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Studies of the  
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# Multicultural Societies and Federalism



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Studies of the  
Royal Commission on  
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# Multicultural Societies and Federalism

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*This study has been prepared for the Royal Commission on Bilingualism and Biculturalism. Although published under the auspices of the Commission, it does not necessarily express the Commission's views.*

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July, 1967

R. L. Watts

Acknowledgements     v

List of Tables     x

**Chapter I                      Introduction    1**

- A    Topic of Study    1
- B    The Relevance of Such a Study    1
- C    The Scope of This Study    5

**Chapter II                      The Concept of a Federal Political System    7**

- A    The Significance of the Concept    7
- B    The Dualistic Concept of Federalism    7
- C    Interdependent Federalism    8
- D    Federal Political Systems and Multicultural Societies    11

**Chapter III                      Federal Societies    15**

- A    Introduction    15
- B    Diversity of Language and Culture as a Motive for Provincial Autonomy    15
- C    Other Motives for Political Autonomy    20
- D    The Forces for Unity    26

**Chapter IV                      The Provincial Units    29**

- A    The Significance of the Character of Provincial Units    29
- B    The Size and Number of Provinces    30
- C    The Homogeneity of Provincial Units    32
- D    Arrangements for Protecting Intraprovincial Minorities    34

**Chapter V                      The Distribution of Authority among Governments    39**

- A    The Distribution of Legislative and Executive Authority    39
- B    The Allocation of Financial Resources    43
- C    Variations within a Federation in the Distribution of Functions    47

**Chapter VI                      Intergovernmental Institutions    51**

- A    Interdependence within Federal Systems    51
- B    Intergovernmental Financial Institutions    51
- C    Intergovernmental Institutions for Coordinating Economic Policy    53

	D	Intergovernmental Institutions for Other Specific Matters	55
	E	Intergovernmental Institutions for Federal Cohesion	55
	F	Institutions for Settling Constitutional Disputes	58
<b>Chapter VII</b>		<b>The Organization of Central Institutions</b>	<b>61</b>
	A	The Role of Central Institutions	61
	B	The Central Legislature	61
	C	The Central Executive	65
	D	The Central Civil Service	67
	E	Federal Capital Cities	72
	F	Political Parties	75
<b>Chapter VIII</b>		<b>Official Languages and Safeguards</b>	<b>79</b>
	A	Official Languages	79
	B	Constitutional Guarantees	83
<b>Chapter IX</b>		<b>Summary and Conclusions</b>	<b>85</b>
<b>Appendix A</b>		<b>The Linguistic Composition of Multicultural Federations</b>	<b>91</b>
<b>Appendix B</b>		<b>Distribution of Legislative Authority between Central and Regional Legislatures</b>	<b>96</b>
<b>Appendix C</b>		<b>Federal Finance</b>	<b>102</b>
<b>Appendix D</b>		<b>A Survey of the New Commonwealth Federations</b>	<b>104</b>
		The Union of India	104
		The Republic of Pakistan	112
		The Federations of Malaya and Malaysia	118
		The Federation of Nigeria	124
		The Federation of Rhodesia and Nyasaland	132
		The West Indies Federation	139
<b>Appendix E</b>		<b>Selected Constitutional Provisions Relating to Language or Culture</b>	<b>147</b>
		The Constitution of India (adopted 1950)	147
		Constitution of the Republic of Pakistan (adopted 1962)	155
		Constitution of the Federation of Malaysia (effective 1963)	157
		The Constitution of the Federal Republic of Nigeria (adopted 1963)	164

The Constitution of the Federation of Rhodesia and  
Nyasaland (adopted 1953) 165

The Federal Constitution of the Swiss Confederation  
(adopted 1874) 168

**Notes to Chapters 171**

**Tables in Appendix A**

- A.1 Canada and provinces: Percentage distribution of the population by mother tongue 91
- A.2 Switzerland and cantons: Percentage distribution of the population by mother tongue 92
- A.3 India: Population by mother tongue 93
- A.4 Pakistan: Percentage distribution of population by language 93
- A.5 Malaya: Percentage distribution of population by race 94
- A.6 Malaysia: Percentage distribution of population by race 94
- A.7 Nigeria: Percentage distribution of population by principal ethnic groups 95
- A.8 Rhodesia and Nyasaland: Percentage distribution of population by race 95

**Tables in Appendix B**

- B.1 Distribution of legislative authority between central and regional legislatures in various federations 97

**Tables in Appendix C**

- C.1 Comparison of central and provincial current revenues and expenditures 102
- C.2 Comparison of composition of provincial current revenues 103



*A. Topic of Study*

In many societies where the forces for integration and for separatism have been at odds with each other, the adoption of a federal political system as the solution has been a popular formula. It makes possible the large political and economic unit required to sustain genuine political independence and to facilitate rapid economic development while at the same time assuring the varied linguistic, racial and religious communities some autonomy. This study is concerned with an analysis of experience in other multicultural federations in order to see what light their experience may throw on similar Canadian problems.

*B. The Relevance of Such a Study*

There are a number of countries where a federal political system has been adopted particularly to meet the needs of a society with a multicultural character. Of the three classic federations which have been in operation for more than half a century—the United States of America, Switzerland and Australia—only Switzerland is fully relevant to this study since both the United States and Australia are essentially monocultural. In the latter two countries it was the continental expanse, the local economic interests, and a previous existence as distinct colonies which lay at the root of the adoption of a federal form of union. In Switzerland, however, one of the strongest continuing motives for the federal character of its political system has been the existence of German-, French- and Italian-speaking groups concentrated in different cantons.<sup>1</sup> Among the newer federations, Germany, like the United States and Australia, is fundamentally monolingual, although regional variations in religious and cultural outlooks had a bearing on the adoption of a federal system in West Germany in 1949, as evidenced by the inclusion within the fairly limited exclusive legislative authority of the states of such fields as education, culture and religious affairs. There are, however, a number of newer Asian and African federations, established within the Commonwealth since 1947, where the federal solution was adopted specifically to meet the needs of a society in which the linguistic and

cultural divisions were, if anything, far sharper than in Canada. Particularly significant among these experiments have been India, Pakistan, Malaya and later Malaysia, Nigeria, and Rhodesia and Nyasaland.<sup>2</sup>

India is the most dramatic example for, according to the 1951 census, it contains some 60 languages or dialects spoken by more than 100,000 persons each, and the Eighth Schedule to the Constitution specifies 14 languages as "the languages of India." Indeed, in India an attempt has been in process since 1947 to unite by means of a federal system a number of linguistic groups, 10 of which are each as large as the French-speaking population of Canada, and each of which speaks a language as different from the others as French is from English.<sup>3</sup>

In Pakistan, the separation of East and West Pakistan by a thousand miles has made provincial autonomy imperative. An equally strong pressure for provincial autonomy has been the sharp cleavage between West Pakistanis, speaking a variety of languages related to Urdu and largely Middle-Eastern in character, and East Pakistanis, Bengali-speaking and Southeast Asian in outlook.<sup>4</sup> These cultural differences have been sharpened by the resentment of the Bengalis about the continued dominance of the western province in their political and economic life, and about being treated as "a colony" by the central government remotely located in the west.

Both in the original Federation of Malaya established in 1948 and the wider Federation of Malaysia created in 1963, the most significant political feature has been the communal character of the population.<sup>5</sup> Since the language, religion and related social customs of the Malay, Chinese, Indian and indigenous Bornean communities within Malaysia are sharply distinct and often incompatible, communal tension has coloured the entire political scene. Each of the states contains a variety of races, but there are significant regional variations in the strengths of the different communities and these give the states their distinctiveness within the federal system. Of particular interest to Canadians was the attempt within a Malay-dominated and conservative Malaysia to accommodate the special local interests of Singapore with its overwhelmingly Chinese population, its distinct economic base, and its strongly radical outlook in politics. Because of these special interests Singapore was given substantially greater autonomy than the states on the Malayan mainland. This experiment of an "associated state" lasted only two years, however, before mounting tension led to the separation of Singapore again from the federation.

Nigeria too is a country marked by sharp linguistic and cultural diversity.<sup>6</sup> Most of the north is dominated by the Hausa language, Muslim belief and law, and the highly organized emirates of the Fulani dynasties. In the south, where Christianity and Animism are the prevailing religions, the culturally-conscious Yoruba-speaking peoples predominate in the west and the rival Ibo peoples in the east. It was the growth after 1946 of the political consciousness of these ethnic groups, expressed in the rise of political parties with a distinctively regional focus, which led to the adoption of a federal system of government in Nigeria in 1954. For a decade Nigerian stability depended on an uneasy coalition of regional parties and its ability to overcome a series of crises rather than on the absence of political strife. When the 1963 census confirmed the permanence of Northern Nigeria's stranglehold on central politics, the willingness to compromise was destroyed, culminating in the destruction of the federal system in early 1966.

For a decade between 1953 and 1963 the Federation of Rhodesia and Nyasaland in Central Africa represented an attempt to reconcile the interests of determined white and black nationalism by means of a federal system.<sup>7</sup> Unlike the other multicultural federations, however, this one did not represent a compromise between the two groups since the African nationalists opposed the union; it was, rather, a bargain between the white settlers and the British government with the latter considering itself the guardian of African interests. Nevertheless, this experiment, in many respects so different from Canada, is of some significance because the failure to achieve the intended multiracial cooperation stemmed from a mutual misunderstanding of the goal of "partnership" set forth in the preamble to the constitution. To the African, partnership to be genuine could mean only equal opportunity for all individuals throughout the federation. To the European settler, partnership meant cooperation between "the senior and junior partner," or between "the rider and his horse."<sup>8</sup>

It may be argued, and with some justice, that Canadian problems are unique and therefore that experience in these other federations is of little relevance to our problems. This is to some extent true of the federations in Europe. Switzerland, with a population of some five million and an area of 16,000 square miles, is relatively small and compact compared with the continental sweep of Canada. Germany, although containing religious diversities, is linguistically relatively homogeneous compared with Canada. The relevance of Asian and African federations seems, at first sight, even more remote. First, their societies are based on non-western cultures very different from the cultures of either English or French Canada. Second, the Asian and African federations are all economically underdeveloped and thus at a very different stage of economic development from Canada. Third, they vary greatly in population. Some encompass populations which range from double that of Canada, as in Nigeria, to over four times that of Canada in Pakistan, and twenty times that of Canada in India. At the other extreme, the electorate of the entire Federation of Rhodesia and Nyasaland was smaller than that of the largest single riding in Canada, and even the widened Federation of Malaysia contained less than half of Canada's population.

These differences, however, should not be allowed to obscure the point that certain factors make the experience of these other federations peculiarly relevant to the study of bilingualism and biculturalism within the Canadian political system. To begin with, unlike Belgium, Finland or South Africa which are not political federations, or the U.S.S.R. which because of its monoparty system represents a peculiar federal system, the European federation of Switzerland, and the Asian and African federations of India, Pakistan, Malaysia, Nigeria, and Rhodesia and Nyasaland are each an example of the resort to a federal political solution specifically in order to accommodate the problems of a multilingual and multicultural society. Indeed, in each the multicultural character of the society was a major factor leading to the adoption of federal institutions. Consequently, most of these federations have wrestled with just the sorts of problems with which Canadians are concerned. These include not only problems of "recognized national languages," education in different languages, and the cultural impact of a federation-wide economy, but also the distinctively federal problems which arise from the attempt to accommodate the needs of a multicultural society by means of a federal political system. Among these issues are the relation of provincial autonomy to cultural distinctiveness, the

place of minorities and majorities within provinces, the impact of the federation-wide economy on provincial autonomy, cooperative and consultative relations between levels of government, and the institutions and processes by which the different linguistic and cultural groups may participate in the establishment of a consensus in central politics. There is already in India, for example, a considerable history of commissions, committees and studies concerned with just these problems.<sup>9</sup>

Two further points make the experience of the more recent Commonwealth federations of particular relevance to Canadians. First, most of the new federations have attempted to copy certain features of Canadian federalism and in a number of instances to improve upon the Canadian model. Statesmen founding the new federations have often commented on the special relevance to their situation of the Canadian experience because, unlike the United States or Australia, Canada was a multicultural federation. Much of the impact of the Canadian example upon the Asian federations has been indirect and results from the influence of the Canadian model upon the form and phraseology of the Government of India Act, 1935. This act in turn was the model with the most influence upon the members of the Constituent Assemblies of India and Pakistan and upon the members of the constitutional commissions and committees in Malaya. This indirect influence, coupled with a direct consideration of Canadian precedents and also difficulties, led in all three Asian federations to (1) the enumeration of state as well as central powers; (2) the constitutional assignment of relatively extensive powers to the central government; (3) special provisions regarding minority languages and education; (4) the inclusion of certain central checks or controls over state governments; (5) virtually unlimited central powers to implement treaties; (6) essentially unitary judicial systems.<sup>10</sup> It also led to the appointment of state governors by the central governments in India and Pakistan and the inclusion in India and Malaya of some nominated members in the second chambers. The new federations in Africa have followed the Canadian model less closely and relied more on the examples of Australia and the United States, but even in the African federations the founding statesmen studied Canadian experience and took it into account. In view of this, it may be of considerable value in tackling our own problems to examine the operation of institutions patterned after those of Canada and also to see which innovations have been successful and which have not. Indeed, we may learn not only from the successes of these federations but also from their failures and difficulties. The latter may provide some guide to the pitfalls to be avoided.

The second reason why the new Commonwealth federations are of particular relevance for Canada is that only in these examples of multicultural federations do we find the combination of federal and parliamentary institutions which was first attempted in Canada. The non-parliamentary character of the Swiss and American executive branches of government is sufficiently significant in the politics of those two federations to make their experience in some important respects less relevant for Canada than that of the other Commonwealth federations. Patrick Gordon Walker has even gone so far as to argue that the adaptation of parliamentary institutions to federalism has produced what amounts to a new variant of political institutions radically different from other federal systems.<sup>11</sup> Traditionally, writers have contrasted federal and unitary systems taking the

United States and the United Kingdom as the norms of each.<sup>12</sup> In the American federal system the concept of limited sovereignty permeates the whole system, authority being divided not only between federal and state governments but also between the branches within each level of government. By contrast, the characteristic feature of the British unitary system is the concentration of all legal authority in the sovereign parliament and its cabinet. In Canada there has developed what amounts to a hybrid radically different from either the United States or the United Kingdom. The American notion of limited sovereignty has been applied in the division of authority between central and provincial governments, but within institutions of each level of government the British notion of the sovereign parliament and its executive has been applied. This means, for instance, that the central institutions designed for producing a federation-wide consensus operate in a manner vastly different from those in the United States or Switzerland. The significance of the new Commonwealth federations is that they provide the only examples outside Canada where the combination of federal and parliamentary institutions has been applied in a multilingual and multicultural society.

### *C. The Scope of This Study*

This study will be concerned, therefore, particularly with an examination of other multicultural federations in the Commonwealth and of how they relate to the bilingual and bicultural character of Canadian federalism. Where appropriate for purposes of comparison, however, reference will be made to Swiss experience in order to point up the effect of a different form of federal institutions in a multicultural society, or to Australian and West Indian experience as examples of the operation of parliamentary federal institutions within a relatively monocultural society. The presentation throughout will be comparative, dealing by topic with the issues which face the Canadian federal system. To provide the background for this approach, an outline of the evolution and operation of the federal system in each of the new Commonwealth federations is provided separately in Appendix D.<sup>13</sup>

### *A. The Significance of the Concept*

Before we can examine the manner in which federal political systems may accommodate the needs of a multilingual or multicultural society, a preliminary discussion about the concept of a federal political system is needed, both for the sake of clarity and to set out the framework for the analysis.

Such a preliminary clarification is especially necessary because the term "federal" has often been used loosely and imprecisely. Most people using the word have in mind a form of political association in which two or more states constitute a political union with a common government but in which the member states retain a measure of autonomy. Within this general definition the term federal has been used in a wide variety of more specific senses.<sup>1</sup> In one of the oldest meanings of the term, "federation" has been used as synonymous with "confederacy," referring to the loose linking together by treaty of sovereign states for military, economic or diplomatic purposes. The confederacies of ancient Greece, the Swiss Confederation before 1848, the United States of America before 1787 and the German Empire 1871-1918 are examples of this form of political union, and this usage for the term federal is still current in Europe where the supranational cooperative agencies are often referred to as federal. Sometimes, at the other extreme, federal government is taken simply as being equivalent to decentralized government. For instance, the word federal has been applied in this way at one time or another to the political systems of Argentina, Brazil, Mexico, Venezuela, Weimar Germany, the U.S.S.R., Yugoslavia and the French colonial federations, although in each case the central government exercised overriding authority. Given such a wide range of uses for the term, a preliminary analysis of the concept itself is clearly needed.

### *B. The Dualistic Concept of Federalism*

Students of political institutions and constitutional lawyers, attempting to make the term federal more precise, have usually defined it as referring to a form of government

midway between the two extremes, distinguishing it from “confederacies” on the one hand and “decentralized unitary government” on the other. One of the clearest statements of this view is presented by K. C. Wheare.<sup>2</sup> Taking the United States Constitution of 1787 as his prototype, he defines the federal principle in this way: “By the federal principle I mean the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent.”<sup>3</sup> Federal government, for Wheare, means a form of government in which the general and regional governments within a country are *neither subordinate* to the other. This form is contrasted with confederacies in which the general government is subordinate to the regional governments, and unitary forms of government in which the regional governments are subordinate to the general government.

It is from this definition of the federal concept, as involving two coordinate levels of sovereignty within a single country, that the traditional theory of federalism, which I shall hereafter refer to as “dual federalism,” was developed. From the concept of dual sovereignties—general and regional—existing side by side, each separate in watertight compartments and in its own sphere independent of the other, a number of implications about federal political systems have traditionally been taken to follow. If each level of government is independent within its own sphere, then each government must be limited to its own sphere. Each government must act directly on the people. There must be a demarcation of the authority of each government set forth in a supreme written constitution. An independent judiciary is necessary to interpret this constitution and umpire conflicts between governments. Any amendment to the federal aspects of the constitution must require the approval of both levels of government.

This dualistic concept of federalism has the advantage of clarity. It also appears to provide an apparently simple political solution for dealing with the problems of a society beset with sharp linguistic or cultural diversities. The notion of two coordinate levels of government, each independent of the other and confined to its own sphere, suggests that by adopting a federal system each linguistic group in its own province might be left free, without interference from the central government, to deal with matters of linguistic or cultural concern. At the same time all the groups would obtain the military, diplomatic and economic benefits of common action by a central government with responsibilities for these functions. That this notion of a federal system has been influential in some multicultural federations is clear from the frequency with which the dualistic definition of the federal principle supported by K. C. Wheare has been echoed in speeches in the constituent assemblies of India and Pakistan, the writings of Nigerian nationalists, and the reports of constitutional committees and commissions in Malaya, Central Africa and the West Indies.<sup>4</sup>

Nevertheless, this concept of federal government has a fatal flaw. In the older federations, as Wheare himself has had to concede,<sup>5</sup> and also in the newer federations it has simply proved impracticable.

### *C. Interdependent Federalism*

Developments in the American, Australian and Canadian federations during the twentieth century have given rise to a new concept of “cooperative federalism.” In these



older federations the development of communications, the extension of federation-wide commerce, the development of an interdependent economy and the growth of national sentiment have resulted, especially in periods of war and of economic crises, in extensive intergovernmental administrative consultation and cooperation and at least partial financial dependence of state and provincial governments upon the central governments. Consequently, the notion of dual federalism—of separate central and provincial governments acting, with only minor exceptions, in distinct watertight compartments each independent of the others—has proved an inapplicable myth. In the words of J. A. Corry, “Under the heat and pressure generated by social and economic change in the twentieth century, the distinct strata of the older federalism have begun to melt and flow into one another.”<sup>6</sup> The “layer cake” notion of federalism has had to be replaced by that of the “marble cake.” Interdependence and cooperation among the governments within these federations have in practice become characteristic features.

This trend was first recognized in the 1930s by American scholars who coined the term “cooperative federalism” to refer to it.<sup>7</sup> It should be noted that, as used by these scholars, the term referred not only to the development of interaction and cooperation between the two levels of government, but also to the trend towards greater centralization resulting from the financial dependence of provincial governments upon central governments for assistance through conditional grants and joint-cost programmes. The connotations of the term as used more recently by Canadian politicians are different. In this latter use, cooperative federalism has referred to a devolution of responsibilities to the provinces, although implicit in this decentralization is the requirement for intergovernmental consultation and cooperation if such a devolution is to be effective.

Within recent years, scholars studying American federalism have further redefined the federal concept. The first scholars to write about cooperative federalism in the United States treated this development as a new trend of the mid-twentieth century. Recent writers, such as M. J. C. Vile<sup>8</sup> and D. J. Elazar,<sup>9</sup> however, have gone further in their rejection of the old dualistic definition of federalism. They have suggested that the traditional conception of federalism as requiring a sharp delineation of responsibilities between two independent sets of sovereignties never did fit the practice in the United States. Elazar argues that in the nineteenth century, as in the twentieth century, administrative cooperation and political interaction between federal and state governments were always dominant characteristics of the American federal system, despite formal legal pronouncements to the contrary. In the twentieth century, under modern economic and social conditions, these features of the American federal system have simply been further accentuated.

This idea of federalism I shall refer to as the concept of “interdependent federalism.” This view parts company with the notion of dual federalism on three points. First, it finds fault with the traditional definition as too legalistic. Those who accepted the concept of dual federalism concentrated their attention upon the constitutional structure and especially the legal division of authority, the pronouncements of the courts on this division, and the formal amendments to the constitution altering this division. Therefore, they paid insufficient attention to other important aspects such as administrative arrangements which inevitably required intergovernmental cooperation, the political



attitudes of citizens affecting the adoption of policies at both levels of government, and the role of political parties bridging the two tiers of political activity.

Second, the more recent view points up a logical error in the assumptions made by those who elaborated the concept of dual federalism. According to the earlier view, a federal system was defined as one in which neither level of government is subordinate to the other. It was assumed, then, that if one government is dependent on another, the former is subordinate. Consequently, the requirement was stipulated that each level of government must be independent of the other in its own sphere. As long as the dependence of one government upon another is one-sided, this presupposition is valid enough. But there is another possibility which was overlooked. If each level of government is dependent on the other—if both levels are interdependent—then dependence does not necessarily imply the subordination of one to the other. Independence is not, therefore, the only alternative to subordination; there may be mutual dependence or interdependence. In the latter case, where each level of government is to some degree dependent on the other, neither tier would be independent but neither would be subordinate. This, in fact, is the contemporary situation as it has evolved in most of the older federations. Provincial and state governments have become increasingly dependent upon the central governments for their finances, but central governments have had to rely more and more upon the administrative cooperation of provincial and state governments for the implementation of federation-wide policies. The activities of central governments have expanded dramatically, but so also have those of the provincial and state governments. This pattern of mutual dependence or interdependence between the two levels of government within a federal system has in practice been found necessary also in the newer multicultural federations.<sup>10</sup> It should be emphasized that while the theories of dual federalism and interdependent federalism appear in some respects to present sharply contrasting positions, both are derived from the same fundamental idea. Both are based on the premise that within a federal system, the central and provincial governments should be coordinate in the sense that neither is subordinate to the other. The difference between the two versions is chiefly one of emphasis: dual federalism views the two sets of government primarily as equal rivals, interdependent federalism views them primarily as equal partners. At the root of both theories is the premise that in a federation, neither level of government is subordinate to the other.

A third point of difference is that, implicit in the concept of interdependent federalism, is the rejection of the view that the definition of a federal system can correspond to some single ideal type or model in terms of which all actual governments might be classified as "federal," "quasi-federal" or "non-federal." There is some value and interest in having a precise definition in terms of which institutions might be classified. This sort of precise classification is of less value, however, when we move away from the enterprise of stipulative definition or from constitutional law to the study of political and administrative practice and social attitudes. Politicians and nation-builders are little concerned with the niceties of theoretical distinctions and tend to be pragmatic in their approach to political problems. In practice, they have been not at all averse to the creation of "mixed solutions" or of "institutional hybrids." This is illustrated by the difficulty which upholders of the notion of dual federalism have had in finding pure

examples of such federations.<sup>11</sup> The danger is that such an approach may concentrate attention upon efforts at fruitless classification rather than upon the study of how these political systems actually operate and why they were instituted.<sup>12</sup> There is, in fact, not just one but a whole range of institutional arrangements by which the principle of coordinate governments within a federal system may be implemented. There may be variations in the number and relative size of provincial units, in the manner in which responsibilities are distributed among governments, in the scope of functions exercised by each level of government, in the degree and kinds of interdependence and interaction between governments, in the arrangements for protecting and adapting the distribution of functions among governments, and in the organization of the institutions designed to generate a consensus on matters of federation-wide concern. Moreover, new forms and adaptations are bound to result as statesmen in the old and new federations experiment with fresh ways of applying the federal idea in new or changing situations. Just as the combination of federal and parliamentary institutions established in Canada in 1867 represented a radically new version of federalism, so every federation has been an experiment.

To recapitulate, I am taking the federal concept to be the principle of political organization by which concurrent desires for territorial integration and diversity within a society are accommodated by the establishment of a single political system within which central and provincial governments possess coordinate authority such that neither level is legally or politically subordinate to the other. Other forms of political systems may recognize or express elements of unity or diversity, but make one level of government subordinate to the other. This statement modifies the traditional definition of federalism in three respects: first, political as well as legal relations between governments are relevant in determining coordinate status; second, governments may be dependent on each other, that is interdependent, so long as the dependence of one level of government on the other does not become so one-sided as to involve subordination; third, the federal principle as stated may be expressed by a whole range of institutional arrangements suitable to different conditions and is not limited to one pure model.

#### *D. Federal Political Systems and Multicultural Societies*

A significant advantage of the concept of interdependent federalism is that it gives a more comprehensive framework for the study of a federation as a *single political system*. The notions of dual federalism and cooperative federalism tended to encourage one-sided accounts of the operation of federal systems. Dual federalism, for instance, stresses the division of functions between the two levels of government. Taken by itself this can be misleading. By directing attention to the self-contained operation of each tier of government, it encourages one to neglect and even overlook the point that these governments operate within a single political system and that inevitably there are many points of contact and interpenetration between them. The notion of cooperative federalism, on the other hand, by focusing upon the elements of cooperative interaction between levels of government, encourages a neglect of the degree to which these

governments may rival each other and draws attention away from the importance within a federal system of the processes by which a consensus from among conflicting regional groups is arrived at in order to produce federation-wide policies. The picture of a single federal system composed of a variety of interdependent and interacting institutions enables us, however, to see in perspective the different ways in which the linguistic and cultural groups act, both as partners and as rivals in the political processes of a multicultural federation.

If we look, then, upon a federation as a single political system within which the various linguistic and cultural groups are at the same time both partners and rivals, the role of these groups can be better understood. Considered in this light, there are three fundamental aspects to the working of a federal political system. First, because the various groups cannot agree to be partners over the whole range of political action, a federal system involves a compromise in which those functions over which a general consensus can be reached are assigned to the central government while other functions over which the partners "agree to differ" are left as the responsibility of the provincial governments. Thus, the distribution of functions and responsibilities between levels of government is one fundamental aspect of any federal system.<sup>13</sup> Second, since in practice the roles of partnership and of rivalry cannot be totally isolated from each other, the activities of the two levels of government inevitably interpenetrate. A study of intergovernmental relations, therefore, is not merely important, but a fundamental aspect of the study of any federal system.<sup>14</sup> Third, a federal system represents above all a form of partnership and, therefore, an especially crucial aspect is the process through which the diverse linguistic and cultural groups participate in reaching a federation-wide consensus. Without effective machinery for generating this wider consensus, the partnership is likely to dissolve into a mere struggle between rivals.<sup>15</sup>

Implicit in this analysis is the premise that no federal political system can be properly understood unless it is related to the social forces which it attempts to express and channel. It has been said that, "The essential nature of federalism is to be sought for, not in the shadings of legal and constitutional terminology, but in the forces—economic, social, political, cultural—that have made the outward forms of federalism necessary."<sup>16</sup> To anyone studying the multicultural federations, this statement will appear a truism. A study of the problems of multilingualism and multiculturalism within federal political systems must, therefore, look not only at the political system itself but also at the complex relationship between the total political system and its underlying society. The interests of various regional, linguistic and cultural groups represent the demand inputs which the federal system converts into policy as an output. The causal relationship between the society and the federal political system, however, is a complex and dynamic one. The distinctive pressures within the society force their expression upon the political institutions. But the political institutions, once created, will themselves shape and influence the pattern of society both by determining the channels through which social pressures may most easily flow, and by the feedback effect upon society of the policies which the political system generates. Moreover, this complex relation between a political system and its society is never static, but one of continual dynamic interaction producing over time changes in the balance of social and political forces.

The degree and type of diversity within societies varies from country to country and any given community will fit somewhere on a hypothetical spectrum of societies ranging from the highly integrated to the highly diversified.<sup>17</sup> The more diversified the society, the greater is the need for providing some effective political means of articulating the diverse interests. Thus, a federal system, if it is to survive, will need to be able to accommodate the particular demands of the society on which it is based. The spectrum of societies will, therefore, require a spectrum of varying federal solutions, each adapted to the needs of its own society. Moreover, since the balance of forces within a federal society rarely remains constant but alters under the pressures of economic and social development, a federal political system must be flexible and able to adapt to changing social conditions and demands. In the next two chapters, therefore, we shall be concerned with an analysis of the relative significance of different social forces, and with the political units by which these have been expressed in multicultural federations.

### *A. Introduction*

In the preceding chapter it was suggested that the study of multicultural federalism must involve an analysis of the relation between the federal political system and the society on which it rests. This chapter will be concerned, therefore, with an assessment of the significance of linguistic and cultural issues among the social demands which federal political systems attempt to accommodate. It should be added, right at the outset, that no attempt will be made in this chapter to present a complete sociological analysis of each of the multicultural federal societies. Instead, attention will be focused on significant features which these societies exhibit in common, insofar as these are relevant to present Canadian concerns.

### *B. Diversity of Language and Culture as a Motive for Provincial Autonomy*

As in Canada, so in India, Pakistan, Malaysia, Nigeria, Central Africa and Switzerland, linguistic, racial and religious minorities that feared discrimination at the hands of numerical majorities but were unable alone to support effectively a genuine separate independence, have sought provincial autonomy within a federal political system as a way of preserving their own distinct identity and way of life. In each of these countries the multilingual and multicultural character of the society has frequently been cited by statesmen as the crucial characteristic making a federal political system necessary.

The assumption that it is the linguistic and cultural diversities which have been fundamental in these federations is not difficult to comprehend. Language barriers are certainly barriers to communication and understanding between different groups within a society. But the problem goes deeper than the mere question of communication. Language itself is fundamental to activities which are distinctively human.<sup>1</sup> It is through language that the individual fulfils his capacity for expression. It is through language that

man not only communicates but achieves communion with others. It is language which by its structure shapes the very way in which men order their thoughts coherently. It is language which makes possible social organization. Thus a common language is the expression of a community of interests among a group of people. It is not surprising, then, that any community which is governed through the medium of a language other than its own has usually felt itself to some extent disenfranchised, nor that this feeling has always been a potential focus for political agitation. Moreover, like skin-colour, language is an easily identifiable badge for those who wish to take issue with a different group, and thus it provides them with a rallying sign even for contests which are basically not those of language or race.

The significance of language as a basis of social activity is well illustrated by W. H. Morris-Jones in his analysis of the diversity on the Indian scene:

It is true that some of the big cities are cosmopolitan—in the sense that employment has attracted men from all parts of India: Madras much less than Delhi, Bombay or Calcutta. But it is striking to notice that, apart from the exigencies of work or business, few things cause the regional groups to mix. Outside office hours, the Bengali in business in Bombay, the Tamil in a government job at Delhi will meet almost invariably fellow Bengalis, fellow Tamils. At all-India conferences and gatherings, delegates when left to themselves quickly form regional groups—a little knot of Malayalees, a compact circle from Bihar. And, indeed, what could be more natural? It is, firstly and above all, a matter of language: a language other than one's own mother tongue has a dampening effect on social intercourse; Hindi (except in the regions where it is itself a mother tongue—that is, in the north-central zone) is not yet widely used except perhaps in the more ordinary transactions; English is still available to many but, except for very few, it is not really fun. With a language goes a way of speaking, a way of making jokes, a whole common world of allusions and references so necessary to easy and enjoyable intercourse. As in Europe, only a tiny few are "at home" in a language other than their own; a Gujarati girl married to a Punjabi will achieve this state—but such marriages between regions are rare. It is also a matter of a shared acquaintance with people and places and the possibility of communicating common memories of family and childhood. For the cultivated, it will be a matter of a common literary and musical heritage—though admittedly this is less important for some regions (Punjab, Gujarat perhaps) than for others. It is even a question of food—not unimportant where social intercourse is concerned. Even the European quickly learns to distinguish between the dishes of Kashmir and those of Madras, the cooking of Maharashtra and that of Bengal; the Indian's preference for his own region's food will often amount to a great distaste for that of others. Distinctive forms of dress (in part related to contrasting climates), festivals that have a peculiar regional significance, different codes of family and social behaviour, special attachment to regional heroes and episodes of the past—all this and much more goes to make vivid and profound the contrasts that exist between one part of India and another.<sup>2</sup>

The importance of language as a basis for the desire for provincial autonomy has been clearest in India, Pakistan, Nigeria and Switzerland, for in these countries regional loyalties appear to have been rooted in language. In India, for example, the pressure for linguistic regionalism expressed itself even in the days before independence when the Congress party found it necessary to base its own internal organization upon the regional linguistic groups rather than upon the existing provincial units. Since 1947 the explosive impact of language has been felt in the tension between the generally Hindi-speaking

peoples of the north and the Dravidian-speaking peoples of the south,<sup>3</sup> and in the demands of regional linguistic groups for the reorganization of state boundaries in order that the states might represent homogeneous linguistic units. Indeed, the pressure for "linguistic states" mounted to such a degree that Prime Minister Nehru, after nearly a decade of resistance, was forced to accede reluctantly to the complete reorganization of state boundaries in 1956 in order to preserve the union.<sup>4</sup> The political force of language was also apparent in the necessity to recognize in the constitution itself 13 different regional languages, each spoken by several millions, as "languages of India."<sup>5</sup>

In Pakistan, too, linguistic diversity has been a potent political force. Linguistic regionalism has been at the root of the continued demands of East Bengal for greater provincial autonomy and of its insistence upon the recognition of Bengali as an official language equal in status to Urdu. The growing dissatisfaction of the Bengalis with the failure of the central government to treat them equally expressed itself in the elections of 1954 when the total rejection by the Bengalis of the Muslim League shattered that party's national dominance. For a decade afterwards, party politics (when not prohibited by martial law) took on a distinctively regional character. The different languages spoken within West Pakistan have also been of some significance. These languages—especially Punjabi, Sindhi, Pushtu and Baluchi—provided the basis for the cultural differentiation within West Pakistan<sup>6</sup> and for what resistance there was to the unification of the variety of western provinces and states into a single province in 1955. In this case, however, the need to counterbalance the Bengali-speaking majority in the east sufficiently undermined the separatism of the different linguistic groups within the west so that the multilingual province of West Pakistan has survived since its creation.

In Nigeria, where some 248 different languages are spoken, linguistic diversity has clearly been a major political force. The three major linguistic groups—the Hausa in the north, the Yoruba in the west, and the Ibo in the east—each represent the dominant ethnic group in one of the three original regional political units.<sup>7</sup> Moreover, these three groups have together dominated the politics of the country. Not only did each group provide the core for one of the three major political parties—the Northern People's Congress (N.P.C.) based its strength on the Hausa north, the National Convention of Nigerian Citizens (N.C.N.C.) had its greatest strength in the Ibo east, and the Action Group was founded on the Yoruba west<sup>8</sup>—but it was the rivalry of these three politicized cultural groups, and especially the fear by each of domination by the others, which produced the tensions and strains within the Nigerian federal system. Furthermore, although each of these three ethnic groups was predominant within its own region, there were other significant linguistic minorities within each region,<sup>9</sup> and from these minorities came considerable political pressure for their own separate ethnically homogeneous autonomous states.

In Switzerland, linguistic diversity has been a basic factor in the establishment and maintenance of the cantons as autonomous political units. It is significant that in every one of the cantons, one language group possesses a clear majority. Only in three cantons—Fribourg (65.7 per cent), Valais (65.0 per cent) and Grisons (56.2 per cent)—does the dominant linguistic group represent less than 77 per cent of the cantonal population.<sup>10</sup> Moreover, although German is the predominant tongue spoken by 74.1 per



cent of the Swiss people, the Constitution of Switzerland has had to recognize German, French and Italian as official languages.<sup>11</sup>

In the two other federations under comparison—Malaysia, and Rhodesia and Nyasaland—the basis for cultural regionalism was fundamentally racial rather than linguistic. In Malaysia, however, differences of language have reinforced differences of race. Thus differences in physical feature and skin-colour among the Malays, Chinese, Indians and indigenous Borneans have been accentuated by the fact that these different communal groups also speak different languages. The issue of whether or not Malay should become the sole official language has always been a politically controversial one. Moreover, although each of the states of Malaysia contains a variety of races, there are significant regional variations in the relative strength of the various communities. On the Malayan peninsula the major racial and linguistic groups are the Malays who constitute 49 per cent, the Chinese who form 37 per cent, and the Indians who make up 12 per cent. The Malays are overwhelmingly dominant in the rural northeast and northwest, while the three communal groups are in a mixture along the west coast where most of the Chinese and Indians are concentrated. It is not surprising that Malay nationalism in the form of Malay opposition to the scheme for a unitary union in 1946 and of communalist appeals by the Pan-Malayan Islamic party should have flourished most in the northern states. The exclusion of Singapore from the Federation of Malaya in 1948, the insistence by the Malays that the accession of Singapore to Malaysia be balanced by the concurrent addition of the Borneo states in 1963, the restricted citizenship status of Singapore citizens in the Federation of Malaysia, and the withdrawal of Singapore from the federation in 1965, were all related to Malay fears that Singapore, with its predominantly Chinese population, would upset the delicate racial balance in the peninsula. Furthermore, the extensive autonomy granted to the Borneo states of Sabah and Sarawak within Malaysia was a recognition of the racial and linguistic distinctiveness of their indigenous peoples. The significance of racial and cultural issues in Malaysian politics is illustrated by the Alliance pattern of its ruling political party which is an alliance of three communal parties in Malaya—the United Malays National Organization (U.M.N.O.), which is the senior partner, and the Malayan Chinese Association (M.C.A.) and Malayan Indian Congress (M.I.C.)—to which since 1963 a number of local Bornean parties have also been allied.

In Central Africa the fundamental racial differences were less closely related to linguistic ones, although they were reflected in fundamental differences in cultural outlook. The basic racial division was between the settlers and the indigenous Africans, and this division cut across all three territories within the federation. There were significant differences, however, in the degree to which the settlers had established themselves in each territory. The proportion of settlers varied from one in 16 in Southern Rhodesia to one in 52 in Northern Rhodesia and one in 588 in Nyasaland. As a result there were contrasting traditions in racial policy. In Southern Rhodesia the settlers had achieved *de facto* control while in the two protectorates the Colonial Office continued to maintain ostensibly a policy of the “paramountcy of native interests.” African opposition in the northern territories towards federation was largely provoked by the fear that it would mean the extension of settler control and racial policies. It was this anxiety which



led the British government to insist upon a federal rather than a unitary political system as the settlers had originally advocated. In addition to this basic racial division between settlers and Africans there was also the linguistic diversity of the different African groups themselves. Although English served as the *lingua franca* for them, the principal African groups in the three territories had substantially different dialects and customs. This not only hampered unity among the Africans of Central Africa but, when the federation broke up, ultimately resulted in the two distinct independent African states of Malawi and Zambia.

While language or race has provided the basis for cultural diversity in India, Pakistan, Nigeria, Switzerland, Malaysia and Central Africa, we must not underestimate the impact of other cultural factors upon political regionalism in these federations. As in Canada, religious differences have often reinforced linguistic ones. Moreover, in the newer federations of Asia and Africa the religious differences, such as those between Hindus and Muslims on the Indian subcontinent or between Muslims, Christians and Animists in Nigeria, have gone much deeper than those between different Christian denominations in Canada and Switzerland. The Hindu-Muslim conflict actually proved too sharp to be contained within an all-India federation as envisaged in 1935,<sup>12</sup> but the two successor states of India and Pakistan themselves each include large religious minorities. India after partition still contained the third largest Muslim population in the world. Muslims were a majority in the state of Jammu and Kashmir, and in Madras and Kerala in the south the Muslim League has remained an active political force. Another religious group, the Sikhs concentrated in Punjab, agitated continually for a separate Sikh state, until finally in 1966 the division of the state of Punjab was conceded by the Congress leadership. There is also a small Christian population which is somewhat scattered throughout India, but which is an influential minority in the politics of Kerala. In Pakistan the partition of 1947 left ten million Hindus among the forty-two million Bengalis in East Pakistan, and these Hindus, fearing the distrust of the West Pakistanis, have been among the strongest advocates of greater provincial autonomy for East Pakistan. In Nigeria, the acceptance of Muslim belief and law have united the Hausa, Fulani, Kanuri and Nupe ethnic groups within Northern Nigeria and have provided the basis for regional distinctiveness. At the same time, the demands of the Middle Belt tribes for their own separate state have been reinforced by their different religious views which are predominantly pagan. In the Western Region, many Yorubas are Muslim but unlike the northerners at least as many are Christian, while the inhabitants of the Eastern Region are either Christians or Animists. Similarly in Malaysia and Central Africa the cultural distinctiveness of the different racial groups has been reinforced by their distinct religions. In Malaysia, the Malays are Muslims; the Chinese are Buddhists, Confucianists, or Taoists; the Indians are Hindus or Muslims; and the various indigenous groups in the Borneo states are largely either Muslim or pagan. The settlers of Central Africa belonged to a variety of Christian churches, but the vast masses of the Africans were still non-Christian, many of them holding Animistic beliefs and half the population of Nyasaland were adherents to Islam. In all the foregoing federations, therefore, cultural diversities have represented more than merely linguistic or racial ones but have also been sharpened by differences in religious belief and outlook.

In Switzerland, religious diversities have been significant but religious divisions have cut across linguistic ones rather than reinforcing them. There is a parallel here to English Canada, which in terms of religious beliefs is far from homogeneous. This parallel does not extend to Quebec, however, where as in the newer multicultural federations, the distinctive cultural outlook is based not only on language but upon a single dominant religious faith. The 1950 census indicated that 58 per cent of the Swiss people were Protestants and 40 per cent were Roman Catholics. The cantons are almost evenly divided between those with a Protestant majority (11½ cantons) and those with a Roman Catholic majority (10½ cantons).<sup>13</sup> Of the German-speaking cantons, eight and a half are Protestant and seven and a half are Roman Catholic. Of the French-speaking cantons three are Protestant and two are Roman Catholic, while the Italian-speaking canton of Ticino is Roman Catholic. Thus, similarities or differences of outlook based on religious belief tend often to undercut political divisions on purely linguistic lines. One should not underestimate the importance of these religious differences. Indeed, in Switzerland religious differences have been more significant politically than linguistic ones. An individual can learn to be bilingual, but to be biconfessional is not possible. Moreover, many of the historical crises of Switzerland have turned on religious issues, and the political party system has reflected their significance. Although, as in Canada, there has been a lessening of religious tensions in the twentieth century, religion remains a basis for political differences. The Catholic Conservatives for instance still maintain a strong standing in the German-speaking cantons of Uri, Schwyz, Obwalden, Nidwalden, Zug, St. Gallen, Appenzell-Inner Rhodes, Lucerne and Grisons, and in the French-speaking cantons of Fribourg and Valais.

In summary, it is clear that in the five recent multicultural federations of India, Pakistan, Malaysia, Nigeria, and Rhodesia and Nyasaland, cultural regionalism based on linguistic, racial and religious distinctiveness assumed the proportions of sub-nationalisms. These sub-nationalisms expressed themselves in agitation for regional political autonomy and in either the growth of primarily regional political parties as in Pakistan or Nigeria, or in internal organization along linguistic or communal lines of the dominant federal political party as in India or Malaysia. Switzerland was also marked by linguistic and religious diversity, but there religious diversities have to some extent cut across linguistic ones and provided a basis whereby ideologically oriented political parties might draw together different linguistic groups.

### *C. Other Motives for Political Autonomy*

While it is clear that, as in Canada, cultural diversity has been politically significant in the federations under comparison, we must now consider the question whether in these federations there might be other even more fundamental motives underlying the desire for provincial autonomy. After all, the United States and Australia have found it desirable to establish and maintain federal political systems although they are not characterized by anything like the same degree of cultural diversity. It might be argued that more important than linguistic, racial or religious diversity as the source for demands for

regional autonomy and for tensions within federal systems are one or more of the following: (1) regional economic interests; (2) variations in the size and wealth of regional groups within a society; (3) clashes between the radical and conservative political outlooks of different regional groups; (4) regional differences in degrees of modernization. Each of these is a plausible explanation of some of the tensions affecting the Canadian federal system and, therefore, an examination of the extent to which they have been fundamental in other multicultural federations seems appropriate.

Although in most federations economic motives have been a prominent factor in the creation of the larger political unions, regional economic interests have also usually been among the major motives for regional autonomy or separatism, even in the ostensibly multicultural federations. Most of the new Asian and African federations, for instance, have attempted to unite territories with distinct economic interests. In India the concentration of industrial and commercial development in Bihar and Bengal, Bombay, and the Kaveri Valley, and the agricultural specialization of different regions have sharpened internal divisions. In Pakistan the two major areas of East and West Pakistan possess distinct economies based on different climates and products, and one of the major complaints of the Bengalis during the first decade and a half after 1947 was the concentration of economic development in the west. The tension between the different communal groups in Malaysia has been heavily influenced by regional economic differences. The northernmost states of the peninsula are characterized by a subsistence economy based on traditional Malay methods of rice-growing and fishing. The west coast plain is wealthier but depends upon an unstable mining and plantation economy dominated by the Chinese. Penang and Singapore derive their wealth from a mercantile economy for which customs barriers are a handicap. The Borneo states are largely agricultural. In Nigeria too, each of the ethnically distinct regions specializes in its own different agricultural products and exports. The three territories of Central Africa depended for their wealth on different products and derived their major governmental revenue from different sources. Even in Switzerland where the cantons were each much smaller units and therefore less able to think of themselves as full-fledged economic units, the growth of Zurich as the major industrial, commercial, and financial city has caused concern and there are significant differences in outlook between the urban and rural cantons.

The strength of regional economic interests is affected by a number of factors. First, even where the wider common market made possible by the larger political unit brings economic gains to the federation as a whole, this does not necessarily mean a gain for each of the units. A customs union may have not only "trade creation" but "trade diversion" effects, which act adversely on some territories within the federation. These regions would therefore be better off outside the federation unless equalization policies were adopted. Fears and complaints that federation has produced such effects and increased rather than reduced regional economic inequalities have been expressed elsewhere than in the Canadian Maritimes. Such issues have reinforced Bengali regionalism in Pakistan, northern separatism in Nigeria, and the secession movement in Nyasaland, just as earlier they contributed to separatist movements in Western Australia and the southern United States.

Second, in most of the multicultural federations the products of the regional economies have been essentially complementary with the result that the regions have stood to gain from increased interregional trade. Nevertheless these regional differences in product have at the same time often fostered strong regional attitudes. In Nigeria, for example, differences in products and therefore in problems of production, in types of exports, in sources of foreign capital, and in appropriate policies to promote economic development, resulted in the placing of many of the responsibilities for economic development in the hands of regional governments. It is not surprising then that western Canadians should be separated from Quebec not only by distance and by language but also by the different economic problems with which they are concerned.

The strength of economic regionalism has also depended upon the degree to which the economic map has corresponded to the political map. In East Pakistan, in the three original Nigerian regions, in Jamaica and in Quebec to a considerable extent, the economic unit has been closely related to the political one. In these examples pressure for relatively autonomous economic provinces has been further strengthened by their relative size which has enabled them to contemplate economic self-sufficiency. By contrast, economic factors have been less influential, although not insignificant, in the demands for state autonomy where economic regions have coincided less precisely with internal political boundaries, as in India and in the units within West Pakistan, or where the states have been small as in the mainland states of Malaya and in Switzerland.

Most of the multicultural federations have joined together territories with acute disparities in economic development and wealth, and these regional inequalities have invariably accentuated separatist pressures. The demand for active public development policies has invariably aggravated these regional pressures because different fiscal and monetary policies are likely to be appropriate for different stages of development and hence for different regions. The resulting pressures for regionalization of governmental development policies have not been unique to Quebec. They have been particularly strong within Nigeria and the culturally homogeneous West Indies.

In addition to these direct influences of economic factors upon demands for provincial autonomy, many separatist movements which have been ostensibly linguistic, racial or cultural in motivation have had strong economic undertones.<sup>14</sup> The separatism of the Muslim middle class in northwest India before partition was directly related to the desire to protect itself from a larger and better educated Hindu group. The linguistic regionalism and Dravidian separatism which have dominated the Indian scene since independence have stemmed in large measure from the intensity of the struggle for jobs among the different linguistic and caste groups. In Pakistan between 1947 and 1958, the growing demands for provincial autonomy in East Bengal were generated by discontent with the economic policies of the central government which appeared to give all the spoils to the landlords and businessmen of West Pakistan.<sup>15</sup> The Bengalis were especially incensed at the degree to which the civil service and the armed forces were primarily in the hands of West Pakistanis. The repeated insistence of Northern and Western Nigeria upon full regional autonomy, and their occasional threats of secession, owed a good deal to the ethnic and religious differences already outlined, but accentuating these was the migration of the aggressive Ibos to regions outside their own and the threat that they

would come to dominate the economy and the civil service.<sup>16</sup> One Nigerian has gone so far as to describe this as the true origin of ethnic antagonism in Nigeria.<sup>17</sup> In Malaya the three racial communities have been differentiated by sharply different economic roles, and therefore communal resentments have been closely related to economic ones. The Malays have resented the dominance of commerce by the energetic Chinese and it is not surprising that it is the economically backward northeastern states which have provided the core of Malay communalism. The Chinese, on the other hand, have resented the constitutionally guaranteed dominance of the Malays in the federal civil service. In Central Africa, too, the ostensibly racial division between the settlers and the indigenous Africans reflected sharp economic differences between the prosperity of the settlers of Southern Rhodesia and the copper belt, and the relative poverty of Nyasaland and the African areas of Northern Rhodesia. In all these instances cultural distinctiveness has helped to sharpen the sense of grievance and even alienation which has stemmed from economic discontent.

It would appear, then, that in many of these federations local economic interests and the desire to legitimize a number of local spoils systems have contributed strongly to the overtly linguistic, racial or cultural demands for provincial autonomy. There are signs that in Canada, too, ostensibly linguistic and cultural tensions have been strongly coloured by economic ones. Any political solution which is to accommodate these linguistic and cultural demands will need, therefore, to take account of the closely related economic factors.

Variations in the size and wealth of regional groups have also been a factor in interregional tensions and demands for provincial autonomy within federations. The distrust of Ontario by Quebec suggests that this may be a significant factor in the Canadian situation. The tendency of such disparities in the size and wealth of regional groups to accentuate interregional tensions is not necessarily founded on linguistic or cultural differences. One need only look at the distrust of Ontario by the other English-speaking provinces in Canada or at the West Indies Federation. The latter, although relatively homogeneous in linguistic or cultural terms, was racked and ultimately wrecked by the interterritorial tensions and disputes which had their root in the attempt to create a union in which Jamaica possessed 52 per cent of the population, 58 per cent of the area and 42 per cent of the revenue; Trinidad held a further 26 per cent of the population, 26 per cent of the area and 42 per cent of the revenue; and the remaining eight territories were left sharing 22 per cent of the population, 16 per cent of the area and 16 per cent of the wealth. The result was heated controversy over the suitable degree of territorial autonomy and over appropriate territorial representation in the central political institutions. The small islands distrusted the big islands and Jamaica in turn resented the degree to which its influence in the federation was reduced in order to accommodate the fears of the small islands.

Similar pressures have also been at work in the multicultural federations. Examples are: the resentment by the smaller states in India of the dominance of Uttar Pradesh with its population of over 60 million; the unification of the provinces and states of West Pakistan in order to counterbalance East Pakistan which held 55 per cent of the population; the southern fears in Nigeria of the political supremacy of Northern Nigeria

(with 55 per cent of the population and 79 per cent of the area) and the northern apprehension of economic exploitation by the wealthier southerners; and the resentment in Central Africa of the Africans in the northern protectorates at the dominant position of Southern Rhodesia as a component of the federal electorate.<sup>18</sup> Even in Switzerland the growth of Zurich as an industrial and commercial centre has been felt to pose a threat to the balance among cantons. In each of these federations fears of domination by the larger provincial units have exacerbated differences in language and culture among the regions. In some cases this has been severe enough to produce demands that the largest units such as Uttar Pradesh or Northern Nigeria be split in order to reduce the ascendancy of one provincial unit or ethnic group within the federation.<sup>19</sup> It is perhaps significant that among the new multicultural federations, the four that have proved most unstable—Pakistan, the West Indies, Rhodesia and Nyasaland, and Nigeria—have been those in which a single provincial unit held a majority of the federal electorate. Where a single cultural group has been in so strong a position politically or economically to consider itself able to insist completely upon its own way, the other cultural groups, insecure in their position, have tended to see their only defence in intransigence. By contrast, the relatively more balanced relation of regional groups in India and Malaya has induced a sense of interdependence which in turn has fostered a greater willingness to compromise. While in Canada no single province contains a majority of the federal electorate, the anxieties of the French-speaking people have certainly been accentuated by their minority position and by their impression that English-speaking Canada represents a monolithic political majority. Thus, many of the same pressures sharpening linguistic and cultural tensions operate, and any solution to the Canadian problem will have to take account not only of linguistic or cultural issues, but of the political means by which the position of majority and minority groups can be reconciled within a federal system.

Another important factor in the tensions between regional groups within a society may be differences between radical and conservative outlooks towards politics. This consideration is certainly relevant to a study of the Canadian situation. Until the mid-twentieth century Quebec with its emphasis on its traditions was considered to be more conservative in its political viewpoint than most of the rest of Canada. But since 1960, under the impact of the "quiet revolution," Quebec has become politically far more radical than the rest of conservative Canada, and it might be argued that it is this which lies at the root of current tensions.

An examination of the ostensibly multicultural new federations suggests that in many of them interregional tension which is overtly cultural has been closely related to differences of political outlook or ideology. Perhaps Malaysia and Nigeria present the most obvious examples. The reluctance of the Alliance party to admit Singapore to Malaysia in 1963 and the subsequent withdrawal of Singapore in 1965 were as much related to this as to racial factors. It is true that the Malay-dominated Alliance feared the effect of the added Chinese population upon the Malaysian racial balance, but at least as strong a force for discord was the clash between the inherent conservatism of the Alliance, including the commercial Chinese elements which supported it, and Lee Kuan Yew's extreme socialist People's Action party which governed Singapore. Never at any



time was a sense of political trust between these parties developed, and it was the P.A.P.'s decision to campaign actively in federal politics, not as a Chinese party but as a Malaysian socialist party, which provoked the withdrawal of Singapore. Similar tensions were powerful forces also in Nigeria and Pakistan. In Nigeria the southerners looked upon northern conservatism as a source of frustration and were fearful of what they considered to be the feudal outlook of the leaders who dominated the ruling Northern People's Congress. In East Pakistan before 1958 the Bengalis, generally more radical in their politics, resented the dominance of West Pakistani landlords and businessmen in central politics, while the latter groups were fearful that federal elections would result in a shift leftward in the politics of the country. It is significant that in Switzerland the main divisions between political parties are not linguistic but ideological or economic, the major parties being the Catholic Conservatives, the Radicals and the Socialists.<sup>20</sup>

Nor can one assume that the more radical the political outlook the more likely it is to favour centralization. It is true that in many cases, notably in India and Nigeria, socialists have been the strongest advocates of centralization, basing their arguments on the view that the development of the economy can be controlled effectively only if the fiscal and monetary instruments of control are concentrated in the central government. But this view has not been universal among socialists. The West Indian socialists, for example, especially the Jamaicans, preferred to achieve welfare states on their own insular scale and were hostile to central economic powers of any kind, despite the fact that culturally the federation was relatively homogeneous. Moreover, experience has suggested that in practice a centralized uniform development policy is not always the most efficient way for encouraging development in a diversified economy and that there are some benefits to be gained from planning on a regional basis.

There is evidence to suggest then that the clash between radicalism (or socialism) and conservatism can, when these viewpoints are concentrated regionally, become on their own a source for interregional tension as in the West Indies, or can affect significantly relations between linguistic and cultural groups as in Malaysia, Nigeria, Pakistan or Switzerland.

Another factor which may lie at the base of interregional tension within a federal system is the contrast between regions in degree of modernization. In Canada, one of the features of the changing scene in Quebec has been the determination of its new elite to make up for the lag in modernization which the emphasis upon tradition, especially in education, had caused in that province until the mid-twentieth century, and to accelerate the process of modernization.

In the newer multicultural federations regional differences in degree of modernization have greatly accentuated regionalism. In these federations, modernization and the penetration of western ideas during the period of colonial rule were often very uneven. Regions where Britain had relied on indirect rule, such as the princely states of India and Pakistan, the former unfederated Malay States, Northern Nigeria, and the protectorates of Central Africa, have usually lagged behind the others. These regions, fearful of being dominated by the more modernized areas, have usually been strong proponents of regional autonomy. The predominantly Muslim regions, influenced by Muslim conservatism and educational backwardness, have nearly always been apprehensive of union with

more modernized territories. The northwest provinces of pre-partition India and Northern Nigeria illustrate this tendency. Differences on the scale of modernity have also reinforced racial differences in Malaysia and Central Africa, and linguistic differences within India and Pakistan. In such cases of uneven modernization, provincial autonomy has often been advocated as a way in which the less developed provinces, protected from exploitation or domination by the more developed provinces, might have a breathing space in which to accelerate their own development and so improve their position relative to the other provinces.

As noted in section B of this chapter, language and culture usually provide a particularly powerful focus for regional separatism. But it is clear from the analysis in this section that linguistic and cultural tensions are often closely connected to economic interests, variations in the size and wealth of different regional groups, clashes between radicalism and conservatism, and contrasts in degree of modernization. Indeed, sometimes these issues may be even more fundamental than linguistic or cultural ones but may masquerade as cultural issues in order to achieve added emotive effect. Because differences of language among groups are so easily identifiable and therefore provide a simple focus, the appeal to linguistic and cultural issues gives any movement for regional separatism an especially potent force. The significance of this analysis of experience in other multilingual or multicultural federations is that it suggests that the role of linguistic and cultural differences within the Canadian federal system cannot be understood in isolation from the other closely related factors considered in this chapter.

#### *D. The Forces for Unity*

So far in this chapter the analysis has been concentrated upon the motivating pressures for regional autonomy. No assessment of federal societies would be complete, however, if it neglected the forces which bring or hold together multilingual and multicultural societies within federal political systems. Unless there are motives for union sufficiently strong at least to balance those for regional separatism, no federation is likely to maintain its existence for long.

An examination of the factors which have led to the establishment or continued existence of other multicultural federations indicates that in spite of the demands for autonomy pressed on cultural grounds, other demands made upon the political system have worked towards political union. First, there are the benefits that have generally been thought to flow from the creation of the larger political unit. Among these have been the achievement or sustaining of genuine independence from imperial or foreign control and domination, the economic benefits from membership in the larger interdependent economic unit, the increased administrative efficiency flowing from economies of scale, effective military defence, greater international prestige and diplomatic influence. Other contributing factors have been the existence of geographical contiguity and linking communications; the presence of a sense of interregional community derived from historical association, some cultural ties or some similarity of political and social institutions; the activity of dynamic but conciliatory leadership; and in the colonial



federations the role of the imperial government in constitution-making.<sup>21</sup> It is also clear that the relative importance of these different factors has varied with each federation, some factors being more influential in one federation and some in another, although most of them have been present to some degree in each federation.

Particularly important in most cases have been the economic expectations. Among the advantages of the larger political unit usually cited have been the free movement of goods and capital made possible by the larger free market and common monetary system, lower costs of production, regional specialization, diversification of exports, attraction of foreign investment, enhanced diplomatic bargaining power in international trade negotiations and increased credit-worthiness for public borrowing. Benefits for the provision of social services have also been claimed from standardization of services and economies of scale, from the greater opportunity to support administrative specialization, and from the more solid financial base on which the services may be supported and from which poorer regions may be assisted to meet minimum standards. It has also usually been assumed that the employment of active monetary and fiscal policies aimed at economic stabilization, forced saving, productive credit expansion and the direction of economic development would benefit from the wider and more diversified financial base and the increased availability of foreign investment. Thus, in most multicultural federations, even those in which there are internal economic differences among regions, demands for the provision of comparable social services and for economic improvement have provided a significant counter-pressure in favour of union.

Another feature which has helped in most multicultural federations to counter the full force of regional separatism has been the fact that regional interests of different types have rarely covered precisely the same span of territory. The geographical demarcation of cultural groups usually does not coincide precisely with the regional demarcation of economic, social, historical or even political interests.<sup>22</sup> Thus, although for some purposes the delineation of other forms of regional grouping may coincide fairly precisely with cultural or linguistic distinctiveness and reinforce it, for many purposes regional economic, social or historical groupings may cut across cultural ones linking segments of different cultural groups together. In such cases the variety of regionalism itself has, paradoxically, contributed to the rejection of a separatism based solely on cultural homogeneity.

It is especially significant that where the various pressures for unity taken together have failed to balance persistent pressures for regional separatism as in Pakistan, Central Africa, Nigeria or even the culturally homogeneous West Indies, either disintegration or the resort to military rule in order to preserve the union has resulted. Ultimately, the preservation of any federal political system would seem to rest not simply on the reconciliation of distinctive regional outlooks but also upon providing a positive consensus to which the different linguistic and cultural groups are willing to commit themselves. Without such a positive focus any attempt merely to reconcile differences is likely only to delay, not prevent, political disintegration.

What complicates the picture is that the motives for union and separatism within a society rarely remain constant, particularly in societies undergoing rapid political and economic development. As a result the equilibrium between the motives for union and

separatism is constantly changing. The success of a federal political system is to be found in its ability to develop a dynamic equilibrium which adapts to the changing social demands made upon it. Acute strains and even civil war or disintegration have resulted when there have been constitutional inflexibility and the inability to respond to new demands in evolving circumstances, or when, under changing conditions, there was failure to counter the erosion of a minority's sense of security. Perhaps the most extreme example has been Nigeria, but such tendencies have also been apparent at different stages in the history of most multicultural federations. The achievement of a dynamic equilibrium between the forces for unity and regionalism would appear to depend, therefore, upon the development of a federal political framework which provides significant cultural minorities with an enduring sense of security for their distinctiveness, and which, at the same time, continues to generate a sense of community among all its diverse groups. Essential to this achievement is the maintenance of a delicate balance whereby the interests of no single provincial or cultural group dominate the political or economic processes. Experience suggests that such a balance is difficult to achieve and maintain and that, therefore, multicultural federations have been difficult countries to govern. But it is because they are difficult countries to govern that they have federal political systems.

*A. The Significance of the Character of Provincial Units*

A federal political system presupposes the existence of provincial governments as components of the federation. The analysis of the way in which federal institutions may accommodate the pressures for political diversity may begin appropriately, therefore, with a consideration of how the character of these provincial units affects the ability of the federal system to accommodate regional interests. In Canada after one hundred years of confederation we tend to take the present structure of provinces for granted. But in the creation and development of the newer multicultural federations controversies over the appropriate shape of provincial units have focused attention upon the ways in which the operation of federal systems may be affected by the character of their regional units. Since many of the existing territorial units were simply the arbitrary or accidental products of British colonial administration and bore little relation to linguistic, cultural or economic groupings within these societies, the possibility of redrawing provincial boundaries to coincide with cultural or other interests has been considered in most of the newer federations. In the process such questions as the effects of the number, relative size and internal cultural homogeneity of provinces have been much discussed.

The significance of these issues in the newer multicultural federations can be seen from the way in which nearly all of these federations have found it appropriate during their brief history to reshape their internal boundaries in order to improve the operation of their federal systems and especially to meet the demands of local cultural and economic groups. In India the states were completely reorganized on a linguistic basis in 1956 with further adjustments being made when bilingual Bombay state was divided into two unilingual states in 1960, when the creation of a separate Naga state was undertaken in 1962, and when the decision to split Punjab was made in 1966. In West Pakistan, separate regional units established in 1947—the three Governors' provinces, one Chief Commissioner's province, ten princely states, some frontier tribal areas and the federal capital area—were consolidated in 1955 into a single province counterbalancing the single

Bengali province of East Pakistan. In Malaya and Malaysia there has been little in the way of shifting state boundaries, but the exclusion of Singapore as a state in 1948 and again in 1965, and the invitation to the Borneo states to join the Malaysian federation in 1963, were related to preserving and adjusting the racial balance among the component states. Southern Nigerians blamed many of Nigeria's tensions on the overwhelming size of the north and argued that it should be split, while minorities in each of the regions sought their own separate autonomous states. Up until 1966 Northern Nigeria had successfully resisted any attempt to break it up, but had played a leading part in splitting the Western Region so that a new Mid-Western Region might be created in 1963. During the lifetime of the Central African federation no actual changes were made to its three territorial units, but on several occasions there were suggestions that Northern Rhodesia should be redefined so that the copper belt and the line of rail along which the settlers were concentrated might be amalgamated with Southern Rhodesia, while the remaining predominantly African areas of Northern Rhodesia might be linked with Nyasaland.

### *B. The Size and Number of Provinces*

Among the new multicultural federations there have been striking contrasts in the area and population of their component regional units. Three of the federations have consisted of states or provinces of massive size. Eight of the 14 Indian states after the reorganization of 1956, the provinces of Pakistan after the consolidation of West Pakistan in 1955, and Northern Nigeria have each contained populations greater than the total federal population of Canada, Australia or Switzerland. At the other end of the scale, more than half of the Malaysian states, eight out of 10 of the West Indian territories, and all but two of the 22 Swiss cantons had individually a population of less than half that of either Montreal or Toronto. Experience in these multicultural federations suggests that the larger regional units have been better able to sustain effectively full governmental machinery, to minimize costly duplication of administration, to function themselves as economic units for the purpose of economic planning, and to discourage the provincial governments from usurping the functions of local government. Most of these advantages would appear to apply in Canada, at the very least to Ontario and Quebec. Especially relevant is the size of the latter province in the light of its desire to take a greater part in shaping its own economic development. Critics of the larger regional units in the newer multicultural federations have also pointed to their shortcomings and to the administrative and political advantages of smaller provincial units. First, the larger regional units are likely to be less homogeneous internally and many of the advocates of smaller provinces have aimed at regional units which might reduce the linguistic or cultural minorities within a province.\* Second, the examples of the larger regional units of Nigeria, Pakistan, India and the West Indies asserting themselves at the expense of the central government, and the willingness of the Malayan states, the smaller Caribbean islands and the Swiss cantons to accept increasing central power, suggest that larger regional units are more likely to obstruct the effective exercise of central power or to contemplate a separate self-sufficient existence.

\*For further discussion on the internal homogeneity of provinces, see section C of this chapter.

As we have already noted in the previous chapter, variations in the size of regions relative to each other within a federation have often helped to accentuate inter-regional tension.<sup>1</sup> The relative population of provinces has been important because it generally governs central voting strength. This issue, for instance, has been an explosive one in Nigeria, Pakistan and the West Indies.<sup>2</sup> The relative wealth of provinces is also significant because of its effect upon their ability to finance services comparable to those of other regions without greater dependence on central aid. Thus, where linguistic and cultural differences among provinces are accentuated by disparity in wealth and consequently social services, invariably some sort of financial adjustment and equalization has been necessary to minimize interregional tension.<sup>3</sup>

The number of component provinces within a federation is a factor which also affects the character of politics within the system. The notable feature of the newer federations is the tendency for fewer regional units, in contrast especially with the 50 states of the United States or the 22 cantons of Switzerland. India, for example, with a population more than double that of the United States, has only a third of the number of autonomous states. Nigeria and Pakistan, despite their immense populations (each considerably more than double that of Canada) have had four\* and two regional units respectively. The political effect in these federations has been twofold. First, the position of the regional governments has in practice been much strengthened at the expense of central authority, and the pressures for regional separatism have been accelerated. Second, the struggle of regions for federal supremacy has been encouraged. Federal stability has been seriously undermined by the interregional fears of domination in Nigeria and by the determination of each of the two provinces in Pakistan not to be subordinate to the other. This suggests that, although Quebec may chafe at being only one among ten provinces, a stable solution to the political problems of Canadian bilingualism is not likely to be found simply in the creation of a biprovincial federal system.

In some of the newer federations, the solution advocated for adjusting the number of regional units, for reducing wide disparities in the size and wealth of provinces, or for reconciling differences in the size of linguistic or cultural groups spread across several provinces, has taken the form of proposals for a zonal structure in which a middle tier of government, grouping provinces into roughly equal zones, would be introduced between the tiers of central and provincial governments. Somewhat similar schemes have been advocated on occasion in Canada for the grouping together of the Maritime Provinces, or of the western provinces. Such a scheme is to some extent implicit also in the notion that the Canadian federal system should become a dual one in which all the English-speaking provinces would be grouped together in one zone with which French-speaking Quebec would have equal status. Such arrangements were suggested for pre-partition India by the Cabinet Mission of 1946, in the original proposals for West Indian federation in 1945-6, and in some of the proposals for Uganda's inclusion within an East African federation. In each of these cases, the notion of another tier of zonal government was rejected, however, because of the complexity involved. The experience of Pakistan is especially instructive. Prior to 1955 there were a number of proposals for grouping the linguistically varied provinces and states of West Pakistan together under a zonal government in order to

\*This number was recently increased to 12. — Editor.

counterbalance the Bengali majority concentrated in East Pakistan. In the end it was decided that such an arrangement would be too complicated, and instead the various units of West Pakistan were simply amalgamated into a single multilingual province. Only in India has a zonal system been adopted. In 1956 at the time of the reorganization of state boundaries the states were grouped into five large zones, but the zonal councils are consultative intergovernmental bodies rather than a middle tier of government.<sup>4</sup>

A simpler scheme than that of a zonal structure within a federation is the concept of double federation. Such an arrangement was envisaged by the Government of India Act, 1935, was proposed for the West Indies by Jamaica in 1960, and was adopted in Malaysia in 1963. In these schemes one group of provinces belonged to a relatively centralized federation, while other large, wealthy or culturally distinctive units (such as Jamaica or Singapore) or states differing in constitutional status (such as the Indian princely states of 1935 or the Malaysian Borneo territories) were less closely tied to the central government and retained autonomy over a greater range of functions. This type of arrangement has sometimes been advocated as a compromise in Canada between the apparent willingness of English-speaking provinces to accept greater centralization and the contrasting insistence of Quebec upon greater autonomy.<sup>5</sup> The extended use of the "opting out" formula would appear to point in this direction. Since such an arrangement is closely related to the way in which authority is distributed between levels of government, the experience in other multicultural federations where such schemes have been considered or adopted will be discussed more fully in Chapter V.

### *C. The Homogeneity of Provincial Units*

The degree to which a federal political system may effectively meet the needs and interests of different linguistic and cultural groups is affected by the extent to which the provincial units themselves represent homogeneous groupings.

Although all federations have contained sectional groups—linguistic, economic or other—which were geographically localized, it has been rare for the concentration of these groups to coincide *precisely* with the provincial political units. To begin with, diversities are usually not regionally segregated so exactly that political boundaries could mark off completely homogeneous units. People do not arrange themselves like that. Just as in Canada not all French Canadians live in Quebec nor is Quebec totally French Canadian, so in other multicultural federations the regional units are never completely homogeneous and a single unit rarely marks off all the members of a linguistic or cultural group. This is clearly apparent from an examination of the tables in Appendix A. Even in India, Nigeria or Switzerland, where the regional units appear to be so distinctive linguistically, there are inevitable overlaps at the edges of the regional boundaries and there are cultural minorities in every regional unit. Indeed, in both India and Nigeria commissions examining possible revisions to internal political boundaries which might create homogeneous units concluded that it would be impossible to draw boundaries which did not leave at least some minorities within each regional unit.<sup>6</sup> Thus, the extent to which social diversities are localized within provinces is a matter of degree. In such federations

as Canada, India, Pakistan, Nigeria and Switzerland each linguistic and cultural group has been concentrated to a relatively high degree, while in Malaya and Central Africa the racial divisions have been less precisely localized, although even in the latter there are significant regional variations in the concentration of the racial communities.

A second reason for the internal social heterogeneity of regional units in federations is that the geographical scope of linguistic, racial, religious, cultural, historical, economic and other interests may not coincide precisely with each other. For instance, the regional grouping of economic interests may not coincide with the distribution of cultural groups or, as we have already noted in Chapter III, religious groupings may cut across linguistic ones as they do in Switzerland. The situation where some diversities correspond fairly closely with the actual regional political units, while others correspond to groups of provinces and still others represent divisions within provinces, is not unique to Canada but typical of all federations. For instance, India may be looked at from several regional viewpoints. There is the fundamental division between the Indo-Aryan Hindi-speaking Ganges heartland in the north and the Dravidian peoples of the Deccan and coastal plains to the south; there are the five main economic regions represented by the zones into which the states have been grouped; there are the states themselves representing since 1956 the major linguistic regions; there are within the states important regional differences of caste, religion, economic interests and, in a few cases still, language. Similarly, within Pakistan there are not only the differences of language, tradition, culture and economy between the provinces of East and West Pakistan, but also within West Pakistan the distinctions of physical feature, language, social structure and custom which marked off the various political units which existed prior to their unification into a single province in 1955.

Malaysia, too, can only be understood in terms of several levels of regional differentiation. The racial and economic contrasts between the peninsula, Singapore and the Borneo states explain the special status which was given to Singapore, Sabah and Sarawak within the Malaysian federation. But on the peninsula itself there are historical, racial and economic contrasts between the predominantly Malay states in the north and the internally heterogeneous states on the west coast. Furthermore, each state itself has a distinctive historical identity, while within the states themselves the Malays live in their kampongs, the Chinese are concentrated primarily in the mines and the cities, and the Indians are located on the plantations. Regionalism in Nigeria is similarly complex. There is the basic distrust between north and south derived from differences of religion, social institutions, degree of modernization and relative size of population. Within the south there is the bitter Yoruba-Ibo rivalry expressed in tensions between the Western and Eastern Regions, while within each of the regional political units themselves there are minority groups which have been strong enough to agitate for their own separate political autonomy.

This analysis suggests a number of points which may be of significance to the understanding of Canadian problems. First, in all federations the regional distribution of interests has been complex. Simply to assume, therefore, that the provincial units are representative of all regional interests oversimplifies the picture in a misleading way. What is needed is an understanding of the way in which these different types and spans of regional interests interact with each other.



At the same time, however, it is worth emphasizing that since the provincial units are the most effective political means of expressing regionalism, a federal system is likely to be more successful if its provincial units reflect the most fundamental regional interests within that society. Otherwise there may be demands for the reorganization of provincial boundaries as have occurred in India, Pakistan and Nigeria. Experience in India and Nigeria would seem to suggest that the creation of essentially unilingual states has tended to reinforce regional loyalties by giving them linguistic solidarity, but this has at the same time reduced tensions over issues of language. Thus, on balance federal stability and unity have been enhanced. Both in India and Nigeria resistance, as long as it lasted, to the reorganization of regional units on linguistic lines provoked expressions of minority grievances, competition among political parties to exploit minority grievances, vigorous and sometimes unconstitutional agitation, and bitterness and national instability over the conflicting claims and counter-claims.

The particular form of federal institutions which is appropriate also is related to the degree to which provincial units are homogeneous and to the extent to which the territorial concentrations of cultural, economic and other regional interests coincide geographically with each other. These factors will certainly affect the strength of the pressures for provincial autonomy, and consequently the functions suitably performed by the different levels of government, the areas in which intergovernmental cooperation is necessary, and the character and role of political parties in representing different regional interests.

Finally, since in all federations some minorities within the regional units have been unavoidable, constitutional provisions specifically designed to protect and meet the needs of these intraregional minorities have usually been found desirable. Such provisions are considered in the next section.

#### *D. Arrangements for Protecting Intraprovincial Minorities*

A variety of arrangements for protecting minorities has been developed.<sup>7</sup> To begin with, a list of justiciable fundamental rights for all citizens has usually been specified by the constitution.<sup>8</sup> Since the motive for setting forth these rights was as much to protect minorities within provinces as to protect provincial majorities against federal majorities, the constitutions in the newer multicultural federations have made these rights binding upon provincial as well as federal governments. Among the fundamental rights specified have been not only personal liberty, freedom of assembly and association, and equality before the law, but also the general guarantee of certain religious, educational and cultural rights.<sup>9</sup> In most cases there was a recognition, too, that the grievances of linguistic, religious or cultural minorities are usually tied closely to economic discrimination, for the constitutions specifically prohibit discrimination against cultural minorities in employment for the public services.<sup>10</sup> The Minorities Commission in Nigeria came to the conclusion that, so long as constitutional government was maintained, the general fundamental rights listed in the constitution would probably provide sufficient protection for intraregional minorities,<sup>11</sup> but in most of the other multicultural federations further safeguards have been created.



In India and Malaysia, the constitutions have included, in addition to a list of general fundamental rights, special guarantees to specified linguistic or other groups which are in a minority in some states. These provisions correspond to some extent to sections 93 and 133 of the British North America Act, 1867, but they are far more extensive in scope.

In India there are special guarantees for linguistic minorities, for the Anglo-Indians, and for the scheduled castes and tribes. The articles relating to the intrastate linguistic minorities deal with the use of minority languages for official purposes, for the redress of grievances and for education. For instance, if the Union government is satisfied that a substantial proportion of a state's population desires the use of any language spoken by them to be recognized by that state, the Union government is empowered to direct that such a language be officially recognized throughout the whole or any part of the state.<sup>12</sup> Every person is entitled under the constitution to submit a representation for the redress of any grievance to any officer or authority of the central or a state government in any of the languages used in the Union or in that respective state.<sup>13</sup> Furthermore, as amended in 1956, the constitution requires that every state and local authority within a state must provide adequate facilities for instruction in the mother tongue at the primary stage of education to children belonging to minority groups.<sup>14</sup> Moreover, the Union government is empowered to issue to any state directions it considers necessary or proper for securing the provision of such facilities, and there is provision for a special officer for linguistic minorities, appointed by the central government.<sup>15</sup> It is his duty to investigate all matters pertaining to the safeguards for linguistic minorities under the constitution and to report to the Union government. His reports are laid before Parliament and the governments of the states concerned.

The Indian constitution also provides some guarantees for a specified period to the Anglo-Indians who were given special consideration with regard to appointments in certain public services and special education grants.<sup>16</sup> In addition, there are provisions to protect certain backward classes, the "Scheduled Castes" and the "Scheduled Tribes."<sup>17</sup> Special consideration for employment in the public services is guaranteed to members of the scheduled castes and scheduled tribes.<sup>18</sup> There is no time limit for this preferential treatment, but it appears to be assumed that it will continue until these groups make sufficient educational and economic progress to reach equality with the rest of Indian society. A special officer for the scheduled castes and tribes is also appointed by the Union government to report on the operation of the safeguards protecting the representation of the scheduled castes in state legislatures, their claims to representation in the public services and their fundamental rights.<sup>19</sup> This special officer is now assisted by ten assistant regional commissioners and he reports annually to the Union government. The constitution also provided for the appointment of two commissions by the central government, one to investigate and report on the administration of scheduled areas and the welfare of scheduled tribes, and the other to investigate the conditions of socially and economically backward classes and to make recommendations as to the steps that should be taken by the Union or any state to remove their difficulties.<sup>20</sup> The Backward Classes Commission reported in 1955 but the Union government found it difficult to accept its recommendations because the Commission had not found objective tests and criteria for classifying socially and educationally backward classes. The Union

government went ahead itself, however, to make surveys for determining criteria for the purpose, and the report provided by the Registrar General of India now supplies the basis for determining which groups require governmental help for their progress.

The Malayan and Malaysian constitutions have also included special guarantees for certain specified groups within the states. The Malayan constitution of 1957 contained explicit arrangements on behalf of the Malays for the reservation of land, for quotas for permits, and for quotas for employment in the public services within the states.<sup>21</sup> These guarantees were designed to protect the Malays who, because of their relative educational and economic backwardness, might otherwise have suffered in competition with the other racial groups, even in those states where they formed the majority. These provisions were continued in the Malaysian Federation, and were also extended to "natives" in the Borneo states of the wider federation.<sup>22</sup> At the same time additional safeguards for the variety of indigenous peoples in these Borneo states were provided centring on the continued use of native languages and the protection of the Muslim religion and education.<sup>23</sup>

The existence of minorities within provinces has also often affected the organization of provincial governments. In a number of cases special provision has been made for representation in provincial legislatures. In India places have been reserved in the state legislatures for members of the scheduled castes and tribes and for Anglo-Indians.<sup>24</sup> In Pakistan places have been reserved for women members.<sup>25</sup> When Nigeria first established a federal system, arrangements were made for the representation of "special interests or communities" in the regional legislatures, but these were continued after independence in Northern Nigeria only.<sup>26</sup> When the provinces of West Pakistan were united into a single culturally heterogeneous province, the fears among smaller groups of domination by Punjabis led to the constitutional requirement that Punjab, although containing a majority of the population within the united province, be limited to no more than two-fifths of the membership in the provincial assembly.<sup>27</sup>

In most federations provision has also been made for the use in state legislatures of minority languages or, where in the interests of minorities, of English. When the states of India were reorganized on linguistic lines in 1956 special arrangements were made for some of those states which remained fundamentally bilingual or multilingual. Regional committees were established within the state legislatures of Andhra Pradesh and Punjab and separate regional development boards were created within the state of Bombay.<sup>28</sup> Somewhat similar arrangements were made in Western Nigeria on behalf of the ethnic minorities in the Mid-Western area. A special Ministry of Mid-West Affairs and an advisory Mid-West Council were established in Western Nigeria in 1957.<sup>29</sup> The Northern and Eastern Regions of Nigeria were themselves internally subdivided into provinces for administrative purposes also to allay the fears of minorities.<sup>30</sup> In most federations, as already mentioned, there have been constitutional provisions designed to ensure opportunities for minorities within regional services, but only in the two northern territories of the Central African federation was it considered desirable to specify the representation of electoral minorities or special groups on provincial executive councils.<sup>31</sup> Elsewhere this was left to convention. The separation of intraprovincial minorities

or special groups into separate electorates has also been avoided except in Central Africa and Pakistan.<sup>32</sup>

It is significant that not infrequently in multicultural federations the central government has been assigned by the constitution a special responsibility as the guardian of minorities against oppression by provincial governments. For example, in the cases of the scheduled areas, tribes and castes in both India and Pakistan and the aborigines in Malaya, the central government was given direct responsibility or power to give directions to state governments regarding these minorities.<sup>33</sup> In India, as we have noted, the Union government has also been given power to direct state governments concerning the recognition within states of minority languages, the use within states of minority languages for education, and the establishment within states of regional legislative committees and development boards, and provision has been made for a special officer reporting to the central government on the operation of minority safeguards within the states.<sup>34</sup> In Pakistan, the authority to specify whether there were to be joint or separate electorates for provincial elections was left under the 1956 constitution to the National Assembly to decide after consulting the provincial legislatures.<sup>35</sup> The Malayan constitution specified that changes in the reservation of land for Malays required not only a special majority in the state assembly but approval by special majorities in the central parliament.<sup>36</sup> In Central Africa, it was the United Kingdom government rather than the central government which was assigned the function of protector of territorial political minorities against discrimination by territorial governments.<sup>37</sup> In many of these federations, provincial majorities have been reluctant to see their autonomy reduced in these various ways but the intraprovincial minorities have pressed for these checks upon provincial autonomy because of their fear that otherwise the guarantees to them might remain ineffective.

In some multicultural federations, intergovernmental advisory bodies, usually with representation from both the central and the provincial governments concerned, have been established to promote the interests of certain intraprovincial or interprovincial minorities. This, for instance, was one of the functions envisaged for the Indian zonal councils and the Southern Zonal Council has had some notable success in handling the mainly educational problems of linguistic minorities where these have overlapped state boundaries.<sup>38</sup> The Councils for Minority Areas in Western and Eastern Nigeria and the Niger Development Board were primarily intended to promote the interests of intraregional minorities.<sup>39</sup> The anxieties of Nigerian minorities over the potential misuse by regional majorities of their control of the police led to a unique arrangement under which a single federal police force with regional contingents was normally administered by a Police Council composed of central and regional ministers.<sup>40</sup>

It would appear, then, that in most multicultural federations a variety of special devices has been considered necessary to protect intraprovincial minorities and that many of these safeguards have required an interpenetration of the functions of provincial and central governments.

*A. The Distribution of Legislative and Executive Authority*

A definitive characteristic of a federal political system is the distribution of authority within the system between coordinate central and provincial governments. Many interesting questions arise out of this aspect of federal government and much of the scholarly writing on federalism has tended to concentrate upon it. In this study, however, no attempt will be made to examine every facet of the assignment of functions to the different levels of government but, rather, attention will be focused only on those which are related to the multicultural character of a federation. At the same time, it must be noted that no consideration of the cultural significance of the distribution of authority between levels of government would be of value if it were carried out in isolation from the related issues discussed in Chapter III (where it was noted that culturally sensitive issues may be closely related to issues of economics, relative modernization and fears of political domination).

It has often been suggested that the chief merit of a federal political system in a multicultural society is that it makes possible a compromise whereby all matters of military and economic interest can be concentrated in the hands of the central government, while those matters of linguistic and cultural significance can be left to the provincial governments to be managed as each regional cultural group prefers. Indeed, Professor Smiley has suggested that this was the essential character of the Canadian confederation settlement of 1867.<sup>1</sup> According to this view, the settlement of 1867 was a compromise which aimed at making possible the aggressive economic development of the British North American economy by entrusting to the Dominion government the authority necessary for military defence and economic development, but which at the same time aimed at avoiding political tensions by leaving to the provinces jurisdiction over those classes of subjects in which legislation would have a direct influence on cultural matters. Whether or not this was the basis of the 1867 settlement, it is evident from recent political developments in Quebec that underlying the present dissatisfaction

in that province is the recognition that the growing interregional character of the Canadian economy threatens to undermine the French Canadian cultural distinctiveness of that province. The insistence of French-speaking Quebec upon its own extensive economic and financial powers grows out of this realization and represents a challenge to the notion that powers over the economy should be concentrated in the central government. What light, then, if any, does the experience of other multicultural federations shed on this fundamental issue?

Although some of the statesmen in other multicultural federations have thought along the lines attributed by Professor Smiley to the founders of the Canadian confederation, in most of these other federations the founding statesmen have found themselves forced to realize that a simple compromise between economic centralization and cultural provincialization is no longer a realistic possibility in the conditions of the twentieth century.

Two major pressures have shaped the distribution of authority among governments in the newer multicultural federations. First, there has been in each of these federations a deep-rooted anxiety among regional linguistic or cultural groups that national fiscal and economic policies aiming at the rapid development of an integrated economy would undermine the cultural distinctiveness of the diverse regional groups. Reinforcing this concern has been the desire to ensure that the economy would develop in such a way that members of the regional linguistic or cultural groups would have opportunities for employment in culturally congenial conditions. In its cruder form this feeling has expressed itself in the desire of each regional linguistic or cultural group for its own local spoils system.<sup>2</sup>

These culturally coloured motives for provincial responsibility in the field of economic policy have usually been reinforced by more direct economic considerations. It is true that in the newer federations the emphasis upon the need for rapid economic growth guided by active governmental development policies and controls has provided a strong incentive for placing economic powers under central direction where, according to the prevailing belief, they would be most effective. But there have been economic counter-pressures too. Particularly influential have been the conflicts of economic interest between provinces specializing in different products, between provinces dependent on exports and those dependent on home products, between wealthy and relatively dependent provinces, and between provinces which would benefit from different fiscal and tariff policies.<sup>3</sup> Moreover, there has in recent years been a growing realization that centralized economic planning may be less efficient than was assumed in the first flush of Keynesian enthusiasm, and that there is a need for regional development policies which are more responsive to local economic conditions. A problem which has further complicated the assignment of governmental authority over economic affairs has been the recognition that although certain aspects are clearly of federation-wide significance and others are of special regional interest, these aspects are closely interconnected in such a way that they cannot be isolated from each other. For example, it has in practice proved virtually impossible to draw a simple line between trade and commerce which is interstate and that which is solely of intrastate significance.

The result of these circumstances has been the rejection in the newer federations of the notion that functions can be divided into two watertight compartments, the one dealing with military and economic matters to be allocated to the central government, and the other dealing with purely cultural or local economic matters to be allocated to the provincial governments. The unavoidable interdependence of central and provincial governments has been reflected in the way in which responsibility over many areas, and particularly over economic affairs, has been shared between levels of government rather than being assigned exclusively to one or the other. Appendix B, which provides in tabular form a comparative analysis of the distribution of authority in a number of federations, indicates that primary responsibility over economic matters has usually been given to the central government.<sup>4</sup> At the same time, as an expression of both cultural and economic pluralism, important economic functions have also usually been allotted to the provincial governments. The precise balance in the distribution of authority among governments has varied, of course, in different federations to meet the particular needs of each society. India, Pakistan and Malaysia have put the most emphasis upon making possible a leading role for the central government in economic planning and in formulating fiscal and monetary policies. The Nigerian and Central African federations placed less but still substantial economic powers in central hands. The West Indies Federation, culturally far more homogeneous than any of these federations, chose, however, to place planning and economic development primarily on an island basis. Despite this range of variation, the significant feature which all these federations had in common was that in none of them was the control of economic policy concentrated solely in one level of government.

In most of the multicultural federations the central governments have been assigned relatively broad exclusive or concurrent authority over trade, commerce, industry, labour, communications, sources of energy, science, industrial research and statistics. At the same time, provincial governments have usually been given control not only over most aspects of such culturally sensitive areas as civil and personal law and education but also exclusive or concurrent authority over such matters as agriculture, land, local industries, intraprovincial trade and commerce, utilities and often labour. All of these are areas which are of particular significance in developing economies. Moreover, in most cases the provision of social services has been left largely in provincial hands.<sup>5</sup> The potential advantages of centralized social services—economies of scale, uniformity of standards and the fiscal ability of central governments to support costly services—have been outweighed by the compelling arguments for making the provinces responsible for these services. These arguments include the personal nature of the services, the need to adapt them to local circumstances and problems, and their close relation to other aspects of local administration. Thus generally, at least primary and secondary education, medicine and health, and most aspects of social security and social welfare services have been made provincial responsibilities. In most of these federations the net effect of the distribution of legislative and executive authority has been to place in the hands of the central governments the major levers for promoting economic development, but at the same time, to place such extensive economic powers in the hands of the provincial governments that the central governments have had to rely heavily upon the provincial governments



for the full implementation of development programmes. Consequently the role of the central government has often become primarily that of coordinating provincial action.

The relatively extensive roles which the provincial governments have come to play in most other multicultural federations is illustrated in Appendix C, Table C.1. If provincial expenditure is taken as a percentage of the combined central and provincial public expenditure we find that only in Malaya among the newer federations has the expenditure of the regional units of government as a proportion of total public expenditure been smaller than that of the Canadian provinces. It might be possible to attribute the relatively higher concentration of central public expenditure in Canada to the needs of a more advanced complex economy, but a comparison with the equally advanced federation of Australia suggests that this is not the only explanation. It is significant that only since 1961 has the proportional expenditure of the Canadian provinces exceeded that of the states in the culturally homogeneous federation of Australia. Indeed, the present situation in Canada reflects a decade of financial devolution and still represents a relatively high degree of centralization compared with other multicultural federations. Provincial expenditure as a percentage of total federal and provincial expenditure in Canada was a mere 29 per cent in 1956-7, 35 per cent in 1959-60, 37 per cent in 1960-1 (the same as Australia in that year), and 41 per cent in 1962-3.<sup>6</sup>

Because of the difficulty of dividing economic functions into neatly separate and independent compartments, most of the newer federations have had to devise a variety of arrangements designed to facilitate consultation and cooperation between central and provincial governments. Often these have taken the form of a procedure requiring one level of government to consult or even obtain the consent of the other level of government before action is taken. Sometimes the procedure has been specified in the constitution itself and sometimes it has been established pragmatically as political pressures made such conventions necessary. The Malaysian constitution contains the most provisions of this kind, although virtually all the newer federal constitutions have included some areas where intergovernmental consultation or consent was required. For example, this sort of solution has been applied as a way of enabling central governments to implement treaties and agreements on subjects normally within provincial competence. Thus, the 1956 constitution of Pakistan and the 1957 constitution of Malaya required the consultation of the regional governments affected in such cases, while the constitutions of Rhodesia and Nyasaland and of Nigeria went still further, requiring the consent of regional governments insofar as the implementation of treaties and international agreements affected normally regional subjects.<sup>7</sup>

There are many other examples in the newer federations of required consultation or consent among governments, and the constitution of the Federation of Rhodesia and Nyasaland even included a general stipulation that "the Governments of the Federation and of the Territories shall, in so far as is practicable, consult together on all matters which are of common interest and concern."<sup>8</sup> In those cases where the consent of the other level of government is required before a government acts, the interests of the other governments involved are safeguarded, but there is the danger that there may be serious delays and inflexibility if the governments find agreement difficult. This has sometimes

been the case in Malaya.<sup>9</sup> The requirement of consultation but not necessarily consent is a less rigid arrangement. It ensures that the interests of other governments will at least be considered without at the same time running the risk that action will be prevented. On the other hand, this arrangement does not provide as strong a protection for the other governments involved. Most federations, therefore, have found it convenient to use both procedures. Consultation is required in some areas and consent in certain others which are more vital to the interests of the provincial governments.

There have been other ways, too, in which the sharing of governmental control over certain functions has been arranged. By contrast with Canada, in nearly all the newer federal constitutions there are lengthy lists of concurrent powers, touching on a wide range of subjects.<sup>10</sup> This has provided a means by which central governments could in these matters exert a general and ultimate control while leaving provincial governments to fill in the details. Usually there have also been extensive provisions enabling the delegation of legislative or executive authority by either level of government to the other.<sup>11</sup>

A characteristic feature of the newer multicultural federations, therefore, has been an interlocking responsibility of both governments over a wide range of functions including many economic matters. In this situation extensive cooperative interaction between governments has been an unavoidable necessity. The machinery devised to facilitate this intergovernmental cooperation is analysed further in Chapter VI.

### *B. The Allocation of Financial Resources*

Questions of federal finance may at first sight seem far removed from those of bilingualism and biculturalism within a federal system, but they are in fact a crucial element in the picture. This is illustrated by the extent to which the demands of the Quebec government for reform within the Canadian federal system have focused upon the issue of fiscal arrangements. There are three reasons for the importance of this issue. First, legislative or executive autonomy for the provinces is likely to prove illusory if the provincial governments are dependent upon the discretion of the central government for financial assistance. Thus a centralized financial system may threaten to undermine the provincial political and cultural distinctiveness which the federal structure was intended to protect.

Second, the control of revenue and expenditure is now widely assumed to be a vital instrument for the active public control of the economy by fiscal and monetary policy. The locus of power over the economy is therefore closely related to the allocation of taxing and other financial powers. Federal finance is thus no longer simply a question of whether or not the revenues assigned to each level of government are adequate to their legislative and executive functions, but has taken on added significance as a major factor in the control and guidance of the economy. If the management of the economy within a multicultural federation is to be organized in such a way as to be efficient economically and yet at the same time enable the expression of regional cultural distinctiveness, then the relative roles of



the central and provincial governments in the control of revenue and expenditure lie close to the heart of the problem.

Third, one of the factors accentuating tensions between different linguistic or cultural groups within a federation has often been the existence of differentials in the range and quality of publicly provided amenities available in different provinces. The result has often been pressure for a redistribution of financial resources within a federation in order to ensure that no linguistic or cultural majority in a province will feel that its services are of a significantly lower standard than those of other groups in the federation.

In dealing with these financial questions the newer multicultural federations have mainly followed the Australian rather than the Canadian model. This pattern has been based upon treating the question in terms of three variable components: (1) the allocation of expenditure, (2) the assignment of powers to levy and collect revenue, (3) the use of substantial transfers of revenue from one level of government to the other.

In the allocation of fields of expenditure, both political and economic considerations have led to a relatively high degree of decentralization, as already noted in the first section of this chapter. This reflects the strength of political and cultural regional interests in these federations. This decentralization has been reinforced further by economic arguments that in the social services, agriculture and even in development projects, efficiency and adaptation to varied local circumstances can often be best achieved through local administration. Consequently, as Table C.1 in Appendix C shows, provincial expenditure as a proportion of combined federal-provincial expenditure has been relatively high in the newer multicultural federations as compared to Canada.

In the assignment of powers to levy and collect taxes and other revenues, however, the newer federations have tended to stress the role of the central government. As shown in Table C.1, Appendix C, only in India among the multicultural federations is central revenue (before intergovernmental transfers) a smaller proportion of combined central-provincial revenues than in Canada.<sup>12</sup> The major revenue sources, direct and indirect, have been assigned to the central government.<sup>13</sup> Important considerations have been efficient levying and collection, minimizing double taxation, avoiding barriers to interprovincial trade, strengthening the creditworthiness of the federation, and enabling an integrated active fiscal policy both to encourage domestic and foreign investment and to maintain stability against inflationary pressures. Most of the major indirect taxes, such as import and export taxes, excise duties and sales taxes, have been placed normally under central control, although some exceptions with regard to specific products have been made where particular circumstances favoured provincial responsibility. The levy and collection of corporation and personal income taxes have also usually been assigned to the central government, although in Nigeria the latter was placed in regional hands because its collection was closely related to local administration. Thus, in the newer multicultural federations most of the taxing instruments for implementing economic policy have been placed firmly in the hands of the central government.

The provincial governments have had to rely on taxes with a distinctly local base, such as those on land, duties on entertainment, licences, and upon non-tax sources of revenue such as profits from commercial operations and public utilities. Furthermore, the power of provincial governments to raise loans has usually been restricted. Because the control of credit is an essential element in limiting inflation and maintaining employment, and because of the necessity to protect the credit-worthiness of the federation as a whole, the authority to raise foreign loans has nearly always been placed exclusively in central hands or has at least required central approval.

The net effect of these contrasting trends—decentralization of expenditure and centralization of revenue—has been the need to resort to very substantial inter-governmental financial transfers in order to bring into balance the revenues and the expensive functions of the provincial governments. This contrasts with the trend in Canada in recent years to devolve the taxing powers themselves upon the provinces. The relative size of intergovernmental transfers and their pattern in different federations is presented in Table C.2 in Appendix C.

Several features are noteworthy about the arrangements for fiscal adjustment in the newer multicultural federations. The first is that, in order to save the principle of provincial financial autonomy, the major portion of the transfers from the central to the provincial governments has normally taken the form of provisions in the constitution guaranteeing unconditional grants or shares of central tax receipts. The principle of "fiscal responsibility," that governments which have the pleasant job of spending money should have the unpleasant job of raising it, has been given little weight on the grounds that taxes are significant these days not merely as sources of revenue but even more as an aspect of fiscal policies with wider economic implications. The crucial factor in the widespread use of unconditional transfers has been the strength of the political and cultural pressures insisting upon provincial autonomy. Extensive reliance upon conditional grants to augment provincial current revenues has almost always been rejected because it would undermine provincial autonomy and give the central government a measure of control over the provincial governments.<sup>14</sup> Thus, in none of the newer multicultural federations have conditional grants-in-aid formed anything like as large a proportion of current provincial revenues as they have in Canada over the last two decades.

These unconditional transfers in the newer federations have taken one of two forms. Often they have simply been unconditional grants. This form has the advantage that the fixed amounts give the provincial governments a basis upon which to plan for the future and to exercise responsibility in keeping expenditure within income. In most cases the unconditional grants entail the disadvantage that they are likely to require regular adjustment and renegotiation, although formulae for the escalation of such grants have been used in some cases. More popular in the new federations has been the constitutional guarantee to the provinces of a specified percentage of the proceeds from certain taxes levied and collected by the central government. This may, as in Nigeria, even involve grouping together a number of central taxes to form a distributable pool from which certain proportions are

distributed to the regional governments. The advantage of this form of unconditional transfer is that provincial revenue is elastic, expanding with central revenue since the provinces are guaranteed a percentage of central tax proceeds. At the same time provincial governments are given a direct interest in encouraging the growth of the activities on which these taxes depend for their yield.

The fiscal transfers in the newer multicultural federations have been used not only to match the provincial revenues to the provincial responsibilities for expenditure, but also to reduce disparities in the capacity of the less fortunate provinces to provide services and social amenities. The principle of derivation—the distribution of transfers among provinces in direct proportion to the provincial contribution to central taxes—has been applied in a few cases because of the pressure of wealthier regions, especially in Nigeria before 1958, but generally its use has been restricted. In most of the multicultural federations an attempt has been made in the allocation of financial transfers to compensate for the unequal impact of the federation on certain provinces, to minimize differences in the per capita revenue of provinces, and to meet the special needs of less wealthy provinces. Because accurate data on provincial fiscal capacity has usually been difficult to obtain, the most common formula for the distribution of unconditional transfers to provinces has been on a per capita basis, this being adjusted sometimes to take specific account of other special factors.

The attempt to diminish economic differentials between provinces has often affected not only the financial transfers from central to provincial governments but also general economic policy. Regional cultural groups have sometimes demanded not only an equalization of the services available in different provinces but also the expenditure of development funds with the conscious aim of producing equality of provincial per capita wealth. Often such pressures have been resisted because economists insisted that such expenditures would result in less productive employment of limited capital resources, but in practice concessions have usually had to be made to such political pressures. In Pakistan, for example, Bengali resentment at the concentration of capital investment in West Pakistan, where it would be more productive economically, became sufficiently serious that President Ayub's government had to direct an increasing proportion of Pakistan's capital investment to East Pakistan in the interests of political stability. Indeed, it became necessary to include a provision in the new 1962 constitution expressly stipulating: "A primary object of the [National Economic] Council in formulating the Plans . . . shall be to ensure that disparities between the Provinces and between different areas within a Province, in relation to income *per capita*, are removed and that the resources of Pakistan (including resources in foreign exchange) are used and allocated in such a manner as to achieve that object in the shortest possible time. . . ."<sup>15</sup> This policy has become a cardinal point of economic planning in Pakistan in recent years, and it is by no means insignificant that during this period there has been some decline in the strength of East Pakistani separatism.

Since the allocation of financial resources in the newer multicultural federations has been based on unconditional transfers of substantial proportions, institutions

have had to be created to make these arrangements adaptable to changing needs and circumstances. In nearly all of these federations standing machinery for review and adjustment has been established, as a rule modelled on the Australian precedents of the Grants Commission and the Loan Council. The nature of these institutions made necessary by the financial interdependence of central and provincial governments will be analysed in Chapter VI.

It is interesting to note that most of the newer multicultural federations have chosen to follow the example of Australia rather than that of Canada. Canadians, despite the recommendations of the Rowell-Sirois Commission in 1940, have proved reluctant to take that path.<sup>16</sup> Canada has not established comparable permanent standing machinery for the review and coordination of federal finance, nor has it adopted a system involving mainly central revenue collection and the unconditional distribution of these revenues to the different governments on the basis of a constitutionally guaranteed but flexible formula. Instead, the problems of federal finance have been left to be solved by *ad hoc* negotiations between the governments involved, a process which has often proved acrimonious. The pattern that has grown out of these negotiations has been one in which certain tax fields have been shared through the passage of uniform legislation with a single collection system being delegated to one level of government or the other. While this approach avoids some of the duplication in the administration of joint tax fields experienced in the United States, the recent trend in Canada toward greater occupancy of the personal income tax field by the provincial governments has left the central government with a less flexible revenue system for the employment of counter-cyclical fiscal policy techniques than those of most other Commonwealth federations. The need for inter-governmental cooperation in fiscal policy and for institutions to facilitate this is, therefore, all the greater in Canada now.

### *C. Variations within a Federation in the Distribution of Functions*

Some Canadians have suggested that the only distribution of powers and privileges between the two levels of government that will satisfy the current demands of centralist English-speaking Canadians and decentralist French-speaking Canadians is one which will provide for a different sharing of these powers and privileges between Quebec and Ottawa than that which prevails between the federal administration and the other provinces.<sup>17</sup> Such an arrangement would not be unique for in some of the other multicultural federations the general scheme for the distribution of legislative and executive authority between central and provincial governments has not been applied uniformly to all provinces.

In a number of instances where certain regional groups have been particularly jealous of their autonomy, the scope of their provincial autonomy has been made more extensive than under the general pattern for the distribution of functions. One of the first examples was the scheme in the Government of India Act, 1935, whereby the acceding princely states would have transferred responsibility to the central legislature only for those subjects specifically mentioned in their Instruments of Accession.<sup>18</sup> This

portion of the federal structure envisaged in the 1935 Act never had an opportunity to go into effect, but a similar arrangement did govern the acceding princely states under the interim constitutions of India and Pakistan in 1947. The arrangement did not last long, however. Such variations in the distribution of authority were attacked in the Indian Constituent Assembly on the grounds that, "So long as the disparity exists, the Centre's authority over All-India matters may lose its efficacy. For power is no power if it cannot be exercised in all cases and in all places."<sup>19</sup> Under pressure, the rulers of the princely states signed progressively wider instruments of accession, until under the Indian constitution of 1950, the central and concurrent authority applied virtually uniformly to all states except the state of Jammu and Kashmir.<sup>20</sup> A few minor transitional differences continued to distinguish the former princely states, but these differences were removed in 1956.<sup>21</sup> The state of Jammu and Kashmir, however, retained a special status because of the controversy over its accession. It was hoped that by giving the state greater autonomy its inhabitants might be more easily reconciled to membership in the Union. The list of exclusive central powers specified in the constitution applied to Jammu and Kashmir, but for this state, unlike the other states, central authority did not extend to matters on the concurrent list and the residual authority remained with the state rather than the central government.<sup>22</sup> But Indian nationalists were never reconciled to this as a permanent arrangement, and late in 1964 the special status of the state of Jammu and Kashmir was reduced although not ended, provoking considerable resentment within the state.

In India there have been three other examples of states with special status. When Nagaland, which had been torn by a terrorist secession movement, was finally made a full-fledged state, the application of certain central laws in that state was made dependent upon approval by the state legislature.<sup>23</sup> A somewhat different arrangement was that which concerned the small sub-Himalayan dependencies of Sikkim and Bhutan, which were protectorates on a treaty basis and therefore remained formally outside the framework of the federation. This last sort of arrangement would appear to be inapplicable to Quebec, however, since its relation to the rest of Canada is not so peripheral.

Pakistan, shortly after independence, consisted of several categories of regional units—four Governor's provinces, one Chief Commissioner's province, a Federal territory, a number of separate acceded states, one union of acceded states and some frontier tribal areas. But as in India, the general trend was towards the reduction of variations in the scope of central and regional powers. The unification of the various types of units in West Pakistan into a single province in 1955 virtually achieved this although the specified Tribal Areas and Azad Kashmir<sup>24</sup> continued to remain under greater central direction.

In independent Nigeria the autonomy of the regions was uniform, but in Rhodesia and Nyasaland there were some variations among the territorial units. The desire of the settlers for centralization, especially in Southern Rhodesia, and African apprehensions of central control, especially in the two northern territories, led to an unusual feature in the distribution of powers in that federation—the division of certain subjects on racial lines. Education and agriculture, which in most other federations were provincial subjects, were divided so that European education and,

except in Nyasaland, European agriculture were central responsibilities, while African education and agriculture were territorial matters.<sup>25</sup> Because most of the settlers were concentrated in Southern Rhodesia this meant that the major portion of the federal government's attention was devoted to that territory. Moreover, since the standard of services provided by the central government for Europeans was higher than that provided by the territorial governments for Africans, the Africans were given the impression that federation was for the benefit primarily of Southern Rhodesia and especially its settlers. This arrangement so discredited the federal union among Africans in the northern territories that the Monckton Commission concluded in 1960 that the federation could only survive if African support was won by "a less racial approach to the problem of the division of powers."<sup>26</sup>

From the examples already examined it would appear that where the distribution of authority between levels of government within a federation has not been uniform it has often fostered rather than reduced tension. On the one hand, nationalists have pressed for more uniformity, as in India and Pakistan, because they wished to avoid the complexities of varied jurisdiction and because they feared that the central government would be hampered in the exercise of its own normal powers. On the other hand, those regional groups which have possessed greater autonomy, as in Kashmir or the northern territories of Rhodesia and Nyasaland, have to some extent felt themselves alienated from the central government which had more extensive responsibilities in other regional units. The dangers of such a scheme were recognized during the West Indian review of the federal constitution. When the Jamaican Government advocated a special confederal arrangement for itself, giving it greater legislative autonomy than the other islands, the constitutional conference of 1961 decided against such a scheme, preferring instead to increase the general level of territorial autonomy.

The most significant example of this problem has been Malaysia. When the entry of Singapore and the Borneo states into the widened Federation of Malaysia was being negotiated, special exceptions were conceded to these states in the application of the existing Malayan distribution of legislative authority.<sup>27</sup> Because of Singapore's special labour and education problems it was agreed that Singapore should retain control over these matters and also over a number of other matters which in the Malayan states still fell under central legislative authority. In the Borneo states, certain central functions, mainly those concerned with native laws and customs, local commerce and communications, and shipping and fisheries, were placed under exclusive state or concurrent authority, while others, such as immigration and development planning, remained central responsibilities but required the approval of the Borneo states before they applied there. Furthermore, as a transitional arrangement some other central functions were delegated to the Borneo states in order not to disrupt existing administrative arrangements. Thus, one of the most significant features of the Malaysian Federation has been the marked variance in the relation of different states to the central government. The states of the previous Federation of Malaya continued as before, but the new acceding states enjoyed considerably more legislative, executive and financial autonomy, and their special interests were more fully safeguarded under the constitution. This arrangement has not



been a total success. It is true that so far it has worked reasonably well in the two Borneo states of Sabah and Sarawak. The fact that they are separated from the other states by some 500 miles of sea has made it less difficult to treat them differently from the states on the peninsula in economic matters. In the case of Singapore, however, the greater autonomy of that state did not resolve the problem satisfactorily. On the one hand, because Singapore's economy was closely related to that of the peninsula, it proved impossible to isolate it from central policies. On the other hand, because of Singapore's greater autonomy, it was considered appropriate to reduce its proportionate representation in the central legislature and to restrict the federal franchise of Singapore citizens outside Singapore.<sup>28</sup> The result was a sense of alienation from the central government among residents of Singapore, and this feeling was reinforced by the refusal of the federal Alliance party to admit the People's Action party, ruling in Singapore, to a partnership in the governing of the federation. The consequent resentment in Singapore, and the annoyance of the Alliance party at the P.A.P. when it did not confine its political activities to Singapore, resulted in mounting tension which culminated in the complete separation of Singapore only two years after it joined the federation.

What are the lessons here for Canada? The first point is that a federation in which certain provinces are given a much greater degree of autonomy than the other provinces is possible. Those who would argue that it is inconsistent with the principle of federalism are clearly wrong, as examples show. Moreover, as experience in the newer multicultural federations has made abundantly clear, the most effective federal systems, such as India, have been those in which the constitutional balance has reflected fairly accurately the balance of political forces within the society. Where a centralized federal structure has failed to give regional interests adequate expression, as in Central Africa or Pakistan during the first decade, or where the federation has been too decentralized to provide any significant benefits from the union as in the West Indies, the federations have experienced serious difficulties or have disintegrated. It is extremely important, therefore, that the distribution of functions among governments within a federal system should express effectively the different demands of the regional groups within the system.

At the same time, the actual experience of multicultural federations with marked variations in the degree of provincial autonomy, suggests that in practice few such examples have worked happily. It is certainly clear from Malaysian experience that unless the arrangement is devised in such a manner as to avoid a feeling in the more autonomous provinces that they are merely second-class members of the federation, the scheme is likely to lead ultimately to secession as in Singapore. A similar situation occurred in the northern territories of Rhodesia and Nyasaland. If variations within a federation in the distribution of authority between levels of government are unavoidable in order to reflect sharply varying degrees of political regionalism in different provinces, such an arrangement is likely to remain stable only if the machinery for intergovernmental cooperation and the institutions of central government are carefully designed to ensure that the more autonomous groups still feel themselves to have an integral part in the operation of the federal system.

*A. Interdependence within Federal Systems*

It is already clear from the analysis in the preceding chapters that the newer multicultural federations have been characterized by an interpenetration of the activities of their central and provincial governments. The notion of a strictly dual polity of two tiers of government operating independently of each other has in practice proved both impossible and undesirable. This being the case, the newer multicultural federations have found it useful to establish a variety of commissions and councils specifically designed to facilitate intergovernmental consultation and cooperation. In Canada there has been some resistance to such a trend for fear that it might encroach upon the sovereignty of Parliament and the provincial legislatures, but in the newer federations the importance of intergovernmental cooperation in making a federal system effective has been recognized as even more important. Some of these intergovernmental institutions have actually been specified in the constitutions, but many of them have been established simply by agreement as the need arose. Broadly speaking, these institutions may be divided into five categories according to the type of intergovernmental relations they deal with: those concerned respectively with financial relations, with economic policy, with other specific areas of common concern, with national cohesion, and with constitutional disputes. Because, as we have already noted in earlier chapters, provincial cultural distinctiveness is related to financial, economic and other issues, each of these categories of intergovernmental institutions will be examined.

*B. Intergovernmental Financial Institutions*

Most of the newer multicultural federations have found it convenient to establish commissions or councils to review and adjust the distribution of financial resources at periodic intervals, and to coordinate public borrowing. In this respect these federations



have been heavily influenced by the examples of the Australian Grants Commission and the Australian Loan Council.

In nearly every one of the newer federations there has been provision for some sort of review of the allocation of tax revenues and grants. Most often these questions have been turned over to an independent expert advisory commission which considers the evidence impartially and arrives at an agreed recommendation. This has been the pattern in India where the constitution provides for the appointment every five years of a Finance Commission responsible for making recommendations concerning the distribution of the tax revenues shared by the Union and the states, the principles determining grants-in-aid, and any other matters referred to it in the interests of sound finance.<sup>1</sup> The constitution of Rhodesia and Nyasaland provided for a similar review at five-year intervals by an independent commission.<sup>2</sup> In Malaysia, quinquennial reviews for central financial relations with the Borneo states and biennial reviews for Singapore were specified. Reference to an independent assessor was to be made only if the governments involved were unable to reach agreement, but in such a case the assessor's judgment was to be binding.<sup>3</sup> Advisory fiscal review commissions similar to those in India and Rhodesia and Nyasaland were appointed in Pakistan in 1952 and in Nigeria in 1947, 1950, 1953, 1957 and 1964, but these were *ad hoc* rather than regular commissions.<sup>4</sup> Because adjustments to the distribution of financial resources may affect critically the balance of power between central and provincial governments, the success of the commissions has depended upon their ability to establish a reputation for impartiality. The ability of the commissions to win the confidence of regional politicians was particularly important in India and Pakistan because there the appointment of the commissions and the implementation of their recommendations rested solely with the central governments. Confidence in the independence of the fiscal review commissions was essential also in Nigeria and in Rhodesia and Nyasaland, for although regional interests were safeguarded by the requirement of regional consent to any modification in the constitutional provisions regarding financial transfers, adjustments would be impossible unless the recommendations of the fiscal commissions received support from both levels of government. To date, it would appear that the tradition of impartiality and independence has been established by the fiscal review commissions in all these federations, for in practice their recommendations have almost always been accepted with little or no change.

In Pakistan since 1956 and in Malaya, the function of fiscal review was assigned to intergovernmental councils composed of ministers representing the central and provincial governments.<sup>5</sup> In these instances decisions have been arrived at more by bargaining than by impartial examination. In both countries the provincial representatives carried considerable weight for together they outnumbered those of the central government. The governments retain the final power of decision since both the Malayan National Finance Council and the National Finance Commission of Pakistan are only advisory in their authority.<sup>6</sup>

The new federations have also established institutions to facilitate the coordination of public borrowing because the control of credit is an important element in the curbing of inflation and the maintenance of employment, because irresponsible borrowing by one province may affect detrimentally the credit-worthiness of other provinces and of the

central government, and because a single or coordinated program of public borrowing is likely to obtain more favourable terms on the international market. In Pakistan and Malaya where intergovernmental councils composed of central and provincial ministers already existed for reviewing the tax and grant structure, these same councils were used to coordinate the exercise by governments of their borrowing powers. Rhodesia and Nyasaland and Nigeria, where independent advisory commissions were used to carry out fiscal reviews, followed instead the Australian example of establishing a separate Loans Council, composed of one representative from each government, to coordinate central and regional public borrowing.<sup>7</sup> The Central African Loan Council, like its Australian model, actually controlled central and territorial borrowing, but this was limited to foreign loans. The Nigerian Loans Advisory Board was only advisory but extended its recommendations to internal as well as external loans. In India, states were not permitted to raise external loans and therefore no coordinating body was considered necessary, but some questions concerning Union loans to the states have been referred to the second Finance Commission.

In some federations provision has been made for special institutions to settle certain kinds of central-provincial financial disputes which are not appropriate for supreme court jurisdiction. For example, all three Asian federations, and Rhodesia and Nyasaland provided for special tribunals for adjudicating disputes between governments over costs incurred by delegated administration.<sup>8</sup> Similar tribunals were also allowed for in order to settle disputes between governments over "unreasonable" central restrictions on external borrowing by provinces in Pakistan (1956-8), over payments for land in Malaya, and over the use and control of interstate rivers and river valleys in India.<sup>9</sup>

### *C. Intergovernmental Institutions for Coordinating Economic Policy*

Among the most important of the intergovernmental institutions established in the newer federations have been those concerned with planning and coordinating economic and social development. These have been especially important because of the way in which the relative economic development of different regions may affect cultural sensitivities and because of the way in which responsibility for economic affairs has usually been distributed between both levels of government.

Examples of major intergovernmental councils concerned with coordinating economic policies and development planning have been the National Development Council in India, the National Economic Council in Pakistan, the National Finance Council and the National Land Council in Malaya and Malaysia, the National Economic Council in Nigeria, and the Inter-Territorial Planning Group in Rhodesia and Nyasaland.

In India and Pakistan the central government has played a strong role in the process of economic planning, both because of provincial dependence upon central grants and loans for capital projects and because a planning commission or board of the central government has collated the plans of the various provinces, drafted the national plans and advised on their implementation. Nevertheless, in both countries the supreme body responsible for laying down the guidelines for the economic plans and for supervising their implementa-

tion has been a council composed of central and provincial premiers or cabinet ministers—the National Development Council in India and the National Economic Council in Pakistan. In addition to coordination of policy by these councils, development planning has involved virtually continuous consultation between various central and provincial departments in the implementation of plans. The significance of the resulting interaction between governments is summarized in Morris-Jones' assessment of Indian economic planning: "The upshot as regards plan formulation seems to be a convincing form of co-operative federalism—so long as we understand that phrase to include hard competitive bargaining. This is indeed the character of Indian federalism throughout. Whereas the emphasis in the Constitution is on demarcation, that of practical relations is on co-operative bargaining."<sup>10</sup>

In Malaya, the central government has also played a major role in economic and social planning because there, more than in any of the other multicultural federations, legislative and executive authority over economic matters was concentrated in the central government. Nevertheless, the central government in Malaya and now Malaysia has been required to consult the National Finance Council, composed of central and state representatives, before putting development plans into operation.<sup>11</sup> There has also been a separate Land Council, composed of central and state ministers, to formulate a national policy for land utilization which would be binding on central and state governments, and to advise on national development plans.<sup>12</sup> In addition, a Rural and Industrial Development Authority, also composed of central and state representatives, has been created to stimulate and organize economic and social development projects, especially in rural areas.

In Nigeria the National Economic Council, composed of representatives of all governments within the federation, was formed in 1955 as a forum for the discussion of economic matters and for fostering cooperation between governments. Its effectiveness was enhanced by the addition of a Joint Economic Planning Committee in 1959. An agreed single federal-regional six-year development programme was published in 1962. A number of other intergovernmental bodies concerned with related matters have also been established, notably the National Council of Natural Resources and the Niger Development Board.

The officials' conference of 1951 preceding the formation of the Central African federation had recommended a development commission of central and territorial representatives, with a central planning staff, but these proposals were never implemented. An inter-Territorial Development Planning Group was appointed, however, to consider the 1957-61 development plans of all the governments and it did play a role in coordinating the presentation of these plans. Otherwise, the machinery for inter-governmental consultation on economic planning was less adequate than in the other newer federations.

These examples indicate that in the newer multicultural federations both levels of government have participated in the formulation of basic economic policy. Because provincial cultural interests are affected by economic policy and because federal and local economic questions cannot be isolated from each other, it has been found necessary to give provinces a role in the process of economic planning. The advantage of these

intergovernmental councils has been that they have enabled central and provincial governments to work together in developing positive policies which aim at protecting provincial interests without sacrificing federal progress.

#### *D. Intergovernmental Institutions for Other Specific Matters*

In addition to the intergovernmental institutions designed to facilitate the adjustment of financial relations and the coordination of general economic policy, there have been a multitude of other intergovernmental councils, commissions and boards intended to make possible consultation and cooperation between central and provincial governments on specific activities of mutual concern. To cite only some of the examples, there have been the river boards, the Central Council of Health, the Inter-State Transport Commission and the Drugs Consultative Committee in India; the provincial advisory boards for the central Posts and Telegraph Department and the National Council of Social Welfare in Pakistan; the National Council for Local Government in Malaya; the Tariff Advisory Board in Malaysia; the Police Council, the National Council on Establishments, the minority area advisory councils, the Joint Consultative Committee on Education, the Central Bank Advisory Committee, the Marketing Board and the statutory boards of certain central corporations<sup>13</sup> in Nigeria; the intergovernmental committees on labour, agriculture, marketing, education and specific development projects, and certain territorial and central statutory boards containing representatives of the other level of government in Rhodesia and Nyasaland.

Apart from such standing machinery for consultation between governments, in most of the newer federations there have been a wide variety of *ad hoc* conferences, composed of central and regional representatives, for the discussion of both general and specialized subjects. For example, in India there have been periodic meetings of state governors, of state chief ministers, of finance ministers, or of other state and central ministers or officials. Such intergovernmental conferences have been a favourite device in the other new federations also. The characteristic temper of these federations was exemplified in the instinctive response of the Indian Union government to the Chinese invasion of 1962. It established an intergovernmental National Defence Council to advise the central government on military affairs and on the mobilization of public participation in national defence.<sup>14</sup> It is clear that since the neat separation of central and provincial functions has been impossible, most federal systems have come to rely on a wide range of institutions facilitating consultation and cooperation between governments.

#### *E. Intergovernmental Institutions for Federal Cohesion*

In the newer multicultural federations, with their sharp linguistic, racial, religious and other cleavages, statesmen have often been fearful that a federal system might encourage increased separatism by marking off the different cultural groups into distinct provincial units. These statesmen have striven to create standing machinery for general consultation among governments in order to foster federal cohesion.

Such institutions have been created in several federations, but India has done the most in this line. Especially interesting has been the Indian attempt in recent years to counter separatism. In November 1960, one of the subjects that was discussed at a Conference of Education Ministers was the distressing frequency with which disruptive tendencies were making themselves felt in the country. The conference was concerned about the threat posed to national cohesion by the growing strength of linguistic regionalism, and stressed the importance of the role of education in counteracting the divisive trends and in fostering unity. As a consequence, a Committee on Emotional Integration, consisting of twelve distinguished Indian leaders in education and politics, was set up in May 1961. Soon afterwards, in August 1961, a States Chief Ministers' Conference on National Integration was held at which resolutions were agreed upon in favour of a common script for all Indian languages, the establishment of new all-India civil services, and the prohibition of any secessionist demands.<sup>15</sup> This was followed by a National Integration Conference, composed of Union cabinet ministers, chief ministers of the states, party leaders and other prominent men, held at the end of September 1961. This conference discussed measures to promote national integration, safeguard the interests of linguistic minorities and plan the national coordination of education. Among the principles agreed to were instruction in the mother tongue at the stages of primary and secondary education, acceptance of the three-language formula (Hindi, English and the regional language) for each region, encouragement of students to study outside their home states, an emphasis in the educational system and the textbooks of each state upon the basic unity of the country, a code of conduct for political parties discouraging them from playing upon and aggravating linguistic and religious differences, and the diminishing of regional inequalities in economic development.<sup>16</sup> As an outcome of this conference a permanent intergovernmental body, the National Integration Council, was established to review and make recommendations on these matters. The membership of this council includes the Union Prime Minister and Home Minister, the chief ministers of all the states, leaders of political parties in Parliament, the commissioners for minority groups, and representatives of higher education and research. This body set to work in 1962 and soon stimulated a campaign to foster national cohesion. The campaign included the elaboration of a press code, the creation of new all-India civil services, the organization of a National Integration Week, and the taking of a national integration pledge by school children and citizens.

In the meantime, in 1962 the report of the Committee on Emotional Integration Committee also appeared.<sup>17</sup> The committee assessed the existing situation in the following terms:

What has dragged the problem of Indian languages down to the arena of acrimonious debate is the attempt, by certain people, to make language a cloak for their ambitious designs in other fields, notably politics and employment. That language is the expression of a people's culture goes without saying, but when it is made a slogan it begins to give shelter to hypocrisy and exaggeration, as most slogans do. The fear, real or fancied, that if a language does not receive prominence, those speaking it will be denied opportunities of employment and political influence, is hardly ever expressed. It is generally mixed with other matters, some of which are of very minor importance. The riots which broke out in Assam a couple of years ago are a case in point.

If people from one part of India elect to take up their residence elsewhere, it is in their own interest to identify themselves with their new neighbours. One of the most potent methods of doing so is to learn the local language and try to speak it properly. At the same time, one can understand the desire of linguistic minorities to have opportunities provided for their children to learn in their mother tongue. The principle of providing such opportunities has already been accepted by the State governments, but its implementation may meet with some difficulty in the initial stages.

The committee went on to recommend measures designed to ensure that in the first five classes of primary school the child would not be burdened compulsorily with more than one language. The child would study either the mother tongue or the regional language, but if a school wished to start the study of another language at this stage it would be free to do so. In classes V to VIII the child would be introduced to two "link-languages," Hindi and English, thus bringing into operation the three-language formula. The committee approved of the use of the regional language as a medium of instruction in colleges and universities in order to remove the gulf between the masses of the people and the intellectual elite, but also emphasized the importance of the link-languages as essential for mobility and intercommunication between different parts of the country. These were necessary both for national unity and in order to speed the programmes for economic development and industrialization.

The zonal councils in India were another intergovernmental device intended to counter linguistic separatism and to foster interstate cohesion. In the constitution, as adopted in 1950, provision had been made for an interstate council in order to facilitate consultation and cooperation among state governments, but such a council was not activated.<sup>18</sup> Instead, zonal councils were created by the States Reorganization Act, 1956.<sup>19</sup> The Indian states were grouped into five zones, each with its own council, composed of the Union Home Minister and the chief minister and two ministers from each state in the zone. The councils were intended to provide a forum for closer consultation among the group of states and between the states and the central government on matters of common interest. Their work has been concerned primarily with questions connected with economic planning, but the councils have also discussed interstate problems related to border disputes, linguistic minorities, official state languages, food distribution, irrigation waters and police reserves. The zonal councils are deliberative and advisory bodies only and therefore in no way diminish the legislative and executive authority of the Union and state governments. When the issue of fostering national cohesion came to the fore in 1961, a Committee of Zonal Councils for National Integration was also established to discuss problems of common interest in all the zones.

From these examples, it is evident that since 1960 there has been considerable concern in India to establish a wide range of institutions specifically aiming at cohesion among the different linguistic and cultural groups within the federation. The full impact of these devices is hard to gauge, for soon afterwards the Chinese invasions of the northern frontiers in October 1962 added an enormous impetus which produced an almost unprecedented integration of the Indian nation, and more recently the brief war with Pakistan has further contributed to national cohesion.



None of the other new multicultural federations has gone to anything like the lengths to which India did in establishing institutions designed to foster federal cohesion. The 1956 constitution of Pakistan did provide for an Inter-Provincial Council to facilitate consultation among provinces,<sup>20</sup> but the 1962 constitution omitted this provision, since with only two provinces there seemed little need for such formal machinery. In Malaya, during the operation of the Federation of Malaya Agreement, 1948, the Conference of Federation Executives, consisting of the central ministers, the chief ministers of the states and the resident commissioners of the settlements, met before every meeting of the federal Legislative Council in order to consider prospective central legislation and policy. Under the 1957 constitution it was provided that the Conference of Rulers,<sup>21</sup> joined by the central prime minister and the state chief ministers, might deliberate on questions of national policy.<sup>22</sup>

#### *F. Institutions for Settling Constitutional Disputes*

No matter how precise or complete the constitutional distribution of authority between central and provincial governments may be, the ambiguity of language, overlapping jurisdiction and the occurrence of unforeseen problems are bound to provoke disputes about the terms of a federal constitution. Consequently, in most federal systems some independent agency or institution, usually a supreme court, has been considered necessary to act as an umpire for settling constitutional disputes.

Most multicultural federations have, like Canada, assigned this role of interpreting the constitution to supreme judicial bodies. There are some exceptions, however. In Switzerland the federal legislature is in effect the final interpreter of the constitution. The courts may declare cantonal laws void if they conflict with the federal constitution, but laws passed by the Federal Assembly are treated as valid.<sup>23</sup> There are limits upon the Federal Assembly, however, insofar as most laws are subject to challenge by a referendum.<sup>24</sup> Among the new multicultural federations only Pakistan since 1962 and Malaya between 1948 and 1957 have not assigned the role of arbiter in constitutional disputes between governments to a supreme judicial body. The Pakistan constitution of 1962 stipulated that in the case of intergovernmental disputes the Supreme Court might "pronounce declaratory judgments only" and added elsewhere that "the responsibility of deciding whether a legislature has power under this Constitution to make a law is that of the legislature itself."<sup>25</sup> In the Federation of Malaya the function of interpreting the Federation Agreement was vested prior to 1957 in *ad hoc* interpretation tribunals.<sup>26</sup> These tribunals consisted of three members: the Chief Justice of the Supreme Court as chairman, and two other members who were either judges of the Supreme Court or possessed the qualifications for such judges, one being appointed by the High Commissioner and the other by the rulers of the Malay states. The appointments were made as the occasion arose. The 1957 constitutional commission rejected this general arrangement in favour of relying upon the Supreme Court for several reasons. First, the states could not maintain their autonomy unless they were able to challenge in the courts as *ultra vires* both legislative and executive acts of the central government. Second, the

insertion of a list of fundamental liberties in the constitution required the establishment of a legal procedure for challenging breaches of these rights. Third, there were advantages in being able to obtain rapid decisions on constitutional questions. The 1957 Malayan constitution, therefore, placed the responsibility of constitutional interpretation in the hands of the Supreme Court, and in the widened Federation of Malaysia the Federal Court performs this role.

In India, Malaysia, Nigeria, Rhodesia and Nyasaland, and prior to 1958 in Pakistan, the role of constitutional umpire was assigned to a supreme court, as had been the case earlier in the United States, Australia and Canada. In the newer multicultural federations the supreme courts have generally been assigned extensive original and appellate jurisdiction. Intergovernmental disputes, with the exception of certain financial disputes sometimes assigned to special tribunals, as mentioned in section A of this chapter, have normally been placed under the original jurisdiction of the supreme courts which have been given ultimate authority to interpret the constitution and to pronounce on the constitutional validity of any central or provincial laws. Where fundamental liberties and special minority rights specified in the constitution impose limits on central and provincial governments, the supreme court has usually also been made the protector of these, either through its original or its appellate jurisdiction. In addition to tasks of constitutional interpretation, the supreme courts have usually been given a wide appellate jurisdiction over civil cases of high value, in certain criminal cases, and where the court permits, by special leave. Since in these new federations the law declared by a supreme court is binding on other courts within the federation, this appellate jurisdiction has made the supreme courts an important force for political cohesion through their capacity to promote a uniformity in legal interpretation.

Given the major role of a supreme court as the constitutional umpire within the federal system, its impartiality becomes essential. Thus the composition of the supreme judicial body and the manner of appointment and dismissal of its members become significant. In Canada, some French Canadian writers have been concerned about the composition of the Supreme Court and have argued that the two major cultural groups should be equally represented.<sup>27</sup> In the newer multicultural federations, however, despite their cultural cleavages, the regional or cultural composition of supreme courts has not been a particularly controversial issue. It is true that the supreme courts of Rhodesia and Nyasaland, of Nigeria (between 1958 and 1963) and of Malaysia have included the chief justices of the regional high courts as *ex officio* members of the supreme court, but this arrangement was motivated largely by the need to provide the supreme court with a sufficiently large panel from which to draw. In Nigeria there was also a regional element in the composition of the Supreme Court since each of four justices was appointed by the central government after consulting a different regional premier. But with these exceptions, the newer federal constitutions have contained no stipulations about the regional or cultural composition of the supreme courts.<sup>28</sup> Instead, primary attention has been focused upon ensuring as far as possible the independence of the courts and this has been reflected in the procedures specified for the appointment or removal of judges.

In the five newer multicultural federations the central cabinet has been given the last word in the appointment of supreme court judges but, except in Rhodesia and



Nyasaland, the central executive has been required by the constitution to consult certain bodies before making the appointments. In India, Pakistan and Malaysia, the executive is required to consult the Chief Justice (titled Lord President in Malaysia) about appointments of other members of the Supreme Court (called Federal Court in Malaysia). The central executive is also required in Malaysia to consult the Conference of Rulers about all Federal Court appointments, in India to consult other Supreme Court justices and the Chief Justices of the state High Courts regarding the appointment of a Chief Justice of the Supreme Court, and in Nigeria to consult a different regional premier for each of four justices.

To ensure the independence of these supreme courts, all the new federal constitutions have included provisions to the effect that judges might be removed only "on grounds of misbehaviour or of infirmity of body or of mind." A special procedure for removal has also usually been specified. Under the constitutions of India, Pakistan (1956), Nigeria (1963), and Rhodesia and Nyasaland, removal required an address of the central legislature, passed by special majorities (except in Rhodesia and Nyasaland). In Pakistan since 1962, removal follows an inquiry by a Supreme Judicial Council, and in Malaysia it follows investigation by a special tribunal. Other provisions, also designed to enhance the independence of supreme court judges, have often been included in the constitutions. As a rule the constitution has contained provisions to ensure that the salaries and terms of office of judges might not be varied to their disadvantage after appointment. The Asian federations have also restricted discussion in the legislatures about the conduct of judges. Furthermore, the constitutions of India and of Pakistan (1956) also included provisions disqualifying justices from subsequently practising in the courts or accepting certain appointments.<sup>29</sup> The intention here was to discourage judicial decisions from being influenced by the hope of future advantage.

On the whole, in the newer multicultural federations there appear to be few signs of dissatisfaction with the impartiality which the supreme courts have displayed in performing their function as guardians of the guarantees embodied in the federal constitutions. In achieving acceptance as independent arbiters, the supreme courts have been helped not only by the constitutional provisions but by traditions of the bar and bench safeguarding the integrity and independence of the judges in these countries.

### *A. The Role of Central Institutions*

One essential feature of any federal system is the autonomy of provincial governments making possible regional distinctiveness, but an equally important feature is the development of a sense of community among the different regional groups. A federation involves not only diversity on some viewpoints but also common agreement on at least *some* matters. No matter how much a federal system allows for differences of regional viewpoint, the federal solution is ultimately bound to fail unless it is able to develop at the same time a positive consensus among the different groups within the federation. The ability to generate such a consensus depends largely on the central institutions. The form of these institutions, the processes by which federal decisions are reached, and the participation of the different regional and cultural groups in arriving at these decisions all affect the extent to which a sense of community can be developed. In this chapter, five aspects affecting the ability to generate a federal consensus will be examined—the central legislature, the central executive, the central civil service, the capital city and the political parties.

### *B. The Central Legislature*

In most of the newer multicultural federations the issue of regional representation in the central legislature has been a particularly controversial one. This is not surprising. In most of these federations the system of cabinet responsibility to parliament has prevailed and, therefore, control of the legislature has been the key to control of central power. Controversies over the organization of the central legislature have usually turned on two major issues. The first of these has been the problem of the appropriate regional composition of the central legislature. Smaller provinces have invariably opposed the principle of representation according to population, and have proposed weightage to favour smaller provinces or even provincial equality in order to prevent perpetual

domination by the larger provinces. The larger provinces have usually been equally insistent that they should have their "fair share" of power, often citing not only the principle of representation by population but also the financial support they have been required to give to the smaller and poorer provinces. The second issue provoking controversy has been the method of election to the central legislature. Since the control of central power was what was at stake, it has sometimes been argued that members of the central legislature should be indirectly elected by the provincial legislatures rather than chosen by direct popular election. These suggestions have arisen in part from the desire of provincial leaders to retain some control over central politics. These claims have been met by equally strong counter-arguments that such a scheme would be "undemocratic."

Out of the attempts in the newer federations to resolve these two issues has come a fairly common general pattern of organization for the central legislatures. A bicameral legislature was adopted in each of the newer independent federations, except in Pakistan and Rhodesia and Nyasaland, where unicameral legislatures were established. The appeal of the bicameral solution lay in the compromise it made possible between the conflicting viewpoints. A bicameral legislature permits the application of different principles of regional composition and method of election in the two central legislative houses. Thus, in India, Malaysia and Nigeria the popular chamber is on the whole directly elected, and regional representation, with some minor exceptions, is based on population. In the second chambers, states are either equally represented, as in Malaysia and Nigeria, or state representation is weighted to favour smaller states, as in India, and in all three federations members of the second chamber are indirectly elected, being chosen by the state legislatures.

The exceptions to this general pattern in Pakistan and Rhodesia and Nyasaland were largely due to special circumstances. The first Pakistan Constituent Assembly had struggled with a variety of complicated bicameral schemes, all of which caused heated disputes over the regional composition and relative powers of the two chambers.<sup>1</sup> Different arrangements for a balance of regional representation were advanced and in one of the schemes the executive would have been made responsible to both chambers. However, when the unification of West Pakistan in 1955 reduced the large variety of provinces and states within the federation to just two provinces, the second Constituent Assembly decided upon equal representation of the two provinces in the National Assembly, and rejected a second chamber as superfluous.<sup>2</sup> The 1962 constitution continued this general arrangement.<sup>3</sup> The solution adopted in Pakistan, if applied to Canada, would require the unification of all the English-speaking provinces into one single province, giving that province and Quebec equal representation in the central legislature. Such a solution would be unlikely to be acceptable in Canada, however, not only because of the already strong historical sense of identity of the provinces, but also because Quebec represents only 29 per cent of the total Canadian population, while the two provinces of Pakistan were fairly well balanced with 55 per cent of the population in East Pakistan and 45 per cent of the population in West Pakistan.

Nor does the example of Rhodesia and Nyasaland offer any better precedent. The establishment of a unicameral central legislature there was essentially a transitional

arrangement and the constitution expressly provided for the creation later of a second chamber.<sup>4</sup> Moreover, in view of the continued controversies over representation in the Federal Assembly of Rhodesia and Nyasaland, this example serves as a poor advertisement for the adoption of a unicameral legislature in Canada.

But the establishment of a bicameral central legislature along the general lines adopted in India, Malaysia and Nigeria does not solve all the problems either. In each of these federations, adherence to the principle that the cabinet should be responsible to the popularly elected house led to the creation of second chambers which were relatively weaker in constitutional power than their respective popular chambers. The lower house has had substantially greater power through being given ultimate predominance in cases of ordinary legislation, through the control of finances and through the responsibility of the cabinet to it. For instance, ordinary central legislation in these federations may be introduced in either house and normally requires passage in both, but in cases of deadlock between the two the first chamber has always been given power to override the other, either simply by later repassage or by outnumbering the members of the other chamber in a joint sitting. The initiation of money bills has been restricted to the popular chamber, and the second chamber may as a rule play only an advisory role. Ultimately the cabinet has always been responsible only to the popular house, although the second chamber has usually been represented in the cabinet, and in most of the newer federations all cabinet ministers may be questioned in the upper house even when they are not members of it.

The second chambers have, nevertheless, served as guardians of provincial and minority interests. In the case of constitutional amendment, they have had equal constitutional powers with the popular chambers because such amendments have normally required the approval of the second chamber voting as a separate house. Furthermore, these second chambers, except the Nigerian Senate, have gained some stability and independence by being unaffected by the dissolution of the popular house. The Indian and Malaysian second chambers were "permanent bodies," a third of the former being elected every two years and half of the latter every three years. Furthermore, because of the manner of election to the second chamber, these chambers have been a more genuine forum for the presentation of regional viewpoints than has the Canadian Senate. In India, election of the second chamber is by state legislatures using proportional representation by means of the single transferable vote; in Nigeria, appointment is by regional governments subject in each case to the affirmative vote at a joint sitting of the legislative houses of that region; and in Malaysia, election is by the state legislative assemblies by simple majority ballot, any assembly member being free to make nominations. The Indian, Malaysian and Nigerian second chambers, in addition to the state representatives, have also reserved some places for members nominated either for their eminence or to represent special minority interests. In India these members constitute less than 10 per cent of the total membership of the chamber, but in Malaysia they make up over 40 per cent of the Senate. But although the second chambers in these newer multicultural federations represent regional and minority viewpoints better than the Canadian Senate, the fact remains that in each case it is the popular chamber which, because of the cabinet system of government, remains predominant.

None of these second chambers has had anything like the power, constitutional or political, of the Senate in the American federal system; but the major role of the Senate in the United States is related to the separation of the executive from the legislature. The fact that the central executive in Switzerland also has a fixed term rather than being responsible to the popular chamber, helps to explain why the Swiss Council of States has been more effective than the second chambers in any of the Commonwealth federations. In Switzerland the cantons are equally represented in the Council of States, the method of election being determined by the canton.<sup>5</sup> In some cantons councillors are directly elected; in other cantons they are elected by the cantonal legislature. The effect of the composition of the council is to ensure that the two minority interests—the Roman Catholic and the non-German speaking areas—have a permanent majority in the Council of States if they vote together.<sup>6</sup> In practice, however, party divisions to some extent cut across this dividing line. Moreover, the effectiveness of other institutions for safeguarding constitutional rights, especially the referendum, has made the Council of States a less significant body than the American Senate.

In the newer Commonwealth federations, the relative weakness of the second chamber in relation to the popular chamber has meant that regional groups have sometimes disputed the notion that the popular house should represent regions strictly according to population. In India and Nigeria the principle of strict representation by population was incorporated, but in the latter federation it provoked a series of constitutional crises when the census results of 1962-3 made it clear that the Northern Region would in effect be guaranteed a permanent majority in the House of Representatives. In Malaysia, representation in the House of Representatives has been based roughly on population but rural areas are heavily favoured. Moreover, Sabah and Sarawak are consciously over-represented, in part because this was necessary to induce them to join, while Singapore was considerably under-represented ostensibly because of the wider range of subjects over which the state possessed autonomous control.<sup>7</sup> The effect, however, was to give Singapore the feeling that it was not fully accepted as a member of the federation, and this contributed to the strains which culminated in the secession of Singapore in 1965.

The lesson for Canada in the experience of other multicultural federations would seem to be that there is no simple solution. The regional representativeness of the Canadian Senate might be improved if its members, instead of being nominated by the central government, were indirectly elected by the provincial legislatures. This might provide another channel of intercommunication between the two levels of government. The West German Bundesrat, composed of delegates from the states, usually members of state cabinets, performs this function particularly well. But as long as the system of cabinet government is maintained, the real seat of central power will lie in the House of Commons. This means that the main responsibility for accommodating regional cultural viewpoints within a general consensus must lie with the political parties. In the United States and Switzerland, the balanced institutions of the bicameral legislature provide the framework for this task; but in federations where power, legislative and executive, is mainly concentrated in a single chamber, it is primarily within the political parties working in that chamber that the reconciliation of regional viewpoints in the formulation

of a federal consensus must take place. The political parties, therefore, bear a much heavier responsibility for this task in parliamentary federations than in the United States or Switzerland.

### *C. The Central Executive*

As we have already noted in the previous section, not all federations have considered a parliamentary cabinet as the appropriate form of executive for a federal system. Both the United States and multicultural Switzerland have fixed-term executives, the former an elected presidency and the latter a collegial Federal Council of seven members chosen for four-year terms by the central legislature.<sup>8</sup> Among the newer multicultural federations only Pakistan has chosen a fixed executive, adopting in 1962 a presidential form modelled in some respects on the American one.<sup>9</sup> It is in the other multicultural federations in the Commonwealth, then, that the closest parallels to the role of the cabinet in the Canadian Parliament are to be found.

The major point of interest here is the extent to which the parliamentary cabinet is able to be responsive to the interests of regional cultural minorities and to provide a focus for reaching a federal consensus. Because the executive is so important in modern government, there have been pressures for an adequate and balanced representation of provincial interests in the cabinets of all the newer federations. Similar considerations led to the stipulation in the Swiss constitution that no more than one member of the seven-man Federal Council should be chosen from the same canton,<sup>10</sup> but the demands have been even stronger in the newer multicultural federations, both because the executive plays a more powerful role in the cabinet system than in the Swiss executive committee, and because of the inherently weaker position of the second chamber as a guardian of minority interests when the cabinet is responsible to the other chamber. But although the pressures for a regional basis to representation in the cabinets have been extremely powerful, invariably it has been found necessary to leave the regional composition of the cabinet to convention in order not to restrict the principle of cabinet responsibility to the legislature. Nowhere, therefore, are there any constitutional stipulations about regional representation in the parliamentary cabinet.

In practice, an attempt has been made in the formation of cabinets in every one of the newer multicultural federations to represent all the major provinces or groups of provinces, and to balance the representation of major areas. In addition, the central cabinet has usually been constructed to give some representation to significant minorities within provinces. The Indian cabinet, for instance, has always included members from the major provinces and all the zones, but it has also consistently contained a Muslim, a member of the scheduled castes, a Sikh, and on some occasions a Jain or a Christian as well. In Pakistan, after the unification of West Pakistan, the two provinces were fairly equally represented in the cabinet. In 1947 the cabinet had included a Hindu, but after his defection no Hindus were appointed until 1955 when the convention quickly developed that the East Bengal representation in the cabinet should include a Hindu. In Malaya the importance of racial balance in the cabinet has been clear. From 1958 to

1963, the usual composition of the cabinet was nine Malays, three Chinese and one Indian. Significantly, cabinet representation for Perak and Selangor, where the Chinese and Indian communities are particularly strong, has been quite consistently divided between the Malayan Chinese Association and the Malayan Indian Congress in the former state, and between the M.C.A. and the United Malays National Organization in the latter state. In Nigeria, not only have each of the regions been represented in the central cabinet but so also have the minority areas within each region. Indeed, in 1960, 10 of the 12 provinces within the Northern Region were separately represented in the central cabinet.<sup>11</sup> In Rhodesia and Nyasaland, too, each territorial unit was represented in the central cabinet, and in 1958 for the first time an African was made a parliamentary secretary. It would appear unlikely then that Canada can afford to dispense with the practice of paying considerable attention to the provincial and minority representation in its central cabinets. Indeed, the extent to which the central government is able to win the support of provincial and intraprovincial linguistic and cultural groups will depend to some extent not only on the presence within the cabinet of representatives of these groups but also upon the quality of these representatives. Here again, because of the nature of the parliamentary system, the ability to bring forth such men will depend on the extent to which the political parties are able to accommodate these groups among the many interests of the party aggregation.

A word of warning is necessary in stressing the importance of provincial and minority representation. If majority groups become seriously under-represented, this too may lead to disaster. Indeed, under-representation in the federal cabinet and legislature was one of the main factors provoking Jamaica's dissatisfaction and eventual secession from the West Indies Federation. Jamaica, with over half the West Indian population, never held more than two of the 11 seats in the federal executive and 17 (38 per cent) of the 45 seats in the House of Representatives. Even in the multicultural federations of India, Pakistan, Malaysia and Nigeria, where care has been taken to give regional and cultural minorities representation in the central cabinet, it has always been necessary to give those provinces with the most populous electorates a predominant position. The issue, therefore, is one of achieving a delicate balance.

Although the adoption of parliamentary executives in most of the newer multicultural federations has made the post of head of state largely a nominal one, nevertheless, some importance has been attached to the position as one which might provide a focus for federal unity. Three of these federations, India in 1950, Pakistan in 1956 (and until 1958) and Nigeria in 1963, while retaining cabinet government decided to adopt a republican form in order to emphasize their independence.<sup>12</sup> The governors-general were replaced by elected presidents. Direct popular election was rejected, however, because of the expense that would be involved and because of the desire to emphasize the ministerial character of the government. In India, to give the president some independence from Parliament, it was decided that the president should be elected by an electoral college composed of both Houses of Parliament and the elected members of the state legislative assemblies, the votes being weighted by a formula giving the Union and state legislators parity and making the voting strength of each state legislator proportionate to the population he represents. Election by a similar electoral college was envisaged in the 1956



constitution of Pakistan, but the first election was left to the Constituent Assembly alone. In Nigeria a somewhat simpler procedure was adopted, the electoral college consisting of all members of both central Houses. This favoured the smaller regions to some extent because of the equal representation of regions in the Senate, and the importance of the smaller regions was further enhanced by the requirement of a two-thirds majority on the final ballot.

Just as Canada appears to be on the verge of a convention that the governor-general should be alternately an English- and French-speaking Canadian, so the new multicultural federations have given attention to similar considerations in the choice of ceremonial heads of state. In India the first president was a northerner and the vice-president a southerner. When the first president retired he was succeeded by the former vice-president, thus initiating what may become a convention of rotating the presidency between men from the north and the south. Significantly, the second vice-president, who subsequently became the third president, was a Muslim northerner. In Nigeria, when Nnamdi Azikiwe, a southerner, was elected the first president at a time when the prime minister was a northerner, public attention was consciously drawn to the fact that the two most prestigious central posts had been divided between a northerner and a southerner. Something of the same sort of convention developed in Pakistan until the suspension of the constitution in 1958. One of the two senior offices of prime minister or governor-general (or president after 1956) usually went to an East Pakistani and the other to a West Pakistani. But the instability of cabinets in Pakistan, which resulted in seven prime ministers and four governors-general and presidents in the period 1947-58, made the convention of dividing the two posts regionally an awkward one to maintain when changes of ministry were so frequent. It would appear, however, that every multicultural federation has felt the need to attract the loyalty of minorities by making the senior ceremonial post open to members of each of the major regional or cultural groups within the federation.<sup>13</sup>

#### *D. The Central Civil Service*

Because of the expanding role of governments in contemporary society, the organization and regional composition of the central civil service may have an enormous impact on the ability of the central institutions to generate a sense of common purpose. In the first place, it has frequently been argued that the government and its administrative services are more likely to be sympathetic and responsive to the needs and interests of the minorities as well as the majority, if the central civil service includes within its membership a healthy proportion from the varied linguistic and cultural groups within the federation. Second, as we have already noted in Chapters III and IV, in many cases tensions between linguistic and cultural groups have often had at their root frustration at the lack of opportunity to participate in the public services. Given the opportunity to serve as full partners in the administration of the country, linguistic or cultural minorities are far more likely to develop a sense of commitment to the federal union.



But while the representation of the different cultural groups in the central public service is in principle clearly desirable, in practice the solution has rarely proved simple. There are two reasons for this. First, the principle of representation of cultural groups in the civil service may conflict with the principle that appointments and advancement should be based on merit. Within the last century the notion has become widely accepted that efficient administration depends upon appointing the ablest and best qualified men. But this criterion will not necessarily produce a service which is regionally or culturally balanced. Indeed, the problem is complicated by the fact that usually, as noted in Chapter III, different linguistic and cultural groups are characterized also by differences in degree of modernization. Consequently, in most multicultural federations certain linguistic or cultural groups have been handicapped by some features of their educational and social systems and have therefore suffered in the competition for civil service positions. In such a setting, the central services have often been reluctant to appoint men with qualifications inferior to those of other candidates, while those candidates from the less advanced cultural groups who have been rejected have then interpreted this as discrimination against their group. Thus, there is a difficult balance to be drawn between, on the one hand, emphasizing efficiency, and on the other, providing all the major regional and cultural groups with a sense of participation.

A second difficulty is the complexity in internal communications which arises within a single public service composed of different linguistic groups. If, in the interests of simplicity, most administration is to be carried on in the language of the majority, civil servants from the other linguistic groups are not likely to find the atmosphere congenial and will be discouraged from seeking a career in that service. On the other hand, if administration is carried on in two or more languages, the process of communication becomes greatly complicated. It also tends to put the premium upon linguistic skills rather than administrative skills. This is the dilemma which has faced all multilingual federations, just as it is facing Canada. This second aspect will be dealt with separately, however, in the next chapter as part of the question of the choice of official languages. In this section attention will be focused on the composition and structure of the central public services.

In India, the candidates from some states have consistently failed for years to compete successfully in the competitions for the all-India public service. This pattern has been the result of differences in educational, social and economic standards among the variety of linguistic groups. Indeed, this situation was itself a factor in the demand soon after independence for the reorganization of states on linguistic lines in order that each linguistic group might at least have a favoured position for employment within its own state public service.<sup>14</sup> The Indian constitution itself contains a number of provisions intended to ensure equality of opportunity in public services and to guarantee special consideration to certain groups which might otherwise be neglected.<sup>15</sup> First of all, an article is included among the justiciable fundamental rights to the effect that "there shall be equal opportunity for all citizens in matters relating to employment or appointment to any office under the State." This article goes on to prohibit specifically discrimination in employment in the public service on "grounds only of religion, race, caste, sex, descent, place of birth, residence" and at the same time permits "the reservation of appointments

or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.”<sup>16</sup> In addition to this general provision, special guarantees are provided to the members of certain groups which might otherwise have difficulty obtaining positions. The members of the scheduled castes and tribes are guaranteed special consideration in appointments to the public service and the members of the Anglo-Indian community have had reserved a specified proportion of posts in certain services. Furthermore, the Special Officer for the Scheduled Castes and Tribes is required to report to the central government on the working of these guarantees. Thus a conscious effort has been made to temper the policy of selection by examination and promotion on merit by introducing some considerations favouring handicapped minorities.<sup>17</sup>

In Pakistan, during the first decade, one of the strongest factors behind the movement for greater autonomy for East Bengal was the feeling of Bengalis that the civil service and the armed forces were primarily in the hands of West Pakistanis.<sup>18</sup> For instance, complaints were made in 1956 that of 776 positions in the superior civil service 734 were held by West Pakistanis and only 42 by Bengalis in spite of the fact that the latter represented over half the federal population.<sup>19</sup> The impact of Bengali dissatisfaction with this situation appears in the 1962 constitution. Among the 21 “Principles of Policy” set forth, no less than five are related in some way to the question of opportunity in the public service.<sup>20</sup> In addition to statements concerning equality of opportunity to enter the public service, a goal is specifically pronounced that “parity between the Provinces in all spheres of the Central Government should, as nearly as is practicable, be achieved,”<sup>21</sup> and there is also a provision for the maintenance of regional quotas for recruitment to public services.<sup>22</sup> Thus in Pakistan, even more than in India, attention to the provincial and linguistic composition of the central services has proved necessary in order to reduce internal tensions. In practice, it will take some time before the Bengalis can make up for the small number appointed from their province in the early years after independence, but there is now at least a commitment to provide them with parity. There are some parallels here to the position of the French Canadians, although it should be noted that in Pakistan the Bengalis actually do form at least half of the federal population and based their claim to parity on their numerical strength as well as upon their cultural distinctiveness.

An unusual feature in both India and Pakistan has been the existence of integrated all-India and all-Pakistan services which serve both central and provincial governments. Such services had been a feature of India under British rule and were carried over by the two federations after independence. These services include the Indian Administrative Service (I.A.S.) and the Indian Police Service (I.P.S.),<sup>23</sup> and the Civil Service of Pakistan (C.S.P.) and the Police Service of Pakistan (P.S.P.). The recruitment and general pattern of these services are under the control of the central governments, but officers may be posted to either the central or the provincial governments, and the posting and promotion of an officer while serving in a province come within the power of the provincial government. These have been the elite services and in practice their members have occupied the highest positions in both the central and state administrations. In India these services have been organized in state cadres, each entrant being allocated to a

particular cadre but, in the interests of furthering integration and seeking impartiality from local influences, about half of each state's cadre is composed of entrants from outside the state. The all-Pakistan services were initially more centralized, however, but because rapid transfers tended to give the impression that these civil servants were not really interested in the province in which they served, President Ayub insisted on a policy designed to associate these civil servants with the provinces in which they serve for a longer period. The joint services have existed in both India and Pakistan in addition to the separate central and provincial civil services. They have been recruited on a federation-wide basis, with common qualifications and a uniform scale of pay, and their members have occupied the strategic posts in both central and provincial governments. As such they have been important instruments for federal cohesion. Indeed, one writer speaking of India has commented, "Above all, the all-India services have come increasingly to be seen as a great force for national integration, in many respects more reliable for this purpose than the all-India political parties."<sup>24</sup> Another writer has said of Pakistan, "In a country plagued with political instability and extreme demands for Provincial autonomy, the Civil Service of Pakistan has played both a stabilizing and unifying role."<sup>25</sup> Although the traditions of Canadian federalism would appear to make the creation of such a service unlikely, federal cohesion in Canada might well benefit from an elite joint higher civil service in which the members would be bilingual and might serve at both federal and provincial levels.

In Malaya and now Malaysia, racial representation in the civil service has always been a critical issue. Under British rule the indigenous Malays were generally favoured in the civil service and came to dominate it while the more industrious Chinese concentrated on commerce and industry. With the coming of independence, the Malays, as a group less advanced educationally than the Chinese, feared that they would lose their own favoured position as the indigenous race to the more aggressive and advanced immigrant Chinese, while the Chinese and Indians resented the special treatment accorded to the Malays which seemed to rank non-Malays as second-class citizens. The issue was an explosive one and a delicate but fragile balance was worked out. The constitution includes among the fundamental liberties a specific article on equality of all citizens before the law, and prohibits discrimination on religious, racial or regional grounds in employment for any public service.<sup>26</sup> This is reinforced by a further article requiring impartial treatment in the terms and conditions of employment for any federal civil servant.<sup>27</sup> But, in addition to these general statements, specific provision has been made "to safeguard the special position of the Malays" by the reservation for the Malays of a "reasonable" proportion of places in the civil service, and provision has also been made for similar quotas for the natives of the Borneo states.<sup>28</sup> In practice the Chinese and Indians have been entering the civil service in ever increasing numbers, but the bureaucratic elite is still primarily Malay in composition, and the constitutionally sanctioned recruitment quota of four Malays to each non-Malay ensures that the federal civil service will retain its predominantly Malay character indefinitely.<sup>29</sup> Thus, the position of the Malays and the natives of Borneo is protected while they try to close the gap in modernization which exists between them and the other groups, but because the quotas are so restrictive upon the Chinese and Indians these groups continue to feel some frustration.

In Nigeria, too, uneven educational development has been a complicating factor. At the time when the federal system was first established in 1954, most educated Nigerians came from the south and, therefore, the lower ranks in the civil service throughout the country had up to that time been manned primarily by southerners. Indeed, one of the strongest motives behind the northern insistence upon the conversion of the unitary system into a federal system with full regional autonomy, was the fear that when independence was achieved and the expatriate senior civil servants left, southerners would step into their shoes. Although the adoption of a federal system ensured the "northernization" of the Northern Region civil service, there still remained the problem of regional balance within the central civil service. As in the other multicultural federations, a provision was specifically included among the fundamental rights prohibiting discrimination against any "particular community, tribe, place of origin, religion or political opinion," but some qualifications to the application of this article in cases of appointment to the public service weakened its force.<sup>30</sup> Although the constitutional provisions on this issue were less complete than in the Asian federations, in practice, because of the strength of political feeling on this issue and also because the country had insufficient graduates to fill its needs, a considerable number of able northerners, among whom it was difficult to find graduates, were simply promoted from the lower ranks to the upper echelons of the federal administration. Also by custom, a tendency developed after 1954 whereby the federal field administration was left in the hands of citizens of the region concerned.<sup>31</sup> This arrangement has had the advantage that the field officers, familiar with the local people and their language, have avoided alienating the local people towards the central government. Generally, following the establishment of the federation, considerations of regional balance within the central civil service were extremely influential in Nigeria.

In Rhodesia and Nyasaland, the settler domination of the political system was reflected in the predominance of settlers in the central civil service and particularly the higher posts. The constitution did establish a special body, the African Affairs Board, with special powers to reserve for consideration by the British Government any bill which in the opinion of the Board was a "differentiating measure."<sup>32</sup> Thus, any legislation or order might be set aside if it subjected Africans to disadvantageous conditions, restrictions or disabilities to which Europeans were not also subjected. But this proved a weak safeguard when the British Government refused to block the Constitution Amendment Bill, 1957, and the Electoral Bill, 1958, after these bills were referred to it by the Board.<sup>33</sup> Moreover, although the Board was empowered to make representations on any matter within the executive authority of the central government, there was little it could do since the main reason for the settler predominance in the higher civil service was the lack of similar opportunities for education among the Africans. It was hardly surprising, therefore, that the Africans of the Central African federation developed little sense of loyalty to a government whose senior civil servants were predominantly European.

Experience in these other multicultural federations would seem to suggest that in the interests of federal cohesion a compromise in the staffing of the central public service must be struck between the principles of merit and balanced regional and cultural

representation. The latter criterion is necessary if minority groups are to feel a sense of genuine partnership in the administration of the country. The means to achieving this would seem to be twofold. In the long run it may be achieved by assisting educational systems which lag behind. In this manner there might be a reduction in regional differences in ability to succeed in the competition for posts. Such a programme must be carefully designed, however, to ensure that the modernization of an educational system does not itself undermine the distinctive regional culture to which it is related. In the meantime, since educational systems cannot be revised quickly and easily, and since inevitably some cultural groups will be at a disadvantage with others in competing for posts, most federations have found certain constitutional guarantees necessary, both in the form of a general fundamental right to freedom from discrimination and also in the form of guarantees and even quotas for special groups.

### *E. Federal Capital Cities*

Within multicultural federations the position and character of the federal capital city has often been a source of considerable controversy. Three issues have especially provoked debate—first the location of the capital, second the assignment of responsibility for the administration of the capital, and third the extent to which the capital truly represents the multicultural character of the federation.

A number of considerations have generally been considered relevant to the siting of the capital city. It should not be too remote in location from any of the major regional centres of population. It should be adequately served by communications to all parts of the federation. It should have available adequate services and facilities for the activities which are usually required in a capital city. Where a new capital is chosen, the cost of its establishment and development should be reasonable.<sup>34</sup>

One of the questions facing new federations has been whether to establish the federal capital in a new city or to use an existing city as a base. Often regional rivalry and the need to dissociate the capital from any particular state or province have made a new federal capital necessary. Among federations in the Commonwealth, examples have been the creation of Canberra in Australia, the transfer of the capital of India from Calcutta to Delhi in 1912, the setting up in Pakistan of a new capital called Islamabad near Rawalpindi. At the formation of the West Indies Federation and the Federation of Rhodesia and Nyasaland, the setting up of new capitals was seen as a development likely to be required in the future but to be postponed at the beginning. In each the constitution therefore gave to the central legislature express power to set up a new capital. In other federations, however, savings in cost and the ready availability of services have encouraged the choice of a well-developed city or even an existing provincial capital. Examples have been the choice of Lagos in Nigeria, Kuala Lumpur in Malaya and, initially, Karachi in Pakistan. For similar reasons, Salisbury in Rhodesia and Nyasaland, and Port-of-Spain in the West Indies were chosen as temporary federal capitals until more permanent ones could be established. In the case of Malaya, when Kuala Lumpur, the capital of the state of Selangor, was chosen as the federal capital, it was intended that eventually the state capital would be moved to a different location at Klang.

In many of these federations, as in Canada, resentment has often been felt in those provinces relatively remote from the capital because of their lack of influence in national politics. Examples have been the feelings of southern Indians towards Delhi, East Bengalis towards Karachi, Northern Nigerians towards Lagos, Jamaicans towards Port-of-Spain and Nyasalanders towards Salisbury. In Pakistan some attempts have been made to reduce such resentment by establishing a subsidiary federal capital. The 1956 constitution provided for meetings of the National Assembly and the Supreme Court to rotate between Karachi, the federal capital, and Dacca in East Pakistan. The 1962 constitution went a step further. Two federal capitals were established, one in the west, Islamabad, serving as the seat of the central government for its diplomatic and administrative activities, and the other in the east, Dacca, becoming the seat of the National Assembly. Arrangements for subsidiary capitals were also advocated in Central Africa and in India but never implemented, although in India the president does rotate his residence between the north and the south during each year. A bicultural Canada might consider following Pakistan's example by officially establishing separate "English-speaking" and "French-speaking" capitals. In a sense, the use of Montreal as a headquarters for some federal departments or agencies is a step in this direction. Nevertheless, the administrative complications created by dual capitals suggest that a more appropriate alternative would be to take the existing capital city of Ottawa as the base for a single bilingual and bicultural federal capital, since it is relatively well served by facilities and communications already developed there, and is situated on the border between Ontario and Quebec. If Hull were incorporated in the federal capital district, the federal capital might then really straddle the boundary between Ontario and Quebec.

In most federations the relative roles assigned to the central and provincial governments in the administration of the federal capital have also been a source of controversy.<sup>35</sup> Indeed, even in such recent federations as India, Pakistan and Nigeria, frequent adjustments have had to be made in the status and jurisdiction over the federal capital cities.<sup>36</sup> Provincial jealousy and the desire to develop the federal capital as a genuine focus for national unity have usually induced demands that the capital be freed from the influence of the government of the state or province in which it is located. On the other hand, where there have been close ethnic and economic ties with the adjoining region or province, as in Lagos and Karachi, for instance, attempts at separation of the capital city from that province have aroused considerable resistance. Generally one of two patterns has been followed. In Australia, India, Nigeria and Pakistan between 1948-55, the federal capital was separated as a distinct centrally administered federal territory with its own local municipal government. Under this arrangement in India (after 1956) and Nigeria, citizens in the federal capital were given control of their own local affairs, but all other jurisdiction was placed in the hands of the federal government. The authority exercised elsewhere by the middle tier of government, the states or provincial governments, was thus placed in the hands of the federal government. Pakistan after 1962, Malaya, Rhodesia and Nyasaland, and the West Indies followed a second pattern. Federal capitals were not separated from the provinces in which they were located. Provincial laws applied in these capitals, although the central government was given special extensive legislative and administrative powers with respect to them.<sup>37</sup> In Malaya, the West Indies, and



Rhodesia and Nyasaland, this policy was related to the selection as federal capitals of cities which had previously been capitals of the state or territory in which they stood. This made their separation from the state especially awkward. Canada, of course, originally adopted the second of these patterns, but since Ottawa is not the capital of Ontario its detachment as a federally administered state would be less awkward.

In addition to the site of the federal capital and the assignment of authority over the administration of the capital, emphasis has been put, in most of the new multicultural federations, on the extent to which the federal capital city might serve as an inspiring focus for federal unity.<sup>38</sup> In the first place, not only should its buildings be dignified, well related and well built, but if the capital is to fulfil its function, it must be a pleasant place in which to live and work. People from all the provinces must feel at home there and must not be subject to constant irritations and frustrations. Moreover, if it is to serve its purpose fully, the capital should be something more than a place where legislators, administrators and diplomats live and work; it should be representative of all that is best in the political and social life of the federation and a place which stimulates the growth of the wider ideas on which development of the country depends. Its outlook as far as possible should be multicultural and not provincial, for persons who work in or visit the capital should be able to find there a society which is congenial to them.

An extreme example of the unfortunate effects of a capital which fails to fulfil these requirements was Salisbury in the Federation of Rhodesia and Nyasaland. A major factor causing the dissatisfaction and suspicion of the Africans in the northern territories of the Federation was the siting of the federal capital in Salisbury where the prevailing practices of racial discrimination meant that Africans who came to the capital found most of the amenities of the city denied to them. In other federations, similar irritants have helped to provoke regional resentment. Examples are the feelings of the northern Nigerians towards Lagos, not simply because of its remoteness from the North but also because northerners have not felt at home there and have even experienced outright hostility. It is the desire to avoid such difficulties that has in many of the new federations led to the creation of a new and separate federal capital under the direct jurisdiction of the federal government.

Experience in other multicultural federations suggests that if Canada aspires to being a genuinely bilingual and bicultural federation, then there are dangers inherent in the existence of a capital which is not itself bilingual and bicultural. A federal capital must serve both as a focal symbol of the federation and also as a place where people from each of the major linguistic and cultural groups may find the cultural atmosphere congenial to their own heritage. As far as site is concerned, it would seem unrealistic to abandon the already developed facilities of Ottawa, but the city might be given a more bicultural atmosphere if the federal capital area were enlarged to include the Hull area. Moreover, if the dual cities were separated from their respective provinces and placed under more direct federal administration, this might facilitate a growth in the bilingual character of the city, and make easier the provision of French language schools and education for children of the French-speaking officials and public, thus removing the cause of some of the existing French Canadian resentment at the "English" character of the federal capital. If the local residents of the present city of Ottawa were to be persuaded to accept such a

scheme, however, it would be essential not to deprive them of their federal franchise or of a measure of autonomous municipal administration.

#### *F. Political Parties*

It has already been suggested in sections B and C of this chapter, that in those federations where a parliamentary executive has been adopted, as in Canada, the major responsibility for generating a consensus among the diverse linguistic and cultural groups falls upon the political parties. It is true that in other federations political parties play a fundamental role in aggregating the varied internal interests but, in such federations as the United States and Switzerland, the separation of powers between different central institutions provides a framework of checks and balances which requires the majority to take account of minority viewpoints. In the parliamentary system, however, all central power is concentrated in the majority which commands both the legislature and the executive. It is within the parties themselves, therefore, that minority viewpoints must make an impression if they are to have any impact on central policy at all. Apart from the desire to capture the majority of seats in the popular house, there is little in the parliamentary framework of the institutions that forces politicians to look for compromises.

The importance of the political parties as the major instrument for generating a federal consensus is vividly illustrated by the experience of the other multicultural federations which have also adopted a parliamentary cabinet system. Two of the federations have been notably and, in the eyes of some commentators surprisingly, stable and successful. The first is India. The second is Malaya, or Malaysia as it has been since 1963. What has distinguished these two federations from the others has been the pattern of their political parties. The Indian National Congress and the Alliance party of Malaya and Malaysia have each dominated the politics of their respective federations, and have provided a focus for federal political unity, because they have consciously set out to accommodate under a comprehensive umbrella all the varied interests of the different linguistic and racial groups in these federations. By contrast, the newer federations which have suffered military take-overs (Pakistan and Nigeria) or disintegration (Rhodesia and Nyasaland, and the West Indies) were all marked by political parties which were primarily regional rather than federal in outlook, or which deliberately failed to accommodate the desires of significant minority groups.

For example, in Pakistan until 1954, the highly centralized Muslim League dominated both the central and the provincial governments. But this party focused most of the economic development on West Pakistan and neglected East Bengal to such a degree that one member of the second Constituent Assembly declared, "East Bengal is bleeding from the wounds inflicted by the Muslim League coterie."<sup>39</sup> The result was the complete rejection of the Muslim League by East Bengal in the 1954 elections<sup>40</sup> and the demand for widely extended provincial autonomy. From this time on, different parties came to dominate the eastern and western provinces, and central politics became a sequence of shifting factions and unstable coalitions. This was accompanied by growing provincialism.



Finally, in 1958 party strife had reached such a state that the army stepped in and removed the politicians from the scene, replacing them by the administrative paternalism of the army and the civil service in partnership. It is noteworthy that later, when the Constitution Commission of 1961 examined the reasons for the failure of constitutional government in Pakistan, the Commission put the blame, not on the federal structure which it considered satisfactory, but squarely on the "lack of leadership resulting in lack of well-organized and disciplined parties."<sup>41</sup> It was this conclusion which motivated the arrangement in the 1962 constitution for a presidential executive which would not be dependent for its stability upon the legislature or political parties.

Nigerian politics were dominated by regional political parties right from the beginning of the federal system. Until 1962 there were three major political parties, the Northern People's Congress (N.P.C.), the National Convention of Nigerian Citizens (N.C.N.C.)<sup>42</sup>, and the Action Group (A.G.), each based primarily on a single region. Each of these controlled the government in its own region and, in spite of attempts by both the N.C.N.C. and the A.G. to become national parties, electoral trends up to 1962 showed an increasingly regional solidarity in the voting support for Nigerian political parties. The regional character of the parties was further emphasized by the fact that until 1959 the national leaders of all three parties preferred to remain as regional premiers, leaving central politics to their lieutenants, and even after 1959 this remained the situation in the N.P.C. and after a brief interlude also in the N.C.N.C. Thus, the central government rested on a coalition of regional parties: a coalition of all three between 1957 and 1959, and a coalition of the N.P.C. and the N.C.N.C. between 1959 and 1964. The balance of regional parties was upset in 1962, however, by the split within the Action Group, arising out of differences between the national leader, Obafemi Awolowo, and the Western Region Premier, S. L. Akintola. The resulting emergency within the Western Region, the formation of the new Mid-Western Region and the controversy over the 1962 and 1963 census results completed the destruction of the balance. Where before, each party had found it necessary to compromise in order to participate in federal policy-making, parties became increasingly intransigent. The N.P.C., as a result of the increasingly regional solidarity of voting in the Northern Region which held a majority of seats in the House of Representatives, found that it could dominate central politics without depending so much on the other regional partners. At the same time its coalition partner, the N.C.N.C., became alarmed at the prospect of permanent northern dominance. In the manoeuvring preceding the federal elections in 1964 a realignment of parties took place, the N.C.N.C. allying itself with the Action Group, and the N.P.C. turning to Akintola's new Nigerian National Democratic party. Party advantage rather than the attempt to create a federal consensus became the predominant motive, and the lengths to which the N.P.C. and N.N.D.P. went in rigging elections during 1964-5 in order to retain power became a source of increasing unrest, until early in 1966 constitutional government was terminated.

In Rhodesia and Nyasaland the difficulty was not in the regional character of the political parties. Between 1954 and 1960 the United Federal party and its territorial affiliates dominated all governments at both levels. The party was solidly supported by settlers who dominated the electorate in all three territories, but the fatal flaw lay in the failure of this party to appeal to the African populace. Consequently, when the territorial

franchise was extended in Nyasaland by the British Government, the result was the overwhelming victory in the 1961 Nyasaland elections of the Malawi Congress party, committed to secession. Soon afterwards Northern Rhodesia also had its own African government for the first time, and thereupon insisted upon also seceding from the federation. Thus, the United Federal party, despite its earlier electoral triumphs, failed in the major task of bringing the Africans into the federal partnership and so laid the seeds for the disintegration of the federation.

The dangers inherent in the failure to develop at least one party which aggregates the major groups within the federation is illustrated by the disintegration of the West Indies Federation. By comparison with the others this federation was relatively homogeneous, culturally. Moreover, the Federal Labour party which held central power was affiliated to parties controlling the governments of Jamaica, Trinidad, Barbados and most of the smaller islands. But this was largely a façade. The F.L.P. and its opposition, the Democratic Labour party, each represented little more than electoral alliances. The principal leaders of the island parties on the whole preferred to hold the fort at home, sending a "second team" to contest the central seats. The F.L.P. was further weakened by the clash of personalities among the major central and island leaders of the party which was expressed in repeated public clashes. In this atmosphere the F.L.P. generated little warmth in support of the federal system which lasted a mere five years.

To these examples must be contrasted the Indian National Congress party and the Malaysian Alliance party. The linguistic and cultural divisions of India are no less deep than those of the other federations. But over the years, especially during the days when it was the focus for the movement for independence, the Congress party learned the importance of reconciling regional and cultural differences in the interests of unity. Since independence it has continued to emphasize this aspect of its role, with the result that it has been the governing party in central politics for two decades, and over that period has also controlled most of the state governments. This general preponderance of the Congress party at both levels of government has been a powerful force for harmony in central-state relations in India. It is significant that intergovernmental friction has been much sharper in the few instances where opposition or coalition ministries have been formed in the states.<sup>43</sup> The success of the Congress party has rested on a mixture of centralization and decentralization in its organization and policy-making. As a legacy of the integrated independence movement, the state Congress committees have been accustomed much more than Canadian parties to look for guidance and to take directions from the central Congress committees. At the same time a new and influential group of political leaders deeply rooted in their regions has been emerging in the states, and the focus of power and influence within the Congress has in recent years shifted considerably from the central organization to those in the states. This is illustrated by the way the chief ministers in the states have come to play an extremely important role in the decisions of the party.<sup>44</sup>

Like the Congress, it was during the movement for independence that the Malayan Alliance party learned the importance of reconciling racial groups in the interests of unity. This party was formed from three clearly racial parties—the United Malays National Organization (U.M.N.O.), the Malayan Chinese Association (M.C.A.) and the

Malayan Indian Congress (M.I.C.)—originally allied solely to contest elections. The Alliance was so successful in the 1955 central and state elections, when it won 51 of the 52 central seats and formed the government in each of the states, that the formula was continued. At times during the succeeding years there were signs of internal strains between the different racial groups within the party, but on each occasion it managed to arrive at a compromise which kept it together. In the next central and state elections in 1959 the Alliance once again emerged as the dominant party in central politics and won power in all but two of the state governments. As in India the dominance of one party in both levels of government appears to have contributed to harmony in intergovernmental relations, for what friction there has been between governments has occurred mostly in the northeastern states where the Pan-Malayan Islamic party controlled the state governments. Within the wider Malaysian federation, the Alliance pattern has been extended to encompass coalitions of the major local parties in the Borneo states. The increased Alliance central majority as a result of the 1964 general election shows the continued ability of the party to coalesce the variety of communities in the federation. It is highly significant that the one occasion when the Alliance pattern was not extended and the People's Action party of Singapore was not brought into a partnership in federal decision-making, the result was considerable political and racial tension and ultimately the separation of Singapore.

These examples make it abundantly clear that an enormous responsibility rests on the political parties of Canada as the main instruments upon which the federation must depend for the development of federal cohesion and consensus. No constitutional provisions by themselves can ensure that the political parties will achieve this. Agreement, as in India,<sup>45</sup> by political parties upon a code of conduct eschewing activity which would exploit and aggravate linguistic, religious and cultural differences might help, but ultimately success will depend on the ability and conscious effort of the Canadian political parties to reconcile internal diversities and to achieve a federal consensus.

The extent to which the Canadian political parties will succeed in this task will depend on the quality of their leadership. The success of the Indian National Congress and the Malaysian Alliance have been in no small measure due to the combination of diplomacy and positive leadership shown by such men as Jawaharlal Nehru and Tunku Abdul Rahman. Vigorous leadership by itself is not enough; tact and diplomacy are essential where different cultural groups must be reconciled, as the failures of Roy Welensky in Central Africa and Grantley Adams in the West Indies make abundantly clear. But mere diplomacy by itself is insufficient, too, for a positive leadership is needed to draw the loyalty of different groups within a federation. In Nigeria, Prime Minister Abubakar Tafawa Balewa's exceptional diplomatic skill in keeping coalition governments together in the end proved insufficient. If the Canadian political parties are to succeed in their task of creating and maintaining federal cohesion, they will require leadership that is both diplomatic and dynamic.

*A. Official Languages*

In most federations composed of diverse linguistic communities, the question whether there should be a single or two or more official languages has arisen. Linguistic minorities have usually pressed for the recognition of their languages as official federal languages because of anxiety that otherwise they would be handicapped in participating in federal affairs. Opposing them, centralists have generally stressed the importance of a single national language, not only to facilitate interregional communication and administration but also to provide a focus for unity. These conflicting points of view have frequently clashed sharply and, because language can affect access to federal jobs and power, the issue has invariably been an explosive one.

It should be noted at the outset that two features distinguish the situation in most of the newer multicultural federations from that in Canada. First, in most of these federations, notably India, Pakistan, Malaysia and Nigeria, there have been more than two major linguistic groups.<sup>1</sup> Thus, in India there are some 10 linguistic groups each at least as populous and as distinctive as the French Canadians in Canada. In Pakistan, the major linguistic division is between the Bengalis and the West Pakistanis, but the latter province itself contains a variety of linguistic groups speaking Punjabi, Sindhi, Pushtu, Baluchi and Urdu. In Malaysia, there are the three main races of the peninsula—the Malays, the Chinese and the Indians—each speaking their own languages, and a variety of other linguistic groups in the Borneo states. The Nigerian scene has been dominated by the three main linguistic groups—the Hausa, the Yoruba and the Ibo—while other linguistic groups make up another 37 per cent of the federal population. Thus, in these federations the issue has normally been one of multilingualism rather than of bilingualism. In a sense this is also true of Switzerland, although it is worth noting that only 5 per cent of the Swiss population speaks neither German nor French as a mother tongue while 13 per cent of Canadians consider neither English nor French their mother tongue.<sup>2</sup> In those federations where there are more than two major linguistic groups, the issue of official

language becomes complicated by the fact that few statesmen or civil servants, let alone citizens, can be expected to become fluent in all the languages of the different linguistic groups within a federation. In such situations the usual policy seems to have been to recognize the languages of the main linguistic groups within a federation, but to select one or two link-languages as the ones to be used for purposes of central government and interprovincial communication. Thus, each citizen would be expected to become bilingual, learning his own regional language and the link-language (or trilingual where there are two link-languages as in India). In general form this is the pattern adopted in India where Hindi and English are the link-languages, in Pakistan where Urdu, Bengali and for an interim period English are the link-languages, in Malaysia where Malay and for an interim period English are the link-languages, and in Nigeria where English is the link-language.

A second factor distinguishing the newer multicultural federations from Canada is the position of English. Although in none of them is English the mother tongue of a large or distinctive regional group, the English language did serve during the colonial period as the *lingua franca* within most of these countries, even among the elite of the nationalist movements. This has led to clashes between those who would prefer to retain English as an official link-language and those who would prefer to select the language of the largest regional group. The advocates of English point out that the choice of one indigenous language would give a special advantage to one linguistic group in the competition for central posts and power. But advocates for the selection of an indigenous national language have usually argued that it would better symbolize the federation's cultural independence, and also that it would serve as a means to better communication between the educated elite and the non-English-speaking masses. Thus, in the newer multicultural federations it has been the linguistic minorities which have agitated for the retention of English as an official language, and the major linguistic groups which have pressed for the adoption of their own language as the official federal language.

In the three Asian federations, the question of national language has proved extremely controversial and a serious threat to federal unity. The situation in Pakistan perhaps has approximated most closely that in Canada since the major issue has been whether Urdu should be the single national language or Bengali should be a second national language. One commentator on politics in Pakistan has even said that, "This single issue aroused more heated feelings than any other."<sup>3</sup> Prior to partition, Urdu had been widely regarded as the principal language of Muslim India. Bengali, by contrast, was the language of a single province and, moreover, was suspect elsewhere in Pakistan because of its links with Hindu Bengal. The Bengalis cherished their language, however, and feared that if Urdu were the only official language they would be at a disadvantage in obtaining positions in the central public services and in influencing federal affairs. What further annoyed the Bengalis was that, since East Bengal contained a majority of the population of Pakistan, the Bengalis felt entitled to the recognition of their language as an official federal one. When Pakistan was created, Jinnah began by insisting bluntly that, in the interests of national unity, Urdu would be the only official language of Pakistan. When the Interim Report of the Basic Principles Committee reiterated this principle, there was such a storm of protest that when the committee next reported to the Constituent Assembly no

mention of any official language was made. The bitter struggle continued and the committee's 1954 report retreated further, recommending the recognition of both Urdu and Bengali, although it did suggest that "the State should take all measures for the development and growth of a common language."<sup>4</sup> Even this latter goal was abandoned by the 1956 constitution, which recognized both Urdu and Bengali as "State languages," and also provided for the continued use of English for official purposes for an interim period of 20 years.<sup>5</sup> The 1962 constitution maintained this arrangement, but added the qualification that after 10 years a commission should be appointed to report on the replacement of English for official purposes.<sup>6</sup> Thus, Pakistan is now committed to official bilingualism for all federal purposes. This policy, conceded under persistent pressure, has helped to allay Bengali anxieties and appears to have reduced internal tensions.

In India the problem has been complicated by the large number of regional languages. Clearly there was a need for some common linguistic medium for federal affairs and for communication between linguistic groups since statesmen and citizens could not be expected to be fluent in all 14 languages recognized by the constitution. English had served as the *lingua franca* of the westernizing elite which led the movement for independence, but there was a strong desire to replace it by an indigenous language which would not only avoid the colonial stigma but could also provide a basis for a national cultural revival. Furthermore, only one per cent of the population was literate in English, while Hindi, spoken by 42 per cent of the population, appeared to be the logical choice. But the Dravidian-speaking middle classes in the south, which were more at home in English, feared that their opportunities to participate in central affairs would be handicapped if English were replaced by Hindi. Consequently, there was a lengthy and heated debate in the Constituent Assembly over the official language provisions. The compromise eventually embodied in the constitution recognized the 13 major regional languages and Sanskrit as "languages of India" with equal status, selected Hindi as the official language for all-India purposes, provided that English would continue as an official language for 15 years in order to accommodate the southerners, and specified the establishment of official language commissions to advise on progress in the use of Hindi.<sup>7</sup>

Tension over the issue continued to smoulder, and when the first Official Language Commission reported in favour of replacing English by Hindi, the discontent and anxieties of the non-Hindi speakers flared into the open.<sup>8</sup> Southern critics bitterly opposed these recommendations, and there were widespread instances of popular demonstrations and the obliteration of Hindi signs in the south. Faced with this fierce expression of opinion, the Congress party retreated, agreeing at its 1958 annual session to a compromise in which the Hindi zealots were to be satisfied by the formal change to Hindi as an official language in 1965, but the non-Hindi groups were to be placated by the continued use of English for official purposes after 1965. Procrastination in implementing this formula provoked growing discontent, however, and when in April 1963 the Official Languages Bill was finally introduced, the Indian Parliament witnessed some of the wildest scenes in its history. Nevertheless, the bill was eventually passed. It provided for the continued use of English for official purposes without a time limit, but also provided for a committee of Parliament in 1975 to review and consult the states about the progress of the acceptance of Hindi as a single official language. Thus, India



has for the time being committed itself to the three-language formula whereby trilingualism is the goal for each citizen, the three languages being the two link-languages of Hindi and English, and the third language being the regional language of the person concerned. For all-India purposes—for the central government or communication between states—Hindi and English operate as official languages, while each state may select its own regional language or languages for official purposes.

In Malaya and Malaysia, language has been one of the issues on which the most extreme positions have been taken. The Malays have insisted upon Malay as the official language since it is indigenous to the peninsula, and they have opposed English because it would favour the immigrant races. Many of the Chinese and Indian citizens of the federation, however, have had little opportunity to learn to speak Malay fluently, and they would clearly be handicapped if Malay were to become the sole federal language. The 1957 constitution incorporated a compromise whereby, in addition to Malay as a "national language," English would continue to be used for an interim period of 10 years, with the central Parliament deciding whether English should then be abandoned.<sup>9</sup> Following independence the Malayan central government continued to reiterate its determination to make Malay the country's sole official language by 1967, the first occasion on which this would be permitted by the constitution. When the federation was widened into Malaysia, however, a concession was made to the newly acceding states, guaranteeing that in these states English would continue to be used for a period of at least 10 years after they joined the federation.<sup>10</sup>

In Nigeria, the official language issue has caused less political tension. The most widely spoken indigenous language, Hausa, was spoken by only 28 per cent of the federal population and, therefore, its adoption as the official federal language was never a serious possibility. Instead, English, which was already widely accepted among the educated classes as a *lingua franca*, was prescribed as the single official federal language.<sup>11</sup>

In Rhodesia and Nyasaland the same choice was made.<sup>12</sup> It is true that in Central Africa, as in Nigeria, English was the *lingua franca* of the educated classes, but in this case English was also the mother tongue of the dominant racial minority and this helped further to reinforce the impression that it was the settlers who were the chief beneficiaries of the federal system.

What lessons does the experience of these federations provide for Canada? First of all, it is clear that in most cases where the language of major regional linguistic groups has been denied recognition as a federal language, tension and bitterness have resulted. In many federations, therefore, two languages have been recognized as official for all central and interregional purposes. The examples are Hindi and English in India, Urdu and Bengali in Pakistan,<sup>13</sup> Malay and, for an interim period, English in Malaya and Malaysia. Switzerland has even gone so far as to recognize three official languages on a permanent basis.<sup>14</sup> In federations where there are more than two or three major languages, sometimes two classes of language have been recognized. Thus in India, Hindi and English are official languages for the central government, but 14 languages are recognized as languages of India. The Swiss Confederation deems three languages as official but recognizes four as the national languages of Switzerland.<sup>15</sup> Such a solution might be appropriate in Canada for the linguistic groups which speak neither English nor French.

In India, Pakistan and Malaysia there was provision for the continued use of English as a second or third official language for a transitional period until the minority linguistic groups could learn the official indigenous language, with a variety of commissions being established to make recommendations as the change-over progressed. Similar interim arrangements for a third language might be useful in a few cases in Canada to bridge the gap until the time when the official languages chosen are widely enough spoken not to handicap seriously any particular minority group.

### *B. Constitutional Guarantees*

In addition to the recognition of official federal languages most multicultural federations have included guarantees to linguistic minorities about the use of their languages and the establishment of schools in which these languages might be learned.<sup>16</sup> Many of these provisions were designed to protect intraprovincial minorities from the majorities within the provinces and, therefore, have already been described in Chapter IV, section D of this study. In the case of provincial majorities, detailed safeguards of this nature were considered less necessary, since most matters of linguistic significance, including control over primary and secondary education, were usually placed in the hands of the autonomous provincial governments.<sup>17</sup> The main guarantees required by provincial majorities, then, concerned freedom from discrimination in the opportunity to participate in federal affairs and the central public services.<sup>18</sup> In India, Malaysia and Nigeria the justiciable fundamental rights which guaranteed freedom from discrimination on racial, linguistic, religious or regional grounds applied equally to central and provincial governments. This was also true of the "Principles of Law-Making and of Policy" in the 1962 constitution of Pakistan. Similarly, the guarantees to specific linguistic or racial groups, or to certain backward classes, have usually applied equally to central and to provincial governments.<sup>19</sup> Thus, in these federations the position of cultural minorities has been protected by constitutional safeguards which, when breached, came under the jurisdiction of the courts.

Such guarantees of individual rights against racial, religious or regional discrimination, and of collective rights to linguistic and educational distinctiveness for specified linguistic and cultural minorities, have contributed to the allaying of minority fears in these multicultural federations. But ultimately the reconciliation of linguistic diversities in a cohesive federation has depended on the spirit of toleration and compromise shown by the majority groups. This has been perhaps the strongest factor in the relative success of such multicultural federations as Switzerland, India, Malaysia, and for a time Nigeria, and it was the decline or absence of such a spirit which lay at the root of the disintegration of the Central African and West Indian federations, and the resort to military rule in Pakistan and Nigeria. This suggests a serious warning to English-speaking Canadians who would insist upon the right of the majority always to have its way. Indeed, the essential point about a federal system is that federalism itself is a denial of simple majority-rule democracy and represents instead what might be called a balanced democracy in which the position of minorities is strengthened by balancing majorities in different levels of government against each other.



A federal system is best understood if it is related to the social forces which it attempts to express and channel. In analysing the experience of other multicultural federations to see what light their experience may throw on Canadian problems, this study has, therefore, viewed each federation as a single interdependent political system set in the context of the demands placed upon that system by its society and the responses of that system to these demands.

Especially relevant for Canada has been the experience of other multicultural federations in the Commonwealth. In these countries the federal solution was adopted specifically to meet the needs of multicultural societies and, like Canada, they have attempted to combine federal and parliamentary political institutions. While Switzerland has not followed the same parliamentary pattern, its experience is also significant because, unlike the United States and Australia, one of the strongest continuing motives for the federal character of the Swiss political system has been its multicultural society. As in Canada, so in India, Pakistan, Malaysia, Nigeria, Rhodesia and Nyasaland, and Switzerland, cultural regionalism based on linguistic, racial or religious distinctiveness has assumed the proportion of sub-nationalisms which have provided a major motive for the demands for provincial autonomy. In some of these federations linguistic regionalism and religious regionalism have reinforced each other but in others, most notably Switzerland, religious groupings have cut across linguistic communities thus weakening the force of linguistic regionalism. In most federations the strength of linguistic regionalism has also been affected by regional economic interests, variations in the size and wealth of the regional groups, clashes between the political radicalism and conservatism of different cultural groups, and differences in degrees of modernization. Any resolution of linguistic and cultural tensions has, therefore, required attention to these related factors. Ultimately the preservation of multicultural federal systems has rested not simply on reconciling the different cultural groups but also upon generating a common consensus to which the different linguistic and cultural groups were willing to commit themselves.

The character of the provincial units composing a federal system has affected the way in which federations have accommodated regional interests. Larger provinces have generally

been more assertive at the expense of the central government, and disparities in the size and wealth of provinces have tended especially to exacerbate interprovincial tensions. Federations composed of only two or three provinces have been particularly prone to instability. Zonal pyramids within a federal system have sometimes been proposed but have usually been rejected as too complex. Generally, federal systems have been most successful where the provincial units have reflected, or have been reorganized to reflect, as far as possible, the most fundamental regional interests within the society. In practice, however, the existence of some minorities within provincial units has been unavoidable, and therefore most federations have established a wide variety of devices to protect these minorities. These arrangements have included the guarantee of individual rights, the guarantee to specified cultural minorities of collective rights regarding language, education and the provincial public services, and special provisions regarding representation in the provincial legislatures. Frequently the central government has been assigned a special role as the guardian of intraprovincial minorities. Sometimes intergovernmental councils have been established to promote the interests of interprovincial minorities.

In the distribution of legislative and executive authority it has been found in most federations that a simple compromise between economic centralization and cultural provincialization is no longer a realistic possibility. The characteristic feature of the newer multicultural federations has been an interlocking responsibility of both levels of government over a wide range of functions including many economic matters. Federal financial relations have usually been a central issue in internal tensions because financial resources define the limits of what provincial governments may do for their own cultural groups. By comparison with Canada, the general trend in the newer multicultural federations has been towards more decentralized expenditure, justified on cultural and economic grounds, combined with more centralized control of taxing powers. Provincial autonomy has been maintained by substantial unconditional transfers. Usually the constitution has not only guaranteed such transfers but has provided for their adjustment at periodic intervals by intergovernmental councils or commissions. At the same time the equalization of provincial financial resources has invariably proved to be an essential element in minimizing grievances among regional cultural groups.

Where there have been contrasts in the strength of provincial pressures for autonomy within a federation, some countries have experimented with giving certain provinces more autonomy than others. Most of these experiments have, in practice, fostered rather than reduced tension. Consequently, in these federations there has usually followed either an attempt to reduce differences among provinces in their degree of autonomy, or the eventual secession of the more autonomous units. Thus, where certain provinces are given greater autonomy than others, experience indicates that special care is needed to ensure that the more autonomous provinces continue to feel an integral part of the federation.

Because of the interpenetration of the activities of central and provincial governments which has been necessary in order that provinces might have sufficient economic powers to preserve their cultural distinctiveness, most federations have found it desirable to establish a variety of intergovernmental institutions. For instance, there have usually been

finance commissions and councils to adjust the allocation of resources and to coordinate public borrowing, and there have been councils with representatives of both levels of government to coordinate general economic policies and development. Furthermore, in most federations there has been a variety of commissions, councils, boards, agencies and conferences, each concerned with specific areas of common interest to both levels of government. In some federations, councils and conferences have been established for general intergovernmental consultation and specifically to consider ways of fostering federal cohesion. This variety of intergovernmental institutions has in most federations placed an increasing emphasis on negotiations between governments within the federation. Nevertheless, independent tribunals, usually supreme courts, have been found to be essential in order to settle disputes between levels of government over their constitutional authority.

An essential feature of federal systems has been the creation of central institutions capable of generating a genuine consensus among the diverse cultural groups within the federation. Bicameral central legislatures in which senators have usually been appointed by the provincial governments have helped to bring regional cultural interests to bear upon central legislation, and a balanced representation of regional linguistic and cultural groups in the central cabinet has nearly always been found necessary. But ultimately, where there has been a parliamentary cabinet system, the most important factor for federal cohesion has been the ability of the political parties themselves to aggregate the diverse cultural groups. Another important factor in developing a sense of commitment to federal unity has been the organization of the central civil service in such a manner that a balanced regional representation is achieved. In many cases this has required special allowances for those cultural groups which, because of their educational systems, may be handicapped in the competition for public employment. Most federations have also striven for a federal capital city which could serve as a focal symbol of the federation, and would be a place where people from all the major linguistic and cultural groups would find the cultural atmosphere congenial rather than alien.

In most federations composed of diverse linguistic communities, controversy has arisen over whether there should be a single or two or more official languages. In those federations where the language of major regional groups has been denied recognition as a federal language, bitterness and tension has been the result. Consequently, in many federations two or even three official languages have been recognized for central and interprovincial purposes. In some federations, in addition to official languages, some other languages have been recognized as "languages of the federation." Besides the recognition of official languages, most multicultural federations have provided constitutional guarantees of justiciable individual rights against linguistic, racial, religious or regional discrimination, and also constitutional guarantees of collective rights to specified minorities. These have been directed as much at protecting intraprovincial minorities as at protecting provincial majorities and have, therefore, been applied to limit provincial as well as central governments. But while constitutional guarantees have helped to allay minority fears, the success of multicultural federations has ultimately been related directly to the extent to which the majorities within the federations have been willing to show a spirit of toleration and compromise.



Table A.1. Canada and provinces: Percentage distribution of the population by mother tongue

Province or territory	English	French	Other
Canada	58.5	28.1	13.4
Newfoundland	98.6	0.7	0.7
Prince Edward Island	91.4	7.6	1.0
Nova Scotia	92.3	5.4	2.3
New Brunswick	63.3	35.2	1.5
Quebec	13.3	81.2	5.5
Ontario	77.5	6.8	15.7
Manitoba	63.4	6.6	30.0
Saskatchewan	69.0	3.9	27.1
Alberta	72.2	3.2	24.6
British Columbia	80.9	1.6	17.5
Yukon	74.3	3.0	22.7
Northwest Territories	35.6	4.3	60.1

Source: Census of Canada, 1961, Catalogue 92-549, Vol. I, Part 2.

Table A.2. Switzerland and cantons: Percentage distribution of the population by mother tongue

Canton	German	French	Italian	Romanche	Other
Switzerland	74.1	20.6	4.0	1.1	0.2
Zurich	93.4	2.1	3.2	0.4	0.9
Berne	83.0	15.0	1.5	0.1	0.4
Lucerne	97.0	1.0	1.6	0.2	0.2
Uri	96.8	0.4	2.5	0.3	0.0
Schwyz	97.4	0.4	1.7	0.3	0.2
Obwalden	98.0	0.5	1.1	0.1	0.3
Nidwalden	97.6	0.6	1.5	0.2	0.1
Glarus	93.6	0.6	5.2	0.4	0.2
Zug	94.5	1.1	3.6	0.3	0.5
Fribourg	32.9	65.7	0.9	0.1	0.4
Solothurn	95.5	2.2	2.0	0.1	0.2
Basle	95.1	2.0	2.5	0.1	0.3
Basle (town)	92.0	4.3	2.7	0.2	0.8
Schaffhausen	96.1	0.9	2.6	0.2	0.2
Appenzell					
Outer Rhodes	97.5	0.4	1.5	0.2	0.4
Appenzell					
Inner Rhodes	99.1	0.1	0.6	0.1	0.1
St. Gallen	96.9	0.5	2.0	0.4	0.2
Grisons	56.2	0.7	13.2	29.2	0.7
Aargau	96.8	1.0	1.8	0.2	0.2
Thurgau	96.4	0.5	2.7	0.2	0.2
Ticino	9.1	1.4	88.8	0.2	0.5
Vaud	11.1	84.5	2.9	0.1	1.4
Valais	33.2	65.0	1.6	0.0	0.2
Neuchâtel	11.8	84.6	3.1	0.1	0.4
Geneva	13.6	77.6	5.3	0.1	3.4

Source: *Annuaire statistique de la Suisse*, 1953, 37.

Table A.3. India: Population by mother tongue

Language	No. people speaking '000,000	Percentage of total population	States of which principal languages	
			Single	Dual
Assamese	4.99	1.39	—	Assam
Bengali	25.12	7.03	W. Bengal	—
Gujarati	16.31	4.57	Gujarat	—
Hindi	149.94	42.01	Bihar,	Punjab
Urdu			Madhya Pradesh,	
			Uttar Pradesh	Jammu & Kashmir
			—	—
Hindustani	149.94	42.01	—	Punjab,
Punjabi			—	Rajasthan
Kannada	14.47	4.05	Mysore	—
Kashmiri	n/a*	n/a*	—	Jammu & Kashmir
Malayalam	13.38	3.69	Kerala	—
Marathi	17.05	7.57	Maharashtra	—
Oriya	13.15	3.68	Orissa	—
Tamil	26.55	7.4	Madras	—
Telegu	33.00	9.24	Andhra Pradesh	—
Other languages	32.91	9.22	—	—

Source: *Report of the Official Language Commission, 1956* (New Delhi, 1957), 27-8.

\* Figures do not include Jammu and Kashmir where no census was taken in 1951.

Table A.4. Pakistan: Percentage distribution of population by language

Province or territory	Bengali	Baluchi	Punjabi	Pushtu	Sindhi	Urdu	Other
Pakistan	56.0	1.5	29.0	4.9	5.9	7.3	2.4
East Pakistan	98.0	—	.02	—	.02	1.1	2.0
West Pakistan							
Baluchistan	—	27.0	14.0	47.0	9.2	13.0	4.9
Baluchistan States Union	—	56.0	.3	.5	32.0	1.7	1.4
Karachi	.5	9.2	9.5	3.7	17.0	68.0	11.9
N-W Frontier Province	.03	.01	42.0	75.0	0.1	5.6	1.4
N-W Frontier Regions	—	—	4.0	85.0	—	2.2	2.0
Punjab	.02	.03	96.0	.3	0.2	16.0	3.7
Bahawalpur	—	—	97.0	.3	0.5	13.0	3.0
Sind	.02	11.0	3.4	0.4	79.0	14.0	1.9
Khairpur	.01	3.6	4.4	0.2	92.0	5.0	.9

Source: Census of Pakistan, 1951 (Karachi), Table 7A. Under each language this table includes persons speaking a language as a mother tongue and as an additional language.



Table A.5. Malaya: Percentage distribution of population by race

States	Malay*	Chinese	Indian <sup>†</sup>	Other
Malaya	49.46	38.40	10.81	1.33
Former F.M.S.				
Perak	37.80	46.60	14.70	0.90
Selangor	26.35	51.03	20.43	2.19
Negri Sembilan	41.30	42.74	14.23	1.73
Pahang	54.27	38.90	5.89	0.94
Former U.M.S.				
Johore	43.84	48.06	7.46	0.64
Kedah	68.01	20.91	9.26	1.82
Kelantan	92.05	5.11	1.10	1.74
Trengganu	91.98	7.02	0.78	0.22
Perlis	78.29	16.72	2.39	2.60
Former Settlements				
Penang	30.54	55.42	12.81	1.26
Malacca	50.27	40.17	8.24	1.32

Source: Malaya, *A Report on the 1947 Census of Population*, 40-1.

\*Includes immigrants from Indonesia.

<sup>†</sup>Includes Indians, Pakistanis and Ceylonese.

Table A.6. Malaysia: Percentage distribution of population by race

State	Malay*	Chinese	Indian <sup>†</sup>	Other
Malaysia (excl. Singapore)	43.4	35.6	9.8	11.2
Malaysia (incl. Singapore)	38.5	42.1	9.7	9.7
Malaya	49.1	37.2	11.7	2.0
Sabah (N. Borneo)	5.7	23.1	0.7	70.5
Sarawak	17.9	30.8	0.3	51.0
Singapore	13.6	75.4	9.0	2.0

Sources: *1957 Population Census of the Federation of Malaya, Reports*, nos. 1 and 14 (Kuala Lumpur, n.d.); *Colony of North Borneo, Report on the Census of Population, 1960* (Kuching, 1962); *Colony of Sarawak, Report on the Census of Population, 1960* (Kuching, 1962); *1957 Census of Population, Singapore, Preliminary Release*, no. 7 (Singapore, 1959).

\*Includes immigrants from Indonesia.

<sup>†</sup>Includes Indians, Pakistanis and Ceylonese.

Table A.7. Nigeria: Percentage of population by principal ethnic groups

Region or territory	Hausa-Fulani	Ibo	Yoruba	Edo	Other
Nigeria	28.1	17.9	16.6	1.5	35.9
Eastern Region	0.2	68.2	0.2	0.1	31.3
Mid-Western Region	0.3	17.7	0.3	28.1	53.6
Northern Region	50.6	1.0	3.2	0.1	45.1
Western Region	1.0	1.8	94.7	0.5	2.0
Lagos	1.5	11.9	73.4	2.1	11.1

Sources: *Population Census of the Eastern Region of Nigeria, 1953, Bulletin*, no. 1 (Lagos, 1954), 18-19; *Population Census of the Northern Region of Nigeria, 1952* (Lagos, 1952-3); *Population Census of the Western Region of Nigeria, 1952* (Lagos, 1953-4).

Table A.8. Rhodesia and Nyasaland: Percentage distribution of population by race

Territory	Population (1959)			Electorate (1959)		
	African	European	Other	African	European	Other
Federation	95.8	3.7	0.5	7.4	88.4	4.2
N. Rhodesia	96.5	3.1	0.4	19.3	73.6	7.1
Nyasaland	99.2	0.3	0.5	1.2	80.1	18.7
S. Rhodesia	92.0	7.5	0.5	3.2	94.3	2.5

Source: Cmd. 1149/1960, Advisory Commission on the Review of the Constitution of the Federation of Rhodesia and Nyasaland, *Report* (London, 1960), App. VI, 11, 326-8.

The distribution of legislative authority expressly mentioned in the constitutions or necessarily implied from them is indicated in Table B.1 by the letters F (Federal), C (Concurrent) and R (Regional). If a subject is not mentioned in the constitution, either because the power to legislate for it is intentionally assigned to the authority exercising residuary power or because it is not applicable in that federation, the space in the table has been left blank; the assignment of the residuary power is, however, shown in the first line of the table. Where a federal power is more restricted than would be implied by the letter F alone, it is shown as FR to indicate that some aspects of the power are regional, or that regional consent is required for the exercise of federal authority in that field. Fr indicates federal powers which can only be exercised after consulting regional governments but do not require their consent. The content and allocation of some subjects, particularly external affairs, defence, law and procedure, machinery of government, parliamentary privilege and emoluments, taxes and loans, and trade are often more complex than might appear from the table, and reference must be made to the constitutions themselves for details.

It should be noted that in some federations, the distribution of legislative authority does not apply equally to all autonomous regional governments. In India, some items on the Union list and the whole of the concurrent list do not apply to the state of Jammu and Kashmir, but no notation of these items has been made in the table. For Rhodesia and Nyasaland, F\* signifies federal in Southern Rhodesia only, and C\* represents concurrent in Northern Rhodesia only (after 1956). Under the Malaysia constitution (1963), certain exceptions applied solely to the new states of Sabah, Sarawak or Singapore. Items marked F+ or C+ are those which, in some of these Malaysian states, came wholly or partially under state control or required state consent for the exercise of federal authority. Items marked F<sup>x</sup> became wholly or partially concurrent in the case of some of these same states.

Source for this table is R. L. Watts, *New Federations: Experiments in the Commonwealth* (Oxford, 1966), 363-6. The table is reproduced by permission of the Clarendon Press, Oxford.

Table B.1. Distribution of legislative authority between central and regional legislatures in various federations

	Canada	Australia	India	Pakistan 1958	Pakistan 1962	Malaysia	Nigeria	Rhodesia & Nyasaland	West Indies
Residuary power	F	R	F	R	R	R	R	R	R
Whether regional powers are listed	Yes	No	Yes	Yes	No	Yes	No	No	No
External affairs		C	F	F	F	F	F	F	FC
Treaty implementation	FR	C	F	F	F	Fr	FR	FR	FC
Citizenship and aliens	F	C	F	F	F	F+	F	FC	C
Immigration: into federation	C	C	F	F	F	F+	F	FC	F
Immigration: into federations between regions			F	C		C+	C	C	C
Defence	F	FC	F	F	F	F	F	F	F
Police		C	R	R	R	F	FrR	FCR	
Public order			R	R	F	C			
Prisons	FR		R	R	F	F	C	C	C
Preventive detention			C	FR	FR	F			
Law and procedure									
Civil	FR	C	C	C		FR	CR	CR	C
Personal	FR	C	C	C		Fr+R	FR		CR
Criminal	F		C	C		F			C
Constitution and organization of courts	R		FR	FCR	FR	F+	FR	FCR	FR
Machinery of government									
Public services and pensions	FR	FR	FR	FR	FR	F+R	FR	FR	FR
Elections: Federal			F	Fr	F	F	F	F	FR
Regional			FR	Fr	F	Fr			
Finance									
Foreign exchange			F	F	F	F	F	F	F
Currency and coinage	F	FC	F	F	F	F	F	F	C
Foreign loans	FR	C	F	FR	FC	F	FR	FR	FC

Table B. 1. (cont'd)

	Canada	Australia	India	Pakistan 1958	Pakistan 1962	Malaysia	Nigeria	Rhodesia & Nyasaland	West Indies
Internal loans	FR	C	FR	FR	FR	Fx	FR	FR	FC
Public debt	F		FR	F	FR	F	F		
Audit			F		F	F	FR	FR	FC
Taxes:									
Customs	F	F	F	F	F	F+	F	FR	CR
Excise	F	F	FR	FR	F	F+	F	FR	CR
Corporation	FR	C	F	F	F	F	F	FR	C
Personal income	FR	C	FR	FR	FR	F	FR	FR	CF
Sales	FR	C	FR	FR	F	F+	FR	FR	
Other taxes	FR	C	FCR	FR	FR	F+R	FR	FR	RC
Banking	F	CR	F	FC	FR	Fx	F	FC	C
Cheques and bills of exchange	F	C	F	F	F	F	F	F	C
Stock exchanges			F	FC	FR	F			
Money lending			R	R	FR	Fx			
Trade, commerce and industry									
External trade	F	C	F	F	F	Fx	FR	F	C
Interregional trade	F	C	F	F	F	Fx	FR	C	C
Intraregional trade	R		RC	R					
Corporations and companies	FR	CR	FR	FCR	FR	F+	FR	FR	C
Insurance			F	FC	FR	Fx	FR	FR	C
Patents, trade marks, copyright	F	C	F	F	F	F	F	F	C
Weights and measures	F	C	FR	FR	F	F	F	F	C
Industries			FCR	FR	FR	Fx	C	C	C
Mines and oilfields			FR	FCR	FR	F	F		
Factories			C	R		F+			
Price control			C	C		Fx		F	
Cooperative societies			R	R		F		CR	

Table B. 1. (cont'd)

	Canada	Australia	India	Pakistan 1958	Pakistan 1962	Malaysia	Nigeria	Rhodesia & Nyasaland	West Indies
Planning			C	C	F	F+r C		C	
Economic and social Town and country									
Shipping and navigation									
Maritime	F		F	FR	FR	F <sup>x</sup>	F	F	C
Inland waterways	FR		FRC	R		F <sup>x</sup> R	FR	F	
Ports			FC	FR	FR	F+r <sup>x</sup>	FR	F	
Fishing	F	CR	FR	FR	FR	F <sup>x</sup> R			CR
Communications and transport									
Roads and bridges			FR	R		FR	FR	FC	
Railways	FR	C	F	FR	R	F+	F	F	
Air			F	F	F	F	F	F	C
Regulation of traffic						F+r <sup>x</sup>	CR	C	
Carriage of passengers and goods			F			F <sup>x</sup>			
Mechanical vehicles			C	R		F			
Posts and telecommunications	FR	FC	F	Fr	F	F	F	F	C
Broadcasting and television			F	F	F	F	FR	C	C
Utilities									
Water			FR	R		F <sup>x</sup> R	FC	FR	
Electricity			C	R		F <sup>x</sup> +	CR	C	
Gas			R	R	F	F+	CR		
Nuclear energy			F		F		F	F	C
Education									
Elementary and secondary	R		R	R		F+		FR	
University	R		FR	R		F+	FC	F	F
Teacher training	R		R	R		F+			

Table B.1. (cont'd)

	Canada	Australia	India	Pakistan 1958	Pakistan 1962	Malaysia	Nigeria	Rhodesia & Nyasaland	West Indies
Libraries			FR	FR	FR	F+			FR
Museums			FR	FR	FR	F+	F		FR
Archaeology and monuments			FCR	CR	FR	F+	C	FR	
Scholarships	R	C	R	R		C+			C
Medicine and health									
Hospitals and clinics	R		R	R		F+x		C	
Lunacy	R		C	R		F+x			
Poisons and drugs			FC	CR		F+x	CR		
Liquor			R	R		F			
Public health and sanitation			R	R		C		C	
Labour and social services									
Trade unions			C	C		F+	C		C
Industrial disputes		CR	C	C		F+	C		C
Unemployment relief	F		R	R		F+			
Workmen's compensation			C	C		F+		F	
Social security		C	C	C		F+			
Social welfare services		C	C	C		C			
Charities			C	R		Fx		C	
Women and children						C			
Vagrancy			C	R		C			
Land						C			
Tenure	R		R	R		CR			
Prospecting			FR	R		R			
Compulsory acquisition		C	C	R		R			C
Transfer	R		CR	R		R			
Reservations	F		F	F	F	RF			



Table B. 1. (cont'd)

	Canada	Australia	India	Pakistan 1958	Pakistan 1962	Malaysia	Nigeria	Rhodesia & Nyasaland	West Indies
Agriculture	C		RC	R		R		F*C*R	
Forestry			R	R		R			
Agricultural pests and diseases			RC	R		F <sup>x</sup>		F*C*R	
Agricultural loans			R	R		R		F*C*R	
Animal husbandry			R	R		C		FR	
Drainage and irrigation			FR	R		C		F*C*R	
Soil erosion						C			
Local government	R		R	R		F+R			
Fire brigades						R			
Burial and cremation grounds			R	R		R			
Pounds and cattle trespass			R	R		R		F*C*R	
Markets and fairs			R	R		R			
Miscellaneous									
Survey			F	F	F	F+	C	C	C
Census	F	C	F	F	F	F	C	C	C
Statistics	F	C	C	FRC	FR	F	C	C	C
Meteorology		C	F	F	F	F	F	F	
Aborigines	F		FR	FR	FR	F+	C	FR	
Professions			C	R		F <sup>x</sup>			
Holidays						FR		C	
Newspapers and printing			C	C		F <sup>x</sup>			
Licensing of films			F	R					
Entertainment and sports			R	R		F <sup>x</sup> R	C	FR	
Wild animals and national parks			R	R		C			
Lotteries			F	R		F			
Betting and gambling			R	R		F	C		
Research			FCR	FCR	FR	F <sup>x</sup>	C	C	F

Table C.1. Comparison of central and provincial current revenues and expenditures

Federation	Year	Percentages of total public revenues*			Provincial expenditure as % of central plus provincial expenditures
		Central revenue (before transfers)	Provincial revenue (before transfers)	Intergov't transfers	
Malaya	1959	89	11	7	17
U.S.A.	1959-60	79	21	5	26
Australia	1960-61	80	20	17	37
Canada	1960-61	75	25	12	37
Canada	1962-63	68	32	12	41
R. & N.	1958-59	70	30	14	43
Pakistan	1962-63	69	31	19	49
Nigeria	1959-60	84	16	37	54
India	1960-61	60	40	20	58
W. Indies	1959-60	1	99	2+	97

\*Combined central and provincial revenues, excluding municipal revenues.

+Mandatory levy on territories for transfer to federal government.

Sources: See under Table C.2.

Table C.2. Comparison of composition of provincial current revenues

Federation	Year	Percentages of total provincial revenues				
		Independent revenue	Share of central taxes	Unconditional grants	Conditional grants	Total transfers
Canada	1960-61	67	16	2	15	33
Canada	1962-63	73	5	2	20	27
Australia	1963-64	61	—	36	3*	39*
India	1960-61	65	19	5	11	35
Pakistan	1962-63	51	34	1	14	49
Malaya	1960	59	2	34	5	41
Nigeria	1959-60	28	72	—	0.2	72
R. & N.	1959-60	65	28	—	7+	35
W. Indies	1959-60	98	—	—	2	2

\*Excludes specific purpose capital grants equivalent to 10% of state current revenues.

+Reimbursement for intergovernmental services.

Sources for Tables C.1 and C.2: Canada, Dominion Bureau of Statistics, *Historical Survey: Financial Statistics of Governments in Canada, 1952-62*, Catalogue No. 68-503 (Ottawa, 1960), Tables 1, 2 and 17; Annual Budget Statements, Finance Commission Reports, Statistical Abstracts and Year books for other federations. For more detailed tables on material in Tables C.1 and C.2 see R. L. Watts, *New Federations: Experiments in the Commonwealth* (Oxford, 1966), 367-75.

*I. The Union of India*

When the confusion and disunity of eighteenth century India provided the opportunity for conquest by the British, the continent was divided from the outset into two groups of areas under different forms of government: British India comprising a number of provinces under direct British administration, and the Indian states which, by treaty or usage, were broadly speaking autonomous regarding their internal affairs but which accepted the suzerainty of the Crown and its control of their external relations.<sup>1</sup>

The part of India under direct rule was divided by the East India Company into three presidencies, Calcutta, Madras and Bombay, each being until 1833 virtually autonomous. In 1833, however, the Governor-General and Council of Bengal were made the supreme authority in India, being vested with complete control in all matters legislative, administrative and financial, and the system remained unchanged when, in 1858, the administration of British India passed from the East India Company to the Crown. The concentration of authority at the centre continued to be a cardinal feature of British India until 1919. The Indian Councils Act, 1861, however, restored some legislative power to the Councils in the presidencies, and the subsequent history of British India was one of the gradual devolution of power to the provinces, as administrators realized the danger of losing contact with their Indian subjects.<sup>2</sup> Under the Government of India Act, 1919, although provincial autonomy was still limited, provincial governments were freed to a large extent from central control, thus laying the foundations for future federation.

Meanwhile in the Indian states, the parts of India controlled through indirect rule, the loyalty of the princes generally during the mutiny had demonstrated their value, and subsequent British policy aimed at the preservation of these princely states except in cases of flagrant misgovernment. The states were kept outside the scope of parliamentary legislation applying to the British Indian provinces, and relations with the states were carried on through a special Political Department directly responsible to the governor-general. The 562 princely states, varying in size from Hyderabad with an area of 82,313

square miles to some 202 states of less than 10 square miles, together composed two-fifths of the area and a quarter of the population of continental India. They did not form a block of contiguous territory but were scattered over every portion of the map of India, and about the only factor common to all these heterogeneous units was their relationship to the British Crown, the paramountcy relationship of the Crown resting both on treaties and on usage and sufferance.

The Government of India Act, 1935, the product of an elaborate and complex process of preparation, "finally broke up the unitary system under which British India had hitherto been administered . . . [and] committed India to a federal form of government."<sup>3</sup> A federal structure was seen at this time as the solution to a number of problems facing India. First, the independence of British India and the Indian states in terms of communications and economics made desirable some political unity, but this required yoking together in one structure the princes, with their autocratic regimes and jealous of their sovereignty, and the Congress, entrenching itself in the British provinces and hostile to the princes as undemocratic and anti-national. Federation suggested a way of bringing together the two Indias in a common constitutional system, thus providing a meeting point for the two earlier British policies. Second, since the increasing communal antagonism evident after 1919 was attributed to the Congress emphasis on monolithic unity and centralization and to Muslim fears of Hindu predominance, a federal structure suggested a means of accommodating Muslim anxieties within a united India. Third, the defects and complexities of dyarchy experienced in the provincial governments pointed to the desirability of full responsible government in the provinces, and this required provincial autonomy. Finally, British distrust of the Congress, which had become quasi-revolutionary in character, made attractive the prospect of a central legislature in which the nominated representatives of the princes would provide a counterbalancing conservative bloc.

The Government of India Act, 1935, in many respects set the major outlines of the federal system adopted after independence. The 1935 Act provided for an all-India federation consisting of eleven Governor's provinces and of such states as acceded to the federation by individual instruments of accession.<sup>4</sup> While the division of legislative, administrative and financial powers between the central and provincial governments was spelled out in precise detail in the Act, the powers of the federating states were left to be determined by the instruments of accession. The division of legislative powers between the central and provincial governments was laid out in three exhaustive lists of federal, provincial and concurrent powers; residual powers were to be assigned by the governor-general acting at his discretion; the financial provisions drew a distinction between powers of taxation and sources of revenue, the tax jurisdiction of the central government being wider than the revenues it might keep; the power of amendment was reserved to the British Parliament, but flexibility was intended in the right given to the provinces to delegate their powers to the central government and in the emergency powers assigned to the central government; a Federal Court was established, although appeals to the Judicial Committee of the Privy Council were left possible; a bicameral central legislature was provided for, and the central executive was to be based on the principle of dyarchy, giving the governor-general considerable authority. The provinces

were invested "for the first time with a separate legal personality" and moved forward from dyarchy to almost completely responsible government. Some safeguards, bitterly attacked by the Indian nationalists, were placed, however, in the hands of the governors, and the scope of provincial autonomy was also limited by some constitutional provisions concerning legislative, administrative and financial relations between the central and provincial governments, and by those concerning emergencies. Thus Coupland described it as "a federation with, so to speak, a unitary bias: it is more akin to the Canadian federation than to that of Australia or the United States."<sup>5</sup>

In spite of lengthy negotiations right up to 1939, the princes, deterred by the undisguised hostility and large-scale agitation of the Congress in the states after 1937, proved reluctant to give up their sovereignty. As late as 1939, the required number of states had not acceded and, as a result, the part of the Act dealing with the central government never came into force. The sections dealing with provincial government, however, went into effect in 1937 following provincial elections in the winter, six provinces having Congress ministries, four non-Congress ministries, and one a coalition. The Niemeyer Award, providing for unconditional grants to the provinces, removed fears of central interference.<sup>6</sup> In practice, provincial autonomy appeared to be a success, resort to the safeguards being rarely necessary until 1939.<sup>7</sup>

The pattern of provincial responsible government suffered a setback in November 1939 when all the Congress provincial ministries resigned at the request of the Congress central executive over India's participation in the war. As a result, in these provinces the governors were forced to assume comprehensive powers, in most cases for the duration of the war. Under the improved immediate postwar conditions, however, it proved possible to hold fresh elections and by 1946, constitutional government with popular ministries had been restored in all the provinces.

Indian politics after 1937 were characterized by an intensification in communal antagonism and strife and by the solidification of Muslim support for the Muslim League. When the Congress in 1937, seeing its electoral victory as an opportunity to strengthen its position as the sole and exclusive embodiment of Indian nationalism, refused cooperation with the Muslim League, Jinnah and the League became convinced that the only alternative to Hindu domination was for the Muslims to separate themselves and form a state of their own. The League abandoned its policy of trying to cooperate with the Congress and in the famous Lahore Resolution of 1940 took up the demand for partition and the creation of a separate Muslim state. Confronted with the prospect that they would be a permanent minority in a Hindu raj, Muslims in large numbers swarmed to support the Muslim League with a new solidarity. As a result, in the 1946 elections fought on the issue of Pakistan, the League captured every seat reserved for the Muslims.<sup>8</sup>

During the period 1942-7, there were numerous efforts to resolve the political deadlock, and because of its direct bearing on the solution of the communal problem, central-provincial relations became a focal issue. The Muslims, strong in certain provinces, feared the overwhelming Hindu majority in the central government and therefore demanded that the central government should be limited in scope and power. The Congress, genuinely believing in the unity of India, and conscious of its own strength, pressed for a strong central government. Various schemes were advanced to reconcile

these points of view but failed to receive general agreement. The Draft Declaration advanced by the Cripps Mission in 1942 proposed a postwar constituent assembly of provincial representatives to create a union constitution but included the right of any province to secede. The following year, the unofficial *Report on the Constitutional Problem in India* by Reginald Coupland suggested a three-tier federation in which the largely autonomous provinces would be grouped into four economic regions based on the main river basins, two regions being predominantly Hindu and two predominantly Muslim, the four regions being brought together by an "Agency Centre," described as "something between a federation and a confederation."<sup>9</sup> The Rajagopalachari formula of 1944 accepted the principle of a Pakistan, subject to a plebiscite of all the inhabitants of the Muslim-majority areas, but in discussions on it Gandhi and Jinnah failed to come to agreement on several issues. In 1945 a Conciliation Committee under Sir Tej Bahadur Sapru proposed a weak central government with the minimum necessary powers but with no right of secession. Even the Viceroy's attempt at the Simla Conference of 1945 to reconstitute the Viceroy's Executive Council with Indian members failed due to Congress and League disagreement over the right of nominating Muslim members. The Cabinet Mission Plan of 1946 rejected partition as impracticable and proposed a three-tier federation. The central government's powers were to be limited to foreign affairs, defence, communications and the finances necessary for these; the provinces were to be free to form groups, each group being free to determine the range of its powers and to frame the constitutions of its provinces.<sup>10</sup> The Congress accepted the plan, but by interpreting it in a way repudiated by its authors destroyed the basis of compromise. As a result the Muslim League, although it joined the interim government, rejected the long-term proposals and refused to attend the Constituent Assembly.

In the spring of 1947, Lord Mountbatten, the new viceroy, decided, as a result of negotiations, that partition was unavoidable and that the transfer of power should be concluded as rapidly as possible to prevent a further deterioration in the communal hostility. The statement of June 3 proposed that the decision to partition the country and the provinces should be made by the people themselves through the legislatures or by referendum. By the end of July the legislatures of Bengal, Punjab and Sind, a meeting of the tribal representatives in Baluchistan, and the voters in referenda in Sylhet and the North-West Frontier Province had decided upon partition. The Indian Independence Act, 1947, then provided for the establishment of two independent dominions on August 15, 1947.<sup>11</sup>

The Indian Independence Act, 1947, assigned to the Constituent Assemblies of India and Pakistan sovereign constitution-making authority unfettered by limitations of any kind, and at the same time provided that the Government of India Act, 1935, should serve in the meantime as an interim constitution in each of the two dominions, the Constituent Assemblies acting as the central legislatures.

Thus the federal scheme of the 1935 Act provided the basic framework for the constitution of India until 1950 when the Constituent Assembly had completed its work. The federal features of the 1935 Act were virtually unchanged, the only major modifications being the removal of the special powers and responsibilities of the governor-general and the governors, thus converting them into purely constitutional heads of their respective governments.<sup>12</sup>

The deliberations of the Indian Constituent Assembly lasted from December 1946 to December 1949.<sup>13</sup> At its early sessions, when there was still some possibility of Muslim cooperation, the Assembly favoured assigning considerable power, including residuary power, to the autonomous units.<sup>14</sup> After the decision to partition the country, the Union Powers Committee presented a revised report which, although it rejected a unitary constitution as "a retrograde step," concluded, in view of the threat of insecurity and disintegration, that "the soundest framework for our constitution is a federation with a strong centre."<sup>15</sup> It went on to suggest a scheme clearly modelled on the Government of India Act of 1935. After the Assembly had considered the general outlines of the future federal structure, as recommended by the Union Powers, Union Constitution and Provincial Constitution Committees, a Drafting Committee chaired by Dr. B. K. Ambedkar prepared a draft constitution which was the subject of extensive discussion in the country and in the Assembly. Although the debates in the Assembly were characterized by considerable differences among delegates over the division of powers between the central and state governments, the well-organized leadership of the Congress party defeated the major efforts to amend the draft and it was adopted substantially intact, becoming operative January 26, 1950.

A major task which faced the new Dominion of India in 1947 was the integration of the Indian states which had hitherto been ruled by Britain only indirectly.<sup>16</sup> The Indian Independence Act terminated the paramountcy of the Crown over the states and left them legally independent of both India and Pakistan. But since, without the cooperation of the states scattered among the Indian provinces, India could not achieve political stability or full economic development, there was a pressing need to bring the states into an organic unity with the new dominion. A States Department under Sardar Patel was formed, and between 1947 and 1950 he transformed the map of India.

The first need was to fill the void caused by the lapse of British paramountcy over the states, and therefore the rulers were urged to sign instruments of accession transferring to the Government of India control over defence, external affairs and communications, but otherwise leaving the states autonomous. As a result of a combination of persuasion, cajolery, bribery and the lack of sufficient military power on the part of the princes to enforce their claim to independence, the accession of all but Junagadh, Hyderabad, Kashmir and those acceding to Pakistan was achieved prior to the formal transfer of power on August 15, 1947.

During the next three years, the integration of the states into viable units, the democratization and modernization of their administrations, and their subordination to the central government constitutionally and financially were carried out simultaneously. The creation of viable units comparable with the provinces in size and resources was achieved (1) by merging 216 of the smaller states with adjacent provinces of former British India, (2) by consolidating 61 states into seven centrally administered areas, and (3) by integrating 275 states into five States Unions which, with the only three states to retain their original form, Mysore, Hyderabad and Kashmir, became the eight "Part B" states under the 1950 constitution. Democratization took the form of a transfer of power to the people of the states wherever possible and the pensioning off of the rulers. In the process of consolidating states into the new States Unions, new instruments of accession were negotiated extending the jurisdiction of the central government to all subjects on the



federal and concurrent lists of the Government of India Act, 1935, and financial agreements based on the recommendations of the States Finances Enquiry Committee completed the task of making the states and provinces equal in their rights and obligations.

Special difficulties arose in the integration of Junagadh and Hyderabad, but as a result of the intervention of the Indian Army, the former was eventually merged in the Saurashtra States Union and the latter acceded to the Indian Union and adopted its constitution as a state of India. The accession to India of the Hindu Maharaja of Kashmir with a predominantly Muslim population was followed by a military struggle with Pakistan which ended with the ceasefire of January, 1949. As a result, although Kashmir was listed in the 1950 constitution as a Part B state, it retained a special limited relation to central authority.<sup>17</sup> In 1954 the Constituent Assembly of Kashmir declared that the accession of the state to the Indian Union was final and irrevocable and the state constitution adopted late in 1956 stated that "the State of Jammu and Kashmir is and shall be an integral part of India," thus taking one stage further the integration of the state into the Union.<sup>18</sup>

The Indian constitution of 1950 consisting of 395 articles and eight schedules is probably the longest constitutional document in the world. The great variety of regional and social differences, the relative inexperience in self-government, and the need to provide for emergencies, induced the framers of the constitution to make it explicit on matters of detail. The federal features of the new constitution follow closely, indeed might be described as an adaptation of those of the Government of India Act of 1935.

The Indian Union exhibits the usual major features of a federation—a dual polity, a distribution of powers between the national and state governments, a written constitution and a supreme court. The salient federal features of the constitution are as follows:

- 1) The existence, until their reorganization in 1956, of four categories of states and territories, each group with a different status and relationship to the central government;
- 2) The enumeration of Union, state and concurrent powers in three exhaustive lists, with the resulting limited residuary power vested in the central government;
- 3) A detailed definition of legislative, administrative and financial relations between the national and state governments, with an emphasis on the interrelation of the two levels of government and provisions for flexibility and adaptability;
- 4) The assignment of different degrees of rigidity to different parts of the constitution, most parts requiring a special majority vote in the central parliament and some of the federal features requiring the ratification of the Parts A and B states;
- 5) The assignment to the Supreme Court of the role of interpreter of the constitution;
- 6) The creation of a bicameral central legislature but without equal representation for the states in the indirectly elected second chamber;
- 7) The establishment of responsible parliamentary executives in the central and state governments;
- 8) The inclusion of a list of fundamental rights and a set of directive principles.

The framers of the constitution were particularly concerned about the strength of the disintegrating and disruptive tendencies and therefore aimed at a strong central

government. As a result, wide powers were given to the central government in the extensive federal and concurrent lists, in the implementation of treaties, in certain controls over administration in the states, in the levying of taxes, in controls over public borrowing and in the power to create new states or alter state boundaries.<sup>19</sup> In addition, the Supreme Court and state High Courts were integrated into a single judiciary, a common all-India civil service for important posts in both Union and State governments was created, and a singular uniform citizenship for the whole of India was stipulated. The name itself, "the Indian Union", was deliberately chosen to emphasize the "indestructible" character of the new republic.<sup>20</sup> In emergencies, even more sweeping powers were given to the central government to exercise overriding legislative and executive authority. Indeed, the scheme was designed to work as a federal system in normal times but to be convertible to a unitary system in cases of war or other emergencies.<sup>21</sup>

In the post-independence period, the most serious centrifugal tendency has been the popular demand for the reorganization of states on a linguistic basis.<sup>22</sup> The movement for linguistic states existed long before independence, but was obscured by the strength of Hindu-Muslim communal antagonism. It arose from the fact that the provincial boundaries in British India were mainly the result of historical accident and administrative convenience, bearing little correspondence to the distribution of the major linguistic groups. As early as 1920, the Congress had accepted the linguistic redistribution of provinces as a clear objective and had adopted the principle for the purposes of its own organization. With the new responsibilities after independence, the Congress leadership, fearing that linguistic divisions might have a disintegrating effect on the fragile Union, steadily resisted the application of the linguistic principle. In this they were supported by the Dar Commission Report, 1948, and the J.V.P. Committee Report, 1949, which emphasized the initial priority of unity and economic development.<sup>23</sup> As a result, the state boundaries recognized in the constitution of 1950 were based on those inherited from the British administration and on the results of the hasty integration of the princes' states for purposes of administrative convenience.

But in spite of the decisions of the Constituent Assembly, the movement for linguistic states gained ground after 1950. With the completion of the integration of the princes' states and the decline of Hindu-Muslim tension due to partition, attention internally became focused upon linguistic tensions within the multilingual states and, due to the choice of Hindi as the national language, upon the fears of the non-Hindi south of northern domination. In the 1952 elections, the skilful exploitation by the Communists of the Telegu demand for an Andhra state and the fast unto death of Shri Potti Sriramulu over the issue, led Nehru to surrender and agree in 1952 to the formation of a linguistic Andhra state. This led inevitably to the demand for a wider consideration of a general reorganization of state boundaries, and a commission to examine the question was appointed in 1953. The States Reorganization Commission reporting in 1955 recommended a redrawing of state boundaries along lines more or less in keeping with many of the linguistically based demands, although other considerations were also taken into account.<sup>24</sup> Negotiations between the central government, state governments and communities concerned led to modifications to the commission's proposals, and the modified plan following linguistic boundaries even closer was enacted in 1956.<sup>25</sup> As a

result there was a substantial simplification and reduction in the number of constituent units in the federation, the existing 29 states and territories in four categories becoming 14 states of equal status and five centrally administered territories.<sup>26</sup> The desire of the Congress leaders to counteract the centrifugal forces inherent in the movement for linguistic states, led them to establish at the same time five interstate zonal councils, the zones representing economic regions. The councils, composed of ministers and other representatives from the groups of contiguous states, meeting under the chairmanship of the central government Home Minister, are advisory in function and mainly concerned with securing better economic coordination within each zone.<sup>27</sup> The councils have also considered such regional problems as border disputes, official state and national languages, food distribution and police reserves. Indeed, the Southern Zonal Council, the most effective of the five councils, has achieved some notable successes in handling the educational problems of linguistic minorities.

The reorganization of 1956 left as multilingual states Bombay, Punjab and Assam, and in each of these the issue of linguistic provincialism remained alive. Subsequently, under continued pressure, the experiment of a bilingual state in Bombay was abandoned in 1960, when it was divided into the two basically unilingual states of Gujarat and Maharashtra, the creation of a separate Naga state was set in motion in 1962, and in 1966 the Congress leadership conceded the principle of the partition of Punjab state.

The reorganization of states did not exhaust the importance of language as a political issue in India. The reorganization of states provided political bases for the major regional languages, but the question of the choice of an all-India language was also a source of controversy. The constitution in 1950 distinguished between fourteen specified "languages of India" and the "official language" for all-India purposes. The choice of the latter provoked one of the most bitter debates in the Constituent Assembly. The choice was between Hindi, the language spoken by the largest number of Indians (42 per cent) but not by a majority,<sup>28</sup> and English, spoken in all parts of India but only by the educated elite representing slightly over one per cent of the total population. The opposition to Hindi came most strongly from the non-Hindi areas and particularly the Dravidian language groups of South India who felt they would be placed at a disadvantage. On the other hand, to select English was to place a barrier between the educated elite and the masses and furthermore to retain a vestige of colonialism. The compromise arrived at in the Constituent Assembly and embodied in the constitution was the choice of Hindi as the official language for all-India purposes together with the continued use of English over a transitional period of 15 years. When the Official Language Commission of 1956<sup>29</sup> (provided for in the constitution) reported in favour of proceeding with the replacement of English by Hindi, the issue once more became a centre of fierce controversy as the long-smouldering fears of the non-Hindi speakers burst forth. In 1958, as required by the constitution, a special committee of Parliament reviewed the commission's report and endorsed the commission's views but expressed concern over too hurried a switch to Hindi.<sup>30</sup> The threat at the Congress Party annual session in 1958 of a split within the party led finally to a compromise solution whereby, in order to satisfy the Hindi enthusiasts, Hindi would still "formally" become the official language in 1965, but, in order to placate the non-Hindi areas, English would remain for

an indefinite period as an associate official language. Nevertheless, the issue remained very much alive. Although a Presidential Order in 1960 made official the retreat from strict switchover in 1965, the counter-persuasions of the Hindi advocates and the pressure of the Chinese war induced the Union Government to postpone the legal enactment of the associate status of English. When at last in April 1963, the Official Language Bill was introduced, the Indian Parliament witnessed some of the rowdiest scenes in its history. Following a lengthy debate and amendments stipulating that the state governments should be consulted when the issue is reviewed in 1975, the bill was finally passed establishing two official languages as a practical fact in India.

The operation of the Indian federal system since 1950 has shown the simultaneous development of strong centralizing and decentralizing tendencies. On the one hand, the authority of the central government has been strengthened by the dedication to economic and social planning, the predominance of the Congress party under Nehru's leadership, the willingness to invoke central emergency powers and the military threats of China and Pakistan. On the other hand, the central government has been dependent upon the states for a large part of its administration, and regional linguistic feeling has been strong enough to force a nation-wide reorganization of state boundaries and a postponement of the imposition of a single common official language. Furthermore, since Nehru's death there has been a notable shift in the balance of power within the Congress party itself, apparent in the growing influence of state leaders in the making of major decisions. The 1967 elections indicated a significant weakening in the previous dominance of the Congress party in the formation of state governments. The effect of the two conflicting and highly dynamic forces of integration and regionalism has been to intensify the federal aspects of the Indian constitution during the first two decades of its operation.

## *II. The Republic of Pakistan*

It was the events of 1937-47, revealing to the Muslims that the end of British rule could not be long delayed and that it might be followed by a Hindu raj able to claim the sanction of an electoral majority, that turned the Indian Muslims to a separate Pakistan as a practical objective. The Muslim League had already been in existence since 1906, and the idea of a separate Muslim state had been suggested by Muhammad Iqbal in 1930, but it was not until 1940 at its Lahore meeting that the League adopted the Pakistan Resolution, declaring officially for the first time the goal of a separate Muslim state. The League converted itself into an agency with mass influence and the subsequent history of the movement has been described as "... one of increasing momentum toward a single, fixed goal. Unity was made easier to preserve, since fear spurred from behind and a glorious vision beckoned from ahead. No other loyalty to person or principle was to be allowed to stand in the way of Pakistan."<sup>31</sup> When in the postwar elections the League carried almost all the provincial Muslim seats except the North-West Frontier Province and took every Muslim seat in the central assembly, its claim to speak for the large majority of Muslims could no longer be denied. The subsequent failure of the Cabinet

Mission in 1946 to provide a stable compromise between the Indian National Congress and the Muslim League made it clear that partition was the only solution.

The new state of Pakistan which came into existence August 15, 1947, presented its leaders with an almost impossible task in trying to make it work. It was perhaps unique in consisting of two large fragments severed from the structure of old India and separated by a thousand miles of hostile territory. Moreover, Pakistan was born in chaos for partition was marked by widespread riots, massacres, looting and arson. Because India inherited all the major centres of government and commerce, a whole structure of government had to be improvised in Pakistan and the economic structure had to be completely rebuilt. To all these difficulties was added the severe internal economic burden caused by the flood of refugees and the external danger of hostilities with India, particularly over Kashmir.

The Indian Independence Act, 1947, provided that the Government of India Act, 1935, should become, with certain adaptations, the working interim constitution of Pakistan until the Constituent Assembly had provided a new constitution.<sup>32</sup> Originally this arrangement was expected to last only a few years, but in fact the government of Pakistan was carried on under this interim constitution for nearly a decade, until March, 1956. Thus, from the beginning, Pakistan was established constitutionally as "The Federation of Pakistan."<sup>33</sup>

As originally established Pakistan consisted of a complex array of units. In the east wing there was the single province of East Bengal with 55.4 per cent of the total Pakistani population. In the west wing there were three Governor's provinces, West Punjab, Sind and North-West Frontier Province, together constituting three-quarters of the population in western Pakistan, and one Chief Commissioner's province, two acceded princes' states, and eight further acceded states grouped into the Baluchistan States Union and the North-West Frontier Agencies.<sup>34</sup> The ceasefire line ending the hostilities with India over Kashmir, left the main centres of population in Indian hands, but a narrow thinly populated strip in the northwest, known as Azad Kashmir, was retained by Pakistan. The system of government in the different components of Pakistan at the time of its formation ranged from complete autocracy in some of the princely states to full representative government in the Governor's provinces.

Under the interim constitution, the indirectly elected Constituent Assembly, a body of never more than 80 members, acted also as the unicameral central legislature of the new dominion. Due to the original expectation that its duration would be short, there was no ban on membership in two legislatures, and therefore the central assembly included provincial and state ministers among its members. Although the Indian Independence Act of 1947 terminated the special discretionary powers of the governor-general, Jinnah, as the first governor-general with his authority as Quaid-i-Azam, the founder of the state, towered over all other political leaders and ministers who willingly served as his lieutenants. With Jinnah's death in 1948, the political situation came more closely to resemble cabinet government, when Liaquat Ali Khan, clearly the leading statesman of the country, chose to remain prime minister, but following his death in 1951 the succeeding governors-general regained the initiative.

The distribution of powers between the central and unit governments was determined in the case of the acceding states by the instruments of accession and in the case of the provinces by the three lists of federal, provincial and concurrent powers in the Government of India Act, 1935. The extensive federal and concurrent legislative lists gave the central government widespread authority, and the provisions regarding administrative relations with the provincial governments were heavily weighted in its favour. Moreover, during the period the interim constitution was in operation, the central assembly freely used its exclusive power of constitutional amendment to add to its legislative powers. The original scheme of the 1935 Act gave the major sources of revenue to the central government, but provided that the whole or part of the proceeds of central taxes should be shared with the provincial governments. After the establishment of Pakistan, central requirements for funds were so great, particularly in the field of defence, that the original distribution was changed further in favour of the central government.<sup>35</sup> In 1952, in view of the improved position of the central government with its surplus and the financial hardship of the provinces, it was decided, following Sir Jeremy Raisman's inquiry into the question, to revert to a position more closely resembling the original scheme of the Government of India Act, 1935.<sup>36</sup>

Although the interim constitution possessed the usual features of a federal constitution—central and regional governments, the division of powers in a written constitution and a Federal Court to interpret the constitution—in many respects the central government was in a position to dominate the provincial governments. The central government not only possessed emergency powers in cases of threats to security,<sup>37</sup> but its emergency power to take over provincial administration if the normal constitutional machinery broke down was reinserted and exercised on a number of occasions.<sup>38</sup> The central legislature, in its capacity as Constituent Assembly, was in a position to amend the interim constitution by a simple majority and this power was frequently used, thus leaving provincial governments at its mercy.<sup>39</sup> The central power to appoint and dismiss provincial governors was used as a source of central control over provincial governments, through the prerogative power of a governor to depose a cabinet. The Public and Representative Offices (Disqualification) Act (PRODA), which gave the governor-general or governors discretionary power to refer to the courts charges of misconduct in public office, was intended as a weapon against corruption but served also as a political weapon against provincial ministers.<sup>40</sup> Until its decline in 1954, the party organization of the Muslim League, whereby the central offices closely supervised the provincial branches, provided a form of central control over provincial governments. Following the arrangements existing before 1947, Pakistan also retained, within a nominally federal structure, a single higher civil service and a higher police service common to all levels of government, but with recruitment and the general pattern of these services being under central control. Thus, while the interim constitution retained the federal form, these central powers and their frequent use made its operation far removed from the traditional definition of the federal principle.

The concentration of power in Karachi and its neglect of East Bengal in favour of the western provinces became a source of growing East Bengali resentment. The result was that in the 1954 provincial elections, a United Front, held together by a common desire



for autonomy for East Bengal and a shared determination to defeat the League, virtually annihilated the Muslim League in that province.<sup>41</sup> Although the central government tried to cope with this situation by suspending the provincial government for a period, from this time on, Bengali demands for greater provincial autonomy were to prove a major element in Pakistani politics.

The task of reaching agreement on a permanent constitution proved to be a protracted one.<sup>42</sup> Although the Constituent Assembly agreed in 1949 in its Objectives Resolution on Aims and Objects that Pakistan should be "a Federation wherein the units will be autonomous,"<sup>43</sup> the interim report of its Basic Principles Committee in 1950 caused such a storm of criticism in East Bengal that its consideration was postponed. When the committee presented its revised report in 1952 it had an equally unfavourable reception, this time led by the Punjabis, with the result that its consideration was again deferred. In 1954 the report of the committee with further modifications was finally passed by the Assembly. Just at this point, however, when the Assembly, expecting to be presented with the finished product of the Drafting Committee at its next meeting, seemed to be on the verge of completing its work, the Constituent Assembly was dismissed by the Governor-General on the grounds that it had lost the confidence of the people.

Four major issues were the sources of controversy and delay in constitution-making during the life of the first Constituent Assembly. A crucial issue was that of provincial representation in the central legislature. The problem arose because East Bengal, possessing a larger population than all the other provinces combined, felt entitled to representation according to population, while the other provinces feared that this would result in perpetual domination by East Bengal. Different bicameral schemes were advanced successively in each of the reports of the Basic Principles Committee in an attempt to find an acceptable compromise, culminating in the "Mohammed Ali Formula" giving the two wings of Pakistan parity at joint sittings. There was also considerable controversy over the degree of centralization. While the Basic Principles Committee and the Constituent Assembly favoured giving the central government strong powers on the model of the Government of India Act, 1935, this provoked a strong reaction in East Bengal, where neglect by the central government under the interim constitution and remoteness from Karachi resulted in the overwhelming success of the United Front demanding provincial autonomy in the 1954 elections. The national language issue was also a source of dispute. While Bengali was spoken by 56 per cent of the population, the national leaders insisted that Urdu, the traditional language of Muslim India and widely understood in West Pakistan, should be the single national language as a focus for unity, thus adding to the Bengali sense of grievance. After the 1954 elections, the demand for Bengali as a second national language could no longer be ignored and the Assembly reached a compromise recognizing both Urdu and Bengali.<sup>44</sup> Finally, although there was fairly general agreement that Pakistan should be based on Islamic principles, differences developed between the westernized political leaders, who thought in terms of Islamic principles applied to modern democratic institutions, and the ulama, the professional men of religion, who wished to reproduce the institutions of the early caliphate.

As a result of the judgments of the Federal Court, ruling upon the Governor-General's dismissal of the first Constituent Assembly, a second Assembly was set up in 1955.

Before turning to constitution-making it performed two other major tasks.<sup>45</sup> The first 49 sittings of the new Assembly were devoted to the revalidation of those statutes which became null and void as a result of the legal disputes that followed the dissolution of the first Assembly. Its second task was the unification of West Pakistan. Under the interim constitution West Pakistan, with a population less than that of East Bengal, had consisted of a complex array of units. Although there had been some suggestions of the advantages of administrative rationalization by the unification of West Pakistan into a single unit, these proposals had not been taken seriously during the life of the first Assembly because of the cultural and linguistic differences within the area. After the dismissal of the Constituent Assembly, the central government, intent on providing a counterbalance to diminish the power of the single large eastern province, announced its decision to merge West Pakistan into a single province. When the attempt to do this by executive decrees was frustrated by the Federal Court, the government insisted that the second Constituent Assembly pass its proposals before turning to constitution-making. After heated and bitter debate the Establishment of West Pakistan Act, 1955, was passed, merging the former western provinces and states into a single province, resulting in "an unusual federal system, with only two provinces balancing each other in a state of precarious equilibrium."<sup>46</sup> Controversy over the unification of West Pakistan did not end with the 1955 Act. Various groups advocated the redivision of the province, and in 1957 the West Pakistan Assembly actually passed a bill recommending the dissolution of the single western unit. The central government, however, refused to act on this recommendation.

Once West Pakistan was unified, the second Constituent Assembly turned to constructing the constitution and, by the end of February 1956, had completed this task. Its proposals bore a close resemblance to those adopted by the first Constituent Assembly before its dismissal, except that Pakistan now was a federation composed of two provinces, provincial powers were slightly increased, and a simpler unicameral legislature replaced the complicated bicameral scheme approved in 1954.

The greater part of the new constitution consisted of provisions similar to those of the interim constitution. Indeed, many terms and even clauses were carried over.<sup>47</sup> There were, of course, some modifications, some as a result of experience since partition and some modelled on the features introduced in the Indian constitution. In the constitution, which went into effect March 23, 1956, the central government still retained wide legislative powers, but provincial powers were enhanced by additions to the provincial list and by the assignment of residual powers.<sup>48</sup> Specific constitutional provision was now made for a number of intergovernmental institutions, including the National Finance Commission and the National Economic Council composed of central and provincial government representatives.<sup>49</sup> To central emergency powers existing previously were also added special central powers in cases of financial emergency. A rigid amendment process was adopted, most provisions requiring a special majority in the central legislature and some requiring ratification by the provinces affected. The central legislature continued to be unicameral but was to be increased in size from 80 to 310 members who were now to be directly elected. However, until elections could take place the Constituent Assembly was to continue as the central legislature. Although the question of communal electorates was left open in the constitution, it was soon decided to abandon separate electorates. The principle of cabinet responsibility to the legislature was now specifically stated and



the governor-general was replaced by an elected president. Lists of fundamental rights and directive principles were included, and in addition the constitution was given an Islamic flavour.<sup>50</sup>

Although the constitution expressly stated that "Pakistan shall be a Federal Republic,"<sup>51</sup> and there was a greater decentralization in the division of powers than under the interim constitution, the central government continued to possess some of its previous powers enabling it to dominate the provincial governments. In addition to extensive legislative and financial predominance, it retained emergency powers enabling it to suspend the federal character of the constitution.<sup>52</sup> The power to appoint governors continued to be used as a means for controlling and influencing provincial governments. The executive power to give directions to provinces on certain matters,<sup>53</sup> control over the joint All-Pakistan Services common to the central and provincial governments,<sup>54</sup> and the power of refusing assent to some classes of provincial legislation remained.<sup>55</sup> These represented departures from the traditional interpretation of the federal principle and to such a degree that Callard was forced to conclude that "Pakistan is not in reality a federal state."<sup>56</sup>

The adoption of the constitution did not result in any lessening of the political strife and instability which had characterized government under the interim constitution.<sup>57</sup> This instability was chiefly due to the lack of any majority party after the disintegration of the Muslim League. The party manoeuvrings, making voting support in the National Assembly uncertain, enabled President Mirza to retain substantial authority and influence both in politics and the administration during this period.

In October 1958, with the country's economic condition rapidly deteriorating, bureaucratic corruption and black marketing and profiteering becoming rampant, instability in governments at both central and provincial levels chronic, growing defiance of central authority and the prospect of politics in East Pakistan turning to radical extremes, the army leaders decided that the existing constitutional machinery was not capable of working in Pakistan. At the request of the army, President Mirza issued a proclamation declaring: "The Constitution which was brought into being on March 23, 1956, after so many tribulations, is unworkable. It is so full of dangerous compromises that Pakistan will soon disintegrate internally if the inherent malaise is not removed."<sup>58</sup> Under the proclamation the constitution was abrogated, the central and provincial governments dismissed, the national and provincial assemblies dissolved, all political parties dissolved, and martial law proclaimed throughout the country, effective power passing to the army under the leadership of Ayub Khan, the Commander-in-Chief, who was appointed Chief Martial Law Administrator. The army met little opposition in establishing itself in power, even the courts being quick to grant their approval. Within three weeks General Ayub had ousted Mirza and assumed the office of president while continuing to act as his own prime minister. Although, for purposes of administration, Pakistan was divided into three areas, East Pakistan, West Pakistan and Karachi, the structure of government became highly centralized, the powers of ministers and martial law administrators being derived from the president in whose name the administration of the entire country was run.

Soon after taking over power, President Ayub had announced that, when the initial vital problems had been met, the government would turn to the question of a suitable constitution. He expressed a preference for a presidential system because of its stability and for strong central government as "a natural reaction to the separatist tendencies to which the federal principle had given rise."<sup>59</sup> During 1959 a system of "basic democracies" was instituted. This consisted of a pyramid of four tiers of councils within each province, each council consisting partly of elected and partly of nominated or official members. The elected members of the higher councils were indirectly elected by the lower councils. The mixture of indirectly elected and appointed members on these councils clearly aimed at a controlled democracy. In February 1960, a Constitutional Commission was set up to examine the reasons for the failure of the 1956 constitution and to submit proposals for a new national constitution suitable to the particular conditions of Pakistan and aiming particularly at "the consolidation of national unity; and a firm and stable system of government."<sup>60</sup> Thirteen years after independence Pakistan was still seeking a permanent solution to the need for a constitution that would unite its diverse elements.

In 1962 a new national constitution was put into force. This constitution expressly set out to establish "a form of federation with the Provinces enjoying such autonomy as is consistent with the unity and interest of Pakistan as a whole."<sup>61</sup> One radical development under this new constitution was the separation of the executive from the legislature and the assertion of the primacy of the former. The 1961 Constitution Commission had recommended a federal system similar to that which had existed before 1958,<sup>62</sup> but the new constitution, as eventually promulgated, differed from that of 1956 in significant ways. There was a greater devolution of legislative and executive authority and, in practice, of revenues assigned to the provinces, but at the same time central controls over the provincial governments were increased. The governors, now active rather than nominal heads of the provincial executives, were appointed and dismissed by the president and subject to his directions. Conflicts between a provincial governor and his legislative assembly were resolved by reference to the National Assembly. Moreover, the National Assembly might legislate within normally provincial fields if in the "national interest of Pakistan in relation to (a) the security of Pakistan, including the economic and financial stability of Pakistan; (b) planning or co-ordination; or (c) the achievement of uniformity in respect of any matter."<sup>63</sup> Despite, or rather because of, these unitary tendencies, separatism remained a potent force in East Pakistan. Although the Bengalis achieved some major economic and financial concessions from the central government, there was still considerable resentment at the continued dominance of the western wing in their political and economic life. Progress was made, but the consolidation of unity within Pakistan still remained an immense task.

### *III. The Federations of Malaya and Malaysia*

In the fifteenth century the Malacca Empire established political control over most of the Malayan peninsula and large areas of Sumatra. The next three centuries, however, saw the slow and sporadic disintegration of this empire as the Portuguese and Dutch

successively captured Malacca itself, but failed to effect direct control over the rest of the peninsula.

The history of the British connection with Malaya began with the establishment of three British trading settlements, Penang, Singapore and Malacca, the latter being finally ceded by the Dutch in 1824. In 1867 the settlements were severed from the administration of India and transferred to the Colonial Office as a Crown Colony. These settlements served both as strategically important naval bases commanding the Strait of Malacca and the shipping lanes to the Orient and as primary bases for commercial expansion and development of the hinterland. As the inland areas developed commercially the settlements became their natural maritime outlets, Singapore quickly becoming the greatest *entrepôt* port in southeast Asia.

Initially, the East India Company, and after it the Colonial Office, was interested primarily in trade, and it was their policy not to undertake conquest or interference in the affairs of the native states if this was avoidable. However, after 1873, because of the semi-anarchy and chronic misrule in the states, the British government, largely in response to the demands by trading groups in the settlements, reversed its policy. The result was treaties between 1874 and 1889 with Perak, Selangor, Pahang and Negri Sembilan, whereby the rulers of these states received British protection in exchange for British "residents" whose advice was to be accepted in all matters except those concerning Malay custom and the Mohammadan religion. Although the Colonial Office insisted that the residents were to act only as advisers, they quickly became the *de facto* wielders of power.

The desirability of greater administrative uniformity and the demands of commercial, mining and agricultural interests for integrated transportation and communications facilities led Sir Frank Swettenham to persuade the rulers to form a nominal federation of the four states, known as the Federated Malay States in 1895.<sup>64</sup> As a result, by 1909 virtually all the executive power formerly exercised by the residents in the states had been centralized in the hands of a Federal Secretariat under the British Resident-General.

Throughout its history, 1895-1941, the Federated Malay States was troubled by controversy over the degree of centralization desirable. This problem was focused on three issues: (1) the conflict of interests between alien capitalism favouring centralized administration as an aid to commercial development, and the state governments representing, and intent on preserving, Malay authority and prestige; (2) the rivalry between the High Commissioner, normally resident in Singapore, and his deputy in the F.M.S., the Resident-General and later the Chief Secretary, over the concentration of power in the hands of the deputy; (3) and the desire to encourage the unfederated Malay states, also under British protection, to join the federation, but the reluctance of their rulers to do so because of the sweeping powers of the Resident-General. As a result, British policy in the F.M.S. vacillated between centralization and decentralization. Until 1932 the general trend was to greater centralization in spite of efforts in 1909 and 1927 to reduce the concentration of power in the central bureaucracy.<sup>65</sup> Following intense controversy over the issue in the early 1930s, the Colonial Office adopted proposals to achieve a considerable measure of decentralization, involving the transfer of certain departments to the states, the abolition of the office of chief secretary and reduction in

the authority of department heads. The result was the display of new initiative in the state governments, freed from the stringent control of over-centralized government.

In addition to the Federated Malay States, five other Malay states, Johore, Kelantan, Trengganu, Kedah and Perlis, later came under British protection between 1909 and 1930.<sup>66</sup> Witnessing the effect of the resident system and the federation upon the sovereignty of their colleagues in the F.M.S., the sultans of the unfederated states took considerable pains to maintain their independence. In these states the British officers assigned to each ruler were styled "advisers" rather than "residents" and indirect rule was more of a reality. A feature common to these unfederated states was their insistence on independence from any form of inter-Malayan federation and their emphasis on internal self-development.

In December 1941 the Japanese invaded Malaya and quickly overran the whole peninsula and Singapore. The Japanese caused little change in the administrative structure of the settlements and the states, although in 1943 the elective principle was introduced to the Malays for the first time. For a while, an attempt was made to combine Malaya and Sumatra under a single administration centred in Singapore, the ethnic, linguistic and economic ties between the peoples of the two areas being stressed, but by 1944 the plan was abandoned. The net effect of the Japanese occupation was a disillusionment with British power, a general stirring of Malay political consciousness, increased communal antipathy because of the unequal treatment of the Malays, Indians and Chinese by the Japanese and the improvement of the Communist party organization operating through its guerrilla forces.

During the war, the Colonial Office devoted considerable attention to the political future of Malaya after its liberation. Considering the cumbersome nature of prewar Malayan administration in which there were 10 legislatures in a country scarcely larger than England, the planners decided that "efficiency and democratic progress alike demand therefore that the system of government should be simplified and reformed."<sup>67</sup> The result was a scheme involving a *volte-face* from the policy of decentralization adopted in 1933. It was decided to create a Malayan Union embracing the nine Malay states and the two British settlements of Penang and Malacca, only Singapore being left separate as an island colony.

When Malaya was regained in 1945, the Colonial Office proceeded as planned. In a whirlwind tour at the end of 1945, Sir Harold MacMichael secured in secrecy from the nine sultans a transfer of their complete rights of legal sovereignty to the British Crown.<sup>68</sup> Then, without further consultation in Malaya, the British government put into effect its scheme for a Malayan Union, whereby practically all power would be concentrated in a central government, each state would have a State Council with such authority as the Union Legislative Council delegated to it, the sultans would retain their thrones but with little political power, and Union citizenship would be given to all claiming Malaya as their homeland without discrimination of race and creed.<sup>69</sup> The result was Malay indignation over MacMichael's blunt methods in compelling the sultans to sign the agreements, the arbitrary imposition of the scheme without consultation of Malay opinion, the deprivation of the rulers' historic legal sovereignty and, most of all, the provision for citizenship giving equal rights to Chinese and Indians and thus depriving the

native Malays of the privileged status they had previously occupied under British rule. The most effective protest came from the United Malay National Organization (U.M.N.O.) which carried on a vigorous agitation, pushing forward the moderate sultans and rousing the hostility of the peasants against the new policy. The Malay cause was further strengthened by the failure of the Chinese to attempt to defend a policy which was to their advantage. In the face of the Malay opposition and threats of a mass non-cooperative movement, the British government bowed to the storm. It agreed to drop the Union proposals and to consult representative Malay, Chinese and Indian leaders to explore the possibility of a new settlement.

The result of these negotiations was the Federation of Malaya Agreement, 1948, which established by agreement of the rulers of the states and the British government a federation under the protection of Great Britain.<sup>70</sup> The new federal constitution was in fact almost as unitary as that of the Malayan Union, but Malay support was bought by the British agreement to recognize the political identity of the Malay states, by a highly restrictive citizenship law which excluded about half the Chinese and Indians, and by safeguards for the special position of the Malays.

The federation created consisted of two types of units: the nine Malay states under their rulers and each with state executive and legislative councils, and the two settlements of Malacca and Penang, each with settlement councils, in which the chief executive officers were resident commissioners acting in the name of the high commissioner.

Central institutions of government were also established. The Executive Council, headed by a high commissioner, at first consisted of a majority of officials but with some unofficial members, but in 1951 a "quasi-ministerial" system was adopted and in 1956 the council was further amended to operate more as a cabinet with a chief minister. Initially the Legislative Council was composed of a majority of nominated unofficial members including representatives of the state and settlement councils, the racial communities, and various economic and professional groups. In 1955 the principle of election was introduced, the Legislative Council being given a majority of elected members. Under the 1948 Agreement, there was also a Conference of Rulers, composed of the rulers of the nine Malay states attended by their Malay advisers, which performed some of the functions of a second chamber as a focus for state views upon central legislation and policy, and some of the functions of a premiers' conference by bringing together the heads of the state governments.<sup>71</sup>

In the division of powers, the Agreement gave "very wide powers to the central authorities who could, if they so desired, legislate against the wishes of the State Governments on almost all questions other than those touching Muslim religion and Malay custom."<sup>72</sup> Indeed, what devolution of power there was chiefly took the form of a compulsory delegation to the states of executive authority over central laws on certain subjects. The central government was given powerful controls over the state and settlement governments through the special powers of the high commissioner to give them directions, through the central control of state budgets, and through a centralized civil service under the control of the high commissioner. As a result, the 1948 constitution was aptly described as "a loose and ill-defined hybrid somewhere between unitary government and federation."<sup>73</sup> In practice, however, the federation was less

centralized.<sup>74</sup> In large areas potential central legislative power was left unexercised, the bulk of administration being left to the states. In addition, the central government never introduced a major change of policy or legislation without first obtaining the agreement of all the state governments concerned, and intergovernment consultation was a characteristic feature of Malayan federal government, 1948-56. In 1956, a revision of the financial allocation improved the financial autonomy of the states, further strengthening their position.<sup>75</sup>

A special characteristic of the 1948 Agreement was that, although a Supreme Court was established, the task of constitutional interpretation was assigned to a special Interpretation Tribunal.<sup>76</sup> The amendment of the constitution was normally by federal ordinance or in certain cases by proclamation of the high commissioner, but in each case the approval of the rulers or the state and settlement councils was also required.<sup>77</sup>

The 1948 Federation of Malaya Agreement remained in effect until 1957. Politics in Malaya during this period were characterized by the Communist emergency, the progressive advance towards self-government and the growth of political parties. In early 1948 the Malayan Communist party made an abrupt change in policy from labour agitation to armed revolt, and as a result, the need to combat terrorism and guerrilla warfare provided a strong impetus for centralized administration. This decade also saw a progressive advance towards self-government with the introduction of the principle of responsibility in the central executive and the principle of elected representation in the central legislature. These advances encouraged the development of political parties, which, because of the existence of the Malay-based U.M.N.O. with policies favouring the Malays, took the form of communal parties, the Malayan Chinese Association among the Chinese and the Malayan Indian Union among the Indians. When Dato Onn bin Ja'afar, recognizing the need for intercommunal unity if independence and self-rule were to be possible, attempted to found a new multiracial Independence of Malaya party, the result was an opposing alliance between the major communal parties. The Alliance was so successful that in the 1955 federal elections it swept 51 of the 52 elected seats in the Federal Legislative Council, largely as a result of its superior organization and its campaign cry of *merdeka* (freedom).

At the constitutional conference in London in 1956, the Alliance's "Merdeka Mission" obtained agreement that independence should be proclaimed in 1957 and that a constitutional commission should be appointed to review the existing constitution and to draft suggestions for a new federal constitution for Malaya at independence.<sup>78</sup> The recommendations of the Reid Commission were on the whole accepted and incorporated in the new constitution, although at the insistence of the U.M.N.O. the constitution was on some points made more conservative and favourable to the Malays.<sup>79</sup>

The Federation of Malaya Agreement, 1957, like its predecessor, concentrated legislative, executive and financial power in the central government, for the only exclusive state legislative powers of any significance were land, agriculture, forestry and local government.<sup>80</sup> The previous arrangement, whereby in many matters legislative power was conferred on the central government but executive power on the states, was rejected as "impractical," and exhaustive federal, state and concurrent lists were now incorporated, with legislative and executive authority generally, though not always, going together. The



predominance of the central government was assured by the sweeping central power to act even in the exclusive state sphere in order to implement treaties,<sup>81</sup> to promote uniformity of state laws,<sup>82</sup> to implement national economic development programs<sup>83</sup> and in cases of emergency.<sup>84</sup> Flexibility and intergovernment cooperation were aimed at in the provisions enabling delegation of legislative and executive powers<sup>85</sup> and in the considerable number of intergovernmental councils established by the constitution.<sup>86</sup> Both central predominance and flexibility were also enhanced by the constitutional amendment procedure, which, although normally requiring special majorities in the central legislature, in only a few cases requires ratification by the state legislatures or the Conference of Rulers.<sup>87</sup>

Under the new constitution, the settlements, Penang and Malacca, were severed from the British Crown and became states equal in rank to the other states in the federation, although headed by governors rather than hereditary rulers. The federation itself was now headed by a monarch, chosen for a five-year term by the Conference of Rulers from amongst themselves on the basis of seniority. The central parliament became truly bicameral with the addition of a senate composed partly of nominated members and partly of senators elected by the state legislatures. The Conference of Rulers continued to operate. Its functions included the election of the monarch, giving or withholding assent to certain laws, advising the monarch on some appointments and, in company with the central prime minister and state chief ministers, deliberating questions of national policy.<sup>88</sup>

The separate Interpretation Tribunal was abandoned, the courts being given authority to interpret the constitution and the Supreme Court exclusive jurisdiction in any intergovernment disputes. The scope of judicial authority was also enhanced by the inclusion in the constitution of a set of fundamental liberties.

The new constitution of the Federation of Malaya went into effect with the commencement of independence on August 31, 1957.<sup>89</sup> In the early years of its operation, the continued dominance of the Alliance was the major factor for political stability. The federal and state elections of 1959 swept the Alliance back into power with large majorities, except in the northeastern states of Kelantan and Trengganu where the victories of the Pan-Malayan Islamic party suggested a tendency to Malay communalism. On the other hand, in areas where the Chinese vote was dominant, the Alliance gained a majority of seats, and the Socialist Front, also a recognizably intercommunal party, was the most successful opposition. The dominance of the Alliance, both at federal and state levels, provided an impetus for centralization as did the continued "state of emergency" which was finally terminated in mid-1960. The tendency towards the further concentration of central power was illustrated by the first major constitutional amendment in 1960 which enhanced the central power of preventive detention, set up a national council on local government, and placed the appointment of Supreme Court judges solely in the hands of the central cabinet.

An issue which faced the Federation of Malaya in its early years of independence was the question of its relation to Singapore. In the plan for the Malayan Union, 1946, Singapore was expressly excluded because of its different economic interests as an *entrepôt* trade centre based on free trade, because its predominantly Chinese population would, if included in Malaya, give the Chinese a majority over the Malays, and because of

Britain's special strategic interests in Singapore. As a result, in spite of the considerable economic interdependence between the island and the peninsula, Singapore was constituted a separate Crown Colony in 1946 and remained outside the Federation of Malaya formed in 1948. Singapore underwent its own political development with major constitutional advances in 1948, 1955 and finally 1959 when it received internal self-government as the state of Singapore. The Singapore leaders, recognizing the inability of Singapore to achieve full independence on its own, were strongly in favour of association with the federation and discussed the issue with the Malayan government several times. Malayan leaders were generally more reluctant, fearing that the addition of a million or more factious Chinese would upset the delicate racial balance in the federation.<sup>90</sup> As conservatives, the Malayan leaders also distrusted the socialist government and the strong Communist elements in Singapore. But Singapore continued to press for union until, in 1961, Lee Kuan Yew persuaded Prime Minister Tunku Abdul Rahman to agree to plans for a merger of Malaya and Singapore to take place in 1963.<sup>91</sup> The Malayan change of heart was largely prompted by concern that, unless taken under the protective custody of the federation, Singapore might be taken over by Communists and then used as a base for subverting the federation. In order to offset Malay fears of Chinese preponderance within the federation, Tunku Abdul Rahman at the same time began negotiations with the British government for the inclusion of its Borneo territories within a widened Federation of Malaysia.<sup>92</sup> The Sultan of little Brunei, anxious about the future disposal of his oil revenues and about his personal status, decided against acceding, but in the two larger Borneo territories of North Borneo and Sarawak, political parties supporting Malaysia secured large majorities in elections which were subsequently endorsed by a United Nations mission. Finally, in September 1963, the Federation of Malaysia was established by joining Singapore, Sarawak and Sabah (North Borneo) to the states of Malaya.

In form, the 1957 constitution was retained, with modifications being made to it by the Malaysia Act, 1963, but in effect the changes were so substantial as to establish a new federal structure. A notable feature was the marked variation in the relation of different states to the central government. The status of the Malayan states remained unchanged, but the new states were granted considerably more legislative, executive and financial autonomy, and their special interests were more fully safeguarded under the constitution. Created in the face of Indonesian hostility, the new federation found itself immediately under political and economic strains resulting from the need to defend itself. Moreover, the unwillingness of the Alliance party to allow Lee Kuan Yew a partnership in federal decision-making and the desire of the People's Action party to play a role in federal politics rather than confining its activities to Singapore led to a challenge by the P.A.P. against Malay political predominance. The result was mounting tension which was relieved only when Singapore left the federation in 1965.

#### *IV. The Federation of Nigeria*

As a unit of government, Nigeria has been described as "an artificial creation . . . perhaps the most artificial of the many administrative units created in the course of the



European occupation of Africa.”<sup>93</sup> Prior to British rule there was no Nigerian unity. Northern Nigeria, where Islam provided a transtribal bond, historically belonged to the western Sudan and was economically oriented toward Tripoli and Egypt. Southern Nigeria, on the other hand, isolated from the impact of Islam by the dense and inhospitable tropical rain forest and by the tsetse fly, had for long been part of the Atlantic world, linked to it by the activities of the slave traders and the missionaries. Moreover, within the distinct regions of north and south, there were a multitude of political, ethnic and tribal groups. In the north, the Muslim Hausa, Fulani and Nupe, and most of the smaller “pagan tribes” of the middle belt were organized into a large number of semi-independent emirates governed by a Fulani aristocracy, but the Muslim Kanuri of Bornu and the non-Muslim Tiv south of the Benue River remained unconquered by the Fulani. The south was even more fragmented. In the southwest there existed the sizable Yoruba and Edo kingdoms while in the southeast there were the small semi-autonomous communities of the Ibo, Ibibio and Ijaw-speaking peoples, as well as other politically more splintered tribes. Thus, a leading Nigerian nationalist wrote little more than a decade ago, “Nigeria is not a nation. It is a mere geographical expression. There are no Nigerians in the same sense as there are ‘English,’ ‘Welsh,’ or ‘French.’ The word ‘Nigerian’ is merely a distinctive appellation to distinguish those who live within the boundaries of Nigeria from those who do not.”<sup>94</sup>

It was on this situation that British rule “was imposed like a great steel grid over the amorphous cellular tissue of tribal Africa.”<sup>95</sup> During the nineteenth century the British penetrated into the hinterland unevenly and gradually from three uncoordinated bases—Lagos which was annexed as a colony in 1861, Old Calabar where a Foreign Office consul was located after 1849 and Lokoja, the base of the trading companies which were amalgamated in 1886 to form the Royal Niger Company with a monopoly of trade in the Niger Basin. By 1900 these had developed into three separate territories under British rule: the Colony of Lagos, the Protectorate of Southern Nigeria and the Protectorate of Northern Nigeria.<sup>96</sup> The next two decades saw the administrative unification of Nigeria. In 1906 the Colony and the Southern Protectorate were united, and in 1914 the Colony and the two Protectorates were amalgamated and ostensibly became a single political unit called the Colony and Protectorate of Nigeria, with its capital at Lagos and with Sir Frederick Lugard as its governor. An advisory “Nigerian Council” representing the whole area was also established at this time, but in 1922 a new constitution established a Legislative Council which lasted until 1946, with amendments in 1928 and 1941 making some concessions to the principle of election. In the meantime, at the end of the 1914-18 war, the adjacent German Cameroons had been placed under British mandate by the League of Nations, and in 1923 provision was made for the administration of the Southern Cameroons as part of the Southern Provinces and of the Northern Cameroons as part of the adjacent Northern Provinces of Nigeria. Thus, as a political entity, Nigeria was a British imperial creation.

But, while common British rule and the creation of internal peace and order made free movement and commerce possible and contributed to Nigerian unity, the form and character of the British administrative superstructure sowed the seeds of later regionalism. Even after the amalgamation of Nigeria under a common governor in 1914, the north and

south were administered by two virtually distinct bureaucracies, the governor being virtually "the only bond of political unity."<sup>97</sup> Moreover, while the policy of indirect rule through traditional authorities was applied in the north, constitutional development in this direction proved less appropriate in the south, and the Legislative Council, its legislative jurisdiction limited to the south, represented a policy of importing European political institutions. In addition to the division between north and south both in administration and in policy, divisions were maintained within Southern Nigeria, and Lagos retained its unique legal status as a colony until 1951. In the interests of administrative convenience, the southern provinces were divided in 1939 into two groups, the western and eastern, with the Niger River as the boundary. Describing the Nigerian situation in 1945, Governor Richards wrote, "At present no unity exists, nor does the constitution encourage its growth."<sup>98</sup>

By 1945, the increasingly vigorous criticism of the existing constitutional arrangements by African groups outside the Legislative Council made clear the need for reform. The problem facing British officialdom was that of reconciling the demand of the educated southerners that the Legislative Council should be expanded into a parliamentary system of government, acting as the central government for the whole of Nigeria, with the policy in the north whereby the native authority system had been developed as the primary unit of African self-government. Views within the Colonial Office differed on the solution. Some, mainly British officials in the north, favoured progressively wider powers for the emirates until they became self-governing. Others leaned towards a radical decentralization within Nigeria in which the three groups of provinces would be separate federations held together by a weak central superstructure, thus creating a three-tier structure similar to the cabinet mission proposals for India in 1946. Still others such as Sir Bernard Bourdillon, Governor of Nigeria, 1935-43, and Lord Hailey, saw the future in the promotion of political unity by a unitary structure including the north.

In 1945, Sir Arthur Richards, the Governor, strongly influenced by Bourdillon's views, submitted proposals which led to a new constitution.<sup>99</sup> Its stated objectives were: "... to promote the unity of Nigeria; to provide adequately within the unity for the diverse elements which make up the country; and to secure greater participation by Africans in the discussion of their own affairs."<sup>100</sup> Under the "Richards Constitution" which went into effect in 1946, the sovereign powers of the Legislative and Executive Councils were extended to cover the whole of Nigeria.<sup>101</sup> At the same time Regional Councils, chiefly electoral colleges and otherwise advisory in function, were created for each of the groups of provinces to serve as a link between the new national government and the local native authorities. Although, in view of the advisory nature of the Regional Councils, the character of the new constitution was fundamentally unitary, it set the mould within which the federal structure subsequently grew. On the one hand, it established a central legislature for the whole of Nigeria for the first time, a step towards Nigerian unity. On the other hand, by assuming that the former groups of northern, eastern and western provinces corresponded to the ethnic and cultural diversities of Nigeria, it established the three regions, each actually ethnically heterogeneous, as the fundamental political units within Nigeria.

The unitary nature of the Richards Constitution was intended to promote Nigerian unity, but in practice it sharpened interregional fears and hostilities, for each group feared the concentration of power in the central government as a potential instrument for domination by another region. Northern demands for autonomy and intensified Yoruba-Ibo rivalry were the result. Thus, the operation of the Richards Constitution was characterized by the regionalization of Nigerian nationalism and by the appearance of political parties such as the Northern Peoples' Congress and the Action Group, primarily motivated by the desire to defend their own regional ethnic interests.

When the British government agreed that the constitution should be revised after a series of stage-by-stage conferences, beginning at the local level and culminating in a general conference at Ibadan in 1950, attention became focused on the issues of regional representation in the central government, the devolution of power to the regions, and the correspondence of regional boundaries to ethnic distribution.<sup>102</sup> The "Macpherson Constitution" of 1951, which resulted from these consultations,<sup>103</sup> retained the existing three regions as the political units within Nigeria, the only change being the inclusion of Lagos in the Western Region, and certain legislative, executive and taxing powers were now conferred on the regional legislatures and provision was made for the first time for Regional Executive Councils.

Although this constitution has been described as "the decision to convert Nigeria into a Federation,"<sup>104</sup> the constitution still remained, in the traditional terminology, ostensibly unitary. Regional powers, for instance, were not exclusive but subordinate to the general authority of the central government. The single public service responsible to the governor remained, as did the single judiciary and the centralized marketing boards. Furthermore, the governor's discretionary reserved powers strengthened the unitary character of the constitution. On the other hand, there were some quasi-confederal features. Except for its *ex officio* and special members, the central House of Representatives was elected indirectly, members being chosen by the regional legislatures from among their own numbers. The Central Council of Ministers was also in a sense indirectly elected, for although the four ministers from each region had to be members of the House of Representatives, nominations to the Council were subject to approval by the regional legislatures, making ministers to all intents and purposes prisoners of their regional governments. With different parties in power in the different regions, a cohesive Council was impossible, and in practice it was little more than a committee of the regions.

Unfortunately, this unique blend of unitary and confederal features suffered the defects of both with the benefits of neither. The central concentration of sovereignty and the subordination of the regional governments continued to excite regional fears; while the lack of cohesiveness in the central legislature and executive, both in effect consisting of delegates from the regional legislatures, soon resulted in political deadlock in the central government. These difficulties came to a climax in the tragic riots of 1953 and the resultant northern threats of secession.

The solution worked out at the London Conference of 1953 and put into effect the next year, was the adoption of an orthodox federal constitution.<sup>105</sup> In spite of other differences amongst them, all the Nigerian delegations at the conference agreed upon the desirability of regional autonomy.<sup>106</sup> The new constitution made possible a considerable

measure of regional autonomy, without sacrificing the major benefits of unity. Moreover, the federal structure enabled a solution of the problem causing the greatest hostility between the north and the south—the issue of self-government which had been at the base of northern fears and southern frustrations. The federal constitution made possible, within a united Nigeria, the early grants of self-government to the two southern regions that were clamouring for it, while postponing northern and federal self-government to a later date in order to allay northern anxieties. Thus the constitutional agreements of 1953 represented “an ingenious compromise of what had been regarded as intractable positions” and, in view of the marked growth of amity and cooperation among the regional leaders after 1954, one could justifiably say, “the idea of a united Nigeria was the real victor.”<sup>107</sup>

The Nigerian constitution of 1954 was based on orthodox federal principles. There was an explicit division of legislative, executive and financial powers; the central government was allocated limited and specified powers by the exclusive and concurrent lists, while the regional governments were also given power over matters on the concurrent list and exclusive power over all unlisted residual matters. Thus the new constitution involved a recognition of regional autonomy by a genuine constitutional division of powers rather than by devolution from the sovereign central government as had previously been the case. The principle of a dual polity was also extended in the new provisions for separate regional public services, regional judiciaries, regional marketing boards, and regional governors in place of lieutenant-governors. There was also a Federal Supreme Court with exclusive jurisdiction to act as an impartial tribunal in inter-government disputes over their constitutional powers. The power of amending the constitution was left in the hands of the British government, thus making the constitution independent of both levels of government.

The central legislature, the House of Representatives, remained unicameral but ceased to consist of delegates from the regional legislatures. Dual membership of central and regional legislatures was abolished, central legislators being elected directly in the south, and indirectly by special electoral colleges distinct from the regional legislature in the north. The issue of regional representation in the central legislature had for some time been a controversial issue because the population of the Northern Region was greater than that of the other two combined. A bicameral central legislature was considered, but finally a unicameral one in which the Northern Region was restricted to half the seats was agreed upon. The confederal features of the central Council of Ministers were removed—regional governors were no longer members, and ministers were appointed by the governor-general without reference to the regional legislatures. The constitution did, however, explicitly provide for equal representation of the regions on the Council, appointments to be made by the governor-general either on the recommendation of the leader of the party with an overall majority or, if this was lacking, on the recommendations of the leaders in the House of Representatives of the majority party in the House from each region.<sup>108</sup>

The basic regional structure of 1946 and 1951 was continued, because of resistance by the Northern Peoples' Congress to any change in northern boundaries. Thus there was no departure from the earlier assumption that these represented the fundamental social

diversities of Nigeria. Some changes were made, however. Lagos, against bitter Action Group opposition, was separated from the Western Region and, as the capital, made a federal territory. The Southern Cameroons, because of its special status as a United Nations Trust territory, was set apart from the Eastern Region as a separate unit but without full regional autonomy.

In operation, the constitution, by granting regional autonomy, helped to reduce interregional fears and tensions and strengthened the central government by removing its constitutional dependence upon the regional governments. The weakness of the central executive was by no means cured, however, for the special "federal" provisions for the Council of Ministers, coupled with the regional distribution of political parties in the House of Representatives, meant that a homogeneous Council was impossible to obtain.<sup>109</sup> This weakness was accentuated by the preference of the major national party leaders for positions of responsibility as regional premiers.<sup>110</sup> Thus, the central government tended to be ineffective and despised—the cat's paw and scapegoat of the regional leaders.

Following a series of constitutional conferences in 1957 and 1958 a considerable number of amendments were made to the constitution, but these did not alter the fundamentally federal structure of the 1954 constitution.<sup>111</sup> Among the early amendments was the grant of internal self-government to the Eastern and Western Regions in 1957 and to the Northern Region in 1959, together with consequent changes in the regional constitutions concerning the relative powers and roles of the governors, executives and legislatures. Alterations were also made to the institutions of central government. In 1957, the office of federal prime minister, with power to nominate his own cabinet, was established. Abubakar Tafawa Balewa, as leader of the largest party in the House of Representatives, became the first federal prime minister, and formed a coalition "national government" of all three major parties which lasted until the elections in 1959. The abandoning of previous arrangements for the Council of Ministers and the adoption of more orthodox cabinet government did a great deal to strengthen the central government. The central legislature was also modified by the agreement to add a senate at the dissolution of the existing House of Representatives in 1959. Thereafter, seats in the lower house were allotted according to population, thus giving the Northern Region a clear majority. Regions were given equal representation in the new second chamber, the senators being appointed by the regional governments. Some adjustments to the legislative lists were also agreed upon at the constitutional conferences, but the balance in the distribution of powers was not fundamentally altered. A complete overhaul of revenue allocation, which had been the source of much acrimony, was also undertaken. The principle of derivation as the basis for revenue transfers to the regions was abandoned in favour of a scheme increasing independent regional revenues and providing for transfers from a distributable pool on a formula taking into account factors such as needs, population and balanced national development.<sup>112</sup>

At these constitutional conferences, the prospect of federal independence in 1960 raised a number of contentious issues which were indicative of the continued distrust and fear existing among the diverse groups within Nigeria. A major issue was the demand, arising from the fears of minorities within existing heterogeneous regions, for the splitting

of these regions in order to create new ethnic states. A special commission appointed to consider the problem stressed the difficulties involved in setting up new states which would be viable and ethnically homogeneous, and suggested the adoption of other safeguards instead to allay minority fears.<sup>113</sup> When the Colonial Secretary warned that splitting the regions would inevitably delay federal independence, the Nigerian leaders deferred the creation of new states until after independence.<sup>114</sup> Another example of the continued prevalence of minority fears was the length of time spent at the 1958 conference in working out the details of the fundamental rights to be included in the constitution.<sup>115</sup> There was also a prolonged controversy over the control of the police force, for minorities within the regions feared regional control of the police as an instrument of domination, while the regional majorities themselves feared central control. The solution was a compromise by which the police was preserved as a unified force but administered by an intergovernment Police Council, subject to ultimate control resting with the central government.<sup>116</sup> The problem of a procedure for constitutional amendment was also considered at these conferences, and agreement was reached on an extremely rigid process under which large sections of the constitution would be specially entrenched, normally requiring a majority of two-thirds of the members of each central legislative House and the concurrence of two of the three regions. The prospect of Nigerian independence also provoked a hesitancy in the Southern Cameroons about its continued membership in the federation. Because of their special status as trusteeship territories, both the Northern and Southern Cameroons were given the chance to indicate their choice in plebiscites. In February, 1961, the Northern Cameroons voted to remain a part of the Northern Region of Nigeria, but the Southern Cameroons chose by a large majority to join the Cameroons Republic instead.

Late in 1959, federal elections were held and again no single party gained a majority. The three major parties each gained a majority of the seats in their home regions although the N.C.N.C. gained considerable support in the Western Region and the Action Group made some inroads in each of the other regions.<sup>117</sup> The N.P.C., with all its members from the north, once again emerged as the largest single party and, in coalition with the N.C.N.C. formed a government under the continued leadership of Abubakar Tafawa Balewa. One of the most significant features of this election was the movement of Nnamdi Azikiwe and Obafemi Awolowo, leaders of two of the three major parties, from regional politics to the central arena, indicating the increased prestige of the central government with independence impending.

On October 1, 1960, the federation achieved independence and a new constitution went into effect.<sup>118</sup> Although a new document, the independence constitution made little change in the basic federal structure. The main modifications from the previous constitution, as already amended 1954-60, were in the removal of most of the governor-general's discretionary powers, and in the addition, as agreed at the earlier constitutional conferences, of an amendment procedure and of central emergency powers "to ensure the safety of the nation against internal and external threats."<sup>119</sup> A further constitutional change came in 1963 with the adoption of a new republican constitution. The governor-general was replaced by a president as nominal head of the executive, appeals to the Judicial Committee of the Privy Council were abolished, the procedure for



the appointment of judges was changed, and a variety of other minor adjustments were made. Although the same federal framework was retained and much of the wording remained unchanged, the conversion to a republic was made the occasion for adopting a completely new constitution.<sup>120</sup>

Until 1966, the Nigerian federal system exhibited a remarkable degree of apparent stability, but this stability represented an ability to overcome successive nearly fatal crises rather than the absence of political strife. For instance, throughout the dozen years of its existence, there were persistent demands for the alteration of the existing regional units. Two pressures were at work. The three original regions had each contained significant ethnic minorities—the non-Muslim Middle Belt in the north, the non-Yoruba midwest, and the non-Ibo peoples of the Calabar, Rivers and Ogoja provinces in the east—and these groups demanded that the existing regions be splintered to form ethnically homogeneous “natural” states. Added to these pressures was the anxiety of southerners as a group at the preponderant size of the Northern Region possessing more than half of the federal population and area. Southern leaders, therefore, regularly argued that northern hegemony within the federal system could be avoided only if the Northern Region were split. Most of these pressures were resisted, but in 1963 a new Mid-Western Region was carved out of the Western Region.<sup>121</sup>

Another continual source of bitter controversy was the issue of regional representation in the central legislature and cabinet. The issue was a crucial one because the population of the Northern Region was greater than that of the others combined, and because the political parties, especially the Northern Peoples’ Congress, were chiefly regional in their bases of support. In 1954 a unicameral legislature had been established in which the Northern Region was limited to half the seats, but in 1959 this was replaced by a bicameral legislature in which the House of Representatives was based on representation according to population, and the Senate was based on equal representation for the regional units. This compromise was based on the assumption that the less advanced North would have a temporary advantage during which it might reduce its relative backwardness, but that in the long run the faster growing southern populations would eliminate the absolute majority held initially by the northerners. Controversy did not abate, however, for when the 1962-3 census confirmed that the automatic northern majority in the House of Representatives would be permanent rather than temporary as the southerners had expected, a series of heated disputes erupted. These almost led to the disintegration of the federation at the time of the federal election crisis in 1964-5 and remained a festering sore thereafter.

The distribution of finances among governments, and especially the application of the principle of derivation in the assignment of transfers of revenue to the regions, was a subject of acrimony also. It was found necessary to appoint no less than three fiscal commissions in the ten years before independence, and a further review was initiated after independence.

The use in 1962 by the central government of its emergency powers was not only a source of controversy but in the final analysis irrevocably destroyed the balance of political forces which had provided stability for a decade. In 1962, when an internal dispute in the Action Group created a constitutional crisis in the Western Region, the



central coalition of the N.P.C.-N.C.N.C. took the opportunity to exercise the emergency powers and to impose central administration in that region for seven months. This action, followed by the corruption investigations and treason trials, seriously weakened the Action Group, both as the federal opposition to the N.P.C.-N.C.N.C. coalition and as the dominant party in the Western Region. This reduced the need of the N.P.C. to rely on the N.C.N.C. as an ally and reinforced the dominant position of the northern-based party in federal politics. At the federal elections late in 1964 the N.P.C. was able to abandon the coalition with the N.C.N.C. and to take as its ally the Nigerian National Democratic party in the west. But the lengths to which this new coalition went in rigging the federal election in 1964 and the Western Regional election late in 1965 became a source of increasing unrest which culminated in the military coup of January 1966 and the end of the constitutional regime.

Throughout the life of the federation, regionalism had been an especially potent force, accentuated by the intensity of regional loyalties, by the bargaining power of regional governments due to the small number of regions and their large size, and by the regional basis of the political parties and of the governing elite. After a decade of relative success, the breakdown in the machinery for generating an interregional consensus led to the failure of the federal system.

But while federalism failed, military rule proved even less capable of resolving interregional tensions. The army itself, breaking into ethnic factions, quickly lost its cohesion and by mid-1967 Nigeria was on the brink of civil war.

## *V. The Federation of Rhodesia and Nyasaland*

In the mid-nineteenth century Central Africa was practically unknown to Europeans except for a handful of explorers. In what is now known as Southern Rhodesia the Matabele, under Lobengula, were dominant, frequently raiding the less warlike Mashona tribes to the east. North of the Zambesi River the Barotse tribe exercised a wide and little disputed authority. In Nyasaland the Zulu Angoni were subduing the indigenous tribes in the northeast and warring with the Yao tribe in the south.

The development of British influence in the three territories, while linked by certain common features, was in the main carried out separately. Southern Rhodesia was developed through the efforts of Rhodes' British South Africa Company, but in 1923 as a result of the demands of the settlers, it was annexed to the Crown as a Crown Colony and the settlers were granted responsible government. Northern Rhodesia also came under British influence through the activities of the same company, but here the process was more peaceful and settlement and development more gradual. In 1924 the administration of Northern Rhodesia was transferred to the Crown, but because of the scanty settler population it remained a protectorate and officials dominated the Legislative Council until 1945. Nyasaland came under British influence in a different way, largely as a result of missionary efforts. In 1891, in order to facilitate the pacification of the area, a British protectorate was proclaimed. The early economic development was largely under the auspices of the African Lakes Company in which the British South Africa Company early

acquired a controlling interest, but European settlement was even slower than in Northern Rhodesia.

From 1915 on, the amalgamation of the Rhodesias was suggested on various occasions. In 1915 the British South Africa Company, which administered both territories, proposed uniting the Rhodesias for the sake of economy, but the Southern Rhodesian settlers rejected the scheme, fearing that union with the undeveloped and predominantly black north would prove an economic liability and delay their own achievement of self-government. Beginning in the 1920s, however, a number of factors began to change the outlook of the Southern Rhodesians. The discovery of the Northern Rhodesian copper belt and the subsequent mushrooming of its wealth and settler population made it economically valuable and a potential bulwark of settler government. At the same time, the victory of General Hertzog's Afrikaner nationalist party in the South African elections of 1924 produced a sharp reaction among the predominantly English-speaking settlers of Southern Rhodesia. The possibility of uniting with South Africa, rejected in the referendum of 1922, became even more unpopular, increasing interest northwards. The growth of anti-imperialist sentiment in Britain and the policy of "paramountcy" of native interest, first enunciated for Kenya by the Duke of Devonshire in 1923, created a feeling of insecurity among the settlers about their future, and further encouraged settler solidarity between the Rhodesias.

In 1927 the appointment of the Hilton Young Commission on Closer Union of the Dependencies of East and Central Africa provoked the settlers of Northern Rhodesia, who preferred union with the white south, to approach the Southern Rhodesian government concerning possible terms of union. The delegates, Captain Murray and Mr. Strike, received terms extremely favourable to Northern Rhodesia. The presentation of these views to the commission succeeded in neutralizing the possibility of recommendations for any union of Northern Rhodesia with East Africa. The commission, however, did not recommend any immediate union of the Rhodesias, federal or unitary, because of their different native policies and different stages of constitutional progress.<sup>122</sup>

The movement for amalgamation gained strength in the Rhodesias during the 1930s. It was spurred by the publication in 1930 of Lord Passfield's *Memorandum on Native Policy*, in which he reaffirmed the application of the British policy of paramountcy of African native interest to Northern Rhodesia and Nyasaland, and to East Africa.<sup>123</sup> The alarmed Northern Rhodesian settlers looked even more eagerly to union with self-governing Southern Rhodesia as an opportunity to free themselves from the Colonial Office and its native policies. Requests for a conference on amalgamation were, however, rejected by Lord Passfield. This only provoked further support for union, but the sole concession was the institution of a Central African Governors' Conference, intended to achieve greater administrative coordination. In 1936, a conference of delegates from the Northern and Southern Rhodesia legislatures met and adopted a resolution in favour of the early amalgamation of the two territories. The British government again rejected the proposal but later set up a Royal Commission to enquire into the feasibility and desirability of closer cooperation between the three British Central African territories. The Bledisloe Report pointed to common economic, social and political problems making closer cooperation desirable. As an ultimate objective it favoured amalgamation rather

than federation, because of the greater administrative efficiency of the former type of union. The commission, nevertheless, considered amalgamation unsuitable for the time being because of the marked difference in the native policies, constitutional status and economic development of the three territories, because the settler population was as yet unready either in numbers or in experience to govern the vast area, and because African opposition in the two northern protectorates displayed a "striking unanimity."<sup>124</sup>

The Bledisloe Commission had, however, recommended an interterritorial council and in 1945 the Central African Council was established. Consisting of four members from each of the three territories, including the heads of their governments, the Council was a purely consultative and advisory body and was concerned chiefly with economic affairs and the operation of common services.

The establishment of the Central African Council did not subdue the hopes of the settlers for amalgamation. Indeed, with the signs of growing African political advance to the north, especially in West Africa, and the triumph of Dr. Malan's nationalist party to the south, the need for Central African solidarity appeared urgent. Led by Premier Godfrey Huggins of Southern Rhodesia and Roy Welensky, the leading unofficial member in the Northern Rhodesia legislature, the settlers continued to press for a union of the three territories. When Colonel Oliver Stanley, the Opposition spokesman on colonial affairs, advised Welensky that the British Conservative party would consider amalgamation out of the question, but might support federation, Welensky convinced Huggins and later the major advocates of amalgamation that they should change their goal to federation of the three Central African territories.<sup>125</sup> A conference of settlers was then held at Victoria Falls in 1949. Although it achieved little specific agreement, it did demonstrate the width of settler support and, because of the absence of African representatives, did arouse African suspicions of the scheme. Next, the Southern Rhodesian government brought pressure to bear by announcing its intention to withdraw from the Central African Council because of its inadequacies as a merely consultative body without executive powers.

Late in 1950, Mr. Griffiths, then Colonial Secretary, accepted Huggins' suggestion that a conference of officials be called to make a "purely exploratory" investigation of the question of closer association. This concession was largely the result of the Colonial Office's new realistic assessment of the situation in Northern Rhodesia in which the initiative had passed to the local officials and the unofficial members of the legislature. The conference rejected a loose league as impractical and amalgamation, despite its simplicity and efficiency, as having little chance of acceptance.<sup>126</sup> The solution it suggested was a compromise on federal lines whereby the different native policies and different constitutional status of the protectorates might be preserved within a unified structure.<sup>127</sup> To allay African fears a special independent African Affairs Board and a Minister for African Interests were also recommended.<sup>128</sup> The report was followed by a conference, this time composed of delegates of the three territorial and the British governments, held at Victoria Falls. The African representatives from the two northern territories became the centre of controversy when they made clear their apprehensions about being closely associated with Southern Rhodesia.<sup>129</sup> Although the final an-

nouncement of the conference stressed features meant to allay African fears and suspicions, African objections continued.

Although Griffiths had insisted that African consent was essential to any scheme of federation, the British elections of 1951 resulted in a Conservative government with a different emphasis. Concerned lest the Southern Rhodesian electorate reject federation, the new British government decided that, in spite of African opposition, the unification of the three territories was urgent if Southern Rhodesia was to be won to federation, a policy of racial partnership and freedom from South African influence.

A conference was held therefore in 1952, and although it was boycotted by the African representatives from the protectorates, it proceeded to produce a Draft Federal Scheme.<sup>130</sup> It proposed a federation of the two Rhodesias and Nyasaland, the two northern territories retaining their status as protectorates. The legislative powers open to the central government were increased considerably over those recommended by the officials' conference in 1951, although residual powers, including matters most closely concerning the daily lives of the Africans, were left to the territorial governments. The other major differences from the officials' scheme were the assignment to the central parliament of the power to fix the federal franchise, and the weakening of the constitutional safeguards for African rights by abandoning the idea of a Minister for African Interests and by reducing the status and authority of the African Affairs Board. The membership of the central legislature provoked considerable discussion because of the problem of balancing both its racial and territorial composition. The solution arrived at followed, with a few modifications, the recommendations of the officials' report. In the unicameral Federal Assembly the settlers were to control a majority of seats from each territory and three-quarters of the total membership (sufficient to pass constitutional amendments), but Southern Rhodesia, with 74 per cent of the federal settler population, was to be limited to 17 of the total 35 seats.

A final constitutional conference met in London in 1953.<sup>131</sup> Once again the African representatives refused to participate. Thus the federal solution finally arrived at was in no way a compromise between the white settlers and the Africans, but rather a bargain between the settlers and the British government. The conference decided upon revisions to the earlier Draft Federal Scheme in the light of the reports of the Judicial, Fiscal and Civil Service Commissions, and further additions were made to the functions of the central government. Most important, in the face of settler pressure, the African Affairs Board was now converted from an independent commission into a standing committee of the Federal Assembly.

The federal scheme was then approved by referendum in Southern Rhodesia, by the Legislative Councils of the two protectorates and by the British Parliament. Huggins' efforts in the referendum campaign to assure the settlers that their security would not be endangered by federation further increased the African suspicion of it as a device to delay their advancement. Despite the continued opposition of the Africans of the northern territories and of the British Labour and Liberal parties, the British Government pressed through the Rhodesia and Nyasaland Federation Act of 1953.<sup>132</sup> Convinced of the value

of federation in facilitating economic development, racial partnership and the creation of a viable nation as the buffer between black Africa to the north and white Africa to the south, and believing that once federation was experienced the Africans would realize its value, the British Government considered it urgent to take this last opportunity to include Southern Rhodesia in the federation before it turned to a demand for its own separate dominion status.

The constitution of the Federation of Rhodesia and Nyasaland went into effect in September 1953.<sup>133</sup> The rationale of the division of powers was that matters primarily of interest to the settlers, especially economic affairs, were assigned to the central government while those primarily of interest to the Africans were left in the hands of the territorial governments. A distinctive feature, therefore, was the splitting of some subjects such as education and agriculture on purely racial grounds.<sup>134</sup> A precise and complete division of powers on racial lines was impracticable, however, and in fact many of the fields allotted to the federal government were multiracial in scope. During the negotiations preceding federation, the settlers had continually pressed for increases in the central exclusive and concurrent powers, with the result that in the constitution as adopted central authority was extensive, including control of external affairs, the armed forces, the economy, communications, key development services and the major sources of revenue.

The constitution included such orthodox federal features as a federal public service distinct from the territorial public services, a Federal Supreme Court with exclusive jurisdiction to decide intergovernmental legal disputes and powers to interpret the constitution, and a rigid procedure for constitutional amendment. The actual normal amendment procedure was unusual, however, in that it was the British government which acted on behalf of the territories in ratifying amendments.<sup>135</sup> During the ten years, any alterations to the division of powers, however, required the prior consent of the territorial legislatures.

A unicameral Federal Assembly was created along the lines agreed upon in 1952. About a quarter of its members were Africans or represented African interests in the territories, and this was considered a major concession by the Southern Rhodesians. On the other hand, the Southern Rhodesian settlers who constituted 7 per cent of the population of that single territory had, under the existing franchise, control over 17 of the 35 central legislators, thus fostering the distrust of the Africans in the northern territories. Moreover, the power to fix the franchise was assigned to the Federal Assembly and it was the use made of this authority by the settlers in 1957-8 that resulted in so much controversy.

The constitution did, however, include many features intended to ease African anxieties. Among these were the specific enunciation in the preamble of "partnership" as a goal of federation, the continuance of protectorate status for Northern Rhodesia and Nyasaland, the requirement of the assent of the British government to constitutional amendments, the prohibition against the central government acquiring land for settling immigrants, the prohibition against the denial of employment in the public service solely on the grounds of race,<sup>136</sup> and establishment of a special standing committee of the

Federal Assembly, the African Affairs Board, with authority to request that legislation of a "differentiating" nature be reserved for assent by the British government.<sup>137</sup>

In the first federal elections Sir Godfrey Huggins' Federal party won a sweeping victory, gaining 24 of the 26 ordinary seats for elected members. First under Huggins and then after 1956 under Welensky as prime ministers, this party continued to dominate central politics, for in 1958 it again triumphed in the federal elections, securing 44 of the 53 "elected" seats, with the support of the predominantly white electorate.<sup>138</sup>

The federation had been imposed despite the protests of the majority of the articulate Africans in the hope that, once experienced, its benefits would be recognized by the Africans. In the early years after its formation there were some signs that federation was indeed resulting in positive achievements. The first seven years saw "a remarkable, if perhaps uneven, economic advance."<sup>139</sup> Some critics have argued that federation itself was not responsible for this economic expansion, and that the economic benefits of this advance were not equitably distributed among the territories,<sup>140</sup> but the Monckton Commission was sufficiently impressed to consider this the main advantage and achievement of federation.<sup>141</sup> There were also some advances in the lowering of the colour bar in land apportionment, industrial employment, the government services, social services and public amenities. But while the settlers considered these major concessions, the meagre nature of the measures and the strength of settler opposition to them did much to undo their value in winning the confidence of the Africans.<sup>142</sup>

Despite these positive achievements the federation failed to accomplish what the British government had expected, for instead of advancing peacefully towards a maturing racial partnership, it produced deteriorating race relations, discontent, disturbances, and instability. The federal government, dependent on a predominantly white electorate, was unable to concentrate on conciliating the Africans, for it had to protect its own right flank against those, such as the supporters of the Dominion party, who charged it with jeopardizing white supremacy. As a result, the failure to take any "significant and well publicized steps to demonstrate the reality of racial partnership as the basis of Federation,"<sup>143</sup> the lack of adequate African representation in the central government, the dominant role of Southern Rhodesia (apparent in the majority it held in the central cabinet, in the choice of Salisbury as the federal capital, and the choice of the Kariba site for the major hydroelectric development), the efforts of the settler-dominated central government to expand its authority and to influence the negotiations for the revision of territorial constitutions, the relative slowness of African political advance in the territories and the increased flood of European immigration, all served to confirm the fears of the Africans that federation was a barrier rather than a means to their political advancement. Thus, the Monckton Commission reported that "the opposition to Federation which . . . was strong at the time that Federation was introduced has gathered further strength by the African disappointment in the manner of its operation."<sup>144</sup> The hope that white altruism and black patience would jointly make a success of federation proved illusory.

The turning point came when developments occurred during 1957-9 which turned the sullen suspicions of the northern Africans about the true purpose of federation into a hardened certainty. The settler demand for an early end to "Whitehall control" and for



the grant of dominion status, and the British promise to consider this at the 1960 review of the constitution, the passage of the Constitution Amendment Act, 1957, and the Electoral Act, 1958, which were ruled "differentiating measures" by the African Affairs Board but approved by the British Government,<sup>145</sup> the federal intervention on the side of illiberality in the territorial constitution-making in Northern Rhodesia and the rejection of Todd as premier in Southern Rhodesia because he was "ultra-liberal," all induced Africans to believe the worst. Federation was exposed in their eyes as a device for settler control, and the African Affairs Board and the British government's reserved powers shown to be ineffective safeguards.

Federation was now fully discredited among the Africans of the protectorates, and the anger, bitterness and frustration of the African nationalists were focused upon federation. Throughout 1958 tension mounted in the three territories. In Nyasaland, the Congress party had reached a stage in which it felt there was no constitutional way in which to make its views effective and with the return of Dr. Hastings Banda was showing a new militancy. The situation deteriorated so rapidly that in February and March, 1959, emergencies were declared in Southern Rhodesia and Nyasaland, the Zambia Congress was declared illegal in Northern Rhodesia, African leaders were arrested, and in Nyasaland a "police state" was imposed with the aid of federal troops.<sup>146</sup> The fears of the Nyasaland Africans that federation would enable white Southern Rhodesian troops to impose settler rule had come true, and the baton charges, the bloodshed, the burning of houses, the searching of villages, the collective fines and the confiscation of implements did not make the people of Nyasaland like the federation any better.

Although not immediately apparent, after the emergency the position of the British government began to shift towards an acceptance of the need to revise the federal structure considerably, in spite of settler opposition. In 1959 an advisory commission under Lord Monckton, composed of nominees of the territorial, federal and British governments was set up to make recommendations for the constitutional review conference due to be held late in 1960.<sup>147</sup> The commission pointed to the economic advantages and achievements of federation but in the light of a widespread, sincere, and "almost pathological" dislike of federation among the Africans of the two northern territories, concluded that "Federation cannot, in our view, be maintained in its present form."<sup>148</sup>

The majority of the commission recommended a drastic revision of the federal structure. Among its recommendations was the suggestion that, in order to make the Federal Assembly representative of the broad mass of African and European opinion, seats in the Assembly should, without delay, be equally divided between Africans and Europeans and the franchise revised.<sup>149</sup> In order to remove the fear of federation as a barrier to political advance, immediate and substantial advances in the territorial constitutions towards self-government were advised. Other recommendations included the rejection of the division of powers on racial lines, the transfer of considerable functions and finances to the territorial governments, the strengthening of the machinery for inter-governmental cooperation, and the improving of existing safeguards and the addition of new ones, including a Bill of Rights and Councils of State, the latter acting as a barrier to discriminatory legislation.<sup>150</sup> Since the term "federation" had become to many Africans



a term of abuse, the commission also concluded that the federal association, in its new form, must start with a new name. One of the commission's most controversial decisions was that the new federal structure should be "on approval," willingness to try the new scheme being obtained by means of a right of secession after a trial period.<sup>151</sup>

The review conference met late in 1960 but the real work of reviewing the federal constitution was postponed. In the meantime, the British Government undertook a program of constitutional advances in all three territories. The result in Nyasaland was the triumph in 1961 of the Malawi Congress party, led by Dr. Hastings Banda, an avowed advocate of secession, when it won control of the territorial legislature and executive council. Nyasaland's continued membership in the federation now depended upon the decision of its African leaders. Soon afterwards constitutional advances in Northern Rhodesia also brought into power African nationalist leaders committed to secession. During the period between 1960 and 1963 the Conservative Government in Britain gradually shifted towards a realization that the federal experiment had failed and should therefore be terminated. Despite a determined rearguard action by the pro-federal settlers, bitter at the gradual withdrawal of British support, the handwriting was on the wall when the Imperial Government agreed late in 1962 to permit Nyasaland to secede. When the African Government of Northern Rhodesia likewise insisted upon its own separate independence, Britain proceeded to dissolve the federation on December 31, 1963.

## VI. *The West Indies Federation*

During the seventeenth, eighteenth and early nineteenth centuries, Britain acquired by settlement and by conquest from the Spanish, French and Dutch a large number of West Indian islands. In the eighteenth century these West Indian colonies were the most important part of the British Empire, far outranking the colonies of the North American mainland in economic and strategic importance. The form of government generally in operation was "the old representative system," the representative institutions being dominated by the white oligarchy. In the nineteenth century, however, when economic and social difficulties followed the drop in sugar prices, soil exhaustion and the abolition of the slave trade and slavery, the constitutional structure of nearly all the islands was altered to non-representative Crown Colony government. It was only in the twentieth century that representative government was reintroduced, this time advancing by gradual stages to a democratic basis.<sup>152</sup>

During the nineteenth and first half of the twentieth centuries, there were numerous official and unofficial proposals for federating the West Indian islands.<sup>153</sup> The various proposals differed widely in the scope of the territories to be included, in the justifications offered for federal union and in the degree of power and influence to be conferred on the central government. Most of these schemes were characterized by a Benthamite preoccupation with the administrative and economic advantages of federal association and therefore failed to stir public imagination. This, coupled with the difficulty and cost of transportation between the scattered islands, resulted in little being achieved in the direction of a federation of all British Caribbean colonies.

Nevertheless, some projects for limited federations and unions within the British West Indies did actually come into operation. At various times from the seventeenth century on, the Leeward Islands and the Windward Islands were grouped under common governors, and a federal constitution was enacted for the Leewards in 1705, but it soon lapsed. In 1871 a new federation of the Leewards was achieved, although a few years later the projected wider federation of the Leewards, Windwards and Barbados was abandoned when it provoked the "Confederation Riots" in Barbados. The Leeward Islands federation, consisting of Antigua, St. Kitts, Nevis, Dominica, Montserrat and the Virgin Islands lasted right up to 1956. The federation was of a very loose order, the central legislative and financial powers being very limited, and the central legislature, composed of delegates from the local legislatures, being inhibited from developing any power that would rival those of the component units. The result was "a weak central government, involving additional expenditure to no effectual purpose" and it was the target of much criticism throughout its existence.<sup>154</sup> This lesson, it would appear, was not, however, sufficiently taken into account by those planning a wider federation after 1945.

During the nineteenth century several intercolonial unions were also undertaken in the West Indies. Most significant perhaps was the federation of Tobago with Trinidad in 1887, followed by the complete amalgamation in 1898, for the fate of Tobago did not pass unnoticed in the smaller islands of the Caribbean. Other unions of West Indian islands took place when the diminutive Cayman Islands and the Turks and Caicos Islands were brought under the Jamaican legislature in 1863 and 1873, and when St. Kitts and Nevis were united as a single presidency within the Leeward Islands federation in 1882.

For a time British Honduras was under the jurisdiction of the governor of Jamaica, but it became a separate colony in 1884. An intercolonial link of a different sort was the West Indian Appeal Court set up in 1919.

On the issue of a wider British Caribbean federation, however, there was little progress before 1945. Indeed, the Closer Union Commission of 1933 had reported unfavourably and the West India Royal Commission of 1938-9 had advised caution. Both pointed to the strength of local pride and to the difficulties of communication and suggested that public opinion in the British West Indies was not yet ripe for federation, although the latter commission suggested that British West Indian unity was the ideal to which policy should be directed.<sup>155</sup>

Events during the war of 1939-45 fostered the growth of opinion in favour of political federation in the West Indies. One of the most important developments was the extension of interisland communication by air, facilitating contact between island leaders on a scale previously impossible. During the war, regional organization of one kind and another came into being and these led to a growing appreciation of the value of a regional approach to the solution of social and economic questions. The ferment of the Second World War affected ways of thought in both the imperial power and the West Indian peoples. The British government set upon a policy of implementing independence for the colonies but considered that in the Caribbean this would only be practicable if the islands were federated.<sup>156</sup> Among the people of the islands, the enunciation of the Atlantic Charter and the establishment of the American bases without reference to West Indian opinion fostered West Indian nationalism. The issue of West Indian unity was brought

into focus late in the war by meetings of the Associated Chambers of Commerce and the West Indian Conference in Barbados in 1944, and by the newly formed Caribbean Labour Congress which at its first session in 1945 demanded a conference for the purpose of considering West Indian federation.

Early in 1945, when it was clear that the war would soon be over, Oliver Stanley, the Secretary of State for the Colonies, in a dispatch to all the governors of the British Caribbean colonies, initiated discussions on two programs of federation, one for federating the Windward and Leeward Islands and the other, a larger plan, for linking all the British Caribbean colonies.<sup>157</sup> The smaller federation was not looked upon as an alternative but rather, as the Moyne Commission had suggested, as an important "experimental" step towards the wider federation. Following a conference of delegates from the Windward Islands in 1945, the Colonial Secretary submitted in 1946 proposals for the amalgamation of the Windwards and Leewards under "a strong central government with wide powers over all matters of general administration."<sup>158</sup> A conference on closer union of the Windward and Leeward Islands, held at St. Kitts early in 1947, agreed that a central government should be established, with a wide range of powers assigned to it and a legislative council directly elected by the people, thus differing greatly from the existing Leeward Islands federation.<sup>159</sup> Nevertheless, the persistence of strong insular feeling was evident for the delegates were clearly in favour of an orthodox federation instead of amalgamation.

Although the Moyne Report had suggested that the question of a wider British West Indian federation be deferred until experience with the Windward-Leeward federation had been obtained, Arthur Creech Jones, then Secretary of State for the Colonies, suggested in 1947 that there was no need to postpone a conference to consider the question since all the British Caribbean colonial legislatures, except the Bahamas, had already shown support for the wider federation when debating Stanley's dispatch. Accordingly, in September 1947, a conference on closer association of the British West Indian colonies was held under the Colonial Secretary's chairmanship at Montego Bay.<sup>160</sup> After a general discussion of the issues involved in federation, the conference agreed on "a federation in which each constituent unit retains complete control over all matters except those specifically assigned to the federal government."<sup>161</sup> The conference also agreed upon the establishment of machinery to work towards this aim. A Standing Closer Association Committee, composed of delegates from each of the colonial legislatures, was to consider and report on the form the federal constitution should take, special commissions were to examine the problems of a customs union and of the unification of the public services, and a small regional economic committee was to study and report on matters of common economic significance and to advise territorial governments on economic policy.<sup>162</sup> So general was the agreement that after the Montego Bay conference hopes ran high and federation was regarded as imminent. But while there had been general support for the resolutions of the conference, its proceedings indicated some of the probable difficulties in store. The strength of insular particularism was indicated by the resolution that the political development of the individual territories "must be pursued as an aim in itself, without prejudice and in no way subordinate to

progress towards federation.”<sup>163</sup> The reluctance expressed by the Jamaicans and especially of Bustamante, to more than functional cooperation for fear that federation would retard Jamaica's progress to self-government, indicated Jamaican doubts in spite of their support at the end of the conference for its conclusions. The hesitance of the representatives of the mainland British Caribbean territories, British Guiana and British Honduras, foreshadowed their later refusal to join the federation when it was formed.

The decision to proceed with the British Caribbean federation, without awaiting the results of the narrower experimental federation in the Windwards and Leewards, raised the problem of the role of the smaller federation within the larger one. In their proposals, the Colonial Secretaries had suggested that the Windward-Leeward colony might be one unit in the wider federation. The St. Kitts proposals had, however, assigned to the smaller federal government powers and revenues which were likely to be those of the central government in the wider federation. In the end, the combination of insularity and desire to participate in the larger federation led to the abandonment of the smaller middle-tier one, for the islands preferred to participate in the British Caribbean federation as individual units. Indeed, the problem evolved into one of dissociation, the existing Leeward Islands federation being defederated in order that its components might become separate units in the larger federation.<sup>164</sup>

Two years after the Montego Bay conference the Standing Closer Association Committee submitted its proposals on the form the British Caribbean federal constitution should take.<sup>165</sup> It recommended a division of powers patterned on the form of the Australian model, with federal and concurrent fields of legislation enumerated and all residual powers remaining with the territorial governments. In view of the existing social and economic diversity and the strength of local political and other traditions, the list of “federal” functions was limited chiefly to external relations and interterritorial communications.<sup>166</sup> The gradual accretion of central functions “as the region grows together” was envisaged, however, and to make this possible provisions enabling the territories to delegate powers to the central government were suggested.<sup>167</sup> The S.C.A.C. insisted that for effective federal government, the central government must have its own independent source of revenue. Since it considered the establishment of a customs union as “the foundation of a federal structure,” it suggested that customs was the appropriate major source of central revenue.<sup>168</sup> But because customs revenue would exceed for many years the central requirements, and alternative sources of territorial revenue were limited, it was proposed that 75 per cent of the net customs receipts should be returned unconditionally to the territories in proportion to their consumption of dutiable goods. Thus the central government was to be left financially weak also.

The report advocated a bicameral central legislature in order that the Senate, consisting wholly of nominated members, might represent the equality of the constituent units and serve as a revisionary house. The House of Assembly was to be elected by universal suffrage and to represent the territories in something like proportion to population, except that the representation of the larger territories was considerably reduced to prevent Jamaica, with nearly half the British Caribbean population, from dominating the House. The central executive was to be a Council of State in which the

prime minister would be elected by the House of Assembly, an interesting innovation in British constitutional practice.

Other recommendations included setting up a Supreme Court on the Australian model, establishing separate federal and territorial civil services, placing the capital in Trinidad, and relying on British Orders in Council for constitutional amendments. The committee also examined the cost of federation in order to contradict exaggerated ideas that had become current,<sup>169</sup> and recommended certain forms of pre-federal joint action, although it insisted that these were no substitute for political federation. During 1949 and 1950 the Holmes Commission also reported in favour of immediate unification of the public services<sup>170</sup> and the McLagan Commission reported that a customs union, whether preceding or accompanying political federation, was both practically and economically desirable.<sup>171</sup>

After the publication of the S.C.A.C. report, discussions became involved and difficult as the special interests, ambitions and fears in each island came to the fore. Parochialism grounded deep in generations of history continued to exert itself. A complicating factor was the introduction of adult suffrage and rapid constitutional progress in the individual islands after 1944, making some political leaders eager to consolidate their political gains and fearful that in federation they might lose them. Moreover, the S.C.A.C. proposals for the central government, and especially the central executive, represented a Crown Colony constitution of an advanced type, but slightly less advanced than the constitutions already in force in several territories. Thus, for the politicians who hoped for a speedy advance towards dominion status through federation, the proposals were a distinct disappointment. The S.C.A.C. report was debated in the legislatures of the various islands. Jamaica, a thousand miles from the other islands and more self-contained, was at first doubtful, and Barbados, fearful of Jamaican domination, was unenthusiastic. But eventually all the islands, with the exception of the Virgin Islands, accepted federation in principle, although some proposed modifications to the S.C.A.C. scheme. The mainland territories of British Guiana and British Honduras, fearing they might be swamped by the surplus population from the islands, conscious of their own undeveloped resources and cherishing dreams of continental destinies, declared themselves against participation.

As a result of the problems and disagreements which had emerged following the publication of the S.C.A.C. report, constitution-making proved to be a long, drawn-out and difficult process. Between 1953 and 1956 three constitutional conferences were held and four commissions appointed to examine particular aspects of federation.<sup>172</sup> The major issues of contention were the assignment to the central government of finances and particularly customs,<sup>173</sup> the power to levy income tax, and the control of external public borrowing; the assertion of the principle of freedom of internal movement which aroused Trinidad's fears of migration from the smaller islands; whether to permit simultaneous membership in central and territorial legislatures; where to place the constitutional amending power—whether in the West Indian legislatures or the British government; the site of the federal capital; and the “dependent” character of the central government. Not infrequently decisions made at earlier conferences were reversed at later ones.<sup>174</sup>

The compromises arrived at on the issues of central control of free internal movement, customs union and income tax were similar—"an agreement in principle and postponement of its realization."<sup>175</sup> In the case of the restriction of internal movement, the ultimate control would after five years lie with the central government, but until then the territories were left with some initiative. Similarly, although the concurrent power to levy taxes on income and profits, and customs and excise duties, was recognized, for the first five years central revenue was limited to the profits on the issue of currency, a mandatory levy on the territorial governments, and receipts from certain scheduled customs and excise duties. The net effect was that, at least for the initial five years, the central government would be even weaker than under the S.C.A.C. recommendations. On the issues of simultaneous membership in legislatures and procedure for constitutional amendment, the 1956 conference reverted to the S.C.A.C. proposals in prohibiting the former and leaving the latter to British Orders in Council. The demand for a less "colonial" central government resulted in alterations to the membership of the Council of State and the powers of the governor-general, although the governor-general still retained considerable discretionary power and the British government held reserved powers. Disagreement over the federal capital site necessitated a special commission, but its recommendation of Barbados in terms offensive to West Indian nationalism resulted in the Standing Federation Commission choosing Trinidad instead.<sup>176</sup> For some time the United States refused to give up its naval base on that site and Port-of-Spain served as the temporary federal capital, but later the United States agreed to vacate the area required for the federal capital by the end of 1962.

In January 1958, after thirteen years of negotiations, the constitution of the West Indies Federation finally came into effect.<sup>177</sup> As implemented, the federation consisted of ten islands or groups of islands with wide variations in size, population and wealth. Jamaica alone contained 52 per cent of the federal population, 58 per cent of the total area and 42 per cent of the total revenue, while Trinidad held a further 27 per cent of the population, 26 per cent of the area and 42 per cent of the revenue, representing more than the eight other territories combined. The chief characteristic of the division of powers was the extreme weakness of the central government in legislative authority and financial resources. Indeed the central government was little more than an improved version of the pre-federal Regional Economic Committee. The list of exclusive central powers was niggardly, although the more extensive concurrent list provided scope for a transition later to greater centralization. The central government's lack of finances dramatized its weakness; with one-tenth the revenue of either Trinidad or Jamaica, it would hardly be in a position to achieve the hoped-for economic transformation. The West Indies Federation was also unique among modern political federations in commencing without a customs union, the implementation of this being delayed, awaiting the report of a Commission on Trade and Tariffs.

The first federal elections were held early in 1958, and in these the Federal Labour party, a loose alliance of island socialist parties, emerged narrowly victorious. As its major leaders, Norman Manley and Eric Williams chose to remain as the premiers of Jamaica and Trinidad, Grantley Adams of Barbados became the federal prime minister. The opposition Democratic Labour party, a heterogeneous coalition of parties, which claimed to be



anti-socialist and opposed to undue federal encroachments over the units, did better than expected, capturing a majority of the federal seats in both Trinidad and Jamaica. As a result, in the early years of the federation the two largest territories were both seriously under-represented in the central executive.

The achievement of federation did not end disagreements over the federal structure. The constitution had deferred the implementation of the customs union, the central right to tax income and profits, and central control of internal movement, and had also provided for a general review of the constitution within five years, thus encouraging continued contention.<sup>178</sup> In the discussions on these issues, Trinidad emerged as the champion of central power and Jamaica as the proponent of the view that the central government should have no more power than necessary for its recognition as an international entity. The key issue was whether the central government should have powers of direct taxation and control of economic development. The Jamaican government had undertaken its own program of economic development and, attributing its rapid expansion to these efforts, was determined to prevent the central government from interfering with the Jamaican economy. It therefore opposed federal control of income and taxation of profits, and argued for a longer period than that recommended by the Trade and Tariffs Commission within which to accommodate its existing high protective tariffs to a customs union. Jamaicans, realizing also that without control of the federal legislature, their economy might be placed at the mercy of the federation, demanded that they should receive representation in the House of Representatives proportional to their population, and insisted that this problem be settled before the others were dealt with.

These issues came to a head in a long series of intergovernmental negotiations beginning in 1959 and culminating in the constitutional review conference in June 1961.<sup>179</sup> The outcome was a continuous, if often unwilling, dance to the Jamaican tune and the result, an emasculated federal structure. Because it was feared that a federation without Jamaica could not be viable, concessions were made on most issues. Jamaican representation in the House of Representatives was increased, direct taxation and the control of economic development were placed outside federal competence, any transfer of these to federal control being in effect subject to Jamaican veto, and the introduction of the customs union was to be phased over nine years.<sup>180</sup>

In spite of these concessions and the promise of federal independence in May 1962, the federation failed, however, to hold Jamaica. Premier Norman Manley, a professed supporter of federation, had announced early in 1960 that Jamaica would hold a referendum on the issue of secession. Conceived as a weapon both to extort concessions for Jamaica in the constitutional bargaining and to undermine the Jamaican critics of federation, it succeeded in achieving the former but backfired in the latter, for when the referendum was held in September 1961, a majority of Jamaicans voted against federation. Faced with this expression of Jamaican opinion, the British Government quickly agreed to permit Jamaica to secede and seek its own independence.<sup>181</sup> With the withdrawal of Jamaica, the Trinidad Government decided to seek its own independence also. Thereupon, the British Government decided simply to dissolve the federation.<sup>182</sup>



Handicapped by the failure to give the central government effective power and by the parochialism of its leaders, the West Indies Federation, which had been floundering unhappily since its formation, finally sank altogether and was dissolved on the very day it was to have achieved independence.

*I. The Constitution of India (adopted 1950)<sup>1</sup>*

*Fundamental Rights*

*Article 15*

- 1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
- 2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
  - a) access to shops, public restaurants, hotels and places of public entertainment; or
  - b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds dedicated to the use of the general public.
- 3) Nothing in this article shall prevent the State from making any special provision for women and children.
- 4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.<sup>2</sup>

*Article 16*

- 1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- 2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
- 3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office (under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory)<sup>3</sup> prior to such employment or appointment.<sup>4</sup>
- 4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- 5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

*Article 25*

- 1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.
- 2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law
  - a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
  - b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

*Explanation I.* The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

*Explanation II.* In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

*Article 26*

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

- a) to establish and maintain institutions for religious and charitable purposes;
- b) to manage its own affairs in matters of religion;
- c) to own and acquire movable and immovable property; and
- d) to administer such property in accordance with law.

*Article 27*

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

*Article 28*

- 1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.
- 2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.
- 3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

*Article 29*

- 1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
- 2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

*Article 30*

- 1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- 2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

*Directive Principles**Article 46*

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

*Parliament**Article 120*

- 1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in Parliament shall be transacted in Hindi or in English:  
Provided that the Chairman of the Council of States or Speaker of the House of the People, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in Hindi or in English to address the House in his mother tongue.
- 2) Unless Parliament by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

*The State Legislature**Article 210*

- 1) Notwithstanding anything in Part XVII, but subject to the provisions of article 348, business in the Legislature of a State shall be transacted in the official language or languages of the State or in Hindi or in English:  
Provided that the Speaker of the Legislative Assembly or Chairman of the Legislative Council, or person acting as such, as the case may be, may permit any member who cannot adequately express himself in any of the languages aforesaid to address the House in his mother tongue.
- 2) Unless the Legislature of the State by law otherwise provides, this article shall, after the expiration of a period of fifteen years from the commencement of this Constitution, have effect as if the words "or in English" were omitted therefrom.

*Special Provisions Relating to Certain Classes**Article 330<sup>5</sup>*

- 1) Seats shall be reserved in the House of the People for
  - a) the Scheduled Castes;
  - b) the Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam; and
  - c) the Scheduled Tribes in the autonomous districts of Assam.
- 2) The number of seats reserved in any State (or Union territory)<sup>6</sup> for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that State (or Union territory)<sup>6</sup> in the House of the People as the population of the Scheduled Castes in the State (or Union territory)<sup>6</sup> or of the Scheduled Tribes in the State (or Union territory)<sup>6</sup> or part of the State (or Union territory)<sup>6</sup> as the case may be, in respect of which seats are so reserved, bears to the total population of the State (or Union territory).<sup>6</sup>

*Article 331<sup>7</sup>*

Notwithstanding anything in article 81, the President may, if he is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.

*Article 332<sup>8</sup>*

- 1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the tribal areas of Assam, in the Legislative Assembly of every State. . . .<sup>9</sup>

- 2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.
- 3) The number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.
- 4) The number of seats reserved for an autonomous district in the Legislative Assembly of the State of Assam shall bear to the total number of seats in that Assembly a proportion not less than the population of the district bears to the total population of the State.
- 5) The constituencies for the seats reserved for any autonomous district of Assam shall not comprise any area outside that district except in the case of the constituency comprising the cantonment and municipality of Shillong.
- 6) No person who is not a member of a Scheduled Tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district except from the constituency comprising the cantonment and municipality of Shillong.

#### *Article 333<sup>10</sup>*

Notwithstanding anything in article 170, the Governor . . .<sup>11</sup> of a State may, if he is of opinion that the Anglo-Indian community needs representation in the Legislative Assembly of the State and is not adequately represented therein, nominate such number of members of the community to the Assembly as he considers appropriate.

#### *Article 334<sup>12</sup>*

Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to

- a) the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States; and
- b) the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination,

shall cease to have effect on the expiration of a period of ten years from the commencement of this Constitution:

Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

#### *Article 335<sup>12</sup>*

The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

#### *Article 336<sup>13</sup>*

- 1) During the first two years after the commencement of this Constitution, appointments of members of the Anglo-Indian community to posts in the railway, customs, postal and telegraph services of the Union shall be made on the same basis as immediately before the fifteenth day of August, 1947.

During every succeeding period of two years, the number of posts reserved for the members of the said community in the said services shall, as nearly as possible, be less by ten per cent than the numbers so reserved during the immediately preceding period of two years:

Provided that at the end of ten years from the commencement of this Constitution all such reservations shall cease.

- 2) Nothing in clause (1) shall bar the appointment of members of the Anglo-Indian community to posts other than, or in addition to, those reserved for the community under that clause if such

members are found qualified for appointment on merit as compared with the members of other communities.

#### *Article 337<sup>13</sup>*

During the first three financial years after the commencement of this Constitution, the same grants, if any shall be made by the Union and by each State...<sup>14</sup> for the benefit of the Anglo-Indian community in respect of education as were made in the financial year ending on the thirty-first day of March, 1948.

During every succeeding period of three years the grants may be less by ten per cent than those for the immediately preceding period of three years:

Provided that at the end of ten years from the commencement of this Constitution such grants, to the extent to which they are a special concession to the Anglo-Indian community, shall cease:

Provided further that no educational institution shall be entitled to receive any grant under this article unless at least forty per cent of the annual admissions therein are made available to members of communities other than the Anglo-Indian community.

#### *Article 338*

- 1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.
- 2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this Constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament.
- 3) In this article, references to the Scheduled Castes and Scheduled Tribes shall be construed as including references to such other backward classes as the President may, on receipt of the report of a Commission appointed under clause (1) of article 340, by order specify and also to the Anglo-Indian community.

#### *Article 339<sup>15</sup>*

- 1) The President may at any time and shall, at the expiration of ten years from the commencement of this Constitution by order appoint a Commission to report on the administration of the Scheduled Areas and the welfare of the Scheduled Tribes in the States. . . .<sup>16</sup>

The order may define the composition, powers and procedure of the Commission and may contain such incidental or ancillary provisions as the President may consider necessary or desirable.

- 2) The executive power of the Union shall extend to the giving of directions to (a State)<sup>17</sup> as to the drawing up and execution of schemes specified in the direction to be essential for the welfare of the Scheduled Tribes in the State.

#### *Article 340*

- 1) The President may by order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State and the conditions subject to which such grants should be made, and the order appointing such Commission shall define the procedure to be followed by the Commission.
- 2) A Commission so appointed shall investigate the matters referred to them and present to the President a report setting out the facts as found by them and making such recommendations as they think proper.
- 3) The President shall cause a copy of the report so presented together with a memorandum explaining the action taken thereon to be laid before each House of Parliament.

#### *Article 341*

- 1) The President (may with respect to any State<sup>18</sup> (or Union territory),<sup>19</sup> and where it is a State . . .<sup>20</sup> after consultation with the Governor...<sup>21</sup> thereof), by public notification,<sup>22</sup> specify the castes, races

- or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State (or Union territory, as the case may be).<sup>19</sup>
- 2) Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

#### *Article 342<sup>23</sup>*

- 1) The President (may with respect to any State<sup>24</sup> (or Union territory)<sup>25</sup> and where it is a State . . .<sup>26</sup> after consultation with the Governor. . .<sup>27</sup> thereof), by public notification,<sup>28</sup> specify the tribes or tribal communities or parts of or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State (or Union territory, as the case may be).<sup>25</sup>
- 2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

#### *Official Language*

##### *Article 343*

- 1) The official language of the Union shall be Hindi in Devanagari script.  
The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.
- 2) Notwithstanding anything in clause (1), for a period of fifteen years from the commencement of this Constitution, the English language shall continue to be used for all the official purposes of the Union for which it was being used immediately before such commencement:  
Provided that the President may, during the said period, by order authorise the use of the Hindi language in addition to the English language and of the Devanagari form of numerals in addition to the international form of Indian numerals for any of the official purposes of the Union.
- 3) Notwithstanding anything in this article, Parliament may by law provide for the use, after the said period of fifteen years, of
  - a) the English language, or
  - b) the Devanagari form of numerals, for such purposes as may be specified in the law.

##### *Article 344*

- 1) The President shall, at the expiration of five years from the commencement of this Constitution and thereafter at the expiration of ten years from such commencement, by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint, and the order shall define the procedure to be followed by the Commission.
- 2) It shall be the duty of the Commission to make recommendations to the President as to
  - a) the progressive use of the Hindi language for the official purposes of the Union;
  - b) restrictions on the use of the English language for all or any of the official purposes of the Union;
  - c) the language to be used for all or any of the purposes mentioned in article 348;
  - d) the form of numerals to be used for any one or more specified purposes of the Union;
  - e) any other matter referred to the Commission by the President as regards the official language of the Union and the language for communication between the Union and a State or between one State and another and their use.
- 3) In making their recommendations under clause (2), the Commission shall have due regard to the industrial, cultural and scientific advancement of India, and the just claims and the interests of persons belonging to the non-Hindi speaking areas in regard to the public services.



- 4) There shall be constituted a Committee consisting of thirty members, of whom twenty shall be members of the House of the People and ten shall be members of the Council of States to be elected respectively by the members of the House of the People and the members of the Council of States in accordance with the system of proportional representation by means of the single transferable vote.
- 5) It shall be the duty of the Committee to examine the recommendations of the Commission constituted under clause (1) and to report to the President their opinion thereon.
- 6) Notwithstanding anything in article 343, the President may, after consideration of the report referred to in clause (5), issue directions in accordance with the whole or any part of that report.

#### *Article 345*

Subject to the provisions of articles 346 and 347, the Legislature of a State may by law adopt any one or more of the languages in use in the State or Hindi as the language or languages to be used for all or any of the official purposes of that State:

Provided that, until the Legislature of the State otherwise provides by law, the English language shall continue to be used for those official purposes within the State for which it was being used immediately before the commencement of this Constitution.

#### *Article 346*

The language for the time being authorised for use in the Union for official purposes shall be the official language for communication between one State and another State and between a State and the Union:

Provided that if two or more States agree that the Hindi language should be the official language for communication between such States, that language may be used for such communication.

#### *Article 347*

On a demand being made in that behalf, the President may, if he is satisfied that a substantial proportion of the population of a State desire the use of any language spoken by them to be recognised by that State, direct that such language shall also be officially recognised throughout that State or any part thereof for such purpose as he may specify.

#### *Article 348*

- 1) Notwithstanding anything in the foregoing provisions of this Part, until Parliament by law otherwise provides
  - a) all proceedings in the Supreme Court and in every High Court,
  - b) the authoritative texts
    - i) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament or in the House or either House of the Legislature of a State,
    - ii) of all Acts passed by Parliament or the Legislature of a State and of all Ordinances promulgated by the President or the Governor. . .<sup>29</sup> of a State, and
    - iii) of all orders, rules, regulations and bye-laws issued under this Constitution or under any law made by Parliament or the Legislature of a State,
 shall be in the English language.
- 2) Notwithstanding anything in sub-clause (a) of clause (1), the Governor. . .<sup>30</sup> of a State may, with the previous consent of the President, authorise the use of the Hindi language, or any other language used for any official purposes of the State, in proceedings in the High Court having its principal seat in that State:
 

Provided that nothing in this clause shall apply to any judgment, decree or order passed or made by such High Court.
- 3) Notwithstanding anything in sub-clause (b) of clause (1), where the Legislature of a State has prescribed any language other than the English language for use in Bills introduced in, or Acts passed by, the Legislature of the State or in Ordinances promulgated by the Governor<sup>30</sup> of the State or in any order, rule, regulation or bye-law referred to in paragraph (iii) of that sub-clause, a

translation of the same in the English language published under the authority of the Governor<sup>30</sup> of the State in the Official Gazette of that State shall be deemed to be the authoritative text thereof in the English language under this article.

*Article 349*

During the period of fifteen years from the commencement of this Constitution, no Bill or amendment making provision for the language to be used for any of the purposes mentioned in clause (1) of article 348 shall be introduced or moved in either House of Parliament without the previous sanction of the President, and the President shall not give his sanction to the introduction of any such Bill or the moving of any such amendment except after he has taken into consideration the recommendations of the Commission constituted under clause (1) of article 344 and the report of the Committee constituted under clause (4) of that article.

*Article 350*

Every person shall be entitled to submit a representation for the redress of any grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the State, as the case may be.

*Article 350A*<sup>31</sup>

It shall be the endeavour of every State and of every local authority within the State to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups; and the President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.

*Article 350B*

- 1) There shall be a Special Officer for linguistic minorities to be appointed by the President.
- 2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for linguistic minorities under this Constitution and report to the President upon those matters at such intervals as the President may direct, and the President shall cause all such reports to be laid before each House of Parliament, and sent to the Governments of the States concerned.

*Article 351*

It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.

*Eighth Schedule (Articles 344(1) and 351).*

1. Assamese
2. Bengali
3. Gujarati
4. Hindi
5. Kannada
6. Kashmiri
7. Malayalam
8. Marathi
9. Oriya
10. Punjabi
11. Sanskrit
12. Tamil
13. Telugu
14. Urdu

## *II. Constitution of the Republic of Pakistan (adopted 1962)<sup>32</sup>*

### *Principles of Law-making and of Policy*

#### *Article 6, Principle 2*

##### *Equality of citizens*

- 1) All citizens should be equal before the law, be entitled to equal protection of the law and be treated alike in all respects.
- 2) This Principle may be departed from where
  - a) in the interest of equality itself, it is necessary to compensate for existing inequalities, whether natural, social, economic or of any other kind;
  - b) in the interest of the proper discharge of public functions, it is necessary
    - i) to give to persons performing public functions powers, protections or facilities that are not given to other persons; or
    - ii) to impose on persons performing public functions obligations or disciplinary controls that are not imposed on other persons; or
  - c) it is necessary in the interest of the security of Pakistan or otherwise in the interest of the State to depart from this Principle,
 but, where this Principle is departed from, it should be ensured that no citizen gets an undue preference over another citizen and no citizen is placed under a disability, liability or obligation that does not apply to other citizens of the same category.
- 3) This Principle shall not be construed as preventing a legislature from making laws different from laws made by any other legislature.

#### *Article 6, Principle 7*

##### *Freedom of religion*

No law should

- a) prevent the members of a religious community or denomination from professing, practising or propagating, or from providing instruction in, their religion, or from conducting institutions for the purposes of or in connection with their religion;
- b) require any person to receive religious instruction, or to attend a religious ceremony or religious worship, relating to a religion other than his own;
- c) impose on any person a tax the proceeds of which are to be applied for the purposes of a religion other than his own;
- d) discriminate between religious institutions in the granting of exemptions or concessions in relation to any tax; or
- e) authorize the expenditure of public moneys for the benefit of a particular religious community or denomination except moneys raised for that purpose.

#### *Article 6, Principle 12*

##### *Public educational institutions*

- 1) No law should, on the ground of race, religion, caste or place of birth, deprive any citizen of the right to attend any educational institution that is receiving aid from public revenues.
- 2) This Principle may be departed from for the purpose of ensuring that a class of citizens that is educationally backward shares in available educational facilities.

#### *Article 6, Principle 14*

##### *Protection of languages, scripts and cultures*

No law should prevent any section of the community from having a distinct language, script or culture of its own.

*Article 8, Principle 3**Fair treatment to minorities*

The legitimate rights and interests of the minorities should be safeguarded, and the members of minorities should be given due opportunity to enter the service of Pakistan.

*Article 8, Principle 4**Promotion of interests of backward peoples*

Special care should be taken to promote the educational and economic interests of people of backward classes or in backward areas.

*Article 8, Principle 5**Advancement of under-privileged castes, etc.*

Steps should be taken to bring on terms of equality with other persons the members of the under-privileged castes, races, tribes and groups and, to this end, the under-privileged castes, races, tribes and groups within a Province should be identified by the Government of the Province and entered in a schedule of under-privileged classes.

*Article 8, Principle 6**Opportunities to participate in national life, etc.*

The people of different areas and classes, through education, training, industrial development and other methods, should be enabled to participate fully in all forms of national activities, including employment in the service of Pakistan.

*Article 8, Principle 14**Entry into service of Pakistan not to be denied on grounds of race, etc.*

- 1) No citizen should be denied entry into the service of Pakistan on the grounds of race, religion, caste, sex or place of residence or birth.
- 2) This Principle may be departed from where, in the public interest
  - a) it is desirable that
    - i) a person who is to perform functions in relation to a particular area should be a resident of that area; and
    - ii) a person who is to perform functions of a particular kind should be of a particular sex; or
  - b) it is necessary so to do for the purpose of ensuring that, in relation to the Central Government, persons from all parts of Pakistan, and, in relation to a Provincial Government, persons from all parts of the Province concerned, have an opportunity of entering the service of Pakistan.

*Article 8, Principle 16**Parity between the Provinces in Central Government*

Parity between the Provinces in all spheres of the Central Government should, as nearly as is practicable, be achieved.

*Article 8, Principle 17**Service in the Defence Services*

Persons from all parts of Pakistan should be enabled to serve in the Defence Services of Pakistan.

*Relations between the Centre and the Provinces**Article 145 (4)*

A primary object of the Council in formulating the plans referred to in clause (3) of this Article shall be to ensure that disparities between the Provinces, and between different areas within a Province, in relation to income per capita, are removed and that the resources of Pakistan (including resources in foreign exchange) are used and allocated in such manner as to achieve that object in the shortest possible time, and it shall be the duty of each Government to make the utmost endeavour to achieve that object.

*Miscellaneous**Article 211*

- 1) The Capital of the Republic shall be Islamabad situated in the district of Rawalpindi in the Province of West Pakistan at the site selected for the Capital of Pakistan before the enactment of this Constitution.
- 2) The area of the Capital (in this Constitution referred to as "the Islamabad Capital Territory") shall be determined by the Central Legislature, but shall not be less than two hundred square miles.
- 3) There shall be a second Capital of the Republic at Dacca in the Province of East Pakistan.
- 4) The area of the second Capital (in this Constitution referred to as "the Dacca Capital Territory") shall be determined by the Central Legislature.
- 5) The principal seat of the National Assembly shall be at Dacca.
- 6) The principal seat of the Central Government shall, subject to clause (7) of this Article, be at Islamabad.
- 7) Until provision is made for establishing the Central Government at Islamabad, the principal seat of that Government shall be at Rawalpindi in the Province of West Pakistan.

*Article 215*

- 1) The national languages of Pakistan are Bengali and Urdu, but this Article shall not be construed as preventing the use of any other language and, in particular, the English language may be used for official and other purposes until arrangements for its replacement are made.
- 2) In the year One thousand nine hundred and seventy-two, the President shall constitute a Commission to examine and report on the question of the replacement of the English language for official purposes.

*Article 240*

Subject to the observance of the Principle of Policy that parity between the Provinces in all spheres of the Central Government should, as nearly as is practicable, be achieved, any quota relating to the recruitment of persons to the service of Pakistan in relation to the affairs of the Government of Pakistan that, immediately before the commencing day, applied to a particular region shall continue to apply until the expiration of a period of ten years after that day.

*III. Constitution of the Federation of Malaysia (effective 1963)<sup>33</sup>**Fundamental Liberties**Article 8*

- 1) All persons are equal before the law and entitled to the equal protection of the law.
- 2) Except as expressly authorised by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.
- 3) There shall be no discrimination in favour of any person on the ground that he is a subject of the Ruler of any State.
- 4) No public authority shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.
- 5) This Article does not invalidate or prohibit
  - a) any provision regulating personal law;
  - b) any provision or practice restricting office or employment connected with the affairs of any religion, or of an institution managed by a group professing any religion, to persons professing that religion;
  - c) any provision for the protection, wellbeing or advancement of the aboriginal peoples of the Malay Peninsula (including the reservation of land) or the reservation to aborigines of a reasonable proportion of suitable positions in the public service;

- d) any provision prescribing residence in a State or part of a State as a qualification for election or appointment to any authority having jurisdiction only in that State or part, or for voting in such an election;
- e) any provision of a Constitution of a State, being or corresponding to a provision in force immediately before Merdeka Day;
- f) any provision restricting enlistment in the Malay Regiment to Malays.

#### *Article 11*

- 1) Every person has the right to profess and practise his religion and, subject to clause (4), to propagate it.
- 2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.
- 3) Every religious group has the right
  - a) to manage its own religious affairs;
  - b) to establish and maintain institutions for religious or charitable purposes; and
  - c) to acquire and own property and hold and administer it in accordance with law.
- 4) State law may control or restrict the propagation of any religious doctrine or belief among persons professing the Muslim religion.
- 5) This Article does not authorise any act contrary to any general law relating to public order, public health or morality.

#### *Article 12*

- 1) Without prejudice to the generality of Article 8, there shall be no discrimination against any citizens on the grounds only of religion, race, descent or place of birth
  - a) in the administration of any educational institution maintained by a public authority, and, in particular, the admission of pupils or students or the payment of fees;
  - b) in providing out of the funds of a public authority financial aid for the maintenance or education of pupils or students in any educational institution (whether or not maintained by a public authority and whether within or outside the Federation).
- 2) Every religious group has the right to establish and maintain institutions for the education of children and provide therein instruction in its own religion, and there shall be no discrimination on the ground only of religion in any law relating to such institutions or in the administration of any such law; but federal law may provide for special financial aid for the establishment or maintenance of Muslim institutions or the instruction in the Muslim religion of persons professing that religion.
- 3) No person shall be required to receive instruction in or to take part in any ceremony or act of worship of a religion other than his own.
- 4) For the purposes of clause (3) the religion of a person under the age of eighteen years shall be decided by his parent or guardian.

#### *Relations between the Federation and the States*

##### *Article 89*

- 1) Any land in a State which immediately before Merdeka Day was a Malay reservation in accordance with the existing law may continue as a Malay reservation in accordance with that law until otherwise provided by an Enactment of the Legislature of that State, being an Enactment
  - a) passed by a majority of the total number of members of the Legislative Assembly and by the votes of not less than two-thirds of the members present and voting; and
  - b) approved by resolution of each House of Parliament passed by a majority of the total number of members of that House and by the votes of not less than two-thirds of the members voting.
- 2) Any land in a State which is not for the time being a Malay reservation in accordance with the existing law and has not been developed or cultivated may be declared as a Malay reservation in accordance with that law:

Provided that

- a) where any land in a State is declared a Malay reservation under this clause, an equal area of land in that State which has not been developed or cultivated shall be made available for general alienation; and
  - b) the total area of land in a State for the time being declared as a Malay reservation under this clause shall not at any time exceed the total area of land in that State which has been made available for general alienation in pursuance of paragraph (a).
- 3) Subject to clause (4), the Government of any State may, in accordance with the existing law, declare as a Malay reservation
- a) any land acquired by that Government by agreement for that purpose;
  - b) on the application of the proprietor, and with the consent of every person having a right or interest therein, any other land;
  - c) in a case where any land ceases to be a Malay reservation, any land of a similar character and of an area not exceeding the area of that land.
- 4) Nothing in this Article shall authorise the declaration as a Malay reservation of any land which at the time of the declaration is owned or occupied by a person who is not a Malay or in or over which such a person has then any right or interest.
- 5) Without prejudice to clause (3), the Government of any State may, in accordance with law, acquire land for the settlement of Malays or other communities, and establish trusts for that purpose.
- 6) In this Article "Malay reservation" means land reserved for alienation to Malays or to natives of the State in which it lies; and "Malay" includes any person who, under the law of the State in which he is resident, is treated as a Malay for the purposes of the reservation of land.
- 7) Subject to Article 161A this Article shall have effect notwithstanding any other provision of this Constitution; but (without prejudice to any such other provision) no land shall be retained or declared as a Malay reservation except as provided by this Article and Article 90.

#### *Public Services*

##### *Article 136*

All persons of whatever race in the same grade in the service of the Federation shall, subject to the terms and conditions of their employment, be treated impartially.

#### *General and Miscellaneous*

##### *Article 152*

- 1) The national language shall be the Malay language and shall be in such script as Parliament may by law provide:  
Provided that
  - a) no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and
  - b) nothing in this clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and study of the language of any other community in the Federation.
- 2) Notwithstanding the provisions of clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the English language may be used in both Houses of Parliament, in the Legislative Assembly of every State and for all other official purposes.
- 3) Notwithstanding the provisions of clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, the authoritative texts
  - a) of all Bills to be introduced or amendments thereto to be moved in either House of Parliament, and
  - b) of all Acts of Parliament and all subsidiary legislation issued by the Federal Government shall be in the English language.



- 4) Notwithstanding the provisions of clause (1), for a period of ten years after Merdeka Day, and thereafter until Parliament otherwise provides, all proceedings in the Federal Court or a High Court shall be in the English language:  
Provided that, if the Court and counsel on both sides agree, evidence taken in the language spoken by the witness need not be translated into or recorded in English.
- 5) Notwithstanding the provisions of clause (1), until Parliament otherwise provides, all proceedings in subordinate courts, other than the taking of evidence, shall be in the English language.

*Article 153*

- 1) It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and the legitimate interests of other communities in accordance with the provisions of this Article.
- 2) Notwithstanding anything in this Constitution, but subject to the provisions of Article 40 and of this Article, the Yang di-Pertuan Agong shall exercise his functions under this Constitution and federal law in such manner as may be necessary to safeguard the special position of the Malays and to ensure the reservation for Malays of such proportion as he may deem reasonable of positions in the public service (other than the public service of a State) and of scholarships, exhibitions and other similar educational or training privileges or special facilities given or accorded by the Federal Government and, when any permit or licence for the operation of any trade or business is required by federal law, then, subject to the provisions of that law and this Article, of such permits and licences.
- 3) The Yang di-Pertuan Agong may, in order to ensure in accordance with clause (2) the reservation to Malays of positions in the public service and of scholarships, exhibitions and other educational or training privileges or special facilities, give such general directions as may be required for that purpose to any Commission to which Part X applies or to any authority charged with responsibility for the grant of such scholarships, exhibitions or other educational or training privileges or special facilities; and the Commission or authority shall duly comply with the directions.
- 4) In exercising his functions under this Constitution and federal law in accordance with clauses (1) to (3) the Yang di-Pertuan Agong shall not deprive any person of any public office held by him or of the continuance of any scholarship, exhibition or other educational or training privileges or special facilities enjoyed by him.
- 5) This Article does not derogate from the provisions of Article 136.
- 6) Where by existing federal law a permit or licence is required for the operation of any trade or business the Yang di-Pertuan Agong may exercise his functions under that law in such manner, or give such general directions to any authority charged under that law with the grant of such permits or licences, as may be required to ensure the reservation of such proportion of such permits or licences for Malays as the Yang di-Pertuan Agong may deem reasonable; and the authority shall duly comply with the directions.
- 7) Nothing in this Article shall operate to deprive or authorise the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him or to authorise a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of a person any permit or licence when the renewal or grant might reasonably be expected in the ordinary course of events.
- 8) Notwithstanding anything in this Constitution, where by any federal law any permit or licence is required for the operation of any trade or business, that law may provide for the reservation of a proportion of such permits or licences for Malays; but no such law shall for the purpose of ensuring such a reservation
  - a) deprive or authorise the deprivation of any person of any right, privilege, permit or licence accrued to or enjoyed or held by him; or
  - b) authorise a refusal to renew to any person any such permit or licence or a refusal to grant to the heirs, successors or assigns of any person any permit or licence when the renewal or grant might in accordance with the other provisions of the law reasonably be expected in the ordinary course of events, or prevent any person from transferring together with his business any transferable licence to operate that business; or

- c) where no permit or licence was previously required for the operation of the trade or business, authorise a refusal to grant a permit or licence to any person for the operation of any trade or business which immediately before the coming into force of the law he had been *bona fide* carrying on, or authorise a refusal subsequently to renew to any such person any permit or licence, or a refusal to grant to the heirs, successors or assigns of any such person any such permit or licence when the renewal or grant might in accordance with the other provisions of that law reasonably be expected in the ordinary course of events.
- 9) Nothing in this Article shall empower Parliament to restrict business or trade solely for the purpose of reservations for Malays.
- 10) The Constitution of the State of any Ruler may make provision corresponding (with the necessary modifications) to the provisions of this Article.

#### Article 161

- 1) No Act of Parliament terminating or restricting the use of the English language for any of the purposes mentioned in Clauses (2) to (5) of Article 152 shall come into operation as regards the use of the English language in any case mentioned in Clause (2) of this Article until ten years after Malaysia Day.
- 2) Clause (1) applies
  - a) to the use of the English language in either House of Parliament by a member for or from a Borneo State; and
  - b) to the use of the English language for proceedings in the High Court in Borneo or in a subordinate court in a Borneo State, or for such proceedings in the Federal Court as are mentioned in Clause (4); and
  - c) to the use of the English language in a Borneo State in the Legislative Assembly or for other official purposes (including the official purposes of the Federal Government).
- 3) Without prejudice to Clause (1), no such Act of Parliament as is there mentioned shall come into operation as regards the use of the English language for proceedings in the High Court in Borneo or for such proceedings in the Federal Court as are mentioned in Clause (4), until the Act or the relevant provision of it has been approved by enactments of the Legislatures of the Borneo States; and no such Act shall come into operation as regards the use of the English language in a Borneo State in any other case mentioned in paragraph (b) or (c) of Clause (2), until the Act or the relevant provision of it has been approved by an enactment of the Legislature of that State.
- 4) The proceedings in the Federal Court referred to in Clauses (2) and (3) are any proceedings on appeal from the High Court in Borneo or a judge thereof, and any proceedings under Clause (2) of Article 128 for the determination of a question which has arisen in proceedings before the High Court in Borneo or a subordinate court in a Borneo State.
- 5) Notwithstanding anything in Article 152, in a Borneo State a native language in current use in the State may be used in native courts or for any code of native law and custom, and in the case of Sarawak, until otherwise provided by enactment of the Legislature, may be used by a member addressing the Legislative Assembly or any committee thereof.

#### Article 161A

- 1) Subject to Clause (2), the provisions of Clauses (2) to (5) of Article 153, so far as they relate to the reservation of positions in the public service, shall apply in relation to natives of a Borneo State as they apply in relation to Malays.
- 2) In a Borneo State Article 153 shall have effect with the substitution of references to natives of the State for the references to Malays, but as regards scholarships, exhibitions and other educational or training privileges and facilities Clause (2) of that Article shall not require the reservation of a fixed proportion for natives.
- 3) Before advice is tendered to the Yang di-Pertuan Agong as to the exercise of his powers under Article 153 in relation to a Borneo State, the Chief Minister of the State in question shall be consulted.
- 4) The Constitutions of the Borneo States may make provision corresponding (with the necessary modifications) to Article 153 with the changes made by Clause (2).

- 5) Article 89 shall not apply to a Borneo State, and Article 8 shall not invalidate or prohibit any provision of State law in a Borneo State for the reservation of land for natives of the State or for alienation to them, or for giving them preferential treatment as regards the alienation of land by the State.
- 6) In this Article "native" means
  - a) in relation to Sarawak, a person who is a citizen and either belongs to one of the races specified in Clause (7) as indigenous to the State or is of mixed blood deriving exclusively from those races; and
  - b) in relation to Sabah, a person who is a citizen, is the child or grandchild of a person of a race indigenous to Sabah, and was born (whether on or after Malaysia Day or not) either in Sabah or to a father domiciled in Sabah at the time of the birth.
- 7) The races to be treated for the purposes of the definition of "native" in Clause (6) as indigenous to Sarawak are the Bukitans, Bisayahs, Dusuns, Sea Dayaks, Land Dayaks, Kadayans, Kalabits, Kayans, Kenyahs (including Sabups and Sipengs), Kajangs (including Sekapans, Kejamans, Lahanans, Malays, Punans, Tanjongs and Kanowits), Lugats, Lisums, Melanos, Muruts, Penans, Sians, Tagals, Tabuns and Ukits.

#### *Article 161B*

- 1) In so far as any provision made by or under an Act of Parliament, by removing or altering a residence qualification, confers a right to practise before a court in the Borneo States or either of them on persons not previously having the right, that provision shall not come into operation until adopted in the States or State in question by an enactment of the Legislature.
- 2) This Article shall apply to the right to practise before the Federal Court when sitting in the Borneo States and entertaining proceedings on appeal from the High Court in Borneo or a judge thereof or proceedings under Clause (2) of Article 128 for the determination of a question which has arisen in proceedings before the High Court in Borneo or a subordinate court in a Borneo State.

#### *Article 161C*

- 1) No Act of Parliament which provides as respects a Borneo State for special financial aid for the establishment or maintenance of Muslim institutions or the instruction in the Muslim religion or persons professing that religion shall be passed without the consent of the Governor.
- 2) Where under any provision of federal law not having effect as respects Sabah, or not having effect as respects Sarawak, any such aid as aforesaid is given by way of grant out of public funds in any year, there shall be paid by the Federation to the Government of Sabah or Sarawak, as the case may be, and applied for social welfare purposes in that State, amounts which bear to the revenue derived by the Federation from that State in the year the same proportion as the grant bears to the revenue derived by the Federation from other States in that year.
- 3) For the purposes of Clause (2) the revenue derived by the Federation from any State or States shall be the amount after deduction of any sums assigned to States under Article 110 or the Tenth Schedule; and there shall be disregarded any contributions received by the Federation out of the proceeds of lotteries conducted by the Social and Welfare Services Lotteries Board together with any amounts applied to such aid as aforesaid out of or by reference to those contributions.

#### *Article 161D*

Notwithstanding Clause (4) of Article 11, there may be included in the Constitution of a Borneo State provision that an enactment of the State Legislature controlling or restricting the propagation of any religious doctrine or belief among persons professing the Muslim religion shall not be passed unless it is agreed to in the Legislative Assembly on second or third reading or on both by a specified majority, not being a majority greater than two-thirds of the total number of members of the Assembly.

#### *Article 161E*

- 1) As from the passing of the Malaysia Act no amendment to the Constitution made in connection with the admission to the Federation of a Borneo State shall be excepted from Clause (3) of Article 159 by Clause (4) (bb) of that Article; nor shall any modification made as to the

- application of the Constitution to a State be so excepted unless the modification is such as to equate or assimilate the position of that State under the Constitution to the position of the States of Malaya.
- 2) No amendment shall be made to the Constitution without the concurrence of the Governor of the Borneo State or each of the Borneo States concerned, if the amendment is such as to affect the operation of the Constitution as regards any of the following matters:
    - a) the right of persons born before Malaysia Day to citizenship by reason of a connection with the State, and (except to the extent that different provision is made by the Constitution as in force on Malaysia Day) the equal treatment, as regards their own citizenship and that of others, of persons born or resident in the State and of persons born or resident in the States of Malaya;
    - b) the constitution and jurisdiction of the High Court in Borneo and the appointment, removal and suspension of judges of that court;
    - c) the matters with respect to which the Legislature of the State may make laws, and the executive authority of the State in those matters, and (so far as related thereto) the financial arrangements between the Federation and the State;
    - d) religion in the State, the use in the State or in Parliament of any language and the special treatment of natives of the State;
    - e) the allocation to the State, in any Parliament summoned to meet before the end of August, 1970, of a quota of members of the House of Representatives not less, in proportion to the total allocated to the other States which are members of the Federation on Malaysia Day, than the quota allocated to the State on that day.
  - 3) No amendment to the Constitution which affects its operation as regards the quota of members of the House of Representatives allocated to a Borneo State shall be treated for purposes of Clause (1) as equating or assimilating the position of that State to the position of the States of Malaya.
  - 4) In relation to any rights and powers conferred by federal law on the government of a Borneo State as regards entry into the State and residence in the State and matters connected therewith (whether or not the law is passed before Malaysia Day) Clause (2) shall apply, except in so far as the law provides to the contrary, as if the law had been embodied in the Constitution and those rights and powers had been included among the matters mentioned in paragraphs (a) to (e) of that Clause.
  - 5) In this Article "amendment" includes addition and repeal.

#### *Article 161F*

Notwithstanding anything in Article 152, until otherwise provided by enactment of the Legislature of Singapore, the English, Mandarin and Tamil languages may be used in the Legislative Assembly of Singapore, and the English language may be used for the authoritative texts of all Bills to be introduced or amendments thereto to be moved in that Assembly, and of all enactments of that Legislature, and of all subsidiary legislation issued by the government of Singapore.

#### *Article 161G*

Nothing in Clause (2) of Article 8 or Clause (1) of Article 12 shall prohibit or invalidate any provision of State law in Singapore for the advancement of Malays; but there shall be no reservation for Malays in accordance with Article 153 of positions in the public service to be filled by recruitment in Singapore, or of permits or licences for the operation of any trade or business in Singapore.

#### *Article 161H*

- 1) No amendment shall be made to the Constitution without the concurrence of the Governor if the amendment is such as to affect the operation of the Constitution in relation to Singapore as regards any of the following matters
  - a) citizenship of Singapore, and the restriction to citizens of Singapore of the right to be a member of either House of Parliament for or from Singapore, or to be a member of the Legislative Assembly of Singapore, or to vote at elections in Singapore;
  - b) the constitution and jurisdiction of the High Court in Singapore and the appointment, removal and suspension of judges of that court;

- c) the matters with respect to which the Legislature of the State may make laws, the executive authority of the State in those matters, the borrowing powers of the State and the financial arrangements between the Federation and the State;
  - d) the discharge of functions of the Public Services Commission or of the Judicial and Legal Service Commission by a branch established for the State, and the constitution of any such branch;
  - e) religion in the State, the use in the State or in Parliament of any language and the special position of the Malays in Singapore;
  - f) the allocation to the State, in any Parliament summoned to meet before the end of August, 1970, of a quota of members of the House of Representatives not less, in proportion to the total allocated to the other States which are members of the Federation on Malaysia Day, than the quota allocated to the State on that day.
- 2) In this Article "amendment" includes addition and repeal.

#### *IV. The Constitution of the Federal Republic of Nigeria (adopted 1963)<sup>34</sup>*

##### *Fundamental Rights*

###### *Section 24*

- 1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief and freedom, either alone or in community with others and in public or in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.
- 2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observances if such instruction, ceremony or observances relate to a religion other than his own.
- 3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.
- 4) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society
  - a) in the interest of defence, public safety, public order, public morality or public health; or
  - b) for the purpose of protecting the rights and freedom of other persons, including their rights and freedom to observe and practise their religions without the unsolicited intervention of members of other religions.

###### *Section 28*

- 1) A citizen of Nigeria of a particular community, tribe, place of origin, religion or political opinion shall not, by reason only that he is such a person
  - a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the Government of the Federation or the Government of a Region to disabilities or restrictions to which citizens of Nigeria of other communities, tribes, places of origin, religions or political opinions are not made subject; or
  - b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action any privilege or advantage that is not conferred on citizens of Nigeria of other communities, tribes, places of origin, religions or political opinions.
- 2) Nothing in this section shall invalidate any law by reason only that the law
  - a) prescribes qualifications for service in an office under the state or as a member of the armed forces of the Federation or a member of a police force or for the service of a body corporate established directly by any law in force in Nigeria;
  - b) imposes restrictions with respect to the appointment of any person to an office under the state or as a member of the armed forces of the Federation or a member of a police force or to an office in the service of a body corporate established directly by any law in force in Nigeria;
  - c) imposes restrictions with respect to the acquisition or use by any person of land or other property; or

- d) imposes any disability or restriction or accords any privilege or advantage that, having regard to its nature and to special circumstances pertaining to the persons to whom it applies, is reasonably justifiable in a democratic society.

### *Parliament*

#### *Section 59*

The business of Parliament shall be conducted in English.

### *Miscellaneous*

#### *Section 159*

- 1) There shall be a board for the Niger Delta which shall be styled the Niger Delta Development Board.
- 2) The members of the Board shall be
  - a) a person appointed by the President, who shall be chairman;
  - b) a person appointed by the Governor of Eastern Nigeria;
  - c) a person appointed by the Governor of Mid-Western Nigeria; and
  - d) such other persons as may be appointed in such manner as may be prescribed by Parliament to represent the inhabitants of the Niger Delta.
- 3) A member of the Board shall vacate his office in such circumstances as may be prescribed by Parliament.
- 4) The Board shall be responsible for advising the Government of the Federation and the Governments of Eastern Nigeria and Mid-Western Nigeria with respect to the physical development of the Niger Delta, and in order to discharge that responsibility the Board shall
  - a) cause the Niger Delta to be surveyed in order to ascertain what measures are required to promote its physical development;
  - b) prepare schemes designed to promote the physical development of the Niger Delta, together with estimates of the costs of putting the schemes into effect;
  - c) submit to the Government of the Federation and the Governments of Eastern Nigeria and Mid-Western Nigeria annual reports describing the work of the Board and the measures taken in pursuance of its advice.
- 5) Parliament may make such provision as it considers expedient for enabling the Board to discharge its functions under this section.
- 6) In this section, "the Niger Delta" means the area specified in the Proclamation relating to the Board which was made on the twenty-sixth day of August, 1959.
- 7) This section shall cease to have effect on the first day of July, 1969, or such later date as may be prescribed by Parliament.<sup>35</sup>

### *V. The Constitution of the Federation of Rhodesia and Nyasaland (adopted 1953)<sup>36</sup>*

#### *Preamble*

Whereas the Colony of Southern Rhodesia is part of Her Majesty's dominions and Northern Rhodesia and Nyasaland are territories under Her Majesty's protection;

And whereas the said Colony and territories are the rightful home of all lawful inhabitants thereof, whatever their origin;

And whereas the Colony of Southern Rhodesia should continue to enjoy responsible government in accordance with its constitution;

And whereas Northern Rhodesia and Nyasaland should continue under the special protection of Her Majesty, to enjoy separate Governments for so long as their respective peoples so desire, those Governments remaining responsible (subject to the ultimate authority of Her Majesty's Government in

the United Kingdom) for, in particular, the control of land in those territories, and for the local and territorial political advancement of the peoples thereof;

And whereas the association of the Colony and territories aforesaid in a Federation under Her Majesty's sovereignty, enjoying responsible government in accordance with this Constitution, would conduce to the security, advancement and welfare of all their inhabitants, and in particular would foster partnership and co-operation between their inhabitants and enable the Federation, when those inhabitants so desire, to go forward with confidence towards the attainment of full membership of the Commonwealth;

Now, therefore, the said Colony and territories shall be associated in a Federation in accordance with the following provisions:

### *General*

#### *Article 7*

- 1) The official language of the Federation shall be English and, except as may be provided by any law of the Federal Legislature
  - a) all proceedings, records and Bills of the Federal Assembly;
  - b) any law of the Federal Legislature and any instrument made under any such law or under this Constitution;
  - c) all documents issued by the Federal Government; and
  - d) all proceedings and records of the Federal Supreme Court or of any body authorised or established by or under this Constitution or by any law of the Federal Legislature, shall be in the English language:Provided that nothing in this article shall be deemed to prohibit the use of any other language as well as English for the purpose of bringing any matter to the notice of any person concerned therewith.

### *The African Affairs Board*

#### *Article 67*

- 1) There shall be a Standing Committee of the Federal Assembly, to be known as the African Affairs Board, consisting of the following members of the Federal Assembly, that is to say
  - a) the two specially appointed European members and the specially elected European member; and
  - b) one specially elected African member from each of the three Territories, to be selected by a majority vote of the specially elected African members and the members referred to in sub-paragraph (a) of this paragraph acting together.
- 2) The Governor-General in his discretion shall appoint a chairman and a deputy chairman from among the members of the Board.

#### *Article 68*

- 1) Any decision of the Board shall be made by a majority vote of the members present and voting.
- 2) At any sitting of the Board at which any decision is taken
  - a) the chairman or, in the absence of the chairman, the deputy chairman shall preside, who shall be entitled to vote as a member of the Board and, in the event of an equality of votes, shall in addition have and exercise a casting vote;
  - b) the quorum of the Board shall be three.
- 3) In exercising his casting vote, the chairman or deputy chairman shall vote in such a manner as to enable further consideration to be given to the matter.

#### *Article 69*

Subject to the last foregoing article the Board may sit and act

- a) notwithstanding any vacancy among its members; and
- b) notwithstanding that the Federal Assembly is adjourned or prorogued,



and in the event of a dissolution of the Assembly the persons who immediately before that dissolution are members of the Board may continue to sit and act as the Board until the Assembly first meets after that dissolution.

#### *Article 70*

It shall be the general function of the Board

- a) to make to the Prime Minister, or through the Prime Minister to the Executive Council, such representations in relation to any matter within the legislative or executive authority of the Federation as the Board may consider to be desirable in the interests of Africans;
- b) if the Government of any Territory so request, to give to that Government any assistance which the Board can provide in relation to the study of matters affecting Africans, and in particular assistance in the exchange of information relating to any such matter.

#### *Article 71*

- 1) It shall be the particular function of the Board to draw attention to any Bill introduced in the Federal Assembly and any instrument which has the force of law and is made in the exercise of a power conferred by a law of the Federal Legislature if that Bill or instrument is in their opinion a differentiating measure; and for that purpose they shall have the powers conferred by the subsequent provisions of this Chapter of this Constitution.
- 2) In this article and in the subsequent provisions of this Chapter of this Constitution, the expression "differentiating measure" means a Bill or instrument by which Africans are subjected or made liable to any conditions, restrictions or disabilities disadvantageous to them to which Europeans are not also subjected or made liable, or a Bill or instrument which will in its practical application have such an effect.

#### *Article 72*

There shall be paid out of moneys provided by the Federal Legislature to the Board or to the members thereof such special allowances and other sums as that Legislature may determine for the purpose of enabling the Board and the members thereof to discharge their functions under this Chapter of this Constitution.

#### *Article 73*

Before any Bill is introduced in the Federal Assembly, a copy of the proposed Bill shall be sent to the Board unless the Governor-General in his discretion has certified in writing that the proposed Bill

- a) is of such a nature that it is not in the public interest that it should be published before its introduction in the Assembly; or
- b) is so urgent that it is not in the public interest to delay its introduction in the Assembly until a copy has been sent to the Board.

#### *Article 74*

If at any stage during the passage of any Bill through the Federal Assembly that Bill, whether as originally introduced or as amended at any stage, is in the opinion of the Board a differentiating measure, the Board may lay before the Assembly a report on the Bill stating their reasons for considering the Bill to be such a measure; and, if at any time after such a report has been laid the Board no longer consider the Bill to be such a measure, they may lay before the Assembly a further report to that effect.

#### *Article 75*

- 1) On the passing of any Bill by the Federal Assembly the Board may present to the Speaker of the Federal Assembly a request in writing that the Bill shall be reserved by the Governor-General for the signification of Her Majesty's pleasure on the ground that it is a differentiating measure, and any such request shall include the reasons why in the opinion of the Board the Bill is such a measure, and, if the decision to make the request was not unanimous, a statement to that effect.
- 2) Where such a request is received by the Speaker, he shall cause it to be delivered to the Governor-General when the Bill is presented to him for assent.

- 3) Where such a request is delivered to the Governor-General, then, except as provided in paragraph (4) of this article, he shall not himself assent to the Bill but shall reserve it for the signification of Her Majesty's pleasure and send the Board's request to a Secretary of State together with the Bill.
- 4) Notwithstanding any such request by the Board, the Governor-General in his discretion may himself assent to the Bill
  - a) if he satisfies himself that it is not a differentiating measure and that the reasons given by the Board for considering it to be such a measure are of an irrelevant or frivolous nature; or
  - b) if he is satisfied, upon representations made by the Prime Minister, that it is essential in the public interest that the Bill be brought into immediate operation;
 but if he does so assent the Governor-General shall forthwith send to a Secretary of State the Bill to which he has assented together with the Board's request and a statement of his reasons for assenting.
- 5) Nothing in paragraph (4) of this article shall be construed as authorising the Governor-General himself to assent to any Bill which he is required by article ten or article ninety-seven of this Constitution to reserve for the signification of Her Majesty's pleasure.

#### *Article 76*

The provisions of the two last foregoing articles shall not be construed as prejudicing any additional provision which may be made by Standing Orders of the Federal Assembly with respect to the referring of Bills or proposed amendments thereto to the Board for the Board's report thereon at any stage or with respect to the action to be taken by the Assembly on any report by the Board.

#### *Article 77*

- 1) If any instrument which has the force of law and is made in the exercise of a power conferred by a law of the Federal Legislature is in the opinion of the Board a differentiating measure, the Board may at any time within thirty days after the publication of the instrument send to the Prime Minister a report in writing to that effect stating the reasons why in the opinion of the Board the instrument is such a measure.
- 2) When such a report in respect of any instrument is received by the Prime Minister, he shall within thirty days, unless the Board have in the meantime by notice in writing withdrawn the report, send the report and his comments thereon to the Governor-General, and the Governor-General shall forward the report and the Prime Minister's comments thereon to a Secretary of State.
- 3) A Secretary of State may at any time within twelve months after receiving such a report with respect to an instrument disapprove of that instrument, and after receiving notification of such a disapproval the Governor-General shall cause notice of the disapproval to be published in the official Gazette of the Federation and the instrument shall be deemed to be annulled as from such date, not being earlier than the publication of the notice, as the Governor-General in his discretion may by that notice appoint.
- 4) On the annulment of any instrument under this article, any other instrument or law amended, revoked or repealed by the instrument annulled shall have effect from the date of the annulment as if the instrument annulled had not been made, but save as provided in the foregoing provisions of this paragraph the provisions of subsection (2) of section thirty-eight of the Interpretation Act, 1889, shall apply to that annulment as they apply to the repeal of an Act of Parliament.

### *VI. The Federal Constitution of the Swiss Confederation (adopted 1874)<sup>37</sup>*

#### *Article 4*

All Swiss are equal before the Law. In Switzerland there is neither subjection nor privilege of locality, birth, family, or person.

#### *Article 5*

The Confederation guarantees to the Cantons their territory, their sovereignty within the limits of Article 3, their Constitutions, the freedom and the rights of the people and the constitutional

rights of citizens, as well as the rights and powers which the people has conferred upon the authorities.

#### *Article 14*

When a dispute arises between two Cantons they shall not take any independent action nor resort to arms, but are to submit duly to the decision of the Federation.

#### *Article 27*

The Confederation is entitled to establish a Federal university and other institutions of higher education, in addition to the already existing Polytechnic School, and to subsidize institutions of this nature.

The Cantons provide for adequate primary education, which shall be exclusively under the control of the civil authority. Such education is compulsory and, in the public schools, free.

The public schools shall be such that they may be attended by adherents of all religious sects without any offence to their freedom of conscience or belief.

The Confederation shall take the necessary measures against Cantons which fail to fulfil these obligations.

#### *Article 27 bis*

Subsidies shall be paid to the Cantons to help them fulfil their obligations in the field of primary education.

The details shall be settled by law.

Organization, control, and supervision of primary schools remain Cantonal matters, subject to Article 27.

#### *Article 31 bis*

Within the limits of its constitutional powers, the Confederation shall take measures to increase the general welfare and to ensure the economic security of the citizens.

While safeguarding the general interests of the national economy, the Confederation may regulate the exercise of trades and industry and take measures in favour of particular economic classes or professions. In the exercise of this power the Confederation shall respect the principle of Freedom of Trade and Industry, except as provided in paragraph 3.

When the public interest justifies it the Confederation has the power to make provisions infringing, if necessary, the Freedom of Trade and Industry:

- a) to preserve important economic classes, or professions, whose survival is threatened, and to encourage independent producers in such economic classes or professions;
- b) to preserve a strong peasantry, to encourage agriculture, and to strengthen the position of rural property-owners;
- c) to protect districts whose economic life is threatened;
- d) to prevent harmful social or economic effects of cartels or similar organizations;
- e) to take precautions against the event of war.

Professions and economic classes shall only be protected under the headings (a) and (b) if they have themselves taken such measures of mutual assistance as can be fairly expected of them.

Federal legislation under (a) and (b) shall safeguard the development of groups based upon mutual assistance.

#### *Article 49*

Freedom of conscience and belief is inviolable.

No one may be compelled to be a member of a religious association, to receive a religious education, to take part in a religious ceremony, or to suffer punishment of any sort by reason of religious opinion.

The father or guardian has the right of determining the religious education a child shall receive, in conformity with the principles stipulated above, until the child's sixteenth birthday.

Exercise of civil or political rights may not be restricted by any religious or ecclesiastical conditions or prescriptions whatever.

No one is released from performance of his civil duties by reason of his religious beliefs.

No one is obliged to pay taxes devoted especially to the special expenses of the ritual of a religious community to which he does not belong. Further execution of this principle is reserved to Federal legislation.

*Article 50*

The free practice of religious ceremonies is guaranteed within the limits of public order and decency.

The Cantons and the Confederation may take the necessary measures to maintain public order and peace between adherents of different religious communities, and to combat the encroachments of ecclesiastical authorities on the rights of citizens or of the State.

Conflicts of public or private law arising out of the creation of new religious communities or a schism of old ones may be brought on appeal before the competent Federal authorities.

No bishoprics may be set up on Swiss territory without the consent of the Confederation.

*Article 51*

The order of Jesuits and societies affiliated thereto can be received in no part of Switzerland, and are forbidden to take any part in Church or school affairs.

A Federal *Arrêté* may extend this prohibition to other religious orders whose activity is dangerous to the State or disturbs the peaceable relationship of religious denominations.

*Article 52*

The founding of new convents or religious orders, and the re-establishment of those which have been suppressed, are both prohibited.

*Article 60*

Cantons are obliged to treat the citizens of other Confederate States as favourably as their own citizens, in legislation and before their courts of law.

*Article 107*

Members and deputy members of the Federal Tribunal shall be elected by the Federal Assembly, which shall see that the three official languages of the Confederation are represented upon it.

A Law shall provide for the method of organization of the Federal Tribunal and the sections thereof, the number of its members and deputy members, their term of office and their pay.

*Article 116*

German, French, Italian, and Romanche are the national languages of Switzerland.

German, French, and Italian shall be deemed the official languages of the Confederation.

### Chapter I

1. See App. A, Table A.2, for distribution by cantons of linguistic groups in Switzerland.
2. See App. A, Tables A.3-A.8, for the distribution of linguistic or racial groups in these new federations. For a detailed comparative study of these new Asian and African federations (without reference to their relevance to Canadian problems) see R. L. Watts, *New Federations: Experiments in the Commonwealth* (Oxford, 1966).
3. See App. A, Table A.3.
4. See App. A, Table A.4.
5. See App. A, Tables A.5 and A.6.
6. See App. A, Table A.7.
7. See App. A, Table A.8, for distribution of races.
8. See B. T. G. Chidzero, "The Meaning of Good Government in Central Africa," in Colin Leys and Cranford Pratt (eds.), *A New Deal in Central Africa* (London, 1960), 170-81.
9. See, for instance: Constituent Assembly of India, *Reports of Committees*, Three Series (New Delhi, 1947-9); C. A. I., *Report of the Linguistic Provinces Commission [Dar]* (New Delhi, 1948); Indian National Congress, *The Report of the Linguistic Provinces Committee* (New Delhi, 1949); *White Paper on Indian States* (rev. ed., New Delhi, 1950); *Report of the Finance Commission, 1952, 1957, 1961* (New Delhi, 1952, 1957, 1962); P. H. Appleby, *Public Administration in India, Report of a Survey* (New Delhi, 1953); *Report of the States Reorganization Commission, 1955* (New Delhi, 1955); P. H. Appleby, *Re-examination of India's Administrative System* (New Delhi, 1956); *Report of the Official Language Commission, 1956* (New Delhi, 1957); *Report of the Committee of Parliament on the Official Language* (New Delhi, 1958); *Statement Issued by the National Integration Conference, 1961* (New Delhi, 1962); *Report of the Committee on Emotional Integration* (New Delhi, 1962); *Annual Reports of the Commissioner for Linguistic Minorities* (New Delhi, annually).
10. For examples of the consideration of Canadian precedents and experience see: Constituent Assembly of India, *Debates*, V, 164; VII, 37, 43; XI, 647; Constituent Assembly of India, *Draft Constitution* (1948), 192 n.; *Report of the Official Language Commission, 1956*, 13, 16-7; A. K. Brohi, *Fundamental Law of Pakistan* (Karachi, 1958), 20, 223-6, 245, 267-70, 685; *Report of the Constitution Commission, Pakistan, 1961* (Karachi, 1962), par. 68; Col. no. 330/1957, *Report of the Federation of Malaya Constitutional Commission, 1957* (London, 1957), par. 137; Harry Miller, *Prince and Premier* (London 1959), 137.
11. Patrick Gordon Walker, "Federalism in the Commonwealth," *Journal of the Parliaments of the Commonwealth*, XLII (1961), 351-9.

12. See, for instance, A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (10th ed., London, 1961), Chap. III.

13. For a general picture of the Swiss federal system see G. A. Coddington, *The Federal Government of Switzerland* (Cambridge, Mass., 1961) and Christopher Hughes, *The Federal Constitution of Switzerland* (London, 1954). For a general account of the Australian political system see J. D. B. Miller, *Australian Government and Politics* (2nd ed., London, 1958), and S. R. Davis (ed.), *Government of the Australian States* (Melbourne, 1960).

## Chapter II

1. For a history of ideas of federalism see Sobei Mogi, *The Problem of Federalism, A Study in the History of Political Theory*, 2 v. (London, 1931).

2. K. C. Wheare, *Federal Government* (4th ed., London, 1963), especially Pt. I. For other statements agreeing substantially with Wheare see W. P. M. Kennedy, *The Constitution of Canada* (London, 1922), 407-8; J. A. Corry, *Democratic Government and Politics* (2nd ed., Toronto, 1951), 551-3; J. Quick and R. R. Garran, *Annotated Constitution of the Commonwealth of Australia* (Sydney, 1901), 333.

3. Wheare, *Federal Government*, 10.

4. See, for example, Constituent Assembly of India, *Debates*, V, 37; Col. no. 255/1950, *British Caribbean Standing Closer Association Committee, Report [Rance]* (London), par. 22; Cmd. 8233/1951, *Central African Territories, Report of Conference on Closer Association*, par. 46.

5. Wheare, *Federal Government*, 242-3.

6. J. A. Corry, "Constitutional Trends and Federalism," in A. R. M. Lower [and others], *Evolving Canadian Federalism* (Durham, N.C., 1958), 122.

7. See, for instance, Jane Perry Clark, *The Rise of a New Federalism* (New York, 1938); "A Symposium on Co-operative Federalism," *Iowa Law Review*, XXIII (1938), 455-616; G. C. S. Benson, *The New Centralization* (New York, 1941). Later the term was also used by A. H. Birch, *Federalism, Finance and Social Legislation in Canada, Australia and the United States* (Oxford, 1955), 304-6; Corry, "Constitutional Trends".

8. M. J. C. Vile, *The Structure of American Federalism* (London, 1961), Chap. X.

9. D. J. Elazar, *The American Partnership* (Chicago, 1962), Chap. I.

10. The evidence for this claim will become apparent in subsequent chapters, but for a full exposition of this view of the newer federations see Watts, *New Federations*, Chaps. I, X, XIV.

11. Wheare, *Federal Government*, Chap. II.

12. Such a criticism of Wheare himself would be unfair for he warns against this pitfall and does examine the operation of federal governments. But some other writers following Wheare appear to have become absorbed with the problem of classification.

13. This aspect is dealt with in Chap. V.

14. This aspect is dealt with in Chap. VI.

15. This aspect is dealt with in Chap. VII.

16. W. S. Livingston, *Federalism and Constitutional Change* (Oxford, 1956), 1.

17. The idea of such a spectrum was first suggested by Livingston, *ibid.*, 3-5. It is further developed in Watts, *New Federations*, especially 93-5.

## Chapter III

1. On the function of language for the individual and for society see R. B. LePage, *The National Language Question* (London, 1964), Chaps. I and II.

2. W. H. Morris-Jones, *Parliament in India* (London, 1957), 18-19.

3. The Dravidian group of languages are Telugu, Tamil, Kannada, and Malayalam spoken mostly in the southern states. See App. A, Table A.3.

4. *States Reorganization Act, 1956* (37/1956); *The Constitution (Seventh Amendment) Act, 1956*. See also *Report of the States Reorganization Commission, 1955* (New Delhi, 1955). See also Chap. IV.

5. *The Constitution of India, 1950*, Eighth Schedule. See App. E. A fourteenth language so specified was Sanskrit, but this was not a regional language.

6. See App. A, Table A.4.

7. See App. A, Table A.7.

8. In 1962 the Action Group split and thereafter western regional politics was a struggle between it and the United People's party. The U.P.P. with the addition of some western N.C.N.C. elements in 1964 became the Nigerian National Democratic party (N.N.D.P.).

9. See App. A, Table A.7.

10. See App. A, Table A.2.

11. These three languages together with Romanche are further recognized as "national" languages.

12. *Government of India Act, 1935*, 26 Geo. V, Chap. 2.

13. *Annuaire statistique de la Suisse, 1953* (Official statistical information published since 1891), 40. For a study of the problems of the complex cultural diversity in Switzerland see Kenneth D. McRae, *Switzerland: Example of Cultural Co-Existence* (Toronto, 1964).

14. See F. G. Carnell, "Political Implications of Federalism in New States," in U. K. Hicks [and others], *Federalism and Economic Growth in Underdeveloped Countries* (London, 1961), 46-7.

15. See, for instance, Second Constituent Assembly of Pakistan, *Debates*, I, 1818-9, 1845-7, 1909-10, 1942, 1998, 2016-7, 2049-50, 2072, 2083, 2100-2, 2119, 2122-3, 2232-6, 2271-2.

16. In 1953, southerners, mainly Ibos, held 82 per cent of all posts in the clerical service of the north. Carnell, "Political Implications of Federalism."

17. H. O. Davies, *Nigeria: The Prospects for Democracy* (London, 1961), 21.

18. Because the franchise favoured the settlers 75 per cent of the federal electorate was located in Southern Rhodesia, and this electorate controlled 47 per cent of the seats in the federal legislature.

19. See, for instance, *Report of the States Reorganization Commission, 1955* (New Delhi, 1955), 244-52; and Cmnd. 505/1958, *Nigeria, Report of the Commission Appointed to Enquire into the Fears of Minorities and the Means of Allaying Them* (London, 1958), Pt. IV.

20. For an analysis of Swiss political parties see Coddington, *The Federal Government of Switzerland*, Chap. VIII.

21. For a detailed analysis of these factors see R. L. Watts, *New Federations*, 41-66.

22. For a fuller development of the significance of this point see Chap. IV, C.

#### Chapter IV

1. See Chap. III, C.

2. The ways in which central institutions have been organized in an attempt to resolve this issue are discussed in Chap. VII.

3. The methods by which this has been done in other federations are discussed in Chap. V.

4. *The States Reorganization Act, 1956* (XXXVII/1956), Pt. III. For a comment on the operation of these councils see Chap. VI.

5. This is the basis of the appeal which the notion of a *statut particulier* has for some in Quebec. On this subject see D. V. Smiley, "The Two Themes of Canadian Federalism," *Canadian Journal of Economics and Political Science*, XXXI (1965), 80-97.

6. *Report of the States Reorganization Commission, 1955*, pars. 154, 233; Cmnd. 505/1958, *Nigeria, Report of the Commission on the Fears of Minorities*, 87.

7. For details of relevant constitutional provisions see App. E which contains selected articles and sections from different federal constitutions.

8. *Constitution of India, 1950*, Arts. 12-35; *Constitution of the Islamic Republic of Pakistan, 1956*, Arts. 3-22; *Constitution of the Federation of Malaysia, 1963*, Arts. 5-13; *Constitution of the Federal Republic of Nigeria, 1963*, Sects. 18-33. The fundamental rights in the *Constitution of the*



*Republic of Pakistan, 1962*, Arts. 5 and 6, were not justiciable, but an amendment conceding to the courts some power to review legislation was passed in 1963. Although not grouped separately as fundamental rights the *Federal Constitution of the Swiss Confederation, 1874* (hereafter *Swiss Constitution*), Arts. 4, 43, 45, 55, 56, 58, 60, correspond.

9. *Constitution of India, 1950*, Arts. 12, 15, 16, 25-30, 350; *Constitution of Pakistan, 1956*, Arts. 13, 14, 18, 19, 21; *Constitution of Pakistan, 1962*, Art. 6, Principles 7, 12, 14; Art. 8, Principles 3, 4, 5, 6, 10, 14, 16; *Constitution of Malaysia, 1963*, Arts. 4(1), 11, 12; *Constitution of Nigeria, 1963*, Sects. 5(1), 24, 28. For similar provisions see *Swiss Constitution*, Arts. 27, 27 bis, 49, 50.

10. *Constitution of India, 1950*, Art. 16; *Constitution of Pakistan, 1956*, Arts. 12, 17; *Constitution of Pakistan, 1962*, Art. 8, Principles 6, 14; *Constitution of Malaysia, 1963*, Art. 8; *Constitution of Nigeria, 1963*, Sect. 28.

11. Cmnd. 505/1958, *Report of the Commission on the Fears of Minorities*, 97-103.

12. *Constitution of India, 1950*, Art. 347.

13. *Ibid.*, Art. 350.

14. Art. 350A as inserted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 21.

15. Art. 350B as inserted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 21.

16. Arts. 336, 337.

17. For a somewhat similar Swiss provision see *Swiss Constitution*, Art. 31 bis.

18. *Constitution of India, 1950*, Art. 335.

19. *Ibid.*, Art. 338.

20. *Ibid.*, Art. 340.

21. *Constitution of the Federation of Malaya, 1957*, Arts. 89, 90, 153(10).

22. *Malaysia Act, 1963*, Sect. 62 inserting Art. 161A in the *Constitution of Malaysia, 1963*.

23. *Constitution of Malaysia, 1963*, Arts. 161, 161C, 161D.

24. *Constitution of India, 1950*, Arts. 332-4.

25. *Constitution of Pakistan, 1956*, Art. 77(2); *Constitution of Pakistan, 1962*, Art. 71(2).

26. *The Nigeria (Constitution) Order in Council, 1954* (S.I. 1954, no. 1146), Sects. 22, 30, 36; *Constitution of Northern Nigeria, 1960*, Sect. 7(b).

27. *The Establishment of West Pakistan Act, 1955*, Sect. 14; *Constitution, 1956*, Art. 77(5); *Constitution, 1962*, Art. 239.

28. *Constitution of India*, Art. 371 as inserted by the *Constitution (Seventh Amendment) Act, 1957*, Sect. 22.

29. Cmnd. 505/1958, *Nigeria, Report of the Commission on the Fears of Minorities*, 12, 96.

30. Cmnd. 569/1958, *Report of the Resumed Nigeria Constitutional Conference* (London, 1958), pars. 54-5.

31. Cmnd. 1149/1960, *Report of the Advisory Commission on the Review of the Constitution of the Federation of Rhodesia and Nyasaland*, (London, 1960), App. VI, "Survey of Development Since 1953," 43, 54.

32. *Ibid.*, 33-6, 43-6, 53-4; *Constitution of Pakistan, 1956*, Art. 145. There are no separate electorates under the Pakistan constitution of 1962.

33. *Constitution of India, 1950*, Arts. 244, 275(1), 337-42, Fifth and Sixth Schedules; *Constitution of Pakistan, 1956*, Arts. 103-4, 204-7; *Constitution of Pakistan, 1962*, Art. 223; *Constitution of Malaya, 1957*, Ninth Schedule, List 1, item 16.

34. *Constitution*, Arts. 347, 350A, 350B, 371.

35. *Constitution of Pakistan, 1956*, Art. 145.

36. *Constitution of Malaya, 1957*, Arts. 89-90.

37. Cmnd. 1149/1960, *Advisory Commission on Rhodesia and Nyasaland, Report*, App. VI, 30-1, 47-8, 54-5. The Africans were a majority of the population in each of these territories but a minority of the electorate.

38. J. V. Bondurant, *Regionalism versus Provincialism: A Study in Problems of Indian National Unity* (Berkeley, 1958), 56, 62; W. H. Morris-Jones, *The Government and Politics of India* (London, 1964), 103, 144.

39. Cmnd. 505/1958, *Nigeria, Report of the Commission on the Fears of Minorities*, 94-7; Cmnd. 569/1958, *Report of the Resumed Nigeria Constitutional Conference*, pars. 52, 56.

40. *Constitution of Nigeria, 1963*, Sects. 105-10.

## Chapter V

1. Smiley, "Canadian Federalism," 80-97, esp. 81-3.

2. See Chap. III, C.

3. For a more extensive discussion of examples see R. L. Watts, *New Federations*, Chap. III, sect. 3.

4. The West Indies Federation was an exception to this trend.

5. Malaya is the exception, but in the Borneo states of Malaysia a number of the social services are placed under concurrent rather than exclusive central jurisdiction.

6. In these calculations the total cost of joint programs, including the portion financed by federal grants-in-aid, has been attributed to provinces. In most other federations expenditures on such programmes are accounted for in this manner. It is perhaps illustrative of the more centralist Canadian outlook, that the official Canadian accounts usually include this portion with federal rather than provincial expenditures. The percentages above are calculated from statistics published by the Dominion Bureau of Statistics in *Historical Review: Financial Statistics of Governments in Canada, 1952-62* (Ottawa, 1966).

7. *Constitution of Pakistan, 1956*, Art. 108 proviso; *Constitution of Malaya, 1957*, Art. 76(2), and *Malaysia Act, 1963*, Sixth Schedule; *Constitution of Rhodesia and Nyasaland, 1953*, Art. 34; *Constitution of Nigeria, 1963*, Sect. 74.

8. *Constitution of Rhodesia and Nyasaland, 1953*, Art. 42(2).

9. See, for instance, Col. no. 330/1957, *Report of the Federation of Malaya Constitutional Commission, 1957* [Reid] (London, 1957), par. 33.

10. For examples see App. B.

11. *Constitution of India, 1950*, Arts. 252, 254(2), 258 and 258A as inserted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 18; *Constitution of Pakistan, 1962*, Arts. 131(3), 135(b), 143; *Constitution of Malaya, 1957*, Arts. 76, 80, 110(4), 157, and *Malaysia Act, 1963*, Sects. 30(7), 37, 38, 48; *Constitution of Nigeria, 1963*, Sects. 72, 99, 100; *Constitution of Rhodesia and Nyasaland, 1953*, Arts. 31, 32, 41, 42(3).

12. The West Indies Federation was a marked exception to the general trend in the newer federations.

13. See App. B, Table B.1 for the actual assignment of taxing powers in the different federations.

14. An exception has been the relatively wide use of conditional grants in India and Pakistan for purposes of capital projects as part of the Five Year Plans.

15. *Constitution of Pakistan, 1962*, Art. 145(4).

16. See A. M. Moore [and others], *The Financing of Canadian Federation*, Canadian Tax Foundation (Toronto, 1966), for a recent survey of federal finance in Canada.

17. Prime examples are the advocates of a *statut particulier* for Quebec. On this subject see also Smiley, "Canadian Federalism," 93-7.

18. *Government of India Act, 1935*, Sects. 6(2), 101.

19. Constituent Assembly of India, *Debates*, VII, 42.

20. *White Paper on Indian States* (rev. ed., 1950), pars. 175, 218-21, 244.

21. *Constitution (Seventh Amendment) Act, 1956*, Sect. 29 and Schedule amending Arts. 259, 278, 291 and 306 of the constitution.

22. See *Constitution (Application to Jammu and Kashmir) Order, 1954*, especially Sects. 2(6)(b), 2(22)(b), made under article 370 of the *Constitution of India, 1950*. See also B. R. Sharma, "The Special Position of Jammu and Kashmir State in the Indian Constitution," *Indian Journal of Political Science*, XIX (1958), 282-90; M. P. Jain, *Indian Constitutional Law* (Bombay, 1962), 597-600.

23. *Constitution (Thirteenth Amendment) Act, 1962*.

24. Azad Kashmir is the portion of Kashmir held by Pakistan.

25. *Constitution of Rhodesia and Nyasaland, 1953*, Federal List, items 24, 25, 26, 30. See also Northern Rhodesia, *The Non-African Agriculture (Transfer to the Concurrent List) Ordinance, 1955* (N.R. Ordinance 61/1955) (Lusaka, Northern Rhodesia, 1955).

26. Cmnd. 1148/1960, *Report of the Advisory Commission on Rhodesia and Nyasaland*, par. 125.

27. *Malaysia Act, 1963*, Fourth Schedule. See App. B. See also Cmnd. 1954/1963, *Malaysia, Report of the Inter-Governmental Committee, 1962* (London, 1963), pars. 16, 17, 21-3, and Annex A.

28. Singapore with 17 per cent of the federal population was given only 15 seats in the House of Representatives with 159 members. On the federal franchise restrictions upon Singapore citizens outside Singapore see *Malaysia Act, 1963*, Sect. 31. It is perhaps significant that neither of these disabilities applied to Sabah or Sarawak.

## Chapter VI

1. *Constitution of India, 1950*, Arts. 280-1. To date Finance Commissions have reported in 1952, 1957 and 1962.

2. *Constitution of Rhodesia and Nyasaland, 1953*, Art. 96. The first commission reported in 1957.

3. *Malaysia Act, 1963*, Sects. 47, 48.

4. The Nigerian constitutions of 1960 (Art. 153) and 1963 (Art. 164) provided for such commissions "from time to time."

5. *Constitution of Pakistan, 1956*, Art. 118; *Constitution of Pakistan, 1962*, Art. 144; *Constitution of Malaya, 1957*, Art. 108.

6. Under the 1956 constitution of Pakistan the decisions of the National Finance Commission were binding, but up to the time of the suspension of that constitution in 1958 the commission had not been convened.

7. *Constitution of Rhodesia and Nyasaland, 1953*, Arts. 88-92; Cmnd. 481/1958, *Nigeria, Report of the Fiscal Commissioner* (London, 1958), pars. 158, 166.

8. *Constitution of India, 1950*, Arts. 257(4), 258(3); *Constitution of Pakistan, 1956*, Art. 129; *Constitution of Malaya, 1957*, Art. 80(6); *Constitution of Rhodesia and Nyasaland, 1953*, Art. 31(3).

9. *Constitution of Pakistan, 1956*, Arts. 116(4), 129; *Constitution of Malaya, 1957*, Art. 87; *Constitution of India, 1950*, Art. 262.

10. Morris-Jones, *Government and Politics of India*, 143.

11. *Constitution of Malaya, 1957*, Arts. 92(1), 108.

12. *Ibid.*, Arts. 91, 92(1).

13. The regional governments are represented on the statutory boards of the Electricity Corporation of Nigeria, the Nigerian Ports Authority, the Nigerian Railway Corporation and the Nigerian Broadcasting Corporation.

14. Its membership included the central prime minister and six central cabinet ministers, the chief ministers of seven states, other major political leaders, the military chiefs of staff, and some officials and technical and scientific advisers.

15. Subsequently, the *Constitution (Sixteenth Amendment) Act, 1963* prohibited the advocacy of secession.

16. *Statement issued by the National Integration Conference* (Delhi, 1961).

17. Government of India, Ministry of Education, *Report of the Committee on Emotional Integration* (New Delhi, 1962).

18. *Constitution of India, 1950*, Art. 263.

19. On the zonal councils, see Bondurant, *Regionalism versus Provincialism*, Chaps. III, V, VI; M. V. Pylee, *Constitutional Government in India* (Bombay, 1960), Chap. XLII; B. N. Schoenfeld, *Federalism in India* (Washington, 1960), 16-18; Morris-Jones, *Government and Politics of India*, 103, 144.

20. Art. 130.

21. A body composed of the rulers or governors of all the states in the federation.

22. *Constitution of Malaya, 1957*, Art. 38(3). This provision continues in Malaysia.

23. See Hughes, *The Federal Constitution of Switzerland*, 122-4, regarding Art. 113 of the constitution.

24. See *ibid.*, 100-3, regarding Art. 89.

25. *Constitution of Pakistan*, 1962, Arts. 57(2), 133(1).

26. *Federation of Malaya Agreement*, 1948, Clauses 66, 153.

27. See, for instance, Jacques-Yvan Morin, "Vers un nouvel équilibre constitutionnel au Canada," in Paul-A. Crépeau and C. B. MacPherson (eds.), *The Future of Canadian Federalism; L'avenir du fédéralisme canadien* (Toronto, 1965), 153.

28. The *Swiss Constitution* (Art. 107) does stipulate that the three official languages are to be represented on the Federal Tribunal, but does not specify their proportional representation. In practice the Assembly has seen that the main parties and both religious denominations are represented on the Federal Tribunal, as well as the three official languages.

29. *Constitution of India*, 1950, Art. 124(7); *Constitution of Pakistan*, 1956, Art. 150(2).

## Chapter VII

1. Basic Principles Committee, *Interim Report* (Karachi, 1950), par. 30-9; Basic Principles Committee, Franchise Sub-Committee, *Report* (Karachi, 1952), 1, 4; Basic Principles Committee, *Report* (Karachi, 1952), pars. 36-80; Basic Principles Committee, *Report* (as adopted, 1954), pars. 39-87.

2. *Constitution of Pakistan*, 1956, Art. 43.

3. *Constitution of Pakistan*, 1962, Art. 19.

4. *Constitution of Rhodesia and Nyasaland*, 1953, Art. 97(5).

5. *Swiss Constitution*, Art. 80.

6. Hughes, *The Federal Constitution of Switzerland*, 88-9.

7. An important factor also was the Malay desire to limit the extent of Chinese political influence.

8. *Swiss Constitution*, Arts. 95-104.

9. *Constitution of Pakistan*, 1962, Arts. 9-18, 25, 31-6, 165-7.

10. Art. 96.

11. In Nigeria, the regions are the autonomous political units, but these are themselves subdivided into administrative provinces.

12. Malaysia is unique in having an elected monarch. He is elected by the Conference of Rulers from among the hereditary rulers of the states. The Federation of Rhodesia and Nyasaland, which was dissolved before it achieved independence, had a governor-general.

13. The Federation of Rhodesia and Nyasaland was an exception, of course. There was no overt attempt to assign a senior ceremonial post to anyone from one of the African groups, thus contributing to the general alienation felt by the Africans in the northern territories towards the federal system.

14. *Report of the States Reorganization Commission*, pars. 123, 786-91.

15. *Constitution of India*, 1950, Arts. 16, 335, 336, 338. These are among the articles reproduced in App. E, I.

16. Art. 16. The term "the State" here includes the government and parliament of India, the government and legislature of each state, and all local authorities. See Art. 12.

17. On selection procedures and the organization of the civil service see Asok Chanda, *Indian Administration* (London, 1958), 104, 114-18; Morris-Jones, *Government and Politics of India*, 120-41.

18. See, for instance, Second Constituent Assembly of Pakistan, *Debates*, I (1956), 1845, 1909-10, 1998, 2049-50, 2104, 2122-3. See also K. B. Sayeed, *Pakistan, the Formative Phase* (Karachi, 1960), 384-5.

19. Second C.A.P. *Debates*, I, 2050.

20. *Constitution of Pakistan*, 1962, Art. 8, Principles 3, 6, 14, 16, 17. These are among the sections reproduced in App. E, II.

21. Art. 8, Principle 16.

22. Art. 240.
23. In 1961 the creation of three new all-India services was authorized—the Indian Service of Engineers, the Indian Forest Service and the Indian Medical and Health Service.
24. Morris-Jones, *Government and Politics of India*, 121.
25. Sayeed, *Pakistan*, 401.
26. *Constitution of Malaysia, 1963*, Art. 8 (see App. E, III).
27. *Ibid.*, Art. 136.
28. *Ibid.*, Arts. 153, 161A.
29. R. O. Tilman, "Policy Formulation, Policy Execution and the Political Elite Structure of Contemporary Malaya," in Wang Gungwu (ed.), *Malaysia* (London, 1964), 352-3.
30. *Constitution of Nigeria, 1960*, Sect. 27; *Constitution of Nigeria, 1963*, Sect. 28 (see App. E, IV).
31. E. O. Awa, *Federal Government in Nigeria* (Berkeley and Los Angeles, 1964), 172.
32. *Constitution of Rhodesia and Nyasaland, 1953*, Arts. 67-77 (see App. E, V).
33. Cmnd. 298/1957, Federation of Rhodesia and Nyasaland, *Constitution Amendment Bill, 1957* (London, 1957); Cmnd. 362/1958, Federation of Rhodesia and Nyasaland, *Electoral Bill, 1958* (London, 1958).
34. For a discussion of these questions in some recent federations see Col. No. 328/1956, *Report of the British Caribbean Federal Capital Commission* (London, 1956), 3, and Chap. II; Cmd. 8934/1953, *Report by the Conference on the Nigerian Constitution* (London, 1953), Annex V; Cmnd. 1148/1960, *Report of the Advisory Commission on Rhodesia and Nyasaland*, pars. 263-6.
35. See J. Harvey Perry, *Report on the Financial and Administrative Arrangements in Capitals of Federal Territories* (Lagos, 1953).
36. Regarding India see: *Constitution, 1950*, Arts. 239-41 and First Schedule, *Government of Part C States Act, 1951* (XLIX of 1951), Sect. 21; *Report of the States Reorganization Commission*, pars. 580-94; *Constitution (Seventh Amendment) Act, 1956*, Sects. 2, 17; *Delhi Municipal Corporation Act, 1957* (66 of 1957). Regarding Pakistan see G.G.O. 14/1948, and *Establishment of West Pakistan Act, 1955*, Sect. 2. Regarding Nigeria see Cmnd. 207/1957, *Report by the Nigeria Constitutional Conference* (London, 1957), pars. 55-6, and Cmnd. 569/1958, *Report of the Resumed Nigeria Constitutional Conference*, pars. 22-4.
37. *Constitution of Malaya, 1957*, Art. 154 and Federal List items 6(e), 7(h); *Constitution of Rhodesia and Nyasaland, 1953*, Art. 6; *Constitution of the West Indies Federation, 1957*, Art. 6; *Constitution of Pakistan, 1962*, Art. 131(4).
38. See, for instance, Col. no. 328/1956, *Report of the British Caribbean Federal Capital Commission*, Chap. II.
39. Second Constituent Assembly of Pakistan, *Debates*, I, 2119.
40. The Muslim League won only 10 out of 309 seats in the 1954 provincial election in East Bengal and never recovered in that province.
41. *Report of the Constitution Commission, 1961* (1962), par. 25.
42. Named National Council of Nigeria and the Cameroons until the secession of the Southern Cameroons.
43. Of the six proclamations of emergency rule in the states before 1963, five struck down legislatures which supported opposition of coalition ministries or had unseated a Congress ministry.
44. An example was the role of certain key chief ministers in the states in the selection of Mrs. Indira Gandhi as Prime Minister Shastri's successor.
45. See *Statement Issued by the National Integration Conference, 28 September-1 October 1961* (Delhi, 1962), 11-13.

### Chapter VIII

1. See tables in App. A for the distribution of population by language in each of these federations.
2. *Ibid.*, Tables A.1 and A.2.

3. Keith Callard, *Pakistan, A Political Study* (London, 1957), 182.
4. Basic Principles Committee, *Report* (as adopted, 1954), par. 276.
5. Art. 214.
6. Art. 215.
7. *Constitution of India, 1950*, Arts. 343-9, and Eighth Schedule (see App. E, I for these provisions).
8. *Report of the Official Language Commission, 1956*.
9. *Constitution of Malaya, 1957*, Art. 152. This is reproduced in App. E, III, *Constitution of Malaysia*, Art. 152.
10. *Constitution of Malaysia, 1963*, Arts. 161, 161F (see App. E, III).
11. *Constitution of Nigeria, 1963*, Sect. 59.
12. *Constitution of Rhodesia and Nyasaland, 1953*, Sect. 7.
13. English has also been so recognized for an interim period in Pakistan.
14. *Swiss Constitution*, Art. 116 (see App. E, VI).
15. *Ibid.*
16. For the actual constitutional provisions in these federations see App. E.
17. See Chap. V and App. B. Malaya and Rhodesia and Nyasaland (with respect to settler education) were the only significant exceptions.
18. See Chap. VII, D.
19. For the details of these guarantees, see Chap. IV, D.

#### Appendix D

1. For the history of the British provinces up to 1935 see P. N. Masaldan, *Evolution of Provincial Autonomy in India* (Bombay, 1953), Chaps. I, II, VI.
2. Further Indian Councils Acts in 1892 and 1909 enhanced the legislative powers of the provincial legislatures, and the financial settlements of 1870, 1877, 1882, 1904 and 1912 enlarged the sphere and reduced the uncertainty of provincial finance. The ultimate supremacy of the central government was, however, retained intact.
3. Sir Reginald Coupland, *Report on the Constitutional Problem in India* (London, 1943), Pt. I, 141 (hereafter *Coupland Report*).
4. The establishment of the federation was to be conditional upon the accession of the Rulers of States with at least half the total population of all the states (*Government of India Act, 1935*, 26 Geo. V, Chap. 2, Sects. 5, 6).
5. *Coupland Report*, Pt. I, 141.
6. *Government of India, (Distribution of Revenues) Order, 1936*.
7. The provincial autonomy intended by the Act was in a sense negated, however, since the Congress provincial ministries were closely supervised and controlled by the Congress central "high command" and after 1939 the Muslim League developed the same sort of control over the domestic politics of the Muslim provinces.
8. The growth of Muslim support for the League was aided by the political vacuum resulting from the outlawing of the Congress 1942-5.
9. *Coupland Report*, Pt. III, Chap. 11.
10. Cmd. 6821/1946, *Statement by the Cabinet Mission*.
11. *Indian Independence Act, 1947*, (10 & 11 Geo. VI, Chap. 30).
12. *Ibid.*, Sect. 8(2) (c). The Governor's emergency powers under Sect. 93 of the 1935 Act were also omitted from the interim constitution as a result of this provision.
13. See Constituent Assembly of India, *Debates*, I-XII, and *Reports of Committees*, Series I-III.
14. "The Resolution on Aims and Objects," C.A.I., *Debates*, I, 57; *Report of the Union Powers Committee*, 17 April 1947, C.A.I. *Debates*, III, no. 1, App. 13, 375-8, or C.A.I. *Reports of Committees (First Series)* 1947, 1-5.
15. *Second Report of Union Powers Committee*, 5 July 1947, C.A.I. *Reports of Committees (First Series)* 1947, 70-1.

16. On the integration of the Indian states see Government of India, *White Paper on Indian States* (rev. ed., New Delhi, 1950); V. P. Menon, *The Integration of the Indian States* (Calcutta, 1956).

17. *The Constitution of India, 1950*, Art. 370; *The Constitution (Application to Jammu and Kashmir) Order, 1950*.

18. *Constitution of Jammu and Kashmir, 1956*, Art. 3.

19. Constitution, Seventh Schedule, Lists I, III; Arts. 253, 256-8, 268-81, 292-3, 3.

20. B. K. Ambedkar, C.A.I., *Debates*, VII, 43.

21. *Ibid.*, 34-5.

22. On the reorganization of the states see *Report of the States Reorganization Commission, 1955*; Bondurant, *Regionalism versus Provincialism*; S. S. Harrison, *India, The Most Dangerous Decades* (Princeton, 1960); C. H. Alexandrowicz, *Constitutional Developments in India* (London, 1957), 171-93.

23. *Report of the Linguistic Provinces Commission* (1948), in C.A.I., *Reports of Committees (Third Series)*, 180-239; Indian National Congress, *Report of the Linguistic Provinces Committee* (New Delhi, 1949) (called JVP after the initials of its three members Jawaharlal Nehru, Vallabhbhai Patel, and Pattabhi Sitaramayya).

24. *Report of the States Reorganization Commission 1955*, Pt. II.

25. *The States Reorganization Act 1956* (37/1956) and *The Constitution (Seventh) Amendment Act 1956*.

26. One of the 14 states, Jammu and Kashmir, still retained, however, a special status of its own under Art. 370 of the constitution and *The Constitution (Application to Jammu and Kashmir) Order, 1954* (C.O. 48).

27. *States Reorganization Act 1955*, Pt. III.

28. See App. A, Table A.3.

29. *Report of the Official Language Commission, 1956*.

30. *Report of the Committee of Parliament on the Official Language*.

31. Callard, *Pakistan*, 13.

32. *Indian Independence Act 1947*, 10 & 11 Geo. VI, Chap. 30, Sect. 8.

33. On the interim federal constitution and its operation see *Government of India Act 1935*, 26 Geo. V, Chap. 2; *Indian Independence Act 1947*, 10 & 11 Geo. VI, Chap. 30; *Pakistan (Provisional Constitution) Order 1947* (G.G.O. 22/1947); Callard, *Pakistan*, 101-18, 155-93.

34. The federal capital, Karachi, was detached from Sind and placed under an Administrator. In 1952 it became a Chief Commissioner's province.

35. The sharing of the net proceeds of the income tax was abandoned at the establishment of Pakistan; the administration of sales tax was taken over by the central government (although a proportion of receipts was transferred to the provinces and states); the right to levy succession and estate duties was appropriated by the central government.

36. *Report of the Financial Enquiry Regarding Allocation of Revenue between the Central & Provincial Governments* (1952).

37. *Government of India Act 1935*, Sect. 102. This section was successively amended in 1947, 1948, and 1950 to enlarge its scope, particularly to meet the situation caused by the movement of population after partition.

38. The original Sect. 93 of the 1935 Act giving the central government this power was removed by the *Pakistan Provisional Constitution Order 1947* (G.G.O. 22/1947). But a new Sect. 92A was inserted by Jinnah, acting under his extraordinary powers (*Indian Independence Act 1947*, Sect. 9), restoring similar powers to the central government (G.G.O. 13/1948). These powers remained in force until a modified version was inserted as Sect. 93 by the *Government of India (Amendment) Act, 1955*. The central government exercised these powers in Punjab 1949-51, Sind 1951-3, E. Bengal, March 1954, E. Bengal 1954-5.

39. *Indian Independence Act 1947*, Sect. 8(1). Between March 1948 and September 1954 the first Constituent Assembly made 44 amendments to the interim constitution.

40. The Act was passed in 1949 and repealed in 1954.

41. The Muslim League secured only 10 of the 309 seats at stake.



42. On the deliberations of the first Constituent Assembly see Constituent Assembly of Pakistan, *Debates*; C.A.P. Basic Principles Committee, *Interim Report*, 28 Sept. 1950; *Report*, 27 Dec. 1952; *Report as adopted*, 21 Sept. 1954.

43. Constituent Assembly of Pakistan, *Debates*, V, no.1, 1.

44. The Constituent Assembly's compromise consisted in the recognition of both Urdu and Bengali, but with an expression of hope that the state would take measures for developing a common language.

45. On the work of the second Constituent Assembly see especially Constituent Assembly of Pakistan, *Debates*, I (1955-6).

46. Callard, *Pakistan*, 193.

47. *Constitution of Pakistan*, 1956.

48. *Constitution of Pakistan*, 1956, Fifth Schedule, Provincial List now included 94 items as compared with 55 in the *Government of India Act*, Seventh Schedule, List II (as amended to 1956). Article 109 assigned residuary legislative power to the provinces.

49. Constitution, 1956, Arts. 118, 199.

50. Arts. 25, 197, 198.

51. Art. 1(1).

52. Arts. 191-6.

53. Arts. 125-8, 104.

54. Art. 183.

55. Arts. 110(2), 119.

56. Keith Callard, "Pakistan," in G. McT. Kahin (ed.), *Major Governments of Asia* (Ithaca, N.Y., 1958), 417.

57. From March 1956 to October 1958 there were four central prime ministers, three West Pakistan chief ministers and six East Pakistan ministries.

58. *President's Proclamation*, October 7, 1958.

59. M. Ahmad, *Government and Politics in Pakistan* (Karachi, 1959), 233. See also Mohammad Ayub Khan, "Pakistan Perspective," *Foreign Affairs*, XXXVIII (1960), 547-56.

60. M. Ayub Khan, *ibid.*, 553.

61. *The Constitution of Pakistan*, 1962, preamble.

62. *Report of the Constitution Commission*, 1961, Chap. IV.

63. Constitution, 1962, Article 131(2).

64. Sir Frank A. Swettenham, *British Malaya* (3rd ed., London, 1948), Chap. XII; F.M.S., *Treaty of Federation*, 1895, in Cmd. 4276/1933, *Report on a Visit to Malaya*, App. III. On a strict interpretation of the treaty, the term "federation" was a "misnomer" (see Cmd. 4276/1933, 6). The treaty neither established a central government nor attempted a division of powers, beyond stating that the rulers agreed to accept a resident-general whose advice they would follow in all matters of administration other than those touching the Mohammedan religion (F.M.S., *Treaty of Federation*, 1895, Art. 4). On the contrary, it preserved all the former powers of the rulers in their states (*ibid.*, concluding clause). In practice, however, the treaty did "effect substantial changes" as power became concentrated in the federal secretariat under the resident-general (Cmd. 4276/1933, 6).

65. Cmd. 4276/1933, 7-10 and App. IV. In 1909 a Federal Council was created as the main legislative and financial authority, the resident-general reduced in status to a chief secretary, and an attempt made at a division of powers; in 1927 the states were given greater financial autonomy and the Federal Council was reconstituted to restore the prestige of the rulers.

66. Johore had confided control of its foreign affairs to Britain by a Treaty of 1885, but it was only in 1914 that an agreement was concluded for the appointment of a British officer as general adviser.

67. Cmd. 6724/1946, *Malayan Union and Singapore, Statement of Policy on Future Constitution*, par. 3.

68. Col. no. 194/1946, Sir Harold MacMichael, *Report on a Mission to Malaya*.

69. *Malayan Union Order in Council*, 1946. See also Cmd. 6749/1946, *Malayan Union & Singapore, Summary of Constitutional Arrangements*. Of the three Orders in Council planned, i.e.,

Malayan Union Order, Singapore Order and Malayan Union Citizenship Order, only the first two were duly made, the last due to criticisms never being implemented (Cmd. 7171/1947, *Federation of Malaya, Summary of Revised Constitutional Proposals*, par. 2).

70. S.I. 1948, no. 108, *The Federation of Malaya Order in Council 1948*. See also Cmd. 7171/1947, *Malaya, Summary of Revised Constitutional Proposals*; Col. no. 330/1957, *Report of Federation of Malaya Constitutional Commission*, pars. 22-35.

71. *Federation of Malaya Agreement, 1948*, clauses 67-76. A Standing Committee of two rulers represented the rulers in signifying assent to federal bills (clauses 75-6).

72. Col. no. 330/1957, *Report of Federation of Malaya Constitutional Commission*, par. 33. See also pars. 23, 26.

73. D. Sington, *Malayan Perspective* (London, 1953), 7.

74. Col. no. 330/1957, *Report, Malaya Constitutional Commission*, pars. 33, 86, 101, 102, 103, 105-6, 120.

75. *Report of Committee to Review Financial Provisions of Federation of Malaya Agreement, 1948* (Kuala Lumpur, 1955).

76. *Federation of Malaya Agreement 1948*, clause 153.

77. *Ibid.*, clauses 3, 6.

78. Cmd. 9714/1956, *Report by the Federation of Malaya Constitutional Conference*, pars. 74-5.

79. Col. no. 330/1957, *Report, Malaya Constitutional Commission 1957* [Reid]; Cmnd. 210/1957, *Constitutional Proposals for the Federation of Malaya*.

80. S.I. 1957, No. 1533, Annex: First Schedule, *Constitution of Malaya, 1957*, Arts. 73-112, 9th and 10th Schedules.

81. Art. 76(1) (a).

82. Art. 76(1) (b), (3) (4).

83. Art. 92(1).

84. Arts. 149-51, 71.

85. Arts. 76(1) (c), 80(4, 5).

86. Arts. 87, 91, 108.

87. Arts. 159, 2.

88. Art. 38 and 5th Schedule.

89. *Federation of Malaya Independence Act 1957*, 5 & 6 Eliz. II, Chap. 20; S. I, 1957, no., 1533, *Federation of Malaya Order in Council*, Sects. 1, 2.

90. See App. A, Table A.6.

91. Singapore Cmd. 33/1961, *Memorandum Setting Out Heads of Agreement between Federation of Malaya and Singapore*.

92. See Cmnd. 1563/1961, *Federation of Malaysia: Joint Statement by the Governments of the United Kingdom and of the Federation of Malaya* (London); Cmnd. 1794/1962, *Report of the Commission of Enquiry, North Borneo and Sarawak, 1962* (London); Cmnd. 1954/1963, *Malaysia, Report of the Inter-Governmental Committee* (London); Cmnd. 2094/1963, *Malaysia, Agreement Concluded between the United Kingdom, the Federation of Malaya, North Borneo, Sarawak and Singapore* (London).

93. Lord Hailey, *An African Survey* (rev. ed. London, 1956), 307.

94. Obafemi Awolowo, *Path to Nigerian Freedom* (London, 1947), 47-8.

95. Margery Perham in Joan Wheare, *Nigerian Legislative Council* (London, 1950), x.

96. In 1885 at the Berlin Conference the British claim to a sphere of influence over the Niger Basin was recognized, and following this Lagos was severed from the Gold Coast and given its own governor, the Oil Rivers Protectorate was established (extended and renamed the Niger Coast Protectorate in 1893 and renamed the Protectorate of Southern Nigeria in 1900), and the Royal Niger Company was given its charter. In 1898 the British and French governments signed a convention regulating boundaries and in 1900 the administrative rights and powers of the Royal Niger Company were taken over by the British Crown to form the Protectorate of Northern Nigeria.

97. J.S. Coleman, *Nigeria: Background to Nationalism* (Berkeley and Los Angeles, 1958), 46.

98. Governor's despatch, par. 3, in Cmd 6599/1945, *Proposals for the Revision of the Constitution of Nigeria* (London).

99. Cmd. 6599/1945, *Proposals for the Revision of the Constitution of Nigeria*.
100. *Ibid.*, Governor's Despatch, par. 3.
101. S.R. & O. 1946, no. 1370, *The Nigeria (Legislative Council) Order in Council 1946*, S.8.
102. Nigerian Government, *Review of the Constitution (Regional Recommendations) 1949* (Lagos, 1949); *Report of the Drafting Committee on the Constitution* (Lagos, 1950); *Proceedings of the General Conference on the Review of the Constitution, Ibadan, 1950* (Lagos, 1950); *Report of the Select Committee of the Legislative Council on the Constitutional Review* (Enugu, 1950); *Legislative Council Debates*, 16 Sept., 1950.
103. S.I. 1951, no. 1172, *The Nigeria (Constitution) Order in Council, 1951*. The constitution was usually so named after Sir John Macpherson, Governor of Nigeria, 1948-55, although the constitution itself was the product of the series of conferences.
104. Nigerian Government, *Report of the Commission on Revenue Allocation* [Hicks-Phillipson] (Lagos, 1951), par. 33. The 1951 constitution has also been compared in form to the "democratic centralism" in the Soviet Union, 1923-36. See Birch, *Federalism, Finance and Social Legislation*, 297. For a general analysis of the 1951 constitution see Kalu Ezera, *Constitutional Developments in Nigeria* (Cambridge, 1960), Chaps. VI-VIII.
105. Cmd. 8934/1953, *Report by the Conference on the Nigerian Constitution* (London); Cmd. 9059/1954, *Report by the Resumed Conference on the Nigerian Constitution*, (London); S.I. 1954, no. 1146, *The Nigeria (Constitution) Order in Council, 1954*; S.I. 1954, no. 1147, *The Nigeria (Offices of Governor-General and Governors) Order in Council 1954*.
106. Cmd. 8934/1953, *Report on the Nigerian Constitution*, par. 7.
107. Coleman, *Nigeria: Background to Nationalism*, 402.
108. S.I. 1954, no. 1146, *The Nigeria (Constitution) Order in Council, 1954*, Sect. 88.
109. As a result of the 1954 federal elections, which resulted in no overall majority in the House of Representatives (184 seats), the Northern Peoples' Congress which won the most seats, 79 members, all from the Northern Region, gained the right to nominate the three ministers for that region; the National Council of Nigeria and the Cameroons, with a total of 56 seats, but capturing a majority in each of the Eastern and Western Regions, won the right to nominate the six ministers for those two regions; and the Cameroons National Congress, with all six seats in the Southern Cameroons, nominated the single minister representing that territory.
110. Nnamdi Azikiwe (national leader of the N.C.N.C.), the Sardauna of Sokoto (national leader of the N.P.C.), Obafemi Awolowo (National leader of the Action Group) and E. M. L. Enderley (leader of the K.N.C.) each chose to remain as a regional premier, leading respectively the Eastern, Northern, Western and Southern Cameroons governments. During the decade, 1951-61, different parties were in power in the three regions, the N.P.C. holding a majority in the Northern Region House of Assembly, the N.C.N.C. doing so in the Eastern Region House of Assembly, and the Action Group controlling the Western Region House of Assembly, throughout the period.
111. Cmd. 207/1957, *Report by Nigeria Constitutional Conference* (London); Nigerian Government, *Report of Ad Hoc Meeting of Nigeria Constitutional Conference in Lagos 1958* (Lagos, 1958); Cmd. 569/1958, *Report by Resumed Nigeria Constitutional Conference*.
112. Cmd. 481/1958, *Report of the Fiscal Commissioner* (London); Cmd. 569/1958, *Report by Resumed Nigeria Constitutional Conference*, pars. 36-43.
113. Cmd. 505/1958, *Nigeria, Report of the Commission on the Fears of Minorities*, Chap. 14.
114. Cmd. 569/1958, *Report by Resumed Nigeria Constitutional Conference*, pars. 44-50. The new states issue remained alive, however, being hotly disputed in 1959 federal elections.
115. *Ibid.*, pars. 6-7. About 10 of the 30 days of the conference were spent on this subject.
116. *Ibid.*, pars. 8-17.
117. Distribution of seats in House of Representatives after 1959 federal elections (source, Electoral Commission, *Report on the Nigeria Federal Elections* (Lagos, 1959), App. I):

	N.R.	E.R.	W.R.	Lagos	Total	Support in H. of R.
N.P.C.	134	—	—	—	134	148 } Govt.
N.C.N.C.	—	58	21	2	81	81 }
N.E.P.U.	8	—	—	—	8	8 }
A.G.	25	14	33	1	73	75 } Opp.
Small parties & Independents	7	1	8	—	16	—
	174	73	62	3	312	312

118. *Nigeria Independence Act, 1960*, 8 & 9 Eliz. II, Chap. 55; S.I. 1960, no. 1652, *The Nigeria (Constitution) Order in Council 1960*.

119. Cmd. 569/1958, *Report by Resumed Nigeria Constitutional Conference*, par. 77.

120. *The Constitution of Nigeria* (1963, no. 20).

121. *Mid-Western Region Act, 1962* (1962, no. 6); *Mid-Western Region (Transitional Provisions) Act, 1963* (1963, no. 18); *Constitution of Mid-Western Nigeria Act, 1964*.

122. Cmd. 3234/1929, *Report of the Commission on Closer Union of the Dependencies in Eastern and Central Africa* (London), 282-3.

123. Cmd. 3573/1930 (London).

124. Cmd. 5949/1939, *Report of the Rhodesia and Nyasaland Royal Commission* [Bledisloe] (London), 215-19; Cmd. 8233/1951, *Central African Territories: Report of Conference on Closer Association*, par. 14.

125. For negotiations 1948-53 leading to federation see: Cmd. 8233/1951, *Central African Territories, Report of Conference on Closer Association*; Cmd. 8411/1951, *Closer Association in Central Africa* (London); Cmd. 8573/1952, *Draft Federal Scheme* (London); Cmd. 8671/1952, *Report of Judicial Commissioner* (London); Cmd. 8672/1952, *Report of Fiscal Commissioner* (London); Cmd. 8673/1952, *Report of Civil Service Preparatory Commission* (London); Cmd. 8753/1953, *Report by Conference on Federation* (London); Cmd. 8754/1953, *The Federal Scheme* (London).

126. Cmd. 8233/1951, *Central African Territories, Report of Conference on Closer Association*, pars. 38-9.

127. *Ibid.*, pars. 40-5.

128. *Ibid.*, pars. 43, 49, 50-2, 95, Annex III.

129. Cmd. 8411/1951, *Closer Association in Central Africa*, Annex, pars. 6, 10.

130. Cmd. 8573/1952, *Draft Federal Scheme*.

131. Cmd. 8753/1953, *Report by Conference on Federation*; Cmd. 8754/1953, *The Federal Scheme*.

132. *Rhodesia and Nyasaland Federation Act, 1953*, 1 & 2 Eliz II, Chap. 30.

133. S.I. 1953, no. 1199, *The Federation of Rhodesia and Nyasaland (Constitution) Order in Council, 1953*, was made August 1, 1953, and went into effect September 3, 1953.

134. S.I. 1953, no. 1199, Annex, *Constitution of Federation of Rhodesia and Nyasaland*, 2nd Schedule, items 24, 30.

135. Constitution, Art. 97. Normally support of two-thirds of the members of the Federal Assembly and assent by Her Majesty were required for constitutional amendment. If within 60 days a territorial legislature or the African Affairs Board objected to the bill, Her Majesty's assent had to be by order in council after the draft had been before the British Parliament for 40 days. See Chap. 12.

136. Constitution, Art. 40(2).

137. Constitution, Arts. 67-77.

138. Africans formed less than 3 per cent of the total federal electorate in this election, in part due to the boycotting of the election by many African groups.

139. Cmd. 1148/1960, *Report of the Advisory Commission on Rhodesia and Nyasaland* [Monckton], par. 52.

140. Arthur Hazlewood and P.D. Henderson, *Nyasaland, The Economics of Federation* (Oxford, 1960), esp. 88-91; W. J. Barber, "The Economic Argument," in C. Leys and C. Pratt (eds.), *A New Deal in Central Africa* (London, 1960), Chaps. 7, 8; S. Williams, *Central Africa: The Economics of Inequality* (London, 1960), Chaps. 5-7.

141. Cmnd. 1148/1960, *Report of the Advisory Commission on Rhodesia and Nyasaland*, Chap. 4.

142. Even G. H. Baxter, who as Assistant Secretary of State for Commonwealth Relations had been chairman of the officials' conference in 1951, and who was one of the federation's staunchest friends in Britain, was in 1959 critical of the "very slow" progress towards racial partnership in Southern Rhodesia. See A. J. Hanna, *The Story of the Rhodesias and Nyasaland* (London, 1960), 272.

143. Cmnd. 1148/1960, *Report of the Advisory Commission on Rhodesia and Nyasaland*, par. 34.

144. *Ibid.*, par. 41.

145. Cmnd. 298/1957, *Constitution Amendment Bill, 1957* (London); Cmnd. 362/1958, *Electoral Bill, 1958* (London).

146. Cmnd. 814/1959, *Report of the Nyasaland Commission of Inquiry* [Devlin] (London), esp. pars. 2, 179-86, 254-7, 258, 275-86.

147. Article 99 of the constitution had specified such a conference between seven and nine years after the commencement of the federal constitution.

148. Cmnd. 1148/1960, *Report of the Advisory Commission on Rhodesia and Nyasaland*, pars. 27, 41, 49.

149. *Ibid.*, Chap. 6.

150. *Ibid.*, Chap. 12.

151. *Ibid.*, Chap. 16.

152. Election by universal adult suffrage was finally achieved in Jamaica in 1944, in Trinidad in 1946, and in Barbados, the Windwards and the Leewards in 1951.

153. Lloyd Braithwaite, "Progress Toward Federation, 1938-1956," *Social and Economic Studies*, VI, (1957), 133-7.

154. *Ibid.* 135, 144.

155. Cmd. 4383/1933, *West Indian Closer Union Commission Report* (London), 1-9; Cmd. 6607/1945, *West India Royal Commission (1938-9) Report* [Moyné] (London), 326-8.

156. Cmd. 7120/1947, *Closer Association of the British West Indian Colonies* (London), App. I, pars. 1-3.

157. *Ibid.*, App. I.

158. St. Vincent, *Government Gazette Extraordinary*, LXXIX (March 21, 1946; date of despatch, March 14), Despatch, 7(a). See also Braithwaite, "Progress Toward Federation," 140-1. In his despatch, the Secretary of State pointed to the experience of the Leewards as indicating the disadvantages of a federation with weak central government.

159. Leeward Islands, *Gazette, Supplement*, Feb. 3, 1947, Minutes of Conference on Closer Union of Windward and Leeward Islands held at St. Kitts on Saturday, 1 February, 1947. See also Braithwaite, "Progress Toward Federation," 142-3.

160. Cmd. 7291/1948, *Conference on Closer Association of B.W.I. Colonies, Report* (London); Col. no. 218/1948, *Conference Proceedings*.

161. Cmd. 7291/1948, *Conference on B.W.I. Colonies, Report*, par. 15, Resolution 1.

162. Resolutions 6, 7, 14, 9. A shipping committee, a central organization of primary producers, and a British Caribbean Trade Commissioner Service were also to be set up immediately (Resolutions 3, 4, 5).

163. Resolution 2.

164. *Leeward Islands Act, 1956*, 4 & 5 Eliz. II, Chap. 23.

165. Col. no. 255/1950, *Standing Closer Association Committee Report* [Rance].

166. *Ibid.*, pars. 21, 24; App. 5, pars. 6-7. Many of the suggested activities of the central government were to be functions of an advisory nature such as those previously performed by the Development and Welfare Organization (*ibid.*, par. 27).

167. *Ibid.*, par. 28.

168. *Ibid.*, par. 30.
169. *Ibid.*, pars. 107-12. Concern about the additional cost of federation was a recurring theme in the development of the West Indian Federation, and subsequent reports presented revised cost estimates to contradict the continued fears of the cost of federation. See "Development and Welfare Organization in the W.I.," *Financial Aspects of Federation, Report* (Bridgetown, 1953), pars. 4-5, and Annexes 2, 3, 4; Cmd. 9618/1955, *The Plan for a British Caribbean Federation, Report of the Fiscal Commissioner* [Caine] (London), pars. 18-50.
170. Col. no. 254/1949, *Commission on the Unification of the Public Services Report* (London), esp. par. 157.
171. Col. no. 268/1950, *Commission on the Establishment of a Customs Union, Report* (London), esp. par. 135.
172. Cmd. 8837/1953, *Report by the Conference on West Indian Federation, 1953* (London); Col. no. 315/1955, *Report of the Conference on Movement of Persons within a British Caribbean Federation* (London); Cmd. 9733/1956, *Report by Conference on British Caribbean Federation* (London); Cmd. 9618/1955, *Report of the Fiscal Commissioner* [Caine]; Cmd. 9619/1955, *Report of the Civil Service Commissioner* [Blood] (London); Cmd. 9620/1955, *Report of the Judicial Commissioner* [Smith] (London); Col. no. 328/1956, *Report of the British Caribbean Federal Capital Commission* [Mudie]. A Standing Federation Committee established by the 1956 conference approved the final draft of the constitution and settled certain decisions of detail regarding the federal civil service, the judicial organization and the site of the federal capital that were still outstanding after the conference.
173. Jamaica was particularly sensitive on the issue of customs union because such a large proportion of its revenue was derived from its high tariffs.
174. For instance, decisions made at the 1953 conference concerning arrangements for internal free movement, customs union, dual membership in legislatures, constitutional amendment procedure and site of the federal capital were reversed later.
175. Morley Ayeart, *The British West Indies* (London, 1960), 236.
176. Col. no. 328/1956, *Report, British Caribbean Federal Capital Commission*.
177. *British Caribbean Federation Act, 1956*, 4 & 5 Eliz. II, Chap. 63; S.I. 1957, no. 1364, *The West Indies Federation Order in Council 1957*.
178. Constitution, Art. 118.
179. Cmd. 1417/1961, *Report of the West Indies Constitutional Conference, 1961* (London).
180. *Ibid.*, pars. 11, 20, 26.
181. Cmd. 1638/1962, *Report of the Jamaica Independence Conference* (London).
182. U.K., House of Commons, *Debates*, DCLIII, 6 Feb. 1962, cols. 230-5; DCLVI, 26 March 1962, cols. 849-940.

#### Appendix E

1. Published by the Government of India Press, Delhi, 1950. Subsequent amendments are to be found in *The Gazette of India* (Government of India Press, Delhi), and in the *All India Report* (A.I.R.) published annually.
2. Added by the *Constitution (First Amendment) Act, 1951*, Sect. 2. In its application to the State of Jammu and Kashmir, reference to Scheduled Tribes in clause (4) of Art. 15 is omitted.
3. Substituted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 29 and Schedule, for "under any State specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State."
4. In clause (3), Art. 16, the reference to the State was construed as not including a reference to the State of Jammu and Kashmir.
5. In its application to the State of Jammu and Kashmir, Art. 330, references to the "Scheduled Tribes" were omitted.
6. Inserted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 29 and Schedule.

7. Arts. 331 and 332 did not apply to the State of Jammu and Kashmir.
8. Arts. 331 and 332 did not apply to the State of Jammu and Kashmir.
9. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 29 and Schedule.
10. Art. 333 did not apply to the State of Jammu and Kashmir.
11. The words "or Rajpramukh" omitted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 29 and Schedule.
12. In its application to the State of Jammu and Kashmir, Arts. 334 and 335, references to the State or the States were to be construed as not including references to the State of Jammu and Kashmir.
13. Arts. 336 and 337 did not apply to the State of Jammu and Kashmir.
14. The words and letters "specified in Part A or Part B of the First Schedule" omitted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 29 and Schedule.
15. Art. 339 did not apply to the State of Jammu and Kashmir.
16. The words and letters "specified in Part A and Part B of the First Schedule" omitted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 29 and Schedule.
17. Substituted *ibid.*, for "any such State."
18. Substituted by the *Constitution (First Amendment) Act, 1951*, Sect. 10, for "may, after consultation with the Governor or Rajpramukh of a State."
19. Inserted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 29 and Schedule.
20. The words and letters "specified in Part A or Part B of the First Schedule" omitted *ibid.*
21. The words "or Rajpramukh" omitted *ibid.*
22. See *Constitution (Scheduled Castes) Order, 1950*, published with Ministry of Law Notification no. C.O. 19, dated August 10, 1950, *Gazette of India, Extraordinary*, Pt. II, Sect. 3, 163 and *Constitution (Scheduled Castes) (Part C States) Order, 1951*, published with Ministry of Law Notification no. C.O. 32, dated September 20, 1951, *Gazette of India*, Pt. II, Sect. 3, 1198.
23. Art. 342 did not apply to the State of Jammu and Kashmir.
24. Substituted by the *Constitution (First Amendment) Act, 1951*, Sect. 11, for "may, after consultation with the Governor or Rajpramukh of a State."
25. Inserted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 29 and Schedule.
26. The words and letters "specified in Part A and Part B of the First Schedule" omitted *ibid.*
27. The words "or Rajpramukh" omitted *ibid.*
28. See *Constitution (Scheduled Castes) Order, 1950* published with Ministry of Law Notification no. C.O. 19, dated August 10, 1950, *Gazette of India, Extraordinary*, Pt. II, Sect. 3, 163 and the *Constitution (Scheduled Castes) (Part C States) Order, 1951*, published with Ministry of Law Notification no. C.O. 32, dated September 20, 1951, *Gazette of India*, Pt. II, Sect. 3, 1198.
29. The words "or Rajpramukh" omitted by the *Constitution (Seventh Amendment) Act, 1956*, Sect. 29 and Schedule.
30. The words "or Rajpramukh" omitted *ibid.*
31. Inserted *ibid.*, Sect. 21.
32. Published by the Government of Pakistan Press, Karachi, 1962.
33. *The Constitution of the Federation of Malaya, 1957* (found in S. I. 1957, no. 1533, Annex, London, 1957) and in *Malayan Constitutional Documents*, 2 v. (2nd ed., Kuala Lumpur, 1962), as amended by the *Malaysia Act, 1963* (Malayan Act F.26/1963, Kuala Lumpur, 1963).
34. 1963, Act no. 20 (Lagos, 1963).
35. The Niger Delta is an area inhabited by ethnic groups which are in a minority in both the regions adjacent to the Niger Delta.
36. S.I. 1953, no. 1199, Annex (London, 1953). The Constitution as amended to September 1, 1959, was also published by the Government Printer, Salisbury, 1959.
37. English translation in Christopher Hughes, *The Federal Constitution of Switzerland*.