against or penalise non-nationals, but to benefit nationals. Some of the Dominions have defined their own nationals, as distinguished from British subjects. A Canadian citizen has been defined as a person born in Canada who has not become an alien, a British subject who has a Canadian domicile, or a person naturalised under the laws of Canada, who has not become an alien or lost his Canadian domicile. The Canadian Nationals Act, 1921 ascribes Canadian nationality to any British subject who is a Canadian citizen, the wives of such citizens, and children born out of Canada whose fathers are Canadian citizens. The Union of South Africa also defines a Union National on similar lines. Similarly in the Irish Free State, political rights are strictly limited to citizens of the Irish Free State ; and citizenship is conferred on all persons domiciled within the Free State when the constitution took effect, if he or either parent were born in Ireland, or if he had been resident in the Free State area for 7 years.

The only proper restriction on the future Indian Government should have been not that every kind of discrimination is illegal, but that discrimination should not be made merely on racial or religious grounds.

CHAPTER XXXVI.

Administrative relations between the Federal Government and the Units.

291. " The transformation of British India from a unitary into a Federal State necessitates a complete readjustment of the relations between the Federal and Provincial Governments. The Provincial Governments are, at the present time, subordinate to the Central Government, and under a statutory obligation to obey its orders and directions, though the Central Government, and indeed, the Secretary of State himself, is bound by statutory rules not to interfere with the Provincial administration save for certain limited purposes in matters which, under the devolution rules, now fall within the transferred Provincial sphere. But now that the respective spheres of the Centre and of the Provinces will, in future, be strictly delimited, and the jurisdiction of each (except in the concurrent field) will exclude the jurisdiction of the other, a nexus of a new kind must be established between the Federation and its constituent units." (Para. 218 of the report of the J. S. C.)

The legislative and the financial nexus between the Federation and the units are discussed elsewhere. We will, here, confine ourselves to the administrative nexus.

We have already observed that a duplication of organs—legislative, executive and judicial—is an indispensable mark of federalism. It is the duty of the executive to give effect to the Federal Laws and to the decisions of the Federal Courts. The execution and administration of these laws, and the giving effect to the decisions of the Federal Court may be vested in the Federation itself, and in federal officers, subject, in the case of the States, to the terms of the Rulers' Instruments of Accession, or this may be devolved upon the Provincial Governments themselves, or their officers. Under the existing system of administration, the Central Government has habitually employed the agency of the Provincial Governments for administering a large part of its functions, and there is nothing to prevent the Federal Government of the future from employing the agency of the Provincial Governments. On the other hand it was expressly agreed at the Third Round Table Conference that there need not be a necessary breach in this method, and that, if for exercising these functions on behalf of the Federal Government, the Provincial Governments should employ additional staff, the cost thereof should be borne by the Federal Government. This is provided for in the Act.

292. But in whatever manner the Federal Government carries out its executive functions, there should be a definite obligation on the part of the units to carry out the orders of the Federal Government within the spheres in which the Federal Government is competent. The proposals under the new Constitution, based on the White Paper and the report of the Select Committee, are as follow :—

(1) There is, first of all, a general duty cast upon the units to exercise their executive authority so as to secure respect for the Federal Laws applicable to the unit, as for its own laws.

(2) With regard to the carrying into effect of the Federal Laws applicable to the units, the case of a Province is different from that of a Federated State. The differentiating features are as follow :—

The State is concerned only with such subjects in the Federal Legislative list as is accepted by the State, in its Instrument of Accession, whereas the Provinces are concerned with the entire Federal Legislative list, as well as the concurrent legislative list. In addition, there is the special responsibility of the Governor-General for the safety or tranquility of any part of India. Therefore, while in regard to a Federated State, the giving of directions by the Governor-General is confined to ensuring

(*a*) that the exercise of the authority of the State does not prejudice the exercise of the executive authority of the Federation, and

(*b*) in cases where the administration of any Federal Act has been entrusted to the Ruler of a State or to his officers, that a system of administration adequate for the purpose, is maintained,

in the case of a Province the power of issuing directions applies

(i) to subjects in the exclusively Federal field,

(ii) to subjects in the exclusively Provincial field the administration of which affects the administration of an exclusively Federal subject. Thus if a Provincial Government were so administering its Public Health and Sanitation arrangements as to interfere with arrangements regarded as essential by the Federal Government for the maintenance of quarantine in ports, the Federal Government would have the right to intervene,

(iii) to subjects in the concurrent field included in Part II of the concurrent legislative list to the extent provided for by the Federal Act on the subject. Any such clause in the Act conferring such powers should require the previous sanction of the Governor-General. The reason for confining this right only to certain subjects has been thus explained by the Joint Select Committee in para. 220 of their report :—

" The concurrent field is really a field of Provincial subjects, but Provincial subjects in which some kind of uniformity is desirable. If uniformity is to be maintained, it is necessary to have the good opinion of Provincial Governments, and the proposals must be based, not upon any sanction for their enforcement, but upon a willing co-operation. Further the Federal Legislature cannot, in legislating upon a concurrent subject, impose financial obligations on the Provinces. Whenever the Federation intends to pass a law on the concurrent field, it will, invariably, take provincial opinion, and proceed only if there is a general consensus of opinion. But, at the same time, it is necessary that one recalcitrant unit alone should not be in a position to thwart the wishes of all other units, at least in respect of the more important of the concurrent subjects. Therefore power of issuing directions for enforcing Federal legislation on the more important of the concurrent subjects is conferred on the Governor-General. This power is, of course, in addition to the power vested in the courts which will give effect to the Federal Law in opposition to any Provincial Law with which it may conflict."

(iv) to the prevention of any grave menace to the peace and tranquility of India.

The authority to issue directions to a State is the Governor-General acting, in his discretion, whereas, in the case of the Provinces it is the

Governor-General, *viz.*, the Federal Government, except where the direction is given to the Governor in the interests of peace and tranquility.

293. Now a conflict may arise between the Federal Government and a Provincial Government, and in such a case, if a Provincial Government, *viz.*, the Provincial Ministry should decline to carry out the directions of the Federal Government, the Governor of the Province, in exercise of his special responsibility " for securing the execution of orders lawfully issued by the Governor-General " would be under a duty to carry out these directions. In such a case where there is a conflict between the Federal Government and the Provincial Government, any directions to the Governor to dissent from or overrule his Ministry ought to be given in the Governor-General's discretion. The Joint Select Committee observe : " The Governor-General would thus become the arbiter between the Federal and the Provincial Governments, and we think that disputes between the two are far more likely to be settled amicably by the Governor-General's discretionary intervention. It cannot be assumed that the fault in cases of this kind will always lie with the Province ; the Federal Government may have been tactless or unwise ; and the Governor-General should not be under any constitutional obligation to take action against his better judgment, if the effect would only be to accentuate or embitter the dispute." (Para. 221.)

Similarly if a State defaulted or did not carry out a Federal obligation and the Governor-General's directions were not obeyed, the Governor-General, as Viceroy, would have the right to interfere in exercise of Paramountcy.

For purposes of analogy it may be mentioned that in certain other constitutions, as for example the German Constitution of 1919 it is expressly provided that " if a State does not carry out its obligations under the Reich Constitution, or Statutes, the President can compel it to do so with the aid of armed forces." The decision of the President could be challenged by an appeal to the Courts where the dispute relates to an interpretation of the Constitution.

No such sanction is, however, proposed in the Indian Constitution.

294. In every Federal Constitution composed of autonomous units, there should be an Authority for the decision and disposal of disputes that may arise as between the Federation and a unit, or between the units *inter se*. The disputes or differences may involve legal issues, or they may not. With regard to the former class, the obvious forum for their determination is the Federal Court, and provision has been made, as we shall see, empowering the Federal Court to decide and dispose of them.

With regard to the other class of disputes the question arises whether some machinery should not be provided in the Constitution. Further, there are certain Federal subjects such as statistics, research, broadcasting and the like which are of such a nature as to require the co-operation of the units for their efficient administration, and some provision would appear to be necessary for dealing with these matters. The Joint Select Committee observe on this point as follows :—

"At the present time the Governor-General in Council has the power to decide questions arising between two Provinces in cases where the Provinces concerned fail to arrive at an agreement, in relation to both transferred and reserved subjects ; but plainly it would be impossible to vest such a power in the Governor-General or Federal Ministry after the establishment of Provincial Autonomy, though we do not doubt that the good offices of both will always be available for the purpose. But after careful consideration we have come to the conclusion that it would be unwise to include in the new Constitution any permanent machinery for the settlement of disputes of the sort which we have in mind, and in our opinion the more prudent course would be to leave the Provinces free to develop such supplementary machinery as the future course of events may show to be desirable. There will be necessarily many subjects on which inter-Provincial consultation will be necessary, as indeed has proved to be the case even at the present time; and we consider that every effort should be made to develop a system of Inter-Provincial Conferences, at which administrative problems common to adjacent areas as well as points of difference may be discussed and adjusted. Suggestions for a formal Inter-Provincial Council have been made to us, and we draw attention in later paragraphs of our Report to a number of matters on which it is, in our view, important that the Provinces should co-ordinate their policy, in addition to the financial problem which we discuss hereafter. It is obvious that, if departments or institutions of co-ordination and research are to be maintained at the Centre in such matters as agriculture, forestry, irrigation, education and public health, and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work, the joint interest of the Provincial Governments in them must be expressed in some regular and recognised machinery of inter-governmental consultation. Moreover, we think that it will be of vital importance to establish some such machinery at the very outset of the working of the new Constitution, since it is precisely at that moment that institutions of this kind may be in most danger of falling between two stools through failing to enlist the active interest either of the Federal or the Provincial Governments, both of whom will have many other more immediate preoccupations. There is, however, much to be said for the view that

though some such machinery may be established at the outset, it cannot be expected to take its final form at that time, and that Indian opinion will be better able to form a considered judgment as to the final form which it should take after some experience in the working of the new Constitution. For this reason, we doubt whether it would be desirable to fix the Constitution of an Inter-Provincial Council by statutory provisions in the Constitution Act, but we feel strongly the desirability of taking definite action on the lines we have suggested as soon as the Provincial Autonomy provisions of the Constitution come into operation. We think further that, although the Constitution Act should not itself prescribe the machinery for this purpose it should empower His Majesty's Government to give sanction by Order in Council to such co-ordinating machinery as it may have been found desirable to establish, in order that, at the appropriate time, means may thus be available for placing these matters upon a more formal basis.

" There is, however, one subject with respect to which we are of opinion that specific provision ought to be made. The Government of India has always possessed what may be called a common law right to use and control in the public interest the water supplies of the country, and a similar right has been asserted by the legislation of more than one Province as regards the water supplies of the Province. " Water supplies " is now a Provincial subject for legislation and administration, but the Central Legislature may also legislate upon it " with regard to matters of inter-Provincial concern or affecting the relations of a Province with any other territory." Its administration in a Province is reserved to the Governor in Council, and is therefore under the ultimate control of the Secretary of State, with whom the final decision rests when claims or disputes arise between one Provincial Government and another, or between a Province and a State. This control of the Secretary of State obviously could not continue under the new Constitution, but it seems to us impossible to dispense altogether with a central authority of some kind.

The White Paper proposes to give to the Provinces exclusive legislative power in relation to " water supplies, irrigation and canals, drainage and embankments, water storage and water power," and reserves no powers of any kind to the Federal Government or Legislature. The effect of this is to give each Province complete powers over water supplies within the Province without any regard whatever to the interests of neighbouring Provinces. The Federal Court would indeed have jurisdiction to decide any dispute between two Provinces in connection with water supplies, if legal rights or interests were concerned ; but the experience of most countries has shown that rules of law based upon the

analogy of private proprietory interests in water do not afford a satisfactory basis for settling disputes between Provinces or States where the interests of the public at large in the proper use of water supplies are involved. It is unnecessary to emphasise the importance from the public point of view of the distribution of water in India, upon which not only the prosperity, but the economic existence, of large tracts depends.

"We do not think that it would be desirable, or indeed feasible, to make the control of water supplies a wholly Federal subject; but for the reasons which we have given, it seems to us that complete provincialisation might on occasion involve most unfortunate consequences. We suggest, therefore, that where a dispute arises between two units of the Federation with respect to an alleged use by one unit of its executive or legislative powers in relation to water supplies in a manner detrimental to the interests of the other, the aggrieved unit should be entitled to appeal to the Governor-General acting in his discretion, and that the Governor-General should be empowered to adjudicate on the application. We think, however, that the Governor-General, unless he thinks fit summarily to reject the application, should be required to appoint an Advisory Tribunal for the purpose of investigating and reporting upon the complaint. The Tribunal would be appointed *ad hoc*, and would be an expert body whose functions would be to furnish the Governor-General with such technical information as he might require for the purposes of his decision and to make recommendations to him. Such recommendations, though they would naturally carry great weight with the Governor-General, would not necessarily be binding on him, and he would be free to decide the dispute in such manner as he thought fit. We think also that provision should be made for excluding the jurisdiction of the Federal Court in the case of any dispute which could be referred to the Governor-General in the manner which we have suggested. We should not propose that the powers of the Governor-General should extend to a case where one unit is desirous of securing the right to make use of water supplies in the territory of another unit, but only to the case of one unit using water to the detriment of another. With this limitation we believe that the plan would be a workable one, and that it could not reasonably be regarded as inconsistent with the conception of Provincial Autonomy or with the principle that outside the Federal sphere the States' relations will be exclusively with the Crown.

"We have found occasion in later paragraphs to draw attention to the importance of the co-ordination of research in connection with the special subjects of Forestry and Irrigation. It is a matter very relevant to any consideration of the future relations between the Federal and Provincial Governments. Whatever criticisms may have been levelled in

the past against an excessive centralisation of Government in India, they can have little application to the facilities thereby created for the pooling of ideas and of methods so as to enable the whole of India to benefit from the administrative experience of every part. It would be deplorable if the establishment of Provincial Autonomy were to lead the Provinces to suppose that each could regard itself as self-sufficient, or to tempt the Centre to disinterest itself in the efforts which it has made in the past to collect and co-ordinate information for general use. If our recommendations are adopted, the existing central research institutions will remain under the exclusive control of the Federal Government, but they can only flourish if assured that the interest and support of the Provincial and States' Governments are still assured to them. The Statutory Commission made special reference to the Council of Agricultural Research, which was established as a result of the recommendations of the Royal Commission on Agriculture in India, and we agree with them in thinking that similar institutions might with advantage be established in other fields, such as Public Health and Education." (Paras. 223 to 227.)

295. The Act gives effect to these recommendations. Provision is made for resolving disputes regarding water supplies and for the setting up of an Inter-Provincial Council. In addition, in respect of Broadcasting, a Federal subject, the units have been given the right to reasonable facilities for broadcasting. The Governor-General in his discretion is constituted as the arbiter in case of disputes between the Federal Government and the units. In order to avoid the possibility of conflict by conferring concurrent jurisdiction, the Act expressly states that the Federal and other Courts shall not have jurisdiction in these matters.

CHAPTER XXXVII.

Allocation of Revenues.

296. We may start this chapter with some relevant extracts from the report of the Joint Select Committee on the general problems relating to the allocation of revenues between the Federation and the units.

General Problems.

" In any Federation the problem of the allocation of resources is necessarily one of difficulty, since two different authorities (the Government of the Federation and the Government of the Units), each with independent powers, are raising money from the same body of tax-payers. The constitutional problem is simplified if it is possible to allocate separate fields of taxation to the two authorities, but the revenues derived from such a division, even where it