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Advisory Commission on the
Review of the Constitution of the
Federation of Rhodesia and Nyasaland

Report—Appendix VII

POSSIBLE CONSTITUTIONAL CHANGES

(Report by Committee of Officials)

Presented to Parliament by the Prime Minister
by Command of Her Majesty
October 1960

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PREFACE

1. We were appointed by the Governments of the United Kingdom, the Federation of Rhodesia and Nyasaland, Southern Rhodesia, Northern Rhodesia and Nyasaland with the following terms of reference:—

> "To survey developments since Federation was inaugurated in 1953, in the economic, political and social spheres and, where possible and appropriate, to make suggestions and analyse the arguments for and against constitutional changes which may be desirable and practicable".

2. We have discharged the first half of this task in our first Report, the "Survey of Developments since 1953", which was prepared in Salisbury in September–October 1959. This second Report, which summarises the results of discussions in London in November–December 1959, is devoted to an examination of suggestions for certain possible changes in the Federal Constitution and to an analysis of the main arguments for and against such changes.

3. Our terms of reference do not require us to make recommendations or to indicate any order of preference among the various constitutional adjustments which we have considered. We have therefore confined ourselves to an objective survey of a number of important modifications which may be thought to be possible and desirable within the general ambit of the Federal Constitution. We should perhaps emphasise, at the outset, that:—

(*a*) In considering both the existing constitutional arrangements and possible changes in them we have restricted our examination to elements within the basic structure of the Constitution. In particular, our terms of reference do not extend to matters which are regulated by individual Acts of the Federal Legislature, except in so far as they amend the Constitution.

(*b*) We have naturally not concerned ourselves with the political implications either of the existing Constitution or of the possible modifications of it which we have analysed in this Report. We must emphasise, therefore, that we are not to be taken as in any way purporting to endorse any of the suggestions discussed in the later chapters of this Report, still less to evaluate their political validity.

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CHAPTER 1

THE CONSTITUTIONAL BACKGROUND

4. The Federation of Rhodesia and Nyasaland differs from many other federations in that the Territories which constitute its component parts are not broadly comparable in the main features of their political and social organisation but manifest substantial, although diminishing, differences in terms of the standard of living of their inhabitants, the social structures which they embody, the racial composition of their populations and, above all, in the degree of constitutional evolution which they have achieved. Southern Rhodesia was originally acquired by conquest and was formally annexed to the Crown in 1923; and it has gradually developed, through the normal stages of constitutional advance, into a Colony which is now largely self-governing, although still subject to the control of the United Kingdom in certain respects. (These are detailed in paragraph 6 of Chapter 4 of the "Survey of Developments since 1953".) Northern Rhodesia and Nyasaland, on the other hand, are Protectorates; and their association with the Crown originally derived in the main from a series of treaties or agreements with individual African chiefs.

5. When the Federation was established in 1953 these differences in the relations between the United Kingdom and Southern Rhodesia on the one hand and Northern Rhodesia and Nyasaland on the other hand were formally recognised in the Preamble to the Constitution, which, after emphasising that all three Territories "are the rightful home of all lawful inhabitants thereof, whatever their origin", prescribed that:—

(*a*) "The Colony of Southern Rhodesia should continue to enjoy responsible government in accordance with its constitution";

(*b*) "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".

6. The Parliament and Government of the United Kingdom have therefore retained power to discharge a continuing responsibility towards the peoples of the Rhodesias and Nyasaland not only by means of their control, in varying degrees, over the Constitutions of the three Territories but also by means of certain constitutional limitations upon the authority of the Federal Legislature and Government. These limitations, which are referred to in this Report as the "elements of subordination", are fully described in Chapter 2 of the "Survey of Developments since 1953". Briefly, they relate to extra-territorial legislation, Privy Council appeals, the Royal Style and Titles, the appointment of the Governor-General, external affairs, reservation of Bills, disallowance of laws, the powers of the United Kingdom Parliament to make laws for the Federation and the incapacity of the Federal Legislature to legislate in a manner repugnant to such laws.

7. But, although the powers of the Federal Legislature and Government are limited both by the "elements of subordination" enumerated above and by the United Kingdom Government's powers in relation to the Territories,

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particularly the two Protectorates, the Preamble to the Constitution of 1953 also affirmed that one of the purposes of the association of the three Territories in a federation was to enable the Federation, when their "inhabitants so desire, to go forward with confidence towards the attainment of full membership of the Commonwealth". And the Joint Declaration by the Governments of the United Kingdom and of the Federation, in April 1957, defined the purposes of the constitutional review of 1960 as follows—"The purpose of this conference is to review the Constitution in the light of the experience gained since the inception of federation and, in addition, to agree on the constitutional advances which may be made. In this latter context the conference will consider a programme for the attainment of such a status as would enable the Federation to become eligible for full membership of the Commonwealth".

8. These declarations constitute the background of declared policy against which the following chapters examine, as the raw material of possible solutions of the problem, certain important features of the Federal Constitution—the safeguards against racial discrimination, together with the procedure for the amendment of the Constitution; the composition of the Federal Assembly; the distribution of legislative powers; and the machinery of inter-Governmental co-operation. These may be thought to be the main features of the existing Constitution requiring consideration during the review of 1960. But, although we have discussed them in separate chapters and have added, in the Annex, some comments on the "elements of subordination", we must emphasise that they are not, in fact, separate subjects but are closely inter-related within the Constitution. The pattern of their inter-relation largely determines the form of the Constitution; and it would therefore be logical, before examining them in detail, to enquire how they are to be finally integrated and where, in the Constitution which they ultimately compose, authority is to reside. The answer to this question might, we imagine, vary according to whether it placed the emphasis on the relationship between the United Kingdom Government and the Federal Government and, therefore, on the rate and degree of constitutional advance which the Federation should achieve, or on the relationship between the Federal State and its constituent members and, therefore, on the basis on which authority is shared between the Federation and the Territories in an acceptable manner. But both question and answer are, fundamentally, political and can be dealt with only by reference to the objectives of the Governments concerned, the nature of the future relationships between them and the climate of political opinion in both the United Kingdom and the Federation. We can offer no comment on these issues; we would only repeat that the various constitutional elements which are examined in the following chapters can be combined in different ways to serve different purposes, according to the political judgment on the scope and timing of any possible changes in the Constitution of the Federation.

CHAPTER 2

THE SAFEGUARDS AGAINST DISCRIMINATION; AND THE AMENDMENT OF THE CONSTITUTION

9. The existing safeguards against discrimination are twofold:—

(*a*) The "elements of subordination", particularly the powers of reservation and disallowance.

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(*b*) The African Affairs Board. This Board is a Standing Committee of the Federal Assembly, whose composition and functions are described in paragraphs 59–73 of Chapter 1 of the " Survey of Developments since 1953 ". Briefly, its main powers derive from its ability to require the Governor-General (subject to certain exceptions) to reserve for the signification of Her Majesty's pleasure any Bill which, in its view, is a differentiating measure (in the sense that it subjects Africans to any conditions or disadvantages to which Europeans are not also subjected) and from its ability to make representations to the Federal Prime Minister in relation to any matter within the legislative or executive authority of the Federation which affects the interests of Africans.

10. For a variety of reasons the African Affairs Board has not sufficed wholly to reassure African opinion. Moreover, it is concerned, as its name implies, to protect only the interests of Africans, whereas the objective of federation is the creation of a multi-racial state, the constituent Territories of which should be regarded, in the words of the Preamble, as " the rightful home of all lawful inhabitants thereof, whatever their origin ". If the African inhabitants of the Federation are to play an increasing part in the management of its affairs and if the review of the Constitution in 1960 is to provide a stable and permanent foundation for the future life of the Federation, it is proper to enquire whether any revision of the safeguards which it may incorporate should extend those safeguards to non-Africans no less than to Africans. The form of such safeguards might also be thought to be closely related to any constitutional advance which may arise for consideration in the future.

11. We have therefore considered what shape might be taken by any fresh or alternative safeguards—designed to protect the interests of all sections of the population, regardless of race, and applicable to executive, no less than to legislative, action—which might be incorporated in the Constitution. We have regarded it as desirable that safeguards should satisfy, as nearly as possible, the following requirements:—

(i) They should not merely provide but also be seen (both in the Federation and in the United Kingdom) to provide effective protection for all the inhabitants of the Federation.

(ii) They should be firmly entrenched in the Constitution, but in such a manner as not to make impossible such amendment as future changes in circumstances may require.

(iii) They should be immune from the pressure of immediate political influences but, at the same time, representative of the wishes of the inhabitants of the Federation and reasonably responsive to public opinion.

(iv) They should not appear as an extraneous and artificial element in the Constitution but should be an organic feature of it and capable of playing a natural part in the evolution of the Federation.

(v) They should be administratively realistic, in the sense of making no more than reasonable demands on the available resources of manpower and not unnecessarily impeding the course of public business.

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(1) A BILL OF RIGHTS

12. It is not easy to devise an institutional safeguard—some authority or organ established by, and constituting an integral element in, the Constitution—which will satisfy these requirements; and, before examining the various possible forms which such an authority might take, we have considered whether its task would be eased if it were provided with some formal definition of individual entitlement in the nature of a Bill of Rights, itself entrenched in the Constitution. For this purpose we have examined the most up-to-date example of this type of provision, namely the provision for "fundamental rights" which is made by the Nigeria (Constitution) (Amendment No. 3) Order in Council, 1959.

13. Previous experience suggests a rather cautious approach to any list of fundamental rights of this nature. The dilemma is well known. Either the basic definition is relatively short and is couched in general—and, therefore, imprecise—terms, which make heavy demands on those who are called upon to interpret them. Or it is relatively lengthy and is expressed in exact and minute terminology, which may involve such complexity of detail as to defeat its own purpose in so far as this lies in providing individuals with a clear and concise assurance of protection. Nor can there be any insurance, on either hypothesis, against a failure to foresee all possible contingencies. Indeed, it is precisely the inevitable need to amend the definition in the light of changes in social and political circumstances which constitutes one of the strongest objections to any statutory declaration of human rights, entrenched in the Constitution and, for that reason, capable of being modified only with the greatest difficulty.

14. Moreover, in the case of the Federation the conception might be thought to entail certain additional disadvantages:—

(*a*) Some of the existing measures of discrimination, particularly in relation to land, are designed to protect African interests and need to be continued until this protection is no longer required. If these were formally embodied in a Bill of Rights, they would appear to constitute exceptions to, rather than examples of, its general principles and would therefore cast doubt on the universality of those principles themselves. Moreover, their very entrenchment in the Constitution might, with the passage of time, come to constitute a disability.

(*b*) It might well be necessary to incorporate in the Bill of Rights a specific exception in relation to the declaration of a state of emergency. Such a provision would not normally be misunderstood in a conventional Bill of Rights; but in a declaration purporting to define the rights of individuals in the Federation at this particular stage of its development it might be open to misinterpretation.

(*c*) The Nigerian precedent provides, in respect of many of the rights which it defines, that "nothing in this paragraph shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality, public health or the economic well-being of the community or for the purpose of protecting the rights and freedom of other persons". A general exception of this nature is obviously necessary; and in a tolerably homogeneous society it provides its own justification. But the precise interpretation of the words "any law that is reasonably justifiable in

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a democratic society" might be a matter of considerable complexity in the case of a state consisting of three Territorial units which are at differing stages of social and political development.

15. We admit that these arguments are not necessarily decisive and that there might well be a psychological advantage in incorporating in the Constitution a definition of fundamental human rights which might help to create a new sense of confidence and a fresh purpose of co-operation. We would only remark that:—

(*a*) If this course were adopted, it might complicate, rather than simplify, the task of any new institutional authority which might be created as a safeguard against racial discrimination.

(*b*) Nevertheless, the Constitution must incorporate some definition of discrimination if the safeguard is to operate by reference to a known criterion. It would seem to be essential that the test should be not merely whether a particular legislative measure or executive act is, or is not, discriminatory on grounds of race, colour or religion but also whether, even if discriminatory, it is, on balance, desirable either in the interests of the individuals concerned or, possibly, in the wider interests of the community as a whole. For convenience, we have referred to such a measure or act in the remainder of this Report as "desirably" or, alternatively, "undesirably" discriminatory.

(2) INSTITUTIONAL SAFEGUARDS

16. Possible institutional safeguards can be divided into two main classes—judicial and political. We have examined examples of each type in the light of the requirements enumerated in paragraph 11 above.

A.—A Judicial Safeguard

17. The most obvious form of such a safeguard would be a provision, written into the Constitution, prohibiting discrimination absolutely, except in relation to certain matters to be specified in the Constitution, and stipulating that, if legislation were challenged on the grounds that it was discriminatory, the courts of law, including the Federal Supreme Court, would be empowered to determine whether it was in fact discriminatory and, if so, to declare it to be *ultra vires*. There are obvious advantages in an arrangement of this kind, particularly in so far as it would rely on machinery which is already an integral part of the Constitution and, so long as the independence of the judiciary is assured, should be acceptable to all sections of opinion as an authority which is wholly impartial and immune from political pressures.

18. The major disadvantage of this proposal, however, would be its extreme rigidity. It would incorporate no provision to permit the enactment of legislation which, although discriminatory in terms of the Constitution, might be held to be "desirably discriminatory".

19. A variation of the above scheme would, therefore, give to the Supreme Court the power to consider not only whether legislation was discriminatory but also to determine whether, if it was discriminatory, it was nevertheless "desirably" so. But this entails the objection that to pronounce on questions of this kind—whether with, or without, the aid of a Bill of Rights—calls for

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an act of political judgment. For this reason we fear that, if the decision were left to the Supreme Court, the inevitable and undesirable result would be to involve the Court in matters of current political controversy.

20. There are further difficulties. Unless the Supreme Court were to be invited to examine Bills on their introduction—to which there are serious objections, both of principle and of practice—an issue of alleged discrimination could not be submitted to them until the law had been enacted and events had provided an opportunity to test its practical application; and by that point the Government's prestige would have become engaged and popular feelings would have been aroused. Moreover, it is difficult to see how instances of alleged discrimination in the field of the Government's executive action could be challenged before the Supreme Court without seriously impeding the effective functioning of day-to-day administration and possibly involving the Judiciary in successive clashes with the Government of the day.

21. For these reasons we doubt whether the Supreme Court would of itself constitute a satisfactory institutional safeguard, although it would, of course, continue to provide individuals with the opportunity to challenge any legislation on the purely legal ground that, irrespective of its "desirability", it had not been enacted in accordance with the procedure required by the safeguards in the Constitution. It is therefore essential that the appointment and removal of judges of the Supreme Court should be seen not to be in any way influenced by political considerations.

B.—A Political Safeguard

(*a*) *A Second Chamber*

22. If it is conceded that the problem is essentially a political, rather than a judicial, problem, it nevertheless remains important to dissociate the decision as far as possible from immediate political pressures. A possible solution, from this point of view, might be thought to lie in the creation of a Second Chamber—an Upper House or Senate. The Constitution already provides in Article 97 (5) for the establishment of a Second Chamber; and, in the light of the analogy of other federations in which a Second Chamber has been established in order to protect State rights and the interests of minorities, the establishment of a similar Chamber in the Federation of Rhodesia and Nyasaland would appear to be a reasonable and natural form of safeguard against "undesirable" discrimination.

23. The functions of the Upper House would presumably consist of those normally entrusted to a Second Chamber, together with the additional and special function of examining and, if necessary, debarring the immediate enactment of discriminatory legislation. As regards the former, the Upper House should perhaps be empowered to delay ordinary legislation (apart from Money Bills) for a limited period; to review and amend Bills which had passed through the Lower House; and to debate issues of general public importance. As a safeguard against discriminatory legislation, however, it would need more stringent and exacting powers. The procedure might, for example, be as follows. Where the Upper House rejected any Bill on the grounds that it was "undesirably discriminatory", the Bill would be remitted for examination by a Select Committee of both Houses before it could be reintroduced in the Lower House. The Upper Chamber would be empowered

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to reject it, if necessary, a second time—whereupon it would be examined at a joint sitting of both Houses, where a majority of, *e.g.*, two-thirds or three-quarters of the total number of members might be required before it could become law.

24. Such a procedure should provide a substantial obstacle to the passage of "undesirably discriminatory" legislation. But its effectiveness would clearly depend to a considerable extent upon three considerations—first, the certainty with which its functions as a guarantor of safeguards could be distinguished from its other, more conventional, functions; second, its composition; and third, its influence in relation to the Lower House. As regards the first point we believe that we can foresee considerable difficulties which, although they apply in varying degrees to any institutional safeguard, would be liable to be particularly acute in the case of a Parliamentary body. For example, the Upper House, in accordance with normal practice, would presumably not be empowered to delay or to reject a Money Bill. But can it be assumed that a Money Bill would in no circumstances be discriminatory in an unfair or undesirable sense? Or should it rather be regarded as a particularly effective means of discrimination in the hands of a Government which might be disposed so to use it? Again, even if the Upper House proved to be an adequate safeguard against legislative discrimination, could it be relied upon to be equally effective in challenging discrimination in the field of executive action? Or would it be necessary, in the interests of its impartiality, to provide that the Government should not be represented in it—with the result that its members would have no reliable means of effectively calling in question the Government's actions in terms of day-to-day administration?

25. As regards the composition of the Second Chamber, it might be desirable that its total numbers should bear a constant ratio to the numbers of the Lower House, that each of the constituent Territories should enjoy equal representation in it and that the Territorial representatives should be divided in equal proportions between the two main races affected, one-third of them retiring in rotation. It might be objected to this arrangement, first, that it would ignore the interests of the Asian and Coloured sections of the population and, second, that it would tend to perpetuate, rather than to eliminate, the principle of racial distinction within the Federation. But, given that the objective is to provide an effective safeguard against racial discrimination, it is unlikely that either Africans or non-Africans would feel satisfied that this objective was being achieved unless their representatives in the Upper House were not at a numerical disadvantage. We have concluded that, on balance, equality of racial representation might be the lesser evil—both in an Upper House and perhaps in any other institutional body which might be established as a safeguard against discrimination. Even so, it would not be easy to devise a permanently satisfactory method of appointing the members of an Upper House or to ensure that they would be insulated against the influences of contemporary politics. There are obvious objections to their being either wholly nominated by Governments or wholly elected on the same franchise as members of the Lower House. And, even if they were appointed by electoral colleges, the same objections are apparent, albeit at one remove; for how could the colleges themselves be so constituted as to be reasonably representative of public opinion but indifferent to political pressures?

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26. Finally, it is difficult to be certain how effective a barrier to discriminatory legislation would be presented by an Upper House, consisting of members divided equally between Africans and non-Africans and sitting jointly with a Lower House which would consist of a larger number of members, the racial proportions of which will vary as time passes. The potential deadlock in the Upper House would be initially a source of irritation to the Lower House; and subsequently, at the stage of the joint sitting, even the requirement of a two-thirds or three-quarters majority would not necessarily be proof against political pressures. In general, experience does not confirm the assumption that a Second Chamber can prevail, in the last resort, against a Lower House which can claim to be more genuinely and immediately representative of the will of the people.

(b) A Council of State

27. For these reasons, we have considered whether it is possible to devise some alternative safeguard which, while permitting normal legislation to proceed without hindrance or delay, would impose on potentially discriminatory Bills a check of scrutiny by a body whose decision would be more or less independent of the Legislature and could not be challenged in the courts. We have examined several variants of this concept:—

SCHEME A

28. Under the first scheme a Select Committee of the Federal Assembly would be appointed, composed of a fixed number of members of different races or, perhaps preferably, of a number of members selected by the Legislature together with a number of members appointed by the Governor-General in his personal discretion. The function of this Committee would be not to express any opinion on the desirability of a Bill but merely to determine whether, in their view, its provisions were discriminatory by reference to some agreed criterion—*e.g.*, a Bill of Rights or some corresponding definition incorporated in the Constitution. If they judged that a particular Bill was not discriminatory, it would continue to follow the normal legislative process. If, however, they judged it to be discriminatory, they would report accordingly to the Assembly; and in that event the Bill would need to follow a special process in its further stages. This process would involve its submission to a Council of State, which might consist of an equal number of both Africans and non-Africans from each Territory, appointed by the Governor-General in his personal discretion from a list of perhaps double that number recommended by each Territorial Governor in his personal discretion. The function of this Council would be to express an opinion whether, in so far as they considered the Bill to be discriminatory, they nevertheless judged it to be " desirably " so. If their judgment on this question was favourable to the Bill, it would then follow the normal legislative process. But, if they pronounced against the Bill, it would be withdrawn; and no Bill which, in the opinion of the Speaker, was of substantially the same effect could be introduced during the same Session. If the Bill were reintroduced during the next Session, it would not be re-submitted to the Council but would require, *e.g.*, a two-thirds majority of the total number of members of the House before it could become law.

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SCHEME B

29. Alternatively, the Constitution might provide for the appointment of a Standing Committee of the Federal Assembly, consisting of an equal number of members from each Territory who might be elected by the members of the Assembly itself. This Committee would be empowered to report a discriminatory Bill to the Assembly; and this report would be referred by the Assembly to a Council of State. This body might consist of an equal number of persons from each Territory, divided equally between Africans and non-Africans, who would be either elected by the Territorial Legislative Houses or selected by the Governor-General in his personal discretion from a panel of names submitted by the Territorial Governors, acting similarly in their discretion. Its functions would be to decide whether the Bill which was the subject of the Standing Committee's report was, or was not, a discriminatory measure and, if it was discriminatory, whether it was " undesirably " so. If they decided that it did not fall into the latter category, they would report accordingly to the Speaker and the Bill would thereafter follow the normal legislative process. But, if they decided that the Bill was " undesirably discriminatory ", it could not be submitted for the Royal Assent unless the Legislative Houses of at least two Territories passed resolutions indicating that they did not disapprove of it.

SCHEME C

30. Under a third variant of the basic concept the Constitution might provide for the appointment of three separate bodies. The first would be a special Standing Committee of the Federal Assembly, consisting of a defined number of members appointed by the Governor-General in his personal discretion. The Committee would be required to examine all legislation and to report to the Speaker any Bill which, in their opinion, was discriminatory. Thereafter such a measure would be referred to a Council of State, which might consist of an equal number of members from each Territory, divided equally between Africans and non-Africans. The Council's function would be to advise the Assembly not merely whether, in their opinion, the law was a discriminatory measure but also whether it was " undesirably " so. Finally, if the Council reported adversely on the Bill, the Government would be required—unless they abandoned the measure—to place the matter upon the Order Paper by way of Notice of Motion. If, on debate of such a Motion, the Assembly decided to proceed with the measure, the question would be referred back to the Council for further consideration. If the Council remained of their opinion that the Bill was both discriminatory and undesirable, the issue would be referred for final decision to a joint sitting of the Assembly, the Council of State and the elected (or possibly all) members of the Legislative Houses of the three Territories, with a requirement that, *e.g.*, a two-thirds majority of the whole body would be needed before the Bill could be submitted for the Royal Assent.

SCHEME D

31. The fourth scheme which we have examined derives its initial impetus from much the same type of source as its predecessors—*i.e.*, a

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Standing Committee of the Federal Assembly, responsible for drawing attention to any legislation which they judged to be discriminatory. Such legislation would be referred to a Council of State, consisting of an equal number of African and non-African members, nominated or elected by each of the three Territories and presided over by a Chairman appointed by the Governor-General with the agreement of the three Territorial Governors. The Chairman would enjoy the right to vote. Each member of the Council might be appointed for a maximum period of, say, nine years, one-third of the members retiring every three years.

32. The Council's first function would be to decide whether the Bill which had been brought to their attention was discriminatory and, if so, to decide whether it was also "undesirable". If they pronounced against it, their decision would be final and could not be challenged by any further process. If, therefore, the Government of the day considered it essential to proceed with action which the Council had vetoed, they would be compelled to seek a dissolution. And if, on the constitution of a new Government, the same proposal was put forward a second time and again debarred by the Council of State, the Government would either have to abandon the proposal or be compelled to make a further appeal to the electorate.

Scheme E

33. The fifth scheme links the operation of a Council of State with the exercise by the Governor-General of his power to grant, or to withhold, the Royal Assent to legislation. The Constitution would provide that no Bill passed by the Federal Assembly could be submitted for the Royal Assent unless—

(*a*) it was accompanied by a certificate, signed by, or on behalf of, a Council of State, that the Bill did not infringe the limitation relating to discriminatory legislation, which would be specially entrenched in the Constitution in the form of a solemn declaration; or

(*b*) if the Council of State certified that the Bill infringed the declaration, the terms of the Bill were nevertheless approved by resolution of the Legislative House of each of the three Territories.

The Council of State might be a small body, consisting of five members —one appointed by the Governor-General in his personal discretion and the remaining four by the Governor-General from a panel of names submitted by the four Governments.

34. The safeguards which we have examined in the preceding paragraphs do not necessarily exhaust the possibilities. Other variants and combinations can be envisaged. Nor are the examples which we have quoted mutually exclusive. Given a certain amount of adaptation, any one could be combined with any of the others—*e.g.*, a Council of State could be combined with an Upper House, and both could be further fortified, if necessary, by the inclusion of a specific and detailed Bill of Rights in the Constitution. But, in that event, it would become the more important to bear in mind the fifth of the requirements which we have suggested—*i.e.*, that the safeguard should be administratively realistic.

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35. If, however, one considers each of the possible safeguards individually and on its merits, it may be thought that some form of a Council of State might prove the most appropriate. The advantages of a Council of State would appear to be that it would ensure that:—

(*a*) The judgment whether a Bill was not merely discriminatory but also "undesirably" so would be entrusted to a body which, although "political" rather than "judicial" in character, would be separate and distinct from the Legislature and would therefore impose on the legislative process a check which should be relatively immune from political pressures.

(*b*) The legislative check could be injected into the process at a relatively early stage (by contrast with the point at which a Second Chamber or, still more, the Supreme Court could intervene) *i.e.*, at a stage when opinions had not hardened and there was opportunity for relatively dispassionate consideration of the issue in question.

(*c*) The safeguard would rely on action by a Committee of the Federal Assembly to set it in motion; and it would equally invoke some democratic form of final decision—*e.g.*, a joint sitting of the bodies concerned, a dissolution or the submission of the Bill for the approval of the Legislative Houses of each of the three Territories before it could be presented for the Royal Assent.

36. On the other hand a Council of State would suffer from certain disadvantages:—

(*d*) The fact that it would rely on an initiative by a Committee of the Federal Assembly to bring it into action might itself constitute a handicap to its effective intervention, in view of the political pressures which might be at work within the Committee. This objection could be reduced:—

(i) by providing that, even in the absence of any action by the Committee, the Speaker would be required to submit a Bill to the Council of State at the request of any member of the Legislature who could obtain the support of, say, five other members; or

(ii) by enabling the Council to take cognizance of any legislation on its own initiative at the earliest possible stage.

(*e*) Whether one considers either the present racial composition of the Federal and Territorial Legislative Houses or the probable increases in African representation, there can be no certainty that any stipulated majority (*e.g.*, two-thirds or three-quarters), either at each of separate sessions of the Federal Assembly and the Territorial Legislative Houses or at a joint sitting, would ensure that discriminatory legislation was effectively debarred. The respective sizes of all the Legislative Houses, which are not immutable, might also have a considerable bearing on the outcome.

(*f*) The members of the Council of State would need to be either nominated or elected. On the former hypothesis they might be thought to be insufficiently responsive to public opinion; on the latter hypothesis, it would be difficult to devise an appropriate and satisfactory form of election.

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37. These disadvantages are common to all the variants of a Council of State which we have examined. In addition, however, certain objections can perhaps be raised to individual examples. Thus:—

(*g*) Scheme D would confer on the Council of State (ultimately, perhaps, on its Chairman alone) the drastic power of forcing a dissolution—possibly more than once—if its views conflicted with those of the Government of the day. It is open to question whether, notwithstanding the exceptional importance of devising an adequate safeguard against discrimination, an arrangement so much at variance with democratic procedure would be easily accepted by public opinion either in the Federation or in the United Kingdom.

(*h*) Scheme E would postpone the effective intervention of the safeguard until the last moment in the legislative process, *i.e.*, the stage at which the Bill was submitted for the Royal Assent. By this point opinions would have hardened and the prestige of the various interests concerned would have become engaged.

38. As we have made clear in the Preface, we are not required to attempt to judge whether any of the possible safeguards examined in the preceding paragraphs would be appropriate. But the arguments stated above need to be amplified by certain additional, and more general, considerations. Thus:—

(*a*) We have examined the safeguards in relation only to major legislation —*i.e.*, Bills introduced in the Federal Assembly. It would be necessary to provide, however, that they should also apply to subsidiary legislation. There should be no insuperable difficulty in making the necessary arrangements.

(*b*) In discussing a Second Chamber, we have drawn attention to the difficulty which might arise if, in accordance with normal practice, its powers did not enable it to delay the passage of a Money Bill. The difficulty is particularly obvious in that case; but it is relevant not only to a Second Chamber. No Government can survive if it is defeated on a Money Bill; and the treatment of such a Bill in relation to any safeguard involves therefore a considerable issue of principle.

Money Bills are normally of two kinds, dealing respectively with taxation and appropriation. Both are fundamental to the efficient conduct of public business, the former for obvious reasons, the latter because an Appropriation Bill authorises the provision of finance not only in order to enable the Government to implement laws passed by the Legislature but also to enable them to take executive action which lies within their competence but has no specific legislative authority other than the appropriation of the necessary funds. There are many occasions on which a Money Bill might in practice be a discriminatory measure. It might perhaps be conceded that, if the differentiation was manifest and clearly deliberate, the safeguard should apply in full rigour, notwithstanding the fact that the Bill was a Money Bill. If, on the other hand, the differentiation was defensible on practical grounds and was not likely to prove disadvantageous to the interests affected, the efficient conduct of Government business might be held to require that the safeguard should not be allowed to impede the passage of the Money Bill in question. It might not be easy to prescribe a method of

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procedure which would satisfy this requirement. But we suggest that it would be essential to provide for the point if the conduct of Government business was not to be unduly impeded.

(c) In principle, a safeguard should apply not merely to legislative action but also to executive action. In this connection it is perhaps relevant to note that, in the draft Constitution for Cyprus prepared by Lord Radcliffe in 1956 and published as Cmnd. 42, it was suggested that an effective safeguard against executive discrimination might be provided by a Tribunal of Guarantees. This Tribunal would not itself initiate action in relation to any executive act of the Government but would judge any complaint made by an individual or association in relation to such an act. It is perhaps for consideration whether some such tribunal should be established as part of the review of the Constitution of the Federation. But there are considerable practical difficulties in the way of giving full effect to this concept—difficulties which were presumably recognised when it was agreed, in 1953, that the powers of the African Affairs Board in relation to executive action by the Government should be confined to the right to make representations to the Federal Prime Minister and when the Board themselves subsequently decided that their representations should be confined to matters of policy and principle which, in their judgment, affected African interests. To go further and to enable a safeguard to operate as rigorously in relation to executive as to legislative action might well be regarded as an unacceptable impediment to the efficient despatch of the day-to-day business of Government. For this reason it may be thought that the powers in respect of executive action which should be entrusted to any new institutional safeguard should be no greater than those already entrusted to the African Affairs Board. If so, some form of Council of State would seem to constitute the most appropriate body for this purpose.

39. We would conclude this discussion of possible safeguards by emphasising the inescapable dilemma which they present, a dilemma which perhaps appears most clearly from the brief discussion of executive action immediately above. If a judicial form of safeguard is rejected but the judgment of some other type of body entrusted with the safeguard is not to be open to challenge in the courts (as would clearly be necessary) and is also to afford an absolute guarantee against discrimination, its authority must be co-extensive with the whole field of Governmental action and must be sufficiently effective to debar any type of " undesirable " discrimination. If so, it must be able, in the last resort, to bring the machinery of Government to a standstill. If, on the other hand, this is thought to be intolerable, there appears to be no escape from the conclusion that the safeguard must be less than completely effective.

40. We have not attempted to pre-judge in this examination of possibilities the political decision whether the safeguard should continue for a further period to include the element, which exists at present, of eventual reference to the United Kingdom Parliament; equally, we have not pre-judged the political issue whether the safeguard might be related to the removal, in whole or in part, of the " elements of subordination ".

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Amendment of the Constitution

41. At present any Bill introduced into the Federal Assembly for the amendment of the Constitution requires a two-thirds majority of the members of the Assembly before it may be deemed to be passed; and, even if so passed, it is automatically reserved by the Governor-General for the signification of Her Majesty's pleasure. In addition, no Bill to amend the provisions of the Constitution in respect of matters on which the Federal Legislature may legislate can, within the first ten years after the coming into force of the Constitution, be introduced into the Federal Assembly unless the Legislative House of each Territory has passed a resolution that it does not object to the introduction of the Bill. Furthermore, if the Legislative House of any Territory objects to any Bill providing for an amendment of the Constitution after that Bill has been passed by the Federal Assembly, Her Majesty's assent to the Bill must be signified by Order in Council and no such Order may be submitted to Her Majesty unless it has been laid in draft before each House of the United Kingdom Parliament and neither House has, within a period of forty days, resolved that the Order should not be submitted to Her Majesty. To this extent, therefore, the ultimate sanction against the enactment of Federal legislation amending the Constitution—and possibly affecting thereby any individual safeguards provided by the Constitution—is the authority of the United Kingdom Parliament.

42. Without prejudice to the decision on the political question whether this ultimate sanction should be retained, it is for consideration whether the procedure for the amendment of the Constitution might itself make use of one of the safeguards which we have already examined, *e.g.*, a Council of State. In that event it might be desirable to provide that Bills amending the Constitution should be divided into two categories, according to whether they would, or would not, effect a significant or fundamental change in the Constitution. For this purpose it might be provided that certain Articles in the Constitution (which would in any event include both those incorporating the safeguards and those prescribing the procedure for the amendment of the Constitution itself) should be automatically regarded as "significant" Articles, any amendment of which would be subject to a particularly stringent procedure. The objection to an arrangement of this kind would lie in its inflexibility, *i.e.*, in the obstacle which it would present to any attempt to make an "insignificant" amendment to a "significant" Article. It might, therefore, be preferable to leave it to the Council of State to decide whether any amendment was, or was not, significant or fundamental. In that case, however, the Council of State would be liable to be no more—though no less—effective as a means of activating the safeguard against undesirable amendment of the Constitution than as a means of activating any other safeguard.

43. The subsequent procedure would depend upon the Council's judgment whether a Bill amending the Constitution incorporated a significant amendment or not. If they regarded the amendment as not significant or fundamental, an appropriate Bill might be laid on the table of the three Territorial Legislative Houses; and if, within a specified period from the time when it was so laid, at least two of those Houses did not object to it, the amendment might be passed by a simple majority in the Federal Assembly. If, on the other hand, the Council considered the amendment to be significant or fundamental,

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a more rigorous test of its acceptability to the peoples of the Federation might be thought desirable. The form of such a test would need more detailed consideration; but it is for consideration whether it should be related to the stage of constitutional advance reached at the time in each of the three Territories.

Review of the Constitution

44. Article 99 of the Constitution provides for its review within a specified period from the date of its coming into force. The desirability of a periodical review of the Constitution is a political question, on which we express no view; but it is perhaps for consideration whether it is advisable to make constitutional review the subject of a positive statutory requirement embodied in the Constitution itself.

CHAPTER 3

THE FEDERAL ASSEMBLY

45. The Report of the 1951 Conference on Closer Association in Central Africa* proposed the principle that, in the allocation of seats in the Federal Assembly, no one Territory should have voting power equal to, or exceeding, that of the other two Territories combined. This principle was accepted to the extent that Southern Rhodesia was given one less seat than Northern Rhodesia and Nyasaland together. Thus, under the original Federal Constitution of 1953, the Federal Assembly consisted of a Speaker and 35 members. Of these 17 represented Southern Rhodesia, 11 Northern Rhodesia and 7 Nyasaland. In each case two members from each Territory were specially elected Africans and one from each Territory was a European representing African interests.

46. The size of the Federal Assembly was increased by the Federal Constitution (Amendment) Act, 1957. This Act maintained a similar proportion of representatives from each Territory; and the composition of the Federal Assembly is now as follows:—

	Southern Rhodesia	*Northern Rhodesia*	*Nyasaland*	*Total*
Elected (race unspecified) ...	24	14	6	44
Elected African	4	2	2	8
Specially elected African ...	—	2	2	4
Specially elected European ...	1	—	—	1
Specially appointed European	—	1	1	2
	29	19	11	59

The method of registration of voters and election of members is described in Chapter 1 of the "Survey of Developments since 1953".

47. We are not concerned to pronounce whether the existing position is appropriate; but it can be argued that it will be liable to become increasingly inappropriate and that consideration might therefore be given to redesigning the balance of representation in the Federal Assembly in order to permit a progressive redistribution of seats which would reflect more closely the co-ordinate status of the Territories, having regard to the approximate equality

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of their populations and to the effects of the progressive enfranchisement of their peoples as individual incomes and standards of education rise.

48. On the other hand, it can be maintained that the members of the Federal Assembly should not be regarded as no more than representatives of the Territories from which they are drawn. They are primarily members of a Legislative House which, in its nature and its outlook, should be essentially Federal. Moreover, the ratio of Territorial representation in the Federal Assembly, as originally determined in 1953, was reaffirmed less than two years ago, with the agreement of all the Governments concerned, when the total size of the Assembly was increased under the Federal Act of 1957. It embodies the principle that no one Territory should be able to outvote the other two Territories in combination; and it may be thought desirable that this principle should be maintained, irrespective of any progressive variation in the ratio of Territorial representation. It may also be thought to be premature to make any change in the existing provisions of the Constitution governing the composition of the Federal Assembly until the present arrangements have been tested by experience and it has been established that alternative and better provisions, acceptable to all races, could be devised.

CHAPTER 4

THE FUNCTIONS OF GOVERNMENT

INTRODUCTION

49. In discussing the distribution of functions and of legislative authority between the Federation on the one hand and the Territories on the other hand, we have concentrated on the main functions in respect of which some reallocation of responsibility may be thought to be required. There are several less important matters where a more precise definition would be useful in clarifying doubts which experience during the last six years has provoked; but these, together with any other similar questions which may affect the detailed shape of the Legislative Lists, might be best dealt with, in the light of the decisions on the main functions, during the 1960 review.

50. We have arranged the functions which we have examined in three broad groups, comprising the provision of social services, the regulation of the economy and the maintenance of law and order. In addition, we have included a separate section on finance. Many of the functions are closely interrelated; and it has not always been possible, in discussing the case for and against the transfer of a particular function from one Government to another, to avoid the impression of pre-judging the issue in the case of another related function. But, although the decision in the one case may materially influence the decision in the other, we should not be regarded as anticipating it in either. As we have emphasised in Chapter 1, those decisions are matters of political judgment, which can be taken only by reference to the form of the Constitution which is ultimately judged to be appropriate.

51. The Second Schedule to the Federal Constitution, which is reproduced as Appendix I to this Report, is divided into separate parts. Part I is entitled " The Federal Legislative List " and comprises " in relation to any Territory, matters with respect to which the Federal Legislature has, and the Legislature of the Territory has not, power to make laws ". It consists of 44 Items.

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Part II, which is entitled " The Concurrent Legislative List ", comprises " in relation to any Territory, matters with respect to which both the Federal Legislature and the Legislature of that Territory have power to make laws ". It consists of 32 Items. These lists require to be interpreted in the light of certain provisions in the Constitution itself, particularly those in Chapters 3 and 8.

52. At present the functions of Government comprised in the two Legislative Lists are divided between the Federal Legislature and the Territorial Legislatures on a basis whereby:—

(*a*) Only external affairs has been formally designated as exclusively Federal under the proviso to Article 29 (2).

(*b*) The remaining Items in the Federal Legislative List have not yet been so designated; but, as and when they are so designated, they will become the exclusive preserve of the Federal Legislature.

(*c*) The Items in the Concurrent Legislative List are within the legislative competence of both the Federal and the Territorial Legislatures; but, in the light of Article 35 (1), the will of the Federal Legislature can prevail in relation to any of these subjects.

(*d*) Matters not included in either list are residual, *i.e.*, they are exclusively within the legislative competence of the Territories.

53. The Report of the 1951 Conference on Closer Association in Central Africa, on which the present Legislative Lists are based (subject, in some cases, to important modifications), enunciated certain basic principles in Chapters 4 and 5. We have taken account of those principles in considering what further modifications, if any, might now be made in the allocation of functions. We have also tried to bear in mind certain general considerations:—

(i) We are dealing with a federation—not with either the looser entity which may be described as a league or confederation or with the more closely-knit entity which is a unitary state. In the former the will of the constituent parts normally prevails, in the last resort, against the will of the central authority. In the latter the position is reversed. But in a genuine federation powers are so divided between the central and the regional governments that they are seen to be co-ordinate authorities, each being independent of the other and enjoying both a substantial degree of responsibility and the means to discharge that responsibility. In practice, this definition is variously interpreted; and we have attached, as Appendix II to this Report, a schedule illustrating the distribution of powers and functions in other federal and quasi-federal constitutions within the Commonwealth. It may suffice to indicate the wide range of variation between those cases where the central government is " strong " and those where it is " weak ". And it may be thought to constitute a clear warning against any attempt to discover in precedent any basic " principle of distribution ", which can be applied indiscriminately to any and every instance of federal government. But, however widely the countries quoted may differ as regards the allocation of individual functions, they are alike in preserving to each of the parties its quantum of co-ordinate authority; and we have regarded it as

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axiomatic that this should continue to be true in the case of the Federation of Rhodesia and Nyasaland also. In particular, the considerations of efficiency and economy which might normally point to a greater concentration of authority in the hands of the central government must be weighed, in the case of a federation, against the fact that the governments of its constituent parts have judged it to be to their advantage to enter into a closer association only provided that they do not thereby lose their separate individualities. Efficiency and economy are relevant, and may be decisive, considerations in the case of a unitary government. They are not less relevant, but may not be decisive, in considering the distribution of functions in a federation. Here the decision on the acceptable distribution of functions should precede the decision on the appropriate apportionment of the federation's total financial resources which is necessary to enable the responsible governments to provide the services, or to discharge the functions, in question.

(ii) The distribution of functions and responsibilities between the central government and the regional governments should reflect two conflicting factors. It should be based on as clear and precise definitions as possible, in order to reduce the area of uncertainty and, possibly, suspicion. On the other hand, it should not be at the mercy of rigid definition and should remain sufficiently flexible to permit action to be adapted to the needs of changes in circumstances and conditions of emergency. It can be argued that the existence of two Legislative Lists—the one exclusive to the central government, the other concurrent in relation to both the central and the regional governments—is unnecessarily cumbrous. Moreover, it may be thought to leave the regional governments in doubt about the extent of their legislative authority, since, in addition to being normally excluded from the central government's List, they may at any time be excluded from the Concurrent List as well. For these reasons, it might be thought preferable to adopt only a single Legislative List, which would comprise all the functions—but only those functions—in relation to which the central government should be accorded exclusive power to legislate, items not included in the single List remaining within the exclusive jurisdiction of the regional governments. Here, it may be suggested, would be an arrangement which would be clear, definite and final, allowing each government to know precisely the extent of its powers. But this conclusion is open to question. Nearly all modern federal constitutions incorporate the principle of a Concurrent List, not merely in order to preserve the necessary degree of flexibility between the central and the regional governments but also in order to make provision for those functions in respect of which both the central authority and the regional authorities may properly expect—and be expected by public opinion—to enjoy some measure of legislative competence. Moreover, however carefully the draftsman defined the functions to be included in a single Legislative List, the possibility of inexactitude or omission would remain; and the more minutely individual functions were subdivided in order to anticipate this risk, the more cumbrous and complicated the List would become. In

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practice, this might be too high a price to pay for clarity and certainty; and the balance of advantage may, therefore, be thought to lie in proceeding by way of two Legislative Lists—the one exclusive to the central government, the other concurrent. If so, however, there are obvious advantages in entrusting to one authority, as far as possible, functions which are naturally related to one another.

54. The considerations mentioned so far might be applied, *mutatis mutandis*, to any instance of federal government. But, in the case of the Federation of Rhodesia and Nyasaland, certain additional factors must be borne in mind:—

(iii) The Federation has existed for only six years; and there is a risk that changes, unless they were clearly necessary and carried some decisive advantage, would entail disrupting administrative arrangements and destroying habits of work which have barely yet had time to take firm root. Moreover, they would be liable to involve serious administrative problems, particularly in terms of personnel. On the other hand, it can be argued that six years' experience of federation has provided sufficient time for the concepts upon which it was founded to be tested by experience and that such experience has indicated that the present distribution of functions between the Federal and Territorial Governments needs adjustment. If so, the administrative rearrangements which would be involved should perhaps be regarded as a subordinate problem and, if changes are to be made, the opportunity should be taken now, when a final form of federation is being worked out.

(iv) The Report of the 1951 Conference on Closer Association in Central Africa suggested that " those services which have a specially close relation to the day-to-day life and work of the African peoples should remain the responsibility of the Territorial Governments "; and the existing apportionment of certain functions, as indicated in the two Legislative Lists, must be deemed to illustrate this principle. It is perhaps for consideration, however, whether the time is approaching for an advance towards a more non-racial approach to the problem, designed to create a more homogeneous society; and on this hypothesis it would be desirable to substitute, in any reallocation of functions and powers in 1960, the principle that matters affecting the daily life of people of all races should be Territorial. Nevertheless, there are still wide differences between the Territories in terms of the standard of living of their inhabitants and the social and economic structures which they reflect; and a non-racial approach, even if adopted, does not necessarily presuppose Territorial, rather than Federal, administration.

(v) Finally, it may be thought to be relevant to the distribution of functions that the system of administration in the rural areas of the two Protectorates differs from that obtaining in Southern Rhodesia. The difference is that between indirect and direct rule and is more fully discussed in Chapter 6 of the " Survey of Developments since 1953 ".

55. In the light of these various considerations, we offer the following comments on the possibility of a redistribution of functions between the Federal and the Territorial Governments.

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A.—SOCIAL SERVICES

I.—HEALTH

56. Health (other than silicosis in Northern Rhodesia) is a concurrent subject, under Item 64 of the Concurrent Legislative List.

57. In most federal constitutions medicine and health generally, including hospitals and clinics, public health and sanitation, are a territorial responsibility. Among seven federal and quasi-federal constitutions in the Commonwealth which have been compared, only the Malayan Constitution prescribes that hospitals and clinics should be a federal subject and public health and sanitation concurrent subjects; otherwise the services are territorial.

58. The Report of the 1951 Conference on Closer Association in Central Africa recommended, in paragraphs 47 and 64, that health should be a Territorial subject; but it was decided at the Federal Conference of 1952 which prepared the Draft Federal Scheme* that the legislative power should be concurrent, while the major responsibility for the provision of health services should be Federal.

59. Note (11) to the Item in the Draft Federal Scheme, page 13, indicates that the decision that health should be a concurrent, rather than an exclusively Federal, responsibility was designed to leave scope for the Territorial Governments to continue to provide, legislatively and executively, for the maintenance of health services, such as rural clinics, which are provided in the Northern Territories by native authorities. As indicated in Chapter 9 of the " Survey of Developments since 1953 " the Federal Government have in fact assumed responsibility for the main provision of health services throughout the Federation, on a basis of medical regions. The three regions at present correspond to Territorial boundaries, because the Federal Government are continuing to operate the health services under Territorial legislation, which differs to some extent between the Territories, and have not yet found it possible, for the reason indicated in the following paragraph, to legislate for health services throughout the Federation.

60. The difficulty in question arises from the vagueness and generality of the expression " Health " (whereas in other federal constitutions some of the functions which this expression may be held to cover are listed separately) and from the legal doubts as to the precise scope of the functions involved—although this has not affected the establishment of the main health institutions in the manner described in the " Survey of Developments since 1953 ". It has been suggested that, if health were to remain concurrent, the Item might be defined on the following lines:—

" Health, including—

(*a*) The preparation, carrying out and co-ordination of measures conducive to human health, including measures for the prevention and cure of diseases;

(*b*) The establishment, control and maintenance of hospitals, clinics and similar institutions for the treatment of physical and mental defects, dispensaries and laboratories;

(*c*) The provision of medical and allied services;

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(*d*) The manufacture, processing and sale of poisons, drugs, disinfectants and insecticides and of foodstuffs injurious to health;
(*e*) The cultivation of plants from which poisons and drugs can be derived;
(*f*) Housing conditions, including overcrowding, not conducive to health, in any area which the Governor-General, with the consent of the Governor of the Territory in which the area is situated, may by order designate;
(*g*) Standards with respect to the safety, purity and potency of biological, pharmaceutical and similar products;
(*h*) The advertising and labelling of biological, pharmaceutical and similar products;

but not including silicosis."

This is not to suggest that a definition on these lines is the only, or necessarily the most satisfactory, method of resolving doubts about the extent of the legislative power. But it may serve to illustrate the difficulty presented by the existing definition in Item 64.

61. Federal administration of health services may be thought to be inconsistent with the principle that personal services affecting the day-to-day life of the people are more suitably Territorial. It would also appear to diverge from the general practice in other federations (although in this context weight must be given to the fact that the Federal health service has existed for the last six years). We have therefore considered whether health should be made a residual subject. The arguments for and against this course follow.

(a) Considerations of Scale

62. The first argument in favour of a Federal health service derives from the advantages which may be thought to flow from the greater scale of the organisation, particularly as regards the provision of specialist officers, bulk buying, special and expensive equipment and medical research. In smaller services it is not easy, and is often impossible, to maintain an adequate reserve of specialist officers, whereas in a Federation-wide service such a reserve is feasible. Further, in smaller services there is often difficulty in replacing specialists who may be absent on leave or for other reasons; in a Federal service temporary replacement by transfers between regions is possible. Again, bulk purchase is conducive to economy and standardisation, which itself promotes greater efficiency in the distribution of drugs and the maintenance of equipment. In particular, the purchase of expensive specialised equipment may not be practicable if its use is to be restricted to the smaller organisations of individual Territories, whereas a Federation-wide service constitutes a sufficiently large unit to make possible the acquisition and operation of expensive equipment such as the cobalt bomb, heart-lung machines and deep X-ray equipment. Finally, medical research is likely to be more efficient when conducted on a centralised basis.

63. As against these considerations it can be argued that the Territories would in fact be able to share specialist officers between themselves on a basis of mutual assistance even in the absence of a Federal service; that bulk buying of equipment could be organised as well by an *ad hoc* consortium

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of the three Territories as by a Federal service and that in any case the Protectorates could obtain their supplies through the Crown Agents for Oversea Governments and Administrations; that specialist equipment, however expensive, could equally be shared between Territories; and that medical research can not only derive advantages from local initiative but also, where desirable, be organised on a Federation-wide basis without the implication that all medical services must be so organised.

(b) Considerations of Uniformity

64. A second argument is based on the advantages of uniform and common standards of service throughout the Federation. It can be maintained that in a federation there should, as far as possible, be the same standard of health services in all the territories and that this can be better achieved by making the responsibility a Federal one. Table 4 in Chapter 9 of the "Survey of Developments since 1953" may be thought to support this contention. Further, a strong central administration facilitates the planning of the services on a national basis and makes it possible for the Federal Government, while taking full account of local views, to spend available funds where they are most needed. In so far as the administration of health services is a matter closely affecting local authorities, any difficulties which may arise can properly be adjusted by legislation (which is one of the reasons for proposing the new definition of "Health" in paragraph 60 above; such a definition of responsibility would to a great extent remove present uncertainties and frictions). As regards the native authorities in the Northern Territories, however, it can be argued that few difficulties have in fact occurred and that, since the Item is concurrent, there is no reason why the existence of the Federal health service should hinder the promotion in rural areas of development schemes which include health services. This would admittedly continue to depend on co-operation between the Federal and the Territorial Governments; but it is in any case desirable on general grounds to maintain and extend such co-operation.

65. The opposite viewpoint may be expressed as follows. Granted the desirability of a common standard of health services, there is no reason (subject to an appropriate fiscal adjustment) why the Territories themselves should not jointly establish such a standard. Moreover, arguments based on the advantages of uniformity of treatment and centralised control are apt to discount the essentially personal nature of medical services, which are closely related to the day-to-day life of the people. On these grounds it is preferable that health services should be administered as closely as possible to the places where they are needed. It is common practice to devolve administration of hospitals and other medical services to regional and local bodies, who are better able to take account of local problems and to meet local needs. The most satisfactory administration of such services is normally secured by giving the local inhabitants a direct interest in their management.

66. In addition, each Territory has its own particular problems. In African conditions the basic requirements of health, as illustrated by a recent survey in Nyasaland of health as a factor of productivity, are environmental hygiene in rural and urban communities; anti-malarial and other campaigns involving health education and preventive measures; and the expansion of

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rural health clinics as distinct from new hospitals. All these requirements need close co-operation and initiative on the part of local authorities and the field administrative staffs of the Territorial Governments. Moreover, it is not only in regard to special campaigns that the efficient conduct of a health service depends upon its being closely linked with local authorities and the Territorial administrations. In many areas District Officers are the persons best able to carry out much of the administrative work which is involved. In Northern Rhodesia the medical officer is himself an integral part of the Provincial team and the local administration and is responsible, generally speaking, to the Provincial Commissioner. Local authorities are directly concerned in the maintenance of public health in their areas and look naturally for guidance to the Territorial, rather than the Federal, administration—whereas direct devolution of responsibility from the Federal Government would enable a local authority to play off that Government against the Territorial Government in matters of finance.

67. In the rural areas of the Northern Territories a significant proportion of health facilities is provided by native authorities, who also enact rules and orders to promote hygiene and to ensure the maintenance of health discipline. In these areas it is a condition of success that such schemes should secure the co-operation of Africans; and this can best be ensured through guidance given by the local Territorial officers to the native authorities, who are becoming increasingly concerned in health legislation and in the provision of such services as dispensaries, clinics and itinerant medical orderlies. Moreover, they include health programmes in the specific schemes of development for their peoples; and this is also the policy of the Territorial Governments, in whose rural development programmes the promotion of health services forms an integral part. It can be maintained that the co-ordination of these programmes and the co-operation of native authorities are best secured through Territorial control and that the present remote administration of the health service has resulted in a lack of consultation and an unsatisfactory and inflexible response to urgent but local health problems. It is difficult for a distant controlling authority always to be fully aware of local needs; and there is a danger that over-centralisation may result in a deterioration in the services provided. The division of a Federation-wide service into regions does not fully meet this point, since each Regional Director is necessarily limited in his authority—a limitation which may not permit the swift action often required to meet particular and urgent problems.

68. As regards the argument that the legislative difficulties of a Federal health service could be resolved without undue difficulty by *inter alia* a more precise definition of "Health", it is perhaps relevant to observe that, in view of the very varied conditions in the different regions, it is unlikely that their particular needs could be satisfactorily met by the enactment of Federal legislation unless it was made, inevitably, so complicated as to point to the assumption that local and Territorial legislation would have been preferable. It may be doubted whether comprehensive legislation is, in fact, practicable and whether a body exercising centralised control over so large an area as the Federation would command the detailed knowledge of local conditions which is considered essential for proper administration of health services. It can be maintained that the size of the Territories and the distribution of populations are such that satisfactory administration is possible only on a Territorial

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basis and that each Territory is itself as large a health unit as can be controlled by one authority.

69. On the other hand, it is probable that, under a Federal health service, the medical regions would in due course be smaller than the Territories and would possibly overlap their boundaries. Moreover, such difficulties as are liable to arise from the remote control of the Federal health service could be, if not removed, at any rate mitigated in two ways: first, if better machinery were established for consultation and co-operation between the Governments and other authorities concerned; and, second, if the Territorial Governments felt able, in the field in which the Federal Legislature had not legislated, to use the powers which are available to them by virtue of the fact that health is a concurrent subject.

(c) Relationship with Other Services

70. A third argument relates to the connexion between health and other services which are at present Territorial. These include some activities of labour departments (such as workmen's compensation), housing and social welfare generally. It can be contended that it is essential that social welfare services should be treated as a whole, since they are inter-connected; and that this is particularly true in the case of the social services which are linked with health. Sickness benefits, probation services, after-care facilities and welfare services support the general framework of the administration of hospitals, dispensaries and other health institutions. Administration of the health service by the authority which is also responsible for general social welfare and relief work would facilitate the provision of ancillary services and permit the most efficient use of hospital facilities. On the other hand, it can be argued that other subjects, at present Federal, are also related to social welfare and, indeed, to other Territorial subjects; and that the remedy for any difficulties which may arise lies in greater co-operation between the Federal and the Territorial Governments.

(d) World Health Organisation

71. A fourth argument derives from the position of the Federal Government as an associate member of the World Health Organisation. It can be maintained that Federal control of medical services is necessary in order to enable the Federal Government to co-operate fully with that organisation and to further its activities in Africa. The Federal Government at present enjoy this advantage. On the other hand, it can be argued that the existence of international obligations is irrelevant to the merits of the allocation of any particular function and that in any case those obligations could be satisfied by suitable co-operation between the Federal and the Territorial Governments.

II.—EDUCATION

72. Item 30 of the Federal Legislative List comprises " Primary and secondary education of persons other than Africans ". Item 31 of the List comprises " Higher education (including higher education of Africans), that is to say, institutions or other bodies offering courses of a university, technological or professional character ". These provisions follow the recommendations in paragraphs 64 and 82 of the Report of the 1951

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Conference on Closer Association in Central Africa. Their effect is discussed in full in Chapter 10 of the " Survey of Developments since 1953 ", which describes the institution of the University College of Rhodesia and Nyasaland, under the general (primarily financial) ægis of the Federal Government; the establishment by the Federal Government of a department and institutions for the primary and secondary education of European, Asian and Coloured children; and the separate development, by the three Territorial Governments, of departments and institutions for the primary and secondary education of African children. The division of responsibility for technical and technological education is described in paragraph 86 below.

73. It is generally accepted that university education for all races should remain a Federal subject. Elementary and secondary education, however, and even, to some extent, university education are organised on a regional basis in most federations; and in the seven federal and quasi-federal constitutions within the Commonwealth which have been compared they are regional in six and federal only in Malaya.

74. We have therefore considered whether it would be desirable and practicable that all education, with the exception of university education (and whether this should include technological education is discussed separately below), should become an exclusively Territorial responsibility. The main arguments in favour of this course follow.

Primary and Secondary Education

(a) The Advantages of Local Administration

75. It is the normal practice, even in unitary states, to devolve the administration of social services to local authorities. In almost all federations education is substantially in the hands of the regional governments; and it can be maintained that it is particularly desirable that it should be so in cases where the regions differ from one another.

76. Moreover, it can be argued that education, as a service which intimately affects the daily lives of the people, is pre-eminently a matter for local administration and that it should therefore be handled on a Territorial, rather than a Federal, basis. In support of this view it can be maintained that:—

(i) It is important to encourage local interest in education and to associate the local population, particularly local authorities, with the management of schools in their area. This would be more easily accomplished if education were under the control of the Territorial Government. Native authorities already have a large share in the management of African schools in the Northern Territories.

(ii) The performance and character of individual schools are not only of local concern but inevitably vary from one area to another; and better results are obtained the closer the centre of administration is located to the schools themselves. Centralised administration is liable to lead to a rigid application of common central policies without regard to local needs; and there is too great a variety of conditions between the three Territories to justify one Federal system for all of them.

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(iii) In any event there is a point in the size of any organisation beyond which further enlargement detracts from, rather than promotes, efficiency. Each Territory is already as large a unit as can efficiently be administered by one authority in the field of education.

(iv) Common administration of all schools in a single area by one authority would lead to administrative economies and could promote a more efficient use of facilities, equipment and staff. The present division of authority will be liable to lead increasingly to duplication of facilities between African and non-African establishments, as educational services expand.

(b) The Educational System as a Composite Whole

77. Moreover, the educational system should be regarded as a composite whole and be treated as such. The reasons in support of this view are given below. (They overlap to some extent the particular arguments about technical and technological education which are considered later; but they are incorporated here for the sake of completeness.)

(i) A number of advantages would follow from the control of all education by a single Governmental authority within a Territory. Such an arrangement would enable the special characteristics and problems of each Territory to be reflected in its educational system and account to be taken of its particular needs and state of development.

(ii) The provision of educational facilities should be kept in step with the economic and social development of the people whom they serve.

(iii) The educational system, from the lowest primary class to the senior secondary and technical level, should form a planned and balanced whole; and teacher training should be so organised that the supply of teachers will meet the expanded needs of the schools and, conversely, the output of the schools will contain sufficient candidates of the standard required to train as teachers.

(iv) The principles of education are the same for all, irrespective of race; and teaching methods for Africans and non-Africans may be expected progressively to approach each other, despite present differences.

(v) Facilities for technical education should be co-ordinated with those for academic education; and both should be related to the availability of future employment.

(vi) Technological education is often an extension of technical education at the higher level; and it may be convenient and economic to provide both within a single establishment and thus to make the best use of available facilities. An attempt to provide separate establishments for the different races would be liable to lead to an unnecessarily extravagant use of resources or, alternatively, to inadequate coverage.

78. Some of these arguments could equally be applied in support of the proposition that education, as a composite whole, should be administered by the Federal Government rather than by the Territories. But this contention does not overcome the basic objection to Federal administration, deriving from the close connexion of education with the local life of the inhabitants. Moreover, it can be argued that education and social services are closely inter-connected and should, therefore, be considered as a whole. Social

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services should be administered by the authorities who are also responsible for general social welfare and relief work, operating in close co-operation with local authority welfare organisations, local voluntary organisations, native authorities and the general District administration. One Government should be responsible for the whole range of these matters; and, in view of their nature, that Government should be the Territorial Government.

79. Against the point of view summarised in the preceding paragraphs it can be maintained that no compelling arguments have been adduced which would justify a change from the present system or suggest that it is working otherwise than satisfactorily. Indeed, it can be argued that the change outlined above, if effected in the foreseeable future, would be harmful to all sections of the community. The arguments for the maintenance of the *status quo* are mainly practical and pragmatic. Admittedly, in most other federations education is a regional subject. No doubt this is attributable to reasons derived from the particular circumstances of the countries concerned. But circumstances in the Federation of Rhodesia and Nyasaland are not paralleled in other federations; and when the Federation was established a different approach was considered to be appropriate. The Report of the 1951 Conference on Closer Association in Central Africa gave careful consideration to the distribution of the responsibility for education. For reasons which seemed sound at the time and flowed from the advantages of uniformity of standards it recommended that non-African education should be Federal. It departed from this concept in relation to African education in the light of the close relationship of education to the day-to-day life of the African people. It can be maintained that the experience of the past six years has confirmed the wisdom of this view.

80. Moreover, the arguments in favour of local control have only limited application. The same result can be achieved by a system of regionalisation —as in the existing Federal system, where the four regions correspond more closely to actual educational needs than do existing Territorial boundaries. Nor does experience, either in the Federation itself or in other federations, support the argument that the Federal administration of a service inevitably implies the imposition by the central Government of common policies unsuitable to the various regions. The purpose of regionalised administration is precisely to adjust policy and its application to local needs. Present Federal legislation does not preclude any local authority from maintaining any type of school which it desires; but in practice local authorities in non-African areas look to the Government to provide primary and secondary educational facilities. Consultation and co-operation with local authorities are in any case no less possible under Federal administration than under Territorial. Equally, the Federal Government must be assumed to be as able as a Territorial Government to assess local economic and social requirements and therefore to supply the needs of the people.

81. It can be further argued that education in the Federation cannot be regarded as a composite whole because, in the particular circumstances of the case, different methods are needed, and different problems are involved, in achieving the same end in relation to different races. There is still a considerable gulf between the standards of living and the cultural level of

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Africans and non-Africans. The problem is therefore twofold—on the one hand, the problem of providing, for the comparatively small number of non-Africans, education up to standards comparable with those generally applying in other developed countries; on the other hand, the problem of providing education at progressively improving standards for an ever-increasing number of Africans—a problem which is growing more acute every year, as is shown in the " Survey of Developments since 1953 ".

82. Moreover, it can be maintained that techniques of teaching Africans and non-Africans differ fundamentally and that methods of instruction need to be adapted to the varying stages of a child's educational life. This need is obvious from the fact that instruction to Africans, although given at the early stages in the vernacular, is thereafter conducted in what is virtually a foreign tongue. The point is further illustrated by the fact that before 1953 both Southern Rhodesia and Northern Rhodesia had separate departments of African and non-African education.

83. In addition, certain practical difficulties have to be considered in relation to the possible re-allocation of responsibility for education. There is a back-log in the educational facilities available in the Federation for both Africans and non-Africans; but it is most marked in relation to African education. This is clearly demonstrated by the fact that the present objective in Southern Rhodesia is restricted to the provision of primary education up to Standard III for all Africans and up to Standard VI for a limited number—a fact which, in its turn, is an indication of the limitation on the Colony's capacity to provide secondary education for Africans. It would seem to follow that the provision of adequate primary and secondary education for all races is impossible within the foreseeable future, even if the combined resources of the Federal and the Territorial Governments were directed towards this end. The real problem, therefore, is to determine how the available educational resources of the Federation as a whole can best be used to the advantage of all races within the Federation.

84. In the particular case of Southern Rhodesia the facilities provided for Africans and non-Africans differ in several respects; and these differences would increase the problems involved in making primary and secondary education an exclusively Federal or an exclusively Territorial subject. Full secondary education for non-Africans has been provided in the principal towns of the Colony and, in order to extend these facilities to pupils coming from homes in the country, boarding hostels have been provided in the same towns. Such secondary education as has been provided for Africans in the Colony up to the present consists of the provision of a limited number of secondary schools (two Government boarding schools, three Government day schools and eighteen mission schools); and the problem of boarding facilities for Africans has not arisen to any marked extent.

85. Finally, we would observe that racial segregation between Africans and non-Africans is implicit in the present division of responsibility for education (subject to the provisions of Article 32 of the Constitution). Whether this is desirable and whether it should be taken into account in any redistribution of functions is a matter for political judgment.

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Technical and Technological Education

86. The provisions of the Constitution relating to technical and technological education have been interpreted to mean that technological education for all races is the responsibility of the Federal Government by virtue of the precise terms of Item 31 of the Legislative List; that technical education for all non-Africans is also the responsibility of the Federal Government by virtue of Item 30 (secondary education being implicitly interpreted as including technical education); and that the technical education of Africans (for the same reason) is the responsibility of the Territorial Governments. Chapter 10 of the " Survey of Developments since 1953 " describes in paragraphs 26 and 27 the provision of technological education, and in paragraphs 17 to 25 the provision of technical education, for non-Africans. The provision of technical education for Africans in Southern Rhodesia is described in paragraphs 84 to 95 of the same chapter, in Northern Rhodesia in paragraphs 169 to 178 and in Nyasaland in paragraphs 220 to 225.

87. The division of responsibilities is complicated, as a matter of interpretation, by the difficulty of drawing a precise line of distinction between technical and technological education. Normally, " technological education " is regarded as comprising courses leading to the grant of a qualification such as a diploma (regarded as the equivalent of a university degree) and any kind of technical education which leads to a lower qualification is described as " technical ". Even so, the dividing line is rather indistinct. It can be argued that, if all education were the responsibility of the Territorial Governments, this difficulty would no longer arise. Moreover, not only do technical and technological education merge into one another but technical education itself necessarily depends upon a particular type or bias of education at the secondary level, while at the conclusion of the process the qualifications of the pupil need to be acceptable to employers in the particular industry for which the technical or technological course in question is devised. At both ends of the process, therefore, there is the most intimate connexion with responsibilities which in any event should lie with the Territorial Governments—at one end with primary and secondary education, particularly of Africans, and at the other end with the responsibilities relating to the regulation of apprenticeships, etc., which are comprised within the general field of Labour. This argument, therefore, tends to the conclusion that, even if all education were not assigned to the Territorial Governments, at any rate both technical and technological education, for all races, should be their responsibility.

88. It can be further argued that the most immediate and practical disadvantages entailed by the existing division of responsibilities in the Constitution arise in the context of the provision of facilities for technical education. Such facilities are particularly expensive; and if it is not possible to provide them on the basis of use by both Africans and non-Africans, there will be either an unnecessary duplication of facilities or inadequate geographical coverage for one race or another and in either event the available resources will not be put to the best and most efficient use.

89. As against these arguments it may be considered illogical to provide for university education under the auspices of the Federal Government while

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making technological education the responsibility of the Territorial Governments, particularly in view of the modern tendency to seek to assimilate university and technological qualifications.

III.—CARE AND PROTECTION OF MINORS

90. This is a concurrent function, under Item 61 of the Concurrent Legislative List. It can be argued that it should now be made residual, since the subject is one aspect of the whole system of social welfare services and should not be divorced, either legally or administratively, from that system. In addition:—

(a) It is already a Territorial responsibility in practice; and existing arrangements work well.

(b) Institutions for child care should be small and locally based.

(c) Territorial responsibility is best adapted to take account of divergencies of conditions, especially where local African custom may be involved.

(d) The individual nature of the problems of child care makes local attention more important than general uniformity.

91. It is therefore for consideration whether this subject should become residual.

IV.—OLD AGE PENSIONS

92. Item 41 of the Federal Legislative List is "The payment of old age pensions by the Federal Government".

93. This wording gives the Federal Government power to pay old age pensions from Federal funds but does not preclude the Territorial Governments from paying them from Territorial funds. In practice the Territorial Governments make legislative or executive provision to govern the awards of pensions; but the actual responsibility has been assumed by the Federal Government in consequence of a fiscal allocation. The latter Government therefore control the general rates and conditions of awards.

94. It can be argued that this function should become entirely the responsibility of individual Territories on the ground that old age pension payments need to be co-ordinated with other social service benefits which are provided within the general Territorial responsibility for social welfare. Equally, it may be necessary to provide for some degree of variation between —and, indeed, within—the Territories in relation to the local cost of living. Moreover, it can be maintained that each of the Territories should proceed towards the provision of full social welfare services at the pace appropriate to itself.

95. It is for consideration therefore whether full responsibility for old age pensions should now be transferred to the Territorial Governments.

V.—REGISTRATION OF BIRTHS AND DEATHS

96. Item 73 on the Concurrent Legislative List is "Registration of births and deaths". Under present practice the initial registration of births and deaths, as of marriages, is undertaken by the Territorial Governments. The Federal Government have not legislated in this field or assumed executive control in the two Northern Territories, although they have assumed administrative control in Southern Rhodesia.

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97. It can be maintained that the registration of births and deaths should be an exclusively Territorial function on the ground that registration officers need to be persons (*e.g.*, members of the Provincial administration) who are in close contact with the local population and are familiar with African law and custom in rural areas. Since administrative officers in all three Territories already satisfy this criterion, it might be thought to be wasteful to establish a parallel Federal organisation for this purpose.

98. If the function became residual and Territorial, the statistical requirements of the Federal Government could still be met (by virtue of their powers under Item 71 on the Concurrent List) by the maintenance of a central register, incorporating material provided by the Territorial Governments.

99. It is for consideration, therefore, whether registration of births and deaths should now become a residual subject.

B.—ECONOMIC FUNCTIONS

I.—LABOUR

100. Labour in general is a residual and, therefore, a Territorial subject. As such it is not defined. Responsibility for labour questions, however, is affected to some extent by Item 47 on the Concurrent Legislative List, " Control of the voluntary movement of persons between Territories ", in view of its connexion with labour migration, which is of great importance to all Territories, particularly Nyasaland. The responsibility of the Territorial Governments for labour matters is also qualified by Article 30 of the Constitution, which, while specifically reserving to the Territories the power to legislate with respect to trade unions and the settlement of disputes between employers and employees, etc., nevertheless reserves to the Federal Legislature the power to legislate for the settlement of disputes between Federal officers and the Federal Government or between Federal officers and other Federal officers. Further reference is made to these provisions below.

101. In other federal constitutions various functions which are normally included under the heading of labour, *viz.*, trade unions, industrial disputes, unemployment relief and workmen's compensation, are sometimes concurrent and sometimes regional. In the seven federal or quasi-federal constitutions within the Commonwealth which have been compared it is only in Malaya that all these functions are federal. Trade unions and industrial disputes are concurrent in four of these constitutions, while unemployment relief is only certainly regional in two and is federal in two, including Malaya. There is therefore no obvious general rule governing the allocation of these functions; and their apportionment may differ according to the extent to which labour is regarded as a " factor of production " or a " social service ". The Report of the 1951 Conference on Closer Association in Central Africa recommended in paragraph 64 that labour, undefined, should be a Territorial subject. The organisation of labour services by the Territories within the Federation is described in Chapter 19 of the " Survey of Developments since 1953 ".

102. We have examined two suggestions relating to the redistribution of the responsibility for labour matters in various ways:—

(*a*) That the Federal Government should assume responsibility, but on the Concurrent List, for industrial conciliation, the fixing of minimum

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wages and all external relations aspects of labour, including the implementation of conventions of the International Labour Organisation. (The other main divisions of the generic term " labour " are registration of trade unions, labour exchanges, unemployment insurance, workmen's compensation, apprenticeship and training and factory inspection. There would appear to be no need to consider removing these functions from exclusively Territorial responsibility.)

(*b*) That in labour matters relating to Federal statutory organisations, such as Rhodesia Railways, Central African Airways, the Cold Storage Commission, electricity supply and the Federal Power Board, the Federal Government should be given the same exclusive responsibility for the settlement of disputes as they possess in relation to the settlement of disputes between the Federal Government and Federal officers under Article 30 (2) of the Federal Constitution.

These two suggestions are considered in turn in the following paragraphs.

103. The main arguments for giving the Federal Government concurrent responsibility for industrial conciliation, the fixing of minimum wages and the external relations aspects of labour are as follows: —

(*a*) The Federal Government are responsible for the overall economic development of the Federation. In its economic aspect labour, as a commodity and a factor of production, plays an important part in the economic development of the country as a whole. It seems illogical, therefore, that the Federal Government should have no responsibility for this subject.

(*b*) There are also several more specific Federal functions which are directly or indirectly concerned with labour questions. For example, the Federal Government are responsible for providing and maintaining certain essential services of communications and power. But in the event of an industrial dispute involving such services only Territorial legislation and conciliation machinery can come into play. The position is further complicated by the fact that different legislation governs conciliation machinery and the settlement of disputes in each Territory. The Territorial Governments have always shown a ready willingness to co-operate when disputes have arisen; but this does not alter the fact that difficulties and anomalies exist.

(*c*) It may be thought to be a further anomaly that, while the Federal Government have sole responsibility for external relations, a responsibility which involves them in labour matters through the I.L.O., in present circumstances they have, and can have, no labour policy of their own. Moreover, they have no experts in the labour field to advise them and must depend upon Territorial departments for advice; and the advice given by the three Territories is not necessarily in agreement, as a result of the different conditions which prevail in each of them.

(*d*) Immigration is a Federal subject; but, in so far as it relates to the entry of people into the Federation for permanent settlement, it can also be regarded as a source of labour supply. There should therefore be close co-ordination of immigration and labour policies. In the past, however, some difficulties have arisen in this connexion.

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(*e*) The Federal Government's relationship with such bodies as I.L.O. warrants specific mention in relation to immigration. Many of the I.L.O. conventions are concerned with the conditions under which migrants are recruited, transported to their country of employment and employed on arrival. These conventions frequently seek, in the interests of the immigrant, to impose various safeguards as a condition of immigration and call for the introduction of legislation to provide for these safeguards.

104. The counter-arguments are, first, that labour itself is not simply a " factor of production " but is also to a large extent a " social service "; second, that labour is pre-eminently a subject affecting the daily lives of the people; and, third, that the whole subject of labour, by virtue of its status as a " social service ", is closely related to a large number of functions which are the responsibility of the Territorial Governments. These include social welfare, local government, housing and the education of Africans at the primary and secondary level.

105. More particular arguments can be adduced in reply to the contentions set out in paragraph 103 above.

(*a*) As regards the argument that the Federal Government require powers to deal with industrial conciliation, particularly in connexion with the essential services for which they are responsible, the remedy can lie, and already does lie to a great extent, in consultation and co-operation between the Governments concerned. Moreover, other considerations greatly outweigh the advantages which might accrue from this proposal. Labour is a homogeneous subject, closely linked with other matters under exclusively Territorial control; and it would be difficult and, indeed, unwise to isolate three aspects of the matter (as suggested in paragraph 102 (*a*)) and to make them a Federal responsibility. Industrial conciliation requires a local knowledge of Africans and Europeans and of the circumstances in which they work. Indeed, the success of conciliation proceedings largely depends on an understanding and experience of the psychology, aspirations and requirements of the parties, derived from close and continuing contact with them. The administration of conciliation matters should remain Territorial by reason of its close association with the general Territorial administrative background which conditions any given industrial situation. Industrial conciliation can be most successful when it is conducted by the authority which is also responsible for the other matters which most closely affect those working in the various industries. The same is true in the case of minimum wages, for these too are very much a local matter, linked to local problems. Further, in industrial conciliation prompt action is frequently required—for example, the Northern Rhodesia Government maintain an Assistant Labour Commissioner on the Copperbelt. Serious difficulties can be avoided by the swift action of officers who are known to those concerned on both sides of industry and have experience of conditions in the area.

(*b*) As regards the responsibility of the Federal Government for external relations, it is true that the present arrangements whereby the Federal

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Government are the Government represented at the International Labour Organisation may give rise to difficulties. These difficulties, however, may be thought to be minor; and in any case the three Territories have different problems, which need to be differently presented to international organisations. It is the Territorial Governments who have the knowledge and experience to describe those problems correctly and to decide what changes are possible in the given conditions.

(*c*) As regards the suggestion that there should be some Federal control over immigrant labour, it can be argued that the Territorial Governments should have control of African immigration into their areas for political and security reasons and, in addition, in order to enable them to integrate immigration and labour policies. In the Northern Territories only the local District administrators can keep track of African movement across the borders; and the machinery for this purpose is purely Territorial. Further, Federal control of migrant labour might allow more Africans to enter a Territory than a given labour area could safely accommodate. These considerations are vital factors in maintaining the stability of a Territorial economy, particularly in Northern Rhodesia, where a nice balance has to be struck between the rural and urban areas.

(*d*) It can also be contended that the Territorial Government are in a better position to gauge the pace at which African advancement in the labour field can proceed; and, as in the case of other social welfare functions, there are advantages in allowing a Territory to adapt its own policy in this matter to its own local conditions.

106. Apart from the foregoing arguments on the three aspects of the labour function, there would be specific difficulties in transferring the control of industrial conciliation from the Territorial Governments. These difficulties arise from the different conditions in the three Territories and the different systems of legislation and industrial conciliation which they have developed. These differences occur, for example, in the registration and recognition of trade unions, the establishment of industrial councils and the rules governing the legality of strikes; and they imply that any attempt to enact uniform labour legislation would give rise to difficulties.

107. If it were decided to make the labour function partly Federal, particularly close attention would have to be paid to the views of the labour force and their organisations, both African and European, in view of the effects of such a decision on the daily life and work of the individuals affected.

108. The second main suggestion (see paragraph 102 (*b*) above) is that in labour matters relating to statutory Federal organisations the Federal Government should be given the same exclusive responsibility as they enjoy in relation to the settlement of disputes between the Federal Government and Federal officers under Article 30 (2) of the Federal Constitution. The general argument in support of this contention is similar to the argument on which Article 30 (2) itself is apparently based, namely that the Federal Government cannot reasonably be denied the control of labour relations in fields where they are the ultimate employer. Difficulties have in fact occurred in the management of Rhodesia Railways, which operate under the differing labour codes of Northern and Southern Rhodesia. As against this it can be

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maintained that such difficulties have been overcome by negotiation and that they could be similarly overcome in the future. Further, it is doubtful whether a single enterprise such as Rhodesia Railways could be removed from the general legislation applicable to industrial conciliation, in view of the movement of tradesmen from one industry to another and the possible loss of benefits in relation to unemployment, sickness and holidays.

109. Finally, whatever view may be formed of the suggestion that responsibility for a part of the labour function should be assumed by the Federal Government, it may be thought that there should in any case be the closest consultation and co-operation in this field between Governments. Machinery for such consultation does in fact exist; but it may be held to be desirable that it should be strengthened in future.

II.—Land

110. Land is a residual subject, for which the responsibility rests with the Territorial Governments. In view of the African's deep-rooted attachment to his land and the importance of avoiding any action which might appear to threaten his rights in relation to it, there would not appear to be any case for changing this arrangement.

111. There is one respect, however, in which the position might well be clarified. Article 33 (1) of the Constitution reads as follows:

> " Notwithstanding anything in this Constitution, the Federal Legislature shall not have power to make provision for the acquisition, whether compulsorily or by agreement, of any African land, or of interests in or rights over any African land, otherwise than in accordance with the provisions of any of the African land laws applicable to the land in question; and any power for the compulsory acquisition of land conferred by a law of the Federal Legislature shall, notwithstanding anything in that law, not be exercisable in relation to African land for the purpose of settling immigrants thereon."

This Article would appear to accept that the Federal Legislature has power under the Constitution to provide by law for the compulsory acquisition by the Federal Government of land which is not African land. But the existence of this power has been questioned. If it is held that the Federal Legislature has such power, the position may be thought to conflict with the provision in the Preamble to the Constitution that " 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 . . . . ". Control of land, it can be argued, must include the process of compulsory purchase for public purposes; and it can be contended that, in order to conform with the Preamble, the Constitution should clearly establish the position that, where the Federal Government, in pursuance of their other lawful powers, need compulsorily to acquire land, whether African or non-African, they must do so under the laws relating to this matter in the Territory where the land to be acquired is situated. It is for consideration, therefore, whether the Article should be so amended as to

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make it applicable equally to African and to non-African land, with the result that the Federal Government could only acquire land, whether African or not, in conformity with the land laws of the Territory concerned.

112. Alternatively, it may be thought that, although the Territorial Governments have in fact always co-operated with the Federal Government in enabling the latter to acquire such land as is needed for Federal purposes, it is right that the Federal Legislature should be clearly vested with the power to legislate in order to enable the Federal Government to discharge, in terms of the compulsory acquisition of non-African land, the functions entrusted to them in relation to, for example, defence, civil aviation, posts and telegraphs, &c.; and that, in so far as the Federal Legislature may already possess this power, it should retain it.

113. Whatever the final decision of policy, it may be thought that the position should be clarified, whether by amendment of Article 33 (1) or otherwise.

III.—Agriculture and Marketing

Agriculture

114. On the assumption that, apart from the possible amendment of Article 33 discussed above, the constitutional provisions in relation to land are to remain unchanged, it is necessary to consider whether any amendment is required as regards the allocation of responsibility for functions relating to agriculture, marketing and such related subjects as co-operative societies and the control of movement of goods and animals.

115. Item 24 of the Federal Legislative List, which refers to Southern Rhodesia only, assigns to the Federal Government responsibility for agriculture and related subjects, including agricultural research, the provision of specialist services, veterinary services and conservation, but excluding forestry, irrigation and African agriculture. In addition, under Article 31 of the Constitution (which empowers the Legislatures of the Northern Territories to add certain responsibilities to the Federal Legislative List) the Government of Northern Rhodesia have transferred to the Federal Government responsibility for certain aspects of non-African agriculture in Northern Rhodesia. As a result, the present position, which is fully described in Chapter 20 of the " Survey of Developments since 1953 ", can be broadly summarised as follows—

(*a*) The Federal Government are responsible for agriculture, as defined above, in Southern Rhodesia. In Northern Rhodesia they have assumed responsibility for non-African agriculture but not for animal health or tsetse fly control; in practice, their activities are at present confined to conservation and extension services and specialist advisory services.

(*b*) The Southern Rhodesia Government are generally responsible for African agriculture in the Territory.

(*c*) The Northern Rhodesia Government are responsible for all aspects of African agriculture in the Territory and for the balance of services required for non-African agriculture.

(*d*) The Government of Nyasaland are responsible for both African and non-African agriculture in the Territory.

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116. At first sight this arrangement may seem complicated; and it is appropriate to examine the reasons for this distribution of functions. In order to do so it is necessary to examine the position in each Territory separately, since social and economic influences have caused agriculture to develop on distinctive lines in the three Territories and the contribution made by each of them to the economy of the Federation is substantially different. (See Table 60 in Chapter 20 of the " Survey of Developments since 1953 ".)

117. In *Southern Rhodesia* immediately after the European occupation of the Colony provision was made for the setting aside, in the form of reserves, of areas for exclusive native occupation on a communal basis; and since 1930 land has been divided into African and non-African areas. The position is described in Part A of Chapter 13 of the " Survey of Developments since 1953 ". The present division of the Colony shows 41,951,000 acres of African land, and 48,056,000 acres of non-African land. The major part of African land is occupied communally, while non-African land is largely owned individually under freehold title. The initiative and capital resources of non-African farmers have developed the productive capacity of the non-African agricultural economy to a high level of efficiency, which is far ahead of that of the African counterpart. African agriculture was based originally on a bare subsistence economy and is slowly evolving into a cash economy as the result of reforms in land tenure, coupled with large scale capital investment. As a result of this wide divergence in the development of these two sections of the agricultural economy, separate administrative arrangements became necessary and separate departments of African agriculture and non-African agriculture were established, the latter embracing to a large extent responsibility for research, specialist and veterinary services and marketing. The marketing organisations were extensively developed; and, in view of the dominant position of non-African agriculture in the money economy, they were included in the administrative functions of the department which was responsible for non-African agriculture. The administrative division therefore formed a readily adaptable basis, on the advent of federation, for a division of the agricultural function in Southern Rhodesia between the Federal and the Territorial Governments; and there has since been no discernible change in administrative policies which has affected African and non-African farming interests.

118. In *Northern Rhodesia* land is divided into two main categories which can be referred to, for convenience, as the Crown land area and the African area. The position is described in Part B of Chapter 13 of the " Survey of Developments since 1953 ". The Crown land area comprises approximately 10,412,800 acres; the African area comprises about 173,696,640 acres. Of the Crown land area 44·9 per cent. is unalienated, and farming in the remainder is entirely in the hands of non-Africans. It contains extensive areas of good soil, is generally well situated in relation to markets and has lent itself to the development of highly capitalised farming. It is occupied on leasehold and freehold title. The African area, which consists of generally poorer soils, is occupied in accordance with tribal law and custom. Although great strides have been made in the development of improved farming in such areas, there is still in the main a wide, but narrowing, gulf between farming as practised on Crown land and farming practised elsewhere. In addition, flue-cured tobacco, which is one of the two main crops grown on

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Crown land, is not produced on African land at all. These circumstances provided the basis for the decision in 1956 to transfer the responsibility for certain aspects of non-African agriculture to the Federal Government.

119. In *Nyasaland* the position is described in Part C of Chapter 13 of the "Survey of Developments since 1953". African land comprises approximately 20,300,000 acres and public land and privately-owned land comprise approximately 3,100,000 acres. Most of the non-African farming is limited to the privately-owned land, which is less than a million acres; and the African land is mainly occupied in accordance with tribal law and custom. Leaving aside the tea industry, which is largely self-contained, the situation is rather different from that in the Rhodesias in that the limited extent and the geographical distribution of non-African agricultural enterprise have been regarded as not justifying a separate departmental organisation; and there has, in fact, been no administrative separation of non-African and African agriculture.

120. It is natural to enquire at this point whether African and non-African agriculture should be administered separately. On the one hand, it may be argued that the division is wasteful and that the creation of separate departments for African and non-African agriculture precludes the sharing of overheads and results in the duplication of staffs and services. There may also be thought to be a danger that, if two separate agricultural services are provided, the recipients of one may consider that they are enjoying a standard of service inferior to that provided by the other. Further, it may be argued that racial distinctions are irrelevant to agricultural production, since the end-products are the same whether the farmer is African or non-African. In addition, many services essential to the farmer cannot be divided, racially or otherwise. Thus, for practical reasons, veterinary services, conservation of natural resources and protection against tsetse fly are best provided by one department for all farmers. This has been recognised in practice by the fact that in each Territory these services are under common administration—in Southern Rhodesia they are provided for all farmers by the Federal Government and in the Northern Territories by the Territorial Governments. Finally, the example set by European farmers can exert a valuable influence on the development of African agriculture; and division of administration may make it more difficult for this beneficial influence to be fostered.

121. On the other hand, the arguments for separation of non-African and African agriculture in the two Rhodesias are clear from the historical and economic synopsis in paragraphs 117 and 118 above. Briefly, they maintain that in these Territories there is a wide gulf between the economics of African and non-African farming and that, in the light of the wide divergencies between the two sectors of the agricultural economy and the differences in the agricultural methods employed, separate administrative treatment is desirable. While the establishment of separate departments may cause some duplication, this consideration may be thought to be outweighed by the advantage of providing in separate departments for the special needs of each branch of the agricultural economy.

122. It is possible, however, to suggest an arrangement whereby the benefits of separate treatment could be retained without perpetuating a racial division. The fact that in both Rhodesias land normally farmed by European

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farmers is contained in homogeneous blocks, distinct from African land, may be thought to provide a solution. Thus, it could be arranged for scheduled areas in each Territory to be recognised as appropriate for the development of highly capitalised agriculture and to be dealt with by a department or departments equipped to provide conservation and advisory services suited to the requirements of such agriculture. Thereafter, all other areas would be dealt with by a department or departments equipped to give such services as are appropriate to a more primitive peasant economy. The racial dichotomy would be avoided, while the necessary division between systems of agriculture which require separate treatment would be preserved.

123. Without pre-judging the answer to the question whether African and non-African agriculture should be separately administered, one may next enquire whether, if it is right that they should be so administered, the departments concerned should nevertheless themselves be the responsibility of the same Government.

124. Many of the arguments for and against the administration of the two sectors by separate Governments are inevitably arguments made in the previous paragraphs in the context of the desirability or otherwise of separate departments. At the risk, therefore, of some repetition, it can be argued in favour of the departments being responsible to one Government that, whatever the present differences in the degree of development of the two sectors of the agricultural economy, the end-products are generally the same and that the basic principles of good husbandry are identical for all forms of production. The benefits of the experience gained and the examples set by the more highly capitalised sector of the agricultural economy would more readily be transmitted to the African peasant as a result of the close association which control of both departments by one Government would automatically create. Further, duplication of staff and services could be avoided to a large extent if one Government controlled both departments, since specialised services and equipment could be shared. As individual Africans in the African areas developed their farms to a stage where more advanced techniques could be practised, it would be possible to arrange for them to be given guidance in those techniques by officers normally concerned with the non-African sector. Moreover, it is clearly desirable to co-ordinate agricultural advisory services with such allied services as forestry, water development, conservation of natural resources and veterinary services. This would be most easily achieved if, as a first step, all agricultural advisory services were placed under one administration, since it would then only remain to place the allied services under the same administration. Finally, it would be easier to co-ordinate production policies if the development of both forms of agriculture were under one control.

125. Against these considerations it can be argued that, although the historical circumstances already described, the basic differences in agricultural practice in different parts of the Federation and, in particular, the reservation of large areas of land for occupation by Africans make Territorial supervision desirable in the case of some producers, others, in whose case questions of land tenure and methods of production do not make such supervision necessary, should not be denied the advantages of a centralised administration of this basic industry. They would thus be enabled to derive the maximum benefit from the association of the formation of agricultural policy with the

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formation of policy for marketing, imports and exports, and other related subjects. This view may be thought to be reinforced by the fact that some of the chief products of non-African agriculture—notably flue-cured tobacco and, to a lesser extent, dairy products—are very largely confined to that sector at present.

126. If the conclusion (which, again, we do not purport to pre-judge) is in favour of all agriculture being under the control of one Government (whether it is administered by one department or two), should that Government be the Federal Government or the relevant Territorial Government? The answer to this question inevitably involves some recapitulation of the discussion of the earlier questions.

127. In favour of making responsibility for agriculture Federal it can be argued that this would enable the Federal Government more effectively to co-ordinate agricultural production policy with the related subjects for which it may be thought that they should be responsible, particularly marketing and import and export policy. That Government can also maintain more extensive technical facilities than any Territorial Government could afford on its own; and, if all agriculture were made a Federal responsibility, the benefit of such facilities and the experience of the Federal Ministry of Agriculture could be made freely available to all farmers for the improvement of agriculture throughout the Federation. The Federal Ministry would also be able to plan the agricultural development of the area as a whole in such a way as to maintain the most economically advantageous balance between the varying ecological characteristics of the Territories. Finally, it may be thought that the Federalisation of agriculture would have the support of, and give confidence to, European farmers in the Northern Protectorates, while the opposite course of making all agriculture a Territorial responsibility would constitute a discouragement and disincentive to them.

128. On the other hand, it can be argued that there are significant economic and ecological variations between one Territory and another, which make it sensible for the agricultural development of each to be planned as a whole by its own Government. It can also be argued that responsibility for land is, and should remain, a Territorial function; that the Territorial Governments should therefore continue to be responsible for the allocation of land, the preservation of land rights, the administration of schemes of land settlement and land use and the co-ordination of measures for the conservation of natural resources; and that it would be anomalous for such responsibilities to remain with the Territorial Governments while agriculture was a Federal concern. Equally, it might be thought that there would be objections to the transfer to the Federal Government of certain other services which are closely linked with agriculture. Thus, the Land Husbandry Scheme in Southern Rhodesia and the rural development schemes in the Protectorates —the latter carried out in co-operation with the native authorities—are essentially local in character and should continue to be administered by the Territorial Governments. The development of the economy of the remoter areas, in which agriculture must play a leading role, is essentially a matter for local initiative; and agricultural schemes should be closely integrated with other measures for the improvement of rural life, including the provision of better housing, the development of local communications and markets and the introduction of improved systems of land tenure. Even on economic

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grounds, therefore, it cannot perhaps be assumed that it would necessarily be more efficient for the Federal Government to assume responsibility for agricultural production; and, while the importance of co-ordinating schemes for fostering such production with the main economic policies of the Federal Government may be recognised, this co-ordination could be achieved by means of inter-Governmental consultation without Federal control of field services. Further, it can be argued that it would not be feasible to make the Federal Government responsible on a unified basis for some of the services related to agriculture. Veterinary services in the Northern Protectorates should remain a Territorial responsibility, in view of the importance of securing the co-operation of the native authorities in measures of disease control and animal husbandry. Finally, agriculture is a basic feature in the daily life of the African peoples, the majority of whom still derive their living from the land; and, if the Constitution is to continue to reflect the fundamental principle that " those services which have a specially close relation to the day-to-day life and work of the African people should remain the responsibility of the Territorial Governments ", it might be difficult to justify the Federalisation of agriculture.

129. But, before forming a final view on the possible courses of action discussed above, it is necessary to consider the closely related question of marketing.

Marketing

130. Item 10 in the Federal Legislative List assigns to the Federal Government responsibility for " the distribution, disposal, purchase and sale of such manufactured and unmanufactured commodities and such animals and poultry as the Governor-General may by order specify, the control of the wholesale and retail price of any commodities, animals or poultry so specified, and the payment by the Federation of subsidies in respect of any commodities, animals or poultry so specified (subject to the provisions of Part III of this Schedule), so, however, that a law of the Federal Legislature relating to animals or poultry made by virtue of this Item shall not have effect in relation to any Territory unless and until the Governor of that Territory has declared by notice in the official Gazette of the Territory that it shall so have effect ". This Item should be read in conjunction with Items 8 and 9 of the List, which give the Federal Government power to exercise control of imports into, and exports from, the Federation; responsibility for exchange control; and power to promote exports from the Federation.

131. The Federal Government have assumed responsibility for marketing in the three Territories in differing degrees, which are described in detail in paragraphs 81–85 of Chapter 20 of the " Survey of Developments since 1953 ". For practical purposes they have taken over all agricultural marketing responsibilities previously exercised by the Southern Rhodesia Government, in so far as these were operated through the medium of statutory commissions; but they have limited their assumption of responsibility in Northern Rhodesia to the marketing of grain and ground nuts in scheduled areas and flue-cured tobacco, while in Nyasaland the only direct Federal marketing responsibility is exercised through the Cold Storage Commission. In addition, however, the Federal Government are responsible for formally determined agricultural prices in the two Rhodesias and for guaranteed livestock prices in parts of Nyasaland.

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132. It is for consideration whether the arrangements described above reflect an appropriate division of responsibility between the Federal and Territorial Governments in the field of marketing. It can be argued that the Federal Government must retain responsibility for the basic controls of the economy—particularly as regards the regulation of imports and exports, the fixing of prices, the payment of subsidies and so forth. It is only by this means that the economic advantages of federation, as they were envisaged in 1953, can be realised—the advantages of a larger market, a reduction in costs and an increase in the real wealth of the community. The increase in the size of the market is a particularly important consideration when that market consists of a large number of individuals whose unit purchasing power is small. If such a market is to be integrated and expanded on the most efficient and economic lines, the power to regulate its operations—both in terms of the internal relations between its constituent elements and in terms of its own relations with the outside world—must be centralised; and the instruments available for this purpose—the regulation of prices, the guaranteeing of a market, the provision of marketing machinery and the regulation of imports and exports—must be similarly co-ordinated. No authority can be expected to guarantee a market if the control of prices or the regulation of imports is at the discretion of some other authority. Moreover, the unit cost of operating a marketing organisation falls as turnover increases. Finally, if the control which the Federal Government now exercise over agricultural marketing reverted to the Territorial Governments, there would be a risk that, in the interests of their own price and production policies, the latter would adopt measures of protection against one another which might in certain cases virtually seal off the individual Territorial marketing units. In that event, costs would rise; the economic unity of the Federation would be weakened by the customs barriers which the Territories would be liable to erect against one another; and export promotion would inevitably suffer from the division of authority.

133. As against these arguments it can be maintained that marketing arrangements must be closely integrated with rural economic development, for which the Territorial Governments are responsible in co-operation, in the Protectorates, with the native authorities and District Councils. Such developments must be largely based on agricultural production, and it is therefore important to ensure that marketing facilities are provided for the disposal of the output and that the price structure and marketing organisation are adapted to the circumstances of the area in question and to the special characteristics of the products concerned. Moreover, the Territorial Governments are concerned largely with backward areas, mainly dependent on a subsistence agriculture which is carried out by comparatively primitive methods. In such circumstances the encouragement of cash crop development has to be carefully correlated with the necessity to assure the staple foodstuffs of the people; and the necessary balance can be achieved only by close integration of production and marketing. In Nyasaland and in some areas of Northern Rhodesia this integration is so complete that the services are for practical purposes unified. Again, in a country as large as the Federation there is inevitably a wide variation in marketing problems. An administrative organisation and a grading and price mechanism adapted to meet the requirements of a highly capitalised agricultural industry adjacent to main

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centres of consumption may be quite unsuited to other areas. Thus, in the one case a few large producers may be capable of providing the necessary organisation by their own collecti e efforts without Government assistance, while in the other case the existence of many small producers may necessitate the creation of a pool organisation, reinforced by legal controls. It can be maintained that such a situation can best be met if Territorial Governments are responsible for primary marketing arrangements. Further, the most common organisation adopted for primary marketing is the co-operative society. Such societies normally depend for their membership on the community of economic interests of local producers and are, therefore, essentially local in character. As such, they are best administered under Territorial law. Administration of African co-operative societies and the marketing of African agricultural produce go hand in hand, as is illustrated by the fact that in one Territory the Registrar of Co-operative Societies is also the Director of African Marketing. Finally, it can be maintained that there is no subject on which the farmer feels more keenly than the price of his agricultural produce. In any peasant community this is a matter of great importance; and among Africans, whose standard of living is still very low, it arouses the strongest feelings. The actions of the marketing authorities are closely and critically examined and any apparent discrimination or failure to provide for special local needs occasions resentment. In such circumstances farmers living in remote areas inevitably reach the conclusion that their interests have been disregarded because they cannot exercise the same pressures on the authorities as the farmers situated near to the main consuming centres. In the light of the above arguments it can be maintained that the Territorial Government or its agencies should be the instruments for adjusting prices and arranging the disposal of agricultural produce, albeit within the framework of comprehensive plans, formulated, after consultation, on a Federal basis to accord with the main economic policy of the Federal Government.

134. There is a local problem in relation to Nyasaland which needs to be separately examined. For reasons which have appeared sound both to the Federal and to the Nyasaland Governments the powers conferred upon the former by Item 10 in the Federal Legislative List have not been exercised in respect of Nyasaland's basic agricultural products—tea, tobacco, maize, ground nuts and cotton. It can be argued, therefore, that the Legislative List should be so amended as to give permanent effect to the position which has hitherto been maintained by agreement. This could be done by writing into the relevant Item specific limitations in the case of these products (with the exception of tea, which, for various reasons, can be accepted as being in a category of its own), similar to those which are already incorporated in the Item in respect of animals and poultry.

135. Against such a course it can be contended that it would diminish the ultimate control of the Federal economy by the Federal Government, which is necessary in the interests of the Federation as a whole; that Nyasaland can make only a limited contribution to Federal development; that the principal element in that contribution—its agricultural potential—should be so controlled as to ensure that it is developed in the best interests of the whole Federal area; and that one Territory should not be placed in a

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position in which its policies, dictated by local interests, could run counter to Federal policies based on wider considerations.

136. On the other hand, it can be maintained that, by reason of its geographical position, its undiversified economy, its separate transport system and its complicated ecology, Nyasaland is a separate production unit from the agricultural point of view; that, for the reasons explained in paragraph 133, the control of the production and marketing of basic crops has had to be unified under close Governmental administration; and that such control is most efficiently and economically exercised locally. The land, its product and the price which that product commands are indissolubly linked in the mind of the African and, if only for that reason, the control of all these issues has been centralised in the hands of a single Government. As a result, the provision of the necessary machinery has dictated, to a large extent, the shape of the administration itself. Such a machine cannot function from season to season; and, if it is to operate in the best interests of the wider economy, it must be reasonably free from the fear of being exploited to serve some temporary expediency. Without disputing that the machine must not be used to obstruct or to weaken the economic policies of the Federal Government and that the closest co-operation with those policies is essential, it can be argued that both requirements can be assured—in the first instance by the improvement of the machinery of consultation between the Federal and the Territorial Governments at the stage of formulation of policy and, ultimately, by the overriding control over exports and imports which is exercised exclusively by the Federal Government.

137. In conclusion, we would suggest that, whatever may be the final decisions regarding the responsibility for agriculture, marketing and other allied subjects, that responsibility should be as firmly and clearly defined as possible in any revision of the Constitution and should be made subject only to such modification as can be achieved through the ordinary machinery provided for the amendment of the Constitution or the delegation of powers.

IV.—Co-operative Societies

138. Responsibility for agricultural co-operative societies which are predominantly non-African is concurrent—under Item 51 in the Concurrent Legislative List, which relates to " Co-operative societies and co-operative companies, being such societies and companies with objects connected with agriculture, except where a majority of the members are African ". Responsibility for African co-operatives is a residual (*i.e.*, exclusively Territorial) function.

139. Hitherto it has been unnecessary for the Federal Government to exercise their authority under Item 51, partly because, in the case of certain crops, production has not been sufficiently substantial and partly because, in relation to others, it has been possible to exercise effective control by means of subsidy policy. But the time is now thought to have come when Federal legislation is required if the European agricultural co-operative movement is to develop in harmony with the Federal Government's general agricultural marketing policies. It is therefore proposed to introduce Federal legislation, on lines to be agreed with the Territorial Governments, in order to facilitate the establishment of national co-operatives wherever these are judged necessary or desirable. This would have the advantage of ensuring that,

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e.g., pig producers in both the Rhodesias would benefit from an integrated policy, as compared with the present position in which the pig industry is well developed on co-operative lines in Southern Rhodesia but only to a limited extent in Northern Rhodesia. It might also provide a solution to the recurrent problems of potato marketing. For these reasons it may be thought desirable to make no change in the existing allocation of responsibilities.

140. On the other hand, it can be argued that Item 51 should be excluded from the Concurrent List and that all co-operative societies should become a wholly Territorial responsibility. Thus, the existing European societies are primarily local institutions, incorporated under Territorial legislation (which differs in the two Rhodesias). Responsibility for co-operatives need not necessarily be co-terminous with responsibility for marketing, since the controls which the Federal Government can exercise in this field through their powers in relation to imports and exports, price control, etc., would not be adversely affected by the fact that particular co-operative societies were registered under Territorial laws. Moreover, the proposed Federal legislation can refer only to agricultural co-operatives which are mainly non-African; and it can be maintained that for this reason it would not take sufficient account of the position which might develop if a society incorporated under Federal law with a mainly non-African membership changed that membership in such a way that Africans predominated. At the same time all other kinds of co-operatives—consumer, social, educational, etc.—would continue to be regulated by Territorial legislation; and the enactment of Federal legislation would therefore complicate the position, inasmuch as the Federal Government would be responsible for agricultural co-operatives of a limited class while the Territorial Governments would retain this responsibility for all other co-operatives. Finally, it is undesirable to perpetuate racial division in the co-operative movement. For these reasons, it can be argued that it might be preferable to delete Item 51 from the Legislative Lists.

V.—Roads

141. Responsibility for the construction, alteration and maintenance of roads in the Federation is divided between the Federal and the Territorial Governments according to the classification of the roads themselves. These are, on the one hand, those scheduled as inter-Territorial in the Final Act of the Transport Conference held at Johannesburg in 1950, together with any other roads which may be prescribed as inter-Territorial by Federal law (Item 19 of the Federal Legislative List); and, on the other hand, all other roads, which are regarded as Territorial roads (Item 54 on the Concurrent Legislative List). Responsibility for the roads mentioned in Item 19 is Federal; responsibility for other roads is concurrent.

142. Since 1953 the execution of all road work has been carried out entirely by the Territorial Governments, who possess the only existing organisations for road construction and maintenance. Work connected with inter-Territorial roads is therefore carried out by the Territorial Governments acting as agents for the Federal Government, who retain responsibility for the provision of finance and the approval of plans. The Federal Government adopted this arrangement partly because they considered that, in present circumstances, the establishment of a separate Federal organisation would be

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unduly expensive in terms of money and manpower and partly because they wished to disrupt as little as possible the programme of road construction, planned to extend over a number of years, on which the Territories were engaged at the time of federation.

143. There are, however, arguments for consolidating all formal responsibility for road work under the Territorial Governments by deleting Items 19 and 54 from the Legislative Lists. The principal legislative requirement in connexion with road-building is the power to enter and, where necessary, compulsorily to acquire land; and land is a Territorial responsibility. Moreover, expenditure on roads is closely related to domestic developments in the area concerned (*e.g.*, agricultural production, housing, etc.) and is thus of great concern to the Territorial Governments. In Territories emerging in a short space of time from primitive conditions the construction and improvement of roads must be related specifically to local development plans. This can best be done by the Territorial Government which initiates such plans.

144. Moreover, it can be argued that, while the present delegation of authority to the Territorial Governments may in practice have been the right method to adopt, delegation in itself does not overcome the fundamental difficulty of a division of responsibility for a system which should be treated as an integrated whole, particularly since the development of each part of the system then depends on the financial position of each Government at any one time. Further, if in a particular year Federal expenditure on roads has to be reduced, the Territories (who provide the necessary organisation and machinery to meet Federal requirements) may be faced with the alternatives either of disbanding part of their organisation at short notice or of trying to provide Territorial funds to permit a corresponding increase in expenditure on Territorial roads which may be of less importance than those for which finance has been withdrawn.

145. On the other hand, there are arguments for planning a road system in a federation on a Federal, rather than a Territorial, basis, the responsibility for local roads being devolved to the Territories. The efficiency of the trunk road system and the relationship between road and rail capacities are matters of general economic significance to the Federation as a whole. Moreover, as the industrialisation of the Federation develops, both in terms of the internal economy and, in due course, in terms of the Federation's commercial relations with the rest of the continent, the demands of commerce may well necessitate the provision of long-distance trunk roads having little value to some of the areas through which they pass. In such cases the planning and financing of the roads may present problems which can best be dealt with on a Federal basis. The present system whereby the Federal Government is financially responsible for the construction and maintenance of trunk roads enables the rate of expenditure in the various Territories to be phased flexibly, both as to amounts and as to time, on the basis of the needs of the trunk road system as a whole. This flexibility could not be so effectively obtained by other means. Moreover, the potential embarrassment which the Territories face through the present division of responsibility could, if necessary, be overcome by the establishment by the Federal Government of their own road-making organisation.

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146. Federal powers could also be used to ensure uniformity of standards in road construction on the main trunk roads of the Federation, although in practice a measure of standardisation has been achieved by inter-Governmental co-operation.

147. Finally, in some cases road construction is related to defence requirements. Defence is a Federal responsibility; and it follows that the Federal Government may on occasion need powers to prescribe priorities in road construction for strategic reasons.

148. In any event, it may be thought that the definition of inter-Territorial roads in Item 19 in the Federal Legislative List by reference to the Final Act of the Johannesburg Conference in 1950 is unsatisfactory and that, if the Federal Government are to retain power to make laws in respect of inter-Territorial roads, it might be more appropriate to prescribe those roads in a Schedule, which could be enlarged, if necessary, by law of the Federal Legislature. If so, however, it would be for consideration whether the power to make additions to the Schedule should be subject to the consent of the Governors of the Territories.

VI.—Regulation of Road Traffic

149. There is some doubt about the scope of Item 56 in the Concurrent Legislative List, which reads "Regulation of road traffic". It can be argued, on the one hand, that this Item is intended to cover only the regulation of the behaviour of traffic on the roads and, on the other hand, that it extends to the wider field of the control of road transport, including, for example, the licensing of public service vehicles. It may be thought that the scope of the Item should, if possible, be put beyond dispute by re-definition.

150. All control in the narrower sense of traffic regulation is at present exercised by the Territories, which have achieved by formal consultation a substantial degree of standardisation over a wide field, including road signs, registration of vehicles, driving licences, examination of vehicles, etc. In addition, responsibility for the regulation of road transport services is exercised through the Territorial road licensing authorities.

151. It can be argued, however, that road transport services should be under Federal control and that the Item should include the licensing and regulation of road service vehicles and the regulation of rates. This contention is of particular significance in relation to the co-ordination of all forms of transport, particularly transport by road and rail. The Federation covers a vast area, parts of which are situated far from the principal markets. Economic progress therefore requires that transport costs should be kept as low as possible; and this can best be achieved by the rationalisation of the main transport services, in order that each may make its most effective contribution to the development of the economy. Furthermore, road transport, considered in isolation, is liable to be inhibited from making its particular contribution if it is controlled by three separate authorities and regulated by three separate policies. Apart from other disadvantages of such an arrangement, the benefits of inter-Territorial movement of goods by road are likely to be jeopardised, since one Territory may refuse a licence for a service which is acceptable to another. This does not mean, however, that,

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if road transport services were placed under Federal control, identical policies would have to be adopted throughout the Federation, that the representation of local interests would be precluded or that large fields of regulation would not be left to the Territorial Governments.

152. Against these considerations it can be argued that road transport is of vital importance to the daily life of the inhabitants of the Territories, particularly in the remoter areas. Difficulties which might have arisen over the movement of goods by road between Territories have in practice been successfully surmounted by inter-Governmental co-operation. In Northern Rhodesia there is only one railway line, and vast areas of the Territory are wholly dependent on local road transport to convey their produce to the main centres of distribution. Nyasaland is similarly dependent on road transport for the delivery of agricultural produce to railhead, and small operators are increasingly providing road transport services for this purpose. In the two Northern Territories, therefore, there is little danger that the two forms of transport may develop out of balance. Agricultural development and rural development generally are particularly dependent on road transport; and its problems are essentially Territorial. It may be thought that the Federal authorities could not have the same knowledge of local conditions in this connexion as the Territorial Governments.

153. It can be further maintained that the rationalisation of transport services to the extent that is necessary or desirable at this stage can be achieved by action taken by the Territorial Governments. For example, in issuing road carriers' licences the Territorial authorities are required to give special attention to the interests of the railways. In this connexion the Governments of Northern and Southern Rhodesia direct that, where road services compete with the railways, freight rates charged by road operators must not be lower than the corresponding rail freight rates. Any further degree of rationalisation might, by unduly protecting the railways, deprive the public of a door-to-door transport service which avoids trans-shipment and reduces delays and breakages.

154. In deciding the final allocation of responsibility for road transport, it will also be necessary to consider the precise scope of "ancillary services" in the Items in the Federal Legislative List relating to railways (Item 20), shipping (Item 21) and aviation (Item 22).

VII.—ELECTRICITY

155. Responsibility for electricity is concurrent, under Item 57 in the Concurrent Legislative List.

156. The function is there described by the single word "Electricity". It may be thought that a more precise allocation of responsibility is desirable and that this might be achieved if the Federal Government retained the power to legislate in respect of the generation, transmission and bulk supply of electricity throughout such areas as might be designated as the main areas of demand, while the Territorial Governments were made responsible for the distribution to consumers within these areas, together with generation, supply and distribution in the remaining areas. The arguments in favour of assigning these responsibilities to the Territorial Governments may be summarised as

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follows. The distribution of electricity is essentially a local matter and is therefore most appropriately managed by local electricity authorities, operating under the ægis of the Territorial Governments, who are best situated to assess local needs. Moreover, electricity plays an important part in both urban and rural development: and the authorities responsible for the planning of such development are Territorial authorities—the Territorial Government themselves and the various local authorities. The development of rural areas is often particularly important; and in such areas, which are often remote and primitive, it may be necessary to provide electricity on a basis which, at least initially, is uneconomic and involves subsidisation. Only the Territorial Government, in the light of its detailed knowledge of local needs and priorities, can form a balanced judgment of the relative importance of different schemes of this kind.

157. On the other hand, it can be argued that the provision of an adequate supply of power in a modern economy must be planned comprehensively and that there is some risk of imbalance and extravagance if the responsibility for so fundamental a function is too widely diffused. Moreover, there may on occasion be economic advantages in planning the distribution of electricity on the basis of regions which ignore arbitrary Territorial boundaries. Although there are few instances of this kind at present, they may become more frequent as the Federal economy develops. Finally, the local interest in the adequacy of supply and distribution systems can be satisfied by the recognition under Federal law of local electricity authorities, who would be responsible for the distribution of electric power within their areas.

VIII.—Building Societies

158. The responsibility for building societies, which constitute a residual subject, rests entirely with the Territorial Governments. It can be argued, however, that it should be made a Federal, or at least a concurrent, responsibility. If it is accepted that the Federal Government should be responsible for matters affecting the economy of the Federation as a whole, the control of all the major financial functions—banking, insurance, hire purchase, etc.—should rest with that Government. The building societies now mobilise and deploy a significant part of the Federation's financial resources; and it is anomalous—and perhaps uneconomic—that they should remain outside Federal control. Moreover, Territorial legislation differs from one Territory to another; and in some cases it needs to be brought up to date. This limits both the field of operation of the societies and their ability to spread their risks and so to encourage confidence. At present there are eight registered building societies in Southern Rhodesia and six in Northern Rhodesia; and, of these, five societies in each Territory have close financial and administrative links with one another. It may be thought that there would be considerable advantages and significant economies in operation if they were enabled to amalgamate and to operate under one homogeneous and up-to-date system of legislation.

159. Building societies are linked, however, not merely with the financial mechanism of the Federation but also with housing development in each of the Territories. Housing is essentially a local matter; and it is therefore a residual subject, falling exclusively within the legislative competence of the

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Territorial Legislatures. A close liaison is maintained between the Territorial Government and the building societies as regards the promotion of new housing schemes, both African and non-African; and it can be argued that, if the legislative authority in relation to the societies were transferred to the Federal Government, this liaison would be weakened or destroyed and the local integration of finance with housing policy would be undermined.

IX.—Surveys

160. The responsibility for surveys is concurrent, under Item 67 in the Concurrent Legislative List, which relates to " Geological, trigonometrical, topographical and cadastral surveys ".

161. Geological and cadastral surveys are matters of purely local interest. Consideration might be given, therefore, to making these matters residual, leaving trigonometrical and topographical surveys concurrent.

X.—Town Planning

162. Responsibility for town planning is concurrent, under Item 66 in the Concurrent Legislative List.

163. Town planning is primarily of Territorial interest, and consideration might therefore be given to making it residual.

C.—LAW AND ORDER

I.—The Police

164. Responsibility for the existing Territorial police forces is exclusively Territorial. Item 36 in the Federal Legislative List, however, provides for " The establishment, training, maintenance and administration of a Federal police force for service in the employment of, or use in, any Territory at the request and under the operational control of the Governor of that Territory in addition to or in substitution for the police force of that Territory; and the conditions (including conditions as to payment by the Territory) on which the Federation will make that police force available for such use or employment ".

165. It can be argued that this provision places the Federal Government in an anomalous and vulnerable position in that, if they established a police force, it could be operated only at the request, and under the control, of the Territorial Governors. Thus, the Federal Government have little or no control over internal security in the Federation as a whole. They can admittedly exercise influence in this field through their control of the defence forces, when so requested by the Territorial Governors; but these forces are not trained or equipped to carry out police duties, and it may also be thought that they should not be actively involved until the civil power is no longer able to deal with the situation.

166. One of the responsibilities of a police force is to prevent dangerous internal security situations from arising. It can be argued that for this purpose a reserve of police is essential and that this reserve, while being maintained as economically as possible, should be immediately available and capable of acting either as a unit or in general support of the local police. In this way the use of troops in aid of the civil power would be obviated

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until the latest possible moment. In order to meet this requirement it is not necessary that the Federal Government should have exclusive control over the police in respect of their ordinary functions, including the prevention and detection of crime; but it can be maintained that they need adequate powers to ensure the safety of the nation as a whole and of any individual Territories which may be affected by a situation which has arisen in another part of the Federation. In short, the civil power cannot be considered in isolation in each Territory.

167. It is for consideration, therefore, whether, while day-to-day control over the disposition and operation of the police within the Territories should be left with the Territorial Governments, the Federal Government should be given a measure of authority on the lines of the following scheme:—

(*a*) It would provide for the maintenance of a Police Force, which would belong to all Governments jointly, on the basis of three separate and distinct Units, each of which would retain the name and traditions of a Territorial Police Unit and would be under the control of its own Commissioner, as follows—

(i) the British South Africa Police, stationed in Southern Rhodesia;
(ii) the Northern Rhodesia Police, stationed in Northern Rhodesia; and
(iii) the Nyasaland Police, stationed in Nyasaland.

(*b*) A Police Council would be established, consisting of the Federal Prime Minister (Chairman, with a casting vote), the Prime Minister of Southern Rhodesia and the Governors of Northern Rhodesia and Nyasaland. It would perhaps need to be understood that, in the exercise of his casting vote, the Federal Prime Minister would vote for the maintenance of the *status quo* except during, or in relation to the Council's decision as to the existence of, an emergency. The decision whether any situation should be considered to be an emergency for the purpose of the exercise by the Police Council of emergency powers as described below would rest with the Council itself, whether or not a formal state of emergency had been declared by the Governor-General or any of the Territorial Governors. In other respects the functions of the Council would be, in general, recruitment, training and the co-ordination of conditions of service, with a view to promoting as much uniformity as possible between the Territorial Units in order to facilitate transfers between them. The Council might also deal with promotions on transfer between Territorial Units, but, if so desired, might be empowered to do so only on request of the Territories concerned. It would be an important element in the Council's functions to co-ordinate plans for the development of the police Units in order to ensure the morale of the Force and the effectiveness of the service which they rendered to the community. It may be thought that a closer association of the three Units in a common purpose and endeavour would be valuable to the Units themselves, to each Territory and to the Federation as a whole.

(*c*) An Inspector-General would be appointed by the Council, with powers of inspection and supervision and the responsibility of promoting co-operation between the Units in their common purpose. He would work under the general directions of the Council.

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(*d*) The conditions of service, discipline and general administration of the Units could be regulated in any of several ways, whether by giving the Council, in the Constitution or otherwise, power to provide for such matters or by leaving that power in the hands of the Territorial Governments. But the Council would presumably need to be invested with a measure of financial authority and to be empowered to decide whether any particular proposal could be approved from the financial point of view.

(*e*) If the Territories retained the power mentioned in the previous sub-paragraph, the Commissioners of Police, appointed by the Governors of each of the Territories after consultation with the Council, would be in charge of the Territorial Units. Under the Territorial legislation the Commissioners would be responsible to the Territorial Governments for the general administration and the day-to-day control, operation and disposition of their Units.

(*f*) If the Police Council so directed, the control of any Unit would vest in the Inspector-General under the general direction of the Council. The Commissioner of the Unit concerned would then pass under the direct command of the Inspector-General. This power would be exercisable only when the Council decided that an emergency existed, in the sense defined in sub-paragraph (*b*) above.

(*g*) The Police Council would prepare estimates of expenditure. Expenditure approved by the Federal Legislature would be allocated to the Territories concerned by way of grant. Each Territorial Government would thus enjoy control of its own Unit and could be questioned on its administration in the Territorial Legislature. It might be desirable to provide that full reports on the expenditure of the grants should be submitted to the Council.

(*h*) The expenditure authorised by the Federal Legislature would be a first charge on the yield of basic Federal income tax. Thus—

(i) all Governments would contribute to meeting the expenditure in proportion to their constitutional allocation of income tax revenues;

(ii) all Governments, through their representatives on the Police Council, would have a voice in the expenditure incurred;

(iii) it would be easier to ensure that financial provision for the policing of the Federation was related to varying local needs.

It can be argued that, as a result of a scheme on the lines of the foregoing proposals, the police would be an instrument of each Territory but would also be subject to an effective measure of central control, designed to serve the interests of the Federation as a whole. In addition, Territories which, at the present time, have to rely for assistance in case of need solely on the goodwill of other Territories, would be able to participate in the decisions on the disposal of the available forces. Moreover, the Police Council could ensure that the forces were deployed even in advance of a declaration of a formal state of emergency and might therefore be able to prevent that declaration from having to be made.

168. It can be maintained, however, that the proposals contained in sub-paragraphs (*f*) and (*g*) of the preceding paragraph reflect two assumptions

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which would entail ultimate control of the police by the Federal Government. These are:—

(i) The suggested right of the Police Council (in which the Federal Prime Minister would enjoy a casting vote) to decide that an emergency existed for the purpose of the exercise by the Council of their powers and to direct the Inspector-General, in such circumstances, to assume command of a Territorial Police Unit.

(ii) The suggested power of the Federal Legislature to control the finances of the Territorial Police Units.

It can be argued that the degree of centralisation of control implicit in a central Police Council, particularly in the light of these two assumptions, is open to the following objections:—

(*a*) Under the proposal the new Police Force would belong to all Governments jointly; none of the Units on which it was based would belong to the Government of the Territory in which it was stationed. Each Territorial Government would, therefore, be in fact subordinate to the Police Council as regards the maintenance of a police force for the preservation of law and order within the Territory. Moreover, in an emergency, ultimate control would in practice lie with the Federal Government, provided that the Federal Prime Minister could obtain the support of one other member of the Council.

(*b*) The Territorial Governments should retain unfettered control over the internal administration of their Territories, including the right to control the police, in order to maintain intact the basic framework within which they evolve their domestic policies, ensure the protection of their Constitutions and regulate the safety and welfare of their peoples. Moreover, in the context of African administration it is difficult, and sometimes impracticable, to separate responsibility for law and order from responsibility for general government; and the work of the police must be closely co-ordinated with that of other bodies which carry some measure of responsibility for the maintenance of law and order, particularly the Provincial and District administrations and the native authorities, where these exist.

(*c*) Any attempt to divide responsibility for law and order might be liable to lead to uncertainty and delay which, in a sudden emergency, might have serious consequences, particularly in relation to the possibility of a transfer of control from the Territorial Commissioner of Police to the Inspector-General and, therefore, from the Territorial Government to the Police Council.

(*d*) The proposal that ultimate financial control over the Territorial police forces should vest in the Federal Legislature would be tantamount to a surrender of control to the Federal authority over those forces. This would be inconsistent with the considerations referred to above.

(*e*) There would be no clear-cut Ministerial responsibility for the Police Council, whereby an individual Minister could be questioned and brought to account by normal Parliamentary procedure.

(*f*) The proposed control of the police forces would be liable to be regarded by the people as a means of enabling the Federal Government to enforce the Federal system. Moreover, it can be argued that,

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if a serious situation were precipitated by opponents of Federation, the very fact that police forces under the direction of any but a Territorial authority were brought into action would itself aggravate the situation.

(*g*) The implementation of the proposed scheme might be regarded as a move towards amalgamation and a unitary state; and if, for this reason, it was unacceptable to the majority of the peoples of the Northern Territories, it would be liable to increase, rather than to reduce, the difficulties of maintaining law and order.

(*h*) The fact that the deployment of a Territorial police force would be under the control of the Police Council might result in the forces in a Territory being reduced below the level considered adequate by its own Government.

(*j*) The suggestion that the proposed Police Council should exercise general control over recruitment and training and should co-ordinate the conditions of service of police forces in order to achieve as much uniformity as possible might give rise to difficulties in the light of the variation in traditions and conditions of service between the forces, particularly as regards the opportunities for African advancement. Any attempt to unify conditions of service in these circumstances might adversely affect the morale of the forces.

(*k*) The authority envisaged for the Police Council would imply that it could direct police reinforcements to a Territory against the wishes of the Governor of that Territory, who might judge that they might not be required and that their presence might even aggravate the situation.

169. For these reasons it can be argued that a rather different approach is needed, reflecting the contention that the Territories should have police forces adequate to enable them to discharge their responsibilities in relation to the maintenance of law and order. The first requirement, therefore, is to ensure that all Territorial forces are brought up to strength and are able to meet all day-to-day demands. The second requirement is that reserve forces should be created, which could reinforce the police in any Territory in emergency.

170. On the assumption that the first requirement mentioned above is satisfied in full, it could be argued that the reserves necessary to meet the second requirement might be constituted on the following lines:—

(*a*) The Federal Government should establish and finance a reserve police force.

(*b*) This force should be distributed among, and form an integral part of, the three existing police forces.

(*c*) Each section of the reserve would come under the disciplinary and operational control and command of the appropriate Commissioner of Police, and its terms of service would be integrated with those of the force of the Territory to which it was permanently allocated.

(*d*) In view of the financial responsibility of the Federal Government, a Federal Inspector-General would be appointed with appropriate powers to ensure that the recruitment, establishment, training and efficiency of the reserve were consonant with the expenditure incurred.

(*e*) The sections of the reserve would be available for use in another Territory, subject to the consent of both Governors concerned.

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Subject to this proviso, they would in fact be disposable by the Federal Government for use by, and in, the Territory requiring their services.

(*f*) The reserve would comprise all the basic elements of a balanced police force, including, in particular, specialists in investigational and Special Branch work.

(*g*) The co-ordinating functions of the Inspector-General would ensure that each section of the reserve could be efficiently deployed in support of any Territorial force.

171. A modification of this proposal envisages that a number of additional police would be recruited and trained by the Territorial authorities at the expense of the Federal Government and that, in an emergency, these would be made available to the Federal Government to undertake particular tasks. They would operate as a unit under the immediate command of Territorial officers. Apart from the fact of Federal control, this arrangement would not be very different from the manner in which the Territories assist one another at the present time within the limits imposed by the forces available.

172. It can be argued, however, that both these proposals would be open to some of the objections in paragraph 168 above, in so far as they would give the Federal Government authority over the deployment of reserve forces, and that this would be inconsistent with the view that full control of the police forces should remain an exclusively Territorial responsibility both in normal times and in emergency. It can be maintained, therefore, that a preferable and equally effective method of meeting the needs of the Territories in respect of police reserves would be an arrangement whereby each Territory would maintain, as part of its normal force, a reserve which could be used for ordinary police duties but would be available, by arrangement between the Territorial Governors concerned, for loan to other Territories in times of need. In the past it has been customary for Territorial Governments to lend units of their forces to neighbouring Territories; and this proposal would therefore be an extension of existing arrangements. The police forces of the Territories would thus remain comprehensively under the control of the Territorial Governments to which they belonged.

173. But, although it can be objected to any body such as a Police Council that it might be unable to act with the necessary speed in times of serious disturbance and that its composition would enable the Federal Government (together with any one Territory) to overrule the policies of either of the other two Territorial Governments, it may nevertheless be thought desirable to establish machinery for consultation between the Territories on a permanent basis, particularly in order to strengthen the existing exchange of information and to achieve uniformity in laws and police practice where possible. Even though this would not involve the establishment of a body with executive powers, it might be appropriate, in order to achieve the required degree of co-ordination, to empower the Governor of each Territory, by specific provision in the Constitution, to delegate such functions as he might consider necessary either to the Federal Government or to some other authority. Moreover, the creation of an adequate reserve would presuppose an increase in the strengths of the

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Territorial police forces in order to permit them to have forces available which could meet additional requirements in an emergency and could be lent to other Territorial Governments in similar circumstances.

II.—Emergency Legislation

174. It can be maintained that the powers of each Government within the Federation in times of emergency require to be clarified. Certain federal constitutions (including those of the West Indies, Malaya and Nigeria) provide for the extension of legislative powers in emergencies; and it is accordingly for consideration whether the Constitution of the Federation of Rhodesia and Nyasaland should similarly provide for the Federal Legislature (and the Territorial Legislatures) to pass emergency laws outside their normal legislative spheres. Such laws, in so far as they provided for matters outside the ordinary competence of the Legislatures concerned, would have effect only during the period of emergency. During such a period a Territorial emergency law (including regulations made by a Territorial Governor under the Emergency Powers Orders in Council, 1939 to 1959) would prevail over any Federal law, other than a Federal emergency law, unless the Governor-General, after consultation with the Governor concerned, otherwise directed. It would perhaps need to be understood, however, that the Governor-General would not so direct unless, as a result of consultation with the Governor concerned, it was established that the Federal Government could themselves take such steps as might be necessary to meet the difficulty which had caused the Governor temporarily to override the Federal law in question.

175. This proposal may, however, be thought to be open to the objection that it is impracticable to divide authority in an emergency. The suggestion that the Governor-General should have ultimate legislative authority in times of emergency can be maintained to conflict both with the contention that the final decision in such an event must rest with the man on the spot, especially in view of the time factor, and with the arguments in favour of Territorial autonomy in the field of internal security.

III.—Prisons

176. In general, responsibility for prisons has been assumed by the Federal Government under Item 60 in the Concurrent Legislative List, with the agreement of the Territorial Governments.

177. It can be argued that this responsibility should be transferred exclusively to the Territorial Governments by the removal of this Item from the Legislative Lists. Some aspects of prison work, particularly in the field of probation and rehabilitation, are closely related to social services, for which the Territorial Governments are broadly responsible. The prisons also form an integral part of the machinery for the maintenance of law and order and are connected with the Judiciary through the system of visiting justices, the Provincial and District administrations, the native authorities and the police. All these functions are Territorial. In Northern Rhodesia, responsibility for District Prisons remains with the Territorial administration; and, since the central prisons are the responsibility of the Federal Government, this division of responsibility results in certain difficulties.

178. On the other hand, it can be argued that the maintenance of Federal responsibility for prisons would entail the advantages associated with centralisation, *e.g.*, uniformity in the treatment of offenders, a more

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appropriate classification of prisoners within the existing prisons and, possibly, improved career prospects for certain classes of prison officers. Moreover, to dismember the Prison Service at this stage would be liable to involve an administrative reorganisation of some magnitude and to lead to considerable additional expenditure.

179. It is for consideration whether, if responsibility for prisons reverted to the Territorial Governments, the Federal Government should continue to be able to provide for holding individuals temporarily detained under Federal law, *e.g.*, persons declared prohibited immigrants and held pending their removal under the Immigration Law. A further possible exception to full Territorial control comprises criminal lunatic institutions, long-term penitentiaries and other specialised institutions, which, it can be argued, should remain on the Concurrent Legislative List. It does not appear to be open to question that the Federal Government should retain responsibility for the detention of military offenders against military law.

IV.—Control of the Voluntary Movement of Persons Between Territories

180. At present, Item 47 in the Concurrent Legislative List gives both the Federal and the Territorial Governments unrestricted power to control the voluntary movement of persons between Territories.

181. It can be argued that among the benefits which federation confers on those who inhabit the constituent Territories should be the right to share in the economic developments and greater earning opportunities directly or indirectly attributable to federation. On this basis it can be further argued that, in order to promote a sense of Federal citizenship and the creation of a Federal nationhood, no Territory should be permitted to legislate in such a manner as to reserve the economic benefits of federation or the opportunities of employment resulting therefrom for its own inhabitants to the exclusion of those of the other constituent Territories; that the unrestricted power of control at present conferred both on a Territory and on the Federation by Item 47 in the Concurrent List is not compatible with this objective; and that, if the objective is accepted, the Federal Constitution should provide that no Legislature may restrict the voluntary movement of persons within the Federation except for certain specified purposes.

182. On the other hand, many considerations in fact make limitations necessary. These include the land laws, security, the administration of native authority areas, unemployment, housing problems, etc., all of which may be thought to justify the existence of a power to control the movement of persons within the Federation from time to time. It is open to question, therefore, whether the exceptions which would need to be specified to the principle of unrestricted movement would defeat the purpose of enunciating the principle itself.

D.—LIMITATION ON THE FEDERAL POWER TO LEGISLATE IN PURSUANCE OF TREATIES

183. Article 34 in the Constitution provides that a Federal law implementing a treaty on a Territorial matter shall not have effect in relation to the Territory concerned except with the approval of its Governor, publicly notified.

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184. It can be argued that this restriction, which applies to subordinate legislation as well as to Acts of the Federal Legislature, should be removed on the grounds that it creates difficulties for the Federal Government in international negotiations. On the other hand, the provision was originally inserted in order to prevent the Federal Government from encroaching on the Territorial legislative field without Territorial consent; and it can be contended that its removal might create suspicion, however ill-founded, among the inhabitants of the Territories that the Federal Government would be able unduly to interfere in Territorial administration. This point might perhaps be largely offset if, as under Article 47 of the Constitution of the Federation of the West Indies, the Territorial Legislatures were given a concurrent power to implement treaties on concurrent and residual subjects.

E.—DELEGATION OF POWERS BY AND TO THE FEDERATION

185. A comparison of paragraph (1) with paragraph (2) of Article 32 of the Constitution shows that, while the Federal Legislature has an unrestricted power to delegate to a Territorial Legislature authority to legislate on matters in the Federal Legislative List, the powers of a Territorial Legislature to delegate to the Federal Legislature authority to make laws on residual matters is strictly limited. In support of this limitation it can be argued that, if a Territorial Legislature were given an unrestricted power to delegate, it could, without recourse to the process of constitutional amendment, place within the competence of the Federal Legislature and Government important residual matters which ought to remain its own sole responsibility. On the other hand, it can be argued that, since a delegation of legislative authority can always be revoked on six months' notice under Article 32 (4), there is no need for the Constitution to safeguard the Territorial Legislatures against an excessive use of their powers of delegation and that they might, therefore, like the Federal Legislature, safely be given unrestricted power to delegate. It is perhaps relevant to compare, in this connexion, Article 44 of the Constitution of the West Indies, which treats the Federal and the Territorial Legislatures in exactly the same way for this purpose.

186. Under paragraph (1) of Article 41 of the Constitution of the Federation of Rhodesia and Nyasaland the Governor-General has an unrestricted power to confer Federal executive functions on a Territorial officer or authority with the consent of the Governor of the Territory in question, whereas the corresponding power of a Territorial Governor under Article 42 (3) to confer Territorial executive functions on a Federal officer or authority is restricted to matters which are ancillary or directly related to Federal matters. Furthermore, although the Federal Legislature has power under Article 41 (2) to confer statutory functions on a Territorial officer or authority, Article 42 does not enable a Territorial Legislature to confer functions on a Federal officer or authority. It can be argued that there is no good reason why the Territorial powers should not be the same as the Federal powers and that the entrustment of executive functions to a Federal authority in this manner would not be open in the same degree to the objection mentioned in the preceding paragraph in relation to legislative functions, since in any event the executive functions could be controlled by the terms of the entrustment.

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F.—FINANCE

187. It follows from the principle of federation—the principle of separate and co-ordinate powers, each Government being invested with independent authority in its own sphere—that, in the field of finance, each Government should have complete control over its own resources and that those resources should be adequate to ensure its financial independence.

188. In considering the practical implementation of these considerations it is useful to bear in mind three fundamental characteristics of Government finance. First, fiscal policy has, in broad terms, a twofold object—both to provide the resources required to finance Government expenditure and to play its part effectively in the regulation of the economy. Second, financial policy and administration do not constitute a function of government in the same sense as the other responsibilities which have been discussed in preceding sections of this chapter. Financial considerations pervade the whole of a Government's activities and must be taken into account both in the formulation of general policy and in the discharge of each individual responsibility. Third, the power to tax is in practice exercised by imposing taxes on activities, forms of property, etc., which are in principle distinguishable one from another; but the clarity of the lines of distinction can vary considerably.

189. These considerations not only point to the underlying importance of the problem of allocating responsibility for the exercise, in a federal system, of State powers in the field of Government finance but also indicate something of the nature of the problem; and its nature is such that it is best considered not in the abstract but in relation to a specific pattern of Governmental responsibilities. We have therefore assumed that either concurrently with, or immediately after, the Constitutional Review of 1960 it will be necessary to establish a Fiscal Commission, similar to the Commission of 1952, to consider and make recommendations on the allocation of financial responsibilities, in the light of the decisions taken at that Review. For this reason we have considered it unnecessary in this Report to discuss questions of detail or any matters which would be hypothetical at this stage and have confined ourselves to drawing attention to certain suggestions which arise as the result of practical experience of the financial arrangements flowing from the present Constitution and appear to raise issues of importance.

I.—The Taxing Power

A.—The Existing Position

190. The authority to impose taxation is determined by Items 11 and 12 in the Federal Legislative List, together with Articles 80, 82, 83 and 84 of the Constitution itself.

191. Item 11 comprises "Duties of customs and excise (including export duties) other than duties on motor spirit, whether the proceeds of these duties are to be used for Federal or for Territorial purposes (subject to the provisions of Article 83 of this Constitution)". Item 12 in the Federal Legislative List comprises "Taxes on income and profits and taxes on amounts paid or payable on the sale of goods other than motor spirit, whether the proceeds of these taxes are to be used for Federal or for Territorial purposes (subject to the provisions of Articles 80 to 82 and 84 of this Constitution)".

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192. Article 80 of the Constitution provides that, where any Federal tax is levied on income or profits, 14% of the proceeds shall be paid to Southern Rhodesia, 18% to Northern Rhodesia and 6% to Nyasaland. Article 82 provides that a Territorial Government may levy, in addition to the basic Federal tax on income or profits, a Territorial surcharge on such income or profits, provided that the surcharge does not exceed 20% of the basic Federal tax. Article 83 provides that, where an export duty is imposed by the Federal Government, each of the Territorial Governments shall receive the same proportions of the proceeds as their proportions of the yield of taxes on income or profits. Article 84 provides that, if the Federal Government impose a tax on the sale of goods, not less than two-thirds of the total yield shall be payable to the Territorial Governments.

193. In all other respects the power of taxation rests exclusively with the Territorial Governments.

B.—Direct Taxation

(1) The principle of the Territorial surcharge

194. The system of Territorial surcharges (which are based on residence in the case of individual taxpayers and on source of profits in the case of companies) has given rise to various technical problems of assessment, some of which are likely to become more serious as industry and commerce come to play an increasingly important part in the Federal economy. So far as individuals are concerned, a difficulty has arisen from the fact that, although the authority conferred on the Territories to levy a surcharge relates to a person who is "resident in that Territory during the year of assessment", the word "resident" is nowhere defined in the Constitution; and it does not appear that the term is, in fact, capable of clear definition. Problems have therefore arisen in relation to visitors to the Federation, especially those whose purpose is to supervise or promote business interests.

195. The surcharge system would also add to the complexities, if it were decided to introduce a P.A.Y.E. system of income tax.

196. So far as companies are concerned, the purpose of the Territorial surcharge is to enable the Territories to tax income and profits derived from within their boundaries. Under Article 82 it is possible for a company operating in more than one Territory to set off losses incurred in one Territory against profits earned in another; and this may detract from a Territory's power to tax in full the profits earned within its boundaries. Moreover, companies have been authorised to deduct Territorial surcharge on payment of a dividend; and the Federal Taxes Charging Acts "gross up" dividends to include a Territorial surcharge. At present, this is a relatively simple operation. But it will be liable to become far more complicated if a Federal Companies Act is enacted, which abolishes the Territorial registration of companies. For it will then be necessary to determine, on payment of a dividend, the proportion of it which is derived from each Territory and thereafter to deduct surcharge at whatever rates (which may themselves vary) the Territories charge. But, in that event, which of the Territories is to give credit for the surcharge deducted or "grossed up"? Will one Territory be prepared to give credit to one of its residents in respect of surcharge applicable

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to another Territory? Or will it bear the whole burden of surcharge deducted in the other Territories? These problems would present no particular difficulty in a unitary state. But in a federal community they have more than technical implications—in particular, they carry the threat of double taxation and the impediment to enterprise which this may be thought to imply.

197. On the other hand, the system of Territorial surcharges was established in order to provide the Territorial Governments with an independent means, under their own control, of taxing incomes. This objective comes so close to the heart of the problem of Federal finance that the system should not lightly be abandoned, even though some of the remedies for the problems outlined in the preceding paragraph might prove to be far from simple. Nevertheless, it seems worth considering whether the principle of Territorial surcharge is likely to prove permanently appropriate. This question involves detailed technical considerations, which we have not attempted to assess. We have noted, however, that in other federal systems varying approaches to the same problem have been adopted; and we would only comment that, in examining any possible alternatives, it will be necessary to have regard to the objection which might be made to many of them, namely, that they are more inflexible than the present system of surcharge and therefore less capable of adjustment to those local needs and capacities which only the Territorial Governments can fully appreciate.

198. If it is decided that the principle of Territorial surcharge should remain, it is for consideration whether the present provision in Article 82, which imposes a fixed ceiling on the amount of the surcharge, should be amended. It can be argued that a fixed ceiling provides the Territorial Governments with insufficient room for financial manoeuvre and that this arbitrary limit should be removed, in order that the Governments may be left free to judge for themselves what rate of surcharge should be imposed. In support of this view it can be maintained that it would carry no threat to the entitlement of the Federal Government to levy the basic tax, since this is always a first charge on the taxpayer. Moreover, there is consultation between the Federal and the Territorial Governments in regard to rates of tax; and, if the limit on the Territorial surcharge were abolished, the Territorial Governments would be hardly likely, in their own interests, to seek unduly to exploit their greater freedom of manoeuvre.

199. On the other hand, it can be argued that such freedom would enable a Territory, however unwittingly, to damage the structure of taxation throughout the Federation and to disturb the balance of the economy as a whole. Taxation is one of the most potent regulators of the economy, and the power to determine its incidence and the balance of its distribution should rest, together with the other main powers which affect the regulation of the economy, in the hands of the Federal Government. In a matter which so closely affects the economic interests of individuals and, therefore, the welfare of the Federation as a whole and is also of the closest interest to overseas investors, it might be held to be undesirable to grant more than one Government uncircumscribed authority over the same field.

200. A variation of the same suggestion envisages that the existing limit on the Territorial surcharge, *i.e.*, the limit of 20% of basic Federal tax, should be increased to a higher figure, *e.g.*, 25% or 30%. It is a matter of

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judgment how far this proposal would be open to criticism on the lines indicated in the previous paragraph.

(2) Modifications of the Territorial Percentage Shares of Basic Income Tax

201. At present the Territorial percentages of the yield of taxes on incomes and profits are prescribed by the Constitution and cannot, therefore, be varied without amendment of the Constitution. From one point of view their entrenchment provides the Governments with a valuable safeguard of one of their most important sources of revenue. But it can be argued that this safeguard is achieved, as in other cases, only at the cost of flexibility. The processes of constitutional amendment are normally—and properly—slow and difficult; but the rate of economic development in the Federation has been high. It may therefore be thought desirable, if a system of division of the proceeds of income tax is retained, that provision should be made for some alternative and more easily adaptable form of amending the shares of the yield of taxes on income, in relation not to temporary budgetary embarrassments but to the emergence of new factors or to some fundamental economic change. It might be provided, for example, that in such circumstances and, in any event, at prescribed intervals the percentages should be reviewed by a Fiscal Commission and that, if the Commission's recommendation were unanimously accepted by the Governments, they should be put into effect by some simpler process than amendment of the Constitution. If, on the other hand, the Governments were unable to reach agreement, the full process of constitutional amendment would have to be set in motion before any modification of the percentages could be made. It can be objected to this suggestion that, if the Governments failed to reach agreement, there would perhaps be little prospect of an amendment of the Constitution being enacted. This situation may be inevitable if it is regarded as undesirable in principle that so important a matter as the degree of Territorial entitlement to the proceeds of taxes on income and profits should be dealt with otherwise than by formal amendment of the Constitution. We would only observe that, if so, the Constitution would be liable to embody an element of rigidity which, while from one point of view a safeguard, could be regarded from another point of view as a possible impediment to the economic and social development of the Federation.

(3) Poll Tax

202. This is a residual function, by virtue of which all three Territories impose a poll tax, at flat rates, on their African inhabitants. In Nyasaland a corresponding tax is payable also by non-Africans. Experience suggests that a flat rate tax of this kind may not enable a Territorial Government to distinguish sufficiently between individuals whose circumstances and means may differ relatively widely and that the poll tax should therefore be assessed on a graduated basis. It would then constitute a charge corresponding roughly to the " rates " which the average householder in other countries is required to pay to his local authority.

203. There are certain objections to this proposal. It can be maintained, for example, that a graduated tax of this nature would be no more than an income tax under a different name and that it would be inappropriate that those individuals whom the income tax code of assessment has been designed to exclude completely from liability should be brought back within the tax

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gatherer's reach by a local scheme of the same nature. (The tax could only be properly regarded as separate from income tax if no relief were given—as it is—in respect of its payment when income tax falls to be paid.) It can be further argued that, if a graduated local tax should properly be regarded as equivalent to a subsidiary income tax, graduation would in effect enable a Territorial Government to determine for itself—by adding the local supplement to its share of the basic Federal tax—the total amount which it would receive by way of tax on income. In short, graduation would be merely a more complicated way of deciding the size of the Territorial shares of the income tax; and—if this argument is conceded—it would be simpler to follow precedent by merely increasing the percentages of the yield of the Federal tax which the Territories already receive. Moreover, unless the tax were made payable by all races in the two Rhodesias, it would perpetuate a racial distinction likely to disappear in the course of time, as Africans become liable for the general income tax. A further objection may be thought to lie in the fact that a part of the Territorial Governments' financial arrangements would be made to rest on the direct taxation of those persons whose incomes are lowest. Finally, it can be maintained that the collection of a graduated native tax would be a complicated and expensive matter and that the costs of administration would bear no reasonable relationship to the yield.

204. On the other hand, it can be argued that the poll tax is, and would remain, separate and distinct from income tax, particularly in so far as it operates, and would presumably continue to operate, at income levels below those which attract liability to Federal tax. It is therefore incorrect to regard it as merely income tax in another form; the poll tax is already in operation. And to interpret its graduation as merely a more circuitous means of apportioning the yield of taxes on income would be no less mistaken. On the contrary, graduation would enable the Territorial Governments to adapt assessment to the differing means and circumstances of the individuals affected. It would also be confined to those cases where the costs of collection would not be disproportionate to the yield. Moreover, it would introduce greater flexibility into the administration of the local tax; and it would make it less arbitrary and indiscriminate in its operation. In Northern Rhodesia this is a matter which closely affects the native authorities, for the bulk of the native tax is collected by them and the yield from this source, which they receive into their Treasuries virtually in its entirety, furnishes them with the major part of their revenue.

205. A variant of the proposal envisages that native authorities and District Councils should be empowered to levy a local graduated rate. They already impose general rates and special levies for particular purposes; and it can be argued that there is now an increasing need for them to introduce graduated levies. But, since tribal conceptions of property make any rating system difficult (if not impossible) and income remains as the only basis of assessment of a levy which takes into account the capacity to pay, this proposal might be thought to be open in principle to much the same objections as the general proposal that Territorial Governments should levy a graduated tax. On the other hand the practical possibilities of designing a scheme which for a considerable time to come would not effectively conflict with income tax might be higher and for this reason might be thought to justify closer examination.

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C.—Indirect Taxation

(1) Customs and Excise

206. Under Item 11 in the Federal Legislative List the right to impose duties of customs and excise, other than duties on motor spirit, rests exclusively with the Federal Government. The proceeds of such duties, therefore, accrue wholly to that Government; and there is no provision either for the allocation of percentages of the yield to the Territorial Governments or for the imposition by those Governments of even a limited surcharge. It can be argued that, by contrast with the arrangements which obtain in relation to income tax, this is an anomaly and that the Territorial Governments should be entitled to share the yield of customs and excise duties no less than the yield of income tax. This argument is supported by three considerations. First, duties of customs and excise are more rapid in operation than taxes on income and profits; and it is perhaps unreasonable that the Territorial Governments should be dependent for one of the most important sources of their revenue on the tax which operates more slowly and, if there is a recession in trade and employment, takes longer to recover. Second, duties of customs and excise exert a more direct impact on the ordinary citizen, inasmuch as they tend to be reflected more or less immediately in costs and prices. It may be thought inequitable that the Territorial Governments should have to carry the responsibility of defending to their peoples rises in prices resulting from increases in Federal customs duties in the proceeds of which they have no share. Finally, if these proceeds were shared, the Federal Government would enjoy more flexibility in adjusting the incidence of direct and indirect taxation, whereas at present they might be inhibited from reducing income tax because of the effect on Territorial revenues.

207. As against these considerations it can be argued that customs duties are not merely an important source of revenue but also an essential and powerful instrument by which a Government can regulate the economy as a whole. As such, they should be entrusted—as are the other central economic functions of government—to the Federal Government; and to make the revenues of Territorial Governments partly dependent on the yield of these duties might confuse the formulation of economic policy. The arrangement whereby the Territorial Governments are entitled to certain percentages of the yield of income tax was adopted because the proceeds of income tax were used, as the balancing factor, in order to make each Government's resources earned by the operation of taxing powers under its own control, *plus* its share of basic income tax, equal its expenditure. Unless the principle of securing independent taxing powers to the Governments is to be abandoned, the division of income tax proceeds should be regarded as the exception rather than the rule. If the Federal Government's powers of independent taxation were to be restricted by a requirement to pay to the Territorial Governments a fixed proportion of the yield of customs duties in addition to income tax, their freedom of manoeuvre would be unduly limited —so much so that, whatever the size of a deficit on a Federal Budget, they might have no means of meeting it short of imposing an increase in duties which would yield in total a greater amount than was required for that purpose. It would not be easy to regulate the balance of an economy if all the tax instruments in the hands of the central Government had blunt edges.

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(2) Sales Tax

208. The Federal Government's power to levy a tax on the sale of goods under Article 84 of the Constitution has not yet been exercised. It can be argued, nevertheless, that this power should remain with the Federal Government and should not be transferred, in whole or in part, to the Territorial Governments. In the light of its effect on costs and prices, a sales tax could play an important part in the regulation of the economy as a whole, for which the Federal Government should remain responsible. Moreover, it is closely connected with the control of exports and imports, the imposition of excise duties and, therefore, the degree of protection to be afforded to the domestic producer—for which, again, the Federal Government are, and should remain, responsible. Finally, if one Territory were free to impose a sales tax which did not operate, or operated only at a different level, in a neighbouring Territory, the effect on inter-Territorial trade could be pronounced; and here, too, the regulation of the Federal economy as a whole could be prejudiced. For these reasons it may be thought that authority to impose a sales tax should continue to rest solely in Federal hands.

209. On the other hand, it can be maintained that in the United States and Canada this power is vested in individual States and Provinces and appears to operate reasonably satisfactorily. Moreover, a sales tax—in the sense of a tax of modest dimensions, levied on sales over the counter—would have little, if any, effect on the general level of costs and prices; but it would give the Territorial Governments greater freedom of financial manoeuvre in the management of their own affairs. For these reasons it may be thought that those Governments should be entrusted with the authority to impose a sales tax.

210. Alternatively, it is for consideration whether, even if the control of such a tax remained with the Federal Government, some part of its yield should be apportioned between the Territorial Governments on the same basis as income tax; or those Governments should be allowed to impose a tax on sales within a limit imposed by reference to the value of the goods; or they should be empowered to levy—perhaps only on "luxury" goods—a surcharge, corresponding to the surcharge which they are entitled to levy in respect of Federal income tax.

(3) Agricultural Levies

211. Two separate problems arise under this heading:—

(*a*) The power to levy excise duties (except on motor spirit) rests with the Federal Government, by virtue of Item 11 in the Federal Legislative List. Agricultural levies are clearly excise duties; but, in so far as the products on which they are levied are exported, they may also be regarded as export duties. In the latter case, however, their proceeds would fall to be divided in accordance with Article 83; and, since agricultural levies are usually imposed for a limited and specific purpose, it may be thought desirable that excise duties which take the form of levies on agricultural produce should be distinguished from export duties and sales taxes. If so, and if the power to levy excise duties is to continue to rest with the Federal Government, the opportunity should perhaps be taken to clarify a certain confusion

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about the Governmental responsibility for the imposition of levies on agricultural produce which has arisen by reason of the terms of the Southern Rhodesia African Agriculture Designation Order, 1954, made in terms of Item 24 in the Federal Legislative List. This purported to designate, as part of African agriculture, the power to impose levies, an arrangement which derogates from the Federal Government's power to levy excise duties. The anomaly would be removed if the position in respect of Southern Rhodesia were clarified in the new Constitution in such a way that in Southern Rhodesia, as in Northern Rhodesia and Nyasaland, the Territorial Government could be authorised by the Federal Government to impose any necessary excise duties on agricultural produce.

(*b*) A separate issue is whether the authority to impose agricultural levies on the produce of African growers should rest with the Federal Government or with the Territorial Governments. Where such levies are applied to the more intensive development of agriculture, it can be argued that they are best administered under the direction of Territorial Governments, who are more intimately acquainted than the Federal Government with local circumstances and, in particular, with deficiencies in the pattern of local agricultural production. Further, levies on agricultural produce, fish and livestock are an important part of the revenues of native authorities; and it may be thought that they should be assured to them permanently.

212. On the other hand, it can be argued that an agricultural levy is an excise duty and, therefore, properly Federal. Moreover, the power to impose such a levy can profoundly affect agricultural marketing policy; and it can therefore be maintained that, if the Federal Government are to retain the major responsibility for marketing, they should not be exposed to the risk that their policy might be prejudicially affected by the arbitrary incidence of agricultural levies which might be imposed by different Territorial Governments at different rates. Further, levies differing from one Territory to another would be liable to encourage a black market in agricultural produce and to impede or to distort the free movement of inter-Territorial trade. The present arrangements in respect of the Northern Territories show that the association of the Territorial Governments with the administration, and even the assessment, of agricultural levies is not incompatible with ultimate Federal authority.

II.—The Borrowing Power

213. The Constitution provides, in Articles 88 to 91, for a Loan Council, which must approve proposals for external borrowing by the Governments in respect of any year. The Council, whose approval must be by unanimous vote, may either approve the aggregate amount proposed to be borrowed by the several Governments or may approve a smaller aggregate amount. In the latter event the smaller aggregate amount is apportioned among the several Governments in such manner as the Council may unanimously agree or, failing such agreement, in the proportions prescribed by paragraph (3) of Article 90. In approving borrowing the Council is enjoined to " have regard to the amounts which, in their opinion, it is possible or desirable, or in the economic interests of the Federation or of the Territories, to borrow in the year in question ".

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214. No corresponding constitutional machinery exists for dealing with internal loans; these are raised, and divided, in accordance with programmes agreed between the four Governments.

215. Loans, both external and internal, have normally been raised by the Federal Government.

216. The control of borrowing by non-Government bodies is vested in the Federal Government by virtue of Item 7 in the Federal Legislative List: " Banks and banking, other than land banks as defined in Item 50 in Part II of this Schedule; control of capital issues ". It has been contended that this Item enables the Federal Government to control borrowing by Governments; but this interpretation has been disputed.

217. It can be argued that the control of approaches to the market, whether external or internal, should be clearly established as an exclusively Federal function. This important control would then be placed in the hands of the Government which is responsible for all major economic policy and, in particular, for currency, coinage, the balance of payments, the Central Bank, other financial institutions, hire purchase, insurance and major taxation. Their concern with all these activities brings the Federal Government into continuous contact with money markets and, it can be maintained, puts them in the best position to judge the timing and amounts of borrowing. Conversely, because of the Federal Government's major economic responsibilities, capital markets look to them to maintain policies appropriate to a sound borrower. All four Governments contribute by their policies to the creditworthiness of the Federation; but that creditworthiness cannot be exploited to the full for the general good, and may even be dissipated, unless a single authority is given ultimate power to control borrowing and to prevent unco-ordinated approaches to the market. Control by the Loan Council may not be sufficiently effective to enable the best use to be made of the Federation's borrowing power.

218. If the control of borrowing were made an exclusively Federal function, it would perhaps need to be recognised that a formal exception might have to be made in respect of certain types of borrowing, *e.g.*, overdrafts, other forms of temporary accommodation, and, as now, direct loans by the Government of the United Kingdom to a Government in the Federation; and that general authorities for other types of borrowing might well have to be issued. Moreover, the proposal does not contemplate any diminution in the process of continuous consultation on borrowing which already takes place; it envisages that the new arrangements would make that process even more desirable and useful. Nor is it implied that the allocation of moneys borrowed should be decided otherwise than by agreement between the Governments, or, failing agreement, in fixed proportions. This function would continue to be carried out by the Loan Council.

219. On the other hand, it can be argued that the arrangement outlined in the preceding paragraphs would not in practice be more effective than the Loan Council system. Moreover, it would offend against the general principle that Territorial Governments should enjoy an independent measure of co-ordinate authority in the field of ways and means. They all have an equal interest not only in raising funds by borrowing but also in ensuring that the

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Federation's creditworthiness is not impaired, that competition for funds is avoided and that approaches to markets are properly regulated. It can be argued that, for these reasons, any changes made should be within the general ambit of the Loan Council system.

220. A second proposal, which requires to be considered separately, is that, whatever decisions may be reached about the Loan Council system in relation to external borrowing, a similar system should be established for the control of internal borrowing as an alternative to the suggestion, discussed above, that the control of internal (as well as external) borrowing should be a Federal function. With this proposal could be combined a provision that the Council should also exercise, in relation to the proceeds of internal borrowing, the same function of allocation which it discharges in relation to the proceeds of external borrowing. The arguments for these proposals accept that control is needed but contend that a body representative of all the Governments would most satisfactorily exercise it, since each Government could sponsor its case before a Council of which it was a member and would be associated with the decisions taken.

221. It can be argued against this suggestion, however, either that, for the reasons set out earlier, control of approaches to the market is most effective when it is entrusted to an authority which, in the last resort, exercises a single responsibility or, alternatively, that no special machinery of control is needed, since in practice the existing informal arrangements already have the desired effect. The operation of Loan Council control, however many dispensations the Council gave, might be cumbrous; and, if it was not necessary, it would unduly hamper a proper freedom of Government action.

222. In any case it is for consideration whether it would be desirable to widen the authority of the Loan Council or to modify its procedure in certain respects.

CHAPTER 5

THE MACHINERY OF INTER-GOVERNMENTAL CO-OPERATION

223. In the previous chapter we have examined the arguments for and against changes in the allocation of responsibility for certain of the main functions of government. Without prejudice to the decision in any of the cases which we have considered, we think that it may be appropriate to conclude this Report with a brief reference to possible improvements in the machinery of inter-Governmental co-operation, on the assumption that improvements will be thought, in any event, to deserve consideration on their merits.

224. Article 42 (2) of the Constitution provides 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.

225. The main existing fields of inter-Governmental co-operation are described in Chapter 7 of the "Survey of Developments since 1953". It is generally conceded that in practice this co-operation has worked somewhat unevenly. In some cases it has taken the shape of formal, and sometimes

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statutory, consultation; in others it has emerged as informal or *ad hoc* co-operation, designed to overcome administrative or technical differences as they were foreseen or arose. As a result, not only do certain gaps appear to exist in the existing machinery for co-operation but such machinery as has been established has on occasion come into operation only when difficulties have already arisen which might have been avoided by earlier consultation.

226. It is for consideration, therefore, whether some more formal arrangement might be made for meetings of Heads of Governments or their representatives, at which matters of current interest or concern could be discussed on a basis of mutual frankness and co-operation. Such meetings might take place not merely when some particular point for discussion had arisen but also at regular intervals, perhaps quarterly. They might with advantage take place alternately in Salisbury and in each of the two Northern capitals in rotation. We have considered whether it would be desirable to prescribe in the Constitution itself that these meetings should take place. The advantages of doing so would be that the provision would reflect in constitutional form the general desire in the Federation that matters of common importance should be the subject of appropriate consultation between the Governments concerned. On the other hand, successful co-operation can only follow a will to co-operate and would not necessarily flow from a mandatory requirement.

227. Such meetings might be of a wholly consultative nature, each Government being free to initiate consultation on any matter, whether in the Federal, Territorial or concurrent field, in which the interests of more than one Government were, or might be, involved. Where it was desired to set up continuing bodies in order to deal with particular problems, committees, either standing or *ad hoc,* could be established as necessary.

228. The need for consultative machinery in the Federation is the greater because different aspects of single functions have been allocated separately to the Federal and Territorial Governments—*e.g.,* European and African education; inter-Territorial and Territorial roads; and so forth. Certain fields in which improved machinery for consultation might be desirable will be apparent from individual sections of the chapter on the Functions of Government; but there are doubtless additional opportunities in other fields, both Federal and Territorial, which we have not discussed.

229. In considering whether additional standing bodies should be established at a high level in order to deal with special aspects of inter-Governmental co-operation, we have taken into account that the Report of the 1951 Conference on Closer Association in Central Africa emphasised the particular importance of adequate co-ordination of the economic activities of the Governments in the Federal State. We note that the particular suggestions made in that Report were not adopted in 1953 and that other arrangements designed to meet the need were introduced. It may perhaps be timely to review these arrangements in the context of the 1960 Review of the Constitution.

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ANNEX

THE ELEMENTS OF SUBORDINATION

1. The possible constitutional changes discussed in the main body of this Report need to be considered not only on their merits but also in relation to the " elements of subordination ". This raises issues of political judgment, to which it would be improper for us to attempt to suggest an answer. But we think that, without prejudice to the basic political decision, we may perhaps offer the following comments on the " elements of subordination ", which may serve to define more precisely the issues for consideration. These comments reflect the varying degrees of importance and significance which attach to the different " elements ". Of the eight in question the first is no longer a live issue, the second is not strictly an " element of subordination ", the third and fourth relate to the exercise of a degree of formal authority which is normally acquired by a member of the Commonwealth only when it becomes fully independent and the remainder are concerned with the substance of political control.

(a) The Rule against Extra-Territoriality

2. The validity of the doctrine that a Colonial Legislature has no general power to enact laws having extra-territorial effect has sometimes been questioned; and specific exceptions to the doctrine have been established by judicial decision. Nevertheless, some doubt still attaches to this question; and it was agreed, in the Joint Announcement by the Governments of the United Kingdom and the Federation in April, 1957, that the Federal Legislature's power to enact laws with extra-territorial effect should be clearly established by Act of Parliament.

(b) Appeals by Special Leave to the Privy Council

3. The fact that the possibility of such appeals is preserved by the present Constitution and that the Federal Legislature is not competent to abolish them does not constitute an " element of subordination " in the same sense as the other matters discussed in this Annex, since the Judicial Committee of the Privy Council is not a part of the United Kingdom Government and, indeed, is not composed entirely of United Kingdom judges. Moreover, appeals to the Judicial Committee still lie from, for example, Australia, New Zealand, Ceylon and Malaya, without derogation from their independence. If such appeals were to be abolished before the Federation became independent, it would be necessary for this to be effected by an Act of Parliament in view of the terms of section 1 (2) (*a*) (iii) of the Rhodesia and Nyasaland Federation Act, 1953.

(c) The Royal Style and Titles

4. The Federal Legislature cannot at present provide for separate Style and Titles for use by Her Majesty in relation to the Federation, since a Federal law to this effect would be repugnant to the Royal Titles Act, 1953 (which expresses the assent of Parliament to the adoption by Her Majesty of such Style and Titles as She may think fit for use in relation to the United Kingdom " and all other Territories for whose foreign relations Her Government in the United Kingdom is responsible ") and would consequently be void by virtue of the Colonial Laws Validity Act, which applies to Federal legislation. If the Federal Legislature were to be given power to provide for

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separate Style and Titles for use by Her Majesty in relation to the Federation before the Federation became independent, an amendment of the Act of 1953 would be entailed.

5. Moreover, if provision for separate Royal Style and Titles were made in relation to the Federation, it would presumably need to be applicable in relation to the Federation for all purposes, both Federal and Territorial. But it is for consideration whether, so long as Her Majesty exercises authority in the two Protectorates in right of the Government of the United Kingdom, the Royal Style and Titles in the Protectorates, and therefore in the Federation generally, should not be that adopted by Her Majesty under the provisions of the Royal Titles Act, 1953.

(d) Appointment of the Governor-General

6. Until a part of Her Majesty's dominions attains independence, Her Majesty is advised in relation to that territory by Her United Kingdom Ministers. After the territory has attained independence, She is advised by the Ministers of the territory. It would therefore appear to be contrary to existing practice to accord to Federal Ministers the right to advise Her Majesty on the appointment of the Governor-General before the Federation attained independence. A relevant consideration in this connexion would be the extent to which the Governor-General was still entrusted with any discretionary functions in relation to matters for which Her Majesty's Government in the United Kingdom regarded themselves as retaining active responsibility.

7. In certain cases, *e.g.*, the appointment of Governors of Regions in Nigeria and the appointment of the Yang di-Pertuan Negara (the local Head of State) in Singapore, the United Kingdom Government have undertaken that the local Government concerned will be consulted. In the parallel circumstances the Federal Government are already consulted as a matter of courtesy.

(e) External Affairs

8. The fact that the Federation is not a full international person is not the result of the wording of Item 1 (*a*) of the Federal Legislative List. The Federation falls short of the status of a full international person because, having regard to its Constitution as a whole, it is not an independent sovereign state; and it is questionable whether it would be so regarded internationally so long as the United Kingdom Parliament and Her Majesty's Government in the United Kingdom retained any substantial degree of authority in relation to the Protectorates. At present, in the context of public international law other states are entitled to look to the United Kingdom as the authority responsible for the international relations of the Federation. The Federal Government can assume international commitments and participate in international negotiations only to the extent to which the United Kingdom Government are prepared to authorise them and other states are prepared to treat with them; and even in these circumstances it is the United Kingdom Government who remain ultimately responsible in international law.

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(f) Reservation of Bills (together with the Governor-General's discretionary power to refuse assent to a Bill)

9. The question whether and, if so, to what extent the United Kingdom Government could agree that the power to reserve Bills or the discretionary power to withhold assent to Bills, at present possessed by the Governor-General of the Federation, should be limited to certain categories of Bill or completely withdrawn or made exercisable only in accordance with the advice of local Ministers is a political one.

(g) Disallowance

10. The question whether the power of disallowance might be retained or abandoned, in whole or in part, as regards Federal laws would have to be considered in relation to the question whether the power of reservation was to be modified or withdrawn. If, however, the general power of disallowance were withdrawn, it would presumably be necessary—as in the Constitutions of the West Indies, Jamaica and Singapore—to retain a power of disallowance in relation to Government stock, in order that it should continue to rank as a trustee security under section 2 of the Colonial Stock Act, 1900.

(h) Powers of the United Kingdom Parliament to Legislate for the Federation; and the Rule of Repugnancy

11. The position is as follows:—

(*a*) As a matter of constitutional law the United Kingdom Parliament has full power to legislate for the Federation and any Federal law which was repugnant to any Act of Parliament extending to the Federation would be void by virtue of section 2 of the Colonial Laws Validity Act, 1865.

(*b*) The possible occasions for the enactment of United Kingdom legislation extending to the Federation have been reduced by the Joint Announcement of April, 1957, which recognised a convention whereby the United Kingdom Government in practice do not initiate any legislation to amend or repeal any Federal Act or to deal with any matter included within the competence of the Federal Legislature except at the request of the Federal Government.

12. The attainment of independence by the Federation would entail the surrender of the whole of the United Kingdom Parliament's power to legislate for the Federation except at the request, and with the consent, of the Federation. But before the attainment of independence by the Federation this power might be partially surrendered if the United Kingdom Parliament were prepared to enact, in relation to laws dealing with matters in the Federal and Concurrent Legislative Lists, provisions equivalent to sections 2 and 4 of the Statute of Westminster. The result would be briefly as follows:—

(*a*) No Federal law would be void or inoperative on the ground that it was repugnant to an Act of the United Kingdom Parliament or to any subordinate legislation made under such an Act; and the powers of the Federal Legislature would include power to amend or repeal any provision of United Kingdom legislation (whether contained in an Act or in subordinate legislation) relating to a matter in the Federal or

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Concurrent Legislative List in so far as that provision was part of the law of the Federation.

(b) No future Act of the United Kingdom Parliament with respect to any matter included in the Federal or Concurrent Legislative List would extend to the Federation as part of the law of the Federation unless it was expressly declared in the United Kingdom Act that the Federal Government (or perhaps the Federal Legislature) had requested, and consented to, the enactment of the Act.

13. It should perhaps be pointed out that the application of sections 2 and 4 of the Statute of Westminster in relation to legislation dealing with matters in the Federal and Concurrent Legislative Lists could lead to a situation in which the *vires* of an Act of the United Kingdom Parliament purporting to legislate within the exclusively Territorial sphere might be challenged in the courts on the grounds that it in fact encroached upon the Federal or Concurrent Legislative List, unless this possibility were expressly excluded by Parliament. Moreover, the application of sections 2 and 4 of the Statute of Westminster in the manner indicated above would have the effect of imposing a constitutional limitation upon the general powers of the United Kingdom Parliament to legislate for the Federation while Parliament still retained power to legislate for any Territorial Constitution and the United Kingdom Government still retained ultimate responsibility for the external affairs of the Federation.

14. It may be thought that a possible analogy is to be found in the position of Australia under the Statute of Westminster, whereby:—

(i) Section 2 of the Statute does not apply to the laws of an Australian State and these therefore remain subject to the Colonial Laws Validity Act. (By contrast, section 7 of the Statute expressly applies section 2 to laws of a Canadian Province.)

(ii) Section 9 (2) of the Statute provides that the concurrence of the Government or Parliament of the Commonwealth shall not be required for any law made by the United Kingdom Parliament with respect to purely State matters " in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence ".

15. In practice, however, it must be assumed that, at least since 1931 and probably before that date, the United Kingdom Parliament would have legislated for an Australian State only if so requested by that State. It is open to question, therefore, whether the analogy with the Federation is valid, since it cannot be assumed that the United Kingdom Parliament would exercise its power to legislate for the Protectorates only at their request.

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APPENDIX I

THE SECOND SCHEDULE TO THE CONSTITUTION OF THE FEDERATION OF RHODESIA AND NYASALAND

MATTERS WITH RESPECT TO WHICH THE FEDERAL LEGISLATURE MAY MAKE LAWS

PART I

THE FEDERAL LEGISLATIVE LIST

(being, in relation to any Territory, matters with respect to which the Federal Legislature has, and the Legislature of the Territory has not, power to make laws.)

Item

1. External affairs, that is to say—
   (*a*) such external relations as may from time to time be entrusted to the Federation by Her Majesty's Government in the United Kingdom; and
   (*b*) the implementation of treaties, conventions and agreements with, and other obligations towards, countries or organisations outside the Federation affecting the Federation as a whole or any one or more of the Territories, whether entered into—
      (i) either before or after the date of the coming into force of this Constitution, by Her Majesty, or by Her Majesty's Government in the United Kingdom on behalf of the Federation or any of the Territories; or
      (ii) after the said date, by the Federation with the authority of Her Majesty's Government in the United Kingdom; or
      (iii) before the said date, by any of the Territories with the said authority;

   but not including relations between the United Kingdom and any of Territories.

2. Extradition, fugitive offenders, and the removal of prisoners, both as between Territories and as between the Federation or a Territory and some country outside the Federation.

3. Defence.

4. Immigration into and emigration from the Federation.

5. Aliens.

6. Citizenship of the Federation.

7. Banks and banking, other than land banks as defined in Item 50 in Part II of this Schedule; control of capital issues.

8. Control of imports into and exports from the Federation; exchange control.

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Item

9. Promotion of exports from the Federation.

10. The distribution, disposal, purchase and sale of such manufactured and unmanufactured commodities and such animals and poultry as the Governor-General may by order specify, the control of the wholesale and retail price of any commodities, animals or poultry so specified, and the payment by the Federation of subsidies in respect of any commodities, animals or poultry so specified (subject to the provisions of Part III of this Schedule), so, however, that a law of the Federal Legislature relating to animals or poultry made by virtue of this item shall not have effect in relation to any Territory unless and until the Governor of that Territory has declared by notice in the official Gazette of the Territory that it shall so have effect.

11. Duties of customs and excise (including export duties) other than duties on motor spirit, whether the proceeds of those duties are to be used for Federal or for Territorial purposes (subject to the provisions of Article eighty-three of this Constitution).

12. Taxes on income and profits, and taxes on amounts paid or payable on the sale of goods other than motor spirit, whether the proceeds of those taxes are to be used for Federal or for Territorial purposes (subject to the provisions of Articles eighty to eighty-two and eighty-four of this Constitution).

13. Currency, coinage and legal tender.

14. Guarantees by the Federal Government of loans.

15. Companies, that is to say, general provision as to the incorporation, regulation and winding up of bodies corporate, other than bodies incorporated directly by a law of the Legislature of a Territory or incorporated under a law of such a Legislature for special purposes specified in that law, and other than co-operative societies or co-operative companies.

16. Insurance, other than insurance undertaken by the Government of a Territory.

17. Bills of exchange, cheques and promissory notes.

18. Copyright, patents, trade marks, designs and merchandise marks.

19. The construction, alteration and maintenance of all roads (in so far as they lie within the Federation) scheduled as inter-territorial in the Final Act of the Transport Conference held at Johannesburg in the year nineteen hundred and fifty, and any other roads within the Federation which may be prescribed as inter-territorial by any law of the Federal Legislature.

20. Railways and ancillary services, including ancillary transport services.

21. Shipping, harbours and ancillary services, including ancillary transport services.

22. Aviation, aerodromes and ancillary services, including ancillary transport services and the safety of aircraft.

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Item

23. Meteorology.

24. In relation to Southern Rhodesia, agriculture, that is to say—
    (*a*) agriculture in general, including animal husbandry, dairies and dairy-farming, horticulture, poultry-farming, bee-keeping, fish-farming, pounds and agricultural colleges;
    (*b*) agricultural research, including pasture, tobacco, veterinary and tsetse research;
    (*c*) the provision and use of specialist services in connexion with agriculture and agricultural products, including veterinary services and services dealing with chemistry, entomology and plant pathology; and
    (*d*) conservation,

    but not including forestry, irrigation or such agriculture as the Governor-General and the Governor of Southern Rhodesia acting jointly shall by order have designated as African agriculture (subject to the provisions of Part III of this Schedule).

25. In relation to Southern Rhodesia, animal health, including animal pests and diseases.

26. In relation to Southern Rhodesia, plant pests and diseases.

27. Posts, telegraphs, telephones, wireless (other than broadcasting, television and other like forms of communication) and Post Office savings banks.

28. Such irrigation works and water works as the Governor-General may by order designate as major irrigation or water works or as works ancillary to such major works (subject to the provisions of Part III of this Schedule).

29. The generation, supply and use of nuclear energy.

30. Primary and secondary education of persons other than Africans.

31. Higher education (including higher education of Africans), that is to say, institutions or other bodies offering courses of a university, technological or professional character.

32. Weights and measures.

33. The Federal public service.

34. Federal public relations.

35. Audit of Federal public accounts.

36. The establishment, training, maintenance and administration of a Federal police force for service in the employment of, or use in, any Territory at the request and under the operational control of the Governor of that Territory in addition to or in substitution for the police force of that Territory; and the conditions (including conditions as to payment by the Territory) on which the Federation will make that police force available for such use or employment.

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Item

37. The establishment, constitution, jurisdiction and powers of any Federal courts other than the Federal Supreme Court (subject to the provisions as to the jurisdiction of the Federal Supreme Court contained in Articles twenty-two and fifty-three to fifty-five of this Constitution).

38. Legal proceedings between the Federation and a Territory or between Territories (subject to Article fifty-three of this Constitution).

39. Legal proceedings by or against the Federation other than proceedings against or by a Territory.

40. Subject to the provisions of Part III of this Schedule, such matters relating to such professions or callings as, and to the extent which, the Governor-General, with the consent of the Governor of the Territory concerned, may by order designate.(1)

41. The payment of old age pensions by the Federal Government.

42. The control of any area which may be designated as a National Park by an order made by the Governor-General with the consent of the Governor of the Territory in which that area is situated, being control with respect to such matters and to such extent as may be specified in that order (subject to the provisions of Part III of this Schedule).

43. Any monument designated as a National Monument by an order made by the Governor-General with the consent of the Governor of the Territory in which that monument is situated (subject to the provisions of Part III of this Schedule).

44. Any other matter, whether or not otherwise within the exclusive legislative competence of the Federal Legislature, with respect to which for the time being, under or by virtue of any provision of this Constitution, the Federal Legislature has, and the Legislature of the Territory has not, power to make laws, or in relation to which reference is made in this Constitution to a law of the Federal Legislature but not to a law of the Legislature of a Territory.

PART II

THE CONCURRENT LEGISLATIVE LIST

(being, in relation to any Territory, matters with respect to which both the Federal Legislature and the Legislature of that Territory have power to make laws).

45. Deportation.

46. Naturalisation.

47. Control of the voluntary movement of persons between Territories.

(1) As amended by section 2 of Federal Act No. 27 of 1959.

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Item

48. Control of movement of goods and animals between Territories.
49. Development of industries.
50. Land banks, that is to say, Government institutions or institutions set up by or under a law of the Federal Legislature or of the Legislature of a Territory, being institutions of which the main purpose is the granting of credits for housing or agricultural purposes.
51. Co-operative societies and co-operative companies, being such societies and companies with objects connected with agriculture, except where a majority of the members are African.
52. Bankruptcy and insolvency; assignments to and compositions with creditors.
53. Hire purchase.
54. Roads, other than those referred to in Item 19 in Part I of this Schedule.
55. Road-rail crossings.
56. Regulation of road traffic.
57. Electricity.
58. Scientific and industrial research, including, in relation to Northern Rhodesia and Nyasaland, agricultural, veterinary and tsetse research.
59. The service and execution in any Territory of the civil and criminal processes, judgments, decrees, orders, and decisions of the courts of any other country and the attendance of persons from any Territory at the courts of any other country, whether that other country is within or outside the Federation.
60. Prisons and other institutions for the treatment of, and methods of treating, offenders against any law, whether or not that law is within the legislative competence of the Federal Legislature or, as the case may be, of the Legislature of the Territory.
61. Care and protection of minors.
62. Fingerprints, identification and criminal records.
63. Security information.
64. Health (other than silicosis in Northern Rhodesia).
65. Promotion of tourist traffic.
66. Town planning.
67. Geological, trigonometrical, topographical and cadastral surveys.
68. Production and distribution of Government films.
69. Broadcasting, television and other like forms of communication.
70. Archives.

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Item

71. Census and statistics.

72. Indemnity in respect of acts or omissions, so, however, that the Federal Legislature shall not have power to make laws with respect to indemnity in respect of acts or omissions in breach of a law of the Legislature of a Territory which is within the exclusive legislative competence of the Legislature of that Territory.

73. Registration of births and deaths.

74. Registration and record of printed publications.

75. Commissions of inquiry.

76. Any other matter, whether or not otherwise within the legislative competence of the Federal Legislature or, as the case may be, of the Legislature of the Territory, with respect to which under or by virtue of any provision of this Constitution both the Federal Legislature and the Legislature of the Territory have for the time being power to make laws, or in relation to which reference is made in this Constitution to laws both of the Federal Legislature and of the Legislature of a Territory.

PART III

PROVISIONS WITH RESPECT TO CERTAIN ORDERS

A.—Any order made for the purposes of any of the following items in Part I of this Schedule, that is to say, Items 10, 24, 28, 40, 42 and 43, shall be published in the official Gazette of the Federation and of any Territory to which the order applies and shall not have effect until it has been so published.

B.—The Federal Legislature shall not have power to make laws with respect to any matter included in the said Item 24 until the order referred to in that item has been made and published as aforesaid.

C.—Where any consent is required to the making of any such order as aforesaid, a notification in the Gazettes aforementioned that the necessary consent has been given shall be sufficient evidence of that consent.

D.—Any order made for the purposes of any of the said items other than Item 24 may be varied or revoked by a subsequent order made and published in like manner as the original order.

APPENDIX II

DIVISION OF LEGISLATIVE POWERS BETWEEN CENTRAL AND REGIONAL GOVERNMENTS IN FEDERATIONS WITHIN THE COMMONWEALTH

The manner in which legislative powers have been divided between the Federal, Concurrent and Regional Lists in the Constitutions of Canada, Australia, India, Pakistan, the Federation of Malaya, the Federation of Rhodesia and Nyasaland, Nigeria and the West Indies Federation may be seen from the following table, in which the powers expressly mentioned in the Constitutions or necessarily implied from it have been indicated by the

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letters F (F*=Federal in Southern Rhodesia only), C and R. Where a subject is not mentioned in the Constitution, either because the power to legislate for it is intentionally allocated to the authority exercising the residuary power or because it is not applicable in that Federation, no attempt has been made to show in the table where the responsibility lies—although the site of the residuary power may be seen from the first line of the table. There are, however, some exceptions to this. For example, where a Federal power is more restricted than would be implied by the letter F alone, it is shown as FR in order to indicate that some aspects of the power are exclusively Regional. Some unusual powers, such as legislation about salt in India and Pakistan, have not been shown. The content and allocation of some subjects (especially external affairs, defence, law and procedure, machinery of government, parliamentary privilege and emoluments, and taxes) are more complicated than the table suggests, and reference must, if necessary, be made to the Constitutions themselves. Nor can the table show safeguards; for example, some Federal powers in Rhodesia and Nyasaland can be exercised only with the consent of the Governor of the Territory concerned.

	Canada	*Australia*	*India*	*Pakistan**	*Malaya*	*Rhodesia and Nyasaland*	*Nigeria*	*West Indies*
RESIDUARY POWER ...	F	R	F	R	R	R	R	R
Whether regional powers are listed	Yes	No	Yes	Yes	Yes	No	No	No
External affairs		C	F	F	F	F	F	
Immigration:								
into Federation ...		C	F	F	F	FC	F	F
between Regions ...			F	C		C	C	C
Citizenship and aliens ...	F	C	F	F	F	FC		C
Defence	F	FC	F	F	F	F	F	F
Police		C	R	R	F	FCR	CR	
Public order			R	R	F		C	
Prisons	FR		R	R	F	C	C	C
Preventive detention ...			C	FR	F			
Law and procedure								
Civil	FR	C	C	C	FR	CR	CR	C
Personal	FR	C	C	C	FR		FR	C
Criminal	F		C	C	F			C
Constitution and organisation of courts ...	R		FR	FCR	F	FCR		FR
Machinery of government								
Public services and pensions	FR	FR	FR	FR	FR	FR	FR	FR
Elections (federal and regional)			FR	F	F			FR

* On 23rd September, 1959, the President of Pakistan promulgated an Order which provides, *inter alia*, that the matters enumerated in the Constitution as exclusively Provincial shall be deemed to be concurrent. The effect of this change is not, however, shown in the table.

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	Canada	Australia	India	Pakistan*	Malaya	Rhodesia and Nyasaland	Nigeria	West Indies
Finance								
Foreign exchange ...			F	F	F	F	F	F
Currency and coinage ...	F	FC	F	F	F	F	F	C
Loans	FR	C	F	F	F	FR	FR	FC
Puh'ic debt	F		FR	F	F		F	
Audit			F		F	FR	FR	FC
Taxes	FR	FC	FR	FR	F	FR	FR	FCR
Banking	F	CR	F	FC	F	FC	F	C
Cheques and bills of exchange	F	C	F	F	F	F	F	C
Stock exchanges ...			F	FC	F			
Money-lending			R	R	F			
Trade, commerce and industry								
Trade	F	C	FRC	FR	F	FR	F	C
Corporations and companies	FR	CR	FR	FCR	F	FR	FR	C
Insurance			F	FC	F	FR	FR	C
Patents, trade marks, copyright	F	C	F	F	F	F	F	C
Weights and measures ...	F	C	FR	FR	F	F	F	C
Industries...			FR	FR	F	C	C	C
Mines and oilfields ...			FR	FCR	F		F	
Factories			C	R	F			
Price control			C	C	F	F		
Co-operative societies ...			R	R	F	CR		
Shipping and navigation								
Maritime	F		F	FR	F	F	F	C
Inland waterways ...	FR		FRC	R	FR	F	FR	
Ports			FC	FR	F	F	FR	
Fishing	F	CR	FR	FR	FR			CR
Communications and transport								
Roads and bridges ...			FR	R	FR	FC	FR	
Railways	FR	C	F	R	F	F	F	
Air			F	F	F	F	F	C
Regulation of traffic ...					FR	C	CR	
Carriage of passengers and goods			F		F			
Mechanical vehicles ...			C	R	F			
Posts and telecommunications	FR	FC	F	F	F	F	F	C
Broadcasting and television			F	F	F	C	FR	C
Utilities								
Water			FR	R	FR	FR	FC	
Electricity			C	R	F	C	C	
Gas			R	R	F		C	
Nuclear energy			F			F	F	C

* On 23rd September, 1959, the President of Pakistan promulgated an Order which provides, *inter alia*, that the matters enumerated in the Constitution as exclusively Provincial shall be deemed to be concurrent. The effect of this change is not, however, shown in the table.

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	Canada	*Australia*	*India*	*Pakistan**	*Malaya*	*Rhodesia and Nyasaland*	*Nigeria*	*West Indies*
Education								
Elementary and secondary	R		R	R	F	FR		
University	R		FR	R	F	F	FC	F
Teacher training ...	R		R	R	F			
Libraries			FR	FR	F			FR
Museums			FR	FR	F		F	FR
Archaeology and monuments			FCR	CR	F	F	C	
Scholarships	R	C	R	R	C			C
Medicine and health								
Hospitals and clinics ...	R		R	R	F	C		
Lunacy	R		C	R	F			
Poisons and drugs ...			FC	CR	F		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			
Social security		C	C	C	F	F		
Social welfare services ...		C			C			
Charities			C	R	F			
Women and children ...					C	C		
Vagrancy			C	R	C			
Land								
Tenure	R		R	R	R			
Prospecting			FR	R	R			
Compulsory acquisition...		C	C	R	R			C
Transfer	R		CR	R	R			
Agriculture	C		R	R	R	F*R		
Forestry			R	R	R			
Agricultural pests and diseases			R	R	F	F*R		
Agricultural loans ...			R	R	R			
Animal husbandry ...			R	R	C	F*R		
Drainage and irrigation ...				R	C	FR		
Soil erosion					C	F*R		
Local Government ...	R		R	R	R			
Fire brigades					R			
Burial and cremation grounds			R	R	R			
Pounds and cattle trespass			R	R	R	F*R		
Markets and fairs ...			R	R	R			

* On 23rd September, 1959, the President of Pakistan promulgated an Order which provides, *inter alia*, that the matters enumerated in the Constitution as exclusively Provincial shall be deemed to be concurrent. The effect of this change is not, however, shown in the table.

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Miscellaneous	*Canada*	*Australia*	*India*	*Pakistan**	*Malaya*	*Rhodesia and Nyasaland*	*Nigeria*	*West Indies*
Survey			F	F	F	C	C	
Census	F	C	F	F	F	C	C	C
Statistics; births and deaths	F	C	C	FCR	F	C	C	C
Meteorology		C	F	F	F	F	F	C
Aborigines	F				F			
Professions			C	R	F	F	C	
Holidays					FR			
Newspapers and printing			C	C	F	C		
Licensing of films ...			F	R			F	
Entertainments and sports			R	R	FR			
Wild animals and National Parks			R	R	C	F	C	
Planning (town and country, economic and social)			C	C	C	C		
Lotteries			F	R	F			
Betting and gambling ...			R	R	F			

* On 23rd September, 1959, the President of Pakistan promulgated an Order which provides, *inter alia*, that the matters enumerated in the Constitution as exclusively Provincial shall be deemed to be concurrent. The effect of this change is not, however, shown in the table.

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