SECRET.
C.P. 187 (27).

MEMORANDUM BY THE SECRETARY OF STATE FOR INDIA.

The Statutory Commission on Indian Constitutional Reforms.

The time has arrived when I must urgently invite the attention of my colleagues to the nature of the Commission to be set up under section 84A of the Government of India Act (which I reproduce at the end of this Memorandum), and to the date of its appointment. This Commission was an integral feature of the scheme embodied in the Act of 1919, and was intended by the framers of the constitution, as they then envisaged its future, to be but the first of a series, each following its predecessor at (presumably) similar intervals of time, and provision was made for the first alone only because it was felt to be inappropriate that the Parliament of 1919 should take it upon itself to legislate categorically for events of a more distant future. But it has for some time been open to doubt whether the business to be undertaken by this series of Commissions is the comparatively simple operation which the framers of the Act of 1919 contemplated. Their view was that "dyarchy"—that is, the system of reserved and transferred subjects and the machinery elaborated to work it—would prove a structure of durability, and that all that successive Commissions would be called upon to do—assuming that each of them found an advance to be feasible—would be to adjust the relations between the two groups of subjects, gradually adding to the "transferred" list and consequently subtracting from the "reserved," until in the fullness of time the transferred subjects comprised the whole administration, and "full responsible government" was thereby achieved. It would overburden this Memorandum were I to attempt to give the reasons which have led me to question (I need not for present purposes put it higher than that), in the light of the experience of the 64 years during which the constitution has been in operation, the soundness of this hypothesis. I content myself here with suggesting the view that the impending Commission may well find itself faced with the more formidable task of fundamental reconstruction. My only object, however, in indicating this somewhat controversial view is to emphasise the extreme importance which, in my judgment, must be attached to the character and the personnel of the Commission.

2. The purpose of this Memorandum is not to put before my colleagues a cut-and-dried scheme, but rather to indicate the various alternatives which have suggested themselves and been suggested to me in the course of preliminary consultations which I have been conducting privately with the Viceroy, and the conclusions which seem to be indicated.

3. As to the date of appointment, I have a definite proposal to make. The Act requires the Commission to be appointed "at the expiration of 10 years after" its passing—i.e. on or about 23rd December 1929. I propose, however, that the selection shall be made at once and that the announcement shall be made in India and the resolutions be introduced in both Houses of Parliament as early as possible next year. My reason for suggesting anticipation of the statutory date is not compliance with Indian clamour, which has been persistent almost since the inauguration of the new constitution. This clamour we or our predecessors have successfully parried (and to that extent have carried out the definite recommendation of the Joint Select Committee of 1919 that the 10-year period should not be curtailed), until we have now reached a point of time when the exact date—which cannot be later than 18 months hence—has naturally become a matter of comparative indifference, though the slight concession which is still possible to Indian impatience may have some small political value. My reason is that, assuming that the Commission will be able to complete its task in one cold-weather visit to India, and that the subsequent deliberations and the legislation necessary to give effect to its proposals will occupy at least another year, it is apparent that the business will not reach completion during the lifetime of the present Parliament. All that this Government can expect with certainty, therefore, as its share in controlling the business, is the appointment of the Commission and the launching it on its task. At the latest, the appointments could not be postponed beyond the spring of 1929.

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since the Commission would require some months for the preliminaries of its task. I suggest that no risks should be run, and that the Commission should begin its preliminary work in this country not later than the spring of 1928. (This will probably necessitate a slight amendment of the Act.) And once this decision is taken, I see no advantage in attempting to maintain secrecy on the point during the intervening months, and in thus forgoing such political advantages as are to be gained by an early announcement of both date and personnel, which I am anxious should if possible come from the mouth of the Viceroy in India in the first instance.

4. Now as to the character of the Commission. I stated earlier that I had no definite scheme to propound at this moment. The first point for consideration is whether any of the Commissioners should be Indians. My first strong inclination was to include Indian members, partly because I believed that the dissensions amongst themselves which would almost inevitably have been disclosed, would have been of assistance politically, and enlightening to the ignorance as to Indian conditions which persists in some quarters here, if the majority of the Commission recommended little or no advance. Also, I felt difficulty in ignoring the danger that a Commission upon which Indians themselves had no place, charged with the duty of devising an Indian constitution, would be so warmly resented in India that its proceedings might be boycotted. The Viceroy, however, though he feels no doubt that a Commission excluding Indians will be very unfavourably received, is not disposed to fear serious boycott, and I have found so strong a body of opinion, both in India and in my own Office, in favour of excluding Indians that I am not prepared to press my own opinion against those who think that the difficulties and disadvantages inherent in a Commission with Indian members are conclusive objections. Very briefly these are (i) no Commission with Indian members would ever produce a unanimous report (and I regard it as essential that no effort should be spared to provide the conditions likely to secure unanimity), (ii) the Indian members of the Commission would have to be either representative of the country, so far as this might be possible, or else a small leaven of reasonable men. If they were of the latter character, they would be repudiated by their countrymen as unrepresentative; if they were in any sense representative, they would have to be present in considerable numbers, and inevitably the representatives of other interests—e.g. those of the English commercial community and the English official—would also have to be included, and the resulting Commission would be an unwieldy, heterogeneous crowd.

5. If the premise that the Commissioners must be exclusively British be accepted, it follows, I think, inevitably that the field of choice must be confined to Peers of Parliament and Members of the House of Commons. No other method of composition would afford a logically conclusive answer to the objections that will certainly be evoked by the exclusion of Indians (for I do not think it would be seriously contended in any quarter that a Parliamentary Commission which did not include either Lord Sinha or Mr. Saklatvala, or both, was manifestly incomplete), and although Royal Commissions are not commonly manned exclusively by Members of Parliament, this is clearly not an ordinary Royal Commission, and a reasonable case can be made for a choice by Parliament of its own members to advise it on the ultimate action to be taken on this important matter. And a unanimous report by a Commission of its own members would, I think, be more likely to be adopted by Parliament with substantial unanimity—a further important desideratum—than a unanimous report by a body of "outsiders," however eminent.

The Viceroy, while representing—as I have already said—that the exclusion of Indians will be very unpopular in India, has all along been in favour of a Parliamentary Commission, and is prepared to face the unpopularity provided that members can be secured whose names will carry real weight in India and that the risk of a minority report is reduced to a minimum.

6. The exclusion of Indians, and consequently of representatives of other interests whose inclusion would be inevitable if a representative Commission were attempted, makes it possible to secure the best condition precedent to unanimity, a really small Commission. I will not dogmatise at this stage about actual numbers, but I may say that seven (including the Chairman) seems to me to be the outside limit, and less would be preferable. It has even been suggested that three would be the ideal.

7. But if Indians are to be excluded from membership of the Commission, the Viceroy feels strongly, and I am disposed to agree, that it is essential to devise some effective means of securing their partnership in its deliberations and of
enabling them to influence or even shape its decisions. Many of our difficulties arise from the fact that Indians will not accept and identify themselves with a constitution, however generous, devised and imposed \textit{ab extra}; and they have never yet had an opportunity of contributing, in a position of real responsibility for the results, towards constitution-building. Several suggestions have been made to me with this object: (a) One is the association of Indians with the Commission as Assessors to assist in the examination of witnesses and to deliberate with the members of the Commission, but to have no hand, of course, in framing the report. This is a proposal of the Viceroy’s which I think we shall have to approve in any case; but by itself it will only emphasise the inferiority of the Indian status, and if Indian aspirations are to be satisfied it will need to be supplemented by some further device such as the following:—(b) That the Commission’s report should be laid before a Select Committee of both Chambers of the Indian Legislature before being presented to Parliament, and that Parliament should receive, along with the Commission’s report, the report of that Committee upon it. This suggestion has obvious attractions, but the great disadvantage that it may involve separate British and Indian reports. (c) This disadvantage could be avoided if, for the preliminary discussion of the Report by a Select Committee of the Indian Legislature, there were substituted a discussion of the Bill based on the Report, at a joint session of the Select Committee of Parliament and a Select Committee of the Indian Legislature sent home for the purpose. This would give to the only \textit{constitutional} representatives of India the widest opportunity of arguing their case before the Imperial Parliament, the final judges of the question; and moreover might have a sentimental appeal to Indians. All parties in the Indian Legislature (including the officials of Government) would be represented, and since it would be realised that Indian political capacity was on trial, the ablest and most moderate members of the two Chambers would be sent. It has been argued that discussion at this final stage, when “firm” offers can be made, away from the heated political atmosphere of India, offers the best hope of an agreed solution. It is not proposed of course that motions should be voted on at the Joint Session.

Two other suggestions made to me involve recognition of the demand by Indians for “a round-table conference.” (d) The first of these would require the Indian Legislature to appoint a convention to draw up a constitution to be submitted to the Commission and discussed in joint conference, it being understood that if the Commission were satisfied that the convention was really representative and that its scheme would in fact be accepted by all the interests involved, the Commission would approve it without alteration of substance. I see great objections to this proposal, and I do not gather that it has recommended itself to the Viceroy. (e) The second is that after the Commission has reported, its report should be placed before a round-table conference of all Indian parties and of representatives of the Government of India and His Majesty’s Government with the object of negotiating an agreed scheme to be put before Parliament.

I have not yet received the final opinion of the Viceroy, and I express no decided view at present on the feasibility of any of these plans or as to their relative merits. But I think that, if something of the kind can be devised, it is most desirable that the intention to adopt it and to make it an essential part of the procedure should be announced simultaneously with the announcement of the appointment of the Commission. I must emphasise this because I think it is generally recognised that the psychological factor is at least as important as any other in the present Indian political situation. If we can get rid of the “inferiority complex” at the start we shall not only avoid the risk of a boycott, but we shall have gone some way towards inducing a frame of mind in which “politically-minded” Indians will eventually accept a constitution falling far short of their extreme demands.

I cannot invite the Cabinet to reach a conclusion upon all the points raised in this Memorandum, but my colleagues ought, I think, to decide at once whether the Commission is to be Parliamentary or not. And equally they ought to decide as to the personnel. I have not dealt with this branch of the subject, for reasons which will be readily understood, in my foregoing observations.
ANNEXURE.

SECTION 84A, GOVERNMENT OF INDIA ACT.

(1) At the expiration of ten years after the passing of the Government of India Act, 1919, the Secretary of State, with the concurrence of both Houses of Parliament, shall submit for the approval of His Majesty the names of persons to act as a commission for the purposes of this section.

(2) The persons whose names are so submitted, if approved by His Majesty, shall be a commission for the purpose of inquiring into the working of the system of government, the growth of education, and the development of representative institutions, in British India, and matters connected therewith, and the commission shall report as to whether and to what extent it is desirable to establish the principle of responsible government, or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chambers of the local legislatures is or is not desirable.

(3) The commission shall also inquire into and report on any other matter affecting British India and the provinces which may be referred to the commission by His Majesty.