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POINTS OF PROCEDURE

I. Provincial Co-operation

ACCORDING to the scheme outlined in the Cabinet Delegation's statement of May 16, 1946, the provinces will, to a large extent, be autonomous units exercising all powers except those reserved to the Union. It will, therefore, be necessary to frame the constitution in such a way as to make it acceptable to the provinces to the largest possible extent; otherwise, it may not work smoothly. For example, the Union services, such as railways, or posts and telegraphs, or broadcasting may occasionally be dislocated by strikes and the Union Government may require the assistance of the law and order authorities of the provinces. Unless the constitution is such as to commend itself to the provinces, this assistance may not be readily forthcoming and may even be completely withheld. Again, as under section 124 of the Government of India Act, 1935, so under the new constitution, the Union may find it necessary, either by agreement or by law, to confer powers and impose duties on provincial authorities: *e.g.*, to require provincial courts to try and punish offences against Union laws. Or, again, the Union may have to invoke provincial assistance to acquire land for Union purposes. What applies to the Union portion of the constitution applies with even greater force to the provincial. Hence the need for enlisting provincial co-operation as far as possible in the framing of every part of the constitution. Procedure in the Constituent Assembly and its

sections has an important part to play in this connection. Let us see what was done in other countries to secure provincial co-operation.

MODE OF VOTING

U.S.A.—In the Philadelphia Convention of 1787, which framed the Constitution of the U.S.A., the representatives of 12 States were present. The strength of the delegation varied from State to State: thus Pennsylvania sent eight delegates, any four of them being competent to represent the State; while Connecticut sent three, any one or more of them being competent to act. The final draft was signed by 39 representatives in all. Early in the proceedings, the Convention appointed a committee to draw up rules of procedure. The first of these rules, adopted as a standing order of the Convention, was as follows:

> "A House, to do business, shall consist of the Deputies of not less than seven States; *and all questions shall be decided by the greater number of these which shall be fully represented*; but a less number than seven may adjourn from day to day." (*Documentary History of the Constitution of the United States of America*, Vol. I, *p.* 51.)

It will thus be seen that each State, large or small, had one vote, decisions being by a majority of those that were fully represented. The question as to the mode of voting had been discussed among the members present while the Convention was waiting for a quorum and it had been urged by some that the large States should firmly refuse parity in this matter as unreasonable and as enabling the small States "to negative every good system of government". Ultimately, however, it was felt that such an attempt might lead to fatal altercations and that it would be easier to persuade the smaller States to give in on particular issues than to disarm them on all.

How this worked out in practice may be seen from an actual instance. On June 29, 1787, the Convention debated a proposed provision of the new constitution that each State should have an equal vote in the Upper House of the Federal Legislature. The delegates from Connecticut and the other small States supported the proposal with great ability and vehemence; the large States opposed it bitterly. When the question was put to the vote on July 2, 1787, there was a tie, the votes of five States being in the affirmative, five in the negative and one divided. The divided vote was due to the fact that Georgia, though small at the moment, was a growing State, so that one of its delegates voted "Aye" and the other "No". As the result of the tie, the Convention appointed a Compromise Committee consisting of one member from each State. The Committee recommended representation according to population for the Lower House of the Federal Legislature and an equal vote for every State in the Upper House. After several days of acrimonious discussion and the appointment of further committees, this recommendation, slightly modified as regards its first half, was adopted by the Convention by a narrow majority. It may be mentioned that at an early stage of the debate it had been proposed that one of the smaller States which happened to be absent should be specially requested to attend; but this was regarded as sharp practice and was promptly voted down. The procedure adopted and the whole course of the debate showed how every State, large or small, was given its due voice, how anything savouring of unfairness was avoided and how deadlocks were resolved by a pervading spirit of compromise.

CANADA—On the very first day of the Quebec Conference which framed the basis of the Canadian Constitution, it was proposed "that in taking the votes on all questions to be decided by the Conference, except questions of order, each province or colony, by whatever number of delegates represented, shall have one vote and that in voting Canada be

considered as two provinces". It should be remembered that at that time Canada was a single province consisting of Ontario or Upper Canada and Quebec or Lower Canada. Under the new constitution, these two halves of old Canada became separate provinces. This explains why in the matter of voting upon the new constitution Canada was considered as two provinces. In other words, what the Conference did was to give one vote to each unit of the new Union. It may further be mentioned that at the Conference, Canada (Ontario and Quebec) was represented by 12 delegates, New Brunswick by seven, Nova Scotia by five, Prince Edward Island by seven and Newfoundland by two. In spite of this unequal representation, the units were given equal voting power.

Next day (on October 11, 1864), the Conference adopted the following rules of procedure:

1. That free individual discussion and suggestion be allowed.
2. That all motions and the discussions and votes thereon be in the first place as if in committee of the whole.
3. That after question put, no discussion be allowed.
4. That each province retire for consultation after question put.
5. That after the scheme is settled in committee of the whole, all the resolutions be reconsidered as if with Speaker in the chair.
6. That just before the breaking up of the Conference, the minutes be carefully gone over and settled, with a view to determining what is to be submitted to the Imperial and provincial governments and what is to be published for general information.

Let us see how the proceedings were actually conducted by taking a concrete case. On October 19, 1864, the Conference debated a proposal that representation to the House of Commons, that is to say, the Lower House of the Federal Legislature, should be on the basis of population. Prince

Edward Island, which would have been entitled only to five members out of nearly 200 on this basis, objected; but the motion was carried, all the others voting for it. Thereupon, Haviland (for Prince Edward Island) observed: "Prince Edward Island would rather be out of the Confederation than consent to this motion. We should have no status. Only five members out of 194 would give the Island no position." Tilley (for New Brunswick) pointed out that it had been fully understood at a previous Convention at Charlottetown that representation would be on a population basis. Palmer (for Prince Edward Island) protested that there had been no such understanding at Charlottetown and that representation by population is not applicable when a certain number of provinces—some with no public debt and low taxation, others with a heavy debt and high taxation—are throwing their resources into one Confederation and giving up their own self-government and individuality. Shea (for Newfoundland) supported Tilley. Coles (for Prince Edward Island) also supported Tilley and regretted his own colleague Palmer's attitude. Gray (for Prince Edward Island) also thought that the population basis had been fully accepted at Charlottetown. Galt (for Canada) requested the Prince Edward Island delegates to reconsider their decision, observing that "it would be a matter of reproach to us that the smallest colony should leave us". Whelan (for Prince Edward Island), who had come prepared to vote with Haviland and Palmer, also suggested reconsideration. "I do not think, however, I could say that I was satisfied with the representation of five in the Federal House of Commons. We are in an isolated position. Our resources are large and our people would not be content to give up their present benefits for the representation of five members. It may be said that the Confederation will go on without Prince Edward Island and that we shall eventually be forced in. Better, however, *that* than that we should willingly go into the Confederation with that representation. But if the government

who form the delegation will take the responsibility on them, I may support them." Next day, Palmer said that he had been under a misapprehension the previous evening and that he had since been told by his colleagues from Prince Edward Island that the financial settlement would follow the discussion about representation and that the matter of representation would depend on the financial resolutions. He conceded that that might alter his position. The matter was not, however, put to the vote again and the decision already taken remained.

[The subsequent history of this affair can be briefly told. Ultimately, Prince Edward Island refused to enter the Union, and hence section 146 was inserted in the British North America Act, providing that "it shall be lawful for the Queen, by and with the advice of Her Majesty's Most Honourable Privy Council, on addresses from the Houses of the Parliament of Canada and from the Houses of the respective legislatures of the colonies or provinces of Newfoundland, Prince Edward Island and British Columbia, to admit those colonies or provinces or any of them into the Union etc. on such terms and conditions in each case as are in the addresses expressed and as the Queen thinks fit to approve, subject to the provisions of this Act etc." In 1873, forced by financial circumstances, Prince Edward Island sought and obtained admission into the Dominion with a representation of six members in the House of Commons on the ground that its population had increased since the census of 1861.]

Two points are clear from this brief account:

(1) There was complete freedom of discussion at the Conference, the delegates from the same province often taking opposite sides.

(2) The Conference was most anxious to obtain the concurrence of every unit, however small.

AUSTRALIA—At the Australian Convention, which framed the Commonwealth Act, the voting was not by States; but, as against this, it must be noted that each of the States, large or

small, had the same number of delegates, ten. There were in all five States at the Convention, two of them (New South Wales and Victoria) large, and the other three small in point of population. Thus, on the whole, the representatives of the smaller States were in a majority. The following extract from *The Annotated Constitution of the Australian Commonwealth* by Quick & Garran (*p.* 172) will serve to show that although at first the majority were inclined to rely merely on their numbers, ultimately a more accommodating spirit prevailed:

> "Then, on the 13th April (1897), commenced the last great debate on the money Bill clauses—a debate which, though it occupied but two days, was certainly the most momentous in the Convention's whole history. It established the recognition by the Convention of the fact that it was a negotiating, and not a legislative, body; that the decision of a majority of representatives within that Chamber went for nothing unless it were a decision which was acceptable to the people of all the colonies. Had that fact and its consequences not been recognised, the present prospects of federation must have been wrecked, and at the outset there seemed some danger that this might happen. Sir John Forrest, for the small States, announced cheerfully and often that 'we have a majority'; and it seemed for a time that the equal representation of the colonies in the Convention—a necessary principle in an assemblage of contracting States—would exercise an undue influence on the form of the constitution. The recognition of the fact that they must defer to the wishes of majorities outside marked the turning point of the Convention, and the entry of the really federal spirit of compromise—a spirit which thenceforward grew, slowly and steadily, through all the sittings of the Convention, and spread from the Convention to the people."

SOUTH AFRICA—In the South African Convention, the provinces were not equally represented, nor did they vote as single units; it must, however, be remembered that the Union of South Africa is not a federation, but a legislative

Union in which the provinces can hardly be said to be autonomous.

Can we adopt this mode of voting (according to which each province votes as a single unit) in our Constituent Assembly, whether at the Union level or in the sections? There will be certain difficulties: first of all, what about the Indian States? Will each of them, large or small, also vote as a single unit? If so, they will swamp the British Indian vote. There will be a similar difficulty, though not of the same order, in respect of the Chief Commissioners' provinces. These difficulties are not insuperable. For example, some such modified rule as the following may be adopted:

> "(1) On all questions relating to the provisions of the new constitution on which a division is challenged, the votes of the representatives of the provinces shall be recorded province-wise in the division lists and of the Indian States in a separate group; and the Chairman in announcing the result of the division shall announce separately—
>
> (*a*) the total number of Ayes and Noes in the ordinary way, and
>
> (*b*) the total number of Ayes and Noes among the Governors' provinces, each such province being counted as a single unit—affirmative, negative, or neutral—according to the result of the division within the province.
>
> (2) No such question shall be decided without a majority both of (*a*) and (*b*)."

This is to be without prejudice to paragraph 19 (vii) of the Cabinet Delegation's statement.

The reason for special treatment of Governors' provinces is—

(1) that unlike Indian States they have no option but to be in the Federal Union, and

(2) that unlike the Chief Commissioners' provinces they are for the most part to be autonomous.

There are other solutions possible which it is unnecessary to detail here.

FRAMING OF THE CONSTITUTION

(In two or more stages with an interval for criticism)

CANADA—The Canadian Constitution was in effect framed in two stages with an interval for provincial criticism. The resolutions of the Quebec Conference, 72 in number, were passed between October 10 and October 29, 1864. They were then submitted to the several provincial governments with a view to their being brought before the respective legislatures for acceptance. The result proved a great disappointment to the advocates of Federation. Only the legislature of one of the provinces, Canada, accepted the resolutions. The Prince Edward Island legislature openly repudiated its own delegates. All that the legislatures of Nova Scotia and New Brunswick could be induced to do was to agree to appoint new delegates " to arrange with the Imperial Government a scheme of Union which would effectually ensure just provision for the rights and interests of the provinces, each province to have an equal voice in such delegation, Upper and Lower Canada being for this purpose considered as separate provinces ". The New Brunswick legislature asked in addition for a provision for the immediate construction of the inter-colonial railway. Newfoundland definitely refused to come into the Union and is still outside. In December 1866, the new delegates of Canada, Nova Scotia and New Brunswick met at the Westminster Palace Hotel in London and reconsidered the Quebec resolutions. Certain modifications were found necessary to make them more acceptable to the several provinces. The 69 modified resolutions formed the basis of the British North America Act. In effect, therefore, the draft was prepared in two stages, first at the Quebec Conference in 1864 and then at the Westminster Palace Hotel Conference in 1866, with an interval for criticism by the provincial legislatures.

AUSTRALIA AND SOUTH AFRICA—In Australia and South Africa, the same plan was deliberately adopted from

the very start. The Australian Convention first met at Adelaide on March 23, 1897. The proceedings lasted a little more than a month and at the end a Bill was settled, which, though it did not represent the unanimous voice of the delegates, at least bore witness to a gradual rapprochement among them which promised well for the future. The next session was held at Sydney in September 1897. During the interval the Bill was considered in the various State Parliaments. The last session was held at Melbourne between January 20, 1898 and March 17, 1898 from which the Bill emerged in its final shape. Thus, ample time was given to the several States to criticise the first draft before the final form of the Bill was settled.

Similarly, in South Africa the Convention held its first session at Durban in October 1908 and then adjourned to Cape Town where it completed the first draft by the end of the first week of February 1909. The Bill was then submitted to the parliaments of the four colonies for approval. The final session was held at Bloemfontein which considered the various amendments proposed by the several parliaments; by June 1909, the new constitution had been accepted by all the four colonies.

These precedents show another way in which provincial co-operation can be secured: the drafting of the constitution must be done in two or more stages with an interval for criticism in the various provinces.

FIRST DRAFT OF PROVINCIAL CONSTITUTIONS

(*By provincial committees*)

So far as India is concerned, yet another way which suggests itself is that the initial drafting of the provincial constitutions should, where possible, be entrusted to committees of the sections consisting only of representatives of the particular

province concerned. The draft can then be considered by the section as a whole. Thus, the provincial constitution for Assam may first be drafted by the Assam representatives in section 'C' and, after an interval for criticism by the Assam legislature, the section as a whole may consider the draft and settle the final form of the Bill.

II. Choice of the Chairman

The Convention that framed the Constitution of the United States met in Philadelphia on May 25, 1787. Its first duty was to choose a presiding officer.

> "As President of the State in whose capital the Convention was meeting, as well as by virtue of his age and reputation, Franklin might have considered himself entitled to that honour. But when the session opened on the morning of the twenty-fifth with a majority of the States in attendance, Robert Morris on behalf of the Pennsylvania delegation formally proposed George Washington for President. Franklin himself was to have made the nomination, but as the weather was stormy he had not dared to venture out. No other names were offered, and the Convention proceeded at once, but formally, to ballot upon the nomination. Washington was declared to be unanimously elected, and was formally conducted to the chair by Robert Morris and John Rutledge." (*The Framing of the Constitution* by Farrand, *p.* 55.)

It must be remembered that Benjamin Franklin was at that time a very old man, 81 years of age, so feeble that all his speeches had to be read for him by his colleague, Wilson. Though highly respected, he does not appear to have taken a very prominent part in the proceedings except for a memorable observation which he made at the end while the last members were signing the completed constitution.

> "Dr. Franklin, looking towards the President's chair, at the back of which a rising sun happened to be painted, observed to a few members near him that the painters had found it difficult to distinguish in their art a rising from a setting sun. I have,

said he, often and often in the course of the session, and the vicissitudes of my hopes and fears as to its issue, looked at that behind the President without being able to tell whether it was rising or setting. But now at length I have the happiness to know that it is a rising and not a setting sun." (Farrand, *op. cit.*, *p.* 194.)

George Washington, who was chosen President, was 55 years of age at the time and at the height of his popularity. The successful outcome of the Revolution had silenced all criticism of his conduct of the war and his retirement to Mount Vernon had appealed to the popular imagination. The feeling towards him was one of devotion, almost of awe and reverence. Of his part in the making of the constitution Farrand writes:

"The parts which were taken by various men in the debates of the Convention will be partially brought out in describing the proceedings, but it seems worth while to notice one man who took no part in the discussions but whose influence is believed to have been important. That man was George Washington, the presiding officer of the Convention. His commanding presence and the respect amounting almost to awe which he inspired must have carried weight, especially in so small a gathering in the 'long-room' with the President sitting on a raised platform." (Farrand, *op. cit.*, *p.* 64.)

A striking instance of Washington's personal influence may be found in an incident which occurred towards the close of the Convention. Just before the question was to be put, upon the adoption of the completed constitution, one of the delegates said that if it was not too late, he would like to see the ratio of representation in the Lower House of the Congress changed from one for every 40,000 inhabitants to one for every 30,000 inhabitants. This suggestion had been made at an earlier stage in the Convention and had been rejected. Nevertheless, when Washington rose to put the question, he said that although he recognised the impropriety of his speaking from the chair, he felt this amendment to be of such consequence that "he could not forbear expressing his wish that the alteration proposed might take place". Not a single

objection was made and the change was then unanimously agreed to.

CANADA—The Quebec Conference met in what was then a part of the province of Canada. The Prime Minister of Canada, Sir Etienne Pascal Taché, aged 69, was elected Chairman, being proposed by Gray (Prince Edward Island) and seconded by Tilley (New Brunswick).

AUSTRALIA—Unlike the Philadelphia Convention and the Quebec Conference, the Australian Convention held its sessions in public and we have therefore a full record of what took place. The first session was held in Parliament House, Adelaide, South Australia, on Monday, March 22, 1897. The delegates met in the House of Assembly Chamber at Parliament House, Adelaide. The Clerk of the Legislative Council of Adelaide read out the various proclamations relating to the meeting of the Convention and the certificates of appointment of the representatives to the Convention for the various States. He then requested the delegates to attend at the table and sign the roll. Thereafter, Sir Joseph Abbot, a delegate from New South Wales, proposed Mr. Kingston, Premier of South Australia, for the office of President in the following terms: " It is a very pleasing duty to me to follow what has been the established precedent in reference to these Conventions. For many years past in the colonies in which they have been held, invariably the Premiers of the colonies have been chosen to preside over the meetings of the Conventions, and that is a rule there is no justification in departing from on the present occasion." Sir Graham Berry, a delegate from Victoria, seconded the nomination: " Following the precedents which have always prevailed in the Australian colonies, that the Premier of the colony in which the Convention is being held shall preside, I think the motion will be unanimously carried and that Mr. Kingston's election will meet with the approval of the delegates." There was no other nomination and accordingly Mr. Kingston was elected President.

SOUTH AFRICA—The South African Convention held its first session in Durban (Natal) on October 12, 1908. Lord (then Sir Henry) de Villiers, Chief Justice of the Cape Colony, was chosen President and ex-President Steyn of the Orange River Colony was elected Vice-President. The Chairman had the right of speaking and voting and in the event of an equality of votes he had a casting vote. In acknowledging the honour conferred upon him, he said, among other things: "Failure is certain if we start with a feeling of distrust and suspicion of each other and with the sole desire to secure as many advantages as we can for our respective political parties or our respective colonies. Success is certain if we give each other our fullest confidence and act upon the principle that, while not neglectful of the interests of those who have sent us here, we are for the time being representatives of the whole of British South Africa." (*The Inner History of the National Convention of South Africa* by Walton, *p.* 40).

III. Language to be used

The question of language arose in an acute form in the South African Convention. It was found that though all the members could follow speeches in the English language, some found a difficulty in expressing themselves in any tongue but Dutch. It was therefore arranged that Dr. Bok, the Secretary to the Prime Minister, should attend the meetings and act as interpreter. General Botha spoke almost invariably in Dutch and so did several other delegates, while some of the bilingual speakers used either the one language or the other. Whenever Dr. Bok's services were requisitioned, the speech took twice as long to deliver as when spoken in English. However, there was the best possible understanding among the members on this subject throughout the whole of the sittings and no difficulty whatever was experienced. (Walton, *op. cit.*, *pp.* 37, 38).

IV. Whether Sessions should be open or in camera

U.S.A.—The sessions of the Philadelphia Convention of 1787, which framed the Constitution of the U.S.A., were strictly secret and sentries were planted without and within the building to prevent any person from coming near. The Convention also adopted a rule that " nothing spoken in the House be printed or otherwise published or communicated without leave ". There were of course many rumours current as to what was being done in the Convention and at one stage, when serious differences of opinion threatened to disrupt the Assembly, the following inspired item of news appeared in the press: " So great is the unanimity, we hear, that prevails in the Convention upon all great federal subjects that it has been proposed to call the room in which they assemble— ' Unanimity Hall '." It is related that on one occasion quite early in the proceedings one of the members dropped his copy of the agenda on the floor and it was picked up by another delegate and handed to the President, General Washington. After the day's debate, the President rose from his seat and reprimanded the member for his carelessness: " I must entreat gentlemen to be more careful, lest our transactions get into the newspapers and disturb the public repose by premature speculations. I know not whose paper it is, but there it is (throwing it down on the table), let him who owns it take it." He then bowed and quitted the room. None dared to own the paper.

The reason for adopting this rule of secrecy was that any publication of the opinions of members " would be an obstacle to a change of them on conviction and might furnish handles to the adversaries of the result of the meeting ".

CANADA—At the Quebec Conference which framed the basis of the Canadian Constitution, correspondents representing Canadian, British and American newspapers submitted a

memorial asking for facilities to report the proceedings. The Secretary to the Conference told them in reply:

> " Whilst the members of the Conference fully appreciate the motives by which you are actuated in your communication, and are equally sensible of the deep interest naturally felt by the people of the several British North American provinces in the objects of the Conference, they cannot but feel that it is inexpedient, at the present stage of the proceedings, to furnish information which must, of necessity, be incomplete; and that no communication of their proceedings can properly be made until they are enabled definitely to report the issue of their deliberations to the governments of the respective provinces." (Pope's *Confederation Documents, p.* 11).

AUSTRALIA—On the first day of the Adelaide session, one of the members gave notice of a motion that the proceedings of the Convention be open to the public except when otherwise ordered. The motion was taken up the next day and the speeches made are reproduced below:

" Mr. Holder: I move:

> *That the proceedings of the Convention be open to the public except when otherwise ordered.*

I submit this motion, feeling assured that every member of the Convention will wish the proceedings to be as public as possible. We should take the public into our confidence at the earliest possible moment, and, while availing ourselves of the other powers in this Convention, the educative influences that will be exercised by admitting the public to this Convention will be largely promoted.

Sir Richard Baker: I second the motion.

Sir George Turner: I desire to ask whether the proceedings of the Convention will include the Convention in Committee.

Mr. Barton: Select Committee?

Sir George Turner: No; I understand that in Select Committee it would be desirable that we should discuss matters in private; but what I desire to make clear is whether, when

the Convention goes into Committee, the proceedings of the Committee as a whole should be open to the public. I think that should be so; and I wish to know if the words are sufficiently wide. If they are I shall be perfectly satisfied.

The President: I take it that the words are sufficiently wide for the Committee of the whole, but not for Select Committees.

Question resolved in the affirmative." (Official Report of the National Australian Convention Debates, Adelaide, 1897, *p.* 8).

[Of an earlier Convention at Sydney in 1891, which also decided to hold its meetings in public, Egerton remarks:

"Rightly or wrongly—rightly from the point of view of future edification, perhaps wrongly in the interests of the swift dispatch of business—it was decided that the Convention should sit with open doors, though the actual work of drafting was done informally by sub-committees."]

SOUTH AFRICA—The South African Convention copied the U.S.A. and Canadian precedents rather than the Australian.

"Unlike its Australian predecessors, the (South African) Convention sat in secret, and therefore no reference to its proceedings can be made without a breach of confidence. It is impossible to doubt the wisdom of this procedure. The questions handled were so delicate, and the feeling upon them throughout the country so divided and so acute, that it is not conceivable that an agreement could have been reached in public. It is well known that, on more occasions than one, feeling in the Convention itself ran high. Its work was only brought to a successful issue because no appeal to the gallery was possible. The public was brought to recognise that the result must in any case be a delicately balanced equipoise and, instead of being daily inflamed, was content to wait and pass a final judgment on the completed work. Thus the men who represented it were emboldened to act calmly and with courage, and with a due sense, not only of the immediate present, but of their responsibility towards future generations. As it was, and as must no doubt always be the case in such matters, much was settled outside the Convention itself. Compromises that seemed impossible

in the formal atmosphere of the Convention room settled themselves sooner or later through the medium of personal influences. This process of gradual solution, which was incessant throughout the Convention, would have been impossible in the glare of publicity." (*The Union of South Africa* by Brand, *pp.* 39-40).

V. Resignation of members, controverted elections and filling of casual vacancies

There is no provision in the Cabinet Delegation's statement of May 16, 1946 as to the manner in which a member of the Constituent Assembly may resign his seat or the circumstances or manner in which an election may be challenged or the manner in which a vacancy arising from death, resignation or other cause is to be filled. It cannot be assumed that members have an inherent right of resignation: for example, a member of the House of Commons in England has no such right, although in certain circumstances, prescribed by law, his seat is vacated. It may well be that until there is some rule providing for resignation or vacation of seat, a member once elected to the Constituent Assembly continues as such. Moreover, as the Constituent Assembly is an extra-legal body and its resolutions do not immediately affect any legal rights, it is not certain that the ordinary courts of law will have jurisdiction to entertain election disputes. It may be mentioned that the House of Commons provides for its own proper constitution, whether in the matter of filling vacancies, or determining election disputes outside the jurisdiction of the courts, or determining the right of its members to sit and vote in cases of doubt. In all these matters, therefore, the Constituent Assembly will have to make its own rules to fill any gaps.

VI. Grouping

It has sometimes been contended that freedom to opt out of a group already formed is not the same thing as freedom to

form a group and that there is therefore a conflict between what is recommended in paragraph 15 (v) of the Cabinet Delegation's statement of May 16, 1946 and what is granted in paragraph 19 (v) and (viii). The conflict, if any, is of a kind that can be reduced or removed, *inter alia*, by suitable drafting technique. For example, the new constitution, like the Government of India Act of 1935, may be framed in parts: one part, say Part I, setting out the provincial constitutions, another part, say Part II, setting out the group constitutions, and so on. As under the Government of India Act of 1935, the several parts need not come into force on the same date; it may be provided that Part I shall come into force first and that Part II shall not come into force as regards any particular province, until the legislative assembly of that province formed after the first general election held under Part I has by resolution accepted Part II. An affirmative resolution would mean that the province agrees to form the proposed group; a negative resolution would be equivalent to opting out of the proposed group. On this plan, therefore, freedom to form a group as well as freedom to opt out according to the Cabinet Delegation's statement is, in effect, secured to each province. There may be other plans possible, *e.g.*, those suggested under the heading "provincial co-operation" above; all these are matters of procedure to be discussed in due course.

VII. Interpretation

The Cabinet Delegation's statement of May 16, 1946 was not drafted with the fulness or precision of a statute. But it has come to be looked upon as a kind of fundamental law and questions of interpretation of various words or phrases used in the document are bound to arise from time to time in the Constituent Assembly. In the House of Commons, there is an officer known as the Speaker's Counsel to assist the Speaker

and the House generally in legal and quasi-judicial matters. On this analogy, the Constituent Assembly may have a special officer or tribunal of its own to assist in questions of interpretation or, if it thinks fit and if the judges of the Federal Court agree, may refer any such questions to the judges for an advisory opinion.

VIII. General Procedure

As regards general procedure, the Australian Convention adopted the standing orders and practice of the South Australian Assembly. Following this precedent, the Constituent Assembly may adopt, with suitable modifications, the rules and standing orders of the Indian Legislative Assembly.