up in the words of Burke: 'With regard to state policy, the preservation of their old prejudices, their old customs by the bill, turns the balance in favour of French. The only difference is, they will have George the Third for Louis the Sixteenth'. The Act had its defects and virtues. But, on the whole, it may be said that it strengthened the imperial tie in so far as it settled the status of the Roman Catholic and removed it for generations out of religious politics. Had its position been left in the air without a statute behind it, the coming of the United Empire loyalists might have added another war of religion to the tragedies of history. As it was, the transition to a new constitution was infinitely less complicated.'

The Canada Act of 1791.

From 1774—1791.

The religious and racial differences in Canada intensified with the immigration of "Unity Empire Loyalists", from the United States. They pressed for the same political rights in Canada which they had enjoyed hitherto in U. S. A. They had been deeply influenced with the agitation that was carried on in U. S. A. for the control over executive and taxation and they carried on an agitation for similar rights in Canada. But on the other hand, the French were used to autocratic rule and the representative assemblies did not at all appeal to them. These two elements thus contended in the provinces. As the result of representation made by the British minority and the advice given by the Governor of the time, the British Parliament repealed the Quebec Act and passed a new Act in 1791. The new constitutional Act, known as the Canada Act, marks the second stage in the constitutional development of Canada.

The Provisions of the Act of 1791.

Under the Act—

(1) The territory of Quebec was divided into Upper and Lower Canada.

(2) The legislative authority was vested in the Governor or Lieutenant-Governor acting with the advice and consent of the Legislative Council and Assembly in each of the two new provinces.

(3) The Upper House or the Legislative Council (which was created to guard against the democratic tendencies of U. S. A.) was to consist of at least seven members in Upper Canada and fifteen members in Lower Canada.

(4) Additional members could be added to the Legislative Council by the Crown; members were to be British subjects above twenty-one years of age. Membership was for life and the Speaker was appointed and could be removed by the Governor.

(5) The Assembly was to consist of at least sixteen members in Upper Canada and fifty in Lower

Canada. The franchise was based on property qualifications. The Governor could reject a bill even if it was passed by both the Houses and the British Government could reject a bill even if it was assented to by the Governor. The Governor and the Executive Council constituted a court of appeal; appeal, however, could be carried to the Privy Council from them.

(6) The guarantees to the Church of Rome under the Quebec Act were confirmed.

From 1791 to 1840.

The Act failed to find satisfactory solution of the various problems. The Executive which was appointed by the Governor was entirely independent of the legislature, both financially and constitutionally. It led to constant collisions between the two organs of the Government, resulting in the Government of Upper Canada falling into the hands of a small family clique and the Government of Lower Canada being faced with frequent deadlocks. This state of affairs continued for about fifty years.

'In Upper Canada, the population was almost wholly of English settlers, who were continually in revolt against "the family compact." In Lower Canada, where the original French settlers were in the majority, the constitutional contest took another complexion—French, whereas the Legislative Council and the Executive Council were almost wholly British. In both provinces, the demands were for a control over the Executive control of the purse, an elective Legislative Council and the independence of judges.'

The Union Act of 1840.

Arrival of Lord Durham and his Report.

The situation as described above eventually resulted in open revolt in both the provinces. In Upper Canada, the rebellion was led by Mackenzie and in Lower Canada by Papinean. Though there was no insurrection in the maritime provinces yet, people there were acutely divided over the causes that had led to insurrection in both the other provinces. Such was the situation when Lord Durham arrived in Canada as Governor General on May 29, 1831. He had been

given exceedingly wide powers and was required to consider any proposals he 'might think conducive to the permanent establishment of an improved system of government in Her Majesty's North American possessions'.

On his arrival in Canada, through a Proclamation, he expressed his desire to do his utmost to 'lay the foundations of such a system of Government as will protect the rights and interests of all the classes, allay all dissensions, and permanently establish under Divine Providence that wealth, greatness and prosperity of which such inexhaustible elements are to be found in these fertile countries.' He gave a practical proof of his goodwill by dissolving the old Council and appointing a new one.

After a full examination of the causes that had led to chaos and disorder, he made the following important recommendations in his 'Report on the affairs of British North America'.

Lord Durham's recommendations.

(1) The two Provinces of Upper and Lower Canada should be united. It was not a federal union he thought of (though he had favoured a federal solution for the troubles of the colonies before he arrived in Canada) but a complete fusion in which the political institutions of the provinces were to completely disappear and merge in new common institutions for the whole of Canada. He gave the following reasons for his changed opinion:—

"A federal union would produce a weak and rather cumbrous government; a colonial federation must have, in fact little legitimate authority or buisness, the greater part of the ordinary functions of a federation falling within the scope of the Imperial legislature and executive; and the main inducement to federation, which is the necessity of conciliating the pretensions of independent states to the maintenance of their own sovereignty, could not exist in the case of colonial dependencies, liable to be moulded according to the pleasure of the supreme authority at home.'

He thought complete legislative fusion would give vigorous control of the rebellious French minority in Lower Canada and an efficacious government for the whole of the colonies.

(2) Responsible Government should be established in which executive should continue only so long as it retains the confidence of the Legislature and the Governor should act on the advice of the ministry. This recommendation applied to the maritime provinces also and was made with a view to removing difficulties which the colonial governors often faced in the management of the internal affairs of the country. 'I know not,' he wrote, 'how it is possible to secure... ...harmony in any other way than by administering the government or those principles which have been found perfectly efficacious in Great Britain. I would not impare a single prerogative of the Crown ; on the contrary, I believe that the interests of these colonies require the protection of prerogatives which have not hitherto been exercised. But the Crown must on the other hand submit to the necessary consequences of representative institutions ; and if it has to carry on the government in unison with a representative body, it must consent to carry it on by means of those in whom that representative body has confidence.'

(3) Responsibility should not extend to all spheres. There should be a division of powers ; the colonists should be responsible for their own government in matters of internal concern, and the Imperial Government in matters of common concern to the whole empire. He recommended that matters like control of land policy, trade relations with the Empire and foreign countries including issues of coinage and shipping, their constitutions, foreign relations and defence should be reserved to the Imperial Government and matters of local interest in which the Imperial Government had no interest, should be dealt with by local administration.

(4) Provision should be made for the voluntary admission of the maritime provinces in one union.

He saw no prospect of immediate union on account of the lack of support from the provinces concerned and the difficulties of communication.

(5) The principle of representation according to population should be followed.

(6) No money votes should be proposed except on the advice of responsible ministers.

A storm of discussion arose over the Report which recommended a new type of colonial system. It was disapproved by the old-fashioned imperialists and die-hards who thought that the concession of full independence in one thing would gradually lead to independence in other things and ultimately to independence in everything. The weak point in the case of Lord Durham's opponent, however, was that their criticism was entirely destructive. They had no constructive proposal to make as a substitute for Durham's proposal. It was admitted that the previous system of representative government had hopelessly failed and cried for a change. Durham had a substitute whereas his critics had none. The continuance of the existing discredited system must have involved the continuance of friction which would have probably resulted in forcible secession.

Keith on Durham Report.

"In the grant of responsible government as conceived by Lord Durham, there was involved no idea of the surrender of the sole sovereignty of the United Kingdom. He contemplated no inroad on the paramount authority of the Imperial Parliament and the Imperial Government; his desire was that they should confine their action to matters truly imperial, and, having created local administrations, leave them to deal unfettered with all matters of local concern. He saw that struggle in Canada was largely waged over issues of patronage and expenditure on local objects in which the Imperial Crown had no special interest. And he proposed that all questions should be dealt with by local ministries framed on the British model which would thus express the will of the electorate from time to time."

Kennedy on Durham Report.

"With all its defects, Durham's Report on the affairs of North America remains the greatest state paper in colonial history. The minutest criticism has been applied to it since the time of its appearance. Much of this criticism is valid. The 'family compact', for example, subjected it to searching examination, and a committee of the legislative council of Upper Canada produced a report in which forceful restraint is combined with a logic which from many points of view can never be denied. The sections on Upper Canada are decidedly weak. Politically there is fairness, socially and economically there are exaggerations and distorted views. The part dealing with Lower Canada can only be described as brilliant, and the situation there is diagnosed with the greatest insight, which is made all the more remarkable by the occasional slips in facts and errors in interpretation. In his efforts to grasp the problems which called for solution, Durham gave himself up to five months of ceaseless activity. His resignation cut him off from perfecting his summary in detail, and had he remained longer, it is reasonable to expect that he would have learned more of Upper Canada. He felt, however, that the most pressing issue was that of French-Canadanism, and on it, he expended the greater part of his tireless energy. Of the maritime provinces, he said little. The blow from England fell on him when he was in the middle of a conference with eastern delegates, and his report was finished leaving the history a mere sketch, with no comprehensive grasp of the difficulties which the interview brought to light."

Action on the Report.

The British Government lost no time in taking steps on the basis of the recommendations made by Lord Durham. A bill was introduced in June 1839 which, however, was postponed on account of strong opposition in Upper Canada and conditional approval by the Assembly till the Report of Charles Ponlett Thomson, afterwards Baron Sydenham of Sydenham and Torants, who was sent to Canada as Governor-

General. The measure, however, was finally passed in 1840.

Under the Act of 1840—

1. The Upper and Lower Canada were to be united with one House of Assembly and one Legislative Council within fifteen months after the passing of the Act.

2. The members of the Legislative Council were to hold office for life on good behaviour. The members of the Assembly were to consist of an equal number from Upper Canada and Lower Canada. The members were required to possess property worth at least £500.

3. The Speaker of the Council was to be nominated by the Governor and of the Assembly to be elected by its members.

4. A consolidated fund was to be instituted out of which the expenses of the judiciary, government and pensions were to be paid.

5. The two provinces assumed the debts and were given complete control over the revenue (excepting, of course, consolidated fund).

6. The status of the Church of England, of the Roman Catholic Church, of waste lands, and of religious toleration was clearly defined.

From 1841 to 1847.

The union of the old provinces was brought about on February 10, 1841 by a Proclamation and the first elections were held in April 1841. The events, however, proved that the union was an error. The Governor, under the new constitution, occupied an anomalous position. Lord John Russel, the Prime Minister, was not bold enough to introduce responsible government. He directed the Governor on the one hand to choose as his ministers, men who had the confidence of the Assembly, and on the other hand, he was required to consider himself as the servant of the Crown, responsible to it alone. No man could possibly assume these two incompatible roles. Lord

Sydenham, tried assiduously to maintain a constant majority in the Assembly but by the time, he relinquished the office, his ministers had become unpopular and the new Governor, Sir Charles Bagot, realising the difficulty, virtually introduced responsible government by choosing his ministers from the majority party. The next Governor, Sir Charles Metealfe, tried to revert to Lord Sydenham's system but this led to the old troubles. By this time, it was clear that responsible government was the only remedy and it was conceded without qualification when Lord Elgin, the son-in-law of Lord Durham assumed the office of Governor-General in 1847.

From 1847 to 1860.

The new system of government, however, did not prove an unqualified success between 1847 and 1860 mainly because it did not fit in with the conditions created by the Union Act of 1840. 'It resulted in a majority of the British influence over the French influence of so considerable an extent as to place the French in a perpetual but powerful minority. The result was that both sides desired that the Union should be dissolved.' An attempt was made to govern the British and the French Canadians under a false unitary system but such an attempt was bound to be foiled as the Assembly which was expected to look after the common interest of the whole of Canada really discussed the various topics from the points of view of the two races. If one province received a grant for a certain purpose, the other province was also to be given such a grant, whatever it needed it or not. This led to waste and extravagance. The situation w s fundamentally impossible.

British North America Act (1867).

From 1861 to 1877.

As the Union proved a failure, the statesmen gave their thought to the basic reasons which had led to that *impasse* and their analyis of the situation indicated some scheme of *federation* as the only way out of the difficulty. A federal solution commended itself because of—

1. the geographical contiguity of the provinces,

2. the same stage of political development that the provinces had reached,

3. the rapid growth of their sense of common national interest,

4. danger of annexation from the United States,

5. their similar economic problems and economic difficulties,

6. the scheme of railway expansion which could be possible only under federation,

7. the impossibility of acquiring the vast expanse of land stretching up to the Rockies if the Canadians maintained merely a provincial existence,

8. the termination of the Reciprocity Treaty with U. S. A. According to the treaty, the Canadian goods could be exported through American ports but with the termination of the treaty, the Canadians lost that contact and could send their goods throughout the year only through Halifax, Nova Scotia. But it was only under a system of federation that this port could be at the service of Canada and

9. the absence of any better alternative scheme of government.

The case for federation thus was fairly strong. It was only through federation that the Canadians could develop economically, unite politically, preserve the western prairies to the Empire and to make Canadian nationalism a reality.

The proposal commended itself to both the provinces as the French also thought that their interests required security which only federation could give them. Fortunately, it so happened at that time that the maritime provinces which were discussing a scheme of union among themselves and had sent their delegates to meet in Charlotte town accepted the suggestion of the Canadian government for a wider union,

This larger conference met at Quebec on 10th October, 1864. It sat, in fact, as a Constituent Assembly and embodied its decisions in a series of seventy resolutions. The resolutions were based on the principle of federation. There was to be a central Federal Parliament along with local Parliaments for the Upper Canada, the Lower Canada and the maritime provinces. These resolutions were placed before the Canadian Parliament in 1865, to be rejected or accepted as a whole. They passed without any difficulty in Assembly though some opposition was offered in the Council. The Parliament of Nova Scotia and New Brunswick also ultimately passed the resolutions. A bill was drafted on the basis of Quebec resolutions and was passed by the British Parliament in March 1867. The bill was entitled, the 'British North America Act' and came into operation on 1st July, 1867.

By the Act (which is the Canadian Constitution and which we propose to consider in detail in the following pages), the government of Canada is vested in a Governor-General appointed by the Crown. He is assisted by a Privy Council chosen by him. In fact, he takes no action without the consent of his cabinet which forms the Committee of the Privy Council. He plays the role of a constitutional sovereign. The Legislature consists in the Senate and the House of Commons. The members of the Senate are nominated by the Govenor-General, twenty-four members being assigned to each province. In the House of Commons which continues for five years unless previously dissolved, Quebec sends 65 members and the other provinces a number which is determined according to population by reference to the Province of Quebec.

The Act united federally the provinces of Quebec, Ontario, Nova Scotia and New Brunswick, Later on, Manitoba was admitted as a province in 1870. It was created out of a part of the North West territories purchased by the Dominion from Hudson Bay Company. British Columbia and Prince Edward Island joined the

Dominion in 1871. Alberta and Saskatchewan became provinces in 1905.

With the growth of Constitutional Conventions the British North America Act of 1867 no longer faithfully represents the constitutional practice of the Dominion. This Constitution (British North America Act of 1867) embodies most of the developments that had occurred in the constitutional experience of the two Canadas since the Quebec Act of 1774. Yet in practical experience, constitutional usage soon outstripped the legal right. For the development that had occurred between 1774 and 1867 continued, and did not stand still because in 1867 the development that till then had occurred was summarised in a written fundamental law. The consequence is that the written articles of the constitution of 1867 are, in many matters, no guide to the constitutional practice of the present day. The practical effect of these changes may be summarised in the statement that in 1867, Canada was given the constitutional status of a colony, whereas at the present time, she exercises the constitutional usage of sovereign nationhood.

The Canadian constitution has, therefore, become encrusted with a number of constitutional conventions which have considerably modified and expanded it in many of its most vital relations. The strict letter of the constitution consequently is not a reliable guide to the ordinary practice under it. This has led to an important distinction embodied in the phrase "legal authority and constitutional right". In the strict letter, "the legal authority" remains the same but in practice the "constitutional right" has abrogated that authority. These changes extend in every direction including "issues of peace and war, treaty making and international relations"

British North America Act of 1915.

The British North America Act of 1767 was amended in 1915. By the new Act, the number of senators provided for under Section 21 of the British North America Act of 1867 was increased

from 72 to 96; the divisions of Canada in relation to the constitution of the senate were increased from three to four, the number of members which the Governor General could add upon the direction of His Majesty the King was increased from three or six to four or eight, representing equally the four divisions of Canada; the maximum number of senators was fixed at one hundred and four and each province was entitled to a number of members in the House of Commons not less than the number of senators representing such province.

Q. 2. Trace the development of colonial autonomy during the last fifty years.

Ans. The Queen, in proroguing the Parliament in 1886, voiced the Imperial sentiment which had overtaken the people in the following words:—

"I am led to the conviction that there is on all sides a growing desire to draw closer in every practical way the bonds which unite the various portions of the Empire. I have authorized communications to be entered into with the principal Governments with a view to the fuller consideration of matters of common interest."

Origins of the ideas of Imperial Federation and closer union.

This desire for closer union which was based on practical grounds gave birth to one of the most important institutions in the British Empire—the Imperial Conference which gradually began to take on a political importance though convened in early stages to discuss practical business matters like cable communications, regulations concerning trademarks and patents, and naturalization. Some of the more important influences working in that direction were—

(*a*) the feeling of the people in Great Britain that they were not a match for the new rising Germany and therefore they needed a system, Imperial defence and commercial solidarity;

(*b*) the foundation of Imperial Federation League by W. E. Foster;

(*c*) the publication of Seeley's *The Expansion of England*. It made the English people look upon the colonies not as mere appendages but as the outward growth of the parent state and living parts of one great whole ;

(*d*) the publication of *Problems of Greater Britain* by Charles Dilke.

Imperial Conference of 1867 and Joseph Chamberlain.

Successive Colonial Conferences met in London in 1887, 1894 (at Ottava), 1897, 1902 and 1907. The Secretary of State for Colonies used to preside over these conferences but in 1907 it was decided that such conferences should be held after every four years at which premiers of the colonies should be present and the Prime Minister should conduct the proceedings in the capacity of Chairman. Joseph Chamberlain played a very important part in the orientation of new relationship between Great Britain and the colonies. Presiding over the Colonial Conference of 1897, he for the first time discussed the constitutional problem and stressed the necessity for some better machinery of consultation between the self-governing colonies and the mother country. His aim was to create a great federal council of the Empire to which self-governing colonies might send their delegates. The proposal, however, was not received very enthusiastically. The conference, by means of a resolution, expressed its satisfaction with the existing condition of things.

Free trade and Protection controversy

The Free-traders in England did not look with favour at the idea of closer union with the colonies as any preference by the colonies meant a preference to the colonies which further implied a tax on food. Inspite of his resignation in 1903 and formation of a new organisation—Tariff Reform League—Joseph Chamberlain could not change the British public opinion which remained hostile to any proposal smacking of protection. It took about a quarter of a century to disentangle the idea of Imperial relation from the controversies between "Free Trade" and Protection as it was in only 1923 that an Empire Marketing Board was established with a large annual grant to advertise

and push the sale of Empire produce as some return for the preferences granted by the Dominions to British manufactured goods.

Conferences of 1902 and of 1907.

The Colonial Conference of 1902 recognized the position that so far as may be consistent with the confidential negotiations of treaties with foreign powers, the views of the colonies affected should be obtained in order that they may be in a better position to give adhesion to such treaties. For the first time, in a resolution passed at the Colonial Conference of 1907, the word 'colonial' was given up and the word 'Imperial' was substituted for it. Moreover, Dominion ministries were for the first time referred to as 'His Majesty's. The Defence Conference which met in 1909 was consultative and deliberative in nature. It recommended that the forces of the Crown wherever they were, should be so organised as may be completely combined into one homogeneous Imperial Army if the Dominions wished to assist in the defence of the Empire in a real emergency. As regards naval defence, Canada decided to establish an auxiliary fleet and undertook the maintenance of dockyards at Halifax and Esquimault.

Imperial Conference of 1911.

The Conference of 1911 met under 'the new and dignified appellation of the Imperial Conference.' It resolved that the Dominions should be afforded an opportunity of consultation when framing the instructions to be given to British delegates at future meetings of the Hague Conference, and that conventions affecting the Dominions provisionally assented to at that Conference shall be circulated among the Dominion Governments for their consideration before any such convention is signed and that a similar procedure where time and opportunity and the subject matter permit shall, as far as possible, be used when preparing instructions for the negotiations of other International Agreements affecting the Dominions.

A. P. Newton sums up the position and the constitutional status of the Dominions on the eve of the Grea

War (1914) in the following words :—

Position on the eve o Great War, 1914.

"The Dominions had come to occupy in relation to the mother country a curious and anamolous constitutional position, the significance of which was not generally comprehended in Britain itself and must have been extremely puzzling to foreign states. This peculiar position was the logical outcome of the grant of responsible government. By 1914, a stage had been reached when the Dominions had come to realize that their subordination in external policy was theoretically incompatible with their full freedom in local matters. At the same time, they took a very practical view of their position, and in the interests of Imperial unity were not disposed to exaggerate difficulties which might not become acute for many years."

"Internationally, the Dominions had no independent standing, for, the control of all international matters affecting them was vested in the Imperial Government and Parliament. Yet, the Imperial Government, from motives of expediency and fairness, had frequently consulted the Dominions in the conduct of its policy. In the sphere of economic policy particularly, a great deal of latitude had been given to the Dominions. Nevertheless in practically every negotiation, the Imperial Government continued to exercise a control that was real as well as formal, for though the Dominions were frequently entrusted with the negotiation of commercial agreements, yet, they had first to obtain the necessary powers to negotiate, and no treaty could be signed until its terms had been approved by the Imperial Government. Within these limits, the Dominion ministers had full powers of negotiation subject to check that the results of their negotiations had to be sanctioned by their own parliaments before being submitted to the Imperial Government for satisfaction by the Crown.

"In this way, the national aspirations of the Dominions had been satisfied without entailing any

breach in the diplomatic unity of the Empire. Technically and actually, Dominion negotiators were Imperial representatives, though the subject of their transactions concerned only a fragment of the Empire. In 1912, however, there occurred a significant departure from this procedure. At the Radiotelegraphic Conference held in that year, the agents of the Dominions were distinct from those of Great Britain and acted under the instructions, not of the Imperial Government, but of their own national governments, that is, they voiced the views only of their own dominions. The only power retained by the Imperial Government was the issuing of the necessary authority to the Dominion agents to act as plenipotentiaries. It might also refuse to advise the Crown to ratify any convention which was agreed upon. The constitutional importance of the conference lay in the fact that it formed the first occasion on which the Imperial Government surrendered its prerogative of issuing instructions to the Dominion representatives on the line they were to take. As a result of this surrender, it could no longer interfere to prevent the signing of treaty which is disliked, while the representatives of the Dominions could oppose the views of the parent state, if they thought fit."

Developments since 1914.

Developments since 1914.

The idea of federation had not yet been given up and the idea of equal co-partnership had not yet emerged but things soon began to shape in such a manner as strengthened the idea of equal partnership and weakened that of Imperial federation.

The Imperial Government declared war against Germany on August 4, 1914 and it brought the question of Imperial relationship in the forefront. Legally, there was no obligation on the Dominions to contribute men or money towards the conduct of the war but they could not declare their neutrality as the war had been declared for the Empire and no part of the Empire could escape the responsibility for the decision of the Imperial Government. It was possible

only by seceding from the Empire. Germany would have been as much entitled to bombard Sydney, Montreal, Quebec as London and Manchester. Actual participation in the war was wholly voluntary but neutrality was impossible.

The Imperial Government, however, was scrupulously careful to respect the autonomy of the Dominions. It restrained even from interfering with the discretion of the Dominions in regard to the conduct of the military expeditions and their occupation of enemy territory. Response of the Dominions, however, was spontaneous. Canada raised 458,218 men, inspite of the reluctance of the French Canadians to military service.

The Imperial War Conference of 1917.

The Imperial Government invited the prime ministers of the Dominions and representatives of India to visit England in 1917, and to become members, for the time being, of the War Cabinet. The invitation was accepted by the Dominions and India. Canada was represented by Sir Robert Borden, Prime Minister and Sir George Perley, Minister of the Overseas Military Forces. The membership of the Imperial War Council —which was for the time being the governing body of the Empire—clearly defined the status of the Dominions. Sir Robert Borden, the Canadian Premier, in an address to the Empire Parliamentary Association, was quite clear on this point. He said:

"We meet here (in the Imperial Cabinet) on terms of equality under the presidency of the First Minister of the United Kingdom ; we meet here as equals ; he is *primus inter pares*. Ministers from six nations sit round the council board, all of them responsible to their respective parliaments and to the people of the countries which they represent. Each nation has its voice upon questions of common concern and highest importance as the deliberations proceed ; each preserves unimpaired its perfect autonomy, its self-government, and the responsibility of its ministers to their own electorate. For many years, the thought of

the statesmen and students in every part of the Empire has centred around the question of future constitutional relations ; it may be that now as in the past, the necessity imposed by great events has given the answer." These words were endorsed officially and were reproduced in the Report of the War Council of 1917.

Peace Conference of 1917.

The Peace Conference assembled in Paris on 12th January 1919. In the plenary session, Australia, Canada and South Africa were each represented by two delegates. Similarly, the Dominions in the aggregate were represented in the British Empire delegation of five members. The representatives of the Dominions took an equal part in moulding the deliberations of the conference. Marriot comments thus on the constitutional significance of the Paris Conference :—

"For the first time, the British Empire was diplomatically recognised as a power ; for the first time, the Dominions and India were similarly recognised as powers. The status of each was made clear not only by many documents and memoranda incidental to the conference but still more by the attestations to the treaties of the peace.

Thus, the Treaty of Versailles was signed on behalf of His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India by five ministers as well as by two representatives for the Dominion of Canada, two for the Commonwealth of Australia, two for the Union of South Africa, one for the Dominion of New Zealand and two for India. Terms of treaty were formally approved by Dominion Parliaments. The new status of the dominions was further recognised by the fact that they were among the original members of the League of Nations and each of them has the right of separate representation in the Assembly of the League. They have equal right of voting and can become candidates for one of the four elected seats on the Council. As the decisions of the Council

are unanimous, they can reject any proposal inimical to their best interest.

Imperial Conference of 1926.

The Imperial Conference of 1926 will ever stand out as a landmark in the history of inter-imperial relationship. It put an end to all controversies by adopting the Report of the Committee on Inter-Imperial Relations. It will be best to quote the actual words of the Committee.

Dominion Status.

The Committee are of opinion that nothing would be gained by attempting to lay down a constitution for the British Empire. Its widely scattered parts have very different characteristics, very different histories, and are at very different stages of evolution; while, considered as a whole, it defies classification and bears no real resemblance to any other political organization which now exists or has ever yet been tried. There is, however, one most important element in it which, from strictly constitutional point of view has now, as regards all vital matters, reached its full development—the group of self-governing communities comprised of Great Britain and the Dominions. Their position and mutual relation may be readily defined:—

Definition of Dominion.

They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.

"The British Empire...depends essentially, if not formally, on positive ideals. Free institutions are its life blood. Free co-opration is its instrument.... Equality of status, so far as Britain and the Dominions are concerned, is thus the root principle, governing our inter-imperial relations."

Statute of Westminster.

The Conference, however, recognised that a conference of experts should be held to give legal form to its recommendations. Such a Conference met in 1929 and interpreted the recommendation in the widest spirit. The

Imperial Conference of 1930 approved the views of the Conference of Experts and the Imperial Government secured necessary legislation (the Statute of Westminster which was finally assented to by the king on December 11, 1931) after the Conference resolutions had been approved by the Dominion Parliaments. Commenting on the Statute of Westminster, Keith writes thus :—

" The statute is not a revolutionary measure. It represents the outcome of a long process of development under which the Dominions had achieved almost full autonomy as regards internal affairs, and its importance mainly lies in the fact that it establishes as law what had before rested on convention. The system of responsible government in the colonies rested essentially on a division in exercise of the authority of the Crown. The executive, legislative, and judicial functions of the Crown were exercised in part on the advice and authority of colonial ministries, legislatures and judges, in part on the authority of the Imperial government, the Imperial Parliament and the Judicial Committee of Privy Council. The whole system of the evolution of responsible government lay in the transfer of effective authority from the latter to the former instrumentalities. The control over the passing of the colonial legislation, was gradually relaxed in all matters not of vital imperial concern.. but this conventional limitation of imperial control nevertheless left in being a mass of legal restrictions and it was the work of the conferences from 1926 to 1930 and the Statute of Westminster to abolish them so that the internal sovereignty of the Dominions might stand out unquestioned."

According to Prof. Keith, however, the Statute of Westminster does not concede the right to declare war or neutrality; it, on the other hand, it definitely asserted that the Dominions and the United Kingdom will not deal with such an issue by isolated action. An Act to declare war would amount to the declaration of independence. It will virtually be an act of

secession. Authorities, however, are not unanimous as to whether the statute concedes right of secession.

Q. 3. Discuss the specific powers of the Crown and the Governor-General in the Canadian Government.

Ans. The Imperial Crown is one and indivisible for the whole of the British Empire. It is a symbol of unity. Whatever rights the Crown can exercise in Great Britain, they can equally be exercised in Canada but as is always the case in countries with responsible government, such rights can only be exercised through the ministers responsible to the Parliament. The Crown can constitutionally withhold assent to an Act passed by the Canadian Parliament and in that case, the Act stands annulled. Sections 56 and 57 of the British North America Act run as follows :-

"Where the Governor General assents to a bill in the Queen's name, he shall by the first convenient opportunity send an authentic copy of the act to one of Her Majesty's principal secretaries of state and if the Queen-in-Council within two years after receipt thereof by the Secretary of State thinks fit to disallow the act, such disallowance (with a certificate of the Secretary of State of the day on which the act was received by him) being signified by the Governor-General, by speech or message to each of the houses of parliament or by proclamation, shall annul the act from and after the day of such signification."

(*Section 56*).

"A bill reserved for the signification of the Queen's pleasure shall not have any force unless and until, within two years from the day on which it was presented to the Governor-General for the Queen's assent, the Governor-General signifies by speech or message to each of the houses of parliament or by proclamation, that it has received the assent of the Queen-in-Council."

(*Section 57*).

But this power of withholding assent is of little practical significance now as it is never likely to be exercised. "It is true that consultation and amicable workings between Ottawa and London have made this veto of little actual importance in Canadian history, and that since equality of status has been claimed for and conceded to Canada, the right has been practically abandoned by the Imperial government, yet its existence even as a theory may be noted in this connection. All laws, whether federal or provincial, are enacted by the King-in-Parliament."

Governor-General.

The powers and the functions of the Governor-General.

The Governor-General is the representative of the Crown in the Dominion. He is appointed by the Crown with the consultation and the approval of the Canadian Government. Formerly, the appointment was made on the advice of the British Government but the Imperial Conference of 1930 definitely laid down that the appointment was to be made in consultation with the Dominion Government

Appointment and removal.

The Dominion Government might communicate directly with the King in this matter. It is not essential that the correspondence in this connection should be conducted through the British Government. The selection of Lord Bessborough as the Governor-General of Canada on February 9, 1931, was made on the sole responsibility of the Canadian Government. This implies that the power of removal also rests with the Canadian Government. The King merely formally approves the appointment and removal. The British Government can neither intervene nor need be consulted in such matters.

His formal and real functions.

The British North America Act requires the Governor-General to act with the advice of the Privy Council for Canada. This provision is not clear as the Privy Council is an honorary body. The Act makes no mention of his relation to the Cabinet and legislature. But according to the conventions of the constitution, he acts on the advice of his ministers. He is never present in the meetings of the Cabinet

though he is kept informed of the current issues. He receives all official communications through the Cabinet. All orders in council are submitted to him personally. He can dismiss the ministry if there is no confidence in it but then he must create a new ministry which is willing to take the responsibility for his action. Similarly, the Governor General has the power to refuse to dissolve the House though it is difficult to contemplate that he would readily do so.

He has ceased to be an agent of the British Government.

The Imperial Conference of 1926 took away from him the ambassadorial functions by emphasizing his position as the counterpart of the King. He is the representative of the King and not of the British Government. He may be a local man though the selection of a local man is not advisable as he might be accused of partisanship. The agency functions taken away from the Governor-General have been transferred to the High Commissibner of whom the first was appointed in Canada in 1928. His political duties require him to serve as a connecting link between the two countries in regard to British policy and foreign affairs and his duties in the economic sphere require him to control the agencies employed to keep the Board of Trade and British Industry informed of Canadian openings.

The authority of the Governor-General is confined to those matters only about which he receives instructions or which are laid down by the statute. He cannot exercise those powers of the Crown which are not legally delegated to him. He has the right to summon, prorogue and dissolve parliament under the constitution Acts but his action must be governed by ministerial advice. Constitutionally, he can refuse assent to a bill or reserve it for the signification of the King's pleasure but in practice, the Crown never issues instructions to the Governor-General as to reservation of bills. If he is to reserve a bill, he must do so on the advise of the ministry or on ministerial grounds. The delegates of the Dominions to the League Assembly are accredited by the Governor-General in Council and he is empowered to receive foreign envoys

appointed to the Dominion. There is, however, no delegation of the power to accredit envoys to foreign States. The Governor-General is responsible for the appointment and removal of the Lieutenant Governors. He appoints the Speaker of the Senate and may remove him and appoint another instead. He is also the Commander-in-Chief, in law, of the various forces of Canada.

Borden on his portion.

His position may be summed up in the words of R L. Borden: "The administration of public affairs is conducted by ministers responsible to parliament and the Governor General acts by their advice. By convention, his appointment is subject to the approval of the government of the day and his functions as an Imperial officer are formal rather than real : his office as representative of the Crown exhibits the constitutional unity of the empire.....He has become in fact a *nominated president.*

Q. 4. Describe the nature of the executive and its relation to the Legislature and the Governor-General in Canada.

Formation of cabinet.

Ans. The executive government of Canada is carried on by a cabinet of ministers selected from the majority party in the House of Commons. The Governor-General sends for the recognised leader of the political party in power and asks him to select members to work with him in the cabinet. He becomes the prime minister and selects his colleagues from the leading members of his party. His choice, however, is not unfettered. A convention has grown up which requires him to consider the interests of Quebec in general, (particularly of the English speaking population), of Roman Catholics in provinces other than Quebec and to give a balanced representation to all the provinces.

Cabinet responsibility.

Members of the House of Commons, on accepting ministrial responsibility, were till very recently required to seek re-election. Ministers in charge of departments are paid salaries whereas, those without any

portfolio, get no remuneration. After taking oath of office, they along with the Governor-General act as the executive government of Canada. Entire responsibility for all government measures, for the finance bill and for all orders in council rest with them. The Cabinet acts as a unit and takes united responsibility for all arrangements made for the administration of Canada. There is strict solidarity among its members. The ministers are responsible to one another and their co-operation is maintained by the prime minister. They have to resign their offices collectively if any vote of censure is passed against them showing lack of confidence in their administration. Cabinet is responsible as a body for all its acts to the House of Commons. A member who cannot support his colleagues in any matter decided at a meeting has to resign as soon as the matter is before the Parliament. "He has the privileges of explaining his resignation in parliament, and his first statement must be made there so that the premier can reply. The Governor General's permission is necessary for exercising the privilege, as proceedings in the Cabinet cannot be made public without his leave first being obtained ; but such permission is never refused." Cabinet and the legislature.

The Cabinet can appeal to the electorate by asking the Governor General to dissolve the House of Commons and to order a general election on a particular time. The fate of the ministry in that case will depend upon the verdict returned by the electorate. If the party they represent is returned in majority, they retain their seats on the Cabinet ; otherwise they have to resign and a new ministry is formed. The Cabinet can hold office only so long as it retains the confidence of the Parliament.

A minister is responsible for the efficient working of his department. It is he who is required to attend to the drafting of bills pertaining to his department and is to pilot the bill through the Parliament. He must frame estimates of departmental expenditure and should be in a position to defend them in the Parlia. Duties of a minister.

ment. He receives deputation on matters pertaining to his department and is expected to be always prepared to defend his own as well as his colleagues' actions both inside and outside the legislature.

The Governor-General and the Cabinet.

Cabinet and the Governor-General.

The power of the Governor General, whether resting on prerogative or derived from statute, is always exercised on the advice of the ministers though he may in exceptional cases, refuse to dissolve the House of Commons when so advised by the Prime Minister. He does not attend Cabinet meetings but all communications which can be called official come to him through the Cabinet and all orders in Council are submitted to him personally. He is entitled to receive the full confidence of his ministers when they ask him to act in any official capacity. If confidence does not exist, he can doubtless dismiss them; but he would do so with the full knowledge that he would be compelled to find successors who would be prepared to take constitutional responsibility for his action. As a matter of fact, no instance of dismissal exists in the history of federal government in Canada. Doubtless also, he has the constitutional power to refuse a dissolution, but the sense of political responsibility has become so strong with Canada's new status in the empire that to do so would be an act of extreme danger. The tendency is to assimilate the constitutionl convention of Great Britain and to follow in this matter the completeness of political development.

Government defeats.

The rule that the Cabinet must resign if it suffers a defeat at any time of importance is not followed with great rigidity. The Government may overlook the defeat.

Q. 5. Explain the constitution and the system of representation in the House of Commons.

Composition.

Ans. According to the British North America Act (1867), the House of Commons was to consist of one hundred and eighty-one members of whom eighty-

two were to be elected for Ontario, sixty-five for Quebec, nineteen for Nova Scotia and fifteen for New Brunswick. The Act, however, provides that at the end of each decennial census, the representation of the provinces should be readjusted in such a manner as the Canadian Parliament decides, subject to the following rules :—

1. Quebec must have sixty-five members.

2. Each of the other provinces must be assigned such a number of members as will bear the same proportion to the number of its population (ascertained at each Census) as the number sixty-five bears to the number of the population of Quebec.

3. In the computation of the number of members for a province, a fractional part not exceeding one-half of the whole number required for entitling the province to a member should be disregarded : but a fractional part exceeding one-half of that number should be equivalent to the whole number.

4. On any such readjustment, the number of members for a province should not be reduced unless the proportion which the number of the population of the province bore to the number of the aggregate population of Canada at the time when last preceding readjustment of the number of members for the province was ascertained is diminished by one-twentieth part or upwards.

5. Such readjustment should not take effect until the termination of the then existing parliament.

The number of the members of the House of Commons may thus undergo a change from time to time provided the proportionate representation of the provinces as described above is not disturbed. At present, the House of Commons has :—

Ontario	...	82	members.
Quebec	...	65	„
Nova Scotia	...	14	„
New Brunswick	...	11	„

Prince Edward Island	...	4	members
Manitoba ...	...	17	„
British Columbia	...	14	„
Saskatchevan ...	...	21	„
Alberta ...	...	16	„
Yukon territory	...	1	„

Each province, under an Imperial Act of 1915, must have as a minimum the same number of members as it has senators.

Election of Speaker.

The House of Commons on its first meeting after a general election elects one of its members to be Speaker who presides over the sittings of the House. If the Speaker is absent for a period of forty-eight consecutive hours, the house is empowered to elect another member to act as Speaker. The Speaker can vote only when the house is equally divided. The election of the Speaker must be approved by the Crown. According to the *convention* of the constitution, if the Speaker in one parliament is of British origin, in the next, he will be a French-Canadian. Another custom is 'the Speaker's demand for the ancient and undoubted rights and privileges of the Commons and the assertion of the independence of the House by reading a dummy bill which has no reference to the cause of summons in the royal proclamation convening parliament to the business to which parliament's attention is drawn in the speech from the throne."

The Speaker and the Deputy Speaker cannot both be of the same race. The leader of the opposition is paid a salary and his position is recognised in law.

Quorum.

Quorum.

Twenty members of the house are necessary to constitute a meeting of the house. This number includes the Speaker. Questions are decided by a majority of votes other than that of the Speaker and

when the votes are equal, the Speaker can vote. The members can address the House in English or in French.

Duration, money bills, sessions and keeping of records.

The House of Commons continues for five years from the day of the return of the writs for choosing the House (subject to be dissolved sooner by the Governor-General). There must be a session of the Parliament of Canada once at least in every year so that twelve months shall not intervene between the last sitting of the Parliament in one session and its first sitting in the session. The records and the journals of the Parliament must be kept in English and in French and either can be used in any court of law. Bills for appropriating any part of the public revenue, that is, the *money bills* must originate in the House of Commons.

Franchise and Constituencies.

Franchise and constituencies.

The electoral districts and the franchise are determined by the federal parliament. The provincial voters' lists are now used under dominion legislation. All British subjects by birth or naturalization, male or female, of full age are qualified to vote provided they have resided in Canada for twelve months and in the registration district for two months immediately before the issue of the writ of election.

The following are disqualified :—

1. Judges appointed by the Governor-in-Council.
2. The chief electoral officer of the district.
3. Criminal prisoners.
4. Persons disqualified in provincial election on racial grounds. These include North American Indians in New Brunswick, British Columbia, Saskatchewan and Alberta ; Chinese in Saskatchewan ; British Indians, Chinese and Japanese in British Columbia.

5. Persons disfranchised for corrupt and illegal practices.
6. Inmates of asylums and public charitable institutions.
7. Returning officers except in case of an equality of votes.
8. Election clerks.
9. People of unsound mind.

Those who served in the Great War with the Canadian forces are qualified to vote despite their disqualification in provinces on racial grounds.

There are single-member constituencies and the redistribution is carried out by a Commission representing both the parties. There is a larger unit for urban than for rural districts.

Q. 6. Explain the constitution, the powers, the procedure and the qualifications for membership of the Senate.

Constitution.

Ans. The Canadian Senate consists of 96 members. Originally, according to the British North America Act (1867), it consisted of three divisions, *viz.*

1. Ontario.
2. Quebec.
3. The Maritime Provinces (Nova Scotia and New Brunswick).

Each division was represented by 24 members. Nova Scotia and New Brunswick each had 12 members. The total number of Senators was 72. But as at present constituted, the Senate consists of 96 members—24 members from each of the four groups of provinces, *viz.*

1. Ontario
2. Quebec
3. The Maritime Provinces—Nova Scotia 10, New Brunswick 10, Prince Edward Island 4 = 24

4. The Western Provinces.

Qualifications of Senators :--

The qualifications of Senators are as follows :—

Qualifications of Senators

1. A Senator must be at least 30 years of age, male or female.
2. He must be a natural born or naturalized subject of the Crown.
3. He must possess real and personal property worth four thousand dollars over and above his debts and liabilities.
4. He must possess freehold valued at four thousand dollars in the province for which he is appointed.
5. He must be resident in the province for which he is appointed.
6. In the case of Quebec, he shall have his real property qualification in the electoral division for which he is appointed or must be resident in that division.

Addition of Senators in cases of deadlock.

Senators are appointed by the Governor-General on the advice of the federal Cabinet. Senate is thus a nominated House.

According to the British North American Act (1867), the Crown could direct, on the recommendation of the Governor-General, that three or six members be added to the Senate, representing equally the three divisions of Canada. But according to the present provision, in case of a deadlock between the Senate and the House of Commons, the Crown can direct on the advice of the Governor-General that four or eight members be added to the Senate. As the Governor-General must recommend if he is desired to do so by the federal Cabinet, this enactment makes the Cabinet directly responsible. There is only one instance of a Canadian Cabinet asking for its application. The Mackenzie Ministry, on taking office in 1873 on the defeat of Macdonald's first ministry,

asked that the crown should be advised to add six members. The Governor-General forwarded the request to the Colonial Secretary, who firmly refused it, stating that the power was only for use in serious deadlock which actually held up the administration, and when it could be shown that it provided adequate remedy.' The provision, however, is there and the power will undoubtedly by exercised by the Crown on recommendation of the Governor-General.

Tenure, resignation and disqualifications.

A Senator holds his place in the Senate for life though he can resign his place. The place of a Senator becomes vacant in any of the following cases :—

1. If for two consecutive sessions of the Parliament, he fails to attend the Senate.

2. If he takes an oath or makes a declaration of allegiance to a foreign power or does an act whereby he becomes a subject or citizen of a foreign power.

3. If he becomes a bankrupt or insolvent or a public defaulter.

4. If he is attained of treason or convicted of felony or of any infamous crime.

5. If he ceases to be qualified in respect of property or of residence.' A Senator, however, is not deemed to have ceased to be qualified in respect of residence by reason only of his residing at the seat of the Government of Canada while holding an office under that government requiring his presence there.

6. If he resigns his place.

Quorum.

Quorum, appointment of Speaker and procedure.

The presence of fifteen members including the Speaker is necessary to constitute a meeting of the Senate. The Governor-General appoints a Senator to be the Speaker of the House and may remove him and appoint another in his stead.

Voting.

Questions arising in the Senate are decided by a majority of votes. The Speaker has in all cases a

vote. When the votes are equal, the decision is deemed to be in the negative. If any question arises respecting the qualification of a Senator or a vacancy in the senate, it is heard and determined by the Senate.

Money bills.

Money bills.

Money bills can not originate in the Senate as it is laid down that any appropriation bill or taxing bill must originate in the House of Commons. So, theoretically, it can reject a finance bill. Not only this, it has at times tried to *amend* such bills. 'It rejected in 1922 and 1924 the proposal to build branches of the Canadian National Railway, which is doubtless correctly deemed a mere bait to the electorate, and in 1925, it drastically amended the bill making appropriations to relieve the sufferers from the disaster affecting the Home Bank, and the lower house had perforce to acquiesce. Many other measures both financial and general have since been examined critically though not so drastically by the Senate ....." ['*Constitutional Law of British Dominion*" *by Keith, p. 205.*]

The Constitution Act, however, is silent over the powers of the Senate.

Q. 7. "The Canadian Senate has never possessed either the glamour of an aristocratic and hereditary chamber or the utility of a chamber representing the federal as opposed to the national idea." (*Marriot*) Examine the statement and briefly sketch the constitution of the Canadian Senate. [*Panjab University B. A. Political Science, Paper B., 1956.*]

Composition of Senate—a nominated house.

Ans. The Canadian Senate consists of ninety-six members nominated for life by the Governor-General on the advice of his responsible ministers. The Senators are apportioned to the several provinces in accordance with the scale prescribed by the statute. Quebec and Ontario have twenty-four each; Prince

Edward Island has four; Manitoba, Alberta, Saskatchewan and British Columbia have six each whereas Nova Scotia and New Brunswick have ten each. Originally, the number of Senators was seventy-two only but subsequently the number was increased as new provinces were created.

A Senator, as we have already seen in the preceding answer, must be thirty years of age, must be a British subject, must be a resident of the province from which he seeks appointment and should possess property of the net value of not less than four thousand dollars within the province. Powers of the Senate were not defined by the British North America Act, excepting the negative provision that money bills must originate in the House of Commons. No provision was made for overcoming a deadlock between the Senate and the House of Commons. The Governor-General can on the advice of the ministry can add four or eight members to the Senate. divided equally among the four divisions, *viz.*, Quebec, Ontario, Maritime Provinces and Western Provinces.

The main cause of the weakness of the Canadian Senate is that it tries to reconcile two incompatible ideas of a centrally nominated House and provincial representation and fails to achieve either of the objective

The composition and the method of appointment to the Senate are open to severe criticism. The Senate was intended to be the counterpart in Canada of the House of Lords in Britain, adopting the principle of nomination for life in place of hereditary peerages and at the same time, was supposed to represent the federal idea This attempt to combine the two ideas of nomination and federal representation has made it unsuitable for either purpose. It is impossible to maintain with consistency the system of nomination by the Federal Cabinet with the provincial interests. A nominated house in a federation cannot be expected to be the guardian of provincial interests.

The federal idea implies equality of status among the states forming the federation, each choosing its own Senators. But all that the Canada Acts provide is that the three original provinces (Quebec, Ontario and Maritime Provinces) shall not have their

membership of twenty-four each increased or decreased. But, as we have seen, the original Maritime Provinces of Nova Scotia, New Brunswick and Prince Edward Island have been assigned ten, ten and four members respectively. Similarly, the great Western Provinces have to be contented with six apiece. These cross-purposes have naturally made the Canadian Senate one of the most impotent second chambers of the world. Its impotence in maintaining and championing the federal principle is clear from the fact that the Prime Minister when making selections of the Senators is obliged to consider provincial interests. This attempt at the impossible —reconciling federal idea with centrally nominated senate—has seriously affected the prestige of the Senate which has neither the power which attaches to an elective Second Chamber (as is the case with the French Senate) nor the usefulness of an Upper House which is based on the federal principle of equality of status (as is the case with the Senate of the United States).

Keith on the Canadian Senate

"The Senate," writes Keith in hisl atest publication on the constitutional law of the Dominions, "obviously from the outset was not based on true federal principles. for, apart from the lack of equality of representation of the provinces, the mode of appointment secured that the members selected would be men not likely to champion provincial rights, and the Senate has never shown any special activity in this regard. It has failed also to carry out the idea that it might be the home of elder statesmen whose calm prudence would be valuable aid to the lower house. As it has none of the authority in treaty matters and appointments of the United States Senate, it has attracted none of the younger politicians. Membership is the reward of party services, normally in old age ; it may be given to generous benefactors of party funds, or to businessmen whose presence there is expected by some great corporation to further their interest in

legislation. Appointments are purely party; Sir J. Macdonald once deviated from this rule, Sir W. Laurier, Sir R. Borden, and Mr. Bennet never. The purely partisan character of the Senate has resulted in the rule that it accepts the legislation of the party without serious dissent."

Marriot on Canadian Senate

Marriot gives expression to the same ideas in the following words :—

" It will be observed that the Canadian Senate attempts to combine several principles which, if not absolutely contradictory, are clearly distinct. Consequently it has never possessed either the glamour of an aristocratic and hereditary chamber, or the strength of an elected assembly, or the utility of a senate representing the federal as opposed to the national idea. Devised with the notion of giving some sort of representation to provincial interests, it has, from the first, been manipulated by party leaders to subserve the interests of the central Executive."

It is difficult to amend the constitution in the absence of agreed formula.

Inspite of the unsatisfactory constitution of the Senate, it has been found difficult to amend the law. Various suggestions have been made to improve its utility and influence as for example nomination by the provincial governments; election by the provincial legislatures, nomination or election by various interests and learned institutions but all these schemes have fallen through on account of absence of agreement.

Q 8. Describe the organization of Courts in Canada.

Canada does not possess federal courts.

Ans. Canada has no system of federal Courts such as is possessed by the United States. British North America Act of 1867, however, makes provision for the creation of such a system by the Dominion Parliament. Section 101 of the Act lays down that the Parliament of Canada may from time to time provide for the constitution, maintenance and organization of a General Court of Appeal for Canada, and for the establishment of any additional Courts for the

better administration of the laws of Canada. In fact, the framers of the Constitution Act of 1867 seemed to have believed that the care taken to define the respective powers of the several legislative bodies in the Dominion would prevent any conflict of authority arising between the central and local governments and therefore they made no provision for the creation of federal judicature. But as Dicey points out, the futility of a hope grounded on a misconception of the nature of federalism is proved by the existence of thick volumes of reports filled with cases on the constitutionality of legislative enactments, and by a long list of decisions as to the respective powers possessed by the Dominion and by the Provincial Parliaments given by the Judicial Committee of the Privy Council—the true Supreme Court of the Dominion.

Canadian Supreme Court does not interpret constitution.

The Supreme Court of Canada does not possess any power of interpreting the constitution, quite unlike United States which has a Supreme Court authorised to interpret the constitution. Absence of such a power can also partly be accounted for by the fact that the residuary powers rest with the federal government and the federal authority has the right to vote provincial legislation. Constitutional disputes, as previously stated, are settled by the Judicial Committee of the Privy Council. The Supreme Court possesses an appellate Jurisdiction, Criminal and Civil, throughout Canada and consists of a Chief Justice and five puisne judges. There is no Court of criminal appeal similar to that in England, but questions of law arising in a criminal trial may be reserved and brought before the provincial Court of appeal, and if that Court is not unanimous, the person convicted may appeal to the Supreme Court of Canada. An appeal, however, lies to the Supreme Court from all final judgments of the highest Courts. This appellate jurisdiction varies in connection with different provinces and is governed by federal legislation.

The Court of Exchequer and Admiralty.

The Court of Exchequer and Admiralty deals with patents, trademarks etc. and has an original jurisdiction in revenue cases concurrent with the provincial courts. It also considers cases against the Crown and petitions of right in the federal area.

Provincial and Federal legislation in relation to Supreme Court.

The federal parliament has the power to allow appeals to the Supreme Court from provincial judgments and courts even though such judgments are not final and such courts are not courts of final resort. Provincial legislation cannot interfere with the jurisdiction granted by federal legislation to the Supreme Court. No province can prevent appeals in all cases from the provincial Courts, if the federal parliament has not itself limited the right of appeal. Nor can a provincial legislature grant powers of appeal where such are limited by federal authority. The Supreme Court has also an appellate jurisdiction in cases of controverted elections, and from its decisions in such cases, the Privy Council will not receive appeals. The Governor-General in Council has the power to obtain opinions by direct answers from the Supreme Court on any question of law or fact. The answers are not binding on the Governor-General in Council, nor on Canadian judges in any specific cases, but they are treated as final judgments for purposes of reference to the Privy Council.—(*Kennedy*).

Provincial Courts.

Both civil and criminal courts having provincial jurisdiction are constituted and organised by the provincial governments. The procedure in civil matters is regulated by the provincial legislatures whereas criminal law and criminal procedure are controlled exclusively by the federal government. New duties may be imposed and new powers may be given to the provincial Courts in sphere not exclusively assigned to the provinces, by the dominion government. Section 96 of the British North America Act (1867) which is the constitution of Canada provides for the appointment of the Judges of the Superior, District and County Courts in each province ; except

Appointment of Judges.

those of the Courts of Probate in Nova Scotia and New Brunswick by the Governor-General. The selection of the judges of the Courts of Quebec is always to be from the Bar of that province. The salaries, allowances and pensions of judges of the Superior, District and County Courts (except the Courts of Probate in the Maritime Provinces) and of the Admiralty Courts are fixed and provided by the Parliament of Canada. All matters of litigation under federal and provincial law are dealt with by the provincial Courts. They are entitled to hear election petitions and have jurisdiction in cases of controverted elections. The Provincial Executives seek their opinion on the constitutionality of Acts. The Supreme Courts of Canada does not exercise Appellate Jurisdiction over these opinions.

Their Jurisdiction.

Law regulates the tenure of judicial office. The judges of the Superior Court hold office during good behaviour and are removable by the Governor-General on address of the Senate and House of Commons. Their salaries are fixed and provided by the Canadian Parliament. They are placed on the civil list and do not depend upon annual votes. Canadian laws provide for the same terms of tenure in respect of judges of the Supreme Court. County Court judges too hold office during good behaviour and residence in their respective jurisdictions and are removable by the Governor-General in certain cases. 'The Governor-General in Council can, however, remove them for misdemeanours, or failure in the performance of duty owing to age, ill health, or any other cause. The circumstances leading up to a possible removal must be fully enquired into after due notice given to the judge concerned, who must be afforded an opportunity to be heard, to cross-examine witnesses and to bring in evidence on his own behalf. If he is removed, the Order in-Council covering such removal the correspondence, reports, and evidence must be laid before Parliament within the first fifteen days of the next session.'

Tenure of Judicial office.

An appeal lies from the highest court in Canada to the Judicial Committee of the Privy Council. This according to some writers, derogates from the sovereignty of Canada.

Q. 9. Describe the distribution of legislative power in Canada between the federation and the provinces.

Ans. The British North America Act (1867) contemplates a fourfold scheme of division :

1. Subjects assigned exclusively to the dominion. They are dealt with in Section 91 of the Act.
2. Subjects assigned exclusively to the provinces. Section 92 of the Act deals with them.
3. Agriculture and immigration over which there is concurrent jurisdiction is dealt with by Section 95.
4. Education, nominally under provincial control, is taken up by Section 93.

Subjects exclusively federal

(A) The exclusive legislative authority of the Dominion Parliament extends to all matters coming within the following classes of subjects :—

1. The public debt and property.
2. The regulation of trade and commerce.
3. The raising of money by any mode or system of taxation.
4. The borrowing of money on the public credit.
5. Postal service.
6. The census and statistics.
7. Militia, military and naval service and defence.

8. The fixing of and providing for the salaries and allowances of civil and other officers of the Government of Canada.
9. Beacons, buoys, light houses.
10. Navigation and shipping.
11. Quarantine and the establishment and maintenance of marine hospitals.
12. Sea coast and inland fisheries.
13. Ferries.
14. Currency and Exchange.
15. Banking, incorporation of banks and the issue of paper money.
16. Savings banks.
17. Weights and measures.
18. Bills of exchange and promissory notes.
19. Interest.
20. Legal tender.
21. Bankruptcy and insolvency.
22. Patents of inventions and discoveries.
23. Copyrights.
24. Indians and the land reserved for Indians.
25. Naturalization and aliens.
26. Marriage and divorce.
27. Criminal law, except the Constitution of Courts of Criminal Jurisdiction but including the procedure in criminal matters.
28. Establishment, maintenance and management of penitentiaries.
29. Such classes of subjects as are expressly excepted in the enumertion of the classes of subjects by the Act assigned exclusively to the legislatures of the provinces.

Residuary powers.

Thus the dominion is given a general power to legislate, in addition to the subjects enumerated above, for those subjects which are outside the exclusive powers granted to the provinces.

To leave no doubt about the powers of the federal legislature, it is expressly mentioned that the dominion has exclusive power over twenty-nine subjects (as enumerated above) 'notwithstanding anything in the Act.'

Subjects exclusively Provincial

(B) The Provincial Councils are given exclusive power in relation to matters coming within the following classes of subjects :—

1. The amendment from time to time, notwithstanding anything in the Act, of the Constitution of the province except as regards the office of the Lieutenant-Governor.
2. Direct taxation within the province in order to the raising of revenue for provincial purposes.
3. The borrowing of money on the sole credit of the province.
4. The establishment and tenure of provincial offices and the appointment and payment of provincial officers.
5. The management and sale of the public lands belonging to the province and of the wood and timber thereon.
6. The establishment, maintenance and management of public and reformatory prisons in and for the province.
7. The establishment, maintenance and management of hospitals, asylums, and charitable institutions in and for the province, other than marine hospitals.
8. Municipal institutions in the province.

9. Shop, saloon, tavern, and other licenses in order to the raising of revenue for provincial, local or municipal purposes.

10. Local works and undertakings other than such as are of the following classes :—

(*a*) Lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other of the provinces, or extending beyond the limits of the province.

(*b*) Lines of steam ships between the province and any British or foreign country.

(*c*) Such works as, although wholly situated within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces.

11. The incorporation of Companies with provincial objects.

12. The solemnization of marriage in the province.

13. Property and civil rights in the province.

14. The administration of justice in the province, including the constitution, maintenance and organization of provincial Courts, both of civil and of criminal jurisdiction, and including procedure in civil matters in those courts.

15. The imposition of punishment by fine, penalty or imprisonment for enforcing any law of the province made in relation to any matter coming within any of the classes of subjects enumerated above.

16. Generally matters of a merely local or private nature in the province.

(C) Agriculture and Immigration and civil laws.

The provincial legislatures can make laws in relation to agriculture in the province and to immigration into the province but subject to the paramount power of the federation. Any law relating to agriculture and immigration of the provincial legislature has effect as long as it does not clash with the federal legislature Uniformity of civil law is established by the Federation in Ontario, Nova Scotia and New Brunswick with the assent of the legislatures. Any Act of the Parliament of Canada making provision for such uniformity cannot have effect in any province unless and until it is adopted and enacted as law by the provincial legislature.

(D) Education.

The provincial legislatures can exclusivetly make laws in relation to education subject to certain provisions For instance, the provincial legislation must not prejudicially affect any right or privilege with respect to denominational schools which any class of persons had by law at the time of Union. Similarly if in any province a system of separate schools existed by law at the Union or is thereafter established by the legislature of the province, an appeal lies to the Governor-General in Council from any Act of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority. If any legislation thought necessary on this appeal by the Governor-General in Council were not executed, power was given to the Federal Parliament to remedy the defect.

The framers of the constitution thought that the division of power was so clear that no occasion would arise for any dispute over the relative jurisdiction of federal and provincial authorities. This, in fact, accounts for the fact that they made no provision for the establishment of federal judicature. But subsequent history has proved that the distribution of powers

was quite inadequate inspite of the optimism of Sir John Macdonald. More than one dispute has risen with regard to the interpretation of the constitution and these have had to be settled by the Judicial Committee of the Privy Council sitting in London. The Privy Council, in its interpretation of the Dominion Constitution, has scrupulously adhered to terms of the Act and has rejected any implication derived from the interpretation of the constitution of the United States by the Federal Court.

Federal and Provincial residuary powers.

Although, general power has been given to the federal legislature to make laws for the peace, order and good government of Canada in relation to all matters not coming within the classes of subjects assigned exclusively to the legislatures of the provinces, yet that should not lead us to the conclusion that the grant of power over the undefined subjects is complete. The provinces have also the right to legislate generally onall undefined subjects of a local or provincial nature. "The federal residuary power is thus curtailed by the provincial residuary power and power can *de jure* be exercised only when the interests of Canada as a whole clearly are involved. In other words, when the federal legislature legislates on any subject outside the twenty-nine enumerated subjects of Section 91, it can claim no power from that section to legislate on any subject which is in essence or scope, local or provincial. Everything local is given exclusively to a province, whether specifically or generally, and the dominion cannot *a priori* assume that its residuary power allows it to interpret things substantially local in dominion terms. The federal legislative power can only be called into action outside the enumerated subjects over which it has exclusive authority, when the particular matter on which it is exercised lies outside the specific and general powers granted to a province. Of course, a matter may originate locally, like a Hydro-Electric Scheme, continue for a time of local importance, and gradually assume national interest and import. When

such a condition is constitutionally established, the dominion can legislate and can override provincial legislation, if there is a clash. The dominion, too, may, under its residuary power, incidently interfere with a purely local matter. For example, the power to make laws for the peace, order, and good government of Canada must almost inevitably affect provincial control over 'property and civil rights'. But in actual substantial legislation, the dominion must establish the validity of the formula 'something done for the dominion in the interests of the dominion.'

[*Kennedy* "Constitution of Canada."]

Q. 10. Compare the federations of Canada, Australia and United States of America. "Inspite of the propinquity of Canada to the United States, and the vast distance which separates Australia therefrom, the federation of Australia resembles that of United States, in every particular, far more closely than that of Canada does." Comment.

Ans. We may consider the federal constitution of Canada, Australia and United States of America under the following heads :—

1. Location of Residuary Powers.

Location of residuary powers.

The Dominion of Canada possesses all the residuary powers which are not under the constitution conferred exclusively upon the provinces whereas the powers conferred by the constitution on the United States are strictly definite or defined and the residuary powers—indefinite and undefined—are left to the constituent states. It is not difficult to find out why the framers of Canadian constitution decided to leave the residuary powers with the Dominion Government. The great American Civil War was raging during the negotiations that preceded the establishment of the Dominion, and Sir John Macdonald and the other Canadian statesmen were naturally influenced by their knowledge that their conflict arose from the

ambiguity surrounding the powers of the constituent states. • In order to avoid a similiar calamity, in the case of Canada, it was expressly enacted that all residuary powers (that is, powers not explicitly mentioned in the constitution) should belong to the Dominion Government. Section 91 of the British North America Act assigns such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by the Act assigned to the provinces, to the central government.

The provinces in Canada have exclusive powers in respect to the topics enumerated in section 92 of the Act. They are assigned the administration of justice, including the constitution of Courts, civil and criminal, and civil procedure, the imposition of fine, penalty or imprisonment for violations of provincial enactments, the maintenance of public and reformatory prisons, property and civil rights, the solemnisation of marriage and the incorporation of companies for provincial objects, local works and undertakings save as specially given to the Dominion; the necessary means of maintenance of their organisation, control of provincial officers, taxation (but only direct), borrowing and management of lands; shop, saloon, tavern, auctioneer, and other licenses may be used to raise revenue for provincial, local or municipal purposes, municipal institutions, hospitals, asylums and like bodies, and generally all matters of a local or private nature in the province.

The Commonwealth of Australia follows the U. S. A. model in this respect. The Commonwealth possesses only those powers which are conferred upon it by the constitution, whilst all the residuary powers not conferred upon the Commonwealth belong to the States. The plan of the Australian Constitution thus differs essentially from the Canadian Constitution. Section 107 of the Constitution Act provides for the continuance of the existing powers of the constituent states unless any power is exclusively vested in the Parliament of the Commonwealth or withdrawn from

the Parliaments of the States. This is, however, subject to the rule that if any law of a state is inconsistent with a law of the Commonwealth, the latter prevails, and the former to the extent of the inconsistency, is invalid.

2. Amendment of the Constitution.

Amendment of the Constitution

The Constitution of Canada, except as provided by the statute itself, can be changed only by an Act of the British Parliament. The Act does not provide for any special machinery within the Dominion for effecting changes in the system of government as laid down by it. Therefore no part of it can be changed by the Parliament of the Dominion or by any other body within the Dominion. It is, however, certain that the Imperial Parliament will introduce any change in the constitution only when it is desired by a majority of the people and of the provinces of the Dominion.

The Commonwealth of Australia is less subject to the control of the British Parliament than the Dominion of Canada as the people of Australia can amend the constitution. Section 128 of the Commonwealth of Australia Constitution Act lays down the following procedure for the amendment of the Constitution :—

"The proposed law for the amendment of the Constitution must be passed by an absolute majority of each House of the Parliament, and not less than two nor more than six months after its passage through both Houses the proposed law shall be submitted in each state to the electors qualified to vote for the election of members of the House of Representatives."

But if any House passes any such proposed law by an absolute majority, and the other House rejects or fails to pass it or passes it with any amendment to which the first mentioned House does not agree, and if after an interval of three months, the first mentioned House in the same or in the next session again passes

the proposed law by an absolute majority with or without any amendment which has been made or agreed to by the other House, and such other House rejects it or passes it with an amendment to which the first mentioned House does not agree, the Governor-General may submit the proposed law to the electors in each State qualified to vote for the election of the House of Representatives.

If in a majority of the States, a majority of the electors voting approve the proposed law, and if a majority of all the electors voting also approves the proposed law, it is to be placed before the Governor-General for Crown's approval.

No alteration diminishing the proportionate representation of any State in either House of the Parliament or the minimum number of representatives of a State in the House of Representatives, or increasing, diminishing, or otherwise, altering the limits of the State, or in any manner affecting the provisions of the Constitution in relation thereto, shall become law unless the majority of the electors voting in that State approve the proposed law.

The Constitution of United States similarly provides for a special procedure for the amendment of the Constitution. The Congress, whenever, two-thirds of both Houses deem it necessary, can propose amendment to the Constitution, or, on the application of the legislatures of two-thirds of the several States, has to call a convention for proposing amendments, which, in either case are valid, as part of the Constitution, when ratified by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress : provided that no State, without its consent, can be deprived of its equal suffrage in the Senate.

The U. S. A. Constitution was purposely made most difficult to amend. It had suffered nineteen amendments since 1789.

3. Interpretation of the Constitution

Interpretation of the Constitution

Canada has no system of federal courts. At the time when British North America Act was passed, it was thought that no Court of Appeal would be necessary. But many disputes have arisen since then with regard to the interpretation of the Constitution and these have had to be settled by the Judicial Committee of the Privy Council sitting in London. As to the Acts passed by the Dominion or Provincial legislatures, they are treated as void by the Courts if inconsistent with the Constitution. High Court is the final arbiter.

In Australia, the Supreme Courts of the constituent States cannot exercise jurisdiction in matters involving any question arising as to the limits of the constitutional powers of the Commonwealth and those of any State. If any such question arises, the matter is decided by the High Court. In Australia, "the Constitution establishes a Federal Judiciary with a Supreme Court which has power to interpret the Constitution, as in the United States, and to deal with all cases of conflict between the States or between any of the States and the Federal Authority. The Supreme Court in Australia differs from that in the United States in that, while the United States Supreme Court cannot entertain appeals from the States on pure state law, the Australian Supreme Court can and does."

Section I of Article III of U. S. A. Constitution vests the judicial power of the United States in the Supreme Court and such inferior courts as may be established by the Congress from time to time. The Supreme Court stands on an equality with the President and the Congress and is the sole arbiter of all matters affecting the Constitution, in all controversies to which the United States is a party and in controversies between two or more States. The federal judicial system consists of three parts:—

(*a*) the District Courts,

(*b*) the Circuit Court of Appeal and

(*c*) the Supreme Court.

All these Courts exercise jurisdiction in cases arising out of the Constitution, including those of an international character whether between the States of the United States or between the United States and any other State in the world. The Supreme Court, however, as already mentioned, is the final court of appeal for all such cases. It is the ultimate interpreter of the Constitution.

4. Control of federal government over the constituent states.

Control of federal government over the constituent states.

In Canada, the Dominion Government possesses the power of disallowing provincial acts. It can thus exercise considerable control over the legislation of the Provincial legislatures through this power of veto upon the laws passed by the provincial legislatures. The Dominion Government is also responsible for the appointment and dismissal of the Lieutenant-Governors of the provinces. The Lieutenant-Governor thus is a Dominion official as his appointment is made neither by the Imperial Government nor by the provincial governments. The Dominion Government also appoints the judges of the State Courts. This shows that the Dominion Government exercises not an inconsiderable control over the administrative and judicial machinery of the constituent provinces. The provinces of the Dominion are thus more directly connected with the Dominion Government than with the Imperial Government. The Commonwealth of Australia differs completely from the Dominion of Canada in this respect. In Australia, the Governors of the provinces are appointed not by the Federal Ministry but by the Imperial Government (though with the concurrence of the State concerned). Whereas the Lieutenant-Governor of a Canadian province can have no direct access to the Crown, the Governor of Australia can have direct communication with the Imperial Government. Moreover, the Goverment of the Commonwealth cannot veto an

Act passed by the State legislature. In United States, however, the Governors of, the constituent States are elected by the people and the Federal Government cannot interfere with State legislation. The only difference between U. S. A. and Australia, in this respect, is that in the Commonwealth, a constituent State, if it wishes, can seek the aid of the Federal Parliament in legislating for pure State matters and the Federal Government can take over all or part of a State's debt.

5. Legislatures.

Legislature

The constitutions of Senates in Canada and Australia are based upon different principles. Whereas in Canada, as we have already seen, the provinces are not equally represented, in Australia and U. S. A., each State is represented by an equal number of Senators—six in Australia and two in U. S. A. Moreover, in Canada, the members are not elected but nominated for life by the Governor-General ; in Australia and U. S. A. the members are elected by the constituent States for a fixed period.

Canada less federal than U.S.A. and Australia.

The chief features of federalism in U. S. A, Canada and Australia as noticed above clearly show that Canada is far less federal in character than U.S.A. and Australia. The scheme of federalism in Canada departs widely from the federal models of U.S.A. and Australia as in the former, the constituent States, known as provinces, are merely powerful local authorities subject to the control of the Dominion Government in various spheres and the residuary powers are vested in the Dominion Government. There are others, however, who believe that it is wrong to suppose that U. S. A. and Australia represents truer federal models than does Canada. It all depends upon the meaning given to the term 'federal.'

C. F. Strong sums up the differences between Canada and Australia as follows :—

C.F. Strong on Australia and Canadian Federalism

(*a*) " The Australian Constitution defines the powers of the Federal Authority and leaves the 'reserve powers ' to the States, while the Canadian Constitution states the powers of the provinces and leaves the rest to the federal power.

(*b*) "Australia leaves the State Governors to be appointed apart from federal interference, whereas Canada gives the appointment of them to the Ministry of the Dominion.

(*c*) "In Australia, the Commonwealth Government has no right to interfere with State legislation, while, in Canada, the Dominion Government has a veto on provincial statutes.

(*d*) "Australia has a Supreme Court which may interpret the constitution, whereas the Supreme Court in Canada has such power only in a very slight degree.

(*e*) "The Australian Senate is elected in equal numbers from the States, while members of the Canadian Senate are nominated for life by the Dominion Government.

"In general, then, the Commonwealth of Australia is far more federal than is the Dominion of Canada, or, to put it the other way, Canada approaches much nearer to the type of State called unitary than does Australia. Thus, inspite of the propinquity of Canada to the United States, and the vast distance which separates Australia therefrom, the federalism of Australia resembles that of the United States, in every particular, far more closely than that of Canada does."

Q. 11. Write a note on the party organisation and party system in Canada.

Historical.

Ans. The parties in Canada derived their names from the principal parties in the United Kingdom. After the passing of the Union Act, many groups were formed which in fact made responsible gorvernment difficult in the middle of the last century. There were advanced reformers of Upper Canada, advanced French Liberals of Lower Canada, the extreme Conservatives

of Upper Canada, and the moderate Reformers of Lower Canada. By 1856, the moderate Reformers of Lower Canada formed an alliance with the Conservatives of upper Canada. The system of parties was not upset by the creation of Dominion in 1867.

Parties and Church.

The influence of Church has been supreme in Quebec. The Church remained a supporter of the Conservative Party up to 1896. It backed the Liberal Party from that date and again in 1930, it gave its support to the Conservatives. The use of Church influence in political matters went to such an excess that "the Supreme Court of Canada insisted on reversing the views of the Quebec courts that a priest might threaten his flock with ex-communication if they voted for Liberals. Quebec, which was the stronghold of Conservatism, turned Liberal in 1896 with the victory of the Liberal Party under the leadership of Sir Wilfrid Lawries. The year 1930 proved a turning point in the history of Conservative Party when it again won with the help of Roman Catholics both in and outside Quebec.

Parties are not divided over any vital issue.

There is no essential dividing principle between the two parties. Both the parties fought equally for autonomy. "The Liberal Party was once the champion of the provinces against the unifying policy of Sir Macdonald, who had hoped to see a united, not a federal Canada, but when in power Sir W. Lawries denied full autonomy as regards religious education to Saskatchewan and Alberta, and every movement in these provinces to control these issues has been denorced by Liberals in Quebec. On fiscal policy, the Liberals were once devoted to free trade, but in office, they found it necessary to favour protection to meet the views of their supporters in the east and to buy off Ontario hostility. There, however, remains a certain distinction on this head; the Liberals have clearly a stronger hope for lower tarriffs than their rivals, for they are more in touch with the western farmers' efforts

to release themselves from the shackles of the high price exacted under protection by the manufacturers of the east."

Party organisation.

Parties are organised on the British model. There are local branches of central parties. The provinces form an intermediate unit between constituency and federation. The party leader is chosen by Convention and not by election by the party caucus in the legislatures. The party policy is discussed and decided at these Conventions. In this respect, the Canadian party organisation follows the American practice. But still the British influence is strong as "in a very large measure, policy, whether formally approved or not at Conventions, is really the work of the leaders of the party, though they endeavour to keep themselves in touch with their followers and to divine as well as may be how far and in what direction they can safely lead them."

Q. 12. Mention the salient features of provincial constitutions.

Ans. The Executive.

The Executive.

In each province, there is a Lieutenant-Governor appointed by the Governor-General-in-Council. He holds office during the pleasure of the Governor-General but any Lieutenant-Governor appointed after the commencement of the first session of the Parliament of Canada is not removable within five years from his appointment except for a cause assigned, which is to be communicated to him in writing within one month after the order for his removal is made, and is to be communicated by message to the Senate and to the House of Commons within one week thereafter if the Parliament is then sitting, and if not then, within one week after the commencement of the next session of the Parliament. The salary of the Lieutenant-Governor is fixed by the Governor-General. He is the chief executive officer and is assisted by his Executive Council. The relationship between the Lieutenant-Governor and the Executive is similar to that in federal

sphere. There is, however, some difference between the constitutional position of the Governor-General and Lieutenant-Governor. The former's actions are governed by conventions which are fully accepted whereas the latter is responsible to the Governor-General who can remove him from the office on the advice of the Federal Cabinet. Two Lieutenant-Governors had actually been recalled by the Dominion Government as they were considered to have not properly carried out the rules of the responsible Government.

The Legislature.

The legislature.

There is a Legislative Assembly for each province. Quebec and Nova Scotia have bi-cameral Parliaments —a Council and an Assembly. The members of the Councils are appointed by the Lieutenant-Governors of the respective provinces for life. The regulations governing qualifications and legislation are similar to those relating to the Senate of Canada. Nine provincial houses of Assembly differ in composition and procedure. Adult suffrage prevails in provinces. In Nova Scotia and Quebec, however, there are small property or rental, qualifications. The disqualifications for voting are similar to those obtaining at federal election. Where the Upper House exists, as in Quebec and Nova Scotia, there is no provision for deadlock or for the adjustment of differences between the two Houses. The Dominion Government could not interfere.

Judicial organisation.

Judiciary

Both civil and criminal courts are organised by the provinces for provincial purposes. The procedure in civil matters can be regulated by provincial Governments. Provincial Courts may be given new powers by the Dominion Parliament. The Governor-General appoints and the Dominion pays the salaries of the judges of the Superior, District and County Courts in

the provinces. All matters of litigation under federal and provincial laws are dealt with by the provincial Courts.

Division of Power.

Division of power.

As already mentioned, certain matters are specifically assigned to the provincial legislatures, but the residuary powers are vested in the Dominion Parliament. This feature differentiates the Canadian federations of U. S. A. and Australia. In Australia and U. S. A. it is the federal authority to which certain special powers are delegated by the Constituent States, and any power which is not so delegated remains vested with the States. In Canada, the Governor-General can put a veto on the laws passed by the provincial legislatures. This is not the case in Australia and U. S. A.

Q. 13. Write a note on the relation between the Imperial Government and the Dominion of Canada.

Ans. See answer to Q. 2, and the concluding portion of Q. 1.

Q. 14. Summarize the main facts about Canadian Constitution.

Constitution.

Ans. The constitution of Canada is embodied in the British North America Act of 1867 and is the result of the developments that had occurred in the constitutional experience of the country since the Quebec Act of 1774. The constitution gives specific powers to the constituent provinces and leaves the residuary powers to the Federal Government. In this respect, it differs from the U. S. A. constitution which leaves residuary powers to the constituent states and specifies the powers to be enjoyed by the Federal Government.

The Dominion of Canada is now formed of the nine provinces of Ontario, Quebec, Nova Scotia, New Brunswick, British Columbia, Prince Edward Island,

The Governor-General and the Cabinet.

Manitoba, Saskatchewan and Alberta, together with the Yukon and North-West Territories. The executive power of the Dominion is vested in the Crown who is represented by a Governor-General enjoying the ordinary powers of a constitutional sovereign. He is the Commander-in-Chief of the armed forces of the Dominion and has the power to appoint and remove the Lieutenant-Governors of the Provinces. He acts on the advice of his cabinet which is responsible to the parliament. The cabinet is organized on the English plan, "homogeneous in composition, mutually responsible, politically dependent upon the parliamentary majority, and acting in subordination to an acknowledged leader." At the present time, the cabinet consists of nineteen members—the Prime Minister who is the President, a Secretary of State, a Postmaster-General, an Attorney-General, fourteen Ministerial Heads of public departments, such as Trade and Commerce, Justice, Finance, Railways, Labour, Militia and Defence, and two Ministers without portfolio.

The House of Commons

According to Article 37 of the Constitution, the House of Commons was to consist of 181 members, of which 82 were to be elected for Ontario, 65 for Quebec, 19 for Nova Scotia and 15 for New Brunswick. The representation of the provinces was to be readjusted after each decennial census excepting that of Quebec which was always to have 65 members. Each one of the other provinces was to be assigned such a number of members as would bear the same proportion to the number of its population (ascertained at each census) as the number 65 bore to the number of the population of Quebec. The House of Commons elects its own Speaker who presides at the meetings. The presence of at least 20 members of the House is essential to constitute a meeting of the House for the exercise of its powers. The Speaker can vote only when the House is equally divided. The House continues for five years unless dissolved sooner by the Governor-General. Money-bills can originate only in the House of Commons.

According to Article 21 of the Constitution, the Senate was to consist of 72 members. The Dominion Parliament was, however, authorised by an Imperial Act of 1871 to provide for the due representation of provinces subsequently admitted to the Federation. The number, therefore, has increased to 96: Quebec 24; Ontario 24; Nova Scotia and New Brunswick 10 each; Prince Edward Island 3; and Manitoba, Alberta, Saskatchewan and British Columbia 6 each. The qualifications of a Senator are that he must be at least thirty years of age; must be a natural born subject of the Crown; must possess real property at least worth 4,000 dollars over and above his liabilities, must be a resident of the Province from which he is appointed. Senators are appointed by the Governor-General for life. In case of a deadlock, the Crown can nominate four or eight additional members to the Senate. A Senator can resign his place by writing to the Governor-General. Fifteen members form a quorum. The Speaker is appointed by the Governor-General and has a vote. When the House is equally divied, the motion is said to be lost. "It will be observed" writes Sir John Marriott, that the Canadian Senate attempts to combine several principles which, if not absolutely contradictory, are clearly distinct. Consequently, it has never possessed either the glamour of an aristocratic and hereditary chamber, or the strength of an elected assembly, or the utility of a senate representing the federal as opposed to the national idea. Devised with the notion of giving some sort of representation to provincial interests, it has, from the first, been manipulated by party leaders to subserve the interests of the Central Executive.

The judges of the Supreme, the District and the County Courts are appointed by the Governor-General. The judges of the superior courts hold office during good behaviour and are removable by the Governor-General on address of the Senate and House of Commons. Their salaries are fixed and provided by the Parliament.

In each province, there is a Lieutenant-Governor appointed by the Governor-General. The Lieutenant-Governor, just like the Governor-General has an executive council to advise and assist him. The powers of the provinces are specifically defined by the Constitution and the residual authority is vested in the Dominion Government. This was done as the framers of the Constitution felt that the giving of residuary powers to the provinces might lead to the vexed question of 'State rights' as it did in U. S. A. The process was therefore reversed.

CONSTITUTION
OF
FRANCE.

CONSTITUTION OF FRANCE.

Q. 1. Give a brief survey of the constitutional history of France.

Ans. From 1791 to 1870, France had no less than eleven constitutions though none of them was destined to endure. French Constitution of to-day which nobody expected to remain in force bears the marks of the previous regimes and hence a study of the earlier constitutions is necessary to properly understand the origins of present constitution.

Before the Declaration of the Rights of Man in 1789, the king was himself the constitution. It was Louis XIV who stated, "L' Etat, e'st moi." The following constitutions, given in chronological order, were adopted after the French Revolution. Constitutions of—

(1) *The Constitution of September 3rd, 1791* :— The constitution provided for a single legislative chamber chosen for two years from men of property by indirect election with a ministry responsible to it. It was a limited monarchy which ended with the king. It did not satisfy radicals like Danton and Robespierre who wanted to place effective power in the hands of the proletariat. 1791.

(2) *The Constitution of June 24th, 1793* :—It was a Republic and was framed by the Jacobins. It set up an executive committee with a single chamber. But the constitution, though ratified by the people, was never put into effect as Robespierre assumed dictatorial powers. The constitution fell with his fall in power as the moderate element in the country gained ascendency. 1793.

(3) *The Constitution of August 22nd, 1795* :— The Conservative element in the country framed a new constitution, submitted it to the people who ratified it in 1795. The new constitution, which came into force as the result of the reaction of moderates against Jacobins provided for a legislature of two chambers, chosen by people with property qualifications. It vested executive authority in a Directory 1795.

of Five, chosen by the legislature. The two Chambers were a Council of Five Hundred and a Council of Ancients.

1799. (4) *The Constitution of December 13th, 1799* :— The new constitution made for centralization of power. Autocratic powers were assumed by the Directory of Five, the supreme executive power was vested in Napoleon who was appointed the First Consul. The powers of the legislature were considerably reduced. In 1802, Napoleon who had been installed the First Consul, got the office conferred upon him for life. His powers were further extended.

1804. (5) *The Constitution of May 18th, 1804* :— Napoleon, in 1804, proclaimed himself as Emperor, after having submitted the question to the vote of the people. The consulate was abolished. Further revisions of the constitution took place between the dates of 1804 and 1814. "Thus, within the space of fifteen years, France had run the whole cycle of despotism, chaos, republic, and empire. Both as consul and as Emperor, Napoleon found it necessary to do a lot of reorganizing. At every step, he centralized power in his own hands until he had more of it than any of the old Bourbon Kings ever possessed. He placed his own prefects at the head of the territorial departments, and these prefects became the tentacles of the imperial octopus.... .But the most striking among Napoleon's non-military achievements was the compilation of a series of law codes and the systematization of law codes procedure throughout the country. These codes have remained in operation, without radical change, to the present day."

1814. (6) *The Constitutional Bourbon Charter of June 4th, 1814.*—With the fall of Napoleon, the First Empire came to an end. The Bourbons were restored with Louis XVIII as king. The new king expressed his willingness to act as constitutional monarch. An elaborate written constitution was prepared and came into effect. The new Charter purported

to embody all the written and unwritten constitutional laws of Great Britain. A parliamentary system was established with two houses of legislature – one elective on a very limited franchise and the other nominated. The Charter also provided for ministerial responsibility. It, however, maintained the principle of legitimacy and this led to the revival of Imperialistic ideas, giving Napoleon the opportunity for Hundred Days. In order to counter the Bourbon Charter, Napoleon promulgated the *Acte Additionel* during these Hundred Days

(7) *The Constitution of August 14th, 1830.*—The 'July Revolution' was precipitated by Charles X who tried to set aside the provisions of the constitution in order to keep in office a ministry which did not enjoy the confidence of the elective chamber. The king had to abdicate and the French people were again faced with the problem of devising a new constitution. Thiers utilised the revolution to put the House of Bourbon-Orleans in power. Louis Phillippe was put on the throne on the condition that he was to uphold the Charter of 1814, to recognise the supremacy of the people, to lower the electoral qualifications for voters and re-eligibility for election. He was also to abolish hereditary peerage. Constitutional monarchy was thus restored and the organic laws of 1831 followed as the result. But though it was easy to copy British institutions, it was not easy to invert them. The new constitution was an exotic plant which would not take root in the French soil. No ministry could remain in office for a long time owing to mutual bickerings and the multiplicity of political parties. Matters became worse and ultimately gave rise to the revolution of 1848. The king left the throne and the Second Republic was inaugurated. 1830.

(8) *The Constitution of November 4th, 1848* :— The constitution of November 4th, 1848 restored the republic. It was framed by a convention of delegates called for this purpose. It provided for a President

who was to be elected for four years by manhood suffrage. It created a single chamber elective parliament. The President was to be ineligible for second time for the presidency. The ministers were to be nominated by the President. The English Model was no longer followed as the example of United States was considered better. The constitution was based on the theory of separation of powers. The things, however, turned otherwise. Louis Napoleon who was living in exile in England hurried back to France and got himself elected President on January 14th, 1852. Inspite of the fact that the constitution had laid down four years as the term of office of the President, he got his term extended to ten years In fact, he had no intention of leaving his post. "With the name I bear," he said "I must be either on a throne or in a prison."

1852. (9) *The Constitution of November 7th, 1852*:— Under this Constitution, the second empire was established. The title of Emperor was assumed by Louis Napoleon, his act being ratified by the people on November 21st and 22nd, 1852. Bicameral legislature was established. The Upper House, known as Senate, was composed of high officials and senators appointed for life by the Emperor. The Lower House, known as Assembly, was chosen by manhood suffrage but it never reflected public opinion faithfully. The elections were controlled in such a way as only those candidates which were officially approved could succeed. Ballots were tampered with by the election officer who was required to take them to his home and keep them in his custody for a night. The Second Empire lasted for eighteen years—from 1852 to 1870. The popularity of the Emperor began to wane after 1860. The country could no longer tolerate the autocratic rule and the Emperor had to yield and introduce popular control to some extent especially before the war with Persia in 1870. The Emperor's

forces were defeated by the Germans at Sedan and this brought his ruin and the end of the Second Empire.

(10) *The Constitution of May 1st, 1870* :—The changes which the Emperor had introduced in the system of government since 1860 as the result of the growing restlessness among the people under the autocratic rule were now codified. It formed a new Imperial Constitution. It was submitted to the people who confirmed it by voting in its favour. 1st May 1870.

(11) *The Constitution of September 4th, 1870* :—The Third Republic was declared after the defeat though quite a good number of those who proclaimed it were either communists who wanted a proletariat dictatorship or monarchists. The Committee of National Defence set up a provisional government which lasted up till February 1871. The Committee was replaced by the National Assembly, chosen by manhood suffrage, and empowered to pass upon the terms of peace with Germany. The members of the Assembly were not elected for a fixed term and their powers were not clearly defined. The majority of the members were monarchists in their leanings. 4th Sep. 1870.

Thus the state of affairs in France in 1871 was that the country had neither monarchy nor Republic. In the words of Thiers, there was a vacancy of power. The National Assembly was not sure of its powers : it did not know whether it could act as a Constituent Assembly. There was a difference of opinion about that. The Republicans denied 'constituent' powers to the Assembly as most of the members were monarchists and it was impossible for it to frame a liberal constitution. The Monarchists, however, presented the spectacle of a divided house. The claim of the Bourbons was supported by the legitimists, the House of Orleanists and the cause of the Captive Emperor was supported by the Bonapartists. Each group stuck to its claims and hence compromise was impossible. This gave the republicans some power in a

House consisting of more than 700 members. In the beginning, only two hundred Republican Deputies had been returned to the Assembly, but subsequent bye-election increased their members to two hundred and fifty. The party though in a minority, had a very shrewed and sagacions leader in Leon Gambetta.

When the Assembly met, it decided to elect a chief of Executive. Adolphe Thiers—a constitutional monarchist was elected to the high office, The Republican Deputies opposed the proposal to deal further with the framing of the constitution on the ground that the Assembly had no mandate for that purpose. The question of framing the constitution was postponed and Adolphe Thiers acted both as the Chief Executive and the President.

Rivet Law. On August 12th, Charles Rivèt introduced a proposal which was carried by a vote of 491 to 94 on August 31st. Under this, Thiers was to continue as President, with power to appoint Ministers, responsible to the Assembly, and with a term of office coterminous with that of the Assembly. This virtually committed the third Republic to a form of government similar to that in England in so far as the position of ministry was concerned. France drifted on for two years with this makeshift arrangement. Thiers gradually swung over to the Republican side. In a message, dated Nov. 13th, he stated "The Republic exists; it is the legal government of the country. To wish for anything else would be a new revolution, the most formidable of all." Thiers urged his views so earnestly that the Assembly restricted his right to address it. "Thiers' defection was the first indication that the moderate Orleanists were inclined towards a Conservative Republic as the simplest way out of difficulty. Their thoughts were with the July Monarchy of 1830. The immediate result of his defection, however, was to anger and alarm the Monarchist Party. Hitherto that party had not succeeded in actin together to

any effect but on receipt of Thiers' message of November 13th, the Assembly, led by the Monarchists, proceeded to the appointment of a Constitutional Committee of Thirty, charged to submit to the Assembly Constitutional Bills dealing with the organisation of the public powers and the definition of Ministerial responsibility. For, though it had been, resolved that Ministers should be responsible to the Assembly, Thiers' position, as both leader of the Assembly, and first Magistrate of the State brought that responsibility to a nullity. He overpowered his Ministers to such an extent that their responsibility was in effect no more than normal. The Assembly had. therefore, either to allow him to exercise unrestrained authority or to define his powers or to compel the resignation of the Chief Magistrate"

The Three Constitutional Laws of 1875.

The Committee appointed by the Assembly settled some of the questions relating to the structure of the government one by one and the Assembly adopted the three constitutional laws in 1875. These three laws in their scattered and fragmentary position, form the constitution of France. These have been likened "to the equipment of an army gathered hastily on the march, whereas other constitutions present the appearance of a complete equipment laid down ready prior to an army setting forth upon the road."

The constitution comprises twenty six articles only which are strictly constitutional in character and is in fact, the shortest of all documents of its kind. The reason why the document is so brief is to be found in fact that the Members of the Assembly had no liking for the work and they did only as much work as was absolutely necessary. The members lacked enthusiasm for their work. They provided no suitable headings, no table of contents and no division into chapters There was an entire lack of method. The subject,

matter was not arranged in any definite order and the different provisions were inserted as they occurred to the Members. "The constitution of 1875 is a hang-dog constitution, a cinderalla slipping noiselessly between the parties who despise her."

Whereas the laws of February 25th, February 24th and July 16th, were described as constitutional laws, the laws of August 2nd and November 30th did not receive that form but were described as organic laws. The law of February 24th was, however, drastically amended in 1884.

Law of February 25, 1875.

Constitutional Law of February 25th, 1875.—The bill for the organisation of the Public powers was taken up for the first reading on January 21, 1875 by the Assembly. The Republicans, who had considerably increased in numbers by that time, proposed the following amendment: The Government of the Republic is composed of the two Chambers and of a President. The amendment was defeated by a narrow margin of 23 votes—359 against and 336 in favour. Wallon's amendment was carried by a vote of 353 to 352. It ran as follows: The President of the Republic is elected by an absolute majority of votes by Senate and the Chamber of Deputies united as a National Assembly. He is appointed for seven years, and may be re-elected. A few other additions were made to the bill later on and the entire bill was adopted on February 25th by a vote of 425 to 254. The bill was a compromise between the monarchists and republicans. Whereas it conceded a Republic, on the one side, it provided for a Senate in addition to the Chamber of Deputies, on the other. The first was a concession to the Republicans, the second to the Monarchists.

Law of February 24, 1875.

Constitutional Law of February 24th, 1875.—The Constitutional law of February 24 relates to the organisation of the Senate. The Committee on the Constitutional law originally proposed a Senate of 265 mem-

bers chosen for 10 years and renewed as to one-fifth every two years. The proposal was rejected by the Assembly and referred back to the Committee for reconsideration. The revised bill was laid before the Assembly on August 3rd, 1874. It provided for three classes of Senatorts The number was not to exeeed 300. The President was to appoint about half the number for life and the remaining half were to be elected by the Department for nine years, one-third of these retiring every three years. Five members were to be chosen by the Institute. Others, such as, Marshalls, Cardinals and Admirals and certain judges were to sit of right. This scheme was strongly opposed and the bill was passed in an amended form on February 11 by a vote 322 to 310. The amendment provided for an entirely elected Senate. The President, Marshall MacMahan, however, declined to accept the proposal. The Assembly agreeing with the President rejected the bill by a vote of 368 to 345. Negotiations between the Monarchists and the Republicans continued over the constitution of the Senate and Wallon put before the Assembly the following clause on February 19 :—

The Senate shall consist of 300 members, 225 elected by the Departments and Colonies and 75 by the National Assembly. The Senators elected by the Assembly are irremovable. The proposal was carried by a vote of 422 to 261. The Constitution of the Senate was the price paid by the Republicans for the confirmation of the republic. The entire bill was finally passed on February 24 by a vote of 435 to 234.

Constitutional Law of July 16th 1875:—The Constitutional Law of July 16, which settles the relations between the public powers was introduced by the Minister of Justice on May 15. The Republicans opposed the motion to refer the bill to the old committee for consideration. The motion was lost and the bill referred to a new Committee. As the bill was almost non-contentious in character, only a few

Law of July 16, 1875.

changes were introduced. These were accepted and the bill was agreed to by a vote of 520 to '84 on July 16.

Organic Laws.

As already stated, the two laws of August 2nd. concerning the election of Senators and that of November 30th, concerning the election of Deputies, were described as organic laws and were to be subject to the same conditions as ordinary laws. They rank lower than the constitutional laws and higher than the ordinary laws. Whereas the constitutional laws cannot be amended in the ordinary course of legislation and require a special procedure, organic laws, though more fundamental in character, can be amended in the same way as well as ordinary laws. In their case, no special proceedure is required.

"The nature of the French Constitution" wrote Joseph Barthelemy, "cannot be understood if these essential facts are overlooked, namely that the conservative Right unable to establish their ideal government, would only accept a republic that kept as closely as possible to the monarchical form. They set up a presidential chair which could with little difficulty be transformed into a throne, on the day when Providence should brush aside the obstacle to a restoration,' that is to say, when Chambord and his unwavering obstinacy should alike be laid to rest." The constitution of the republic is copied from that of the July Monarchy. It is a Constitution based upon the hope of a monarchy.'

On the other hand, all Republicans, of every shade of feeling, laid aside for the moment their particular beliefs with regard to politics and society, in order to consecrate, under whatever condition, the fact of the Republic. They concentrated all their efforts upon establishing the sacred word, waiting until later to organise the thing itself. Both sides, therefore, considered that they were employed upon a purely temporary work. Yet of the nine constitutions which France has had since 1789,

without counting the modifications which they have undergone, this constitution, fashioned with such modest ambitions, has lasted the longest.

"It differs also from the revolutionary constitutions by the absence of a spirit of simplification, that abstract logic which tends to produce so many evils in political science. The National Assembly, refusing to be persuaded by the famous fallacy, that the nation being one, it should be represented by one body, created that valuable instrument of deliberation—the Senate. Thus, broadly speaking, the French Constitution represents a great compromise between Republic and Monarchy, and the spirit of compromise can be seen in every detail, notably by the way in which the institutions and rules of a Parliamentary regime and cabinet government were adapted for the first time to the Republic. For the first time, the head of the Republican state was declared irresponsible; it was only under Constitutional Monarchy that ministers had been declared politically responsible to the chambers ; now for the first time, the head of the republican state received the right of dissolving the chamber. The compromise between the Republican and Monarchical tradition appears again in the regulation of sessions, in the division of powers between Parliament and the President of the Republic for the conclusion of treaties, etc.....the reproach levelled at the 1875 Constitution of being a monarchical one has been singularly abused in political controversies. In every way, it has ceased to be just : in addition to the formal revision of 1884, the constitution has undergone in the course of time a fundamental revision which has had the result not only of effacing the Presidency of the Republic, but of bringing into prominence the people's Chamber.'

Q. 2. Briefly explain the procedure for the revision of constitutional measures in France.

Constitutional amendment in France.

Ans. The people of France have no say in the matter of Constitutional amendments. The proposal for amendment of any Constitutional measure is not even put before the electorate at the time of Parliamentary election. The method, which is fairly simple, is laid down by Article 8, Law of February 25, 1875. The article runs as follows :—

The Chambers shall have the right by separate resolutions, taken in each by an absolute majority of votes, either upon their own initiative or upon the request of the President of the Republic, to declare that occasion has arisen for a revision of the constitutional laws.

After each of the two Chambers shall have come to this decision, they shall meet together in National Assembly to proceed with the revision. The acts effecting revision of the constitutional laws in whole or in part shall be passed by an absolute majority of the members composing the National Assembly.

National Assembly not a sovereign body in matters of constitutional amendment.

The constitutional provision for amendment as stated above caused a lot of confusion and raised much discussion when the occasion for revision arose in 1884. The Senate objected to the National Assembly considering other matters except those which were previously accepted by the two Chambers. The reason which led the Senate to take up this attitude was the desire of the Chamber of Deputies to limit the appointment of life-members and to curtail the financial authority of the Senate. The Senate realised that being in a minority in the National Assembly, it would be helpless there if that body were invested with sovereign powers. The Chamber of Deputies had to yield to the Senate and agree to the provision that the two Chambers had the right and power to limit in advance the matters to be discussed and the articles to be revised by the National Assembly. The National Assembly thus is not a sovereign body in so far as its power to

revise constitution is limited to the matters already accepted for revision by the Senate and Chamber of Deputies. The Law of August 14, 1884, Article 3, adds the following paragraph to the provision made for amendments by the Law of 1875: Whenever, according to articles 7 and 8 of the law of February 25, 1875, on the organisation of the public powers, a meeting of the National Assembly takes place, it shall sit at Versailles, in the present hall of the Chamber of Deputies. The Chamber of Deputies and Senate were to sit at Paris after that date.

The decision to go to Versailles for constitutional amendments was arrived at, most probably, partly to invest the occasion with an air of solemnity and partly on practical grounds as the hall at Versailles was spacious enough to accommodate about 900 members of the Assembly.

Procedure, thus briefly stated, is that "before commencing the process of revision, each Chamber must declare that there is need for it, and this declaration must be the object of two separate motions, so that the vote of one chamber does not officially bring the question before the other. The vote, passed by the two Chambers, in favour of revision, automatically convokes the National Assembly, which is simply the union of deputies and senators in a single body. Its meetings are held at Versailles, theoretically because business is so weighty as that of the reform of the fundamental contract and must therefore be accomplished in retreat from the turbulence of Paris; but as a matter of fact, because there is a room at Versailles specially arranged to seat the nine hundred members of Parliament." Only matters mentioned in the vote of revision can be taken up by the National Assembly. This safeguards the existence and independence of the Senate. The French Constitution of 1875 has suffered only three amendments since its inception—once in 1879, again in 1884 and again in 1926. In 1879, Versailles was disestablished as the seat of the executive and Parliament. Paris was substituted as the seat of

government. The amendments of 1884 radically revised the Constitution, of the Senate, deprived its organisation of constitutional character by giving it the status of organic law, took away from the members of the Bourbon, Orleanist or Bonaparte family the right to stand for presidency and added that the republican form of government could not be the object of revision. Another provision laid down was that a new election must be held within two months after the dissolution of the Chamber of Deputies. The third revision on August 10, 1926 established a sinking fund for the national debt as the previous arrangements had greatly hampered the government's fiscal plans. Once again, the question arose in 1926 whether National Assembly was competent to consider any constitutional measure or was its power restricted to the consideration of those measures only which had been separately agreed to by the Senate and the Chamber of Deputies. Opinion in France was divided. Duguit held that the Assembly was a sovereign constituent body and could proceed without any limitation while Esmein argued that the Assembly was limited to the amendments proposed by the Senate and the Chamber of Deputies. In 1884, the Assembly did go beyond these limits in so far as it decreed that the members of the families who have reigned in France were not eligible for Presidency. What the people were afraid of in 1926 was the strengthening of the executive power. The procedure laid down by the law of 1875 for the revision of constitutional measures has been criticised by various writers in as much as there is no sanction to compel the Chamber to respect the constitution. One of these writers, commenting upon the unsatisfactory nature of the provisions in this respect, observes : "The system lays down that the Chambers cannot make any law in contradiction to the rules of the constitution. But if the chambers altered or violated the constitution by an ordinary law, that law would be no less valid, and would in fact be legally binding upon officials[1] and

citizens. Accordingly, a growing mass of public opinion is demanding the establishment of a sanction for the foundations of the French political organisation. First of all, it is asked that the French constitution should be something more than a code of procedure, that consequently it should be preceded by a Declaration of Rights ; and, secondly, that the principles thus declared should be recognised by the annulment of all laws contrary to them, such nullification to be pronounced by a special authority."

In U. S. A, as we have seen, the Supreme Court is invested with the power of passing judgment on the constitutionality of an ordinary law but no such body exists in France. In the former country, if a law is declared to be opposed or repugnant to some constitutional provision by the Supreme Court, it ceases to be a law but in France, if a law is passed by the Chambers, even if it violates constitutional provision, it is still valid. It cannot be nullified by any other power.

Q. 3. Write a comprehensive note on the origin of the French Presidency and the Constitutional position of the French President.

Origin of the French Presidency.

Origin of the French Presidency.—In France, a Republic was declared in September 1870 after the dethronement of Louis Napoleon. The National Assembly that was elected was predominantly monarchical though it could not arrive at unanimity about the candidate for the monarchy. In February 1871, the chief executive power of the French Republic was vested in Thiers for an indefinite period. His powers were left undefined and no conditions of any kind were imposed on him. His relations with his Ministers were not specified as it was taken for granted that that would be almost similar to what they had been in the past.

In 1871, Rivet moved in the Assembly that there should be a President of the French Republic whose tenure of office should last for three years.

The proposition was carried through in the Assembly in an amended form. The amended proposition provided for a President of the French Republic who was to hold his office as long as the Assembly continued. It also definitely stated that the President would be responsible to the Assembly for all his actions and that his Council of Ministers were to countersign all the political measures of the President This was a curious system. The Assembly had refused to provide a term of three years for the President out of fear that their power to remove an unsatisfactory President would be thereby destroyed. But they gave the President a term of office as long as, but not exceeding, their own, and then went on to make him 'responsible' to the Assembly which, if it meant anything, meant that at any time the Assembly could overthrow the President. Further a system of dual responsibility was created in that, not only was the President responsible but his Council of Ministers also. Out of this system a great deal of friction arose, as might have been expected, for in regard to current political activities, the question was always raised, who was responsible, President or Ministers ? Several months' operation of this system showed the impossibility of its continuance. The Assembly therefore thought of defining the position of the President more clearly so that the work might be carried on more smoothly.

The real difficulty was how to reconcile the point of view of the monarchical element in the Assembly with the republican element. The Republicans did not want an irresponsible and irremovable President whereas the Monarchists did not want a weak President who could be removed easily by the Assembly. In 1873, it was decided that the spheres of the President and the Ministers should be demarcated and the right of the President to appear before the Assembly to deliver a speech should be abolished. It was, however, decided by way of

compromise that the President should communicate with the Assembly by messages to be read by his Ministers : that he might speak from the Tribune if he gave previous notice of it by message but that sitting be suspended after he had finished speaking, the discussion to be resumed only in his absence. The President was also given the right of veto. Thiers having refused to work under these conditions, Marshall MacMohan was elected as the chief executive. The Monarchical element in the Assembly wanted to fix the term of office of the president at ten years whereas the Republican element was for five years. " It is clear that there was no rational consideration of the significance of this term of office : it was simply a compromise between the ideas of monarchical permanence and republicans rotation.

In January 21, 1875, the Bill on the organisation of public powers was taken up for its first reading by the Assembly. An amendment was proposed by the Republicans which ran as follows : The Government of the republic is composed of two chambers, and of a President. The amendment was, however, defeated by a vote of 359 to 336. An amendment was moved thereupon by Wallon to the effect that "The President of the Republic is elected by an absolute majority of votes by the Senate and the Chamber of Deputies as a National Assembly. He is appointed for seven years' and may be re-elected." The amendment was carried by a majority of one vote—353 for the amendment and 352 against it.

The constitutional position of the French President :—

The Constitutional position of the French President.

Wallon amendment which provides for seven years term of office of the President and his election by the National Assembly was a kind of compromise between the monarchical element and the republican element in the Assembly. The system created was not only the result of a necessary compromise, but also represented the effect

of the general permeation of the world with English ideas of government, for the powers of the President were made curiously similar to those exercised by the English constitutional monarch for seven years."

Constitutional Law of February 1875.

The Constitutional Law of February 25, 1875 confers the following powers on the President of the French Republic :—

1. The President is elected for seven years. He is eligible for re-election. [**Article 2**]

2. The President of the Republic shall have the initiative of laws concurrently with the members of the two chambers. He shall promulgate the laws when they have been voted by the two Chambers : he shall look after and secure their execution.

3. He shall have the right of pardon ; amnesty may only be granted by law.

4. He shall dispose of the armed forces.

5. He shall make appointment to all Civil and Military positions.

6. He shall preside over the state functions ; Envoys and Ambassadors of Foreign Powers shall be accredited to him.

7. Every act of the President of the Republic must be countersigned by a Minister. [**Articles 3 to 7**]

8. As vacancies occur on and after the promulgation of the present law, the President of the French Republic shall appoint, in the Council of Ministers, the Councillors of State in ordinary service. [**Article 4**]

9. The President of France may, with the arsent of the Senate dissolve the Chamber of Deputies before the legal expiration of its term. [**Article 5**]

10. The President of the Republic shall be responsible only in case of high treason. [**Article 6**]

11. In case of vacancy by death or for any other reason, the two chambers assembled together

shall proceed at once to the election of a new President. In the meantime, the Council of Ministers shall be invested with the executive power. [**Article 7**]

12. The Chambers shall have the right by separate resolutions, taken in each by an absolute majority of votes, either upon their own initiative or upon the request of the President of the republic, to declare that occasion has arisen for a revision of the constitutional laws. [**Article 8**]

Constitutional Law of July 16, 1875 contains the following provisions about the President :— Constitutional Law of July 16, 1875.

13. The President of the republic is to announce the closing of the session. He may convene the chambers in extra-ordinary session. He shall convene them if, during the recess, an absolute majority of the members of each Chamber request it. [**Article 2**]

14. The President may adjourn the Chambers. The adjournment, however, shall not exceed one month, nor take place more than twice in the same session. [**Article 2**]

15. One month at least before the legal expiration of the powers of the president of the republic, the chambers shall be called together in National Assembly to proceed to the election of a new president. In default of summons, this meeting shall take place, as of right, on the fifteenth day before the expiration of the term of the President. In case of the death or resignation of the President of the republic, the two Chambers shall assemble immediately, as of right. In case the Chamber of Deputies, in consequence of Article 5 of the Law of February 25, 1875 is dissolved at the time when the presidency of the republic becomes vacant, the electoral colleges shall be convened at once, and the Senate shall assemble as of right. [**Article 3**]

16. The President of the republic communicates with the Chambers by message, which shall be read from the tribune by a Minister. [**Article 6.**]

17. The President of the Republic shall formulate the laws within the month following the transmission to the Government of the law as finally passed. He shall promulgate. within three days, laws the promulgation of which shall have been declared urgent by an express vote of each chamber. Within the time fixed for promulgation, the President of the Republic may, by a message with reasons assigned, request of the two chambers a new discussion, which cannot be refused. [**Article 7**]

18. The President of France shall negotiate and ratify treaties. He shall acquaint the chambers of them as soon as the interests and safety of the state permit. Treaties of peace and of commerce, treaties which involve the finances of the states, those relating to the person and property of French citizens in foreign countries, shall be ratified only after having been voted by the two Chambers. No cession, exchange, or annexation of territory shall take place except by virtue of a law. [**Article 8**]

19. The President of the Republic shall not declare war without the previous consent of the two chambers. [**Article 9**]

20. The President of the Republic may be impeached by the Chamber of Deputies only, and may be tried only by the Senate. [**Article 12**]

21. The Senate may be constituted into a Court of Justice by a decree of the President of the Republic, issued in the Council of Ministers, to try all persons accused of attempts upon the safety of the state. [**Article 12**]

Q. 4. Compare the position of the President of the French Republic with that of the President of U. S. A. and the Prime Minister of Great Britain.

Ans. ***The President of the French Republic.*** The President of the French Republic.

The fact that the President is elected for seven years—a longer term of office than that of any other elected President in the world—and that he is invested with formidable powers as described already shows that the constitution meant to create a strong President with a real and dominating authority. Neither a Senator nor a Deputy remains in office as long as the President. The President receives a salary of 1,200,000 francs per annum and the same dignity and ceremonials attend him as are observed in the case of monarchies. The salary however, is fixed by the budget act and this leads to 'bargaining not at all in keeping with the dignity of the head of the state.' The President resides at the *Palais d' Elysee.* The castles of Fontainebleau and Rambouillet are his country houses.

The President, though head of the state, is not the head of the Government. His position is just similar to the King of England and is quite different from the Prime Minister of that country who is responsible to the Parliament for his actions, and the actions of his colleagues. "He enjoyes" writes Barthelemy, "a privilege formerly only granted to monarchs; he is declared irresponsible ; so that in fulfilling the duties of his office he incurs neither any political penalties, such as votes of censure or official criticisim, the only exception being if the renders himself liable to a charge of high treason. It is not, of course, otherwise *inviolable* ; he is responsible for crimes or misdemeanours committed apart from his office just as an ordinary individual but in this case, he still has the privilege of being tired by no other Court than the Senate". Irresponsibility of the President.

The weakness and strength of the French President :—Although the President of the French Republic is endowed with a very imposing array of powers, almost regal in character and certainly more formidable than the powers given to the President of Real authority of the President.

the United States of America, yet, in effect, the constitution has made it difficult for him to exercise these powers at his own discretion. Article 3 of the Constitutional Law of the 25th Febuarary 1875, as already reproduced, says: 'Each of the act of the President of the Republic must be countersigned by a Minister" and Article 6 of the same law says: "Ministers are collectively responsible before the Chambers for the general policy of the Government and individually for their personal acts and the President of the Republic is not responsible except in the case of high treason." The fact that every act of the President is to be countersigned by a Minister has concentrated responsibility and power in the Ministers and has taken away all effective power from the hands of the President. It may be taken as a general rule, that excepting for the signature of documents directly instrumental to these various duties, the President is nothing but an ornament in the French political system. "Even his signature has been declared to have nothing than autograph value, excepting in the case of his resignation." The constitutional authority of the French President has further been weakened on account of the following causes :—

Weakness of the French President

1. The President of U. S. A. derives his authority directly from the people as he is elected by the people. The French President, on the other hand, is elected by the National Assembly and has therefore lost all touch with the people.

2. As he is not responsible for his actions, he can not exercise any effective power. In France, it is the Ministry that is responsible and therefore it is the Ministers who govern. "In a country of advanced political education and imbued with a love of justice, he alone can act who is responsible for his actions." The President has always to yield before Ministers who claim to represent the people directly and owe reponsibility to their elected representatives.

3. Accidents of history also account for the weakness of the French President. The failure of

the early, Presidents to exercise their power in a way that might have created confidence in them is also responsible to a great extent for the weakness of the French Presidency. Marshall MacMohan and Grevy transmitted the presidency with diminished powers just as Washington left the Presidency of U. S. A. considerably strengthened.

4. The National Assembly, constituted of the Senate and the Chamber of Deputies, cannot be expected to elect a strong President as it can only be at the expense of its own supremacy. The Presidency has generally been a honourable retreat for veteran politicians ; strong presidents, if ever elected, have inevitably failed. Millerand, one of the strongest in recent history, tried to force his own will and had to resign the Presidency. He found it impossible to dictate.

Sir Henry Maine on French President.

It was this weakness of the French Presidents and their limited term of office that led Sir Henry Maine to say : "The old kings of France reigned and governed. The constitutional king reigns but does not govern. The President of the United States governs but does not reign. It has been reserved for the French President neither to reign nor to govern."

M. Casimir Perier.

M. Casimir Perier, a former President wrote to *The Temps*, on February 22, 1925: "Among all the power which seem to be attributed to him, there is but one which the President of the Republic can exercise freely and in person : it is that of presiding at national solemnities."

In his letter of resignation (January 15, 1847) he said ; 'The Presidency of the Republic is deprived of means of action and control. I cannot reconcile myself to the weight of moral responsibilities upon me and the impotence to which I am condemned." On another occasion, he said : "If I was often ignorant while I was President, of things concerning the march of public affairs, yet there was never a matter brought to my personal knowledge which I did not convey to the ministers responsible ."

Abbe Lantaigne and Clemenceau

Abbe Lantaigne characterized French Presidency as 'an office with the sole virtue of impotence and Clemenceau once declared that if there were two things in the world for which he could never find any reason, it were the prostate gland and the French Presidency.

Teze.

Teze says : "The election to the French Presidency has been, to the man chosen, the coronation of an honourable but effaced political life, the supreme recompense of his honest mediocrity, a golden retirement."

Real influence of the French President.

Real influence of the French President.—One might say that if the French President is merely a figure-head, or rubber-stamp, where is the necessity of wasting taxpayers' money in retaining such a costly office ? Would it not be more economical if the French Presidency were abolished ? In reply, one has to admit that though the French President is not an active force in the government of the country, yet the part he plays is both useful and according to some indispensible.

1. The French President is the symbol of nation's nity.

2. "He gives the country a feeling of security. He may be represented as the captain who in normal times allows the helmsman to navigate, but will take command when the ship is in danger. He conveys to the fighting forces the cheering encouragement of the whole nation. His high position ensures that in times of crisis, his words shall have a profound effect upon the country."

3. On account of the multiple party system in France, the election of ministers is not as automatic as is in Great Britain. The choice of the Ministers is to be made by the President. All Ministries are Coalition Ministries and the President has the real power of choice. He may keep out any Minister if he so decides though that should not be taken to mean that he is always successful. President

Poincare, was able to keep out Clemenceau from the Council of Ministers for years.

4. Though the President never attends the meetings of council cabinet, he is frequently present at the meetings of the Council of Ministers and actively participates in the discussions. The amount of influence he is able to wield depends upon his personal qualities.

5. As he has got nothing to do with the detailed administration of the country, he has time to devote attention to the wider problems of the state. As he is above party politics, he is able to exercise his moral influence to avert dissensions among the various parts of administrative machinery. If he is industrious and remains long enough at the helm, he obtains an extraordinary grasp of great questions, and can thus be a most valued guide to his ministers. Nothing can be done without his signatures ; and while he does not abruptly and imperatively refuse it, he can always, delay it. Moreover, before conceding it he can give advice which has every chance of being followed. In this way, he renders very useful service to his country.

6. The President has a great deal of responsibility in great political treaties and settlements. In times of urgency or great impending danger, people are prepared to forego the constitutional provision that treaties must be ratified by the Parliament.

It has been suggested in some quarters that the President will be of greater service to the nation if he had greater authority and this can result only by direct election,

The Prime Minister of Great Britain.

The position of the Prime Minister in Great Britain.—

Whereas the President of France is elected by the National Assembly the Prime Minister is appointed by the Crown.

2. The French President holds office for seven years whereas the Prime Minister holds office as

long as he is able to command the confidence of a majority of members of the House of Commons.

3. The President of France is the head of the state whereas the Prime Minister is the head of the Government.

4. The President is not responsible for his actions to the legislature whereas the Prime Minister must account for his action if an explanation is required by the House of Commons.

5. The President is not a member of the legislature whereas the Prime Minister must be a member of the Parliament.

6. The President, though entitled to attend the meetings of the Council of Ministers, is not bound to be consulted by the Cabinet. His wishes may be ignored by the Ministers. The Prime Minister, however, exercises a very important influence in the deliberation of the cabinet and plays a very important role in shaping the course of legislation in the country.

7, The President is the ceremonial head of the executive branch of the government and his position corresponds more or less to that of the king in Great Britain. The Prime Minister, on the other hand, is not only the real head of the executive but also a potent influence in the legislative branch of the government.

8. Whereas the President of French Republic possesses no real powers, the Prime Minister is the political ruler of England. He is the chairman of cabinet, the leader of House of Commons and the chief framer of the government's policy in important matters. Questions addressed on non-departmental matters are answered by him. He represents the whole cabinet in the Parliament over important political issues. He is the chief spokesman of the Government.

9. "Whereas the President has nothing to do with the details of the administration of the country and has enough time to watch the wider interest of the nation, the Prime Minister is the most hard-worked man and always pressed for time. He has to go through numberless papers, endless correspondence, he has to attend streamless callers : he has to confer with individual ministers ; visit and submit reports to the sovereign, hold cabinet meetings, spend time in parliamentary debates, ever reading to answer questions, deciding points of technical precedure put up to him by his collegues ; he meets the social demands ; groups of constituents will occasionally expect to be taken to the public galleries or entertained to tea on the terrace overlooking the Thames."

10. Although the French Constitution sets out a long array of powers belonging to the President yet, in practice he cannot exert them because every action of the President is to be countersigned by a Minister. The Prime Minister was, on the other hand, unknown to law until 1903 and even now his position is only indirectly recognised in law. A Royal Proclamation of December 1905 gave place and precedence to the Prime Minister next after the Archbishop of York. He has no salary as Prime Minister and has no statutory duties as Premier. He assumes another office generally, that of the First Lord of Admiralty, and receives a slavery for holding that post. "Nowhere does so great a substance cast so small a shadow, nowhere is there a man who has so much powers with so little to show for it in the formal title or prerogative"

The Position of the President of U. S. A. :— The President of U. S. A.

1. The Constitutions of both the countries endow the Presidents with great authority. But the resemblance is superficial and the two have nothing in common between them.

2. The powers of the President of U. S. A. are very real whereas the President of France has no real power. The latter is a Constitutional Head of the State for seven years.

3. The President of U. S. A. can influence the course of legislation by the power of veto endowed upon him by the constitution. A bill passed by both the Houses cannot become law unless it is signed by the President. If he refuses to sign the bill, it must go back to the House and must be passed by them by a two-thirds majority. In fact, it is very seldom that a bill once vetoed by the President will ever become an Act as it is not easy to obtain the necessary majority afterwards. The other means at his disposal to influence the action of the Congress are :—

(*a*) the power to send an annual message to the Congress, in person or through a written document :

(*b*) the power to call the meeting of the Congress for the purpose of delivering a message in grave emergences and

(*c*) the possibility of getting his ideas on a certain subject embodied in a bill through a member of the Congress. The influence of the President in the passing of laws in France is negligible.

4. The President of France is elected for seven years whereas the President of the United States of America is elected for four years.

5. The President of France is elected by an absolute majority of the votes of the Senate and the Chambers of Deputies, acting in joint session as the National Assembly. The President has therefore lost touch with the people—a fact which also accounts to a great extent for his weakness. The President of the United States of America is, on the other hand, directly elected by the people.

6. The President of France can dissolve the Chamber of Deputies with the consent of the Senate

whereas no such power can be exercised by the President of the United States.

7. Both the Presidents enjoy immunities and privileges which are not enjoyed by any other citizens of the State.

8. The President of U. S. A. appoints his own Cabinet. The members of the Cabinet cannot be the members of the Congress and are responsible to the President. The members of the French Cabinet must be the members of the legislature and owe their responsibility not to the President but to the elected representatives of the people.

9. The Presidents of both the countries can be tried by the Senates on impeachment by the House of Representatives in U. S. A. and the Chamber of Deputies in France.

10. *To sum up.*—The Presidency of U. S. A. *possesses real power.* "*He is the Commander-in-Chief* of the Army and Navy; he has the functions of making all the important appointments in the federal government; and the conduct of foreign affairs is in his hands, though the Senate may refuse its assent to certain appointments, and a treaty made by the President requires the ratification of two-thirds of the Senate. Finally, the power to declare war belongs to Congress as a whole, but clearly executive action may bring negotiation to such a pass as to make war almost impossible." The President of France, on the other hand, merely carries out the will of his Ministers. "The power of the President to initiate the laws is in no wise in his hands. The privilege of pardon is a political matter exercised on the responsibility and by the discretion of the Cabinet. Appointment to civil and military office is, of course, regulated by laws which effectively deprive him of all save the smallest personal discretion. His functions in regard to the parliamentary Assemblies are cabinet functions. His suspensive veto on legislation has never been exert-

cised, and it has been pointed out that its exercise is legally inadmissible, and practically impossible. In the administration of law in naval and military administration, in the civil services, there is not even the pretence that the function is one in the name of the President. Justice is the Justice of the Republic, officials the servants of the Republic, the armed forces sustain the Republic—not the President."

Q. 5. Describe the organisation and the functions of the Chamber of Deputies.

Ans. The Electorate :—

The Electorate

Every male citizen of France who has reached the age of 21 is entitled to be a voter provided he

(*a*) is not in the military or naval service of the country ;

(*b*) has not otherwise been deprived of his civil rights by a judicial decree and

(*c*) has been a resident for at least six months prior to the compilation of voters' list of a commune in which he wants himself to be enrolled as a voter. There is no property qualification and no educational tests for the voters in France. Neither a voter must be a taxpayer. "There is no plural voting as in England, no absent voting as in America, and no compulsory voting as in Belguim." There is no female suffrage in France. In fact, France is one of the few advanced countries of the world in which the right to vote has not been conferred on the females. In 1919, though the Chamber of Deputies voted in favour of female suffrage, the proposal was rejected by the Senate. The Socialists and radicals are opposed to women suffrage as they know that women of France being friendly to the Catholic Church will never cast their vote in favour of anti-clericalism which the radical element in France favours.

Qualifications for the candidate.

Qualifications for the candidate :—The candidate must be twenty five years of age and must have made a declaration of candidature. This declaration must

be made at the prefecture on the fifth day before the election, either personally, or through an agent or by letter of introduction to the effect that he intends to stand as a candidate. The candidate receives a provisional receipt when the declaration is deposited and a definite receipt is delivered to him within twenty-four hours. No one can be a candidate in more than one district. If declaration are made by the same citizen in more than one district, the earliest in date alone is valid. If they bear the same date, all are void. It is forbidden to sign or post placards, to carry or distribute ballots, circulars, in the interests of a candidate who has not conformed to the above requirements. Any body found disobeying the above provision may be fined from one to five thousand francs and a candidate who makes declaration in more than one district may be fined ten thousand francs.

Method of election.

Method of election :— France is divided into districts and each district can elect a deputy. Multiple vote system or *scrutin de liste* was first established by the law of June 16, 1885 and was abolished later on and the system of election by single member constituencies (*scrutin uninominal*) was introduced by the law of February 13, 1889.' A violent campaign was carried on against this system which resulted in the Law of July 12, 1919 which restored *scrutin de liste*. The present system is based on the Law of 1927 which provides for the *scrutin uninominal*. Single-member district candidates may present themselves in groups or individually. The declaration of an individul candidate must be supported by one hunred electors of the electoral area whose signatures are authenticated and cannot be used in support of more than one candidate. Similarly lists may be constituted for particular electoral areas by groups of candidates. The voters may vote for individual candidates or for the whole list. The normal practice is voting for a list, as, in France, party affiliations are stronger than the appeal of Independent candidates. A voter's list

is prepared in each commune by a commission of three persons—the mayor, a representative of the municipal council and an official named by the prefect of the department in which the commune is situated.

Vacancies.

The Chamber of Deputies is elected for four years and the general election must take place within sixty days preceeding the expiration of the term of the Chamber. Vacancies which occur in the six months preceding the renewal of the Chamber are not filled. In case of a vacancy through death, or resignation, or otherwise an election takes place within the period of three months counting from the day on which the vacancy occurred. Law of July 12, 1919 put the number of deputies at 602. As at present constituted, the number of Deputies is 612. The election of Deputies always takes place on Sunday fixed by the President between the hours of 8 a. m. and 8 p. m. Members of families that have reigned in France are ineligible to the Chamber of Deputies.

Sessions of the Chamber.

Sessions of the Chamber:—The Chamber of Deputies meets in the Palais Bourbon in Paris. It was assigned to the Chamber by the Law of July 22, 1879. The Chamber meets twice in a year—one session begins in January and lasts until July and the other begins in November and lasts until January. "With the exception of about three months, therefore, the Chamber is continually in session. The daily sitting begins at two o'clock in the afternoon and lasts until six or seven. When the urgency of business requires longer daily sittings, the Chamber meets earlier in the day. It rarely prolongs its sessions into the night."

The President of the French Republic can adjourn the Chamber of Deputies for a period not exceeding one month but he cannot do so more than twice during the same session. Constitutional Law of July 16, 1875 requires that the Senate and the Chambers of Deputies must continue in session at least five months each year and that

the two Houses must begin and end at the same time. The President of the Republic pronounces the closing of the session. He may convene the chamber in extra-ordinary session. He can convene it if, during the recess, an absolute majority of the members request it.

The election of the presiding officer.

The Chamber elects its own presiding officer and determines its own rules of procedure. The presiding officer is chosen by secret ballot. His position resembles that of the speaker of the House of Representatives in as much as he is a party man. The Speaker of the House of Commons ceases to be a party man after his election but the same is not the case with the presiding officer of the Chamber of Deputies. The President ordinarily does not vote. The proposition is deemed to be lost in case of a tie. The powers of the President are similar to the powers of the Speakers of other Assemblies. Law of July 12, 1879 charged the President with the duty of securing the external and internal safety of the Chamber and for that purpose authorised him to call upon the armed forces and upon all authorities whose assistance he considers necessary. Such requisition may be addressed directly to all officers, commanders, or officials who are bound to obey immediately under the penalties established by the laws.

Composition of the Chamber.

The Chamber also elects two Vice-Presidents and other officers. In 1924, the Chamber was constituted as follows :—

Professions and occupations.		Number of Deputies.	Percentage of total.
1.	Agriculture—land-owners etc. ...	83	14·3
2.	Agriculture—labourers. ...	1	0·1
3.	Industry, Commerce and Finance. ...	80	14·6
	Industrial workers ...	57	9·6
4.	Army	11	1·9
5.	Air	—	...
6.	Navy	6	1·0
7.	Civil Service ...	43	7·3
8.	Law	160	27·3
9.	Medicine ...	41	7·0
10.	Teaching ...	46	7·9
11.	Clergy	7	1·0
12.	Authors, Journalists ...	38	6·5
13.	Other professions ...	3	0·5
14.	Party officials	—	...
15.	Trade Union officials	—	...
16.	Unspecified	8	1·0
17.	Other employments	—	...
	Total ...	584	100

[Finer's *Theory and Practice of Government*].

Salaried officials, except a few of the highest, are ineligible.

Lord Bryce on the Chamber of Deputies.

Lord Bryce wrote as follows on the quality of debate and general atmosphere of the Chamber :—

"The Chamber is full of talents because, though many of the members have come from narrow surroundings and retain narrow

views,• the quickness and flexibility of the French mind enable them to adjust themselves to the conditions of a large assembly more readily than would most Englishmen or Americans. When an exciting moment arrives, the debates reach a high level of excellence. Deputies are bright and swift, and great tactical skill is displayed in escaping dangers or forming combinations on the spur of the moment. Trubulent scenes occur, but none worse than once or twice have occurred both in Congress and in the House of Commons. There is little personal rancour, even among those who are most bitterly opposed in politics. Deputies will abuse one another in the chamber and forthwith fraternize in the corridors, profuse in compliments on one another's eloquence. The atmosphere is one of friendly *camaraderie* which condemns acridity or vindictive manners. Parisians say that the level of manners has declined since 1877, and the style of speaking altered, with a loss of the old dignity list may be as abundant, but one misses that philosophic thought by which the Assemblies of 1848 and 1871 impressed the nation and won the admiration of Europe.'

Q. 6. Describe the organisation and powers of the French Senate. Compare it with the second chambers in U.S.A. and Great Britain.

Ans. Constitutional history of the Senate.

Constitutional history of the Senate.

The National Assembly which decided the future of France was a single chamber. It was composed of both Monarchists and Republicans. The Monarchists were definitely in majority. Out of a total number of 630 members, about 400 were monarchists and were determined to set up conservative institutions if they failed to restore monarchy. The Republicans were, on the other hand, opposed to monarchy, institution of Senate or any other conservative body. Gambetta, the leader of the Republican party, opened negotiations with the moderate element among the Monarchists with a view to bring about

a compromise on this question. His idea was to concede a senate to the Monarchists in exchange for their support to produce a Republic.

A bill respecting the organisation of the Senate was placed before the Assembly by the Committee on Constitutional Laws on May 15, 1874. The bill was referred back to the Committee for reconsideration and finally was taken up by the Assembly in the following year. The bill as drafted by the Committee contained the following provisions :—

(1) The total number of Senators was not to exceed 300.

(2) About half of these were to be appointed by the President and were to sit for life.

(3) About half were to be elected by the departments for nine years, one-third of these retiring every three years.

The scheme was carried out in an amended form by the Assembly in February by a vote of 322 to 310. The Senate was to be entirely elected. Marshall MacMohan refused to accept the proposal, and on reconsideration by the Assembly, the bill was rejected by a vote of 368 to 345.

Wallon brought a new proposal before the Assembly which ran: "The Senate shall consist of 300 members, 225 elected by the Departments and colonies and 75 elected by the National Assembly. The Senators elected by the Assembly are irremovable." 422 members voted in favour of the proposition and 261 against it. The proposition was thus carried and referred to the Committee. The bill as re-submitted by the Committee was agreed to by a vote of 435 to 234 on February 24, 1875. "The Senate was established, by the first of the Constitutional Laws of 1875, as a carefully concocted compromise between the parties of the Left, which were in a minority, and the parties of the Centre and Right (excluding the Extreme Right),

brought about by a series of subtle manœvres. Although it was not the institution the Monarchists would have liked to get, its very existence was compelled by their numbers in the Assembly, and although the Republicans of the Centre and the Left had obtained concessions and had good reason to be satisfied that their tactics had averted a chamber of Peers, yet the Senate was not in keeping with their philosophy."

Law of Aug. 14, 1884.

The constitution of 1875 suffered an amendment in 1884. The Republicans were now in a strong position and they tried to change the constitution of the Senate so that it might represent republican opinion. The Law of 1875 entitled each municipal council to send one delegate to the electoral body for the Senate. It placed power in the hands of the village communities which are mostly Conservative in spirit. By the Law of August 14, 1884, the composition of the Senate was transferred to an ordinary law. The seat of each life member on death was to be filled by an elected member. The Senate was thus to be composed of three hundred members elected by departments and the colonies. In 1919, the number of the Senators was increased to 314 as a redistribution of membership among the departments on the occasion of inclusion of Alsace-Lorraine in the French Senate.

The scheme of election.

The Electoral College.

The Law of August 14, 1884 varied the number of delegates to the Senate according to the numbers of Municipal Councillors. Senators are now elected by *scrutin de liste* where necessary, by a college meeting at the capital of the department or of the colony and composed of

(1) the Deputies representing the department in the Chamber ;

(2) the General Councillors ;

(3) the Councillors of the Arrondissement

(4) the delegates elected from among the voters of the commune by each Municipal Council.

The following table gives the population of commune with the number of Municipal Councillors and the delegate or delegates it is entitled to send to the departmental electoral body :—

Population of Commune.	Number of Municipal Councillors.	Delegates.
Below 500 ...	10	1
500— 1,500 ...	12	2
1,500— 2,500 ...	16	3
2,500— 3,500 ...	21	6
3,500—10,000 ...	23	9
10,000—30,000 ...	27	12
30,000—40,000 ...	30	15
40,000—50,000 ...	32	18
50,000—60,000 ...	34	21
60,000 and above ...	36	24
Paris ...	56	30

—Article 7 of the Law of August 14, 1884.

From the Table given above, it is clear that though some attempt is made to establish proportionality between the communes in the matter of their representation, yet exact proportional representation of the communes is still long way off. Small towns still have over-representation. Seventeen towns of the Bonches-du-Rhone, with a total population of not more than 30,000 inhabitants have twenty-four delegates whereas Marseilles with a population of more than 500,000 inhabitants is also entitled to the same number. Twenty-four villages near Lille with a population of 4,000 inhabitants send twenty-four delegates while Lille with a population of 216,000 also sends the same number. Poor representation of the large towns as

compared with small towns and villages has surely made the Senate rather conservative in character. The villages communities are generally conservative whereas large towns are politically advanced. A system by which large towns are poorly represented in the senatorial body ensures a majority to the small and conservative ones. We find from the table given above that ' for larger rises in population from 2,500 and upwards, there is only a uniform increase of three delegates per stage even where that is as many as 20,000 (at the point 10,000 to 30,000). The composition of the Senate has thus been criticised by Billecard: " It is not a logical and harmonious scheme at all, the product of a political conception, the application of a principle : it is the fruit of a compromise between opposed theories, the result of an empirical transaction."

Qualifications.

Qualifications of a Senator.

No one can be a Senator unless he is a French citizen at least forty years of age and enjoys civil and political rights. Members of families that have reigned in France are ineligible for the Senate. Members of the land and naval forces may not be elected senators. The following are, however, excepted from this provision:—

(1) The Marshalls of France and Admirals ;

(2) The general officers maintained without limit of age in the first section of the list of the general staff and not provided with a command ;

(3) The general officers placed in the second section of the list of the general staff.

(4) Members of the land and naval forces who belong either to the reserve of the active army or to the territorial army.

The age qualification has been fixed to secure such members of the Senate as may have ripe judgment and may be conservative in outlook. Age is averse to innovations and makes for conservatism.

Statistics show that though the constitution puts the minimum age at forty, the average age is, in fact, a little over 60. Finer groups the members of the Senate in age classes as follows:—

Age-groups	Number in Senate of 1921	Number in Senate of 1930
40—45 ...	15	5
46—50 ...	23	14
51—55 ...	56	49
56—60 ...	59	56
61—65 ...	56	65
66—70 ...	59	57
71—75 ...	32	35
76—80 ...	1	17
81 ...	8	7

"Thus in 1921 considerably over one-half were between 56 and 70; more were over 70 than under 50; and the group aged 51 to 70 constituted about two-thirds of the entire assembly; in 1930, the age composition showed even higher numbers in the older age groups." The net result of the advanced age of the senators is that the Senate is not easily moved. Age engenders a conservative attitude of mind which is apt to look with tolerance on the existing faults.

Term of the Senate.

Term of the Senate.

Members of the Senate are elected for nine years. The Senate is renewed every three years as one third of the members retire at the expiry of the third year. Long term of office and partial renewal shelters the Senate from turbulent elements in the State. "By these two measures, the 1875 Constituent Assembly intended to ensure the continuity of ideas and the spirit of tradition. The members of the Chamber of Deputies who are elected after every four years can

not be expected to have the same ideas and convictions as a Senator whose term of office expires after nine years. It is very rare that the same majority controls the Chamber of Deputies and the Senate. Ordinarily, there is always a distance in opinion between the two Houses. "The newly-elected Chamber of Deputies represents the actual opinion of the majority, but it is opposed by a Senate representing former and sometimes far earlier convictions of the people. The third of the Senate which is next to retire does not represent, as has sometimes been said, the ideas of nine years ago; for it must be remembered that the Senate is elected by men who have themselves been elected. Thus senators approaching the end of their term of office may represent the people's convictions of from thirteen to fifteen years before, according as one considers them elected by the deputies and municipal delegates composing the electoral college, or by the general councillors."

The Elections.

The elections.

Each member writes his own ballot. There are no formal nominations. In the voting of the electoral college of each department, a majority of all the votes cast is required at the first two ballots for the election of a Senator, but on the third ballot, a plurality cast for a candidate is sufficient. Voting is obligatory. The expenses of the delegates who have to travel to the capital of the department for the voting are paid out of public funds, if asked for. Munro thus compares the work of the electoral colleges in France with those of the nominating conventions in America: "There is the same pledging of delegates in advance, the same attempt on the part of the political leaders to manipulate the proceedings, the same forming of combinations and alliances, and the same frequent triumph of dark horses over strong men. There is a similar lavish outpouring of promises, and usually the same charges of bossism and steam-rollering float through the air. The electoral colleges are

sometimes very large bodies; that of the Department of the Seine has over a thousand members."

Powers of the Senate.

Powers of the Senate.

The Senate's constitutional powers can be divided into the following classes :—

Ordinary bills.

(1) The Senate has, concurrently with the Chamber of Deputies, the power to initiate and to pass ordinary laws. Its function is to resist the hasty passage of revolutionary bills. It seldom openly revolts against a measure of the Chamber of Deputies; it generally imposes delays. It serves simply as a brake as the barriers it imposes are not insuperable. The Chamber of Deputies has no legal power to compel the Senate to proceed to the discussion of a bill. The right given to each House of rejecting a proposition or a bill adopted by the other House is not limited by any constitutional provision; in consequence, a bill voted by the Chamber may be repulsed by the Senate or one voted by the Senate may be repulsed by the Chamber.

Financial powers.

(2) The money bills must first be introduced in the Chamber of Deputies. The Senate possesses no right of initiation. Article 8 of the Constitutional Law of February 24, 1875 says : Finance laws shall first be presented to the Chamber of Deputies and voted by it. This Article has been differently interpreted by different writers. Those who want a powerful Senate think that constitution gives priority only to the Chamber, but not decisive power: The Senate is fully authorised to amend a bill or even to reject it or remodel it. Others, however, hold that the financial powers of the Senate are definitely inferior to the financial powers of the Chamber of Deputies. It can not be denied, however, that the Senate has important financial powers. It can amend financial bills by way of rejecting or reducing items in taxation. It is, however, open to question whether it can also increase the expenditure except by reinstating the items, proposed by the Ministry and rejected by the Chamber of

Deputies. "It has somtimes done so, but the Chamber usually protests, and the Senate, knowing its case to be weak, usually yields." "For example, in 1920 new taxes were created by the Chamber ; the Senate seriously amended the bill in order to cause the budget to balance as soon as possible. The tax most affected was the income tax, which is one of the chief sensitive points in politics. The Chamber of Deputies, through its Commission of Finances, protested, and attempted to lay down a ruling upon the power of the Senate. It conceded the right to reject any expenditure, and the right to reject any tax which appeared excessive. *But it had no right to substitute its initiative for that of the* Chamber or the Government in order to vote increases of any expenditure or taxation." The Senate, however, lodged a strong protest against the ruling of the Chamber. The issue is, therefore, still open.

As a Court of Justice.

(3) The Senate may be constituted a Court of Justice to try either the President of the Republic or the Ministers and to take cognizance of attacks made upon the safety of the State. It has sat thrice for that purpose. The President summons the Senate to sit as a High Court of Justice to try any person, whether official or not, for assaults on the security of the State. The charges are ordinarily framed by the Chamber of Deputies except in those cases where the Senate is to try a person for assault on the security of the State in which case the charges are framed by the Ministry. A bare majority is needed to secure conviction.

Right to dissolve Chamber of Deputies.

(4) The Senate can, with the concurrence of the President of the French Republic, dissolve the Chamber of Deputies before the legal time for the election of a new Chamber has arrived. Constitutionally, this prerogative of the Senate is of great importance. In France, neither the Executive nor the Chamber of Deputies can appeal to the electorate. The Ministry, provided it can secure the approval of the Senate, can exercise this right. The concurrence

of the Senate and the President virtually means the concurrence of the Senate and the Ministry as every action of the President must be countersigned by the Minister. The power of the Senate to dissolve the Senate is therefore of no avail unless Ministry wants the dissolution. This power has been exercised only once, in 1877.

(5) *Control over administration.*

Collective responsibility of Ministers.

Article 6 of the Law of February 25, 1875 says : The Ministers shall be collectively responsible to the chambers for the general policy of the government, and individually for their personal acts. The Senate has frequently used the power implied in this Article, and has sometimes overthrown governments. In 1890, the Tirard Cabinet resigned on account of a hostile vote in the Senate, and 'on at least five comparatively recent occasions, the Ministry of the day has appealed to the Senate for a Vote of Confidence.' Though the Ministers do not appear as often before the Senate as they do before the Chamber ; though the Prime Minister is usually a member of the Chamber of Deputies, it cannot be denied that the constitution does confer an effective power on the Senate and the Ministers cannot afford to be very frequently absent from the Senate without danger. They can not reduce their presence beyond a safety line.

Powers enjoyed conjointly with the Chamber.

(6) There are certain powers which the Senate possesses conjointly with the Chamber of Deputies, *viz.*,

(*i*) the right to elect the President.

(*ii*) the right to vote on the treaties of peace and commerce, treaties which involve the finances of the State and treaties relating to the person and property of French citizens in foreign countries.

(*iii*) the right to be consulted by the President before he declares war.

(7) The Senate is the sole judge of the eligibility of its members, and of the regularity of their election; it alone may receive their resignation.

(8) The Senate elects its own *Bureau* each year for the duration of the entire session which may be held before the regular session of the following year.

The Senate in its actual working : an estimate.

The Senate in its actual working: an estimate.

The conservative nature of the Senate and its desire to preserve the *status quo* is due to the way in which seats are distributed, the method of election and advanced age of the members. Until 1919, no socialist was elected to the Senate and it generally rejects or kills by delay the bills based on progressive social ideas. It does not, however, mean that the Senate is monarchical in its sympathies. In fact, when the chamber has a Right majority, the Senate is more radical in outlook. Finer thus sums up his impressions of the French Senate. "The Senate of France has largely fulfilled the intentions and justified the hopes of its creators: it has been a check upon the pure law of Number. It seems clear to us that the cause lies in two things: the bad conduct of the Deputies which loses then the confidence of the country, and, partly arising out of this, the lack of party organization strong in each chamber and the country, uniting the two chambers by a policy and a programme made by the common advice and consent of the Deputies and Senators in party caucus assembled, prior to their separation into the two legislative bodies. Whatever the cause, the Senate plainly possesses power, and its effect is to curb and check the Chamber of Deputies." It may be said, on the whole, that though Senate is sufficiently advanced from a purely political point of view, it has always shown hostility to systems of taxation of modern democratic tendencies and all legislation impregnated with the spirit of Collectivism.

French Senate compared with the British House of Lords and the American Senate:—The House of Lords is a unique second chamber. Its mem-

French Senate compared with the British House of Lords and American Senate.

bership is hereditary. It is the largest second chamber in the world. Its powers are definitely inferior to the powers of the House of Commons. Under the Parliament Act of 1911, any Act which has been passed three times in three successive sessions by the House of Commons is deemed also to have passed the House of Lords; and any bill which the Speaker of the House of Commons has certified as 'financial' can neither be amended in any respect nor rejected by the House of Lords. Rules are laid down to guide the the Speaker in determining whether a certain bill is a money bill or not. The king can increase the number of members of the House of Lords by creating more peers but he cannot reduce its membership. Whereas the President of the French Republic can dissolve the Chamber of Deputies only with the concurrence of the *Senate*, the House of Lords possesses no such prerogative.

The American Senate represents the federal principle whereas the House of Representatives represents the nation. No such distinction in the basis of representation exists in U. S. A. The American Senate is composed of two representatives from each State of the Union. The total number of Senators thus is 96 only. In France, number of Senators is 314. The American Senate is the most powerful and effective second Chamber in the world. Its powers are almost equal to the House of Representatives in matters of legislation. Any bill except money bill may originate in the Senate and it can amend, reject or entirely remodel a bill passed by the House of Representatives. In cases of deadlock, a Committee of both the Houses takes up the matter. Even in matters of money bills, the excention stated above does not detract much from the power of the Senate as under its amending powers, it can entirely change the bill.

The American Senate possesses certain executive powers which are not enjoyed by the French Senate. The President of U. S. A. can make treaties only with

the concurrence of the Senate; two-thirds of the Senators present must concur. Similarly, he can appoint ambassadors, public ministers and consuls, judges of the Supreme Court and all other officers of the United States only with the concurrence of the Senate. In the judicial sphere, the Senate has the sole power to try all impeachments. When sitting for that purpose, the Senators are on oath or affirmatiton. When the President of the United States is tried, the Chief Justice presides. No person can be convicted without the concurrence of two-thirds of the members present. The French Senate can, however, convict with a simple majority.

In France, constitution requires that the Senator must be at least forty years of age whereas clause 3 section 3 of Article I of the American Constitution puts the minimum age at 30. The Vice-President of the United States is the President of the Senate. In France, the Senate chooses its own presiding officer.

Comparing the House of Lords with the American Senate, Marriot remarks: " The Senate is unquestionably a stronger Second Chamber than the English House of Lords. Not only has it larger powers and more extended functions, but it exercises those functions with greater freedom and independence, and in the main with more general assent....The American Senate, moreover, is superior to the House of Lords in its efficiency as a revising chamber, and in the respect and confidence which it inspires. The latter advantage is due perhaps to the elective basis on which it rests, the former attribute is inseparably bound up with its restricted size. Hence the consensus of opinion among all reformers of the English House of Lords that the first and essential step is to reduce its overgrown and unwieldy bulk to something like the dimensions of the Second Chamber if not of America, at least of France.....More important than the House of Lords as regards its legal functions, the Senate is not inferior to it in popular intelligibility." It rests on

a principle which differentiates it from the House of Representatives just as clearly as the principle of birth differentiates the hereditary House of Lords from the elected House of Commons. The difficulty of getting an intelligible differentia has been a great stumbling bloc in France.

Q. 7. Discuss the various stages through which a Bill passes before it becomes an Act in France.

Permanent Commissions.

Ans. The regulations organise the procedure of work in the Chambers. Before a bill comes before the Chamber, it must be first studied by a committee whose findings are set down in a brief report. There are permanent committees or Commissions in the Chamber, composed of forty-four members each, to which the chamber sends the bill for consideration. Up to 1910, the Commissions were established by the bureaux and had been made permanent as early as 1902. The system of establishment of the Commissions by bureaux, however, continued upto 1919 in the Senate.

Commissions are now appointed by the general vote of the Chamber. The members of the Commission are nominated by the groups, in proportion to their numbers. All members in both the Assemblies are required to join a definite group. The nominations of the committeemen by the groups has to be approved by the Chambers, but this approval is a mere formality and consists simply in the President reading the names of committeemen at the beginning of each session. The list of candidates proposed by the groups can, however, be challenged by fifty members before the day of official nomination. An open vote follows the challenge. But a list is never challenged.

The permanent commissions now number twenty and correspond roughly to the chief departments of the State, *viz.*,

1. General, departmental and muncipal administration ;

2. Foreign affairs ;
3. Agriculture ;
4. Algeria, the Colonies and Protectorates ;
5. Alsace-Lorraine ;
6. Army ;
7. Insurance and social insurance ;
8. Commerce and Industry ;
9. Accounts and Economy ;
10. Customs and commercial treaties ;
11. Education and fine arts ;
12. Finance ;
13. Health ;
14. Civil and criminal legislation ;
15. Mercantile marine ;
16. Navy ;
17. Mines and power ;
18. Liberated regions ;
19. Labour ;
20. Public works and communications.

Each Commission elects a President, Vice-President, a *Rapporteur* and secretaries. The duty of the President is to guide the deliberation of the Commission and its relation with the outside world. The Rapporteur reports the views of the Commission to the Chamber and guides the discussion in the Chamber. "The position of the Rapporteur is one much sought after, for it offers the opportunity to acquire prestige in the Chamber and with ministers. The name of the Rapporteur is published in order that those who wish to know how the work is progressing may know whom to apply. Better to be a rapporteur of a Commission, which has much to do, than the President of the commission not in the public eye.....Most often the recognized experts are chosen as rappor-

teurs ; sometimes ambitious young men. Upon government bill, it is clear that the government can secure a rapporteur favourable to its own attitude : he has been called naturally the organ of the majority ; for being based upon party, the Commission contains group elements corresponding to the strength of groups in the Ministry, and not infrequently they go to members as a compensation for non inclusion in the Ministry, or to various groups as part of the bargain leading up to the coalition."

Procedure. The President of the Chamber settles as to which Commission a particular bill will go. If he is in doubt about that or thinks that the bill should be considered by two Commissions, the vote of Chamber is taken. The members of the Chamber must have the report of the Commission in their hands six days before it is to be debated in the House. If the report concerns the budget, it must be distributed among the deputies ten days earlier. In 1920, in view of the delay made by commissions in submitting the reports, it was decided that the report must be submitted by the Commissions within four months of their being seized with the proposition. If the report is not submitted within four months, the author may withdraw the report and have it placed on the order of the day. The Chamber may, however, refuse to do so. Fifty members must support the author of the bill if he is to withdraw it from the Commission.

One day a week is left free by the Chamber for the work of the Commission. Sessions of the Commission are private and even members of the Chamber may not sit as spectators. Sittings of the Commission may be held even when the Chamber is in session and " experts of the Departments, members, official documents and communications from unofficial sources are examined. The experts and the ministers could keep away from the Commissions if it were to their profit ; in fact, the Commissions have such an influences upon the course of legislation, they are set into so high a

position of authority by the general opinion of the Chamber, they are so much an essential expression of French parliamentary life that both the official staffs and ministers do everything in their power, promising even more, to help them. The Commissions even descend upon the competent Minister when necessary or convenient and discuss their work with him and his administrative chiefs."

The Bill in Chamber.

On the day appointed, the bill is taken up by the Chamber for discussion. The rapporteur takes the lead and first addresses the House. He simply explains the principles of the bill at that stage; no amendments are allowed. The President of the Commission to which the bill had been referred and the Rapporteur have the right to intervene during the debate at any time. The bill enters the second stage if the Chamber votes favourably.

General debate on principles of the bill.

Consideration of bill by clauses.

At the second stage of the discussion, articles of the bills are taken up for consideration one by one. Amendments are proposed at this stage. The Commission can withdraw any article from the Chamber, if it perceives its fault. After all the clauses have been considered and certain amendments accepted, the Commission may obtain a recommittal of the bill. It is always recommitted if its principle is denied.

Final vote.

If no recommittal takes place, the matter may be put to the vote. The voting is public and the ordinary method of voting is by show of hands but if twenty members demand it or if the vote by show of hand is doubtful or if it is a question of serious business the voting may be by ballot. Each member places in the receptacle presented him by the usher a slip bearing his printed name, white for the affirmative and blue for the negative. Voting by proxy is allowed at this stage. If even this does not satisfy the House and a greater number of members make a signed demand, a public ballot may take place. The name of each deputy is called out in the alphabetical order; he then personally walks to the

Tribune and presents his slip. No proxy voting is allowed at this stage.

Bill in the Senate.

If the bill is passed by the Chamber of Deputies, it goes to the Senate where again it passes through practically the same stages. There are, however, two examinations with a five days' interval between them. Senatorial Commissions are required to report not within four but within six months, but in the case of a bill originating in the Senate but amended in the Chamber, within three months. If the Senate votes favourably on the bill, it is laid before the President who promulgates it by means of an official decree.

Promulgation by the President.

The Senate may propose an amendment to the bill if it so desires and in that case, the bill goes back to the Chamber. There is no constitutional provision for a deadlock except as regards constitutional amendment. In practice, when deadlocks have arisen, the ministers have been able to overcome them by their tact and influence. Either one or the other House gives way. The Senate, in fact, rarely rejects the bill outright; its habit is to delay bills. Bills do not drop at the end of a session.

Monthly commissions.

Besides the Permanent Commissions, the Chamber and the Senate have monthly Commissions, each consisting of 11 to 22 members and a Budget Committee consisting of 33. They are nominated by bureaux which are established every month by lot. One, two, three or four committeemen are nominated by each bureau to the monthly Commission. There are 11 bureaux in the Chamber; the Senate has 9. "This curious system is one of the few relics of the *ancien regime* still to be found in the parliamentary proceedure of modern France." The practice of forming bureaux was discontinued for some time in the beginning of the nineteenth century, but was resumed in 1814, and has existed since that time.

Closure and order of speech.

Closure.

It is the President of the Chamber who decides whether a debate should be closed or not. After at least two speeches have been given against the proposition, the President has to close the debate if a sufficient number of members demand closure. One member can speak against the motion to vote on closure. The debate is reopened if the Government exercises its constitutional right to speak after the motion. Members can speak for five minutes each after closure has been voted to explain their attitude. The entire procedure may be shortened when the Chamber votes an urgent matter.

Order of speech.

Duration of speech.

The names of the members who want to speak on a measure are entered in two lists and the members are then called upon to speak in the order in which their names have been inscribed in the list. The Government, according to the constitution has, however, the right to speak at any time. Priority is always given to the presidents, reporters and the members of the Commissions.

Duration of speech.

In 1926, the Chamber of Deputies fixed the duration as follows:—

(1) No limit for the Members of the Government; Commissioners of the Government.

(2) One hour for Presidents and Rapporteurs of Commissions ; authors of interpellations ; first signatory of a resolution ; speakers mandated by their groups.

(3) Half-an-hour for authors of amendment ; speaker opposing the previous question ;

(4) Quarter hour for speakers on chapters of the Budget to which no one has put amendments ; authors of interpellations in reply to the Government; questioners who develop their questions ; all speakers where rules do not fix some other duration.

(5) Ten minutes to the supporters of a demand for immediate discussion ; authors of a demand regarding the order of the day, priority, or call to order ;

(6) Five minutes for those who speak with the consent of a recognized speaker; an interpellator in reply to a minister regarding the date of the interpellation; oral questioners to reply to the ministers ; deputies rising on a personal fact ; one speaker on the closure ; speakers after closure to discuss the putting of the question or to explain their vote.

The French, the English and the American methods of law-making compared.

The following points of difference may be noticed between the French method of law-making and English and American methods of law-making: —

(1) In France, the bill is considered by the Chamber after it has been considered by one of its Permanent Committees or Commissions. In England, the consideration of bill by the House of Commons precedes the consideration of the bill in Committee.

(2) In England, the House of Commons is mainly guided by the Government ; in America, the Chairman, or if he is not in favour of the bill, the foremost member who is, has a right of recognition prior to all others in the House. In France, the Chamber is guided both by the Commission and the Government. In fact, the Commissions have become so powerful as to challenge the leadership of the Government. " The rapporteur on ministerial budget comes to consider himself easily enough as qualified to run the ministry."

(3) In France, the examination and report is confined to the principle of the bill. In America, the Committees have full powers over bills committed to them except that they cannot change the title or subject. They can, however, introduce drastic changes in the bill by amendments.

(4) In England, the alignment on bill is much more a party alignment than in France.

(5) In England, bills drop at the end of sessions while in France, these do not drop at the end of the session and can be proceeded with in the next session from the point at which they were left.

(6) In America, the Committees have no such jurisdiction over amendments as have the French Commissions.

(7) In England, it is the party whips who generally arrange who shall speak ; in France, the members who want to speak have to give their names personally to the President.

(8) " In England and the United States, members speak from their places, and being on the floor are simply on a level with other members and, therefore, receive no physical stimulus to speak otherwise than as man to man. In Germany and France, the orator may mount a Tribune, and there he sees below him and around him an arena full of spectators, and it is generally agreed that this stimulates the speaker to attempt to show off."

(9) " In England, the seating arrangement groups the Government on one side and the opposition on the other. In the other countries the seats are arranged in a semi-circle, in France and Germany, special seats being given to Ministers facing the Assembly, while in the United States, the Floor Leaders occupy certain seats by the gangways in the semi-circle."—

(*Finer : The Theory and Practice of Governments*).

Q. 8. Give a brief account of French system of financial legislation.

Ans. The work of framing budget is begun each autumn. Different ministers frame their estimates of expenditure for the next financial year and submit these to the Minister of Finance. The Minister of France incorporates the various estimates obtained from the Ministers in one single document and

The preparation of Budget.

presents to the ministry with a statement of revenue expected in the next financial year. The Ministry then revises the budget in the light of the statement about the anticipated revenues. All the current expenses of the government fall under the category of *ordinary expenditure* and those items of expenditure which are of a special nature as for example money needed for the conduct of a war fall under the category of *extra-ordinary expenditure*. Extra-ordinary expenditure can only be met by borrowing money. The distinction between ordinary and extra-ordinary expenditure is not so clear in practice and hence sometimes a balance is secured between ordinary and extra-ordinary expenditure by pushing items of ordinory expenditure to the side of extra-ordinary expenditure.

The Commission of Finances.

The Chamber of Deputies (as well as the Senate) has its Commission of Finances which consists of forty-four members. The budget which is submitted, on the responsibility of the Ministry, to the Chamber is referred by it to the Commission of Finances. The Commission divides itself into sub committees corresponding to each Department, and each sub-committee has a separate rapportener but all rapporteurs of the sub-committees work under the superintendence of rapporteur-general. The Commission can alter the various items in the budget at its own pleasure. It can refuse some appropriations, and add others so that it might produce a budget quite different from the one submitted to it. The Commission which sits almost daily has the right to send for papers and to require Ministers and permanent officials to attend and give evidence. The Ministers cannot attend as a matter of right nor can the Deputies but if a Minister expresses a desire to do so, he is generally invited but only to give information. The sessions of the Commission are not open to public. The minutes of proceedings can only be inspected after the passage of the Finance bill.

After the reports of the sub-committees are obtained by the Rapporteur-General, he co-ordinates

Finance bill in the Chamber.

them in the General Report of the full Commission and this document is then presented to the Chamber. The position of the rapporteur-General is very important and in many respects even superior to that of the Finance Member as it is he who presents and pilots the bill through the House. The Finance Member cannot even move amendments in the House. Lord Bryce criticises the procedure as follows :—

Lord Bryce on the procedure relating to financial bill.

" When the Ministerial scheme comes before the Chamber, the Reporter appears as a sort of second and rival Finance Minister, whose views may prevail against those of the Cabinet. The Government of the day has little influence, except what it may personally and indirectly exert, upon the composition of the Commissions, which may contain a majority of members opposed to its general financial policy, or to the view it takes of particular measures. The natural result is to render legislation incoherent, to make the conduct of financial policy unstable and confused, and to encourage extravagance, because ministers cannot prevent expenditure they think needless. A further consequence is to reduce the authority of an Executive which can be easily over ruled, the jealousy which animates the deputies leading them to disregard its wishes, perhaps to enjoy the rebuffs it suffers. The power of those persons who seem responsible because they were the original authors of a measure, or who can be made responsible to the public because they hold an office, being thus so reduced or destroyed that they cannot fairly be treated as responsible, actual control has passed to bodies whose members, debating in secret, and holding no office, are not effectively answerable. The nation can not, if displeased, punish the latter and ought not to punish the former. In these practices, there is visible a deviation from the doctrine, to which lip-service is paid in France, of the separation of legislative from executive power, for an Executive is impotent when the funds needed for administration are withheld."

"The Provisional Twelfths"

As it takes a lot of time before budget procedure is completed, the finance member has to be provided with money for meeting expenditure on current requirements. This is done by both the Chambers by voting lump sums to enable him to meet essential expenditure. These sums are known as "provisional twelfths." A Presidential decree divides the entire sum so voted among the different branches of government. These sums are deducted from the total appropriations voted by the Houses.

Control over Finance.

Control over finance : France, Great Britain and U. S. A. compared :—

The French Senate has no right of initiating money bills. The Law of February 24, 1872 says: The Senate has, concurrently with the Chamber of Deputies, the initiation and confection of laws ; however, financial bills must be, in the first place, presented to the Chamber of Deputies and voted by it. This only means that the Chamber has got priority only in initiation, otherwise no final power is conferred by the constitution on this body. The Senate has complete amending power ; it can remodel or reject the bill if it so choses. There are three other reasons which accounts for this power of the Senate, *viz.*

(1) It is an elected House.

(2) It has obtained great deal of power owing to its history and composition.

(3) According to Dr. Finer, the Chamber of Deputies cannot be alone trusted in finance as it has not the *expertise* or the self-control to make a proper budget in the proper time.

The power of the Senate to amend the finance bill has, however, been challenged by others. Events have sometimes favoured the Senate and sometimes the Chamber so that the issue is still open and the power of the Senate in this matter is somewhat dubious. As Marriot says, the tactics of the Chamber have tended to reduce the power actually entrusted to

the Senate by the organic laws. By deferring the passage of the budget to the latest possible moment, the Chamber compels the Senate to choose between the alternative of rejecting the budget, and driving the ministry to a provisional levy of taxation needing to be consequently confirmed.

In England, the House of Lords cannot amend the money bill. Parliament Act of 1911 took away all powers from the House of Lords in this respect and gave financial supremacy to the House of Commons. The American Senate often amends the finance bill brought before it from the House of Representatives and in case of a deadlock, the issue goes to a committee of both the Houses in which Senate usually wins. Munro sums up as follows:— "The House of Commons has complete control of national finances both in law and in fact; the Chamber of Deputies has it in fact but not in law; while the House of Representatives has it in neither."

Q. 9. Describe the position and the constitution of the Cabinet in the French political system. Differentiate between the Cabinet Government of France and the Cabinet Governments of Great Britain and U. S. A. How would you explain the frequent changes of Ministry in France?

Ans. In France the real executive is the Cabinet, the President is merely a figurehead. He is the constitutional head of the State and resembles in position the Monarch of Great Britain. There is nothing in common between the President of U. S. A. and the President of France. Cabinet Government in France, on the lines of British Cabinet Government, came into existence in 1875. The following articles of the Laws of February 25, 1875 and July 16, 1875 provide the basis for the working of Cabinet Government in France.

1. Every action of the President of the Republic must be countersigned by a Minister;

The constitutional laws bearing on the position of the executive.

2. **Ministers are *collectively* responsible for the general policy of the Government before the Chambers and *individually* for their personal acts.**

3. The President of the Republic shall communicate with the Chamber by messages, which shall be read from the Tribune by a Minister.

4. The President is not responsible for anything except in the case of high treason.

5. The Ministers shall have entrance to both the Chambers, and shall be heard when they request it. They may be assisted, for the discussion of a specific bill, by Commissioners named by decree of the President of the Republic.

6. The President of the Republic shall promulgate the laws within the month following the transmission to the Government of the law as finally passed. He shall promulgate, within three days, laws the promulgation of which shall have been declared urgent by an express vote of each Chamber. Within the time fixed for promulgation, the President of the Republic may, by a message with reasons assigned, request of the two Chambers a new discussion, which cannot be refused.

Constitution of the Cabinet.

The constitution does not say anything about the way in which Ministers are to be appointed. In practice, the Ministers are appointed by the President, while they are selected by the Prime Minister. The Prime Minister is, however, selected by the President. The English sovereign has no difficulty in selecting the Prime Minister as the choice is clearly indicated

Minister.

but in France, the task is not so easy owing to a large number of political parties in the Chamber. Selection of the Prime Minister requires tact and experience on the part of the President as there may be several persons in the Chamber who may have equal claims to be regarded as opposition leaders. If the President is in serious doubt, he generally consults the President of the Senate and the President of the Chamber of Deputies.

Appointment of other Ministers.

The task of selecting other Ministers falls on the Prime Minister or as he is officially known the President of the Council. Though the President may advice him in the matter, he is not bound to accept his advice. The Prime Minister makes his selection in a way as may ensure him a majority in the Chamber. When he has completed his list, he submits it to the President of the Republic who summons the persons selected to take charge of their respective offices.

In England, all the members of the Cabinet must be the members of the Parliament but this is not necessary in France. The Constitution is silent on this point but as a matter of convention, the Prime Minister is always chosen from the Chamber of Deputies and other Ministers are also chosen from the prominent members of the Parliament. In the last century, it was not uncommon for the Prime Minister to appoint a person who was neither the member of the Senate nor of the Chamber as a Minister but this practice has now been given up.

The number of the Ministers is fixed by the President on the advice of the Prime Minister. All the members including the Prime Minister draw the same salary and each is housed in a building which is maintained by the Government. There are the following Ministers :—

(1) the Minister of Justice :
(2) the Minister of War ;
(3) the Minister of Finance ;
(4) the Minister of Marine ;
(5) the Minister of Colonies ;
(6) the Minister of the Interior ;
(7) the Minister of Public Instruction and Fine Arts ;
(8) the Minister of Public Works, Communication and Transportation ;

(9) the Minister of Agriculture ;

(10) the Minister of Industry and Commerce ;

(11) the Minister of Labour and Public Health ;

(12) the Minister of Pensions ;

(13) the Minister of Foreign Affairs ;

(14) the Minister of Liberated regions. There have been Ministries of Supplies and Munitions also.

Conseil des ministres.

Cabinet and the Council of Ministers.

Cabinet meetings are of two kinds, the *Conseil des Ministres* and *Conseil de Cabinet*. The Ministers as members of the Council des Ministers are the chief administrative heads and are subordinate to the President of the Republic. The President attends and can express his opinion in the meetings of the Conseil des Ministers. The members of the Council are ex-officio members of the Council of State—the highest administrative Tribunal of France. The Council acts as the chief administrative authority if the President dies or incapacitated till the election of the new President.

Its chief function is to supervise the administration of the laws of the country. As a Conseil des Cabinet, the Ministers are representative of the Houses of Legislature. They have the right to attend all sessions of the Chamber and have priority over other members. The Cabinet meets once a week under the chairmanship of the President of the Council and is concerned with the details if parliamentary business. No record is kept of the proceedings of the Cabinet. This is true in the case of the Council of Ministers also.

Ministerial responsibility.

Law of February 25, 1875 lays down that Ministers are collectively responsible before the Chambers for the general policy of the Government and individually for their personal acts. The Senate has taken this clause to mean that the Cabinet owes responsi-

bility not to the Chamber of Deputies only but is equally responsible to both the Houses. In fact, some times, it has actually overthrown the Governments. But whether the Cabinet is under obligation to resign if the Senate passes an adverse vote on the reply to an interpellation, is not quite clear. The historical evidence is not conclusive. Whereas on certain occasions, the Cabinet has resigned on a vote of want of confidence by the Senate, on other occasions, it has continued to be in office. It must be admitted, therefore, that the scope of authority of the Senate in this respect is vague and unsettled. It is true that the Ministers have to take the Senate's power strongly into their calculations but by "using tactics well known to all politicians, of daring others to use their power by the threat of resignation, they have been able to make the Senate lose confidence in itself and to vote confidence in the Government." In fact, the principle of Cabinet responsibility cannot work if the Cabinet were to seek the confidence of both the Chambers. The two Houses are differently constituted and hence it is impossible to expect that the one House will look at the events exactly in the same way as the other will. Under these circumstances, the Cabinet's fate must be settled in the Lower House and not in the Upper. So, inspite of the influence the Senate is able to exercise over the Cabinet by means of interpellations and through its Commissions, it remains a fact that the ministerial responsibility in France means responsibility to the Chamber of Duputies only.

Individual and collective responsibility.

Individual and collective responsibility.

The principle of collective responsibility is not always observed in France. According to the Constitution, the Ministers are collectively responsible before the Chambers for the general policy of the government, and individually for their personal acts. The principle of the Cabinet responsibility in France thus permits a member to speak and vote in a sense different from that held officially by the Cabinet.

Such a thing is unthinkable in England. There is no pretention of unanimity and neither does it exist. The Cabinet never pretends to realize an absolute homogeneity. "The English tradition is that all ministers are in the same boat, they float or sink together. It is a case of each for all, and all for each. The opposition in the English House of Commons cannot attack one minister without rousing the entire ministry to his defence. But in France, there is no such iron-bound cohesion. When an individual minister incurs the wrath of the Chamber, his colleagues are under no moral obligation to help him. It all depends upon the politics of the situation. They will treat him as a Jonah and let him be cast overboard rather than permit his presence to sink the ship." The members of the Cabinet can never be trusted to support each other. It is so because of the lack of unity of direction and not from ill will. *In France, in fact, there are ministers only ; there is no ministry.* The collection of ministers under the Prime Minister is a much weaker entity than the corresponding team in England. Each minister lives for himself, knowing fully well that there is no solid strength behind him.

Instability of Government.

Frequent changes in Ministers.

In France, there were sixty-eight cabinets between 1873 and 1928, *i. e.*, during a period of 55 years the Cabinet changed its composition no less than sixty-eight times. The life of each Cabinet thus on the average does not exceed nine months and a half. If we were to include ministries that lasted for less than a week, total number of cabinets during this period of fifty-five years comes up to seventy-one and the average span of life of each Cabinet about nine months only. The following table gives the number of ministries with the duration of each :—

Duration.	*Number*
6 months and under	28
6-12 months	24
12-18 „	7

Number.			*Duration.*
18-24	„	... ...	1
24 months and over		... ...	8

—[*Finer's Theory and Practice of Modern Government.*]

But we must remember that the fall of a Cabinet in France does not mean the same thing as it does in England. In France, it is merely re-shuffling and never the complete clearance of a defeated ministry. As a rule, between one-half and three-quarters of the previous Ministry serve in the new one. Just as the American President may change his Cabinet several times by changing its membership, similarly the change of Cabinet in France usually does not signify a change in a reversal of the governmental policy but merely a few changes in its personnel. The Cabinet does not possess the power to dissolve the Chamber and thus accounts for the fact that French political crises are not national but personal, parliamentary and cabinet crises. Theoretically however, the Chamber can be dissolved by the President if Senate concurs but actually, the possibility of such a dissolution is never mentioned in ordinary times.

Control of Legislature over Executive and Ministerial instability.

Control of legislature over executive and ministerial instability

In France the parliamentary control of executive is exercised through—

1. The Interpellation.
2. Questions.
3. The Commissions.
4. Power over purse.
5. Debates on ministerial declarations.

I. Interpellations.

Interpellations.

In France, any member of the Chamber of Deputies may address an interpellation to a minister.

The interpellation is a kind of question, long and querulous, but not an innocent affair like a question in the House of Commons. It is, in fact, of the nature of an English vote of no confidence and is generally addressed to the Government to put it in trouble. An interpellation may be addressed to a minister by any deputy without any seconder. It can be addressed over a very wide range of subjects, even over the appointment of a minister. It requires the Government to explain its objects and methods in the particular branch of its policy and administration which is attacked. A minister may, however, refuse to answer an interpellation but he cannot persist in this sort of behaviour without giving rise to strong feelings amongst the deputies. If an interpellation relates to a matter of domestic importance, it must come on the programme within a month; but if foreign affairs are concerned, there is no time limit within which it may be replied.

The interpellation is terminable in one of the following three ways :—

1. Without any vote at all when the incident is simply closed.

2. By a vote upon the "order of the day pure and simple." In this case, the Chamber is supposed to have expressed no opinion on the merits or demerits of the Government's case.

3. By the " motived order of the day." This is a definite vote of confidence or no confidence.

Interpellations have been developed destructively. It is possible for interpellations to be joined, and frequently they are, with the result that the diverse passions of the Chamber are joined and focussed, culminlating in a vote of censure on the Government. This is a common way of defeating a Government and about three-fifths of ministries have thus fallen. Interpellations are thus a very important cause of ministerial instability.

2. Questions.

Questions.

Parliamentary questions enable the legislature to exercise day-to-day investigation of the administration. The number of questions addressed is very large and the tendency in recent times has been towards a still further increase. The Parliament addressed no less than 21,000 questions during its sessions from 1919 to 1924. Written questions are deposited with the President of the Chamber. These must be printed along with the replies by the Ministers within eight days following their deposit. Ministers have the right to declare in writing that they cannot reply because public interest prohibits them from doing so or that they require time before they would be in a position to reply. Oral questions are also addressed by the deputies. These questions raise a small debate, the questioner is allowed fifteen minutes to develop his answer ; the Minister replies and then the questioner is allowed another five minutes. Interpellation differs from a question because (1) the former must always be addressed to the minister in writing ; (2) it generally leads to a debate in which every deputy can participate and (3) the debate can only be closed by a vote.

3. Commission.

Commissions.

[See answer to Q. 7].

4. Power over purse.

Power over purse.

[See Q. No. 8].

5. Debates on ministerial declarations.

The first occasion on which the Chamber can enquire into the conduct of administration is by raising a debate on the ministerial declarations. Such declarations come as often as the new ministry and the need for explanation.

Munro on instability of French ministries

Munro on instability of French ministries :— " It is sometimes asserted" writes Munro, " that the instability of French ministries is not mainly due to the interpellation procedure but results from the bloc system and the tenuous grip which a majority bloc usually maintains upon the Chamber as a whole.

French cabinets are practically always coalitions, depending for their support on groups of deputies among whom there is no genuine cohesion. Any test of strength, no matter how applied, would disclose their weakness as compared with English ministries. In the British House of Commons, an opposition member can at any time move the adjournment of a debate in order to discuss some alleged grievance. When the budget is under discussion, he can move to reduce the salary of some minister. And if a motion of this sort is adopted, it has exactly the same effect as an adverse vote upon an interpellation in France. Such motions are made from time to time in the House of Commons, but they are not adopted; they are regularly voted down. This is because British ministry can count upon the votes when it needs them. In France, the ministers have no such unified, dependable support. Their followers often scuttle from the ship when a gust of unpopularity is encountered. So it is not interpellation procedure alone, but the *intrinsic weakness of party discipline* that is responsible for shortening the average life of ministries in France."

English, French and American cabnit system

English, American and the French Cabinet system :—

1. In England, the members of the Cabinet must be the members of the Legislature ; in France, the law does not provide that ministers shall be members of either house though they actually are ; in U. S. A. the members of the Cabinet cannot be the members of the Congress.

2. In England, the members of the Cabinet are collectively responsible to the House of Commons ; in France, they are both individually and *collectively responsible to the Houses of legislature* ; in U.S.A., the Cabinet is not responsible to the Congress.

3. In England, the ministry can depend upon the support of the party it represents ; in France, the ministries are usually coalition ministries and have a

precarious existence. In U. S. A., the President appoints and dismisses the members of his Cabinet

4. In France, a member of the Cabinet can address either House ; in England, a Cabinet member chosen from the House of Lords cannot address the House of Commons nor a member chosen from the House of Commons address the House of Lords.

5. In England, the king never attends the meetings of the Cabinet ; in France, the President usually attends the session of the Council of ministers and presides over the meetings. He, however, keeps himself away when the ministers are meeting as a Cabinet.

6. In England, the Parliament is usually dissolved by the King on the advice of the Cabinet ; in France, theoretically, the Chamber can be dissolved by the President if the Senate concurs but actually, as already stated, the possibility of such a dissolution is never mentioned in ordinary times. In U. S. A. the President cannot dissolve the Congress.

7. In England, Cabinet is not recognized by law ; in France, as members of the Council, the Ministers are recognized by law but as Cabinet members, they are not recognized by law.

8. In England, the Cabinet looks to the House of Commons only for support ; in France, the Cabinet cannot ignore the Senate without risk.

9. The Prime Minister in France has seldom a long span of office, therefore, much of the value of a Prime Ministership is lost. The average length of office comes to about 8 months. In England, the Prime Minister usually enjoys a longer span of life. In U. S. A. the President is elected for four years.

10. In France, ministers, not feeling any solid strength behind them, desiring to live, seeing themselves at the mercy of the Chamber of Deputies, never dare to be themselves, to defend what they think is most just, and fight what they believe to be bad and

dangerous. They try above all to get the favours of the majority. In England, the members of the Cabinet never take to clever strategies to preserve themselves as they have a solid backing in the Parliament.

French civil service

Civil Service in France.

There are assistants of the ministers in France whose tenure of office lasts as long as that of the ministers. Being members of the Legislature, they attend its sessions and answer interpellations. They are not the members of the cabinet and therefore do not participate in its meetings.

The government of a country. however, can, not be carried on without the help of an efficient permanent and paid body of officers. The function of the Civil Service is not merely to improve government, for government itself would be impossible without them. In France, and for matter of that in democratic states where we have ministers as heads of the departments, it is essential to have a body of persons with character and ability to be able to advise and assist those who are from time to time set over them. The civil service, in the widest sense, does not include high grade officials only, but embraces all permanent employees of the government from the secretary of the department to a *chaprasi.*

In France, there are 90 departments, 385 Arrondissements, 3019 cantons and about 37,000 communes. The Minister of the Interior appoints the Prefect who is the head of each department. The Central Government in France appoints all the local officials and issues orders from Paris. There is complete centralisation in this repect. Up to the Revolution, almost every office, central and local, except a few highest offices, were attainable only by private purchase, gift or inheritance. This is not the case now. All citizens are equally admissible to all public offices without any other motive of preference than their merit and following the conditions which are fixed by law. Appointments are made on the basis of qualifications fixed by law. Local politics

sometimes may play an important part in some appointments and promotions. But unless a man possesses technical qualification for the office, no amount of local influence can help him. The staff of the French ministry of Finance occupy a special position in the civil service. They are appointed by the minister, half by examination and half by patronage, being in both cases nominated from a list of selected persons as a reward for special service. Once appointed, they enjoy complete security of tenure as they are not liable to dismissal.

The power to determine the rule of recruitment lies with the chambers, the President—when the chambers have not made a law on the subject—and ministers to whom the President delegates the appointing power. The conditions of recruitment of the officials corresponding to the British administrative class and the German Higher Civil Service are settled by a number of rules of public administration. One of the most important duties of the State Council concerns the drawing up of rules of public administraion. Parliament is too unwieldy and is not the proper body to decide the minute details of a new set of regulations; hence whereas the laws state general principles only, the details are filled in by the rules of public administration. The "Rule of Public Administration" is drawn up by the President only with the advice of the State Council.

Q. 9. Describe in brief outline the Judicial organisation of France and compare it with that in U.S.A. and England. What are the functions and jurisdiction of the French Administrative Courts ? Discuss the advantages of and objections to these Courts.

Ans. France has two types of Courts:

(1) Ordinary Courts and

(2) Administrative Tribunals.

Ordinary Courts

Ordinary Courts.

Justices of the Peace

A. Justices of the Peace (*Judges de Paix*) are the lowest in the series of the French Courts. They form the 'cantonal' magistracy as each canton has a *Justice of the Peace. The office of the Justice of the Peace did not exist before the Revolution. It was, in fact, borrowed from England and Holland. The Justices of the Peace are appointed by the President of* the Republic on the advice of the Minister of Justice but to be eligible the candidate must provide himself with first diploma in law and must have served in the ministerial departments or public offices for a certain time. If he does not possess the diploma, he must have served in the capacity of a mayor, deputy mayor or general councillor at least for ten years.

The salary of a Justice of the Peace varies from 2,500 165,000 francs per annum. At Paris, salary drawn amounts to 8,000 francs. They can the removed only with the sanction of a commission appointed by the Minister of Justice. The main function of the Justices of the Peace is not so much to try law suits as to prevent them by bringing out reconciliation between parties. The importance of such a work can easily be realised from the fact that every year no less than 700,000 attempts are made to reconcile parties. Other functions of the Justices of the Peace are to defend the interests of widows and minors, to settle controversies finally where the sum involved does not exceed 300 francs—'actions, for instance, concerning personal property, disputes between travellers and hotel keepers or carriers, between landlords and tenants or farmers, between masters and servants, or employers and their workmen, even quarrels arising from the sale of domestic animals, etc.' They can even try cases involving a sum exceeding 300 francs but appeal is then allowed to *tribunal d'arrondissement.* They have criminal jurisdiction also and can try petty offences, punishable by a fine not greater than 15 francs, or imprisonment up to 5 days.

According to Barthelemy, the organisation is good in itself but spoilt by political institutions. He deplores the intervention of the Members of Parliament in the appointment of Justices. "Justices of the Peace hold too important an office (in that it keeps them continually in touch with electors) for the district deputies to refrain from trying to get them under their thumb. Consequently all reforms must ultimately depend upon the fundamental reform of political institutions and customs."

(B) Courts of the first instance or *Tribunal d' arrondissement.*

Courts of the first instance.

In each arrondissement, there is a Court of the First Instance which must consist of at least three Judges : a president sitting with two assessors. In important arrondissements, several chambers are created. The district tribunal is a court of appeal from the decisions of Justices of the Peace and councils of *prud' hommes* They have both civil and criminal jurisdiction. In appeals from the Justices' Courts, actions dealing with personality where the value is 1,500 francs per annum, and in all cases of registration, there is no appeal from its decisions. Appeal is allowed in cases outside these limits to the Court of Cassation. On the criminal side, its jurisdiction extends to cases of misdemeanours where the penalties are greater than those attaching to the petty wrongful acts adjudicated on by the Justices of Peace and not less than those attaching to the more criminal charges reserved for the higher courts. In its criminal capacity, tribunal d' arrondissement is known as a 'Correctional Court.'

There are 359 district courts. The president of the tribunal draws a salary varying from 5,000 to 10,000 francs per annum, and other judges from 3,000 to 6,000 francs. The president of the tribunal of the Seine draws a salary of 20,000 a year and the other judges 8,000. The president of the tribunal possesses very important powers. Each tribunal has one department under its jurisdiction.

Courts of Appeal

(C) Courts of Appeal.

These are twenty-five in number and have final appellate jurisdiction in civil and criminal cases with some exceptions. There is one Court of Appeal each for Corsica and Algeria also. The ambit of the appellate jurisdiction of the Courts includes a number of departments ranging from one to five. The Paris Court of Appeal, for instance, has seven. A minimum of five judges is assigned to each such court and these include a first president, presidents of chambers and councillors. Each court is divided into three chambers :

(1) a Civil Chamber,

(2) a Criminal Chamber, and

(3) an Accusation or Indictment Chamber.

The Accusation or Indictment Chamber decides whether persons charged with misdemeanours shall he brought to trial.

Courts of Appeal have no original jurisdiction. They have only appellate jurisdiction and therefore their business mainly is to hear appeals. Whereas at Paris, the first president draws 25,000 francs per annum, in the provinces, the first presidents receive 10,000 francs only. "Procedure in the Court of Appeal is similar to that in first instance. The Judge waits until the case has been gone through by the Court *avoues* (only different from the others in that they appear only before the Court of Appeal), among whom numerous documents pass at great expense ; he is then enlightened by the pleading of the advocates, who, of course, must also receive honorariums. The Court of Appeal cannot sit unless five councillors are present ; this is a great number, too many in fact, for when a bench is so numerous, the presence merely of a certain number of magistrates becomes all that is necessary." No juries are used by the Courts of Appeal in any of their sections.

(D) The Courts of Assize.

The Courts of Assize

These are the great criminal courts of France and are set up periodically in each of the eighty-nine departments of France. The Courts of Assize do not deal with civil cases. Each court is constituted of three judges who are appointed for each session. These judges form the bench and twelve citizens form the jury. In fact, the Court of Assize is the only court in France in which jury trial appears. But the functions of the jury are different from those which are performed by it in U. S. A. The president does not give any exposition of law nor does he charge the jury. The jury merely decides the guilt. An eminent writer on French government condemns the system of trial by jury in the following words : " The principle of judging crimes by a jury appears to be an unalterable dogma; or one might also say an unalterable superstition ; actually this institution sometimes brings about the most bewildering results. Composed almost entirely of petty shopkeepers, the jury often shows extreme severity towards attacks on property and a surprising indulgence to personal assaults. Needless to say, it does consider, and that very often, the judicial consequences of its decision, the result being acquittal for crimes whose punishment seems excessive, for so-called crimes *passionnels*, such as child murder and arson. Accordingly, to avoid such a travesty of justice, counsels transform as many ' crimes ' as they can into ' delicts,' and so bring them before the Correctional Courts, when the Assize Court is really the competent authority. In so-called political and especially in libel cases, one might as well allow justice to depend upon a throw of the dice as upon the decision of the jury. Nevertheless, the decisions of the Assize Court are final, and no appeal is possible."

Trial by jury

The President of the Court of Assize is appointed by the Minister of Justice on the recommendation of the Prosecutor-General, and the other two judges are

appointed either from the councillors of the Court of Appeal or are drawn from the Court of First Instance.

The Cort of Cassation

(E) The Court of Cassation. (*Cour de Cassation*).

The Court of Cassation is supreme Appellate Tribunal for both civil and criminal cases. It may suspend or reverse the decision of the lower courts. It is not a Court of Appeal in the ordinary sense of the term as it never goes into the facts of the case but simply decides whether the procedure in the inferior court was regular and whether the judges interpreted the law properly. There is only one Court of Cassation for the whole of France and this centralisation is designed with a view to secure uniform administration of law. If the court finds that the decision of the lower court has been contrary to the law or procedure has been irregular or law has been interpreted inexactly, it simply quashes the judgment of the lower court giving no new decision. The case is then sent back for a new trial to another Tribunal of the same degree as the one in which the original decision was given and if the original decision of the lower court is upheld by the new judges, the *Cour de Cassation*, on a second appeal, finally decides the case. The Court is divided into three chambers, with a President and fifteen judges :—

(1) The Chamber of Requests which gives civil cases a priority hearing.

(2) The Civil Chamber which re-examines the case and gives final consideration. The Chamber of Requests considers whether the appeal is *bona fide* and is likely to succeed before admitting it. Only those appeals are admitted which are well founded. These are then considered minutely by the Civil Chamber which gives the final decision. It rejects, on the average, one appeal in three which are admitted by the Court of Requests.

(3) The Criminal Chamber which deals with all cases on criminal side. All sentences passed by lower courts in last resort (final in so far as statements of

facts is concerned, can be appealed against to the Criminal Chamber of the Court of Cassation as regards the interpretation of law.

In all, the Court of Cassation is constituted of three presidents of chambers, forty-five judges, a procurator general and six advocates general. Their salaries are as follows :—

The President.....30,000 francs per annum each.

The Procurator General...30,000 francs per annum.

Judges.....10,000 francs per annum each.

Advocate General...10,000 francs per annum each.

It is the highest ambition of every judge to secure a seat in the Court of Cassation. The appointments are generally made from the first presidents and procurator generals of the provinces.

Other courts

Other Tribunals exercising quasi-judicial functions are—

1. Commercial Tribunals.
2. The Courts of Industrial Conciliation.
3. Courts of Expropriation,

Commercial Tribunals

1. Commercial Tribunals (*tribunaux de commerce*).

Tribunaux de Commerce in France perform the same functions as are performed by Registrars in Bankruptcy and Commercial Arbitrators in England. The judges are elected by the merchants of the municipality. Such courts are to be found practically in every important city of France. These courts handle a large number of trade disputes and thus relieve other courts of much of the work.

Courts of Industrial Conciliation or Councils of Prud' hommes

2. Councils of Prud' hommes or Courts of Industrial Conciliation.

The Courts of Industrial Conciliation which are presided over by the Justices of the Peace are composed of equal numbers of employers and employees. They try to settle disputes between employers and

employees arising over wages, hours and conditions of work, victimization of certain labourers and so on. An appeal against the decision of the Industrial Court can be filed in a civil court if the sum involved exceeds a certain amount.

Courts of Expropriation

3. Courts of Expropriation.

Courts of Expropriation decide how much the State should pay to an individual as compensation for his property acquired by it for public purposes. Such courts are known as Juries of Expropriation as they consist of sixteen citizens specially appointed for that purpose. The Court of Appeal or the Court of the chief town of the department appoints such juries in each department. Findings of these juries are reported to the civil courts which promulgate award.

2. Administrative Courts.

Historical :—

Administrative courts

"English law prides itself upon its respect for principles, and on its straightforwardness, on having, for instance, the same judges to settle differences between individuals, as well as law suits in which both individuals and the administration are engaged. The only reason, it is alleged, for the administration wishing to have judges of her own is that she has no liking for plain, unvarnished justice, and refuses to submit entirely to the law." In France, things have developed in a different way. There are special courts exclusively authorised to try Governmental officials if a complaint is filed by a citizen of wrong or inequitable administration. The ordinary courts cannot try the servants of the State. A position of privilege is thus created for officials by protecting them from penalties enforceable in the Ordinary Courts for faults committed in service.

Administrative Courts and administrative law have not been the result of any abstract theories developed by political thinkers but owe their origin to a pressing need. The activities of the agents of the Revolution

in so far as their attacks on persons and property were concerned were checked by the ordinary courts as all the citizens of France including the officials were subject to the same law before the same courts. Administration could not look upon that with equanimity; it took away the power of the ordinary courts to try the officials and concern itself with the acts of the administration. The complaints against the public servants were thus heard, under revolutionary regime, by the administration itself, district or departmental, with the king as the head.

Napoleon found this separation of authorities, administrative from judicial, a very valuable principle of government and succeeded in preserving it. "This principle," writes an eminent French writer, "formed too efficient an instrument of government for Napoleon to renounce it. It was necessary that the one master mind should make itsel felt over the whole centralised territory of France, instantaneously and without hindrance; and to this end no fear of legal proceedings was to paralyse the obedience of his agents; but while preserving this principle, Napoleon used it as he used all the other principles which the Revolution bequeathed to him; he organised it and perfected it. It was scandalous for the very administrators who had performed the act to be called upon to judge complaints raised against it. Napoleon righted this by creating a new separation of powers." The new system was perfected by a long series of measures throughout the nineteenth century. The work of administrative justice was gradually taken away from the active administration and entrusted to consultative administration. In 1799, the Council of State could judge administrative actions and decide cases. With the Restoration, it ceased to pronounce judgments and became merely a consultative body. In 1848, it received the power to pronounce judgments in specific cases. In 1872, it acquired a general and sovereign authority in administrative actions.

Adminst-rative court

Administrative Court.

1. The Council of the Prefecture (*The Council de Prefecture*).

The Council of Prefecture

The Council of Prefecture acts as a court of First Instance. The competence of the prefectorial Council is limited ; it has to deal with cases specially laid down by law. These include

(*a*) questions arising in connection with direct taxation ;

(*b*) certain special questions of fact relating to indirect taxation ;

(*c*) disputes over elections to the Council of the Arrondissement and to the Municipal Council ;

(*d*) questions relative to the administrative control over the communes and public establishments.

(*e*) violation of police regulations relating to main tain roads ;

(*f*) draining of marshes ;

(*g*) queries and

(*h*) contracts made by the government for public works.

It is estimated that prefectorial councils judge about three lakhs of cases every year and a vast majority of these consist of appeals against payment of direct taxes. The facts of each case are determined by an official enquiry before the case is heard. Each department has its prefectorial council which acts as an administrative body ; the court consists of three prefectorial councillors, with the prefect as the president, though he seldom sits. The government is represented by the general secretary (Secretaire General) who is known under these circumstances as the Governmental Commissioner. The prefectional councillors are very poorly paid officials; their salary varies from 2,000 francs per annum to 4,000 francs

per annum. Those sitting at France, however, draw a salary of 10,000 francs. A councillor has neither long tenure, nor large renumeration nor future prospects and therefore very few men of outstanding ability enter prefectorial councils. A councillorship is accepted 'to acquire an appearance of gentility.'

2. Special Administrative Courts.

Special Administrative Courts

Educational Councils

(*a*) The Educational Councils: These mainly consider the complaints of teachers against the officials of the State.

Councils of Revision.

(*b*) The councils of Revision. These deal with complaints over conscription laws.

3. The Council of State (*Council d'etat*)

The Council; Its composition

Composition.

The Council of State is the highest Administrative Tribunal of France and consists of two elements, ordinary and extra-ordinary. The former element is composed of thirty-five councillors (*conseillors en service ordinaire*). Conscillors en service ordinaire are appointed by the President usually on the recommendation of the Cabinet. They are permanent members, receiving salaries. No one below the age of thirty can be appointed a Councillor. All these councillors are men of outstanding ability and high legal attainments. Two-thirds of the counscillors are recruited from *maitres de requetes*, the rest being chosen at the Government's discretion. There are, in addition to the counseillors en service ordinaire, fifty auditors (*auditeures*) and thirty-seven masters of requests (*maitres des requetes*). Auditors and masters of requests prepare judgments whereas the Councillors give judgments. The auditors are recruited by competitive examination whereas three-fourths of the masters of requests are appointed from among the auditors and one-fourth by the government at its discretion. The twenty-one Councillors in extraordinary service are also appointed by the President but from among civil servants. They are not permanent mem-

bers of the Council of State and their advice is sought when any matter pertaining to the several departments is under consideration.

The main work of the Council is done in sections dealing with

(*a*) legislation ;
(*b*) justice ;
(*c*) foreign affairs
(*d*) home affairs;
(*e*) education ;
(*f*) fine arts and religion ;
(*g*) finance;
(*h*) war ;
(*i*) marine and colonies ;
(*j*) public works;
(*k*) posts and telegraphs ;
(*l*) agriculture ;
(*m*) commerce and industry;
(*n*) labour and social insurance.

The members of the Cabinet are entitled to attend the plenary sessions of the Council. They can vote on administrative matters but not on judicial matters. The Minister of Justice is the nominal President of the Council of State as the actual work is done by a vice-president. The latter is assisted in his work by the presidents of sections.

Jurisdiction and powers of the Council of State

Jurisdiction and powers of the Council of State.

The Council of State stands at the head of administrative jurisdiction in the same way as the Court of Cassation stands at the head of the whole legal order " but the comparison between these two great authorities must end there ; for while the State Council certainly acts at times as the Court of Cassation or Supreme Court of Appeal, it also acts as

an ordinary appeal court, and especially as a primary court of common pleas in all matters where the administration is concerned.' The control and the value of the work of the Council of State is described by Barthelemy as follows :—

"The State Council controls the legality of administration in a general way by the right of annulment for "excess of power." This has proved a most effective instrument of control, and one of the most original institutions of French administrative law. Anyone, whether a person or limited company, French or foreign, if damaged by an illegal administrative decision, can appeal to the State Council for its annulment. Acts of Parliament alone are outside such control ; all other authorities are subject to it in cases where they exceed even by the slightest fraction their right of issuing executive commands ; such commands can be annulled whatever their nature; and however lofty their rank in the order of administrative acts ; they comprise the deliberations of general or municipal councils, by-laws of mayors or prefects, appointments or degradations in rank of non-commissioned officers by regimental commandants, ministerial decisions, decrees of the President of the Republic, and even regulations of public administrations, that is, decisions taken by the President of the Republic following a bill in Parliament, and upon the advice of the State Council itself. Thus there is literally no way by which a public authority can escape the rigorous surveillance of the State Council upon matters of dispute.

"Moreover the control exercised with regard to legality over this vast domain is as thorough as it can be. Annulment may be pronounced for the breaking of any law or ruling, whatever the authority on which the law rests (*i. e.*, whether act or statute), and whatever the nature of its limitation, whether one of foundation, of competence or of form; the control of the State Council even concerns itself with the intentions of administrators, and examines whether they are in

accord with the general duties of their office. Thus an action legal to all outward intent may yet be annulled by the State Council, if the authority responsible for the action has used his power for a purpose other than that for which it was intended."

"For instance, the prefect may order a match factory to be closed—'because of insanitary conditions,' he says—quite legally. The State Council finds out, however, that the real motive is to save the State from paying the legal compensation provided for in the match monopoly act, and accordingly annuls the decision; or a mayor, again on the ground of insanitary conditions, orders the closing of a cattle market, the State Council divines that the intention of the mayor is to force dealers to go to the newly built municipal cattle market, and to conduct their business there; other authorities make use of rights which the law has given them for personal interest, or moved by political passion; and in every case the State Council pronounces annulment where it finds misuse of power. No judicial authority would venture to extend its investigations as far as this." According to J. W. Garner, the Council of State occupies a place in the public esteem and confidence of the French which is even higher than that which the Supreme Court enjoys among the American people.

The Council of State thus enjoys high prestige and is entirely independent of executive power in the exercise of its judicial functions. As we have already stated, though the representatives of different ministries are the members of the Council, they cannct take part in the decisions of the Council in judicial matters. The Council has both original and appellate jurisdiction—original in the annulment of administrative acts in certain cases and appellate in hearing appeals from the Councils of Prefecture. Apart from its judicial functions, the State Council may also be called upon to advise the minister.

4. The Conflict Court (*The Tribunal des Conflicts*)

The Conflict Court

The Court of Conflicts decides disputes that may arise between the two orders of jurisdiction. As there are two independent Judicial Chambers functioning side by side, cases of doubts as to jurisdiction often arise. In such a case, the Government is likely to force the trial before the Administrative Courts. The Court of Conflicts is created to avoid this danger. It brings into harmony the civil and administrative tribunals. It was created in 1848, ceased to function in 1851 and was reconstituted by the Law of 24th May 1872.

It consists of eight elected judges and is presided over by the Minister of Justice. The judges are elected as follows : —

(*a*) Three members are chosen by their Colleagues from among the Councillors of State. They are appointed for three years at a time.

(*b*) Three members are chosen from the Court of Cassation by the members from among themselves.

(*c*) Two members are chosen by others for three years.

Members can be re-elected and are, in fact, in almost all cases, re-elected. Very few changes occur.

The Minister of Justice is the nominal president, the vice-president is elected by the eight elected judges and he generally presides. There are also two substitutes similarly elected from the Court of Cassation and the Council of State who act only in the absense of a colleague. There are also two *Commissaires du Government* appointed by the President of the public for one year.

The Tribunal de Conflicts inspires great confidence and, according to Dicey, is considered to be an absolutely judicial body.

Merits of administrative law

Arguments in favour of Administrative Tribunal.

1. French Administrative tribunals are in keeping with the French tradition of a strong executive.

2. They are in accord with the teaching of Montesquieu. If the officials are to carry out their duties with efficiency and energy, it is essential that they should be free from the interference of the ordinary courts.

3. These have enabled the people to obtain justice at relatively small cast and with a minimum of delay.

4. The Council of State serves as a great buffer between the people and the bureaucracy.

5. The development of Administrative Courts has become inevitable on account of the growth of social legislation and increase in government activities.

Demerits

Arguments against administrative tribunals.

1. Administrative tribunals are negation of the 'rule of law.'

2. Executive officers who generally sit in such courts are likely to be biased in favour of administration.

3. Democratic equality does not allow privileged treatment of the official class.

Dicey on Rule of Law and Administrative Law

Dicey sums up the relative merits and demerits of Droit Administratif (Administrative Law) and 'Rule of Law' as follows:—

Rule of Law—Its merits.

Merits of Rule of Law

(*a*) Individual freedom is more thoroughly protected in England than in any other European country. The Habeas Corpus Act aim at the liberty of the citizen; martial law itself is reduced within the narrow limits and subjected to the supervision of the courts.

(*b*) An extension of judicial power represents the august dignity of the State and of the Crown thereby.

(*c*) Trial by Jury, under the rule of law, has produced popular confidence in the judicial bench.

(*d*) The House of Commons does not decide legality of elections. It has handed over to the High Court of Justice the trial of election petitions.

(*e*) In the bitter disputes which occur in the conflict between capital and labour, employers and workmen alike often submit themselves to the Rule of Law. Arbitration Boards (often consisting of the Judges of High Court) help in the maintenance of the Rule of Law.

Demerits.

Demerits of Rule of Law

(*a*) Courts cannot without considerable danger be turned into instruments of Government.

(*b*) Repect for law, moreover, easily degenerates into legalism which from its very rigidity may work considerable injury to the nation.

(*c*) The refusal to look upon an agent or servant of the State as standing, from a legal point of view, in a different position from the ordinary servant of any other employer or ordinary citizen, has also in more ways than one been injurious to the public service.

(*d*) It is possible too that dereliction of duty on the part of public servants which in some foreign countries would be severely punished may still in England expose the wrong-doer to no legal punishment if left to the mercy of the courts.

Merits of Administrative Law.

Merits of Administrative Law.

1. It has been constructed, step by step, in accordance with the needs of the times. It has grown and is not created *de novo* by the action of any parliament or legislature. It is not fixed or stereotyped.

2. It has a wide range, dealing not only with the liabilities of the State and its subordinate divisions

for injuries done to private individuals or their property, but with the rules relating to the validity of administrative decrees, the methods of granting redresses when public officials abused their legal authority, the awarding of damages to private individuals for injuries which result from faults of the public service, etc.

3. Frenchmen consider it as a palladium of their liberties, a protection against arbitrary governmental action. In it, a method of redresses is open free of charge to all who consider themselves aggrieved by an act of the public authority.

4. No jurist can fail to admire the skill with which the Council of State, the authority and jurisdiction whereof as an administrative court, year by year, receives extension, has worked out new remedies for various abuses which would appear to be hardly touched by the ordinary law of the land. The Council has created and extended the power of almost every individual to attack any act done by any administrative authority in excess of the legal power.

5. It has carried the ingenious distinction between damages resulting from the personal fault (spite. violence etc.) and negligence of an official due to his fault. It has made officials realise their responsibility.

6. It is required in France because France is a Republic with a highly centralized administration. The system of administrative law and administrative courts is a counterpoise of centralization. This is bound to develop because the government extends the scope of its functions too widely and accumulates too many responsibilities.

Demerits.

Demerits of Administrative Law

1. The restrictions imposed on the authority of the Courts by *Droit Administratif* have diminished the moral influence of the whole judicial body and deprived the French judiciary of that dignity which the

English Bench have derived from its undoubted power to intervene in matters of State.

2. *Bona-fide* obedience to the commands of superiors, even though that involves a breach of law, is a complete exemption, and the Civil Courts' jurisdiction is ousted. The agents of the government in the *bonafide* discharge of their duties do not receive any protection from the ordinary law courts. French law recognizes a large list of State Acts bearing on matters of policy, which do not fall under the control either of the Administrative or other Courts.

3. The Administrative Courts, cannot from their very nature, give that amount of protection to individual freedom which is secured to every English citizen, and to indeed every foreigner residing in England.

4. There is bound to be a conflict of jurisdiction between two sets of courts acting in France—the Court of Cassation which is the tribunal of last resort in all ordinary cases and the Council of State which is supreme in all administrative controversies. Neither of these two courts is superior to the other, each is supreme within its own sphere. Although there is the Court of Conflicts to settle such disagreements, yet the jurisdiction of each is over-ridden by the other.

Thus the administrative law is law for all State officials. In this sense, there is no such law in England where common law prevails for all. The administrative law contains the rules which regulates the relations between the administrative authorities and private citizens. Englishmen are ruled by law and law alone. In France, the officials can be tried only in the special courts but not in England ; under the Rule of Law, the rights of the individuals are more jealously protected than under the French law.

Present position of the two.

Present position Rule of Law

As regards the rule of law :—It remains to this day a distinctive feature of the English Constitution.

But the ancient veneration for it in England has during the last 40 years certainly suffered a decline. The truth of this is proved by

1. actual legislation.

2. the existence among some classes of a certain distrust both of the law and the judges.

3. A marked tendency towards the use of lawless methods for the attainment of social and political ends

4. The decline in reverence for Rule of Law is also partly due to the spread of ultra-democratic sentiment and mis-development of party government.

As regards the administrative law :– It is becoming more judicialised. Thus the Council of State which is the great Administrative Court of France, is not now presided over by the Minister of Justice who is a member of the Cabinet.

Courts in England and U. S. A.

Administrative Law. Organisation of courts in England.

Great Britain :—Courts may be divided into two categories.

1. Superior Courts located in London with some exceptions.

2. Inferior or Local Courts scattered through the country.

These may further be subdivided as follows :—

1. Civil.
2. Criminal.

A. Criminal Courts.

1. Petty Sessions.
2. Quarter Sessions.
3. High Court of Justice } Supreme Court
4. Court of Appeal } of
5. House of Lords } Judicature.

B. Civil Courts.

Organisation of courts in U. S. A.

1. County Courts.
2. High Court
3. The Court of Appeal
4. House of Lords.

} Supreme Court of Judicature.

High Court is organised in three divisions :—

1. King's Bench Division.
2. Chancery Division.
3. Probate, Divorce and Admiralty Division.

The Judicial Committee of the Privy Council is a Court of Appeal from Dominions and India.

The federal judicial system consists of three parts :—

1. *The Supreme Court.* It consists of a Chief Justice and eight associate Juctices. Its sessions are held annually in the city of Washington and begin on the second Monday of each October. Six Justices constitute a quorum. It has both original and appellate jurisdiction.

2. *The Circuit Court of Appeals.* It consists of circuit judges, judges of the district court and Justices of the Supreme Court though the latter in practice never attend. It has appellate jurisditicon over all cases decided by the District Courts.

3. *District Court.* These are the lowest in the series of Federal Courts. For this purpose, the United States is divided into eighty-nine districts. The President of U.S.A. appoints the district judges with the advice and consent of the Senate. Each State has at least one district judge while bigger States have more than one.

In American States, there are four grades of jurisdiction :—

(1) Justices of the Peace and Mayor's Courts.

(2) County or Municipal Courts.

(3) Superior Courts.

(4) Supreme Courts which have only appellate jurisdiction.

In most of the States, judges are directly elected by the people and cannot be recalled.

Constitutionality of laws and judiciary.

In France and England, no court has power to declare unconstitutional a law passed by the two Chambers and King-in-Parliament respectively. In U.S.A., however, the Supreme Court is the final judge of the legality of Federal and State Laws. It not only interprets law but also decides whether the law is law, that is, whether the legislature was competent to pass the law. If a legislature enacts a law which it is not competent to enact, the Court can declare it null and void. The Court can, however, express itself on the legality of law only if a case is presented to it for adjudication. "Its judges may see the President usurping powers that do not belong to him, Congress exercising functions it is forbidden to exercise, a State asserting rights denied to it. The court has no authority to interfere until its office is invoked in a case submitted to it in a manner prescribed by law." In England and in France, the Courts have to interpret only one law, in U. S. A., the courts have to interpret the Federal Constitution, Federal Laws, State Constitutions and State Laws. American courts, therefore, have to determine whether the power in dispute is granted or withheld by the Constitution.

Marriot on the powers of courts in England and U. S. A.

According to Marriot, "in England, the judges can under no circumstances entertain the question as to the competence of the Legislature to enact a given law. If it is on the Statute-book, it is binding on them until it is amended or repealed. In America, the judges are constantly compelled to entertain this question; they must ask not merely whether the law is on the Statute-book, but whether it has a right to be there. The distinction is fundamental. It is true that in both cases, the Court is performing a judicial function, that in both cases, it is interpreting law, but

in England, it has only one law to interpret, in America, it must have two and may have four." In France, as already stated, the Courts cannot declare a law passed by the Chambers as unconstitutional. Ordinances and decrees can, however, be annulled by the Council of State. It can even annul the action of a General Council or a municipal council, but national laws are outside the scope of its authority.

Q. 11. Describe the system of local government in France and compare it with systems of local government in England, U.S.A., and India.

Ans. There were no local institutions in France before the Revolution. Extreme centralisation prevailed in the pre-revolutionary period. There was complete absence of popular control and the entire administration was in the hands of the officers of the Crown. The Revolutionaries abolished this system altogether and for purposes of local government divided France into 89 departments. Each department was divided into Arrondissements, Arrondissements divided into Cantons and Cantons divided into Communes. These divisions of general administration with some slight modifications introduced by Napoleon, have remained the same up to the present day. Departments were created arbitrarily, each approximately of the same size and were named in accordance with some geographical peculiarity—after some mountain, river etc. The number of departments, arrondissements, cantons and communes is as follows :— Historical

Departments	...	..	89
Arrondissements	...	...	362
Cantons	...	...	2,911
Communes	...	...	36,222

The present scheme. The present scheme

The department. The whole of France has been mapped off into eighty-nine departments. There is a prefect at the head of each department. He is The department.

appointed by the Minister of the Interior in the name of the President. He works in dual capacity--on the one hand, he is the political agent of the central administration and has to execute the orders received from above, and, on the other hand, he is the agent of the local General Council.

Powers and functions of the Prefect

The prefect wields almost despotic powers. He is a political agent--representing, in fact, not only the Ministry of the Interior, but all other Ministries as well. "Within the limits of his Department, he personifies administrative authority, and possesses the power of deciding matters and appointing executives. The prefect does not confine himself to directing, surveying and managing penitentiary and charitable institutions, which are under the Ministry of Justice and the Ministry of Social Work and Protection ; he does not confine himself to acting the part of political watchdog upon officials of all kinds, magistrates, schoolmasters, officers, and drawing up a more or less secret and exact report on everyone of them, nor even to keeping an eye on the general police and the maintenance of public order. In addition, he takes decisions upon numerous technical matters and appoints a large number of technical officers." Act of a prefect can, however, be vetoed by a Minister but a Minister cannot override the prefect. So long as the prefect is there, the Minister has to act through him. Until he is dismissed, he must count.

The prefect has powers as a member of the General Council of his department and carries out other business as desired by the General Council. He can suspend the mayor of a commune from office for a month ; he can also suspend the session of a communal council and can issue direct orders to the officers of the commune. The prefect has under him *conseil de prefecture*, consisting of three or four members. He is assisted by a general secretary and has sub-prefects who are the heads of arrondissements under his direct orders. Prefects are very highly paid officers. Their salaries vary from 18,000 francs to

35,000 francs per annum. They live in palaces, maintained by the departments. Departments have to pay all the expenses incurred by the prefects in their official capacity.

Difficulties that a prefect has to encounter

As Ministries change so often in France, it is very difficult for the prefect to always act according to one definite policy. A new Ministry that replaces the Ministry of today might have entirely different views on local government and may require the prefect to change his course of action. If he refuses to fall in with the wishes of the new Ministry he might be dismissed, though it is not very often that things reach such an extreme. But there is nothing surprising if a change in ministry is followed by a rearrangement of prefects. The prefect's job is not an easy one; he has to carry out the orders of various ministers and sometimes may get entangled among varying orders. If he is tactful, he may succeed, however, in causing those ministers to fall over one another. He, generally, owes his appointment to the influence of Deputies and Senators of his departments and therefore he has to please them by making appointments to minor offices according to their wishes.

The General Council of the department.

The general council of the department: Constitution

Each department has a legislative body known as the General Council. Membership of the General Council varies from seventeen to sixty-seven according to the number of cantons in each department as each canton is entitled to send one representative. There is universal suffrage for the election of the members of the General Council. Members are elected for six years, half the number of the members retiring every third year. Only those who hold property can become members of the General Council.

There are two regular sessions of the General Council each year, though a special session may be called whenever necessary. The dates for the sittings are not prescribed by law but are determined by the

General Council itself. In practice, it does not meet for more than a month in the year and for eleven months, the work, before 1871, was carried on by the prefect on its behalf but since that date, the practice has been to appoint a departmental commission, consisting of from four to seven councillors, to carry on the work on its behalf. Law requires the Commission to meet every month but actually Commissions continue their sessions practically throughout the year.

Its functions

Functions of the General Council.

Varied activities of the General Council include

(1) construction and upkeep of buildings needed for its own use, for the use of the prefect and his subordinates, for the use of the public schools, and for the use of the local courts ;

(2) upkeep of roads ;

(3) control of departmental railways and tramways ;

(4) hygiene of the department ;

(5) poor relief ;

(6) relief of lunatics and those suffering from incurable diseases ;

(7) providing for the cost of printing the election lists ;

(8) voting the pay of the police of the department ;

(9) voting of the annual budget of the department ;

(10) Members of the General Council constitute a part of the electoral college which chooses the senators from the department.

An estimate

Estimate of the work done by General Council. Of all French institutions, the General Councils have worked best. " They cannot be said," says an eminent

French writer, 'to comprise the *elite* of the nation, but the *elite* of a little local, political world. A man once elected to the General Council will generally remain there for many years, supported by no blaze of popularity but by a deeply founded esteem and affection. They are calm and hard-working assemblies. The whole body of general councils forms a varied and multi-coloured image of France in her entirety, perhaps a more exact image than that given by Parliament: the consultations of the general councils on great political, economic and fiscal questions have thus a particular significance. Moreover, most members of Parliament make every effort to combine their legislative mandate with a seat on a General Council, which enables them to strengthen their hold on their constituency. In February, 1919, for instance, out of eighty-six general councils, the Seine and the three Algerian Departments excepted, sixty-three were presided over by members of Parliament of whom thirty-seven were Senators and twenty-six deputies, eight ministers were general councillors, and four ministers and two under-secretaries were presidents of those assemblies.

The Arrondissement.

The arrondissement

The departments are divided into arrondissements. Arrondissements were created in 1799 for the purpose of grouping the communes. There is a sub-prefect at the head of each arrondissement. He is merely the agent of the prefect, with no independent powers. In fact, arrondissements are without any local life; they are merely convenient divisions of the departments, enabling the prefect to do his work more efficiently. All the routine work and minor functions are carried on by his sub-prefect on behalf of the prefect.

There is an arrondissement or district council elected by universal suffrage. It consists of at least nine members. Councillors are elected for six years. Half of the members of the arrondissement council retire every third year. Each canton returns one member to the Council; more populous cantons return two if necessary to make the number up to nine. The

Arrondissement Council is not entrusted with any important function. Its duties are nominal. It used to subdivide among the communes quota of taxes charged to the arrondissement by the General Council. This work even has been taken away from the district councils by the reform of taxes. The only way in which it can defend the interests of the arrondissement is by vote or protest.

Each arrondissement has its rate collector and its primary law court. Members of the Arrondissement Council form a part of the electoral college for electing senators; they can officiate for sub-prefect in certain cases and they sit on the military appeal tribunals. But this is all; the arrondissement has no budget and consequently no institutions. Such assemblies could be abolished without leaving any gap in the national life, and they could be abolished by an ordinary law, for since 1884, the election of senators has ceased to come under the rule of constitutional law; but the reform is not urgent; the title of district councillor costs the nation little and gives pleasure to a great number of citizens. The arrondissement would be as little missed considered as a division of general administration; the abolition of sub-prefects has long been agitated for, since they are actually little more than political and election agents, whose administrative duties are confined to being a kind of "letter box" a "go between" from the people to the prefect.

Canton.

The Canton is essentially a territorial division for election purposes and for the exercise of authority by the State officials. The Canton is the electoral district from which members are chosen for the General Council and the Council of the Arrondissement; the justice of the peace whose jurisdiction extends to the Canton sits at its capital; the rate collector, the tariff agent and inspector of roads are also to be found at the same place. Cantons are important

business centres and fairs are generally held at the capital of the Cantons. It is the capital of the Canton where police is stationed and which form the muster district for the army; conscripts who are to be enrolled in the army must present themselves at that place. The Canton has, however, no administrative organisation of its own.

Commune.

Commune

There were communes in France even before the Revolution. Napoleon tried to suppress small communes and to make arrondissements the most important unit of local self-government. On the whole, however, the division of France into communes to-day almost exactly resembles that in the times of Louis XIV, excepting that the number has been reduced to about 37,000. The commune is just as much urban as rural, though, on the whole, there is a much larger number of rural cummunes than town communes. Some communes are very large *e. g.*, the Commune of Paris or Arles which covers about 250,000 acres and some are very small, *e. g.*, a commune of the Seine-et-Oise district covers twenty-two acres only. The French municipal code defines a commune as any tract of territory the precise limits of which were defined by the decree of 1789 or which has been recognised by any subsequent law or decree.

1. The Council.

Governmental organization: The Council.

Every commune has a municipal council. It consists of from ten to thirty-six members, according to the population of the commune. The two exceptions are Paris and Lyon which has eighty and fifty-four members respectively. The councillors are elected by universal suffrage for four years. They receive no remuneration for their work. Only those can be elected who have certain ties with the commune "either by inscription on the electoral list or on the list of ratepayers, and the number of non-resident rate-payers must not be greater than a quarter."

The Mayor.

2. The Mayor (*Maire*)

The Mayor is the chief executive officer of the Commune. He is not appointed by the government but is elected by the municipal council from among its own members. His term of office is the same as that of the Council. He acts in a dual capacity ; on the one side, he is the chief excutive authority and administrator of the commune and on the other hand, he is one of the State official in the hierarchy of French government servants coming just below the prefect. It is his duty to see that the laws are properly carried out in the commune. He is responsible for the maintenance of order and the apprehension of law-breakers.

Adjoints

3. Adjoints.

The municipal council elects one or more assistants whose duty is to officiate for the mayor if he is absent. The government of the commune is thus constituted by the municipal councillors, the assistant mayors and the mayor. The mayor and the assistant mayors continue to be the members of the council as well. The mayor and the assistant mayors do not constitute collectively a separate executive authority. It is the mayor who is responsible for the administration of the commune to the central government. The prefect can suspend the mayor and assistant mayors for one month; the Minister of the Interior can suspend them for three months. The Government can even remove the mayor and assistant mayors altogether. The prefect and the minister can also annul the acts of the mayor and assistant mayors.

Sessions of the Council

Sessions.

The Council holds four ordinary sessions, every year, of a fortnight each. At one of its sessions, it considers the budget presented to it by the mayor. This session may continue for six weeks. The mayor presides ordinarily. He, however, does not act as the president when his own accounts are being considered.

The municipal council can be suspended by the prefect for one month and may be dissolved by the decree of the President passed in the Council of Ministers. Elections to the Municipal Council are fought on party lines. The mayor is, generally, the head of the winning party. Disputed elections are referred for adjudication not to the municipal council but to the prefectural council. During the period, the municipal council remains suspended, routine work is carried on by a delegation of three to seven members appointed by the President of the Republic. The delegation ceases to function after new elections.

The government of Paris.

The government of Paris

The government of Paris needs special mention as it differs from the administration of the other cities of France. It has no mayor but prefects, *viz.*,

1. the prefect of police and
2. the prefect of the Department of the Seine which includes Paris.

The functions relating to the police are performed by the former and the rest of the functions of a mayor are performed by the latter. The prefects are appointed by the President on the advice of the Minister of the Interior. Paris is divided into twenty arrondissements. Each arrondissement sends four members to the municipal council which thus consists of eighty councillors. The chief executive authorities of the arrondissements are known as mayors. The city administration is not under the control of the council though it votes the budget and carries out certain other functions. The general council of the department of Seine consists of the members of the municipal council of the city with a few more returned from communes outside the city. There is thus complete centralisation so far as the administration of Paris is concerned.

Inspite of the dissatisfaction of the residents of Paris with the existing arrangements, nothing

is done to give the Parisians home rule in their civic affairs. Even the mayors of the twenty arrondissements into which Paris is divided are appointed by the central government. They are just like sub-prefects though they are known as mayors. Method of appointment and functions of these mayors resemble those of sub prefects.

Centralisation of control

The central government and local bodies.

Things have changed greatly in France since the Napoleonic days of complete centralisation. Decentralisation has taken place both as regards powers and staff. The communes can elect their own mayors now though they were appointed by the head of the State during Napoleonic regime. Similarly, the members of the General Council, Arrondissement Council and Municipal Council are no longer appointed by the central government but are elected by the people. General and municipal councils were purely deliberative bodies in the past but considerable executive power has been acquired by them in recent times.

Inspite of this decentralisation, considerable administrative supervision is still exercised on the local elective bodies. The Central Government can dissolve local councils. The prefect can suspend the municipal council for one month. It can be altogether dissolved by the President. The mayor can be suspended by the prefect for one month, by the Minister for the Interior for three months while the President can dismiss him. Local councils have to provide for certain expenditure which is compulsory. If they do not do so, the President of the Republic can supply money in the case of a department and the prefect in the case of a Commune. An official rate can be imposed on the citizens for balancing the budgets. Resolutions of the General Council can be set aside by a simple decree in certain cases. As already stated, there is almost complete centralisation in the case of Paris.

"The local government of France," writes Coles, "is centralised in very minute detail, so that it is

necessary to acquire permits and authorisations from a great number of departments of State before quite simple pieces of local work can be put in hand. The fencing-in of a field which borders on a main road, for example, requires the consent of nineteen different authorities, each necessitating a separate application to Paris. This state of things has now been recognised to have become an administrative nuisance, and thorough-going reforms are from time to time demanded." Another writer thus sums up the merits of the system :—

"Among schemes of centralized local government, the French have built the best of all. Their system is peculiarly well suited to the needs of a country in which the national government insists upon retaining control over the local authorities. Centralization is its essence, centralization raised to the n^{TH} power. All authority converges inward and upward. It is a system that can be chartered in the form of a perfect pyramid. There is in France no recognition of the principle (so freely accepted in England and the United States) that every city and county has a self-evident right to conduct its own affairs in its own way, free from rigid supervision by the central authorities except in so far as such supervision is clearly demanded by the general interest. France is a highly centralized republic as respects all branches of its government. There is no division of powers between the nation and its component parts. There are no independent spheres of governmental authority. The French republic is not a federation of eighty-nine departments; it is a unitary state which has been mapped off into ninety-nine departments for the more convenient performance of governmental functions. The departments, in their turn, have been subdivided into arrondissements, but the divisions and the subdivisions are alike mere creatures of the nation; they have no inherent powers. The Minister of the Interior at Paris just presses a button and a host of local func-

tionaries—prefects, sub-prefects, and mayors—hasten to do his bidding. All the wires run to Paris."

Why no decentralisation

According to Lord Bryce, it has not been possible to effect decentralisation on account of the following causes :—

1. Schemes for decentralisation have always been opposed by the permanent civil service which does not like to part with power.

2. Deputies, senators and ministers also resist schemes for decentralisation as they lose their patronage in that case. It is this patronage that enables them to win the support of their constituents.

3. The control of the central government prevents local bodies from becoming potential source of open rebellion or conspiracy.

4. The French people do not want a large measure of local self government. "They have no such dislike to being governed as used to exist, and to some extent exists still, in England and America ; and they care much more for being governed well than for governing themselves."

Local bodies in Great Britain.

Local government in Great Britain.

Departments of the Central Government do not exercise the same amount of pressure on local bodies as is exercised by the central government in France. In Great Britain, the central government can influence the local bodies only through inspection, audit or grants-in-aid given on conditions ensuring efficiency and by an insistence on the standards of competence in the municipal staff. Local bodies carry out their own policies, but subject to such powers of direction and control as are retained by the central government. They appoint, subject, it may be, to regulations as to qualifications, their own staff, and raise in the main their own revenue. The local officials are the servants of the elected representatives of the locality and not officers of the central government, sent down to carry

out part of the work of the central government. The will that operates in the sphere of local administration is that of the people of the locality and not that of the government.

Local Government in U. S. A.

In U. S. A.

The machinery of local government in U. S. A. is mainly elective. The government of the cities is of three types *viz.*

1. that of a mayor and council
2. that of an elected board of commissioners
3. and that of a city manager, chosen by a small elected body.

Counties are governed by county boards. "In addition to these, however, there is a whole host of particular authorities, sanitary boards, parks and drainage boards and the like, recalling the confusion of local government in nineteenth-century England." The central government exercises little control over local bodies though, during the last fifty years, things have been drifting in the opposite direction.

Local Government in India.

India

Before the Reforms of 1919, local self government in India resembled the French system. The District officer who was the chairman of the district boards and often of the municipalities was more an agent of the central government than an executive officer of the local body carrying out its will. He occupied the same position as does the prefect in French Department. He was just as much the eyes, ears and arms of the provincial government as when functioning as revenue officer or district magistrate. Local government was a part of his varied activities. It was his will that operated and not the will of the local bodies.

The Montagu-Chelmsford report, however, emphasised the need of having as much popular control as possible in local bodies and the desirability of

securing the largest possible independence for them from outside control. The Government of India Act of 1919 transferred the local government to the control of ministers. In all provinces, the elected element in local bodies was increased and the executive power was passed over into the hands of the elected assemblies. Local bodies were clothed with enhanced power and were freed from official control. The experiment, however, has not been an unqualified success. "The only effective powers possessed by provincial governments, namely those of suspension and dissolution, have left the ministers powerless in the face of misconduct calling for less drastic treatment, where spur and rein were needed, the ministers were only given a pole axe....The mistaken idea of freedom from provincial control appears to have had the most unfortunate results in India. Some local bodies have been allowed to continue in evil courses with comparative immunity till maladministration has become almost a habit and, even when the cup is full, ministers are sometimes afraid to make use of their final powers through fear of political consequences. There should be surely little gound for resentment when control is exercised by a responsible minister. It is significant that, where, as in Madras, the authority at the headquarters of the province has made use of a system of specifically earmarked grants-in-aid to keep a controlling hand on district board administration, the fall in efficiency has been far less."—(*Report of the Statutory Commission, 1930*).

Q. 12. Is party government inevitable under Representative Government? Describe the French party system. What do you know of the part played by parties in selecting candidates for the French legislatures.

Need for parties under representative government

Ans. According to Mill, representative government is said to exist in a country where the ultimate controlling power rests with the representatives elected by the people. Democracies may be direct or indirect.

In direct democracies, people rule themselves. In indirect democracies, people rule through their representatives. In big States, we can have only representative democracies. Where great numbers of persons are concerned, it is definitely better that they do not decide and deliberate themselves but chose a few to act for them. As representatives are to be elected by the people, it is essential that people should organize themselves in groups. If a person holding certain views is to be elected, he must be backed by all those who hold similar views. Moreover, if constituencies are big, the choice of a candidate is not an easy affair. Local parties must grow up to select the candidates. "Without some party authority recognized as entitled to recommend a candidate, the voting strength of the party might be dispersed among competing party candidates, many electors not knowing for whom they ought to vote."

The party also binds together in the legislature those persons who hold similar views. That is the only way in which people can effectively advocate the cause about which they are agreed. The need for party organisation is the greatest in countries with parliamentary form of government as the executive there takes its complexion from the complexion of the legislature. The government of the country is carried on by the leaders of the majority party in the assembly while the leaders of the minority party form the opposition. Such a scheme cannot work without some sort of discipline that may keep the members loyal to their party and true to their constituents. Parties, moreover, by extending a helping hand, enable poor, though otherwise capable candidates, to enter the legislature.

Parties in France.

Parties in France.

In France, there were no parties before Revolution. Parties can never exist openly under despotic rule. Even after Revolution, no clearly defined parties emerged out of the turmoils and chaos which followed in

its wake. In 1849, France had four distinct parties, *viz.*,

1. The Monarchists.
2. The Conservative Republicans.
3. The Radical Republicans.
4. The Socialists.

Many other groups emerged later on as these parties failed to represent different shades of public opinion in France. There were two main parties in the French National Assembly (1871-1875) *viz.*,

1. The Monarchists and
2. The Republicans.

Republicans were in minority but they were ably led. The Monarchists, though in majority, were hopelessly divided among themselves. The Legitimists supported the claim of the Bourbons the Orleanists those of the House of Orleans and the Bonapartists supported the cause of the captive Emperor. Republicans were returned in majority in the general election of 1876. Republican party suffered a split in 1882 and a new party consisting of the radical element grew out of the Republican party. The new party was called Radical Party. In 1882, once again, France came to have four main parties *viz.*,

1. The Conservatives.
2. The Republicans.
3. The Radicals.
4. The Socialists.

As none of the party commanded an absolute majority in the chamber, ministries were coalition ministries and like all coalition ministries were short-lived.

Historical parties at present

Throughout the last forty years, political groups in the country as well as in the Chamber have been freely changing their names. They have constantly been in the process of formation and re-formation. It is

difficult to say how many parties exist at the present time and for what each party stands. Different classifications are given by different reference-works on French party system. Even the most stable parties are apt to suffer from splits. It is difficult to regard French political parties as parties at all ; they are rather groups, loosely organised, constantly changing in personnel. Splits and secessions take place so much oftener than elections that "the phenomenon of a group which has no ascertainable vote in the country (because it is a split from a larger group) wandering irre ponsibly about the Chamber and making and upsetting Cabinets, is not at all unusual. Nor is this because France is hopelessly torn, as some of the newer continental nations are, between religious, economic, and racial factions which cannot by any known means be reconciled in a single party or parties. Aside from the communists and the extreme Right, there is no really irreconcilable party in France, and even the troubles of the minority in Alsace appear to be calming down."

The French political parties :— There are twenty of them according to the latest reliable count, as well as a handful of persons so independent that no party can contain them. These can be grouped under three headings *viz.* Right, Centre and Left. We may distinguish the following more important parties from among this group of twenty :—

Royalists and members of the *Action Francaise* are at the extreme Right. They are known as Independents. Next to these, at the Right, are the followers of the *Action Liberale Populaire*, forming the clerical party, and various other Conservatives. The next parties are the Progressites, Republicans of the Left, Republican Democrats, and Radical Democrats. Towards Left, we have the Radical Socialists,. the Republican Socialists, and the Unified Socialists At the extreme Left are the Communists. Besides these main groups, there are smaller groups known as

Dissident Socialists, Clemencists, Christian Democrats and even 'Non-Inscrits.'

In the Chamber, the strength of the principal groups (effectives in the Session of December, 1930) was as follows :—

Right—(*a*)	Democrates Populair	18
(*b*)	Union Republicaine Democratique	85
(*c*)	Action dem et Sociale	64
(*d*)	Republicianes de Gauche	64
(*e*)	Gauche Sociale et Radicale ..	17
(*f*)	Gauche Radicale	6
Left— (*a*)	Independent de Gauche	22
(*b*)	Republicianes Socialistes	15
(*c*)	Radicale et Radical Socialists ...	113
(*d*)	Parte Socialist Francais	14
(*e*)	Socialistes	107
(*f*)	Communists	9
(*g*)	Independents	41
	No groups	20

Dr. Finer thus describes the policies of the different wings from Right to Left :—

Policies and programmes of French parties

"All on the Right are normally in agreement upon authority and efficiency, but on the Left there is serious difference, for the Socialists look to a situation where there shall be rather strict governmental control, and the Communists are rather more extreme in this respect, yet both would be prepared to overthrow a bourgeois government at the present stage of social development which attempted to use the strong hand for capitalistic purposes, except repression of the Catholic Church, while the Socialists, for concessions, would be prepared not to enter a Government, but at least to vote for a coalition of Left Parties, but would abandon these on the first signs of forceful capitalism,

Then the main wings differ as to the parliamentary system; the Extreme Right, looks to a dictatorship (monarchist) and always the strengthening of the permanent Executive power, *i. e.*, the President, and hence at present favours the idea of the Separation of Powers to restrain the assemblies and increase the unchallengeable stability of the Executive. Thence, leftwards, through all shades of difference, the groups become more and more republican. On the extreme Left, appear the Socialists and the Communists, some, but not all, of whom at least speak in terms of political dictatorship. Nor is that all : Other elements disturb the simple division into Right and Left. Such are nationalism and internationalism, and Catholicism and Secularism. From the Extreme Right to the Radical Socialists, there is a strong, at the extreme, a ferocious, nationalism; but in the middle of the Right this, on the proper occasions, tempered by ultra-monatism ; while, at the Radical Socialists, a rational recognition of the propriety of international peace, and therefore of reciprocal abnegation, begins to operate, and finds its extreme expression in the internationalism of Socialists and Communists."

Why France has so many parties?

Why France has so many parties.

The following factors account for the large number of parties in France :—

Chequered political history

1. The French political history lacks continuity. Between 1791 and 1870, *i.e*, during a period of eighty years, France had no less than eleven constitutions. None of these constitutions has survived. The present system of government in France is based upon the constitutional laws of 1875. The vicissitudes of restorations and dictatorships have left behind certain irreconcilables who have formed separate groups and parties. Before 1875, the French could not agree even upon the fundamentals of the government. It is only since that date that republican form of government has universally been regarded as the best form

of government. Even now there is a small group of irreconcilables, forming the Communist party.

Socialism and clericalism.

2. *Socialism and clericalism*. Whereas socialism has created divisions among the parties of the Left, clericalism has created divisions among the parties of the Right.

French temperament

3. *French temperament*. The French take a general pride in intellectuality and what it implies—love for rhetoric, controversy and action. This accounts for the short-lived career of French parties. The majority of Frenchmen take no active interest in politics. Fifty-four per cent of the population of France is rural, interested more in stability than in political innovations. Shut off from the influence of the towns, they are under the influence of the clergy. They would show extraordinary sensitiveness in personal affairs but would be least perturbed by important political controversies.

The case is different with the urban population. In 1848, seventy six per cent of the people lived in communes of less than 2,000 inhabitants, but the growth of industry, finance and commerce has resulted in considerable urbanization. But the dweller of a town is extremely individualistic and such a spirit can hardly accommodate itself to established order of things. Munro remarks that an average Frenchmen goes seeking for some political issue on which he may differ from his fellow citizens rather than for one on which he and others may unite. Yet the French people always show a united front when faced with a grave national emergency. " Did there ever appear on earth," asks Tocqueville, "another nation so fertile in contrasts, so extreme in acts, more under the dominion of feeling and less ruled by principle.....so fickle in its daily opinions and tastes that it becomes at last a mystery to itself...qualified for every pursuit yet excelling in nothing but were ..... endowed with more heroism than virtue, more genius than common sense..... the most dangerous nation of Europe, and the one that

is surest to inspire admiration, hatred, terror or pity — but never indifference."

Parliamentary procedure

4. Parliamentary procedure. The custom of putting government measures in charge of rapporteurs, the system of interpellation and the older system of organization of Committees in the Chamber may be regarded, from different points of view, both as the cause and effect of the ephemeral nature of French parties. System of entrusting governmental measures to the rapporteurs has led to divided responsibility and weak leadership. 'Interpellations help to keep the parties in a state of flux.'

Cabinet has no power to dissolve the Chamber

5. Cabinet has no power to dissolve the Chamber. As the Cabinet cannot compel a group to choose between it and a contest before the people, while the groups have full power to undermine and overthrow a government, there is everything to encourage the formation of group. For even to command ten or fifteen votes is to become an arbiter of the fate of governments, and to become 'ministrable.' It is for this reason, quite as much as out of any intellectual honesty, that France has so many groups. There is nothing to check the transformation of a caprice, as well as a sound intellectual doubt, into a new party.— *Finer.*

Party organizations and selection of candidates.

Selection of candidates

In France, local caucuses play a far greater part in selecting candidates than in England, for neither the principle nor the organization of nation-wide political parties has been accepted as a necessity. A large number of parties exist but so little do they possess the organizational qualities usually needed, that they are called groups. They have not the continuous history of the political parties of England, Germany and the U.S.A. There is no party discipline worth speaking of except in the Socialist and Communist parties and there are rapid and unforeseeable changes of party and group organizations, under the influence

of well expressed novel doctrines. Various associations support candidates in elections without direct affiliation to groups. The economic ruling classes, the big industrialists, the great financiers and commercial magnates support the parties of the Right with funds and propaganda. Quite a good number of candidates fight elections independently. An average Frenchman is individualistic in temperament and readily supports a candidate, not standing on party ticket. These are also supported by local election caucuses which are self-contained electors, sometimes composed of government officials or their close friends.

Results of the multiple party system in France

Results of the multiple party system in France.

Under multiple party system, the government is weakened and its tenure of office becomes uncertain. It is very rarely that government commands absolute and safe majority. Ministries are always coalition ministries and their lives hang by a very delicate thread. It is almost impossible for them to embark upon any bold policy. French Cabinets are thus much weaker and less stable than English Cabinets. Between 1873 and 1928, France had no less than sixty-eight cabinets. The average life of each Cabinet thus was not more than ten months.

Weak government

Continuous changes.

New cabinet does not mean complete change in personnel.

New Cabinet is not entirely composed of new members. Change of ministry in France does not mean complete renewal of offices. From one-half to three-quarters of the members of the outgoing ministry generally serve in the new ministry.

Weak position of the Prime Minister.

Between 1873 to 1928, France had no less than thirty-eight different Prime Ministers. Each Prime Minister remained in office on the average not more than eighteen months. The following table gives the total length of service as Prime Minister :—

Duration		*Number*
Under six months	...	10
6-12 months	...	13

Duration.		*Number.*
12-18 months	...	3
18-24 ,,	...	5
24-30 ,,	...	1
30-36 ,,	...	2
36-42 ,,	...	1
42-48 ,,	...	0
48 months and over	...	4

[*Finer's Theory and Practice of Modern Government*].

This small span of life takes away much from the value of the Prime Ministership. Within a short period, it is impossible for the Prime Minister to give an effective shape to his policy or to leave an abiding impression of his personality and work on the Government of the country.

Sense of collective responsibility can never develop under such a system.

No sense of collective responsibility

Finer on French Party system :—The account of the French party system may best be summed up in the following words of Dr. Finer :—

For France, there is most difficulty, for porty organization, which manages elections, compels the electoral conformity, and controls the parliamentary activity, of members, is existent only in three parties, namely the Radical-Socialists, the Socialists and the Communists, and of these parties, the Communists are of recent parliamentary advent, the Socialists have had a chequered history, and the Radical-Socialists do not and cannot enforce discipline, and moreover, began to organise only at the beginning of the twentieth century. From election to election the names of the organizing groups and committees change, from constituency to constituency, the labels of the candidates vary though they may be sponsored by the same Parisian head-

quarters, and later meet in the same group in the Chamber ; from election to election the names and membership of the campaign *blocs* and *cartels, the unions, the federations* and *the alliances* are transformed ; from parliament to parliament the groups of the Chamber freely change their names. No wonder that the official electoral statistics have an ever-varied classification since 1871. Moreover, it is difficult to compare the parties of before 1871 with those after. Not until after 1914 was there a regular official grouping, when it came about by a rule of the Chamber of Deputies requiring the inscription of names in groups for the purposes of representation on the Parliamentary Commissions.—[*Finer's Theory and Practice of Modern Government*].

Q. 13. Examine the influence of the theory of separation of Powers on practical politics in France.

The present French constitution is not based upon the theory of separation of powers.

Ans. The theory of separation of powers began in France. It was invented by Montesquieu who described it in his monumental work *l'Esprit des Lois*, Book XI. The theory was very popular during the revolutionary era in France. The French National Assembly of 1789 laid-down the principle and divided the executive power from the legislative power. The members of the executive were not to be appointed from the legislature. In fact, it was decided that no member of the National Assembly or future Parliaments should be a minister within four years of the termination of his membership, nor accept any gift, office, pension, salary or commission from the executive. The executive, on the other hand, was denied all legislative powers ; it was not to be allowed to issue decrees. The principle of separation of powers was given up in some of the subsequent constitutions but was usually resuscitated in others. It was, however, not mentioned in the constitutional laws of 1875 which provide the frame work of the present French Government.

In 1875, France adopted the cabinet system of government which is a negation of separation of powers. The members of the Cabinet are usually appointed from the legislature and are responsible to it for their elections. The President is not directly elected by the people but by the legislature. The only traces of the revolutionary belief in the separation of powers is to be found at present in the separate administrative courts to try the officers in their official capacity. The constitution denies to the ordinary courts the power to judge executive officials for a fault committed in and by reason of the public service. Similarly the constitution denies the powers to the Courts of the Justice to declare a law made by the Chambers constitutionally invalid.

A few traces of the theory

Q. 14. Summarise the main facts about French Constitution.

Ans. The present government of France is based upon the laws of 1875. The constitutional laws of 1875 cannot be called a constitution because they are fragmentary and scattered and lack completeness and coherence. These were amended subsequently in 1879, 1884 and 1926. The Chambers have the right by separate resolutions, taken in each by an absolute majority of votes, either upon their own initiative or upon the request of the President of the Republic, to declare that occasion has arisen for a revision of the constitutional laws. After each of the two Chambers has come to this conclusion, they meet together in National Assembly to proceed with the revision. The acts effecting revision of the constitutional laws, in whole or in part, are passed by an absolute majority of the members, composing the National Assembly. The National Assembly sits at Versailles and not at Paris where the Senate and the Chamber of Deputies meet.

Constitution and its amendment

The President.

The President of the Republic is chosen by an absolute majority of votes of the Senate and Chamber

The President

of Deputies united in National Assembly. He is elected for seven years and is eligible for re-election. He possesses the following important powers :—

1. He has the initiative of law concurrently with the members of the two Chambers.
2. He promulgates the laws when they have been voted by the two Chambers ; he looks after and secures their execution.
3. He has the right of pardon.
4. He disposes of the armed forces.
5. He makes appointments of all civil and military officers.
6. He presides over State functions.
7. Envoys and Ambassadors of Foreign Powers are accredited to him.
8. He can dissolve the Chamber of Deputies before the expiration of its normal term with the concurrence of the Senate.
9. He is responsible only in case of high treason.
10. He negotiates and ratifies treaties.

The President can be impeached by the Chamber of Deputies only and tried by the Senate. The ministers are appointed by the president.

Nominally, the powers of the President of France are not less imposing than those which the President of U.S.A. can exercise but actually as every act of his is to be countersigned by a minister, his powers count for nothing. The President is more or less of an ornamental cipher in public affairs. Millerand, who alone of recent Presidents seriously attempted to dictate policy, found it impossible. But, as an ornament, the President is very well-equipped ; his official salary is extremely high and enables him to entertain foreign political leaders (which is now his main job) in a thoroughly satisfactory manner while retaining a reasonable income for his own purposes.

The Chamber of Deputies.

The Chamber of Deputies

The Chamber of Deputies has at present 612 members, elected by manhood universal suffrage. The voting takes place in single member constituencies. No person can be a candidate for more than an electoral area. In case of a vacancy through death, resignation, or otherwise, an election takes place within a period of three months counting from the day on which the vacancy occurred. Vacancies occurring within six months preceding the next general election for the Chamber are not filled. The Chamber is elected for four years though it may be dissolved earlier by the President with the concurrence of the Senate. Money bills can be introduced in the Chamber of Deputies only. Commissions of the Chamber play a very important role in the passing of legislation.

Senate

The Senate.

Senators are not directly elected. They are elected by electoral colleges consisting of

(*a*) deputies whose constituencies lie within the department ;

(*b*) the members of the departmental council ;

(*c*) the members of the council of arrondissements ;

(*d*) delegates from the municipal councils.

The Senate consists of 314 members. It is elected for nine years, one-third retiring after every third year. On the first or second ballot, a clear majority is necessary for election, on the third ballot, a relative majority is sufficient. No body can be elected as a Senator before the age of forty. Representation in the Senate is heavily weighted in favour of the rural areas ; thus the department of the Seine, Paris, with over one half the population, chooses only one-ninth of the senatorial electors, and in the composition

of the electoral colleges generally, though there is since 1884 an element of proportionality, the large towns are badly represented. The distribution of seats, the method of election and the age of Senators, all go forwards securing that the Senate shall be a body generally conservative and intent to preserve *status quo*. " The legislative powers of the Senate and the Chamber of Deputies are equal. The money cannot, however, be introduced in the Senate. The Senate, moreover, has got judicial powers in so far as it constitutes the tribunal for the trial of the President and other important officers of the State. The President can only dissolve the Chamber of Deputies with its concurrence. When deadlock arises, one of the two houses gives way. The Senate seldom rejects the bill passed by the Chamber though it may cause inordinate delays. The constitution make no provision for solving the deadlock.

The Cabinet

The Cabinet.

Nominally, the President appoints the ministers but actually he appoints only the Prime Minister who, in turn, suggests the names of his colleagues. The ministers are responsible not to him but to the legislature. According to Article 6 of the constitutional law of February 25, 1875, 'the ministers are collectively responsible to the Chambers for the general policy of the Government, and individually for their personal acts. The members of the Cabinet may be drawn from the legislature or even from outside. Cabinet meetings are of two kinds :—

(*a*) the Council of Ministers at which the President of the Republic presides and offers advice;

(*b*) the Council of Cabinet at which he s not present.

French Cabinets are short-lived. The average span of life does not come to even one year. The two main reasons for the instability of French ministers are the multiple party system and the absence of the power

of dissolution on the part of Cabinet. The power of interpellation possessed by the Deputies also places the Cabinet at the mercy of the Chamber.

Judiciary.

Judiciary

The French Courts are divided into two classes, *viz.*,

1. those dealing with ordinary law and
2. those dealing with administrative law.

Those dealing with ordinary law include

(*a*) Juctices of the Peace.

(*b*) The Courts of First Justice or *Tribunal d' arrondissements.*

(*c*) The Court of Appeal.

(*d*) The Court of Assize.

(*e*) The Court of Cassation which is the supreme appellate tribunal.

Those dealing with administrative law :—

(*a*) Prefectoral Council in each department.

(*b*) The Council of State.

There is a Court of Conflicts to decide cases of doubt as to jurisdiction.

Local Government.

Local governmen

The largest unit of local government in France is the department which is sub-divided into arrondissements; arrondissements are sub-divided into Cantons and Cantons are subdivided into Communes. There are 89 departments and about 37,000 Communes. The chief administrative authority of the department is the prefect who is appointed from Paris. There is, in addition to the prefect, an assistant, a secretary general and three councillors who form the administrative court of the department. The prefect wields almost despotic powers. There is a General Council in each department, whose members are elected for

six years, one-half of them retiring every third year. The sub-prefects are the chief executive authorities of the arrondissements. Arrondissement councils possess only nominal powers. Cantons are merely convenient electoral areas. Each Commune has a municipal council and an elected mayor. Mayor may be dismissed by the President or suspended by the prefect for one month. The Prefect can even annul the acts of the Mayor and the Council in certain cases. Subject to this control, the Council has a general management of local affairs.

In France, it is not so much the will of local Councils that prevails as the will of the Central Government. It cannot, however, be denied that Napoleonic centralisation no longer prevails as some decentralisation has taken place both as regards staff and power of decision.

The Constitution of India

THE CONSTITUTION OF INDIA

Q. 1. Trace the changes in the constitution of the Indian Government up to the close of the 18th century.

Ans. Our constitution is the result of gradual evolution. This general evolution up to the close of the 18th century took place by various constitutional Acts. *The most important of these were the Charters of 1600, 1601, the Regulating Act of 1773, the Amending Act of 1781, Pitt's India Act of 1784.*

Other minor charters were those of 1669, 1677, 1683, 1686, 1693-4, 1726, 1730, 1734, 1753, 1754, and 1758.

Important constitutional Acts.

A. The Important Constitutional Acts.

The Charter of 1600.

The Charter of 1600. This was granted for the formation of the East India Company, to a body of London Merchants in order to " keep the honour of British Nation, the wealth of British people, the increase of British navigation, and the advancement of lawful traffic for the benefit of British Commonwealth."

Its provisions :—

Constitution of the Company.

(*a*) *The constitution of the Company*—(*i*) The total number of members who were incorporated in the Company was 217.

(*ii*) Further admissions to membership depended upon the candidates being either a son, 21 years of age, of an original member ; or being an apprentice or a servant or a factor of the Company or simply being elected to membership by the general body or the court. They were persons to offer suitable contributions to the capital of the Company.

(*iii*) A Governor was to be elected annually by the members. He was to be the chief executive official of the Company.

(*iv*) Twenty-four Committees, each consisting of an individual, were to be annually elected by the members and the company's work was to be distributed among them ; the assembly of the Committee was called the 'Court of Committees' to distinguish it from the 'General Court' or the general body of members. The twenty-four committees later on came to be designated the Board of Directors.

Its privileges.

(*b*) *Privileges of the Company*—(*i*) It was to have the exclusive right of trading between the Cape of Good Hope and the Straits of Magellan for fifteen years.

(*ii*) The Company were not to trade in any country belonging to a Christian Prince or State which was in alliance with England, without the permission of the said Prince or State.

(*iii*) The Company were allowed to grant licences of trade to others.

(*iv*) A command was issued to subjects that violation of this privilege of the Company was liable to punishment.

Its legislative powers

(*c*) *Legislative powers of the Company*—(*i*) The Company might assemble themselves in any convenient place 'within our dominions or elsewhere' and there 'hold court' and 'make, ordain and constitute such and so many responsible laws, constitutions, orders and ordinances as to them shall seem necessary for the good Government of the Company and of all factors, masters, marines and other officials and for the advancement of traffic and trade.'

(*ii*) They might impose pains, penalties and punishments for the observation of these ordinances.

(*iii*) Their laws and punishments were to be reasonable and not contrary or repugnant to the statutes of England.

(*d*) *The nature of the commercial working of the Company*—(*i*) There was no joint stock. The Company came under the class of Regulated Companies.

(*ii*) There is no mention of qualifications to regulate the voting power of the members. There appears to have existed equal voting power for all members irrespective of the amounts of their contributions. Any member appears to have been eligible to be elected to the Committees.

(*iii*) We do not know about the capital of the Company in the original charter.

II. The Charter of 1661.

Charter of 1661.

(*i*) It introduced permanently the principle of "Joint Stock."

(*ii*) It allowed a vote in the general Court of Proprietors, to the holder of £500 stock.

(*iii*) A holder of £100 stock could be elected on a "Committee," 24 of whom formed the Court of Directors and with the Governor managed the affairs of the Company.

(*iv*) The Company were empowered to appoint governors and other officers for the government of fortresses, to despatch ammunition and war material for defence of their factories, to erect forts, and to appoint commanders and other officers with power to make peace and war with non-Christian nations.

(*v*) The Governor and council of each factory were authorized to judge all persons living under them in causes civil and criminal.

III. Regulating Act of 1773.

Act of 1773.

This Act was "for the better management of the East India Company." The policy of the Act was "to remove the evils which had their operation in the constitution of the Company and the evils which had

their operation in India." It made radical changes in the Company's Government both in England and India.

Its provisions :—(*i*) The qualification for a vote in the Court of Proprietors was raised from £500 to £1000 provided the latter stock was held for one year by the voter.

(*ii*) A proprietor possessing £3000 capital stock was entitled to two votes; if possessing £6000 he had three votes ; and when possessed of £10,000 he was given four votes.

(*iii*) There were to be chosen six Directors for a term of one year, six for two years, six for three years and another six for four years. Every year six new directors were to be elected in the place of such whose term had expired, and the retiring Directors were declared incapable of being re elected. Thus every Director, instead of being annually elected as before, was to hold office for four years, a quarter of the number being annually re-elected.

(*iv*) It provided, for the Government of Bengal, a Governor General and four councillors in whom was vested the whole civil and military government of the Presidency. The first Governor General and the four councillors were named in the Act. Later on the patronage was to be vested in the Company.

They were to hold office for five years and were not removable in the meantime, except by the King on the representation of the Directors.

They were bound by the votes of the majority of those present at their meetings. In the case of an equal division the Governor-General was to have a casting vote.

(*v*) The supremacy of the Bengal Presidency over the other presidencies was definitely declared. The Governor-General and Council were given power

to superintendent and control the Government and management of the Presidencies of Madras, Bombay and Bencoolen (in Sumatra).

(*vi*) The Governor-General-in-Council was given power to issue rules, ordinances, and regulations for the government of the Company's dominions. These regulations were to be registered and published in the Supreme Court. The King-in-Council could disallow them too.

(*vii*) Governments of the two minor presidencies were required to send to the Bengal Government copies of all their regulations and orders, but the Governor-General and Council were not empowered to legislate for the territories of Madras and Bombay.

(*viii*) A Supreme Court of Judicature was established in Bengal.* It consisted of a Chief Justice and three other judges.

The Court was to exercise civil, criminal, admiralty and ecclesiastical jurisdiction and to establish rule of procedure. Its authority extended to all British subjects residing in Bengal, Bihar and Orissa under the protection of the Company.

However, the Supreme Court was not to have any jurisdiction over the Governor-General and the councillors. Offences committed by them were to be tried in the Court of King's Bench in England.

Appeals against the Supreme Court could be made to the King-in-Council.

All offences of which the Supreme Court had cognisance were to be tried by a jury of British subjects resident in Calcutta.

When natives of the country were concerned, suits and actions could be heard by it where the defendant native had agreed to go to it.

(*ix*) The Governor General and Council were to act as Justices of the Peace and for that purpose to hold Quarter Sessions.

(*x*) The Directors were to keep the Treasury informed, within fourteen days, of their receipt of India dispatches, of the civil, military and revenue affairs of Government of the Company.

(*xi*) The Governor-General and Council were to obey the orders of the Court of Directors and keep them constantly informed of all matters relating to the interest of the Company.

(*xii*) Liberal salaries were provided for the Governor-General (£25,000 annually), Councillors (£10,000 annually) and judges (Chief Justice £8000 and others £6000 a year).

(*xiii*) All servants, high and low, were prevented from taking bribes and presents.

(*xiv*) No private trade was to be undertaken by the Company's servants.

Criticism.

N. B. The Act had defects of a serious nature. The system it established was imperfect.

Firstly, the Act left the respective jurisdictions of the Supreme Court and the Executive Government undefined. It was silent on the question of jurisdiction of the Court to examine the legality of the official acts of the Company's servants. The Supreme Court claimed to serve writs on all the inhabitants of the country and to make them plead before itself but the Governor General successfully resisted the claim. Also the Supreme Court refused to recognise the jurisdiction of the Provincial or Country Courts. Then the Act was silent as to the jurisdiction over the revenue collectors of the Company for wrongs done in their official capacity.

Secondly : The Act did not make clear as to what Law the Supreme Court was to administer. Was it to administer the personal law of the dependant (Hindu, Mohammedan or English) or was it to administer the English Law in all cases.

Thirdly: The act was defective in placing the Governor-General at the mercy of his Council.

Fourthly: The changes made in the constitution of the Home Government of the Company (in England) were not free from defects. The small holders of stock (1246 in number) were disenfranchised; the Court of Directors became a permanent oligarchy.

Fifthly: The control of the Governor-General and Council over the other two presidencies was small and undefined. Yet the Act was a landmark in the constitutional history of India. It ended the era of charters by the Crown and began the era of Parliamentary Acts. It distinctly recognised the political functions of the Company.

IV. The Amending Act of 1781 (Bengal Judicature Act).

Act of 1781.

This was passed to remove some of the defects of the Regulating Act of 1773.

Its provisions:—

1. It exempted the actions of the public servants of the Company done in official capacity from the jurisdiction of the Supreme Court.

2. It tried to settle questions relating to the jurisdiction of the Court over servants of the Company and the inhabitants of the country. *The Court* was to have jurisdiction over all inhabitants of Calcutta, but was to administer the personal law of the dependants.

The Company was to keep registers containing the names, occupations, etc. of its Indian employees.

The servants of the Company or of its British officers, or of any Britisher in India were to be subject to the jurisdiction of the Court only in actions for wrongs or trespass or civil cases by agreement of parties, but not in any matter of inheritance or succession to goods, or any matter of business or contract.

3. It made clear as to what law was to be administered by the Supreme Court.

4. The Act recognised and confirmed the appellate jurisdiction of the Governor General-in-Council or any committee thereof in cases decided by the country Courts.

5. The Act empowered the Governor-General-in-Council to frame regulations for the provincial courts and councils from time to time.

6. In the matter of rules and forms for the execution of process in the Supreme Court, due regard was to be paid to the religion and usages of the people of India.

7. The existence of civil and criminal courts as established by the Governor-General independently of Supreme Court was recognised.

8. It was not to have any jurisdiction in revenue matters concerning the rules and regulations made by the Governor-General and Council. The regulations made by the Governor-General and Council for the Company Courts were not to require registration in the Supreme Court.

V. Pitt's India Act, 1784.

Act of 1784.

As India Bill which distinguished between commercial and political dealings of the Company and which tried to replace the Court of Directors by a Board of Seven Commissioners and the Court of Proprietors by nine Commissioners or Assistant was rejected, Pitt's India Act was put forth and passed.

Board of Control.

Its provisions:—(i) A board of six Commissioners for the affairs of India, popularly known as the Board of Control, was established. It consisted of the Chancellor of the Exchequer, one of the Secretaries of State and four other Privy Councillors appointed by the Crown and holding office during pleasure.

They were empowered to superintend, direct and control all acts, operations and concerns which relate to the civil or military government or revenues of the territorial possessions of the East Indian Company. They were to have access to all papers and instruments of the Company and could demand copies of all minutes, orders and dispatches sent or received by the Directors.

The Directors had to pay obedience to and to be bound by the orders of the Board. The latter might disapprove of or modify any of the dispatches. One of them was appointed its President with a casting vote.

Committee of Secrecy.

(*ii*) A Committee of Secrecy of not more than three members (Chairman, the Deputy Chairman and the Senior Director) was to be formed out of the Directors. Secret orders to India were to be transmitted by this body.

The Court of Proprietors defined

(*iii*) The Court of Proprietors lost its chief governing faculty. It could no longer revoke or modify the proceedings of the Court of Directors.

Governor-General and his Council.

(*iv*) The Governor-General's Council was reduced from four to three members including the Commander-in-Chief.

(*v*) The Presidencies of Madras and Bombay were to have a Governor and three councillors (instead of four at first) including the Commander-in-Chief.

Appointments.

(*vi*) The Governor-General, Governors of Presidencies, Commander-in-Chief and Members of Council were to be appointed by the Court of Directors. They and other officers could be removed from office either by the Crown or by the Directors.

Control of the Governor-General and his Council.

(*vii*) The control of the Governor-General and his Council over the governments of the other presidencies was enlarged and extended to all transactions about war or peace or expenditure of revenues.

Directors and the Committee supreme.

(*viii*) The Governor-General-in-Council was not to enter into war or peace or treaty without the express authority of the Directors or the Committee of Secrecy.

Court to have power over all.

(*ix*) All British subjects were declared amenable to all courts of competent jurisdiction in India or England, for acts done in Native States.

Court in England.

(*x*) A special court consisting of three judges, four peers and six members of the House of Commons was constituted for the trial in England of offences committed in India.

Retrenchment and reduction in expenditure

(*xi*) Every practicable retrenchment and reduction in expenditure over civil and military establishments in India was to be made.

Thus the real power in the government of the country was transferred to the President of the Board of Control.

Criticism.

There was established a double Government—one by the Court of Directors who represented the Company, and the other by the Board of Control who represented the British Government.

But the Board of Control was an institution which enslaved the Directors to its President and thus indirectly removed Indian questions from parliamentary politics.

Very little of the administrative transactions of the Company's government could be known outside the narrow body of the Board and the Court of Proprietors; the President of the Board was practically irresponsible.

Act of 1793.

VI. The Charter Act of 1793.

(*i*) This extended the trade monopoly of the Company for another term of 20 years.

(*ii*) The Board of Control was to consist of five Commissioners and not six as before. Two of these five were no longer required to be Privy Councillors.

The salaries of the Board of Control were to be paid out of Indian revenues.

(*iii*) A statement of the Company's affairs at home and abroad, was to be laid annually before Parliament.

(*iv*) The Governor-General was empowered to appoint a Vice-President to act for him in his absence. The Commander-in-Chief was not to be a member of the Governor-General's Council (which consisted of three members). He, however, could be specially appointed.

(*v*) The Governor General and Council were given extensive powers of superintendence, control and direction over the minor presidency governments in matters of war, peace, collection and application of revenues, employment of forces and the civil and military Government of their territories.

(*vi*) It empowered the Governors of the Madras and Bombay Presidencies as the Act of 1786 empowered the Governor-General, to override the councils and act on their own responsibility.

B. Minor constitutional Acts and Charters.

(1) **The Charter of 1669**. By it the King granted Bombay to the Company for an annual rent of £ 10 with powers of civil and military government.

(2) **The Charter of 1677** authorized the Company to coin money at Bombay.

(3) **The Charter of 1683**. It conferred on the Company full powers to raise military forces and to exercise martial law in case of foreign invasion or domestic insurrection. A Court consisting of one person learned in civil law, and two assistants was established to adjudge mercantile and maritime cases.

(4) **The Charter of 1686**. It empowered the Company to raise naval forces, to appoint admirals and other sea officers, and to coin money in their forts.

(5) **The Charter of 1693-4.** It further changed the constitution of the Company. Only holders of £ 1000 stock were given one vote each and no one could possess more than ten votes.

The Governor and the Deputy Governor were to possess £4000 stock and the member of a committee £1000 stock. (In 1698 the qualification for a vote was reduced to £ 500, and that for a Committee raised to £ 2000.) The Governor and the Deputy Governor were not to hold office for more than two years.

(6) **The Charter of 1726.** Municipal and judicial institutions at Bombay, Madras and Calcutta were reorganized ; Mayor's Courts were established by the Crown by Letters Patent and the Governor and Council of each Presidency were conferred powers of legislation irrespective of inhabitants of towns and factories under their control. These laws were to be reasonable and not contrary to the laws and statutes of England. They were not to have any force or effect until they had been approved and confirmed by order in writing of the Court of Directors.

(7) **The Charters of 1730 and 1734** extended the exclusive trade privileges granted to the Company for futher terms and made strict provisions against interlopers.

(8) **The Charter of 1753.** Courts of request were set up for trial of petty cases ; and suits and causes in which both the parties were Indians or non-Europeans were excluded from the jurisdiction of the Mayor's Court, and directed to be determined among the parties themselves.

(9) **The Act of 1754** made provisions for military forces of the Company corresponding to the provision in the English Mutiny Acts. It also made offences committed by the Company's presidents and councils cognizable and punishable in England.

(10) **The Charter of 1758.** This allowed the Company to cede, restore or dispose of any body or

territory which they might have acquired by conquest from Indian Princes or Government.

Q. 2. Review the growth of the India constitution in the 19th century.

Ans. The 19th century constitutional development can be divided into the following periods:—

(*i*) **First Period.—1800 to 1832**: *Constitution under the Company with some Parliamentary control.*

(*ii*) **Second Period.—1832 to 1858** : *Constitution under the last days of the Company with greater Parliamentary control.*

(*iii*) **Third Period.—1858 to 1892**: *India under the Crown and the beginnings of representative institutions.*

I. First Period (1800 to 1832).

(*a*) Acts of minor importance were passed up to 1813.

The Act of 1800 provided a Supreme Court at Madras. The jurisdiction of the Calcutta Supreme Court was extended to Benares and other districts which had been or might thereafter be annexed to the Presidency of Bengal.

The Act of 1807 extended the power of appointing Justices of the Peace and empowered the Governors and councils at Madras and Bombay to make regulations for their territories subject to registration in the Supreme Court and the Recorder's Court respectively.

(*b*) The Charter Act of 1813.

This was preceded by an exhaustive inquiry into the affairs of the Company by a Parliamentary Committee of 1808 which produced its fifth report in 1812.

Its provisions are as follows:—

(*i*) The Act, while preserving the sovereignty of the Crown granted the Indian possessions and revenues to the Company, with the monopoly of the China trade and the tea trade for a further term of 20 years.

(*ii*) The Act threw open the general Indian trade to all British merchants, subject to various restrictions laid down in the body of the Act. It empowered the Directors and, on their refusal, the Board of Control to grant licenses to persons wishing to proceed to India for the purposes of enlightening or reforming Indians or for other lawful purposes. It made the unlicensed persons liable to punishment as interlopers.

(*iii*) It regulated the application of India revenues. The Company were asked to keep their commercial and territorial accounts separate and distinct.

(*iv*) It limited the number of troops that were to be paid out of the Company's revenue to 20,000 and empowered the Company to make laws, regulations and articles of war for their Indian troops and to provide for the holding of Court Martials.

(*v*) It clearly defined and considerably enlarged the powers of superintendence and direction of the Board of Control ; the Local Governments in India were empowered to impose tax on persons, subject to the jurisdiction of the Supreme Court, and to punish persons in cases of non-payment.

(*vi*) It made provisions for religious learning and education, and the training of Company's civil and military servants.

(*vii*) Special provisions were made for the administration of justice in cases in which the Britishers and Indians were both involved. Special penalties were also laid down for theft, forgery and coinage expenses.

(*viii*) It empowered the Governments of all the presidencies to make articles of war and to impose custom duties and taxes.

(*c*) *The Act of 1814* removed doubts about the powers of the Indian Government to levy custom duties and other taxes. Act of 1814

(*d*) *The Act of 1815* empowered the Government to extend boundaries of the Presidency towns. It also amended some of the minor provisions of the 1813 Act. Act of 1815

(*e*) *The Act of 1818* removed doubts of the validity of certain forms of Indian marriages. Act of 1818

(*f*) *The Act of 1820* empowered the Company to raise and maintain a corps of voluntary infantry. Act of 1820

(*g*) In 1832 three Acts were passed.

The First Act authorised the creation of a Supreme Court by the grant of a charter and made provisions for the pay and pension of judges of the Supreme Court, of troops serving in India and of the Indian Bishops and Archdeacons. Act of 1832

The Second Act consolidated previous legislation in regard to Eastern trade and "expressly declared that trade might be carried on in British vessels with all places within the limits of the Company's charter except China."

The Third Act reconsolidated and amended the laws relating to the maintenance of discipline in the army of the Company.

(*h*) *The Act of 1824* recognised the acquisition of Singapore and transferred it for administration to the East India Company. Act of 1824

(*i*) *The Acts of 1825 and 1829* regulated further the salaries of Indian judges and bishops and the appointment of Juries in Presidency towns. The Acts of 1825 of 1829

(*j*) *The three Acts of 1828.* These made the real estates of British subjects liable for payment of their debts; the second applied the East India Mutiny Act to the Bombay Marine Force; the last Three Acts of 1828.

extended the application of certain amendments of the English criminal law to the territories of the Company.

Act of 1832

(*k*) The Act of 1832 empowered the Government to appoint as justices of the peace persons other than covenanted civilians and also enabled non-Christians to become jurors.

The Second Period (1832 to 1858).

Second period 1832 to 1858

(A) This period started with the famous Act of 1832.

Act of 1832

Its provisions :—(*i*) The Company's revenues and territories were to be held for a further period of 20 years but 'in trust for Her Majesty and her heirs.'

(*ii*) The monopoly of the China trade and of the tea trade was abolished.

(*iii*) The Company were required to close their commercial business and wind up their affair as quickly as possible. Their territorial and other debts were charged to the revenue of India.

(*iv*) The Company retained their administrative and political powers and rights of patronage over Indian appointments.

(*v*) The Governor-General-in Council of Bengal was designated "The Governor-General of India-in Council." He was to be responsible for the government of the whole of India.

(*vi*) A fourth ordinary or Law Member was added to the Council and he was to be appointed from among persons who were not in service of the Company. (Macaulay was the first.)

(*vii*) The Act provided for the division of the overgrown Presidency of Bengal into two presidencies, (but this provision never came into operation).

(*viii*) Changes were made in the legislative powers of the Government.

The legislative power of the Indian Government was exclusively vested in the Governor-General-in-Council. The principal governments were deprived of their law-making power.

The Governor-General-in-Council was empowered to make laws and regulations (*a*) for repealing or altering any existing measure ; (*b*) for all persons and all courts of justice ; (*c*) for all places and things and for all servants of the Company and (*d*) for Indian officers and soldiers in the military service of the Company and for the administration of courts-martial over them.

Thus the Governor-General-in-Council was given comprehensive powers to make laws and regulations for the whole country subject to the limitations prescribed and the laws so made were to take effect as Acts without the necessity of registration or publication in any court of justice.

(*ix*) A comprehensive consolidation and codification of Indian laws was contemplated. The labours of the Indian Law Commission resulted in the Indian Penal Code, and indirectly, in the later Code of Civil and Criminal Procedure.

(*x*) It was declared lawful for any natural subject of Her Majesty to live in any territory which was under the Government to the Company No licenses were required for this purpose as before. Law could also be held by them. Indians were to be protected from any insult to their persons or religion by the European population.

(*xi*) No subject because of his birth, descent, or colour was precluded from holding office.

(*xii*) Slavery was abolished.

(*xiii*) The Act declared "that a full, complete, and constantly existing right and power is intended to be reserved to Parliament to control, supersede, or prevent all proceedings and acts whatsoever of the said Governor-General-in-Council, and to repeal

and alter at any time any law or regulation whatsoever made by the said Governor-General-in-Council, and in all respects to legislate for the said territories and all the inhabitants thereof in as full and ample a manner as if this Act has not been passed."

(*xiv*) It increased the bishoprics to three and made the Bishop of Calcutta the Metropolitan Bishop in India.

(*xv*) The Act provided for the training of civil servants for India at the Company's college at Haileybury and regulated admissions to that college.

(*xvi*) The Company hitherto described as "the United Company of Merchants of England trading in the East Indies" came to be designated by the simple name of "The East India Company." (*Section III*).

Thus "the constitutional development set into motion by the Regulating Act of 1773 and modified by Pitt's India Act of 1784 reached its climax in the Charter Act of 1833—the central government was made supreme; the legislative machinery was simplified and the errors of the past corrected.

Act of 1853

(B) The Act of 1853.

Its provisions :—(*i*) The Company were allowed to retain the Government of India in trust for Her Majesty "until Parliament otherwise direct"—thus no definite term of years was fixed for its continuance.

(*ii*) The number of Directors was reduced to 18, of whom six were to be appointed by the Crown.

(*iii*) The fourth or Law Member was entitled to be an ordinary member of the Council. He could now sit and vote at all meetings of the Council.

(*iv*) The Council was enlarged for legislative purposes by the addition of the Chief Justice of Bengal, of a puisne Judge, and four representative members nominated by Bengal, Madras, Bombay and the North-West Province. In all, therefore, for legislative purposes, there were 12 members including

the Governor-General, the Commander-in-Chief, the four ordinary members and the six additional members.

(*v*) The sittings of the Legislative Council were made public and proceedings were to be officially published.

(*vi*) No law or regulation made by the Council, however, was to have the force of law until assented to by the Governor-General.

(*vii*) The Directors were authorized to appoint a separate Governor of Bengal.

(*viii*) The Directors were further authorized to constitute one new Presidency with a Governor and Council or to authorize a Lieutenant-Governor (one such was appointed for the Punjab in 1859).

(*ix*) English Commissioners were appointed to examine and consider the recommendations of the India Law Commission of 1833.

(*x*) Patronage was taken away from the Directors.

The Board of Control was empowered to frame rules and regulations for appointments.

(*xi*) The Indian Civil Service was thrown open to general competition.

(*xii*) The Act created for the first time a separate legislative council for India.

(*xiii*) The Act made provision for the payment of the members of the Board of Control and the Secretary and other officers of the Company. The salaries were to be fixed by His Majesty and the salary of the president was to be in no case less than the salary paid to any one of the principal Secretaries of State.

(C) Another Act which had important administrative results in India was passed by Parliament in 1854.

(*i*) This Act empowered the Governor-General-in-Council to take under his immediate authority and management any part or parts of the Company's territories.

(*ii*) It was under this Act that Chief Commissionerships were established in some territories under the direction and control of the Governor-General.

(*iii*) It also empowered the Governor-General-in-Council to limit and define the boundaries of the various provinces and directed that the Governor-General was no longer to bear the title of the Governor of Bengal.

Act of 1858

(D) Government of India Act, 1858.

The Mutiny of 1857 gave a death-blow to the East India Company. The property of the Company was passed on to the Crown and it was so announced through the Act of 1858 (Queen Victoria's Act).

Provisions :—(*i*) It transferred the Government of India from the Company to the Crown.

(*ii*) A Secretary of State was appointed to whom were transferred all the powers of the Court of Directors and the Board of Control.

(*iii*) The Secretary of State was to be assisted by a council which

(*a*) consisted of 15 members seven of whom were to be elected by the Directors and the remaining eight were to be appointed by the Crown.

(*b*) At least nine of the members must have served in India for ten years.

(*c*) Future vacancies were to be filled by the Crown.

(*d*) They were precluded from becoming members of Parliament.

(*e*) The Secretary of State was to be its President.

(*f*) He had power to overrule its decisions in cases of difference of opinion.

(*g*) The Council had to conduct the business transacted in the United Kingdom in relation to the Government of India.

(*h*) A permanent establishment was created for the Secretary of State-in-Council.

(*iv*) All the military and naval forces at the Company were transferred to the Crown. Their separate local character was however retained.

(*v*) The Board of Control was formally abolished.

(*vi*) A special auditor for the accounts of the Secretary of State was appointed.

(*vii*) The Secretary of State was given a quasi-corporate character.

(*viii*) The Secretary of State-in-Council was required to "lay before both Houses of Parliament an account for the financial year preceeding that last completed of the annual produce of the revenues of India..... and such account shall be accompanied by a statement prepared ..in such form as shall best exhibit the moral and material progress and condition of India." All military expenses carried on beyond the Indian frontiers must be sanctioned by the two Houses of Parliament. The commencement of hostilities must be communicated to Parliament.

(*ix*) The Secretary of State-in-Council became a body corporate, capable of *suing* and being *sued* in India and in England.

(*x*) New rules were made for the Indian Civil Service examination, which was thrown open to all.

(*xi*) The Lieutenant-Governor could be appointed by the Governor-General.

Third Period (1858 to 1892).

Third period (1858 to 1892).

In this period we find the beginning of representative institutions.

(a) The Indian Councils Act of 1861.

Act of 1861

This was the first Act which was of basic importance as "it provided India with the frame-work of Government which has remained up to now."

Its provisions:—(*i*) A fifth ordinary member was added to the Governor-General's Executive Council. The Commander-in Chief was to be an Extraordinary Member.

(*ii*) Power was given to the Governor-General to appoint a president to preside over the Executive Council in his absence.

(*iii*) The Legislative Council of the Governor-General was enlarged by additional members, not less than six and not more than 12 in number, nominated by the Governor-General for two years, of whom not less than half were to be non-officials.

The functions of this new body were strictly limited to legislation. The council was expressly forbidden to transact any business like asking questions, moving resolutions etc.

The Governor-General's assent was required to every act passed by the Council.

(*iv*) The Governor-General was, in cases of emergency, empowered to make temporary ordinances which were not to remain in force for more than six months.

(*v*) The Act validated the rules and regulations passed by the Governor-General-in-Council for the administration of non-regulation provinces (like Saugor, the Narmada Territories) before the passing of this Act, but for future this power was taken away.

(*vi*) The power of legislation was restored to Bombay and Madras (it had been taken away in 1833).

The Council of these provinces were expanded for legislative purposes by the addition of the Advocate-General and other nominated members, not less

than four and not more than eight, at least half of whom were to be non-officials.

No line of demarcation was drawn between central and local subjects.

The previous sanction of the Governor-General was made necessary in certain cases.

The assent of the Governor-General was made necessary, in addition to that of the Governor, for every Act passed by the principal legislatures.

(*vii*) The Governor-General was authorized to create new provinces, to appoint Lieutenant-Governors to administer them, and to alter the boundaries of existing provinces.

(*viii*) The Governor-General was empowered to establish a Legislative Council for Bengal, N. W. Provinces and the Punjab.

(b) The Act of 1865.

Act of 1865

This brought all British subjects in Indian States within the legislative jurisdiction of the Governor-General-in-Council and empowered the Governor-General in Council to define and alter the boundaries of the various provinces and presidencies.

(C) The Act of 1869.

Act of 1869

(*i*) It empowered the Secretary of State to fill *the vacancies in the India Council as they arose.*

(*ii*) The members of the India Council were to be for ten years.

(*iii*) It transferred the *right of filling vacancies in the Councils in India* from the Secretary of State to the Crown.

(d) The Act of 1870.

This was of a more important nature.

Act of 1870

(*i*) It gave to the Governor-General-in-Council power of passing regulations without submitting them to the consideration or vote of the Legislative Council.

(*ii*) It made provisions for co-opting also the Lieutenant-Governor and the Chief Commissioner of the territory in which the meeting of the Viceroy's Legislative Council was held as an additional member.

(*iii*) It reiterated the power of the Governor-General to overrule his council and laid down the procedure to be adopted in case of differences between the Viceroy and the Council.

(*iv*) The Act enabled the Governor-General to appoint Indians to places in the civil service without requiring them to pass the competitive examination in England.

(*v*) It empowered the Government heads of other provinces to draft a regulation for the good government of the territory concerned, which if approved by the Governor-General was to have the force of law.

Act of 1874

(e) The Act of 1874.

It empowered Her Majesty to appoint a sixth ordinary member of the Viceroy's Council "who shall be called the member of the council for public works purposes." Her Majesty was also given power to reduce the number to five again by not filling any vacancy occurring other than that of Law Member.

Act of 1876

(f) The Act of 1876.

It empowered the Secretary of State to appoint, for special reasons, a person, having professional or other peculiar qualifications to be a member of the council and to remain "during good behaviour." Not more than three could be appointed at the same time.

The special reasons for the appointment were to be stated in a minute of the Secretary of State for India and laid before Parliament.

The Act of 1889

(g) The Act of 1889.

It authorized the Secretary of State to abstain from filling vacancies in the Council of India until the number was reduced to ten.

(b) The Act of 1892.

Act of 1892

Provisions:—(*i*) The size of the councils was enlarged. The Governor-General's Council was henceforth to contain between ten and 16 additional members. The Bombay and the Madras councils were to have between eight and 20; that of the province of Bengal not more than 20; and of the United Provinces 15 additional members.

(*ii*) The Governor-General-in-Council was empowered to make rules regulating the conditions under which the additional members were nominated. The principle of indirect election was introduced. Nominations of some of the non-official members were made on the recommendations of some recognized bodies and corporations.

(*iii*) Discussion of the annual financial statement as also the asking of questions but not supplementary questions on important matters of administration was authorized. But power was not given to move resolutions or to guide the Council.

(*iv*) Local legislatures were enabled, with the sanction of the Governor-General, to repeal or alter Acts of the Governor-General's Council affecting their provinces.

Q 3. Give a critical review of the Minto-Morley Reforms of 1909.

Ans. *Viscount Morley summarised the purpose of the reforms proposed under seven heads viz.*, (1) to increase the number of members of both Viceregal and Provincial Councils; (2) to sanction election alongside of nomination; (3) to repeal the prohibition contained in the Indian Councils Act, 1892, against resolution of division in council in financial discussion; (4) to invest Legislative Councils with power to discuss matters of public and general importance, and to pass recommendations to the Government; (5) to extend the power to appoint a member on the council to preside; (6) to increase the number of ordinary

members of the Executive Councils of Bombay and Madras ; (7) and to sanction the powers for the creation of Executive Councils for Lieutenant-Governors and to define the Lieutenant Governor's power to overrule his Executive Council.

Only to liberalize the legislatures under safeguards.

In fact the aim of the Morley-Minto Reforms was to liberalize the legislatures *on a safe foundation.* Lords Minto and Morley expressly disclaimed any desire or intention on their part to advance towards Parliamentary or responsible government. Lord Morley declared : " In all that I have said, I shall not be taken to indicate for a moment that I dream that you can transplant British institutions wholesale into India. Even if it could be done, it would not be for the good of India. That is fantastic and ludicrous." This Act was intended simply to associate Indians in a larger measure with the administration.

Morley-Minto Reforms were embodied in the Indian Councils Act of 1909. Let us examine its provisions critically:—

Increase of the size of the legislature.

1. The most important aspect of the measure carried was the increase of the representative element in the Legislative Council. This increased the size of the various legislative councils in India.

"Excluding the head of the Government and the members of the Executive Councils, the maximum number of additional members for the Governor-General's Council was raised from 16 to 60, that for the Bengal, Madras and Bombay Councils from 20 to 50, and for the United Provinces from 15 to 50 ; while the Punjab and Burma were to have up to 30.

Nomination and election principles.

2. The additional members were to be partly nominated and partly elected. The proportion of elected to nominated members was to be fixed by regulations made under the Act.

(*a*) *Nominated members* could be either officials or non-officials representing certain interests which were not sufficiently organised to be represented

through election, *e. g.*, in the case of the Imperial Legislative Council it was laid down that from among the nominated members, one must be from the Indian commercial community, one from the Punjab Mohammadans, and one from the land-holders in the Punjab.

Among the official members, some where ex-officio —the head of the Government and the members of the Executive Council were ex-officio members in each case ; the rest were nominated by the head of the Government.

(*b*) The elected members were returned by constituencies like Municipalities, Local Boards, Universities, Chambers of Commerce, trade associations, landlords, tea planters, etc.

This system of special representation fixed the number of elected members for each legislative council varying from 26—later raised to 28—in the case of Bengal, to only one in that of Burma. They were elected only to a very limited extent through territorial constituencies.

Thus there were to be three classes of electorates (1) General electorates, consisting of the non-official members whether of Provincial Legislative Council or of the Municipal and District Boards ; (2) Class Electorates, comprising of (*i*) Land-Holders' constituencies and (*ii*) Mohammedan electorates ; and (3) Special electorate, consisting of Presidency corporations, the Universities, Chambers of Commerce, Port Trusts, Planting and Trade interests, etc.

The regulations also prescribed certain qualifications for both (*a*) the candidates for election and (*b*) the voters. Special qualifications were prescribed for (*a*) the landholders' constituencies and (*b*) Moslem electorates.

Criticism. 'This was to divide the slowly uniting people of India into water-tight compartments on the doctrine of counterpoise of natives against natives.'

The Nation wrote in 1907 : "The Government of India, realising that intellectuals will always be a restless and critical element, is turning to the land-owners for support."

The Statesman of Calcutta wrote: "Even more questionable than the effort of the Government to aggrandize the landed interests is their courting of Mohammedan support. We view this with grave concern."

Official majority.

3. In provinces as well as in the centre the composition was so arranged as to give a combination of official and nominated members a small majority over the elected majority. In the centre, however, there was provided a bare majority of official members over elected one *e.g.*—

In Centre		In Punjab.	
Officials not more than	28	Officials not more than	10
Nominated members	5	Nominated members	6
Elected members	27	Elected experts	9
		Ex-officio members	1
Total	60	Total	26

The method of election was indirect in the provinces and doubly indirect at the centre. Thus the right of election to provincial councils was vested in District Councils and Municipal Committees and that to the central one in the non-official members of the nine provincial councils.

Although there was to be non-official majorities in all Provincial Legislative Councils, yet it was not a real majority as, in the words of Mr. Montagu, "their legislation bears the quasi executive, stamp of an official majority."

Budget discussion partially allowed.

4. Rules were made for the discussion of Annual Financial Statement. Any member could move a resolution relating to alteration in taxation, etc. of which he had given a previous notice in writing to the

Secretary of State. It was in the form of a recommendation addressed to the Governor-General-in-Council.

This was followed by the presentation of the Final Budget. A general discussion ensued in which any member could offer observations but no resolution could be moved in regard thereto nor was the budget submitted to the vote of the council. Certain heads of revenue were not open to discussion, such as Stamps, Customs, Tributes from Native States, Army, Marine, Military Works, etc.

Certain heads of expenditure also were similarly excluded, such as Interest on Debt, Ecclesiastical charges, Special defences, State Railways, Political pensions etc.

Discussion of matters of public interest allowed.

5. Rules were made for the discussion of matters of general public interest barring certain subjects. A resolution could be moved to that effect and it that was carried, it had the effect only of a recommendation addressed to the Governor-General-in-Council. The President could disallow any such or part of such resolution. A previous notice must be given.

Questions with supplementary ones allowed.

Rules were also made for the asking of questions at meetings of the Legislative Council. The question was to be only a request for information preceded by a proper notice, and the president might disallow it if it was against public interest.

A supplementary question could also be asked.

This meant that the legislature's functions were enlarged.

Indians appointed to the India Council.

6. One of the underlying ideas of the Reforms was to give a chance to the popular representatives to associate themselves with the Government. With this end in view, **Indians were appointed to the India Council and the Viceroy's Executive Council.** Lord Morley attached great importance to this step and wrote : "The soldier prose of a

Gazette takes the stir and flame out of battle, and all the din of drum and trumpet out of victory. But these plain official sentences (announcing the appointment of two Indians to the India Council) mark a shining day worth living for." *Lord Sinha* was appointed Law Member to the Government of India (inspite of opposition offered by the Mussalmans and the members of the House of Lords).

7. The Governor-General, the Governors and the Lieutenant-Governors were to appoint Vice-Presidents of their councils to preside over the legislatures in their absence.

Members of the Executive Council of Madras and Bombay increased.

8. The maximum number of the ordinary members of the Executive Councils for Madras and Bombay was raised from two to four of whom half at least must have served for 12 years in the service of the Crown in India.

Executive Council for Lieutenant Governors.

9. The Governor-General could establish, by Proclamation, Executive Councils for Lieutenant-Governors, subject to disallowance by either House of Parliament. Bengal was, however, given an Executive Council immediately.

Criticism.

Thus "the problem was to fuse in one single government the two elements which they discerned in the origins of British power in India. They (Lord Minto's government) hoped to blend the principle of constitutionalism derived from the British Crown and Parliament with the principle of autocracy derived from Moghal emperors and Hindu kings ; to create a constitutional autocracy, which differing totally from Asiatic Despotism, should bind itself to govern by rule, should call to its councils representatives of all interests, and should reserve a narrow majority and absolute power to itself." " They hoped to create a constitution about which conservative opinion would crystallize and offer substantial opposition to any further change. **They anticipated that the aristocratic element in society and the moderate men,**

for whom there was then no place in Indian politics, would range themselves on the side of the Government, and oppose any further shifting of the balance of power and any attempt to democratize Indian institutions." (*The Report on Constitutional Reforms 1918, Sec. 73*).

They did not transfer any portion of legislative or financial control to the Indian representatives. They only wanted to rope in the representatives of Indian opinion.

Although the Congress welcomed them and Mr. Gokhale spoke of their "less generous and fair nature," yet, they ceased in the brief span of one year's time to satisfy the political hunger of India. The change was one of degree and not of kind. It was not a step towards parliamentary government; power remained with the Government and the councils were left with no functions but criticism; there was no general advance in local bodies; the work in the legislation was done behind the scenes; narrow franchise and indirect elections failed to encourage in members a sense of responsibility to the people generally, and made it impossible, except in special constituencies, for those who had voters to use them with effect. The Act contained no provisions for the creation of Advisory Councils at the centre or in the provinces. Thus the reforms of 1909 failed in their object, if that was to check the propaganda for self-government.

"But they had the merit of securing improvement in legislative measures, not so much through actual proposals by Indian members as through the circulation of Bills for suggestion and the use of Committees to examine in detail their proposals."—*Keith*.

Q. 4. What important constitutional changes were introduced by the Reforms Act of 1919?

Ans. The following were the important constitutional changes introduced by the Government of India Act or the Reforms Act of 1919:—

(A) Changes affecting the Indian Administration in England or Home Administration:—

Change in the Home Government Secretary of State.

(*i*) "*The salary of the Secretary of State, the salaries of his Under-Secretaries and any other expenses of his Department*, may, notwithstanding any thing in the principal Act of 1915, instead of being paid out of the revenues of India, be paid out of money provided by Parliament, and the salary of the Secretary of State shall be so paid."—*Sec. 30 of the Act.*

India Council.

(*ii*) *The second change here was in the constitution of the India Council.* The Council of India should consist of not less than eight and not more than twelve members. Half the members only were required to possess service qualifications.

The term of office of a member was five years, and the salary of every member £ 1200 per year but an annual allowance of £ 600 was to be given in addition to Indian members.

Meetings of the Councils were to be held at least once a month instead of once a week; statutory quorum was abolished and the quorum was to be prescribed by the Secretary of State himself; and the Secretary of State-in-Council was given the power of making rules for the transaction of business.

High Commissioner for India.

(*iii*) Thirdly, the Mont-Ford Reforms made provisions for *the appointment of a High Commissioner* for India in the United Kingdom, and for the pay, pension, powers, duties and conditions of employment of the High Commissioner and his assistants. The officer was to transact the commercial and agency business of the Government of India which had been until then transacted by the Secretary of State himself. He was to be appointed by the Government of India and controlled and paid by them

(iv) *Fourthly*, to give effect to the purposes of the Government of India Act, 1919, namely, the gradual development of self-governing institutions and progressive realisation of responsible Government in British India as an integral part of the British Empire, *Section 33 provided for the making of rules, regulation and restricting the exercise of powers of superintendence, direction, and control vested in the Secretary of State and the Secretary of State-in-Council.* General rules for the Secretary of State and the council.

This, in fact, was for relaxation of India Office control.

(B) Changes affecting the central Government.

(i) *Indian Legislature.* The central legislature was to consist of two chambers—*the Council of State and the Indian Legislative Assembly.* Changes in the central legislature.

The Council of State was to consist of 60 members, one of whom was to be appointed the President by the Governor-General. Out of the remaining 59, 25 were to be nominated—19 officials and 6 non officials, and 34 were to be elected—20 by general electorates, 3 by European Chambers of Commerce and 11 by commercial electorates (10 by Moslems and 1 by the Sikhs). Council of State.

The Council of State was to be a revising chamber, with equal powers in legislation with the lower house.

The Legislative Assembly. It was to consist of 143 members—exclusive of the President, who was to be appointed by the Governor-General for the first four years. Legislative Assembly.

Out of the total, 40 were to be nominated, 25 of whom were to be official and the rest 15 non-officials; and 103 were to be elected—51 by general constituencies, 32 by communal constituencies (30 by Moslems and 2 by Sikhs); and 20 by special constituencies

(7 by landholders, 9 by Europeans and 4 by Indian Commerce).

Duration.

Duration. (*i*) The normal life of the Assembly was to be three years and that of the Council of State five years. Power was given to the Governor General to dissolve it earlier or to extend its life further.

(*ii*) Provision was to be made for the distinct classification of central and provincial subjects and for the devolution of authority in respect of provincial subject to local governments.

The Governor-General's Executive Council

(*iii*) The Act made some important changes in the composition of the Governor-General's Executive Council. The Act removed the statutory limit on the number of members and provided that the three members with service qualifications might be servants or ex-public servants ; the Law Member might be a barrister or pleader of the High Court, and there would be no extraordinary members of the council.

Council Secretaries.

Council Secretaries. Section 29 empowered the Governor-General in his discretion to appoint from among the members of the Legislative Assembly, Council Secretaries who were to hold office during his pleasure and discharge such duties in assisting the members of his Exectuive Council as he might assign to them. They were to get such salary as was provided by the Legislature. A Council Secretary was to cease to hold office if he ceased for more than six months to be a member of the Legislative Assembly.

Change in provincial governments.

(C) Changes affecting Provincial Governments.

Dyarchy.

(*i*) There was introduced in all the Governor's Provinces the *system of dyarchy* under which the executive government consisted of two parts ; one comprising the Governor and his Executive council and the other consisting of the Governor acting with the Ministers.

Provincial subjects were classified as Reserved and Transferred. The Governor-in-Council was

Provincial subjects :

to control the reserved subjects; the Governor acting with the Ministers was to take charge of the transferred subjects.

Transferred

Among the transferred subjects were included Local Self-Government; Education (with certain exceptions); Medical Administration, Sanitation and Public Health; Public Work, such as roads, buildings and light railways; Agriculture; Development of Industries; Excise; and Civil Veterinary Department, Fisheries and Co-operative societies.

Reserved subjects.

In the list of reserved subjects were included famine, land revenue, pension and reformatories; control of newspapers and presses; Inspection of factories, etc., and labour questions; and Agency functions.

The responsibility for the proper administration of the reserved subjects was retained, by the Act of 1919, with the people of England through the Secretary of State and the British Parliament; while the responsibility for the good government of the transferred subjects was given to the voters in the province through the provincial legislative councils. *Thus provincial autonomy was not completely granted.*

The Executive Council

The Executive Council. The members were to be appointed by His Majesty for five years and on a salary fixed by the Act itself. The maximum number of the Executive Council was fixed by the Act at four. At least one member was to be civilian of not less than 12 years' standing.

No statutory provision was, however, made for the appointment of Indians to the Executive Council but it was contemplated that one of the two members must be non-official Indian. (If two Europeans were appointed to the Executive Council, the Joint Select Committee recommended the appointment of two non-official Indians as well.)

The Ministers.

The Ministers. They were to be appointed by the Governor from among non-official elected members of the Legislative Council.

The Act did not impose any statutory limit on their number.

The status of the Ministers was to be the same as that of the Executive Councillors and they were to be paid the same salary as that given to the members of the Executive Council, subject to the vote of the Legislative Council which may lower it, if it considered necessary.

The Act provided that "minister so appointed shall hold office during (the Governor's) pleasure."

These Ministers were doubly responsible to the Governor and to the legislatures for their departments. A Minister was given the option of resigning if he did not see eye to eye with the Governor; the latter had the right to disregard the advice given by the Ministers and to act as he deemed fit.

(The Act made no provision for the Joint Cabinet meetings of Ministers.)

Governor and Instruments of Instructions and his other powers.

Governor and Instrument of Instructions:— These were for the Governor for his guidance in running dyarchy. According to these (1) he was to be responsible to Parliament for maintaining "the good Government": (2) he was to act as the "guide, friend and philosopher" of the Cabinet; (3) he was to maintain the safety and tranquillity of his province and to prevent religious and racial conflicts, (*i*) to protect the interests of Moslems and other minorities; (*ii*) to secure the advancement of the depressed, backward and aboriginal tribes; (*iii*) to safeguard the legitimate interests of the Europeans and Anglo-Indians; (*iv*) to protect the rights and privileges of the members of the Public Services; (*v*) to prevent unfair discrimination in commercial and industrial matters and to see that the interests of the general public did not suffer by the grant of monopoly or special privileges to any private undertaking.

For the discharge of his responsibility, he was given extensive powers such as overriding his council, dismissing ministers, temporarily suspending dyarchy, and getting estimates for reserved department passed in spite of their rejection by the legislature.

Council secretaries.

Council Secretaries. The Governor was empowered to appoint Council Secretaries from among the non-official members of the legislature. They held office during his pleasure and discharged such duties in assisting members as the Executive Council and Ministers assigned to them.

Their salaries were fixed by vote of the Legislative Councils. The Secretary would cease to hold office if he ceased for more than 6 months to be a member of the Legislative Council.

No statutory limit was imposed on their number.

Provincial legislature

Provincial Legislatures. They were greatly enlarged. Their strength according to the Act was fixed as follows:—Bengal 139; Bombay 111; Madras 127; United Provinces 123; the Punjab 93; Bihar and Orissa 103; Central Provinces 70 and Assam 53—in all 819. Not more than 20 per cent were to be official and not less than 70 per cent elected.

The system of elections was to be a direct one and was to be based on as broad a franchise as possible.

The Act gave separate communal electorates to the Moslems, Sikhs, Indian Christians, Europeans and Anglo-Indians and reservation of seats in plural number constituencies to the non-Brahmins and the Marhattas. There was to be special representation for the landlords, commerce and industry, planting and mining interests, and the universities by means of special constituencies, and for the depressed classes, labour, etc., through nomination (no provision for the representation of women).

Distinction was made between town and country, between urban and rural constituencies.

Electorate rules were laid down for the holding of elections and for securing their purity.

The Legislative Council in a Governor's province was constituted for three years ; but it could be dissolved earlier and extended up to a maximum period of one year by the Governor.

The Governor was to appoint the president of the Council for the first four years and to confirm the election of the Vice-President.

(D) General.

Statutory Commission

(*i*) At the end of the ten years after the passing of the Act, a commission were to be appointed to investigate into the working of the Reforms and to recommend steps for further advance in the direction of responsible government.

Civil Services.

(*ii*) Part IV of the Act made many provisions for protection of rights of the civil services in India.

The Secretary of State was given ample powers with regard to these.

A Public Services Commission was to be appointed for the control of these services.

Auditor-General.

(*iii*) An Auditor-General was appointed in India.

Rules.

(*iv*) The Act left the detailed arrangements to be worked out in the *form of rules which were*, "a subsidiary legislation of sufficient importance." The Act made special provisions as to the authority by which the rules were to be made.

Q. 5. Give a brief history of the Indian constitutional developments during the last fifteen years.

Further agitation after the Act of 1919.

Ans. *The Government of India Act, 1919, did not satisfy the people of India.* Agitation for further reforms was continued. In September 1921 a comprehensive resolution was moved in the Assembly, demanding complete responsibility in the Provincial councils a transfer to responsible Ministers of all central

subjects, except the Army, Navy and Foreign and Political departments. A revision of the Government of India Act at early date than 1929 (only fixed) was demanded.

Meanwhile there were political disturbances in the country. The Rowlatt Bills, the unhappy events in the Punjab, the Nationalists' boycott of the councils, the moderates, 'co-operation with the Government in and outside the councils but later on the Swarajists,' decision to capture the legislatures in 1923 and their subsequent resolution in the Assembly demanding full responsible government in India and for that purpose to summon a representative Round Table Conference were the consequences of the organised agitation of the people for a reformed constitution.

(A) The Muddiman Committee.

The Muddiman Committee.

The result of the agitation was that the Reforms Inquiry Committee — called the Muddiman Committee — was appointed in 1924. Its report was published in 1925. The majority report (of three British and two Indian members) made suggestions for the better working of dyarchy while the minority report (of 4 Indian members including Sir Tej Bahadur Sapru) held that dyarchy was unworkable and possessed inherent demerits and explained the difficulties enumerated in its operation by the provincial governments.

This denunciation of dyarchy was readily taken up by the people. The result of the political pressure was that the Statutory Commission (Simon Commission) was appointed in 1927, two years earlier than its due date. It was boycotted by Indians.

(B) The Simon Commission: Its recommendations :—

Simon Commission.

(I) Provincial Government.

(*i*) *Executive.* It recommended the abolition of dyarchy in the provinces and establishment of unitary administration by doing away with the classification of

subjects into reserved and transferred. There was to be provincial cabinet, the members of which were to be chosen by the Governor, and were to have joint responsibility for action and policy. The Ministry might include one or more non-elected persons, ordinarily experienced officials.

Governor's over-riding powers were to continue.

A Secretary to the Cabinet was to be appointed.

Legislature

(*ii*) *Legislature.* They were to be enlarged, in the case of the more important provinces to a figure between 200 and 250; there was to be no official bloc, and even the nominated element was to be strictly limited to not more than 10 per cent.

In the absence of past agreement communal electorates were to be retained. Muhammadans were to have minority weightage in six out of eight provinces and in the presence of this weightage they were not to have their seats enlarged to figures proportionate in Bengal and the Punjab.

Twenty per cent of the adult population was to be enfranchised. A large number of women voters were also to be admitted. The legislature was to have power of mending its own constitution after ten years. The provinces were to have enlarged financial resources.

Governor.

(*iii*) *The Governor.* His powers to secure legislation by certification and to restore rejected demands were to extend over the same field as was covered by his over-riding powers to control executive action, and he was given unrestricted authority in the event of the breakdown of the constitution.

(*iv*) Separation of Burma from British India was suggested.

(*v*) The principle of autonomy was not applied to the N.W. F. Province. But it was made a Governor's province with a Legislative Council of 40 members.

(II) The Centre.

Centre.

(*a*) *Legislature.* It recommended Federal Assembly (of members between 250 and 280) to represent Government organs of the Federal units—for the time being the provinces only but in course of the time the States also.

Members representing Governor's Provinces were to be elected by the Provincial Councils by the method of proportional representation, ensuring the minority communities a sufficient representation in the Assembly.

From areas outside the Governor's provinces members were to be returned by methods appropriate to each case.

The official members were to consist of such members of the Governor-General's Council as sat in the Lower House, together with 12 other nominated officials.

The Council of State.

The Council of State was to have elected and nominated members chosen in the same proportion as at present. They were to be chosen by indirect election, carried out by Provincial second Chambers (if constituted) or by the Provincial councils.

Executive Council.

(*b*) *Executive* Control over the High Courts was to be placed with the Governor-General. He was henceforward to be the authority who will select and appoint his Executive councillors, one of whom will be to lead the Federal Assembly.

The Governor-General was to continue to have his powers of Ordinances, Certification and of restoration of rejected grants and others.

The Executive was not to be responsible to the legislature.

Control over the Army and Defence, over the Provincial Governors in the exercise of their overriding powers and in regard to relations with the Native States was to vest in the Viceroy.

The Commission's report was condemned by all in the country.

The Nehru Report.

(C) The Nehru Report.

The Government had challenged the Indian politicians to produce a joint constitution acceptable to all communities and the outcome of that was an All Parties Report in 1929 called the Nehru Report. It recommended:—

Its recommendations.

(*i*) India shall be commonwealth with a Parliament all supreme and an executive responsible to that Parliament as in other Dominions.

(*ii*) *The Parliament* shall consist of two Houses, the Senate and the House of Representatives.

(*iii*) The Governor-General shall be appointed by the King.

(*iv*) *The Senate shall* consist of 200 members to be elected by the Provincial Council on population basis, subject to a minimum and on the basis of proportional representation with a single transferable vote It shall be for seven years.

(*v*) *The House of Representatives* shall consist of 500 members to be elected by constituencies determined by law. Every person of either sex who has attained the age of 21 and is not disqualified by law, shall be entitled to vote.

The House shall be for five years.

(*vi*) *The Executive.* It shall consist of the Prime Minister and not more than six ministers. The former shall be appointed by the Governor-General and the latter by him on the advice of the Prime Minister. They shall be responsible to the House of Representatives.

(*vii*) The Commonwealth shall have power to appoint High Commissioners and other foreign representatives.

(*viii*) *The Provincial Executive.* The Governor-General shall appoint the Governor of a province. The latter shall have an Executive Council of not more than five ministers appointed by him. The Chief Minister shall advice him for his selection. They shall be responsible to the Legislature.

(*ix*) *The Provincial Legislature.* There shall be a local Legislative Council for five years with an elected President and Deputy President.

There shall be one member of the Provincial Legislative Council for every 100,000 of the population of the province.

Every citizen of 21 years of age and not disqualified by law shall be entitled to vote.

N.B. There is a provision for earlier dissolution and extension of the term.

The Governor's assent is necessary for a Bill to become an Act. He shall send a copy of the Act to the Governor-General for his assent.

The Governor shall consult the Executive Council for all his actions.

(*x*) *The Judiciary.* There shall be a Supreme Court which shall exercise such jurisdiction as Parliament will determine. It shall consist of a Lord President, and as many other justices, as Parliament may fix. The Lord President and other justices shall be appointed by the Governor General-in-Council. The Supreme Court shall have original jurisdiction in all matters referred to it by the Governor-General-in-Council under S. 85, with regard to the suits by or against the Commonwealth, affecting consuls or other representatives of other countries, between provinces, arising from the interpretation of the constitution.

(*xi*) If the Supreme Court certifies, then there shall be appeal to the King-in-Council.

(*xii*) The Commonwealth shall exercise the same rights in relation to the Indian States as the Govern-

ment of India hitherto exercised and discharged. In case of any differences, the Supreme Court shall finally decide.

(*xiii*) Parliament may amend the constitution with two Houses sitting together and agreed at the third reading by not less than four-fifths of those present.

(*xiv*) There shall be joint and mixed electorates throughout India for the House of Representatives and the Provincial Legislatures. There shall be reservation of seats only for Muslims where they are in a minority and for non-Muslims in the N.W.F. Province.

The question of communal representation can be opened up after ten years.

Round Table Conference.

(D) The Round Table Conference.

The Nehru Report was not accepted by the Government while Indians did not accept the Simon Report.

Lord Irwin announced in Oct. 1929 the decision of the Government to hold a Round Table Conference which was accordingly held in November, 1930 but the Indian National Congress non-co-operated as the status of a Dominion was not assured. The conference resolved itself into several sub-committees such as (*i*) for the federal structure of the future Indian Government, (*ii*) for the scheme of Provincial autonomy, (*iii*) for the problem of the Minorities, (*iv*) for the separation of Burma, (*v*) for the reforms for the N.W.F.P. (*vi*) for franchise, (*vii*) for defence, (*viii*) for services, and (*ix*) for the separation of Sind.

These reports were placed before the conference and noted one after the other.

The Prime Minister's declaration.

The Prime Minister's Declaration of 26th November 1930.

After the first Round Table Conference, the Prime Minister announced the Government's plans about the future Government of India through a declaration

emphasizing in outline, upon the Federal Government with central and provincial legislatures, responsibility of the executive to the legislature, full responsibility in the Governor's Provinces with Ministers jointly responsible to the Legislature, and the central Government embracing both the Indian States and British India, etc., etc.

The Gandhi Irwin Pact.

The Gandhi-Irwin Pact, however, called the "*Delhi Truce*" brought about the attendance of the Congress at the second Round Table Conference in 1931. The conference dispersed without arriving at any final and definite conclusions and a Consultative Committee was appointed to continue its work in India.

Meanwhile the Prime Minister as an arbitrator between the Muslims and others, gave his communal award in 1932, giving separate electorates to the depressed classes and weightage and ample reward to the Muslims for their co-operation. The Poona Pact later on modified it as far as the depressed classes went.

The Third Round Table Conference was convened in 1932 in the teeth of the opposition of the Congress. A white Paper was soon issued after that and shortly afterwards a Joint Select Committee of both Houses of Parliament was appointed to consider the Government's proposals in consultation with Indian representatives.

(E) The White Paper.

The White Paper.

Its main features:—(1) There shall be a *Federal Legislature* consisting of the Council of State and the House of Assembly. The former will have a tenure of seven years and the latter of five years.

The Council of State.

The Council of State shall consist of not more than 260 members of whom 150 will be elected from British India and not more that 100 appointed by the Rulers of State; not more than ten non-officials nominated by the Governor-General.

The Assembly.

The Assembly shall have not more than 375 members of whom 250 would belong to British India and not more than 125 to the Indian States.

The Governor-General.

(2) *The Governor-General* shall have special responsibilities; and can issue his own 'Acts' and, ordinances for emergencies. On the breakdown of the constitution he will be empowered to assume to himself all other powers. He can include any additional sums in the budgets for the discharge of his special responsibilities.

He will be appointed by the King. He shall himself direct and control the administration of the departments of Defence, External Affairs and Ecclesiastical Affairs. For the *Reserved Departments he will be helped by three councillors.*

Council of Ministers.

There shall be also a *Council of Ministers* who command the confidence of the Legislature.

There shall also be a Financial Adviser for the Governor-General appointed by him.

He shall have special responsibilities for (*i*) peace or tranquillity of India ; (*ii*) financial stability and credit of the federation; (*iii*) interests of minorities; (*iv*) interests of the public services; (*v*) prevention of commercial discrimination ; (*vi*) protection of the right of any Indian State; (*vii*) matters affecting the administration of Reserved departments.

Governor's provinces.

3. Governor's Provinces.

Executive. The Governor shall have a Council of Ministers who command the confidence of the legislature.

He shall have special responsibilities in respect of the (*i*) peace and tranquillity in the Province, (*ii*) (*iii*) interests of minorities and services, (*iv*) commercial discrimination, (*v*) rights of any Indian State, (*vi*) excluded areas, (*vii*) execution of orders lawfully issued by the Governor-General,(*viii*) tribal and trans-border areas.

He shall act for all these subject to the directions of the Secretary of State notwithstanding any advice tedered by his Ministers.

The Legislature. For the provinces of Bengal, U.P. and Bihar there will be legislatures consisting of two chambers, a Legislative Council and a Legislative Assembly, the former for seven and the latter for five years.

The Governor shall have his own "Governor's Acts," for his special reponsibilities without the sanction of the legislatures. He shall have also power to issue ordinances, and in the breakdown of the constitution, to assume full control through a proclamation.

There will be no dyarchy but unitary form of Government in the Provinces.

The Franchise will be lowered.

(4) There shall be a list of subjects, exclusively Federal, exclusively Provincial and concurrent. The subjects like the Royal Family, the Army Act, the Air Force, the Naval Discipline Act, and the constional Act shall be placed outside the competence altogether of both Federal and Provincial legislatures. Subjects.

(5) The Judicature. Judicature

A Federal Court to interpret the constitution, with original and appellate jurisdiction shall be constituted.

The Federal Legislature will also be empowered to set up a Supreme Court of Appeal if it thinks necessary to do so.

(4) The Secretary of State shall have no India Council but only Advisers—not less than three nor more than six persons (of whom two at least must have held office for at least ten years under the Crown in India)—for five years. Their salary shall be paid by Parliament.

(5) There shall be a Federal Public Service Commission and a Provincial Public Service Commission for each province. The same provincial commission may work for two or three provinces.

The Secretary of State, however, shall continue controlling the Federal Commission, the Indian Police Service, the Ecclasiastical Department, and the I. C. S.

Recruitment to the Indian Forest Service and the Indian Service of Engineers will cease after the new constitution comes into being.

These proposals in the White Paper were criticised as being insufficient for the advance of Indian constitutional progress.

The Joint Select Committee's recommendations are akin to those of White Paper, with only minor alterations and those are embodied in the Act of 1935 (see Question 40).

Q. 36. Discuss the specific powers and duties of the Crown in relation to Indian Government?

Ans. The Specific powers of the Crown in relation to Indian Government are the following :—

He can remove the members of the Council of India.

(*i*) His Majesty can remove from office any member of the Council of India on an address of both Houses of Parliament.

Can annul rules.

(*ii*) His Majesty may annul rules framed under Sec. 129-A of the Government of India Act, 1919. "If either House of Parliament presented an address to His Majesty against any such rule under the Act (of 1919), within 30 days after it had been laid before it, such rule might be annulled by His Majesty-in-Council but without prejudice to the validity of anything previously done thereunder."

Bills reserved for his approval.

(*iii*) Bills may be reserved for His Majesty's pleasure and vetoed by His Majesty.

(*iv*) His Majesty's assent is essential if an Act certified by the Governor-General is to have effect.

(*v*) The Act of 1935 clearly recognizes that its terms do not exhaust the powers of the Crown, which can be exercised in respect of India and all prerogative

powers in respect of oversea territories save in so far as they are regulated by the Act. Thus the Act leaves untouched the vital prerogatives (of the Crown) of the control of foreign affairs, including the power to cede territory, and making of war or peace or declaring neutrality.

The Act of 1935 does not exhaust the powers of the Crown.

(*vi*) The Governor General in India exercises his power (not being powers connected with the exercise of the functions of the Crown in its relations to the Indian States) as His Majesty may be pleased to assign to him. The accepted functions of the Crown with regard to the States can also be exercised by the Governor General if His Majesty assigns these to him.

The Governor-General assigned power by the Crown.

(*vii*) The powers of the Crown extend to the Indian States too through treaties, engagements, *sanads* (grants), usage and political practice. The states are subject to the paramountcy of the Crown.

The powers of the Crown over the Indian nagative State.

Lord Reading in 1926 emphasized this fact when he wrote to the Nizam: "The sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India."

(*viii*) There shall be no federation in India unless there is a Proclamation made by His Majesty and before that is done, an address in that behalf is to be presented to the King by each House of Parliament (see S. 5 of 1935 Act).

No federation till proclamation by the Crown.

Under Section 6 of the same Act a State is to be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instru-

ment of Accession executed by the Ruler thereof. The Crown under the Act is not bound to accept any Instrument of Accession or Supplementary Instrument.

Its jurisdiction in Military zones.

(*ix*) The Crown's jurisdiction in certain military zones such as Quetta, Secunderabad and Bangalore will remain unaltered.

Its powers and prerogatives go together.

(*x*) The powers of the Crown and its prerogative rights go together. It has got the following rights exclusively enjoyed by it :—

(*i*) The Crown enjoys exemption from criminal or civil liability. The King is above Law.

(*ii*) All the land in British India is vested in the Crown as ultimate owner and all waste land is its absolute property.

(*iii*) The prerogative of annexation of territory remains unaffected.

(*iv*) The prerogative right over gold and silver mines situated in any province are kept.

(*v*) The Crown enjoys escheats of land, treasure-trove and the separate property of persons dying intestate without kin. Section 174 of the Act of 1935 keeps this right of the Crown for the purpose of the Government of that Province or for the Government of the Federation.

(*vi*) The ships of the Crown cannot be seized for giving salvage claims or for claims for damage done by collisions.

(*vii*) The prerogative of mercy, pardons, reprieves, respites and of remissions of punishments kept intact by Section 295 of the Act of 1935.

(*viii*) There is the prerogative power of the Crown to grant honours of imperial status.

"In general the Crown enjoys in British India all the privileges it has under the prerogatives in the case of England except in so far as these are limited by Statute."—*Keith.*

(*ix*) The Crown appoints the High Commissioner for India, the Governor-General, the members of the Governor-General's Executive Council, Governors, the members of a Governor's Council, permanent Chief Justices, judges of the High Court and Advocates General, any Lieutenant-Governor, representatives as regards relations with Indian States, Governors of Burma, and judges of Federal Court (under the new constitution of 1935), Auditor-General, Commander-in-Chief, and other representatives in India with the advice of his Ministers in England. Power of appointment.

Its duties. (*a*) Its duties are co extensive with those of its powers and prerogatives. These allow it to discharge some of the *administrative duties* such as the various appointments in India for the administration of the country, and in the conduct of all wars and treaties (which are always in its name).

(*b*) *Its judicial duties* extend to the appointment of all Chief Judges, judges of various High Courts including that of the Federal Court under the new constitution.

It gives consideration to the petitions of mercy and decides the cases where pardons, reprieves, respites or remission of punishments are to be given. The Privy Council meets under its very control.

(*c*) *Its Legislative Duties* extend to the passing and approving of Orders-in-Council for India, statutes and of laws of India and to the ushering in of the new constitution for this country.

(*d*) *Its Religious Duties* are seen when we find that the Church of England having branches in India is under its very control.

(*e*) *Honours.* The Crown thinks itself in duty bound to keep in hand all those elements which strengthen its hold on India by granting them various honours, such as titles, medals etc.

(*f*) It looks to the welfare of the Indian people through its representatives and discharges all those duties which are incumbent upon it to keep India as an Empire Unit.

Q. 7. What are the powers and duties of the Secretary of State for India? In what position does he stand in relation to Parliament and his council ?

Ans. Powers of the Secretary of State for India.

Administrative powers

I. *Administrative.*

(*i*) He is the Crown's responsible agent for the exercise of all authority vested in the Crown in relation to the affairs of India and of its administration.

(*ii*) He may superintend, direct and control all acts, operations, and concerns which relate to the government or revenues of India.

(*iii*) He has control over all expenditures, such as grants of salaries, gratuities and allowances and all other payments and charges, out of or on the revenue of India.

(*iv*) He is presumably the adviser of the Crown in regard to the appointment —

(*a*) of the Governor-General,

(*b*) of the members of the Governor-General's Executive Council,

(*c*) of Governors,

(*d*) of members of the Governor's Executive Councils,

(*e*) of Lieutenant-Governors,

(*f*) of the Public Service Commission,

(*g*) of the Auditor-General in India,

(*h*) of Chief Justices, judges and Advocates-General of High Courts,

(*i*) of the Bishops of Calcutta, Madras and Bombay.

(*v*) He may, if he thinks fit, by order revoke or suspend, for such period as he may direct, the appointment of a council for any or all of the Governor's provinces.

(*vi*) He may issue orders to the Governor-General-in Council and the latter may pay due obedience to it.

(*vii*) All orders, regulations and directions lawfully made or given by the Court of Directors of the East India Company, or by the Commissioners for the affairs of India so far as they are in force at the commencement of the Government of India Act, 1919, deemed to be his orders, rules and directions given under the Government of India Act, 1919.

(*viii*) His powers in council (Secretary of State for India-in-Council) are :—

(*a*) He prescribes the procedure for the sending of orders and communication to India and in general for correspondence between the Secretary of State and the Governor-General-in-Council or any local Government.

(*b*) He may, subject to some exceptions in S. 17 (1), (*2*), make all appointments and promotions in his establishment and may remove any officer or servant belonging to that.

(*c*) He may by order suspend, until further orders, all or any of the powers of the Governor-General-in-Council which the Governor-General can exercise individually in the absence of his council under S. 43 (1) of the Act of 1919.

(*d*) Ordinarily his express orders are necessary for the Governor-General-in-Council to declare war, peace, treaty, etc. etc.

(*e*) The rules made under S. 45 A (1) shall not authorize the revocation or suspension of the transfer

of any subject (central, transferred, or reserved) except with his sanction.

(*f*) With his approval the Governor General-in-Council can create a council in any province under a Lieutenant-Governor.

(*g*) He may disallow any notification of the Governor-General in-Council whereby the latter declares or alters the boundaries of any province.

(*h*) He may reinstate any person dismissed from the Civil Service of the Crown in India.

(*i*) He may make rules for regulating the classification of the Civil Service in India, the methods of their recruitment, their conditions of service, pay and allowance, and discipline and conduct.

Rules regarding the scale and conditions of pensions of persons in the Civil Service of the Crown and appointed by the Secretary of State-in-Council may be varied by him.

He may, with the advice and assistance of the Civil Service Commissioner, make rules for admission to the Indian Civil Services.

Every resolution of the Governor-General-in-Council defining and limiting the qualifications of persons outside Indian Civil Service, who may be appointed to offices reserved for the civil service members require his sanction.

(*j*) He may fix the salaries, allowances, furloughs, retiring pensions and (where necessary) expenses for equipment and voyage, of the Chief Justices and other judges of the several High Courts and of the Bishops and Archdeacons in India.

(*k*) His consent in writing is necessary for the advancing of any loans by any European British subject to any Indian Prince or Chief.

Legislative powers.

(II) Legislative Powers.

(*i*) If the period between the dissolution of either Chamber of the Indian Legislature or a Local Legisla-

ture is to prolong beyond six months, sanction of the Secretary of State is necessary for the same.

(*ii*) He is to be supplied with an authentic copy of every order made by the Governor-General-in-Council altering the local limits of jurisdiction of High Courts.

(*iii*) *The Secretary of State-in-Council has the following powers:*—

(*a*) His approval is necessary for the Indian Legislatures making any law empowering any Court, other than a High Court, to sentence to death any of His Majesty's European subjects or abolishing any High Court.

(*b*) He may, by resolution, empower any Local Government to propose to the Governor-General-in Council the draft of any regulation for the peace and good government of their territories and empower the latter to *give that the validity of law* from a date to be fixed by the Local Government.

(*c*) His approval is necessary for the validity of rules made by the Governor-General-in Council with regard to the membership of the local legislature and with regard to any ordinance issued by the Governor-General's Council.

(*iv*) The Indian legislature cannot abolish any High Court nor can create a Court without the previous approval of the Secretary of State.

(*v*) Every Act of the Indian Legislature has to be sent by the Governor-General after he has given his assent to the Secretary of State for approval. Similarly all projects for legislation are to be approved of by him.

(iii) Financial. Financial powers.

(*i*) He directs, controls, superintends all acts, operations and concerns which relate to the revenues of India.

(*ii*) *As Secretary of State-in-Council.*,

(*a*) The expenditure of the Revenues of India, both in British India and elsewhere is subject to his control and no grants or appropriation of any part of those revenues or of any other property can be made without his consent;

(*b*) Such parts of the revenues of India as are remitted to the United Kingdom, and all moneys arising or accruing in the United Kingdom for the purposes of the Government of India are paid into the Bank of England to his account and are operated upon by him;

He may, by power of attorney, authorize all or any of the branches of the Bank of England (1) to sell and transfer all or any part of any stock standing in his name; (2) to purchase and accept stock for any such account; and (3) to receive dividends or any stock standing to any such account and direct by writing, the application of the money to be received in respect of any such sale or dividend. All securities etc. held by the Bank of England in his account may be disposed of by him;

(*c*) He has very wide powers of selling, buying and mortgaging etc., property of and for the Government of India and the Local Governments.

(*d*) He appoints an Auditor-General in India and makes rules for his pay, powers and duties etc.

(*iii*) The revenues of India cannot be applied to defraying the expenses of any military operations carried on beyond the external frontiers of India, except with the consent of both Houses of Parliament. This consent depends mainly upon the view taken of the matter by the Secretary of State.

(*iv*) Ordinarily he can enter into contracts on behalf of the Government of India.

(*v*) He indirectly exercises substantial control over the Indian finances, both central and local.

Thus we find " that the council is associated with the Secretary of State for the purposes of control over the revenues of India (*vide* S. 21), the disposal of the securities held by, or lodged with the Bank of England (*vide* S. 25), the disposal of any real or personal estate for the time being vested in the Crown for the purposes of the Government of India and with the raising of money by way of mortgage (*vide* S. 28), the entering into contracts (*vide* S. 29) and the bringing of suits or the defending of suits (*vide* S 32)."—*Sir T.B. Sapru.*

Also we find that the Government of India is completely subordinate to him directly as well as indirectly. His powers are extensive.

(IV) The powers of the Secretary of State with regard to his council.

The Secretary of State and his council.

(*i*) He prescribes the quorum for meetings of the Council of India.

(*ii*) He is the President of the Council of India and ordinarily presides over its meetings.

(*iii*) Meetings of the Council of India are convened and held at his discretion.

(*iv*) All acts done at the council meetings in his absence require his approval in writing.

(*v*) In case of difference of opinion in a council meeting he may require that his opinion and the reasons for it be entered in the Minutes of the Proceedings.

(*vi*) He may constitute committees of the Council of India for more convenient transactions of business, and direct what departments of business are to be under those committees respectively, and generally direct the manner in which the business of the Secretary of State-in-Council of India shall be transacted.

(*vii*) The right of filling any vacancy in the Council of India vests in the Secretary of State.

(*viii*) He may for special reasons of public advantage re-appoint for a further term of five years any member of the council.

(*ix*) He may remove the Vice-President of his council, whom he appoints as Secretary of State for India-in-Council.

(*x*) See also his powers under the headings Administrative, Financial and Legislative powers of the Secretary of State for India-in-Council.

(*xi*) Under the new Act of 1935, Section 278 provides that the Secretary of State shall appoint a body of persons, not being less than three nor more than six in number. These persons will advise the Secretary of State on all matters concerning India on which he seeks their advice. At least one half of these advisers must have held office for ten years or more under the Crown in India. *But the Secretary of State may or may not at all take their advice*; and even if he takes, he may not act on that.

However under Section 261, he must take their majority concurrence when exercising the powers conferred on him by Part X of the Act, i. e., for the recruitment of services and regulation of conditions of employment.

Still under that part, he remains the authority charged with the control of the members of certain public services in India, and is empowered, *subject to Sec. 261* to make rules regulating conditions of service, and to draw up orders in connection with appeals to him from any member of those services.

Thus he may issue orders and instructions in secret and urgent matters without giving any information to his advisers, in subjects like war and peace, defence, relation to Indian States, etc. He can override his council. The financial veto of the council under the Act of 1919 is taken away by the Act of 1935.

His relations with Parliament.

His relation with Parliament.

He is one of the Cabinet Ministers and is to be a member of either of the two Houses of Parliament. He is absolutely responsible to Parliament for all actions taken in his department and for all schemes of policy promulgated. When questions or supplementary questions are put to him concerning his department he is to answer those. He submits the Indian Revenue Accounts and the Report on the Moral and Material Progess of India during the year to Parliament. He comes with his party and goes with his party in Parliament.

His duties.

His duties.

(*i*) As we have stated above, the Secretary of State, with the concurrence of both Houses of Parliament, had to submit for the approval of His Majesty the names of the persons who were to form the Statutory Commission.

(*ii*) He shall within the first twenty-eight days during which Parliament is sitting next after the first day of May in every year, lay before both Houses of Parliament a statement showing the Moral and Material Progress of India during the preceding year.

(*iii*) He shall establish in India Public Services Commissions through the Governor-General and the Governors.

(*iv*) His duties go with his powers as stated above. He has to look to the administration of India and Burma (under the Act of 1935).

Q. 8. What are the functions of the High Commissioner for India?

Ans. The High Commissioner for India whose office was provided for in the Act of 1919 and established by Order-in-Council of August 13, 1920, was assigned definite functions of agency. ***The work undertaken was essentially non-political.***

His appointment by the Act of 1919.

His functions. Some powers of the Secretary of State delegated to him.

(*i*) The Act of 1919 delegated to the High Commissioner those powers previously exercised by the Secretary of State or the Secretary of State-in-Council which were in relation to making of contracts, and prescribed the conditions under which he was to act on behalf of the Governor-General in-Council or any local Government.

He becomes an agent of the Indian Government. India Office agency work goes to his office.

Thus he is an agent of the central government and of the provincial governments in the United Kingdom.

The intention was to transfer gradually all the agency functions performed hitherto by the India Office to the office of the High Commissioner for India in London.

He selects his own staff and contracts for the Secretary of State.

(*ii*) He appoints his own staff and can enter into contracts in the name and on behalf of the Secretary of State-in-Council.

Submits his account to the auditor.

(*iii*) He is to lay before the auditor the accounts of the Secretary of State-in-Council, accounts of the receipt, expenditure and disposal in the United Kingdom of all money, stores, and property by him, accompanied by proper vouchers, and is to submit to the auditor all necessary papers having relation thereto.

Transmits report to the G G.-in-Council.

He has also to transmit to the Governor-General-in-Council a copy of the report of the auditor on those accounts.

Controlover Store Department over Indian ptudent Department.

(*iv*) He has got under his control the Stores Department.

(*v*) The Indian Students Department also works under him ; thereby he deals with the education of Indian students in England.

Supplies information about India.

(*vi*) He supplies information on India to inquirers.

(*vii*) He furnishes trade information and promotes the welfare of Indian trade.

On the occasion of the Ottawa Conference in 1932, his office was made the centre of the activities of the Indian delegation which negotiated with the British Government for the Ottawa Pact to have mutual good trade between England and India. This was in fact a great departure from the intentions of the powers of the Act of 1919.

In the Act of 1919 it was laid down that his work was essentially non-political. But recently his office has become an economico-political one.

(*viii*) He also supervises the work of the Indian Trade Commissioner.

Control over the Indian trade Commissioner. Under the Act of 1935

(*ix*) Under the new regime ushered in by the Act of 1935, " The Governor-General exercising his individual judgment, shall appoint him and prescribe the salary and conditions of his service. The Commissioner shall perform, on behalf of the Federation, such functions in connection with the business of the Federation, and in particular, in relation to making of contracts as the Governor-General may from time to time direct.

The Commissioner may with the approval of the Governor-General and on such terms as may be agreed undertake to perform on behalf of a Province or the Federated State, or on behalf of Burma, functions similar to those which he performs on behalf of the Federation.—(Section 302).

Thus he may be authorized to act for a province, the Federated State, or Burma. Still his work does not inspire any very optimistic enthusiasm in the Indian mind. Indian traders view his activities with suspicion. Theoretically it may be true that by his appointment, an Indian gets the same status as is found in the self-governing colonies and dominions, but practically the India of to-day finds in his functions a charge adverse to the economic interests of India.

Q. 9. Discuss the powers of the Governor-General of India in Legislative, Administrative, Financial and Judicial spheres.

Powers in the legislative sphere.

Ans. (*A*) **Powers of the Governor-General in the Legislative sphere**, according to the Government of India Act of 1919 are as follows :—

(*i*) The Governor General and the two Chambers, namely the Council of State and the Legislative Assembly constitute the Indian Legislature.—(S. 63).

With regard to the two Chambers.

(*ii*) He has the right of addressing the Council of State and the Assembly and may for that purpose require attendance of their members.

[S. 63-A (3), S. 63 (3).]

His previous sanctions for Bills pertaining to.

(*iii*) The previous sanction of the Governor-General is required for introduction in either Chamber of the Indian Legislature any measure which

(*a*) affects the public debt or public revenues of India or imposes any charge on the revenues of India, or

(*b*) repeals or amends, any act or ordinance made by the Governor-General or,

(*c*) affects the religion or religious rites and usages of any class of British subjects in India or,

(*d*) repeals or amends any Act of Local legislature or,

(*e*) affects the discipline or maintenance of any part of His Majesty's military, naval or air force or

(*f*) affects the relations of the Government with foreign princes or states or,

(*g*) affects any measure regulating any provincial subject which has been declared by rules under this Act to be subject to legislation by the Indian Legislature.

(*iv*) When a bill, clause, or amendment affects, in the opinion of the Governor-General, the safety or tranquillity of India or any part thereof he may direct

that no further proceedings shall be taken by Chamber in relation to the bill, clause or amendment. [S. 67(2) (a).]

(*v*) The Governor-General may, in his discretion refer any bill on which there is difference between the two Chambers of the Indian Legislature to a joint meeting of both the Chambers. [S. 67 (3).]

(*vi*) Where a Bill has been passed by both the Chambers, the Governor-General may return it for reconsideration by either Chamber. [S. 67 (4).]

(*vii*) Where either Chamber refuses leave to introduce, or fails to pass in a form recommended by the Governor-General any bill, the Governor-General may certify that the passage of the bill is essential for the safety, tranquillity or interests of British India or any part thereof, and thereupon the bill becomes an Act upon the signification of the Governor General's assent. [S. 67 B (1).]

He may certify a bill if he likes without caring for the Chamber.

(*viii*) A bill passed by both the Chambers does not become an Act until the Governor-General has declared his assent thereto.

His assent is essential.

N. B. The Governor-General may declare that he assents to the Bill or that he reserves the Bill for the signification of His Majesty's pleasure thereon. [S. 68.]

(*ix*) The Governor-General may, in cases of emergency, make or promulgate ordinances for the peace and good government of British India or any part thereof for the space of not more than six months from its promulgation. It may be extended as a subsequent ordinance for a further period not exceeding six months. [S. 72.]

Ordinance Power.

(*x*) The previous sanction of the Governor-General is necessary for the Provincial legislatures' taking into consideration any law (*a*) imposing or authorizing the imposition of any new tax or (*b*) affecting the public debt of India or the customs duties or any other

tax or duty for the time being in force for the Government of India ; or (*c*) affecting the discipline or maintenance of any part of His Majesty's naval, military or air forces or (*d*) affecting the relations of the Goverment with foreign princes or states : or (*e*) regulating any central subject or (*f*) regulating any provincial subject which has been declared by rules under this Act to be subject to legislation by the Indian Legislature or (*g*) affecting any power expressly reserved to the Governor-General-in-Council by any law for the time being in force or (*h*) altering or repealing the provisions of any law enacted before 1919 which can not be repealed by the local legislature without previous sanction ; or (*i*) altering or repealing any provisions of an Act of the Indian legislature made after 1919 which may not be repealed or altered by the local legislature without previous sanction.

N. B. An act or provision of an act made by a local legislature and subsequently assented to by the Governor-General in pursuance of the Government of India Act, 1919, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor-General. [S. 80 A (3)]

(*xi*) The Governor General may instead of assenting or withholding his assent from any act passed by a provincial legislature, declare that he *reserves the Act for the signification of His Majesty's pleasure thereon.* [S. 81 A (3).]

His sanction required by the Chief Commissioners and the Governors for bills.

(*xii*) When a Bill is reserved by the Governor, Lieutenant-Governor, or Chief Commissioner for the consideration of the Governor-General the latter may send back the Bill for further consideration by the council with a recommendation that the council shall consider amendments thereto. [S. 81 A (2)]

As Governor-General in-Council he makes the Standing Orders.

(*xiii*) (*a*) As Governor-General in-Council, he may make the Standing Orders for the conduct of any business etc., in either Chamber of the Indian Legislature [S. 67 (6)] (*b*) and may constitute, with the sanction of His Majesty previously signified by the

Secretary of State-in-Council local legislature in Lieutenant-Governors' and Chief Commissioners' provinces. [S. 77.]

(*xiv*) A bill passed by provincial legislature and assented to by the Governor or Chief Commissioner does not become an act until the Governor-General has assented thereto. [S. 81 (3).]

His Powers in the Administrative Sphere.

1. He appoints :—

(*a*) a member of his Executive Council to be the Vice-President thereof. [S. 38.]

(*b*) a Lieutenant Governor, with the approval of His Majesty. [S. 54 A (1).]

(*c*) every member of a Lieutenant-Governor's Executive Council, with approval of His Majesty. [S. 55 (3).]

(*d*) The President of the Council of State, from among the members thereof. [S. 63 A (2)]

(*e*) The election of the President and Deputy President of the Assembly is to be approved of by him. [S. 63-C (2).]

He may remove the appointed President of the Assembly. [S. 63-C (3).]

An elected President and a Deputy President of the Assembly may be removed from office by a vote of the Assembly with his concurrence. [S. 63-C (4).]

2. He may make rules and orders for the more convenient transactions of business in his Executive Council. [S 40 (2).

3. In case of difference in his Executive Council he may decide a case by casting a second vote in case of a tie. [S. 41 (1).]

4. He may, on his own authority and responsibility, overrule the majority of his council and adopt, suspend or reject any measure, in whole or in part, if

in his judgment the measure essentially affects the safety, tranquillity or interests of British India, or any part thereof. [S. 41 (2).]

5. He may in his discretion exercise alone all or any of the powers of the Governor-General-in-Council if he has been authorized so to do. [S 43 (1).]

6. He may, if he thinks it necessary, during absence from his Executive Council, issue on his own authority and responsibility any order which might have been issued by the Governor-General-in-Council to any Provincial Government, or to any officer or servant of the Crown acting under the Provincial Government. [S. 43 (2).]

7. He is to determine the salary of the appointed President. [S. 63-C (5).]

8. (*a*) He may dissolve either Chamber of the Indian Legislature before the expiry of its full term. [S. 63-D (1) (*a*)]

(*b*) He may extend the term of either Chamber. [S. 63-D (1) (*b*)]

(*c*) After dissolution of either Chamber he fixes a date not more than six months, or with the sanction of the Secretary of State not more than nine months, after the date of dissolution for the next session of that Chamber. (S. 63-D (1) (*c*).]

(*d*) He may appoint such times and places for holding the sessions of either Chamber of Indian Legislature as he thinks fit, and may also from time to time prorogue such sessions. [S. 63D (2).]

9. The first standing orders for the conduct of business in the Indian Legislature are made by the Governor-General-in-Council and may with his consent be altered by the Chamber to which they relate. [S. 67 (6).]

Powers as Governor-General-in-Council :—

As Governor-General-in-Council.

10. He may sell and dispose of any property for the time being vested in His Majesty for the purposes of the Government of India or may raise money on such property in the name of the Secretary of State-in-Council. [S. 33.]

11. He may grant or dispose of any property in British India, accruing to His Majesty by escheat, forfeiture etc. [S. 31.]

12. He determines places where his Executive Council is to meet. [S. 39 (1).]

13. He can empower the Governor-General to conduct the work of the Governor-General-in-Council himself (individually). [S. 43 (1).]

14. Under exceptional circumstances he may declare war, without the orders of the Secretary of State-in-Council. [S. 44 (1).]

15. He can issue orders to the Provincial Governments which the latter must obey. [S. 45.]

16. Under certain conditions he can constitute a new Governor's or a Lieutenant-Governor's Province and can declare any territory in British India a "Backward Tract." [S. 55 (1).]

17. With the approval of the Secretary of State-in-Council he can create a Council in any province under a Lieutenant-Governor. [S. 55 (1).]

His consent is necessary for the validity of rules and orders made by a Lieutenant Governor for more convenient transaction of business in the council. [S. 57.]

18. He can, with the approval of the Secretary of State-in-Council take any part of British India under the immediate authority and management of the Governor-General-in-Council. [S. 59.]

19. He may declare, appoint, alter the boundaries of any of the provinces. [S. 60.]

20. He may make regulations for certain parts of British India. [S. 71.]

21. The residuary power of making rules under this Act resides in the Governor General in-Council. [S. 129-A (1).]

In the financial sphere. Revenues and Moneys.

(C) His powers in the Financial Sphere.

(*i*) No proposal for the appropriation of any revenues or moneys for any purpose shall be made except on his recommendation. [S. 67 A (4).]

Non-votable items.

(*ii*) If any question arises whether any proposed appropriation of revenue or moneys does or does not relate to non-votable items under S. 67-A (3), his decision shall be final. [S. 67-A (2).]

For certain expenditure

(*iii*) He has, in cases of emergency, the power to authorize necessary expenditure, "for the safety or tranquillity of British India or any part thereof." [S. 67-A (8).]

(*iv*) His sanction is necessary for the validity of rules made for the discussion of the annual financial statement in provinces other than Governor's provinces.

In the judicial sphere. Judges and Chief Justice appointed to fill a vacancy for the time being.

(D) His powers in the Judicial Sphere.

(*i*) If any office of a Chief Justice or a Judge of the Calcutta High Court falls vacant, the Governor-General-in-Council can appoint for the interim period any other Judge to act so for that Court. [S. 105.]

(*ii*) As a Governor-General-in-Council, he is also given power to appoint additional judges of High Court for such period (not exceeding ten years), as may be required. [S. 102 (1).]

(*iii*) If a Bill giving power to a High Court to have an original jurisdiction in any matter concerning the revenue is to be introduced, the previous sanction of the Governor-General is necessary.

(*iv*) As Governor-General-in-Council, he may alter the local limits of the jurisdiction of the High Court. [S. 109.]

(*v*) As Governor-General-in-Council, his written order for any Act shall in any proceeding, civil or criminal, in any High Court acting in the exercise of its original jurisdiction, be a full justification of the Act. [S. 118.]

(*vi*) On the occurrence of a vacancy in the office of Advocate General of Bengal or in his absence he (as Governor-General-in Council) may appoint a person for the period. [S. 114 (3).]

According to the Act of 1935.

The Governor-General's powers are as follows :—

(A) Discretionary Powers.

Discretionary Powers. In the legislative sphere.

1. *Vide* Section 108 (1) of the Government of India Act, 1935. Previous sanction of the Governor-General, given in his discretion, is required for introduction in either Chamber of 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*) affects matters in respect of which the Governor-General is by or under this Act, required to act in his discretion or

(*c*) repeals or amends or affects any act relating to any police force or

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

(*e*) subjects persons not residents in British India to a 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 or managed therein or

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

(*g*) affects the currency of the Federation or the constitution or functions of the Reserve Bank, or His Majesty's military, naval or air forces or religious usages or sites or foreign princes or States or his acts or ordinances, or public debts, or public revenues, or any changes in revenues or emergency such as war or internal disturbance.

2. He is also empowered to make laws in the form of Governor-General's Acts in his discretion in matters relating to functions in which he is required to act in his discretion or to exercise his individual judgment. The Act shall be communicated forthwith to the Secretary of State and shall be laid before each House of Parliament and is subject to disallowance by His Majesty.

He is required to explain to both Chambers of the legislature by message the circumstances which in his opinion render legislation essential. He shall before enacting the Bill consider any address which may have been presented to him by either Chamber with reference to the Bill.

The Act shall be void in so far as Governor-General's Act makes a provision which the Federal Legislature would not under the Act be competent to enact.

3. Other powers are as stated according to the Act of 1919, *i. e.*,

(*i*) the power to dissolve, prorogue and summon the legislature,

(*ii*) the power to assent to, or withhold assent from bills, or to reserve them for the signification of His Majesty's pleasure,

(*iii*) the power to summon forthwith a joint session of the Federal Legislature in cases of emergency, etc. etc.,

(*iv*) his sanction for the Provincial Bills, etc. etc.

(B) His powers in the Administrative Sphere.

In the administrative sphere. Reserved subjects.

(*i*) Administrative functions with regard to defence, ecclesiastical affairs, foreign relations (excluding the relations between the Federation and any part of His Majesty's dominions) and the Tribal areas are to be exercised by the Governor-General in his discretion. To assist him in the exercise of such functions, the Governor-General may appoint counsellors (not exceeding three in number) responsible to him alone and sharing none of the responsiblity of the Federal Ministers to the Federal Legislature.

(*ii*) The Governor-General will choose his council of Ministers (not exceeding ten in number) summoned by him holding office during his pleasure.

He may at his discretion preside at meetings of the Council of Ministers. The Ministers have no constitutional right under the Act to give advice upon a matter declared by the Act to be within his own discretion though the governor may consult them. It is, however, the duty of the Ministers to transmit to the Governor-General all such information with respect to the business of the Federal Government as the Governor-General may require or which involves any of his special responsibilities.

Special responsibilities.

(*iii*) In the discharge of his special responsibilities, he can act at his discretion. He can do so for

(*a*) the prevention of any grave menace to the peace or tranquillity of India or any part thereof ;

(*b*) the safeguarding of the legitimate interests of minorities ;

(c) securing to, and to the dependants of, persons who are or have been members of the public services of any rights:provided these are preserved for them by or under the Act and the safeguarding of their legitimate interests.

(d) the securing in the sphere of Executive action of the purpose which the provisions of Chapter II of Part V of the Act (which deals with discrimination) are designed to secure in relation to legislation.

(e) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment.

(f) The safeguarding of the financial stability and credit of the Federal Government.

(g) the protection of the rights of an Indian State and the rights and dignity of the ruler thereof and

(h) securing that in the discharge of his functions in matters with respect to which he is required to act in his discretion or to exercise his individual judgment ; he is not prejudiced or impeded by any course of action taken with respect to any other matter.

With regard to the Reserve Bank.

(iv) In nominating and removing from office the Directors of the Bank, the Governor-General shall exercise his own judgment. In the appointment and removal of the Governor or Deputy Governors of the Bank or in the suspension of the Central Board of the Bank, he holds his own discretion.

(v) He may dissolve, extend the term of, and again summon, either Chamber of the Indian Legislature.

(*vi*) In a case of breakdown of the constitution he is, in his own discretion, empowered to assume to himself by proclamation all or any of the powers vested in Federal body or authority (other than the Federal Court) and to exercise the same in his discretion. This proclamation goes before Parliament through the Secretary of State and elapses after six months.

In case the constitution breaks down

Then it goes on for 12 months with Parliamentary sanction from the day on which it would have ceased to operate. If at any time, the Government of the Federation has for a continuous period of three years been carried on under such a proclamation, then, at the expiration of such period, the proclamation is to cease to have effect and the Government is to be carried on according to the Act subject to any amendment of it which Parliament may make.

(*vii*) The Governor-General may direct the Governor of any Province to discharge in his discretion and as his agent, any of his functions in relation to the tribal areas, defence, external affairs, or ecclesiastical affairs or for preserving peace and tranquillity.

He and the Provincial Governor.

(*viii*) The Governor-General is empowered to make rules in his discretion for the transaction of business of the Federal Government and the allocation of business among Ministers and Secretaries to Government.

For the business of the Federation.

(*ix*) In respect of the appointment of a Chief Commissioner for the Chief Commissioner's provinces (such as Delhi, Ajmer-Merwara, Coorg, the Andamans and Nicobar Islands, and in respect of British Baluchistan and in the direction and control of their administration, the Governor-General has full discretion.

For the administration of Chief Commissioner's Provinces.

(*x*) He is given the power of appointing the Federal Public Services Commission and of the High Commissioner for India.

Federal Public Services Commission.

(*xi*) He can, with the approval of the Secretary of State-in-Council take any part of British India under his immediate authority and management.

He may declare, appoint or alter the boundaries of any of the provinces.

He may make regulations for certain parts of British India.

(C) In the Financial Sphere.

(*i*) A "Financial Bill" must not be introduced in the Assembly or moved except on his recommendation.

If a bill involves "expenditure from the revenues of the Federation" it shall not be passed by either Chamber unless he recommends it to that Chamber for consideration. No demand in the annual financial statement or "budget" shall be made except on his recommendation.

Also if the Bill imposes or varies any tax or duty in which the Provinces are interested—a tax or duty the whole or part of the net proceed whereof are assigned to any Province, or

(*a*) varies the meaning of the expression "agricultural income" or

(*b*) affects the principles on which moneys are or may be distributed to Provinces or States or

(c) imposes any such Federal charge as is mentioned in Sections 137 and 138 of the new Act, the Governor-General's sanction is necessary.

(*ii*) He has financial, powers with regard to the Reserve Bank too.

He has an indirect influence in the administration of the financial policy of that institution as he makes appointments of the Governor, Deputy Governor, and Central Board of the Bank.

(*iii*) The appointment of the Auditor General takes place on the recommendation of the Governor-General.

(*iv*) He may appoint a person to be his Financial Adviser, holding office during his pleasure and determine his salary and conditions of service. He consults his Ministers as to the person to be selected.

(*v*) Others as stated according to the Act of 1919.

(D) His powers in the Judicial Sphere.

(*i*) He may, in his discretion, refer to the Federal Court any question of law of special public importance for consideration.

(*ii*) If any office of a Chief Justice or a Judge of any High Court falls vacant and is not filled by His Majesty, the Governor-General can appoint for the interim period any other judge to act so for that Court.

(*iii*) He may appoint, in the exercise of his individual judgment, the Advocate General of the Federation.

(*iv*) He can exercise the royal prerogative to grant pardons to offenders convicted by courts of justice.

(*v*) He is not subject to original jurisdiction of any High Court and is not liable to be arrested or imprisoned.

(*vi*) Others as stated according to the Act of 1919.

Q. 10. Describe the organization, powers and procedure of the Viceroy's Council.

Ans. (A) Organization of the Viceroy's Council.

Organization of the Viceroy's Council.

According to the Act of 1919, there is to be no statutory limit to the members of the Viceroy's Council. There are in fact, now seven members including

the Commander-in-Chief (who is no longer to be regarded as an Extraordinary Member), appointed by the Crown on the advice of the Secretary of State, holding office for a term of five years. Every member gets Rs. 80,000 per annum except the Commander-in-Chief who gets Rs. 10,000 a year.

There are now three Indian members on the Council (though the Act of 1919 does not prevent all the members of the council from being Indian).

Three of these members must have served in India for at least ten years; one must be a Barrister of England or Ireland or an Advocate of Scotland or a pleader of an Indian High Court of not less than ten years' standing.

(There were to be council secretaries to assist the Viceroy's Executive Councillors in their work but no such secretary has been appointed.)

The work is distributed among the members according to the portfolio system, each member having a department under him.

The portfolios.

The member in charge and the portfolios are:—

(*i*) Viceroy.—Foreign and Political Departments.

(*ii*) Commander-in-Chief.—Army and Defence.

(*iii*) Home Member. General, as the Indian Civil Service, Internal Politics, Law and Order and Justice, Jails, Police, etc. etc.

(*iv*) Finance Member.—Finance.

(*v*) Member of the Railway, Commerce and Ecclesiastical Departments.

(*vi*) *Law Member.*—The Legislative Department.

(*vii*) *Member for the Departments of Education, Health and Lands.*

(viii) Member for Industries and Labour.

There is a Secretary in charge of each branch, who holds the rank of Secretary to Government and is a nominated official in one or other House of the Central Legislature.

Each of the Executive Councillors is a member of one or other chamber of the Indian Legislature, and has also the right of attending in and addressing the chamber to which he does not belong.

(B) Powers. Powers.

The Governor-General has to take the consent of Executive Council for the following powers :

(*i*) The Governor-General-in Council may sell and dispose of any property for the time being vested in His Majesty for the Government of India or may raise money on such property in the name of the Secretary of State-in-Council.

(*ii*) The Governor General-in-Council may grant or dispose of any property in British India, according to His Majesty by escheat, forfeiture, etc.

(*iii*) The council can empower the Governor-General to conduct the work of the Governor-General-in-Council himself (individually).

(*iv*) Under exceptional circumstances the Governor-in-Council may declare war, etc, without the orders of the Secretary of State-in-Council.

(*v*) The council with the Governor-General may issue orders to the Provincial Governments which the latter must obey.

(*vi*) The Governor-General-in-Council can constitute a new Governor's or a Lieutenant-Governor's Province under certain conditions and can declare any territory in British India a "backward tract."

(*vii*) Similarly the same body can create a council in any province under a Lieutenant-Governor;

rules and orders for the council by the latter must be approved by the former.

(*viii*) The council with the Governor-General can take any part of British India under its immediate authority and can make regulations for that. The boundaries of any province can be changed by the same.

(*ix*) The Standing Orders for the conduct of business etc., in either Chamber of the Indian Legislature or in the Provincial Legislatures can be made by the Governor-General-in-Council.

Also the sanction of the Governor-General in-Council is necessary for the discussion of the annual financial statement.

(*x*) This body may appoint persons to act as additional judges of any High Court for such period not exceeding two years, as may be required. Also Chief Justice or any other judge of the Calcutta High Court would be appointed for the period of any office fallen vacant. The same is true when there is a vacancy in the office of Advocate General of Bengal.

Similarly the local limits of the jurisdiction of the High Court can be changed.

(*xi*) The Governor-General-in-Council is given the powers of superintendence, direction, and control of the civil and military Government of India subject to the orders of the Secretary of State. Every local Government has to obey this body and keep it well-informed about the administration.

(*xii*) It has, by delegation, powers of making treaties and arrangements with Asiatic States, of the exercise of jurisdiction and other powers in foreign territory and of acquiring and ceding property.

(*xiii*) "It can enjoy all those powers, prerogatives, privileges, and immunities appertaining to the

Crown as are appropriate to the case and consistent with the system of Law in force in India."

(C) Procedure.

Procedure.

1. The Governor General acts as the President and appoints one of the members as Vice-President who acts as President in his absence.

2. The council meets in such places as the Governor-General-in-Council appoints, usually once a week. The proceedings are private.

3, The Governor-General or any other member presiding, with another member except the Commander-in-Chief, can act for the Governor-General-in-Council. The majority decides the issues for which there is difference of opinion. If they are equally divided, the Governor-General or any other presiding officer has a casting vote.

If, however, the issue involved pertains to the safety, tranquillity or interests of British India or of any part thereof, the Governor-General may override his council and act on his own authority and responsibility.

But if any two dissentient members require the matter in dispute to be referred to the Secretary of State, this can be done. The report with copies of any minutes must be sent to the Secretary of State.

4. If the Governor-General is absent, then the Vice-President and in the latter's absence the senior member other than the Commander-in-Chief, presides. If he is near, his signature to any "act of council made at the meeting" is essential. If he refuses, the act becomes null and void.

"During the absence of the Governor-General on tour, a member in charge of a Department may call together an informal meeting of his colleagues to discuss an important matter or emergent case. the result being reported to the Governor-General."

5. The Secretary to the Government of India signs all orders in the name of the Governor-General-in-Council and this is a legal order before any court.

6. The Governor-General is empowered to make rules and orders for the more convenient transaction of business in his Council.

The Act of 1935 changes its position.

(D) The Act of 1935, however, makes the Federal Government a Dyarchical and not a unitary one. There are Governor General's Ministers giving advice to him on the administration of a part only of the affairs of the Federation. In the exercise of functions with respect to Reserved subjects, *i.e.*, defence, ecclesiastical affairs and external affairs (except the relations between the Federation and any part of His Majesty's dominions), he is assisted by councillors, not exceeding three in number, whose salaries and conditions of service shall be decided by His Majesty-in-Council.

These Councillors are responsible to the Governor-General alone and shall have none of the responsibility of the Federal Ministers to the Federal Legislature and cannot be members of the council of Ministers.

A council of Ministers, not exceeding 10 in number, is to aid and advice the Governor-General in the exercise of his functions excepting such as he is required to discharge in his discretion. These Ministers are chosen by him and hold office during his pleasure. A minister ceases to be so if for a period of six consecutive months, he does not become a member of the Federal Legislature. The Governor-General can act without the advice of his Ministers, in such matters in respect of which he is to act in his discretion; he can exercise his individual judgment and particularly in the discharge of his special responsibilities (see Question 9).

Thus financial decisions rest with the Governor-General though he may consult the Federal Ministers now and then as before the army budget is to be laid before the legislature, etc.

Q. 11. "It must be admitted that Parliament has not been a just and watchful steward of India."—(*Ramsay Macdonald*). How far is this true of to-day? What are the ways in which the Parliament exercises its surveillance over Indian affairs? *(P. U. 1934).*

Preamble to the Act of 1919.

Ans. The preamble to the Government of India Act, 1919, states: "It is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the Empire."

This Preamble is based on the announcement made to the House of Commons on August 20, 1917, by Mr. Montagu—the then Secretary of State for India—in respect of the policy of His Majesty's Government.

The Joint Committee for the Act of 1935 thought that the Preamble had "set out finally and definitely the ultimate aims of British Rule in India through Parliament."

But Parliament and Englishmen do not stand by the preamble.

But the British Parliament has not cared much to stand by this declaration. If a succession of sovereigns and Cabinet Ministers, and Viceroys and others in authority bear out the truth in that Preamble through certain pledges it is declared that "they have no legal binding on Parliament." Mr. Winston Churchill repudiated the promises made in the Preamble and the promises made by responsible members of Government by saying that "what politicians often have to do is to give an agreeable speech on a festive occasion." He went on to add: "No member of the cabinet meant, contemplated or wished to suggest the establishment of a responsible government or of Dominion Status for India in any period which human beings ought to take into account."

In India, the Nationalist movement has aimed at full responsible Government. The politicians and the statesmen have reminded the British Government of its pledge but Parliament has failed to fulfil its promises advanced through the Preamble to the Act of 1919.

There has been no end of the attempt at " breaking to the heart the words of promise uttered to the ear."

The Joint Parliamentary Committee, 1935

The Joint Parliamentary Committee Report, 1935 (page six) bluntly states : " *But a recognition of Indian aspirations, which it is the necessary preface to any study of Indian constitutional problems*, is an insufficient guide to their solution. Responsible government, to which those aspirations are mainly directed to-day, is not an automatic device which can be manufactured to specification. It is not even a machine which will run on a motive power of its own...The British Constitutional theory cannot be applied here...It cannot be acquired by others in the twinkling of an eye ; *nor, when acquired, is it likely to take the same form as in Great Britain.*"

It means, in clear words, that it shall take thousands of years before India sees the dawn of responsible government or the fulfilment of her aspirations. Parliament would not do it because they think that " Parliamentary government in India may develop on different lines from those of Government at Westminster."

The committee admit Indian aspirations and advancement but would not like self-government for them.

Yet the Committee admit that " Indians have shown, since 1921, a marked capacity for the orderly conduct of Parliamentray business, a capacity which has grown steadily with the growth of their experience." " We cannot doubt that this apprenticeship in Parliamentary methods has profoundly affected the whole character of Indian public life, both by widening the circle of those who have had practical contact with

affairs of Government and by stimulating the growth of a public conscience amongst the educated classes as a whole."

Self-government is then being denied because according to the same Committee, there is no considerable body of political opinion ; there is age old antagonism between Hindu and Muhammadan; there are numerous and self-contained and exclusive minorities; there is rigid divisions of caste inconsistent with democratic principle etc. In these circumstances, the Committee assert, the successful working of parliamentary government in the provinces must depend, in a special degree, on "safe-guards." It is nothing but arguing in a circle.

The promise of self-government in India should have been interpreted in a broad-minded spirit. "If the atmosphere in which the declaration was made by Parliament, and the demand in response to which it was made, are borne in mind ; if, further, it is borne in mind that India was, like the dominions, a signatory to the peace treaties, and is and has been an original member of the League of Nations, there should be no room for doubt that England has pledged to India that her place in the British Commonwealth of Nations shall exactly be the same as that of any other self-governing dominion."

The existing machinery of Govt. is not good.

The proposals put forward by the Government in the Act of 1935, fall far short of even the most modest aspirations of an average politically minded Indian *As to the actual administration of India*, it cannot be said that her economic and social problems have always been tackled for the exclusive interests of Indians. The Ottawa Agreement and Government's currency and gold export policies are the recent instances to show its grievous disregard of Indian interests. The Secretary of State for India who is a member of the Cabinet is the immediate agent of Parliament for the discharge of its responsibilities in Indian affairs. The Governor-General, and through

him, the provincial governments are required to pay due obedience to his orders. The Council of India is thus dependent on him." *He is for English Parliament and not for India.*

The Act of 1935 omits any preamble.

Yet the new Act of 1935 does not contain any preamble like that of 1919. The latter is hopelessly out of date and no amount of " interpretation " put upon it can make it identical or consistent with the constitutional status of the dominions. That preamble binds India "as an integral part of the Empire," and this implies the control of the Imperial Legislature, over the affairs of India to the detriments of Indians and their aspirations. Parliament has not been a just and watchful steward of India.

Parliamentary surveillance.

Parliament Surveillance over Indian affairs. (*i*) Detailed accounts for revenue and expenditure are to be submitted to Parliament every year with report of the material and moral progress of India. (*ii*) The accounts are to be audited by an independent auditor who is to submit his report to Parliament every year. (*iii*) Appointment of commissions to report on the advisability of constitutional advance in India and the relaxation of control of the Secretary of State in regard to both reserved and transferred subjects require the approval of Parliament

Q. 12. What are the powers of the Viceroy in relation to his Executive Council ? (*P. U. 1935.*)

Ans. Read answer to Q. 10. and the following :–

The rules for the transaction of council business, the allocation of portfolios among its members and the limitation of their scope, are entirely, subject to his final decision. While he can, with the assent of his council restore grants refused by the Assembly, he can on his sole responsibility and initiative authorise such expenditure as he thinks to be necessary for the safety or tranquillity of British India or any part thereof.

The assistance of the Executive Council is indispensible to the Viceroy in all circumstances. With its help, he can have the continuity of administration. Therefore the members of the Executive Council have a voice. J. S. Mill rightly said that "the advisers attached to a powerful and self-willed man ought not to be put under conditions which would reduce them to a cypher."

Q. 13. Discuss the powers and functions of the Governor of a Province and indicate his relation to the Executive Council ? What is his position under Dyarchy ?

Ans. Powers of the Governor:—(Based on the constitution of 1935.)

(I) Legislative.

Legislative.

(*a*) Unless the Governor of the Province in his discretion thinks fit to give his previous sanction, there shall not be introduced or moved any Bill, or amendment which

No Bill without the Governor's sanction.

(*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.

(*b*) *Previous sanction of the Governor is required* to introduce any Bill or to move any amendment in the Provincial Legislature

(*i*) for making provisions for imposing or increasing any tax, or for regulating the borrowing of money and the like ; and for declaring any expenditure to be charged on the revenues of the Federation. (S. 37 and 82 of the Act of 1935).

(*ii*) for affecting the public revenues of a province or imposing any charge on, those revenues.

Bill proved by the legislature to be approved of by the Governor.

(*c*) A Bill passed by the Legislative Assembly or in a Province which has also a Legislative Council by both Chambers shall be laid before the Governor for assent. The Governor may, in his discretion, assent to the Bill or withhold assent there from, or reserve the Bill for consideration of the Governor-General, or return the Bill for reconsideration.

The Governor makes rules for the council.

(*d*) If the Province has also a Legislative Council, the Governor, after consultation with the Speaker and the President may make rules as to the procedure with respect to joint sittings of and communications between the two Chambers.

Also rules of procedure.

(*e*) A Governor is empowered at his discretion, after consultation with the presiding officer of the Legislature, to make rules :—

(*i*) *for regulating the procedure and the conduct of business in relation to matters* arising out of or affecting, any of his special responsibilities.

(*ii*) *for securing the timely completion of financial business.*

Prohibition of discussions or questions.

(*iii*) *for prohibiting the discussion of, or the making of questions on,* any matter connected with any Indian States unless the Governor, in his discretion, is satisfied that the matter affects the interest of the Provincial Government or of a British subject who is ordinarily resident in the Province, and has given his consent to the matter being discussed, or to the question being asked ;

(*iv*) for prohibiting, save with the consent of the Governor in his discretion—

1. 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 Province ; or

2. the discussion, except in relation to estimates of expenditure of, or the asking of questions on, any matters connected with the tribal areas or arising out of or affecting the administration of an excluded area, or

3. the discussion of, or the asking of questions on the personal conduct of the Ruler of any Indian State or of a member of its ruling family.

The rules made by the Governor for these purposes shall prevail over any rule made by Legislature in his Province.

(*f*) The Governor is conferred emergency and special powers to make laws in the form of Ordinances and Governor's Acts.

His emergency and special powers. Ordinances, Act, etc.

Ordinances can be issued if circumstances are such and require of him to discharge his functions well. These shall remain in force for not more than six months and may be extended for a further period not exceeding six months provided these are sent to the Secretary of State through the Governor-General and then placed before Parliament. These may be disallowed by His Majesty as if these were Acts of the Provincial Legislature. These should be put before the Provincial Legislatures also. Also the Governor-General's concurrence is essential.

Ordinances.

An ordinance can only be promulgated if the Legislature is not in session. It shall be laid before the Provincial Legislature and shall cease to operate after six weeks from the reassembly of the Legislature or upon the passing of any resolution disapproving it by the Chamber or Chambers as the case may be.

Power to enact Acts.

His Acts.

Before enacting such an Act, he shall have to send message to the Chamber or Chambers explaining