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PRINCIPLES OF CIVIL GOVERNMENT

(PART I)



PRINCIPLES OF CIVIL GOVERNMENT

PART II

AN INTRODUCTION TO THE SCIENCE OF ECONOMICS

BY

SACHIN SEN, M.A., B.L.

PRINCIPLES

OF

CIVIL GOVERNMENT

(PART ONE)

AN INTRODUCTION TO THE SCIENCE OF POLITICS

(Fundamental, Illustrative and Operative)

•

BY

AKSHAYA K. GHOSE

Of the Inner Temple, Esquire, Barrister-at-Law; Sometime Professor of English Literature, History, Political Philosophy and Law in the Bangabasi College, and of Law in the Ripon College; and Lecturer in the University of Calcutta on Public Administration in India etc.

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TO

THE MEMORY OF

SIR ASUTOSH MOOKERJI

who, with the genius of an eminent administrator,
represented in himself
the best of Modern Scholarship
ennobled by the highest traditions of Hindu Culture,
and
whose untiring activity
in the cause of
University Education and University Freedom
has been and shall be
an example and a source of inspiration
to us all
and
to generations yet unborn.

PREFACE

Civics has become so popular a subject of study of the *alumni* of the Indian Universities that the need of an adequate treatise on it covering the fundamental and functional principles of Government has long been keenly felt. In the following pages an attempt has been made to meet that want. It is for the teachers and the taught now to say how far they meet with their approval.

Having regard to the fact that the subject of engrossing constitutional interest in India at the present moment is the problem of federation, practically all the leading federal constitutions have been described in Book II under the title of "Types of Government", in which are also described what is the model of all modern constitutions, namely the English constitution, and also its oriental replica, the Japanese constitution. The Egyptian constitution comes in handy as the newest model devised by England.

Apart, however, from the fact that the chapter on the English Constitution had already been printed off, the latest departure on the part of a certain section of the members of the present English Cabinet from the time-honoured principle of the collective responsibility of Ministers has not been noticed in the present volume. A section of the Cabinet, namely the liberal section, headed by Sir Herbert Samuel, the Home Secretary, agreed to differ from their colleagues in the ministry. The departure cannot be said to have yet received the sanction either of usage or of expediency so as to be recognised as a principle in supersession of the inflexible rule of the English constitution, namely, the collective responsibility of Ministers. It was thought therefore, that the young mind should not be needlessly taxed or puzzled by any statement of the propositions so hopelessly conflicting with each other and so clearly damaging to the cardinal rule of the "Unity of the Cabinet" which is the strength and the very foundation of the English political system,—the Cabinet as well as the party.

There is another point of great constitutional importance which has been overlooked. It is still under discussion and it remains to be seen whether it gives rise to fiercer political struggles than the Home Rule movement, or the point given in. It is the Irish determination to delete from the Free State constitution the Oath of Allegiance to the Sovereign. What the effect of the elimination, if it is carried out at all, will be, it is difficult to say or suggest now. The matter has not advanced far enough. If effected its repercussion may have a far-

reaching consequence in other parts of the British Commonwealth, such as Canada and South Africa, and perhaps in Australia too, if not a remote future. When the student has advanced further in his constitutional and political studies he will judge these questions for himself.

In describing the general organisation of the Government of India I have dwelt, it will be seen, more upon the operative than upon the constitutional aspect of the administration, with a view to let the reader have a peep into the working of that organisation.

I need hardly mention that this book does not in any way pretend to be a rival to any existing work on the subject, though, I am not aware of any single volume which covers exactly the topics dealt with in this, or has approached them from exactly the same standpoint. On the subject of Political Science, or on the different types of government, or on the organisation of the Government of India, there are no doubt some excellent, indeed remarkable, books a select list of which is appended at the end. And if the standpoint from which the subject of Civics and Political Science is presented is appreciated by those in whose hands it may find its way I shall consider my labours well-rewarded.

To Mr. Phanindra Mohan Lahiri, M.A., B.L., Professor of History in the Asutosh College, I am deeply indebted. The ready and cheerful assistance that he and Mr. Anil Chander Mitra of the Hare School have given me in the preparation of the index has been most helpful.

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A. K. Ghose.

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INTRODUCTORY

Nature and Scope of Political Science and Civics

History without Political Science has no fruit:
Political Science without History has no root.

This is the couplet with which Professor Seeley introduces us to the subject of Political Science of which Civics only forms a part. It is that part of Political Science which deals with the rights and duties of citizens. It is a subject of deep and earnest study. Political science deals with society solely from its organised standpoint. Society here is to be considered as an effective organisation under a supreme authority for the maintenance of an orderly and progressive existence. The society which we are considering as effectively organised is what is known as the body politic. It is a social body under a political organisation. Political science moreover considers (1) the causes, (2) the purposes, (3) the limits, and (4) the method of the influence of government on human conduct. Being a formal science, a part of the social science, it does not answer such questions as (1) what is the use of a Parliament? or, (2) what laws should Parliament make? or, (3) what are the concerns Parliament should leave alone? or, (4) should it restrict the traffic in liquor? These are the topics of material science. In this sense jurisprudence or the science of Law may be said to be a part of Political science. A legislator is a better legislator when he brings a competent knowledge of Political science to bear upon his duties. Jurists are agreed that legislation is the Art which corresponds to the science of Politics and that jurisprudence is a department of Politics.

Scope of Political Science.

Topics for its consideration.

Jurisprudence and Political Science.

The science of Politics is not simply political, it is ethical also. By it the *moralist* is aided because the science marks the stages of political growth by crystallising political ideas. The purpose of a governmental action being one of the principal subjects of its concern it explains and arranges it. The advantage of taking a precise view is evidenced by the dispute into which England plunged with America in 1773 as to the "right" of the British Parliament to tax the colonies. Legally perhaps, that right existed; but the Americans in denying the "right" were appealing not to law but to political ethics. In that view again it is a science derived

Politics involves ethics also.

America fought on ethical principles not on legal.

from the observation of the customs, traditions, thoughts and practices, not of one but of several countries. They are the materials upon which the science is built.

Politics as a Scientific study began with the Greeks.

As a matter of systematic study, political science began with the Greeks. So far as Europe was concerned, "it was in Greece", says Bluntschli, "that the self-consciousness of man first unfolded itself in art and philosophy," and "so it was in politics".[1] Hence from the European point of view it is with the City States that political science as such begins. Relying upon such assumption Prof. Seeley lets himself fall into an error when he makes the assertion that representative institutions are a modern discovery and handed down from the Greeks and the Romans. "One of the most fundamental facts," says Sir John Seeley, "that I have to put before you is, that whereas both personal Government and Government by majority are found in antiquity as well as in modern States, on the other hand the representative system was scarcely known to the ancient world".[2] With great respect to the learned Professor it may be submitted that this is not true history. The testimony of Sir Henry Maine who must be acknowledged to have left a more undying impression both upon historical jurisprudence and upon Political Science viewed from the standpoint of history, cannot be lightly brushed aside and is entitled to the highest respect. "The families" Maine observes, "within the village or township seem to be bound together through their representative heads" forming a village council which was "always viewed as a representative body, and not as a body possessing inherent authority," but having an "essentially representative character"[3] of its own. Sir Henry Maine goes further when he directs our attention to the fact that the Political Science of the Greeks is to be deduced and gathered from a few books, while that of India still survives. Ancient Indian organisations may be studied to greater advantage and perfection by reference to contemporary institutions. "We take a number of contemporary facts," records the same distinguished authority, "ideas and customs, and we infer the past form of these facts, ideas and customs not only from historical records of that past form, but from examples of it which have not yet died out of the world and are still to be found in it. When in truth we have to some extent succeeded

It begins with the City States.

View of Prof. Seeley.

Maine the highest authority on historical jurisprudence.

Result of Maine's epoch-making researches.

[1] The State. Ch. III. p. 34.

[2] Introduction to Political Science. p. 158.

[3] Sir H. Maine—Village Communities. Lec. IV.

in freeing ourselves from that limited conception of the world and mankind, beyond which the most civilised societies and (I will add) some of the greatest thinkers do not always rise; when we gain something like an adequate idea of the vastness and variety of the phenomena of human society; when in particular we have learned not to exclude from our view of the earth and man, those great and unexplored regions which we vaguely term the East, we find it to be not wholly a conceit or a paradox to say that the distinction between the Present and the Past disappears. Sometimes the Past is the Present; much more often it is removed from it by varying distances, which, however, cannot be estimated or expressed chronologically. Direct observation comes thus to the aid of historical enquiry, and historical enquiry to the help of direct observation".[1] It looks as though Sir Henry Maine had anticipated Sir John Seeley and prescribed an effective answer to his theory. In Greece the Past is Past; in India the Past *is* Present.

Seeley's theory discounted.

Man can be considered only in relation to the company he keeps, but more properly in relation to the society to which he belongs. And when we come to consider him as such, that is to say, as a member of a society, and of a particular society, we come face to face with that branch of science called sociology. When it is further indicated that that society has supreme authority over its members, we cannot help considering him as a citizen, and perhaps more accurately, as a citizen in his relations to the State. We are then right in the midst of Political science for, it should not be forgotten that the idea of the State includes the foundation and general Constitution of it. It is then perfected by the formation of a government with regulations for its administration and enunciation of the principles and methods by which its legislation should be guided.

Political science a branch of Sociology.

State, constitution and government.

[1] Village Communities, pp. 6 and 7.

BOOK I
ESSENTIALS OF CIVIL GOVERNMENT

PRINCIPLES OF CIVIL GOVERNMENT

CHAPTER I

Primitive Institutions

(*a*) THE FAMILY

Having now taken a view of the subject of our study we may proceed to enquire into the steps which precede the formation and acquisition of citizenship. First in order, comes the *Family*.

"The origin of Government", says Woodrow Wilson, "is intimately connected with the early history of the family."[1] Families were the primitive States, and historically stated, our idea of a modern State is no other than our idea of an enlarged *Family*, so that, it has been well-said that "State" is Family writ large.

Early origin of States is in the Family.

When men first began to live together, kinship was their only bond of union. All strangers were regarded as enemies, and only relatives as friends. But the tie of kinship, as was natural, inevitably grew weaker as time passed. The reason is obvious. It is difficult to trace a long descent from a common ancestor. The difficulty however, is got over by a fictitious extension of the idea of kinship. The family is a body of persons who live in one house or under one head, including parents, children, servants and other dependants. It follows therefore, that the term includes those descended, or claiming descent from a common ancestor, though in a wider sense it means a race, a people, or group of peoples assumed to be descended from a common stock. Those who are subject to a common head were regarded as kinsmen. Thus in the earliest historical times, society appears as an aggregate of families, composed of men related together by subjection to a common ancestor, and performance of common sacrificial rites. The individual seems to be merged in the family. He has no personal rights and can own no property. The history of society therefore, is the history of the disintegration of the family and the development of individual rights.

Kinship the bond of union.

What is family?

Common attributes of family.

Since the fundamental basis of all such organisations as Tribe, Nation, Empire, State, whether City or Nation or World State, Society, Commonwealth, Village, Government and People is the family, we might go a little more fully into the composition and functions of the family Husband, wife and child, born in wedlock or legally adopted

Fundamental basis of all social organisations.

[1] Woodrow Wilson. State p. 3

formed the original family which continued to increase, or be added to, as grand-children and great grand-children were born. Upon their marriage daughters became members of the family into which they were married, and ceased to be members of the family in which they were born. Succession established itself through male descendants in the direct line. The government of the family vested in the father in whose absence its eldest male member became the common father, then called the *Patriarch*. The territory of the Family was the family dwelling house. It was their castle. Separation took place with the multiplication of members and when they outgrew the family dwelling house. The separated families, each one of which was a family in the best sense of the term, claimed descent from one ancestor and bound together by ancestor-worship. As there was the family Dharma so there was the family duty. Peace, comfort and mutual trust reigned in the family, and between it and the connected branches, so that cheating, robbery, rape or murder within the family itself was unknown. Morality was restricted within the limits of the Family, individual and allied. The separated families when aggregated for mutual benefit and mutual protection were called a *Clan* or as in Rome, a *Gens*.

The Patriarchal family.

Family dharma and family duty.

The entire idea of the family therefore, develops itself into the Patriarchal Family defined by Sir Henry Maine, as "a group of men and women, children and slaves, of animate and inanimate property, all connected together by common subjection to the Paternal Power of the chief of the household." The definition is a complete one though attempted by Dr. Annie Besant to be amplified for further classification. She describes the family as "a group, originally consisting of husband, wife, child, and developing by multiplication and adoption into a group of men, women and children, with common movable and immovable property, all united in obedience to the eldest male descendant of a common paternal ancestor, dividing the family work for the promotion of family happiness and prosperity." The Patriarchal family, therefore, has three distinct characteristics, (a) a common ancestry, (b) through a direct male line, and (c) the ruling authority in it is that of the eldest living male ascendant. These are the characteristics of the Patriarchal Family as found in the early annals of India. Nor can it be said that those of Rome and Greece were otherwise. They too originated, if words of history are to be relied upon, in the patriarchal family, in support of which Woodrow Wilson observes that the "Roman Law, that prolific mother of

Definition of the Patriarchal Family of Maine.

Mrs. Besant's definition.

Woodrow Wilson on the family characteristics.

modern legal ideas and practices has this descent from the time when the father of the family ruled as the King and the high priest of his little State impressed upon every feature of it. Greek institutions speak hardly less distinctly of a similar descent."[1]

As in course of time the tie of kinship grew looser the tie of local contiguity grew firmer under the influence of which land tended to become the basis of society instead of kin, without destroying the distinctions between families. Men lived together because they cultivated land in common. They cultivated it not as individuals but as members of a family. In the process, several stages could be traced, although no limit of time could be assigned to each.

Kinship and contiguity.

The earliest stage seems to be that of the "Joint Family", which is a number of families living together under a common ancestor, and sharing everything in common,—mess, residence, worship and estate. "From very early times," observes a most competent writer on Ancient Hindu Polity, Dr. P. N. Banerjea, "the reverence for family ties was firmly established and held sacred in India. The family was like a small communistic society bound together by the tie of natural affection, holding in joint possession the means of production, and enjoying the fruits of labour in common. All acquisitions were joint property, and all expenses were paid out of the common fund. The Joint Family was, in fact, very similar to the *Societas universonum bonorum* of the Romans. The father was the head and protector of the family. But just as the dependent members owed their duties to the father, so the father was bound by obligations to the rest of the family. Unlike Roman *paterfamilias,* the father of the Indian family had no powers of life and death over the subordinate members. The family was not his property. Every individual member of the family had a *locus standi* in the law courts and the other departments of the State; and the government could, if it thought fit, deal direct with every member of the family without the intervention of the head. As regards the family property the father was the manager, rather than the owner of it. The family collectively was the owner, and the father had powers to deal with it only as the representative of the family; but even here, his powers were not unlimited. The members of the family were the father, the mother, sons, daughters, daughters-in-law, brothers, sisters, and other dependent relations."[2]

The Joint Family.

Testimony of Dr. Banerjea.

(*b*) THE TRIBE

Now that we have had a clear idea of what a Family is, we may proceed to the next stage of its growth and aggregation into what is

[1] The State p. 5.

[2] Dr. P. N. Banerjea. Public Administration in Ancient India. Ch. II. pp. 24, 25.

termed a *Clan*. "The history of the city of Rome," observes Professor Seeley, "shows us that the nucleus of it was composed of a number of primitive clans living each in its separate settlement, but side by side, for the oldest districts of the city have the names of the ancient patrician *gentes*. In short, a number of indications concur to show that Rome,—though in the time of Cicero the fact had been quite forgotten,—first took shape as a League of cognate but distinct clans, each clan being a conventional family, into which admission could only be procured through the fiction of adoption." In his discussion of the conception of the "State" Bluntschli is more precise in his definition of what constitutes a *tribe*. "A family, a clan," he says, "like the House of the Hebrew patriarch, Jacob, can become the nucleus round which, in time, a greater number gathers, but a real State cannot be formed until that has happened, until the single family has broken up into a series of families, and kindred has become extended to the race. The horde is not yet a tribe. Without a Tribe, or, at a higher stage of Civilization, without a Nation, there is no State." It is to Bluntschli again that we owe our idea of the fact that a Tribe is no more than a division of a "People." Tribe is a group of persons forming a community and claiming descent from a common ancestor. This definition is gathered from the fact that each of the twelve divisions of the people of Israel, claimed their descent from the twelve sons of Jacob. The ten *tribes* of Israel which revolted from the House of David, left only Judah and Benjamin to the kingdom of Judah. The history after their deportation by Shalmanesser is lost, and they are often referred to as the *Lost tribes* whose identification in remote regions has been a matter of deep speculation. It is a particular race of recognised ancestry. It is the inner difference of a people resulting in sections which lie at the root of formation of tribes. They maintain their separate existence and keep alive the differences by which the character of the people is moulded or influenced. The ancient constitution of the Germans, as of the Indians, was nothing but an organisation of tribes, among whom differences existed. This fact is used by opponents of national development in both countries as tending to create a permanent breach among them. It is asserted moreover that it renders union for political purposes and formation of nationhood impossible. Here we need only bear in mind that in Roman history it indicated one of the traditional three political divisions or patrician orders of ancient Rome. These three political divisions later developed into 30 political divisions of the Roman people instituted by Servius

Development of family into clan.

Clan in Rome.

The Hebrew clan.

Tribe defined.

Formation of tribes.

Tullius, and that in B. C. 241, they were increased to 35. In Irish history we have families or communities of persons bearing the same surname. It is therefore, a race of people applied to a primary aggregate of people in a primitive or barbarous condition, under a headman or chief. We will see later how the tribe furnishes the starting point for the formation of a nation and therefore of a State.

Tribes may be formed in spite of differences.

(c) THE VILLAGE

A noble heritage of the Hindus from their noble forefathers is the *village system or community*. All the men of a tribe gathered together and lived in the village which they sometimes fortified. Each village carried on its own affairs by itself. By a "village" is meant a group of separate homesteads, which is called a *para* or *Mahalla*. The groups are small, and separated by the cultivated and waste lands held by each. Each has a chief, and in a tract of one or two square miles there may be as many as a hundred villages, each on an average containing no more than nine or ten huts or cottages, with four or five persons in each dwelling. In fact the four chief characteristics of the early village community, in the East as in the West, have been kinship of all members, government by a council and a headman, community of land and common worship. It is a collection of dwelling houses and other buildings, forming a centre of habitation in a country district. An inhabited place larger than a hamlet and smaller than a town, and having a simpler organisation and administration than the latter. There was a leader or headman of every village, and several villages constituted a tribe or clan, and each union or clan was under the King. The kings were generally hereditary, and led the armies in war, and obtained the spoils. They presided over the discussions on public affairs, and social games and amusements. The village system of India remained almost intact from its very foundation down to the Mahomedan invasions of the country. And this system has been described by Dr. Banerjea as the one in which "the villagers themselves managed the simple affairs of the village; but the States being small, there was hardly any distinction between the Central and the Local Government. In course of time, however, it was found necessary to have a separate organisation for the management of local affairs; and as the States grew larger and larger in size, the distinction between the two kinds of

The village community of the Hindus.

Characteristics of a village.

Tribal kings were hereditary.

Functions of village communities.

governmental activity became more and more marked."[1] Thus we see that practically independent of the central control the villages were completely self-governing, having the power to elect their own headmen and appoint other officials, all of whom were accountable to the community, or more properly to the representatives of the villagers who formed the community. And when to this is added the assertion of Sir Henry Maine that, "the families within the village or township seem to be housed together through their representative heads,"[2] the protest of Professor Seeley that "the representative system was scarcely known to the ancient world"[3] appears to be lacking in historical foundation and opposed to historical truth.

Communities were independent of any control.

In the early stage of the progress of the Hindus as in the case of other migrative nations, it was impossible for single individuals to clear the forests for cultivation and to defend their fields, their most valuable property, against the attacks of enemies or wild beasts. There was no capital available to procure the services of others either. Unless the undertaker had a numerous body of kindreds, he was obliged to call in associates who were to share in the profits of the settlement. Hence came the formation of the village communities and the division of lands into townships. The undivided land must no doubt have belonged to the king. Instead of transferring it to the cultivators for a price paid once for all, or, for a fixed annual rental, the king reserved a certain proportion of the produce while the rest belonged to the community of settlers. The homogeneity of the village system was destroyed partly by the influence of labourers who cultivated these lands which the original settlers were unable to do, and partly by the subdivisions of the properties according to the laws of inheritance, and lastly by the Rayatwari system of land tenure introduced into India by the Marquis of Hastings in 1816, which divided portions of the country into plots which were assigned to the peasant at a rent, re-assessed at intervals. But for these circumstances the village community would probably have remained unchanged.

Formation of townships.

The testimony, however, of Sir Charles Metcalfe in whose time the village communities in India were still existing and operating in full vigour is worth a careful perusal by every student of history and political science. In his famous minute submitted to the Select Committee of the House of Commons in 1832, the great liberator of the Indian Press said: "The village communities

Sir Charles Metcalfe on the potentialities of the village community.

[1] Ibid. Ch. XX. p. 289.

[2] Vill. Comm. Lec. IV. p. 117.

[3] Pol. Sci. Lec. VIII. p. 158.

are little republics, having nearly everything they can want within themselves, and almost independent of any foreign relations. They seem to last where nothing else lasts. Dynasty after dynasty tumbles down; revolution succeeds revolution; Hindoo, Pathan, Moghul, Mahratta, Sikh and English are all masters in turn; but the village community remains the same. In times of trouble they arm and fortify themselves; an hostile army passes through the country: the village communities collect their cattle within their walls, and let the enemy pass unprovoked. If plunder and devastation is directed against themselves and the force employed be irresistible, they flee to friendly villages at a distance, but, when the storm has passed over, they return and resume their occupations. If a country remains for a series of years the scene of continued pillage and massacre so that the villages cannot be inhabited, the scattered villagers nevertheless return whenever the power of peaceable possession revives. A generation may pass away, but the succeeding generation will return. The sons will take the places of their fathers; the same site for the village, the same positions for the houses, the same lands will be re-occupied by the descendants of those who were driven out when the village was depopulated; and it is not a trifling matter that will drive them out, for they will not often maintain their post through times of disturbance and convulsion, and acquire strength sufficient to resist pillage and oppression with success. This union of the village communities, each one forming a separate little estate in itself, has, I conceive, contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of freedom and independence."[1] It is a valuable testimony and truly depicts what the village community was and what its usefulness and activities were.

(*d*) THE SOCIETY

Biologically man is a "social animal" whose temperamental difference with other animals, all of a lower order, prompts him to keep himself away from them, and in company of his own kind. The conjugal, parental, filial, fraternal, and other strictly family ties and affections constitute the primary form of human society. And when the question is asked, why is it that they differ from what is similar or analogous among brute animals, we need not be at a loss for an answer. The answer is simple. It is because of possession of Reason by mankind. It is an advantage over brute

Characteristics of man different from those of the animal world.

[1] Sir Charles Metcalfe's Minute on Report of the Select Committee of the House of Commons. 1832, Vol. III, appendix 84, p. 331.

creation which we have. The existence of reason is the proof that we enjoy liberty of choice. If we had not been accustomed to judge and choose, reason could not have been developed within us, for that power comes from experience alone. It is therefore an advantage we have over brute creation. He prefers to be in the midst of other men just as much as the beast prefers and feels happier in the midst of beasts of his own order

Man's advantage over the brute creation.

But there is this difference, also temperamental, between the two. The beast is selfish; the "social animal" is, we do not say selfless, at any rate unselfish or liberal. When the feeding time comes the beast would snarl and growl if any should approach its food, no matter who it is, even if it should be its own progeny. The history and conduct of man tells a different story.

Animal is selfish, man unselfish.

The dependence and wants of the weaker members on that primary society, give rise to government, i. e., the paramount authority of the man, as husband and father; the authority of parents, for nurture and rearing of offspring. Thus, every human being is, from birth, subject to control of government—*a domestic government.* As a natural development, Primary Society grows into that union of individuals and of families known as Civil Society. In other words it is a development of Man's characteristic social nature in a truer sense than primary or family society is. Man needs society as much for his own benefit as for that of his fellowmen. His ideas do not expand except in their company. His sentiments become finer only in contact with his own kind. His language develops amongst his equals and indeed is said to be the "result of the social instinct, the desire to communicate with others." A perennial source of relief and comfort is the communication of his emotions, whether of pain or of pleasure, to another or others, who share his sorrows and delight in his happiness. They do it because they are also "social animals," liberal and generous and sympathetic. Sympathy, friendship, love and fellow-feeling and all those virtues which render life happy and enjoyable are the result of man's contact with each other and one another. These are moreover virtues, like loyalty, capable of being conceived and acquired by the highest order of animals, not the lowest. The cruel form of punishment of solitary confinement is known to have often driven a man *mad*, never an animal of the lower order. In all places, and at all times, man seeks comrades and companions. He dislikes loneliness, so that as Lord Morley puts it, "the recorded experience of mankind, the ground and origin of society is not a compact; that never existed in any known case, and never was a condition of obligation either in primitive or developed societies, either between

Origin of government.

The Civil Society.

Virtues of man.

subjects and sovereign, or between the equal members of a sovereign body. The true ground is the acceptance of conditions which came into existence by the sociability inherent in man, and were developed by man's spontaneous search after convenience."[1] And it is in that view that every society is regarded to be established for some good purpose, for, as Aristotle says since, "an apparent good is the spring of all human actions—it is evident that this is the principle upon which they are, every one, founded, and this is more especially true of that which has for its object the best possible, and is itself the most excellent, and comprehends all the rest. Now this is called a city, and the society thereof a political Society."[2] In the larger sense of the term therefore, the idea of society is deeply rooted in the nature of man. He cannot rise to his full height without society and except in society. His customs, traditions, habits, institutions, religions, castes, communities, cultures and even prejudices have all their origin in his society. They have to be interpreted and viewed with reference to his society so that the definition of society given by Leacock as a "term having no territorial occupation" and referring "to man alone, and not to his environment" and having its application "to all human communities, whether organised or unorganised," must be taken to be incomplete and perhaps inaccurate. Man by himself is only a biological term. He becomes a "social animal" in the environments of his society. It is this environment which completes his society and makes him a full social animal. It is unthinkable moreover that a 'community' properly so-called can be 'unorganised'. A crowd has the least qualification to be dignified by the appellation of a 'community' so long as it is in an unorganised State. But Mr. Leacock corrects his definition of Society when he states that "it suggests not only the political relations by which men are bound together, but the whole range of human relations and activities. The study of Society involves the study of man's religion, of domestic institutions, industrial activities, education, crime etc.", in fact all that is included under the head of Social Science. In other words, Man may be said to belong to a group of human beings who have, without any extraneous compulsion, desired and established association with one another for a common purpose, agreeing to be governed by a set of rules styled laws to regulate their inter-communal conduct. But kinship remains the foundation-stone of society and family, and as Aristotle

Society exists for good purpose.

Society the culture ground of traditions.

Community organised, crowd unorganised.

Regulation of Man's conduct.

[1] Morley. Rousseau. II p. 183.

[2] Aristotle Politics. Book 1. ch. 1

saw, was the ultimate basis of civilised society. Society therefore, is an aggregate of men living together and united by mutual interests and relationship, and the consciousness of this common interest and aims. These are the characteristics which distinguish it from the animal group.

From these considerations it is evident that Society is no other than the State or condition of living in association, company or intercourse with others of the same species; the system or mode of life adopted by a body of individuals for the purpose of harmonious co-existence, or for mutual benefit, such as defence. It is therefore, the state or condition of being politically confederated or allied; in other words, it is a confederation in which a number of persons are associated together by some common interests or purposes united by a common vow, holding the same belief or opinion and living under the same organisation or government. It is a commonwealth for the common doing of a multitude of freemen.

Man's society a political confederation.

(e) THE PEOPLE

"Peoples and Nations" says Prof. Bluntschli, "are the products of history." It is a slow process of development and expansion through which a mass of men have to pass before they may be said to have succeeded in perfecting a type of life and society which make them a distinct group from the rest of mankind. When they have made that type their own, for purposes of adoption and inheritance, they are called a '*People*.' The learned Professor makes our idea of People clearer when he says that "a mere arbitrary combination or collection of men has never given rise to a People. Even the voluntary agreement and social contract of a number of persons cannot create one. To form a People, the experiences and fortunes of several generations must co-operate, and its permanence is never secured until a succession of families handing down its accumulated culture from generation to generation has made its characteristics hereditary."[1] This leads us to a consideration of what may these characteristics be. They are no other than a common civilisation, a common culture and a common spirit, a common desire of cohesion between themselves and of separation from other peoples. It is therefore, a union of groups or masses of men who may or may not be ethnically or politically united, but bound together by a common spirit, common interests and common aspirations, and especially by language and customs which

Slow development of mankind into 'People.'

Process of formation of the 'People.'

Their common characteristics.

[1] Bluntschli. State. II., iii., 86, 87.

give them a sense of unity and distinction from all foreigners, irrespective of the bond or the government of the State. The Slavs, the Germans, the Greeks, the Moslems are to be found scattered among different nations, yet there is a subtle psychological tie among the several members residing in diverse territories and among diverse nationals, as of a 'People'. They are a body of persons composing a community, tribe, race, or nation,—sometimes viewed as a unity, sometimes as a collective number.

Scattered members have a common tie.

Mankind is divided into Civil Society and Political Society or State to the development of which we shall later refer.

(*f*) TOWNS AND CITIES

Naturally we pass on from village life to *townships*. The 255 towns and cities each with a population of over 20,000 inhabitants, and an aggregate total of 14 millions, cannot be said to be a large number in a country so vast as India, having a population so considerable as 300 millions. The bulk of the population lives in rural areas, a fact which lends weight to the *dictum* that the "nation lives not in cities and towns but in villages." The people of India are mainly agricultural in pursuit, leaving only a small percentage to take interest and be engaged in industrial or manufacturing ventures of towns. A certain amount of village industries there are do not count for much, so as to outbalance the attention that should be devoted to rural areas where the millions reside and toil. In towns people are principally engaged in commerce and trade, internal and foreign, export of raw produce to foreign countries and import of foreign manufactures for the use of the towns and mainly of the villages. Towns and cities may therefore be called the distributing centres of commodities of trade and commerce. It is to modern industrial developments and enterprises that the rise of modern towns is owing. And if, even the rural population tends to collect in towns, it is because town life has its advantages which are lacking in the villages.

The nation lives in villages.

Occupation of the towns people.

A *township* has been described to be a compact piece of land inhabited by a single community. Commonly known, it is an inhabited place larger and more regularly built than a village, and having more complete and independent local government. The area of the township varied according as its people were more or less prosperous. The area was well defined and its boundaries well guarded. The lands within the area of the township may not all be cultivated or even be cultivable. There may be waste lands in it as well as lands incapable of being

Characteristics of township.

brought under cultivation. Kautilya[1] tells us, that it was the duty of the Gopa to set up boundaries to villages or townships, by numbering plots of ground as cultivated, uncultivated, plains, wet lands, gardens, vegetable gardens, fences, forests, altars, temples of gods, irrigation works, cremation grounds, feeding houses, places where water is freely supplied to travellers, places of pilgrimage, pasture grounds and roads, and thereby fixing the boundaries of various villages, of fields, of forests, and of roads; he shall register gifts, sales, charities and remission of taxes regarding fields. And then having numbered the houses as tax-paying or non-tax-paying, he shall not only register the total number of the inhabitants of all the four castes in each area, but also keep an account of the exact number of inhabitants, dividing them up as cultivators, cowherds, merchants, artisans, labourers, slaves, and biped and quadruped animals, fixing at the same time the amount of gold, free labour, toll, and fines that can be collected from each house in it. He shall moreover, keep an account of the number of young and old men that reside in each house, their history, occupation, income and expenditure. Needless to say that what was true of the village area was also true of the township which Elphinstone observes, conducted its own affairs and levied on its members the revenue due to the estate and was collectively responsible for the payment of the full amount. It managed its own police and was answerable for any property plundered within its limits. It administered justice to its own members, as far as punishing small offences, and deciding disputes in the first instance. It taxed itself, to provide funds for its internal expenses, such as repairs of the wall and temple, and the cost of public sacrifices and charities, as well as of some ceremonies and amusements on festivals. It may be noted that each township had its necessary complement of officers for the conduct of the duties specified. Apart from these there were other officers whose business it was to attend to the general wants of the inhabitants. They were subject to the general government as in an organised commonwealth, but nevertheless complete within itself. "This independence", Elphinstone further testifies, "and its concomitant privileges, though often violated by government, are never denied; they afford some little protection against a tyrannical ruler, and maintain order within their own limits, even when the personal government has been dissolved."[2]

Land surveys in Kautilya's time.

Census in Kautilya's time.

Autonomy in towns.

General supervision by officers.

[1] Kautilya (Chanakya) Arthasastra. Tr. by Dr. Shama Sastri. Bk. II. ch. XXXV. Sec. 144. pp. 178, 179.

[2] Elphinstone, History of India. p. 67. (9th Edition.)

(*g*) CITY

A *City* has been defined to be an important town, and more properly a town created city by Charter, especially as containing a Cathedral. From this it does not follow that all Cathedral towns are cities, nor that all cities have Cathedrals. In this sense, in the sense of the city being a larger or a more important town it has all the characteristics of a township. "Neither the Roman nor the Greek" says Mr. Warde Fowler "could think of his State as having an existence apart from the city in which his business was carried on; while we moderns can perfectly well picture to ourselves a France of which Paris should be no longer the capital, or an Italy where the centre of government should be once more shifted from Rome to Florence or Milan." Nearer home we in India have witnessed within recent years the change of capital from Calcutta to Delhi without any modification in the mode, method and the authority of the Government. In fact the earliest conception of European polity is the city-state, or the city, which arises according to Aristotle "when many villages so entirely join themselves together as in every respect to form but one society, that Society is a city, and contains in itself, if I may so speak, the end and perfection of government, first founded that we might live, but continued that we may live happily."[1] It is a community of free men, a collective body of citizens having the right to share in the judicial and executive part of government.[2] And again "a city is a society of people joining together with their families and their children to live agreeably, for the sake of having their lives as happy and independent as possible; and for this purpose it is necessary that they should live in one place and intermarry with each other; hence in all cities there are family meetings, clubs, sacrifices, and public entertainments to promote friendship, for a love of sociability is friendship itself; so that the end there, for which a city is established, is that the inhabitants of it may live happily, and these things are conducive to that end; for it is a community of families and villages, for the sake of a perfect independent life, that is, as we have already said, for the sake of living well and happily. It is not therefore founded for the purpose of men merely living together, but for their living together, for their living as men ought." The ideals embodied in the last sentence which inspired Aristotle are still unrealised and continue to inspire the best spirits even to this day, so as to impel President Wilson to wish, on the

The Greek and the Roman City.

City-state the father of the European idea of polity.

Characteristics of a city.

[1] Politics. Book I., ch. ii.

[2] Ibid. Book III., ch. i.

termination of the great European War, "to make the world fit for free men to live in." It still remains unrealised. One thing however, is to be noticed in Aristotle's theory of the Family in which the man combines in himself the triple function of the master of the slaves, the father of the children and the husband of the wife, a point of view which receives full support from Bluntschli.

Ideal of city-organisation not realised.

It is therefore clear that the theory of the subjection of women is as much Eastern as it is Western in its conception and operation. To say therefore, that it was practised in the East and that the West never recognised it is to say what history does not bear out. History however, bears witness to the fact that the nucleus of almost all great cities of antiquity is laid deep in the establishment of a number of primitive clans in an area. Each clan settled, one by the side of the other, giving the particular subdivision of the area its name. Even to this day the oldest districts in the ancient cities on the continent of Europe bear the names of the ancient patrician *gentes* who settled there. In short, writes Prof. Seeley, "a number of indications concur to show that Rome—though in the time of Cicero the fact had been quite forgotten—first took shape as a League of cognate but distinct clans, each clan being a conventional family, into which admission could only be procured through the fiction of adoption."[1] When these clans were organised they formed a society, and part of the State, so as to be recognised as the Popular Organism. This according to enlightened political principles is the primary as well as the ultimate source of law, *Vox Populi, Vox Dei*. The voice of the people is the voice of God, not the voice of the rabble crowd. It is the voice of the organised people who have to their credit individual self-restraint, self-respect and self-control that is entitled to the respect of the governing powers.

Subjection of women in the East and in the West.

Settlement of clans in particular areas.

Ultimate source of law.

Ancient Greece and Rome not only gave the world examples of single City states, but also examples of federations of City states. In Greece, we have the Phokian, Akarnanian, Epeirot, Theban, Lykian, Aetolian and Achaian federations and other less known instances of the same form of government. And though Rome itself was a City state and never had, at any period of authentic history, a federal constitution, we meet with examples of a real state in Etruria, Samnium, and Latium. Their history however, is very little known and, even where we have plenty of detailed information, the details are found to be unreliable and even

Single and federated City states.

[1] Intro. to Pol. Sci. Sec. iii p. 38.

semi-mythical. All these ancient examples of the federal form of government present the same prominent general features. They are all of them federations of City states. In these as well as in the federations of ancient times, smaller assemblies or senates, in addition to the popular assemblies, existed. The senates were aristocratic in their composition and to them in course of later changes and developments, all citizens had become eligible, though at different times the constitution prescribed different methods for regulating the admission of members into it. It was in the Senate that the governing authorities introduced their measures and had them adopted or amended before submitting them to the popular assembly for final disposal. Thus in practice at least, citizenship in the ancient federal states had made large approaches to the character of citizenship to which in its various aspects, we shall immediately turn our attention.

Composition of early senates.

(*h*) CITIZENSHIP

A citizen is the inhabitant of a city or often of a town. He is one who possesses civic rights and privileges. He is a member of a State, an enfranchised inhabitant of a country, as opposed to an alien. He is entitled to full protection in the exercise and enjoyment of his private rights.

Citizenship may be defined as the status of the individual freeman in the social organism. The status consists not only of duties and responsibilities, but also of rights and privileges.

Prof. Freeman in his Growth of the English Constitution gives a singularly attractive picture of the annual meeting of the popular assemblies of some of the democratic Swiss cantons of Uri, Schwitz and Unterwalden. We have a description there of how the Landammann and his Council of officials and subordinates appear in state before the annual assembly of free citizens to give an account of their conduct of affairs in the canton; and how they sought re-election when their management of affairs received the approbation of their fellow citizens. It is a picture of what exists at the present day and a faithful one of what existed in days gone by, so that the operations of our days are no more than a continuation of the tribal institutions of ancient days. The ancient tribe had its patriarch or monarch and his council of advisers composed of the heads of several families or other capable men, and there was also the assembly of the freemen of the tribe. It was convened periodically to receive informations as to the policy proposed to be followed by the ruling authorities and the measures to be adopted in connection therewith. The freemen in these institutions had little or no rights attaching to citizenship in the modern sense of

Free citizens in Swiss Cantons.

the term. All political power of the State vested in the patriarchal princes or chiefs of the constituent families of the Assembly.

Village community in India.

The village community of which we have heard and know so much is little more than the tribe settled on the land. The ancient organisation of village community is well known to every Indian youth and the truth is that democracy is older than autocracy in India. Our ancestors were fully accustomed to democratic institutions. The great epic of India, not only mentions, but describes Indian democracies. The Buddhist literature fully testifies to their existence in those early days. The Greeks found village republics in full force in India. For over 2000 years, five hundred thousand (5,00,000) village republics, composed of all castes in the village, flourished in India from Megasthenes to Munro, till exterminated by Anglo-Indian centralisation. The vigorous caste Panchayat of to-day contains the germs of republicanism. No people in the world have had wider or longer experience in working popular institutions than the Indians themselves. "The first practical illustrations of self-governing institutions are to be found in the early records of India. Their village communities are as old as the hills." This is an observation of Sir Henry Maine to whose investigations the world owes a complete knowledge of all the essential characteristics of the village community in the East and in the West. From these investigations we further learn that in all essentials, tribal politics are reproduced in these societies. "The headman of the village" observes an erudite contributor to the Madras Review, now defunct, "always belongs to one of the most ancient and best known and respectably connected families of the community and represents the authority of the tribal patriarch. Then there is the village assembly. In the Western village community, this was composed of all the freemen of the community, though as the territorial limits over which the community spreads increased, it tended to lose its democratic aspect." It tended moreover to assume the character of an aristocratic assembly or council composed of all those men of the group who had become distinguished for birth, wealth, talents or character. In the East, the place of this assembly or council, is often supplied by a single headman, hereditary or elected from the members of a particular family, the oldest male being preferred. It may therefore, be said to have assumed the form of a small representative body of elderly men of experience well-versed in the customs of the village. Individual communities residing in it pressed for their separate representation.

Evidence of its early existence.

Maine's testimony.

Village headman and his powers.

Village community a small representative body.

In the Eastern communities, the village Panchayats were, as the name indicates, anciently composed of five persons. Later on when the

village populations became composite bodies, including many classes of people with divergent claims and interests, the number of representatives on the village council increased, though the ancient name of the Panchayat was still retained. These assemblies, however, never assumed the large dimensions of those of the Teutonic Mark in which political and military transactions affecting the very existence of the community had to be debated and decided. On such occasions the community turned out as a body over the deliberations of which the young men skilled in arms exercised the greatest influence.

The village Panchayats.

For one moment we may pass on to the city-states of the ancient Greeks and the Romans. There States arose out of an agglomeration of villages uniting together for purposes of common defence and common worship. It is said man's active nature attained to a higher degree of excellence in the city-state than under any other form of social organisation known to us, whether in ancient or in modern times. In his *Politics* Aristotle says, "when many villages join themselves perfectly together into one society, that society is a *Polis* (i. e., a city-state) and contains in itself, if I may so speak, the perfection of independence." It is only the freemen of the ancient city-states that can be said to have realised what Aristotle calls "the perfection of independence." From a study of the City-state of the Greeks and the Romans we learn that it is only the freemen who enjoyed all the possible rights and privileges of citizenship known to man. In the *ecclesia* only the Athenian citizen was entitled to take his seat, though every one had the right to take part in its debates. They all were entitled to attend the meetings of the *ecclesia* and listen to the speeches of the great orators who made Athenian oratory famous through ages. They were privileged to form their own judgments on men and matters after hearing the messages of their own foreign ambassadors and political leaders. They were also privileged to vote one way or the other when it was necessary to ascertain the collective opinion of the citizens on questions of public importance. Citizens of over 30 years of age could sit as judges of panels of 500 jurymen into which the freemen of Athens were distributed. In this way the entire body of citizens came to be constituted into the State and all enjoyed equal political rights, liberties and prerogatives.

"Perfection of independence" of Aristotle.

Ecclesia and the powers of the citizen.

As in ancient Greece, so in ancient Rome the city-State played a predominant part in the affairs of the nation. The life and activity of the Roman people and their state were centred in the city of Rome. All public questions were referred to the final decision of the general assembly of citizens meeting in the Forum. Time there was when the

citizens of the Roman city-states exercised the same rights and privileges which marked the life of the citizens of the small city-states of ancient Greece. We are told that on occasions "even the rural citizens left their farms in the morning to exercise their public functions on the day of the meeting of the sovereign people and returned home the same evening." In theory, therefore, Roman citizenship maintained the same character as that of Athens or other city-states of Greece in the zenith of their power and prosperity. In practice, however, it had degenerated itself until the Roman world could be saved by the dominating will of one man. Caesarism became an established fact, though, more than three centuries elapsed before the supreme authority of the Roman Senate entirely passed into the hands of the *princeps* as absolute monarchs. The Roman people stood deprived of all political power in a constitution, the age old theory of which, and in a republic the ancient form of which, had been tenderly and sedulously preserved by Augustus.

Public questions before the general assembly.

Roman citizenship was no other than Greek citizenship.

These are some of the earliest illustrations of citizenship as obtained in great states and under great governments,—States and governments the excellence of which has ever remained unattainable by states and governments of the modern world. Inferentially therefore, a citizen, in the full acceptation of that term, in a modern state, may be said to be a member of the civil State entitled to all its privileges. The principal differences in privilege between a citizen and one who is not, namely an alien, consist in these, that the former, when he resides in the country, is there by sufferance only. He cannot exercise any of the political rights conferred by the State upon its citizens. These are the normal differences which do not always exist, for there are states, almost all of them classed as civilized and progressive, which recognise fully the right of aliens to reside within their limits without hindrance. In many states they are permitted to hold, convey and transmit real estate to their descendants freely. In not a few are aliens, after a prescribed period of residence, which is brief, permitted to exercise elective franchise. And where an alien is given the privilege permanently to reside within a State, and to hold property of all kinds therein, and to exercise the privileges of suffrage, the distinction in right, and privilege, and immunity between him and a citizen is not very plain. Indeed, as the suffrage would seem peculiarly to belong to citizens, they are entitled to vote for representatives in their legislature.

Citizen is a member of a civil state.

Not so an alien.

Differences between the two.

Suffrage belongs to citizens.

Citizenship in the sense of modern jurisprudence means little more than "residence". A resident of one State is not entitled to sue or be sued as a citizen of another State. A corporation created by and transacting business within a State is for this purpose to be deemed to represent corporators who are citizens of the State, and a foreign corporation is deemed to represent corporators who are aliens. From an examination of the various characteristics of the term citizenship we arrive at the conclusion, that the strongest source of national character is citizenship, which according to an American jurist, "is a term of municipal law, and denotes the possession within the particular state of full, civil and political rights, subject to special disqualifications, such as minority or sex. The conditions on which citizenship is acquired is regulated by municipal law." And the theory of the test of citizenship has never altered. It is what it was in the days of ancient Athens and Sparta, that "allegiance" owed to the sovereign power, wherever it may reside. Allegiance therefore, on the basis of Calvin's case is the test of citizenship, and that all persons owing allegiance to the sovereign power would be accounted citizens of a State.

Characteristics of citizenship.

Test of citizenship.

Citizenship may be acquired in one of three ways: 1. *By birth*, 2. *By naturalisation* and 3. *By revolution*. A citizen by birth must not only be one born within the State, but must also be subject to its jurisdiction. In other words, it means that he must be subject to the full and complete jurisdiction to which citizens generally are subject. It admits of no qualified or partial jurisdiction, such as may consist with allegiance to some other government. The early aborigines of India may be said to have long lived in this anomalous condition. While residing within a State, or an organised territory, they continued to preserve their tribal relations and recognise the headship of their chiefs. Thus they owed a qualified allegiance to the government of the territory in which they lived while they subsisted under the partial jurisdiction of their tribal chiefs. From a rigorous interpretation of the rule, subjects of Indian States residing within British India would perhaps be regarded as not to escape the disqualification of citizenship of British India. But then the question would be set at rest when we take into consideration the fact that, the Princes in whose territories they were born, or to whom they owe allegiance, are not sovereign powers in the juristic sense of the term. There are limitations on the internal sovereignty of the Indian Princes. Variations of these limitations are extremely numerous, and range from almost complete autonomy to the merely nominal preservation of the last remnants of

Acquisition of citizenship.

Subjects of Indian States are British citizens.

sovereignty. It is not necessary to discuss the position of States like Hyderabad and Baroda, or Mysore and Kashmir, or Indore and Travancore, or Gwalior and Jeypore, or Patiala and Bikanir, the rulers of which have powers of life and death in their own territories. In an empire, however, such as India, where the paramount power, namely the British Government, is responsible for misrule,--supported by its authority,—autonomy could indeed go no further. The concession must be understood to be limited by the general rule, established by practice throughout the empire, that gross misgovernment will neither be permitted nor tolerated. The correct view of the relationship between the States and the Paramount Power is stated to be a general agreement "that the States are *Sui generis*, that there is no parallel to their position in history, that they are governed by a body of convention and usage not quite like anything in the world. They fall both outside international and municipal law, but they are governed by rules which form a very special part of the constitutional law of the Empire." Some sixty years ago Sir Henry Maine regarded their status as Quasi-international. Professor Westlake regarded the rules which regulate their status as part of the constitutional law of the Empire. A similar view was expressed by Sir Frederick Pollock, who held that in cases of doubtful interpretation the analogy of international law might be found useful and persuasive.

States have a *quasi* international status.

In a minute of great weight and importance in the history of the relation between the States and the sovereign power in India, Sir Henry Maine referred to the divided sovereignty between the paramount power and the States. That was in the Kathiawar case in 1864. "Sovereignty", he said, "is a term, which, in international law, indicates a well ascertained assemblage of separate powers and privileges. The rights which form part of the aggregate are specifically named by the publicists who distinguish them as the right to make war and peace, the right to administer civil and criminal justice, the right to legislate and so forth. A sovereign who possesses the whole of this aggregate of rights is called an *independent* sovereign; but there is not, nor has there ever been, anything in international law to prevent some of those rights being lodged with one possessor, and some with another. Sovereignty has always been regarded as divisible. It may perhaps be worth observing that according to the more precise language of modern publicists, 'Sovereignty' is divisible, but independence is not. Although the expression 'partial independence' may be popularly used, it is technically incorrect. Accordingly there may

Maine's discussion of their sovereignty.

Sovereignty is divisible but not independence.

"Partial independence" an incorrect expression.

be found in India every shade and variety of sovereignty, but there is one independent and supreme sovereign—the British Government".

The *jure soli* is a part of the fundamental or the common law of every civilized country. Children born to aliens residing temporarily in a State are no doubt held to have been born there, but not always subject to the jurisdiction thereof. Citizenship by birth may also be founded on the *jure sanguinis,* or by right of blood, depending on the nationality of parents. In the case of tribal persons when a particular individual severs his relations with his tribal head, and that individual withdraws, and makes himself a member of the community, and subjects himself fully to the jurisdiction, his right to protection of person, property and privilege becomes as complete as that of any other native-born inhabitant.

Citizenship by birth.

Citizenship may also be acquired by *naturalisation* which may be effected, *first*, by special laws which confer the privilege upon individuals specified, and *secondly*, by proceedings under general laws of the country whereby individuals severally renounce their old associations and foreign allegiance, and take upon themselves the obligations of citizenship, and *thirdly*, by acquisition of foreign territories, with the people in them, who thereby become citizens of the parent or the acquiring State.

Naturalised citizens, and other modes of acquisition.

The method of acquiring citizenship by naturalisation has its limitations in some countries, but not in others. In the United States of America for instance, "Free White persons" are eligible to be naturalised as citizens. Not the Chinese, nor the Japanese, nor the Indians, are entitled to obtain the benefit of the law relating to naturalisation. The normal conditions almost in every country are, (*a*) a declaration of intention to become a citizen, (*b*) an oath of allegiance taken at the time of admission into citizenship, (*c*) renunciation of prior allegiance and (*d*) residence in the country of adoption for a specified period and, (*e*) in some production of an authentic credential of good and orderly behaviour during such residence.

Varying rules of naturalisation.

Conditions of naturalisation.

Citizenship conferred by revolution is a matter into a detailed consideration of which we need not go, beyond drawing attention to the fact that, on the termination of the revolution and declaration of independence of a country, its people have the choice to retain their old allegiance or renounce it, whereupon, they are regarded as citizens of the new State as from the date of the Declaration of Independence. History furnishes one prominent example of the acquisition of citizenship by this mode in the Declaration of Independence of the United States of America in 1783.

Citizenship acquired by revolution.

America the only example.

CHAPTER II

Effect of Citizenship

(*a*) ORIGIN OF PROPERTY

There are three theories with regard to the origin of "*Property*". *The first or older theory* is that originally the earth was the general *property* of all mankind, and the first *possessor* of a thing or *occupant* of a plot of land acquired a property in it. It lasted so long as the act of possession lasted, and it was confirmed and strengthened in title by the labour of the possessor or the occupant. According to this theory, property owed its origin to possession or occupancy. The necessity for the protection of such possession or occupancy led to the formation of civil society, which ultimately produced States, Governments and Laws.

The theory of occupation.

The theory may be further explained as that the earth and its fruits were originally regarded as *res nulius*, or nobody's property. Men were supposed then to have lived in a state of nature. The inference therefore, is that what was originally no man's property became subsequently the property of the person who first took possession of or occupied it. This theory was based upon the Roman doctrine of "occupatio"—which is that "natural reason gives to the first occupant that which had no previous owner." Early English jurists approved of the theory. Blackstone adhered to it and advocated it to be later seriously objected to by no less a person than Sir Henry Maine, mainly on the grounds (1) that, it is based on mere imagination and presumes the existence in primitive men of motives which actuate civilised men; (2) that, it wrongly presumes the existence of individuals and their motives in ancient society, the unit of which was the family; (3) that, it tries to explain by the light of reason things which do not stand the test of history, biology and sociology.

Roman and English jurists adhere to the theory.

The Hindu jurists held the first theory. According to them *property* arises from *first occupation*. The authority of Manu is great, almost supreme, and he holds that, "a field is his who clears it of jungle, game is his who has pierced it." The Mahomedan jurists on the other hand appear to be divided in their opinion on the point. We have it in the Koran, "whoever cultivates waste lands does thereby acquire property in them." This text has been differently interpreted by Abu Hanefa and his disciples

Manu and other Hindu jurists approve of it.

Abu Yusuf and Mahomed. Hanefa authoritatively lays it down that mere cultivation of waste land is not sufficient to create a real right in the cultivated, but the permission of the Chief is necessary while his disciples hold that no such permission is necessary.

Mahomedan jurists also.

The Second or Patriarchal theory is that originally the human communities comprised of patriarchal families as their units. By process of amalgamation these families formed themselves into "*clans*" or "*gens*". Further process of amalgamation of the "clans" resulted in the production of the "*tribe*" and when a "*tribe*" settled in a definite country, a State was formed or founded.

Patriarchal theory.

The patriarchal theory must be regarded to be an ancient theory. It was held and advocated by Plato and Aristotle, who spoke from experience, and were not merely guided by conjecture. Plato said that family groups survived in his time, and Aristotle stated that the barbarians of his day were of this nature. This theory may be said to have stood the test of history and biology. It is supported not only by Aristotle, the greatest of ancient scientists, but also by Darwin, the greatest luminary of modern science. It is moreover, considered by modern jurists of the highest eminence, such as Sir Henry Maine, to be the correct theory. The early history of India confirms this view, and indeed, Sir Henry Maine draws his highest inspiration in favour of his own view from the records of ancient India.

Darwin and Sir Henry Maine.

The Third or the latest theory is what is known as the sociological theory. It is the reverse of the *patriarchal theory*. It inculcates that originally the human communities were composed of *tribes* practising promiscuity, and that these *tribes* subsequently dissolved into "*clans*" or "*gens*" which again dissolved into families which were either polygamous or monogamous. The two outstanding figures who lend their support to the latest theory are Sir John Lubbock (Lord Avebury) and Herbert Spencer. In spite, however, of these great names behind the theory it cannot be said to have stood the test of biological criticism, and is opposed to the doctrine of Darwin, the greatest biologist and naturalist of modern times. Other biological experts and scientists of considerable reputation also dismiss the theory as untenable. It may not therefore, be seriously considered as of any great value, just the reason why modern jurists have set it down as incorrect.

Sociological Theory.

It is opposed to biological doctrines.

Right to Property:—The bounty of nature is limited and therefore property involves the obligation of proper use. In thinking of the

right to property we are concerned with something of a character different from the right to life or liberty. Property is a means to the end, whereas liberty or happiness is part of the end. Besides property is a material thing. With the right of property is associated the right to work, the right to fair wages or fair prices. They may indeed be regarded as aspects of the right to property. The right to taxation claimed by the State depends upon the conditions and conveniences the State is called upon to supply. It is also a recognition of the fact that the State has a share in the production of property, a special case being the death duties. The theory of property leads to the enunciation of certain principles:—(1) Everyone to count for one, and none to count for more than one, and (2) the greatest happiness of the greatest number.

Right to Property not the same as right to life or liberty.

Nor can we overlook the theory of natural rights which is the basis of democracy. These rights are regarded as the inherent heritage of the individual. The individual is a member of the kingdom of ends. He must therefore be treated simply as a means to some end other than himself.

Theory of natural rights.

(*b*) RIGHTS AND OBLIGATIONS OF CITIZENSHIP

The object of the government is to distribute among the members of the community, 1st *Rights;* and 2nd *Obligations* or *Duties.*

Rights are in themselves advantages or benefits for those who enjoy them. *Obligations* on the contrary are *duties* or burdens for those upon whom they are imposed.

Rights and Obligations.

Rights and *Obligations,* although distinct and opposed in their nature, are simultaneous in their origin and inseparable in their existence. The government, whether by an executive order or otherwise, can grant no advantage to one without imposing at the same time some burden on another. In other words, no right can be created in favour of one without a corresponding obligation on the part of another to respect it. How is a right of property given me over a plot of land? By imposing on others the obligation not to disturb me in my possession and enjoyment of it. How is a right of command over a province granted to me? By imposing upon the inhabitants of that province the obligation of obeying my orders.

Distinction between Rights and Obligations.

It is natural for every government to grant rights with pleasure since they are benefits, and to impose obligations with regret, since in themselves they are evils. According to the principle of utility it should never, and as a matter of fact, would not be justified to impose a burden except to create a greater corresponding benefit.

Rights are benefits, Obligations are evils.

Whatever a man may claim protection for, to be protected in, by appeal to Law and with the sanction of Law, is his Right. It is lawfully his own, under guarantee of Law; e. g., life or property. Liberty in a civilized society and under a civilized government is rightfully claimable. It is therefore, designated a Right. The respect, restraint, conduct, imposed by law, on every one, with regard or in relation to every Right of every other one, is, in each instance, an obligation. "Right" in the words of Green, "is a man's capacity of influencing the acts of another by means other than his own strength". But we should prefer to bear in mind the clearer enunciation given by Professor Holland. In his view a "legal right is a capacity residing in one man of controlling with the assent and assistance of the state the actions of others".

Liberty is right.

Green's definition of Right.

Holland's definition of Right.

Obligations therefore, are checks on liberty so that each man's liberty is bounded and defined by a wall, a hedge-row of obligations as it were. On all sides, are the several, separate domains of other's Rights—all other areas of liberty. The acts which would thus become illegal or unlawful would otherwise not be improper or reproachable. The government by legislative action creates an offence by a positive command as by a prohibition.

Obligations restrict liberty.

Checks on liberty are unavoidable in the actual administration of a government. It is impossible to create rights, to impose obligations, to protect life, or reputation or property or liberty itself, except at the expense of liberty. Every violation of Right is a wrong; and being a negation of, or opposed to *jus,* it is an injury. But that is a matter which belongs strictly to the department of jurisprudence and we therefore leave it here. But every such check is followed by a natural feeling of regret; besides, a number of restrictions and annoyances result from its peculiar mode of operation. None should, accordingly, be imposed without special and sufficient reason. Every man who proposes a coercive law, is bound to prove not only that some benefits will follow from it, but that those benefits are superior to the evils inseparable from all law and from the proposed law in particulas.

Checks are necessary.

Every check must be followed by some benefit.

This apparently evident proposition, that every law, except that which rescinds a restrictive law, is contrary to liberty, is not however generally assented to. On the contrary, some warm friends of liberty, more zealous than enlightened, think themselves bound in conscience to oppose it, that is, they pervert the language and attach to the word 'liberty' a

Liberty often misapplied and misconstrued.

meaning of their own. They define it as 'license,' "*a power of doing whatever cannot interfere with the rights of others.*" This however, is not the usual or real sense of the word. The liberty of doing evil is still liberty. The insane and the wicked are rightly deprived of their liberty to prevent their abusing it. So many verbal disputes are the result of thus arbitrarily altering the ordinary sense of common expressions, that it is important to avoid such a cause of confusion. In doing this it should be our duty to endeavour to lay down or deduce some true principles by which every government is or ought to be guided.

Liberty is not 'license'.

The only object of government should be the greatest possible happiness of the community; that is, of all the individuals composing it, or the greater majority of them. The happiness of an individual must be understood to exist in proportion to the extent and number of his enjoyments, and to his freedom from pain.

To individuals should be left the care of their own enjoyments. The principal duty of the government is to protect man against pain. This, it is needless to say, is done by conferring rights on individuals, right of personal security, right to property, right of self-defence, right to self-respect, right to the use of public property, right of contract, right of expression of opinion, to a fair judicial trial, right to bear arms and to fight for the country, and the right to enter the Public services.

Duty of government.

Rights of man.

The securing of all these implies the existence of what in England is called the Rule of Law. It is a Rule held sacred and dear by every Englishman, no matter what his political opinions otherwise may be. The Rule signifies two things principally. It signifies firstly, the absolute supremacy of the regular law of the land as opposed to arbitrary or discretionary power. Secondly, it signifies the equal subjection of all classes to the ordinary law administered by the ordinary courts. There are various countries the constitutions of which lay down that personal liberty is guaranteed. This indicates that it is a special privilege conferred upon the people. In a country where citizenship in its proper significance obtains, such freedom arises, as in England, from the ordinary law of the land. In England it was recorded, not created, by the Magna Charta. Censorship of the press expired in England in 1695. Since then press offences have become part of the ordinary law of libel. As compared to that among the French, with whom love of freedom is a passion, press offences are still dealt with by special laws and tribunals. The reason is not far to seek. There the Government is superior to

The Rule of law.

Different significations of the Rule.

Magna Charta recorded what existed, did not create it.

the ordinary law. In England the police have not the special authority, to control open-air meetings, that is possessed by European continental police. Nowhere under England's rule can a military tribunal supersede the civil courts. The *droit administratif* of France, under which the relations of government officials to private persons, and all questions arising out of them, are dealt with by special laws administered by tribunals composed of officials. Such a Court is unknown in England and in English jurisprudence. Its nearest approach was when the Stuarts claimed that the prerogatives of the crown were outside the jurisdiction of the Courts and above all laws.

The *droit administratif.*

The right to personal liberty and security is an undoubted right attaching to citizenship. All confinement of a citizen is unlawful, except under due process from the courts, or under a warrant under the hand and seal of a legal authority specifying the cause of commitment. The remedies are (1) self-defence, (2) to resist unlawful arrest, (3) by process of law to set the prisoner free and (4) action for damages for false imprisonment.

Important characteristics of citizenship are liberty and security.

The State which represents the nation plays a part in respect of the duties of individuals who compose it. In early days, in antiquity, it was all-powerful as regards the individuals. The citizen had not even the choice of his beliefs. He had to adopt the religion of the State. It is not so in a modern State. If I have rights, my neighbour has his rights too, exactly the same as mine. Each of these rights, has created a duty for me. I must respect the rights of others as I desire them to respect mine. The ideas of right and duty are therefore correlative. They are also inseparable. No wonder therefore, that the French people insisted after the revolution that Men are born and remain free, and are equal as to rights.

Man is born free and has equal rights with his fellowmen.

What are these natural rights which every state is bound to safeguard? In the first place it is liberty, or freedom to do whatever does not injure others. Since there must be a superior authority to determine what will injure others the State must intervene. It must assure the various members of Society of their respective enjoyment of liberty. It will set certain limits and say, "If you pass this limit it will encroach on the liberty of others. You will cause annoyance to another member of society itself". It is a delicate mission, but it is a necessary mission in the interest of society. The State therefore, fixes the point of equilibrium. All contradictory pretensions are reconciled and harmonised by it.

What are natural rights?

Limitations thereon.

As we have seen, the first of all liberties is the liberty of the

person. Every man should be free to remain in the country or leave it. He should be free to travel or remain in a city, without being either molested or arrested or detained, unless according to legal forms and in respect of a crime or offence proved by law. The English people have laws protecting the security of the individual. These relate to what is known as the *habeas corpus*. In other words the law desires that "thou shalt have thy body", that the State has no right to take it without supreme social necessity and without the regular application of the laws. "It is on the benevolence of the criminal laws," said Montesquieu, "that the liberty of the citizen chiefly depends. In a state which had the best laws possible on this point a man upon his trial and who was to be hanged the following day would be freer than a *pasha* is in Turkey." Montesquieu did not foresee the young Turkish movement, or its outcome, the Turkish Revolution, which saw the birth of one of the most democratic of countries in the modern world.

Liberty of the person.

The rule in England.

The rule depends upon the criminal law.

Another liberty, equally inherent in the human individual, is the right to work and labour. It is however, no more unlimited than any other liberty. The State may impose certain legitimate restrictions. There are, for example, professions which demand certain guarantees of training and competence. Ignorant persons could not exercise or practice them without injury to society: the professions of a druggist, a physician, an advocate or a solicitor. The State intervenes and only admits the right to plead, to attend the sick, or to dispense medicines, if justified by a prescribed course of studies or training previously had. The State may forbid industries to be established, as being dangerous or having an injurious effect upon the health of the people in the town or the district near by. Upon similar grounds an inconvenient business may also be prohibited or regulated. There are industrial enterprises from which private persons may be forbidden altogether. Such are the manufacture of gunpowder or of bombs.

Liberty of occupation.

State interference.

The modern state fights shy to interfere with the private conscience of individuals. I am a Free-thinker, an Atheist, a Catholic, a Jew, a Mussalman, a Buddhist or a Hindu. Whatever I think, believe, or feel is no concern of the State. It should leave me the master of my own conscience. It cannot put itself forward as the arbiter of the truth. But it must respect my innermost thoughts. It must also allow me to express them, provided I do not disturb the public peace, or interfere with another's right to do what I want to do undisturbed.

Liberty of conscience or freedom of thought.

Liberty of speech and press is another right which is an inalienable inheritance of every individual. The free communication of thoughts and opinions is one of the most precious of man's rights. Every citizen therefore may speak, write, and print freely, subject to answering for the abuse of his liberty in the cases prescribed by the law. But here, as elsewhere, the right of each citizen is limited by the right of the rest. Say or write what you please, but insult no one, defame no one. If you do, the insulted person has the right to prosecute you. You obtain the condemnation you deserve of the court and of your fellow-men.

Liberty of speech and press.

Blasphemous, immoral, treasonable, seditious or scandalous libels are punished under every civilized system of government. For the punishment of offences enumerated here, the *liberty of the press*, properly understood, is by no means infringed or violated, not even in England, the most democratic of countries in the world. It is also the country where the Rule of the law is the strongest bulwark of its free people. "The liberty of the press," observes Blackstone, "is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publication, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiment he pleases before the public; but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity." To subject the press therefore, to the restrictive power of a licensor, is to subject all freedom of sentiment to the prejudices of one man. It makes him the arbitrary and infallible judge of all controverted points in learning, religion, and government. To punish after a fair and impartial trial, any dangerous or offensive writings having a pernicious tendency, is necessary for the preservation of peace and good order. It ought never to be forgotten that peace and good order are the only solid foundations of all good government and, above all, of civil liberty. Thus the will of individuals is left free. Its abuse only is the object of legal punishment. A man, says a great writer, may be allowed to keep poisons in his closet but not publicly to vend them as cordials. To punish therefore abuse, and censure license, is to maintain the liberty of the press.

Legitimate bounds of liberty of press and speech.

Blackstone on the liberty of the press.

Does the State authorise citizens to assemble for purposes of deliberation on literary, scientific, political or social questions? Here again the old order of things has changed. The answer is that the State leaves us free to assemble, but not to infringe any of the prohibitory provisions of law. You may form permanent associations, but not for the purpose of defying or

Liberty of meeting.

making a breach of the law of the land, and not to obstruct or hinder the legitimate occupation of your fellow citizen. To-day even Government officials may form associations, and they have not been slow to do so. But it would be intolerable if they were privileged to turn their association against the State, whose representatives or delegates they are.

Right to property akin to human liberty.

The right to property, as a great Statesman has put it, is the logical ratification of human liberty. You are free, you labour, you gain money, you save it, and you become a proprietor. Your property is merely the material form of your liberty and your industry.

We shall make an attempt to enumerate in how many different ways violations of personal security and freedom may be made:—

1. To deprive one the use of any member of the body, or of any physical or mental faculty—even publication of thoughts; saving legal restraint from the abuse of any faculty.

Violation of personal liberty and security.

2. To subject one to cruel treatment.
3. To deprive either spouse of the other.
4. To separate parents from children.
5. To impose forcibly upon one any civil calling or to deprive of one; even to force into a military career, unless in organised submission to a public necessity.
6. To meddle with and to appropriate the efforts of industry.
7. To restrict free change of habitation; to fix to the soil.
8. To invade the privacy of home.
9. To force one into exile or abandonment of home.
10. To imprison or detain one arbitrarily.

The list may not be considered exhaustive but it should give a comprehensive view of the trespasses on personal inviolability and freedom that may be made. In our own Penal Code the right to personal freedom has been carried much further. Section 298 says, "whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person, or places any object in the sight of that person, shall be punished etc." This enactment evinces an anxious sense, justified by experience, of risks, of need of unusual state interference and protection.

Section 298 of the Indian Penal Code.

The right of self-defence is more comprehensive in a state of nature than in civil Society. In the former every individual is the protector of his own rights, with respect to the future as well as to the present. In civil society private individuals are permitted, and that from unavoidable necessity, to use violence only in the immediate defence of their persons or property, all steps for their future security being reserved

Right of self-defence.

for the public authorities. With respect to the present its just limits may not be permitted to exceed and if, within those limits, I secure my safety at the expense of the person who attacks me illegally, my conduct is justified. The distinction therefore, between right and obligation, is created by the command of a political superior, though general moral rights and duties may arise independently of a common authority. A rule commanded by the governing power is legally valid, whatever its character when judged on moral or utilitarian grounds. To these rights correspond as many offences. The law, it has been observed before, cannot create rights without imposing obligations, nor impose obligations without creating offences. The violation of a right is an offence. All orders or prohibitions of the Government are checks upon liberty. Individuals therefore, must give a portion of their liberty for the rights it confers upon them, but even under a bad government there is no proportion between the acquisition and the sacrifice. A government comes nearer and nearer to perfection as the former is greater and the latter more inconsiderable.

Violation of right an offence.

CHAPTER III

The State

(*a*) THE CONCEPTION OF A STATE

A *State* can be considered only in terms of an Association of human beings or a number of men inhabiting or established in a fixed territory, with a cohesive unity among them. The essential elements of a State are: –

(1) A community of people socially united.

Essential elements of a State.

(2) A political machinery, termed a government, and administered by a corps of officials termed a "magistracy".

(3) A body of rules and maxims, written or unwritten, which determine the scope of the public authority and the manner of the exercise.

The State is an almost universal manifestation. A thing that appears before our eyes and is perceived, either by our senses or by our mind. It is a phenomenon, and though the governmental machinery may differ in every case, we find men submitting to the control of a public authority as soon as social life begins. Yet, there is a substantial indentity of purpose in all states. It may be called the idea of the State. And from the historical standpoint, the first subjection of man to public authority of some sort or other, is practically coeval with, or, of the same age as the beginning of social life. It carries us back to periods of human developments that are pre-historic. We need not however, go into that for, Maine in one single sentence gives us an idea of what that was. "The Patriarchal theory of the State", he observes, "is the theory of its origin in separate families, held together by the authority and protection of the eldest valid male ascendant". Some thinkers have asserted that body politic is no more than a development of the family the constitution and growth of which we have already examined. It is a mistake to regard it as such for, in the family the creation of authority is natural: in the State it is one of choice. The family with which we are familiar is founded on the principle of subordination, while equality is the principle of the State. In our consideration of the State we must keep in view its size. The limitation placed by Aristotle is not upon logical grounds so much as upon the utilitarian principle of size and convenience.

State as a phenomenon.

Maine's Patriarchal theory of the State.

Family founded upon subordination, State upon equality.

A State cannot be constituted from a single family. Similarly where a community is too small, it is neither possible nor convenient to form a State of it. Though logically not an impossibility it is very improbable that a single family or a small community should become politically organised. Either, in that event, would lack the element of possible perpetuity of dominion which is an essential element in the constitution of the State. It has yet a distinction between the sovereign,—whether an individual sovereign or any form of sovereign power,—and the subjects. It is a living and organised force the different members of which, in the words of Bluntschli have "spirit and body", and again "has various special functions to perform. It has a masculine development and growth even as a moral, and spiritual growth of a nation."[1] "The fundamental end and purpose of political society," says Salmond, "is defence against external enemies, and the maintenance of peaceable and orderly relations within the community itself,"[2] for, it essentially is an "institution for the protection of rights,"[3] as has been aptly described by another eminent jurist. Holland maintains further that besides preserving internal order, it is necessary to maintain the individual autonomy of a society as a political unit. Probably this necessity for a defensive organisation was first consciously felt. However originated, by force at first, or voluntary recognition, a public authority once created, the State became an absolute fact. It is properly a law-maintaining society which proclaims and asserts the conditions of its existence in connection with its own conduct and that of its subjects, through commanding, permissive and prohibitory rules. No doubt the territorial element enters in the consideration of the State. The permanent settlement of tribes upon and in definite areas of land is an important factor, as are the bonds of kinship, and tribal unity. The latest thinkers however, are of opinion that a State is none the less one because of the lack of it, namely, the territorial element. With the progress of civilization governmental machinery becomes more elaborately organised and that with increasing definiteness of scope.

Perpetuity of dominion not an element of State.

Spirit and body with different functions.

State a law-maintaining body.

Territorial consideration of the State.

Territory not a *sine qua non*

At this stage of our knowledge we shall not concern ourselves with the other various theories of State, such as the Rational theory, the

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[1] Bluntschli. ch. I., cf. Sidgwick—Elements of Politics. p. 221.

[2] Salmond. Jurisprudence—p. 94.

[3] Holland. Jurisprudence. p. 80.

Natural or Instructive theory, the Utilitarian theory, the Force theory, the Divine theory and the Contract theory beyond giving the student a bare idea of what each one means. Each one has had eminent men to support it, but the net result of all is the foundation of the State on the basis of society organised as a political unit.

Different theories of the State.

Natural theory bases the State upon the "natural sociability of man". Besides individual diversity man has the tendency of community and unity. This may be taken to be an explanation of the cause of the state but it hardly justifies political authority as humanly exercised. If the state is natural, and therefore not created by him, it requires no justification in his eyes. In a general way the Greeks regarded political authority as a mental necessity arising from the social life of man. But while it is undoubtedly true that the communal life of man gives rise to mutual interests it does not of itself create a magistracy. It does not of itself organise a governmental machinery such as is necessary for the creation of the State, even though the mutual interests require for their realisation the recognition of mutual rights and obligations. Sociability may be, no doubt is, instinctive, but it cannot determine the form of the governmental machinery, nor the person or persons in whom the authority should be vested.

Natural theory.

Natural theory inconsistent with the form of government.

Willoughby, the eminent American philosopher considers the explanation of the State as an organism to be misleading. He argues that in fact, and strictly speaking, the *state* is not an organism. The units that compose the State have an organic life independent of it. Its entire spiritual being is uncontrolled by it. The control of the State is limited to the conduct of individuals in so far as outward acts and material interests are concerned. In the organism the loss of development, though acting from within, are blindly and entirely followed. Similarly the growth of the State, which also acts from within, is consciously felt as the form of its organisation directs itself. As compared to that, civilised mankind are aware of the changes taking place in their social condition, for they consciously and deliberately take measures for its improvement. Hence, Willoughby suggests that the State strictly considered is psychic rather than physical, and represents a will rather than a physical being. To speak of the State as a "moral organism" is inadmissible, because morality is an attribute of a person, not of a thing, and cannot be predicated of an organism.

State has an organic life though it is not an organism.

State represents a will and not a physical being.

Utilitarian Theory:—"Human personality", said Rousseau, "is so sacred that to subject it to an alien will, however beneficent, without

his consent cannot be justified. What right have you to impose even a good thing on me?" Dr. Taylor on the other hand justifies the assumption and exercise of final authority and control by the State in the name of justice. This is no other than the utilitarian basis. "The state is endowed with the prerogative of rule only because it is composed of individuals possessing the personal prerogative of rule. It is the prerogative of man acting in and through communities. While the prerogative of men acting separately is high, and that of men acting in private association is higher, that of men acting through the community is highest of all."

Utilitarian theory.

The Force Theory:—"To yield to force is an act of necessity and not of will", and there can be no justification of the authority of the State from its force. It is not necessary to obey from a sense of duty, if coercive forces compel their obedience. The authority of the State may however be justified on either of the following assumptions.

Force theory of the State.

(1) The state is an institution, which though humanly administered, is yet created and justified by the will of God and rests therefore upon a will higher than that of man.

(2) The state may be regarded as a purely human institution, but resting upon the original consent of the individuals over whom its authority is exercised, and therefore not oppressive to their freedom.

The Divine Theory:—"Before the birth of constitutional ideas some people relied upon an erratic theory, that the maintenance of the authority of the ruler rested upon divine delegation or sanction, that there was a direct oversight and participation of the Almighty in the control of public affairs. The Greek conception of the nature of the state led some of them to view it, not so much as a means for furthering human developments, as an end in itself. The state was natural and therefore indirectly divine, and rested upon the total submergence of the individual in the state. As against this the Romans considered law as created by the State whose authority is to be sought in the Roman people themselves.

Divine theory of the State.

During the middle ages, the struggle between the Pope and the Emperor ranged round the question as to who was endowed with direct authority from God. The dualism of the Church and State found an ultimate union in a divine order. It was divided only as to the measure of the delegation of that authority to particular hands by its supreme author. The application of the divine theory to political conditions has been twofold, namely,

(1) As justifying political authority in general, and, (2) as legitimising the exercise of such political authority in particular hands by

receiving *de facto* rulers as either direct agents of the Almighty, or, as wielding a power indirectly delegated.

The non-believer may argue that his personal inclinations and powers are of equally divine origin. All that follows from the divine theory is that political rule of some sort is divinely justified. But this is nothing more than saying, "what is, is right," which is the motto of the Force Theory. Besides political compulsion is limited only to external acts and backed by outward physical force.

The Contract Theory:—It means an agreement between the Rulers and the Ruled according to which the power of rule is placed in particular hands. It goes by the name of *Governmental Contract*. Secondly, it means an agreement between the individuals of a particular community according to which such community first becomes politically organised. This is known as the social contract. Political contract however, is the more appropriate term for it, for, by it is supposed to be created the body politic.

Contract theory of the State.

By Contract in the first sense, the legitimacy of the existing government is determined and the validity of the title of the rulers established. The second explains the origin of the State, i. e., of political power itself. The Roman jurists universally rested the power of the Emperor upon an original explicit, or subsequent implicit consent of the people. In accepting however, the contractual origin of governments the original sovereign power of the people cannot be laid aside or overlooked.

What is meant by the contract in its different senses.

In England the first definite statement of the theory of Social contract was made by Hooker. The better view however, is what was stated by Hobbes who conceived the state of nature as one of war in which there exist no legal rights of person or property, but only natural rights founded upon morality and utility. Hobbes bases the state upon a contract between individuals, by which each of them gives up a part of his own natural liberty in order that all might be protected by the strength of all. Not only does the power of the ruler become absolute as soon as the contract is made, but all right of revolution on the part of the people is lost for ever. Whatever the sovereign does, is done, as it were, by each of the individuals who agreed to transfer to him his power, and because the king is no party to the covenant, no breach of contract could be argued against him. To resist the sovereign is to return to a state of anarchy. We have already noticed where the weakness of Hobbes' theory lies.

Hobbes' theory of the contract.

Sovereign no party to the contract.

Modern theorists have regarded Aristotle's classification of the State

into Monarchy, Aristocracy and Democracy not to be satisfactory. England is a monarchy even though her government with a nominal king at the head of it, is of a more democratic character. The President of the United States of America which is regarded as a Democracy has and exercises greater powers than the King of England. The principle of election of monarchies which obtained in some states in the past would not be considered in any sense democratic in our present conception of the term. And the line of demarcation between Aristotle's aristocracy and democracy is not quite clear. Modern thinkers have divided States between "Monarchy" and "Republic". The division no doubt is more definite, but little else. Their classification is as follows:—

Classification of States between Monarchy, aristocracy and democracy.

Present classification is Monarchy and Republic.

1. Chief Executive Organ—a non-responsible single person.
   (*a*) With constitutional limitations on his part.
   (*b*) Without constitutional limitations on his part.
2. Chief Executive Organ, a responsible single person.
3. Non-responsible plural executive.
4. Responsible plural Executive.

The state is started upon its career with the primary object and function of maintaining external *peace* and internal *order*. Hobbes makes Leviathan carry two swords, the sword of peace and the sword of war. He admits the existence of a government, and therefore of a State, only on the basis of force. He founds the right of the Government to rule upon its power to maintain itself against force from any quarter. In other words, he accords the right of the sovereign to rule only in proportion to the actual power he possesses and utilises to protect them. To be regarded as such, a State need not as Sidgwick puts it, "be independent in the sense that it is not in habitual obedience to any foreign individual or body or to the government of a larger whole."[1] If that were so, the members of the North American Union who are not at all independent in their external relations, nor completely independent in their internal administration or legislation, could ever be regarded as States. No lawyer or jurist would have the hardihood to deny them that status. Salmond therefore, gives us the happiest direction for the classification of States in two distinct divisions, *International* and *Constitutional*. Those which being complete in themselves are independent, such as the British Empire, the French Republic, the Kingdom of Italy, or,

The function is to maintain peace and order.

States are international or constitutional.

[1] Sidgwick, p. 221.

which being part of a larger whole are dependent, such as, India, or the Dominion of Canada, are International States, while those which are either composite or unitary, that is to say when the state is not made up of other states, are constitutional States. Jurists have decided that a composite state may be either imperial, such as, the British empire, or federal, as the United States of America.

They may be imperial or federal.

Where the State has a constitution it acquires an organic character. It may then be properly described as a juristic person. It is a person because it has a will of its own which it expresses through the law-making organs of its government. The personality of the State springs from its possession of a unified will and purpose. But the personality we are thinking of is not identical with physical individuality. It always signifies the capacity for unified, continuous and reasoned discretion or exercise of the will. It is thus nothing more than the application of a common principle of thought to ascribe unity to a community of men bound together by a common purpose. It is the unity of political purpose that gives to the State its attribute of personality, and has an ideal existence apart from the citizens who compose it. By no union, or surrender, or purely private rights is it possible to create public rights. Where the individual will and spirit existed and worked in the individual, the existence of the State as a collective body which lives and is determined by a common spirit and a unified collective will would be inconceivable. The attribute of personality ascribed to the State is a juristic conception. That is proved by public law. The individual is a person in the juristic sense because he has legal rights. He does not have legal rights because he is a person. As such he has no legal rights while in a state of nature. On the other hand there may be legal personality apart from physical individuality, e. g., Corporations. Man in general has a double personality. In the plane of social life he has a legal personality with rights and obligations. In the plane of his own will and thought he has an ethical personality. As compared to the man, the state has only one personality, namely, legal. The personality of the State however, is not embodied in a concrete physical frame. For the attainment of the will of this personality, it is necessary that certain individuals shall serve as its mouthpiece and executive agents. Governmental agents acting in conformity to law are passive agents,—mere organs of the expression of the will of the State. As soon as they exceed the legal competence of their powers, they no longer represent the will of the State. They cease to be and are no more its organs. The test of a good government is prescribed to be the facility it affords to the formation of a sober general will, and the formation of an intelligent

The State is a juristic person.

and enlightened public opinion. In proportion to the nearness with which its actions harmonise with such will and opinion the government is regarded as more and more the organ of social consciousness and the servant of the social will. The government derives its powers from the known will of the governed, not their consent.

Hindu idea of the State.

The Hindu idea of the state, however, is a fuller conception. In the Shukraniti it is described as "an organism of seven limbs under a Ruler and Council; it consists of villages, cities and districts, and has a body of laws and customs." In the light of this definition the essential elements of a State are considered to be the existence of (1) a Sovereign, who as the common ruler represents the unity of the State, (2) a Minister, representing a settled administration, (3) the Treasury, indicating a definite system of revenue forming the source of income of the State, (4) the People, who occupy and inhabit a settled territory and hold it adversely against the rest of the world with the help of (5) the Army, which represents the strength of the state, and (6) the Forts, and lastly (7) the allies whose existence is an evidence of the fact that there is no external control over it and also, that it is free to enter into alliances and to declare war or make peace. These essentials of State-being were realised by Kautilya, by Manu and by Kamandaka. They were handed down as the characteristic features of Indian polities in the period subsequent to the invasion of Alexander the Great. The scientific character of the Hindu conception of the state is indubitable. It is regarded as superior to the contemporary Greek view. Such a conclusion appears to be irresistible when we compare the two, the Hindu and the Greek view. Upon a comparative view the Hindu conception of the State brings out the more modern trend of it. And upon a careful consideration of the different conceptions of the State, those of India, Greece and Rome, those that were discussed in the seventeenth century by Hooker, Hobbes and Locke and in the eighteenth by Rousseau, based on Social contract, we may safely suggest that a State is a multi-human organism. It is the body politic as organised for supreme civil rule and government. It is the political organisation which is the basis of civil government either generally or abstractedly, or in a particular country, hence, the supreme civil power and government is vested in a country or nation. A State is an organised, independent community, having, ostensibly, for common purpose and object, the permanent interest and benefit of all its members. It furnishes a settled, continuing, complete social plan

Elements of the State according to Hindu idea.

Kautilya, Manu and Kamandaka.

Hooker, Hobbes and Locke.

of life for the collective body. Aristotle adds, "a State is a society of people joining together with their families, and their children, to live well, for the sake of a perfect and independent life."[1] The principal object for which men, who in the beginning formed a social bond and then formed themselves into a State, was not the protection of their lives, but of their property. On the social bond was superinduced the political relation. The natural man is too proud an animal to admit that he needs any other protection than what his own courage and that of his clan can bestow. Theorists have defined civil community as constituted by the possession of sovereignty, whether exercised by the whole body, or by a few, or by one of its numbers. This definition, however, is of little practical use in the study of history. There are many nations to which it would apply, and yet of whom it would be hard to say that they form a State, and live in civil society. Nobody will argue that the nomadic races or the Arabian Bedouins form what is properly termed a State. This, in fact, if we use the word in its common historical sense, can only be constituted by a people, whether great or small, which possesses and permanently inhabits one particular country. Fixed places of abode and possessions of land formed the second necessary qualification of every state, in the particular sense of the word. The reason of this is, that the whole institution or assembly of institutions, which we term a state, attains its development and application only by the property in land. Each State must have a defined governing power, and a set of rules of social conduct, acknowledged by the entire community and observance of which is compelled by the governing power. History, experience and necessary deduction alike demonstrate how the progression and phases of such grouping must have extended indefinitely. Thus was formed patriarchal government, the stepping stone to monarchy. These in fact were all the intermediate modes or stages between the mere paternal and the merely civil forms of government including clan-chieftainship. The state therefore, embodies a life. It inhabits a definite territory and it has a government acting as its executive. It has specialised organs for its activities and it shapes its own evolution to achieve a common end.[2] Such a definition, according to Dr. Besant, is a fairly inclusive definition.

State is a collection of families.

State and governing power.

Intermediate stages to attainment of government.

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[1] Aristotle. Politics.

[2] Dr. Annie Besant. Lec. on Pol. Sci. p. 51.

(*b*) AIMS OF THE STATE

It is admitted by all that the state should possess powers sufficiently extensive for the maintenance of its own continued existence against foreign interference. It must provide the means whereby its national life may be preserved and developed. It should also maintain internal order including the protection of life, liberty and property.

Power to resist foreign influence.

In the first stage of barbarism, almost the sole aim of the State was to keep the peace between individuals, to check offence as between them and effect defence against other tribes. The variety of the powers actually exercised by the ruling authority in this stage may not have been, and possibly was not great. But the rules that defined the scope and manner of the exercise of this authority were so general and indefinite in character, that perhaps in no direction did the individual possess any guarantee against state molestation.

Peace between individuals maintained by ruling authority.

With the advance of civilization arises a struggle between authority and liberty. The first aim was to secure to the individual a certain field in which he shall be free to act as he wills, without interference, either by the political power or private individuals. The next aim was to establish general rules according to which the functions that are given to government shall be exercised. This means the establishment of a more or less certain and uniform regulation for public affairs with a view to render impossible, at any rate more difficult, the arbitrary and uncertain action of the government. The Romans had a large amount of individual freedom, while with the Normans it was just the contrary. The great political problem of all ages has been to determine the proper boundary line between authority and liberty. No less important a problem has been to give to the people all the liberty they are capable of enjoying, without destroying the stability or the efficiency of the state. The consideration of the principle on which the line is to be drawn, between public control for public good and individual freedom for individual good, brings up the question whether the state is a means to an end, or an end in itself. From the purely individualistic point of view the State is nothing more than a means to an end. It is the instrumentality through which the highest possible development of humanity is obtained. On the other hand, viewed as having an existence apart from the individual, and, as related to its citizens who have no existence as citizens, except as

Struggle between authority and liberty.

Roman and Norman ideas of liberty.

Full liberty without prejudice to the authority of the state.

State is a means to an end.

members of the body politic, the state is of course an end in itself. Bluntschli asserts that, "the State has an end in itself and for its sake individuals are subordinate to it and bound to serve it. Just as the nation is something more than the sum of persons belonging to it, so the national welfare is not the same as individual welfare. Every now and then the State is compelled either for its own preservation or in the interest of future generations to make heavy demands from its present members and to impose weighty burdens on them".

It is also an end in itself.

(c) FUNCTIONS OF THE STATE—ESSENTIAL AND NON-ESSENTIAL

The *essential functions of a state* are of a fourfold character as regards their aims:—

Fourfold essential functions of the State.

1. The first aim of the state relates to those functions which are concerned with the power of the State which includes the essential functions of the State.

2. The second aim of the State is the creation and maintenance of the widest possible degree of liberty.

3. The third aim of the State is to make every effort to improve the method of its organisation and administration, and

4. The fourth is to promote general welfare.

The *Non-essential* or "common welfare" functions of the State are the powers exercised by the State, other than those that are necessary for its mere existence and the maintenance of order. They are assumed by the State because their public administration is supposed to be advantageous to the people, not because their exercise is a *sine qua non* of the existence of the State. As industrial society develops, and increases in coherence and complexity, social interests become more numerous and important. Enlightened utilitarianism demands the subordination of individual interests to the general weal of the community. The development of governments during the last and the present centuries has been one wherein the purely political duties of the State have been progressively less important as compared with its other functions.

Non-essential functions of the State.

Subordination of individual interests.

(d) SUMMARY

From a consideration of the foregoing we arrive at three vital points which Aristotle enumerates and summarises in this way:—

Aristotle's summary.

1. That man is a political being. We do not know man except in society. We do not know of rights except as attached to society. There can be no anti-social rights.

2. That the State comes into existence to make life possible. It continues to exist to make life good. Security is the first aim of the State. Nation itself is unable to give security to the individual and the world-state emerges. But security is only a means to an end, for the State exists to make life good. All rights are but forms of one great right,—the right to a good life. In that view even sovereignty is nothing but a means to an end.

3. That the State is prior to the individual. It means that, as in logic, we must think of the whole, before we think of the part, so in politics we must think of man in society and not as a separate atom.

The assertion that the end of the State is the individual, requires an explanation. The state is an association within the community. It differs from other associations in that it embraces as its members the whole community and has authority over them all. No individual can live within the community and yet not be a member of the State. The Church or the Trade Union have limited membership. They cannot compel anybody to be their member. The State is thus the architect that builds up into a harmony the different interests within the community.

Difference between the State as an association and other associations.

The State is an organism whose life is continuously enlarged. It is perhaps a paradox to say that its powers are increasing at the same time that the liberties of the individuals and of the associations within it are also growing. The State is a personality because it has a will. Its will is more or less self-determining because it guides the community. And to say that the State is an organism only in a qualified sense is to displace the mechanical view of the State. Because the State is a will, and a moral will, it can do both right and wrong. But moral end must be regarded to be the true basis of the State. The moral end stands behind both the State and the individual. The principles which bind the conduct of the individuals are recognised as those which are binding on the State as well in its relation with other States as with the individuals comprising it. Only by trial and error can the State become good; by experience and judgment founded upon it can the State become better.

State can do right and wrong.

Our idea of the State is largely determined by our consciousness of the possibilities of the State. The individual is a member of many associations in the modern community. Citizenship involves the membership not only of a central State but also of a smaller local community. Security and good life which are generally regarded as the two wings of the State cannot be distinguished, because the one is involved in the other and the increase of one marks the increase of the other.

Citizenship involves what.

The prerogative of the State to use power is by itself neither moral nor immoral, but must be decided by the end for which this power is used. Where the State uses its power for unjust purposes it is punished in the long run no less than the individual. Similarly the good life of the individual which is the end of the State has taken a changed colour in modern days. From the narrow idea of citizenship in the Greek States to the ever widening idea of the State of To-day is a large conception. The growth is toward the control of the national State more and more by the international State. We think of the State as the constitution which expresses the organized life of the community. The legislature and the executive, the local and the central governments are all parts of the State, but in the process of time, the State is no longer merely a national organisation. The government of the League of Nations marks the beginning of the constitution of an international organisation.

Power of the State neither moral nor immoral.

State is more than a national organisation.

CHAPTER IV

Heritage of Citizenship

(*a*) LIBERTY

Life and *Liberty* are words used in constitutional law as standing for and representing all personal rights whatsoever, except those which are embraced in the idea of property. The comprehensive word, however, is *Liberty*. By it is meant, not merely freedom to move about unrestrained, but such liberty of conduct, choice, and action as the law gives and protects. Liberty is sometimes classified as natural liberty, civil liberty and political liberty. Natural liberty is often employed in a vague and indeterminate sense. One man will perhaps understand by it a liberty to enjoy all those rights which are usually regarded as fundamental. These are rights which all governments should concede to all their subjects. It is necessary that we should have a clear idea of what these natural liberties are. Their character may be ascertained only when they are expressed in the form and in terms of law and so far as the law could take notice of it, it would be found to resolve itself into such liberty which the Government of a civilized people would be expected by law to define and protect. By natural liberty another man may understand that freedom from restraint which exists before any government has imposed its limitations. None but a savage could exist without government. Liberty, therefore, without a government to specify, recognise and restrain would only mean that of the wild beast in which all men have an equal right to take or seize hold of whatever his agility, courage, strength, or cunning could secure, but no available right to more. It is obvious therefore, that natural liberty of the sort would be inconsistent with any valuable right whatever. A right in any valuable sense can only be that which secures to its possessor, by requiring others to respect it, and to abstain from its violation. Rights then, are the offspring of law. They are born of legal restraints. These restraints protect every man in his enjoyment within prescribed limits. Without them possession and enjoyment must be had, obtained and defended by cunning or force.

Life and Liberty in constitutional law.

Natural liberty, civil liberty and political liberty.

Character of natural liberty.

Rights and legal restraints.

(*b*) CIVIL LIBERTY AND POLITICAL LIBERTY

Civil liberty may be defined as that condition in which rights are established and protected. For such purpose certain limitations and restraints are necessary to be placed upon the action of every individual member of a political society. They are needed to prevent what would be injurious to other individuals, or prejudicial to the general welfare. This condition may exist in any country, but its extent and securities must depend largely upon the degree of political liberty which accompanies it. *Political liberty* may be defined as consisting in an effectual participation of the people in the making of the laws. Civil, therefore, political liberty belongs to a member of society. It is no other than natural liberty restrained by human laws. The restraint is limited by the necessity for the general advantage of the public. Hence, it may be stated that the law which restrains a man from doing mischief to his fellow citizens increases the civil liberty of mankind even if it may diminish natural liberty. Every wanton and causeless restraint of the will of the subject, whether practised as laid down by Blackstone, by a monarch, a nobility, or a popular assembly, is a degree of tyranny. Civil liberty, rightly understood, consists in protecting the rights of individuals by the united force of society. Society cannot be maintained and indeed can exert no protection unless there is obedience to some sovereign power. If every individual should have the right to decide how far he himself must obey, the term obedience would be a meaningless and empty phrase.

Civil liberty defined.

Its extent dependent upon political liberty.

Wanton restraint is tyranny.

The theory of political liberty is rooted upon the principle of Equality; that every man's civil liberty is the same with that of others,—that all men are equal in the eyes of law, in rights, privileges, and legal capacities. A State which bestows favours or establishes unjust discriminations has no business to be there. It should not be upheld and must perish. But there are circumstances when in the interest of the community at large special privileges may and should be granted. These are such as would not admit of a general participation of the privileges. In the incorporation of a national or State Bank whose establishment is deemed essential for general economic and financial welfare, every citizen or every member of the community cannot be a corporator. Similarly where a railroad is to be built, the franchise must necessarily be given into the hands of a few persons. These and cognate cases may be taken to come within

Political liberty and equality co-existent.

Inequality or special privileges necessary in certain events.

the sphere of valid reasons why special privileges or charters may be granted without giving cause for complaint. But in every case it must be shown to be for the general welfare which must be strictly construed. The State is presumed to have granted in plain terms all it intended to grant at all.

(c) LIBERTY AND AUTHORITY

In every civilised society as in a well organised state there are certain rules of good neighbourhood for the intercourse of the several members of the body politic with one another. The rules of conduct prevent a conflict of rights and insure to each the uninterrupted enjoyment of his own, with only one qualification, that that enjoyment must be reasonably consistent with a corresponding enjoyment by others. The power which prescribes or regulates such enjoyment is usually spoken of as the *Authority*. This is a most comprehensive branch of sovereignty the constituents of which we shall examine later on. It extends to and governs every person, every public and private right, everything in the nature of property, every relation in the State, in society, and in private life. The use of the public highways is regulated under it, and so are all occupations of life. Our domestic relations are formed, regulated and sustained under the rules it prescribes. The age at which a child can act for himself and such other things are determined by it. It should be remembered that these rules never raise any question of constitutional authority, but it is possible for them to be pushed to an extreme that shall deny just liberty. We call these rules, Laws, subjection to which indicates restraint and coercion, a uniform and compulsory progress notwithstanding. The terms '*liberty*' and '*freedom*' represent a range of action, and have always a relative significance, in relation to moral Law, to expediency or safety, to the economy or exigencies of civil society. He is free, he enjoys liberty, who knows no other check or trammel, in the exercise of his will, than Law, moral or civil. Admirably is this truth at once expressed and illustrated by Cicero, "for this it is we are servants of the Law, that we may be free men." This formula receives ample support from political thinkers of every shade of opinion and from none more enthusiastically than from Bentham. "No habit of obedience," says he, "and thence no government—no government, and thence no laws, no laws, and thence no such things as rights,—no

Rules of conduct, civil and political, are founded on authority.

Authority is a branch of sovereignty with extensive sphere of action.

Liberty and Freedom correlative terms.

Cicero's formula.

Bentham's formula.

security,—no property,—liberty, as against regular control, the control of laws and government,—perfect; but as against all irregular control, the mandates of stronger individuals, none." We cannot impress this formula upon the young minds too strongly. Rights like liberty and freedom, we are told by Laski, one of the most brilliant of modern political thinkers, are more matters of habit and tradition than of enactments or written records.[1]

Rights are habits.

There is of course a general rule that every person *sui juris* has a right to choose his own employment. He may devote his labour to any calling, or at his option to hire it out in the service of others. This is one of the first and highest of civil rights. Any restrictions that discriminate against persons or classes are inadmissible. The right to reside in a country implies and involves the right to work and labour there. If by treaty with a foreign country British subjects are given the liberty to reside there, no State can have the right to forbid their employment. Obviously the reason is that it would be in conflict with the rights given by the treaty. Nevertheless employments are subject to control under the authority of the State. They may be regulated in various ways, and to some extent restricted as in cases of age, sex or health. These conditions may render certain occupations unsuitable. Civilised states have often forbidden women and young children to be employed in mines and certain kinds of manufacture. The state may also require special training for certain employments and forbid those who have not undergone such training and proved their fitness from following that calling. Cases in point would be that of legal practitioners and of medical men. An occupation opposed to public policy, like that of gaming, may be prohibited altogether. There are others which are peculiarly liable to abuses. These may be hedged in by all manner of securities calculated to prevent them. The sale of intoxicating drinks may be cited as an illustration. Sometimes an occupation whose supposed benefits may be exceeded by its possible evils may be prohibited altogether. Exclusive privilege or monopolistic business is an infringement upon equal rights. It can be defended upon very special grounds and considerations only. An example is had in the case of a patent, or in the case of a copyright of a book or print. "The sole trade", writes Broom, "of any mechanical artifice, or any other monopoly, is not only a damage and prejudice to those who exercise the same trade, but also to all other subjects; for the end of all these monopolies is the private gain of the

Right to choice of employment.

Control over such employment.

Monopolies.

[1] Laski, Grammar of Politics, p. 103.

patentees."[1] The exclusive right to supply water or gas or electric light in a city, or part of it, is often granted to a Corporation, or an exclusive right to lay rail or tram tracks in its streets. The justification for such grants lies in the fact that corporations are required to serve impartially and at reasonable rates all those who apply for their services. The obligation to serve the public impartially seems to be an essential incident to any grant of a monopoly. It cannot be justified on any other public grounds. The justification of the authority of the state lies in the fact that the individual is not endowed with a natural right of freedom. Nature gives him powers, and in any non-political state, the amount of compulsion he would take advantage of would far exceed that exercised by any government. The principle that freedom exists only because there is restraint may appear paradoxical, but it is none the less a sound and a true principle. The positive basis then upon which the state rests is utility. When urged as a justification for coercion of individuals endowed with a natural right to freedom, utility cannot be regarded as the moral basis of the State. If every individual did have a natural right to freedom, no doctrine of utility could justify the imposition of the coercive powers of the State upon him, or another individual who denied its usefulness for himself.

Exclusive rights.

Every citizen of a State is entitled in political science to its impartial protection. Equality means the equal, unvarying protection of law, to which each one is entitled. It does not mean as Laski puts it, "identity of treatment. There can be no ultimate identity of treatment so long as men are different in want and capacity and need. The purpose of society would be frustrated at the outset if the nature of a mathematician met an identical response with that to the nature of a bricklayer. Equality does not even imply identity of reward for effort so long as the difference in reward does not enable me, by its magnitude, to invade the rights of others."[2] Men have equal rights, but to unequal things. The station, duties, possessions, condition, success, of individuals necessarily differ—a necessity as real and as rational, as the physical differences of stature, of colour and of temperament. What rightfully belongs to each, should be equally secured to each by law. The principle that *all men are born equal* should be re-stated as *all men are equally born.* The relations of Family, Property, and the like, are as essential to man's moral being, as Language, without which his mind cannot be unfolded to the apprehension of Rules, and the dis-

Right to protection.

Equal rights to unequal things.

[1] Broom, Constitutional Law. p. 500.

[2] Grammar of Politics. pp. 152, 153.

tinction of Right and Wrong. If therefore, our assumed equality rejects the former circumstance, it must reject the latter. But he is entitled to have his rights tested by the same general laws which govern others. An insane person cannot be deprived of the exercise of his rights over his belongings against his will except after a judicial investigation. Similarly no man's property may be seized or destroyed, or moved off as a nuisance, at the mere discretion or on the judgment of a ministerial officer.

CHAPTER V

Constitution

When a particular form of government along with its incidents is adopted by a particular people, they are collectively called its *Constitution*. A very complete definition of constitution is to be found in Professor Ahren's "Cours", as "that entirety of fundamental institutions and laws by which the action of Government (administration), and all the citizens are regulated". By the constitution of a country therefore, is meant so much of its laws as relates to the designation and form of its legislature, the rights and functions of the several parts of the legislative body, and the structure, office and jurisdiction of the Courts of Justice.[1] It is a body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised. A constitution is valuable in proportion as it is suited to the circumstances, desires, and aspirations of the people, and as it contains within itself the elements of stability, permanence and security against disorder and revolution. Although every State may be said in some sense to have a constitution, the term *Constitutional government* is only applied to those whose fundamental rules and maxims define how those to whom the exercise of sovereign powers shall be confided, are to be chosen or designated. They also impose efficient restraint on the exercise of such powers for the purpose of protecting individual rights and privileges, and shielding them against any assumption of arbitrary power. The number of such governments is not yet great, but is increasing. The object of every constitution is and should be to secure the possession of governmental power to the few who are fit to exercise it, who will neither make an abuse nor muddle of it. These by their ability, knowledge of the country and sympathy with the people, standing in society and inherent worth would and could act as the trustees of the nation.

Definition of Constitution.

A body of rules and maxims.

Constitutional government.

Object of constitution.

A constitution may be wtitten or unwritten. Both have their advantages and disadvantages. A constitution may moreover be rigid when it is one under which certain laws called "Constitutional", or "fundamental" laws cannot be changed in the same manner as ordinary laws. A constitution may also be flexible under which every law of every

Written or unwritten constitution.

[1] cf. Paley. Moral Philosophy Bk. VI. ch. VII.

description can be legally changed with the same ease, and in the same manner, by one and the same body. A rigid Constitution tends to check innovation, but may provoke revolution.

A constitution may also be federal as opposed to unitary. The federal form is typified in the great constitutions of Switzerland, the United States of America, Canada and Australia. These we shall examine in a later chapter. At the present moment we are concerned only with what is *federalism*. It is not an *unity*—not an union in which the Constituent States lose their separate political independence. The desire on their part is that "whatever concerns the nation as a whole should be placed under the control of a national government, but all matters which are not primarily of common interest should remain in the hands of the several States."

Federal or unitary constitution.

Federalism has four distinct characteristics:

Characteristics of Federalism.

(1) That it has a Central Government.
(2) That it has a written Constitution.
(3) That its constitution is rigid, and
(4) That *federalism* is *legalism*.

Federations are composed of a group of States closely connected by locality, by race, by long historical association or the like. They are united together to form a Central Government, without losing or surrendering powers of legislation and administration over purely local affairs, and in purely local areas of the individual States forming the federation.

Composition of Federations.

The terms of every federal constitution are drawn up and specified in a code acceptable to and accepted by each individual State forming the union. These terms are not liable to change in the ordinary course of legislation, nor by the normal process of legislation. They may be, but by an exceptional and unusually lengthy process. The federal government, that is, the government at the head of the Union is what is known as the Central Government. This Central Government is brought into being, maintained and guided by a written constitution within defined limits. Its rigidity therefore, is obvious, imparting an element of conservatism as opposed to flexibility which is the strength of the English constitution. A federal constitution is necessarily weak, though its central *government* is comparatively stronger than that of any individual State. The last feature of *federalism* is legalism, which means the predominance of the judiciary to declare the validity or otherwise of laws whether enacted by the central or the local legislature. The judiciary can never be disturbed by any change of the

Terms of federation.

Federal constitution is rigid, therefore conservative.

Federalism is legalism.

government. As against that an unitary government is one in which the sovereignty is centred in one person or body of persons.

The principles of federation furnish so important a topic to Indians of the present day that a short account of the constitutions of the principal federal states now existing may not be found to be out of place. These are described in Book II, Chap. II.

CHAPTER VI

Characteristics of a Nation

A **Nation** at one time used to be defined as a consciousness that a certain group of men had the same ideal of civilisation and the qualities by which they could realise it, and the will to converge to the same political body. Among the factors in this consciousness were the common historical memory, tongue, religion, dynasty, legal institutions or soil. The principle of nationality encountered many grave obstacles, among which were the cohesion of the existing state and the necessity incumbent upon every state to possess natural frontiers. One of the most deeply rooted needs of a state was that of natural barriers against invasion, communication with distant dependencies, the possession of natural riches, and the means of inter-changing them in its territory, and an access to the seashore.

Materials of nationality.

The action and inter-action of (a) Geographical, (b) Racial, (c) Linguistic and (d) Religious considerations produce over a period of years certain mental, moral and physical qualities. These have a tendency to develop a peculiar and characteristic culture. But while these may be considered as the stuff and material of nationality, a people cannot become a nation without the basis of political institutions, that is to say, until it is embodied in the State. Till then, it will be in the words of Lord Acton, "a soul wandering in search of a body."

Let us now consider the characteristics separately:—

Different characteristics of nationality.

(a) Geographical characteristics.

(*a*) Geographical codsiderations determine not only the size but in great part also the character and political organisation of nations. The best examples of this element in national character are to be found in the island States and in the States of the plains typified by Russia. The climatic nature of the soil and the presence or absence of running water have a considerable social and economic effect on national character. To these may be added the more definite geographical inferences and the general inferences of environment. Effects of sea and mountain and rich valleys are said to exercise a great influence on the temperament and character of peoples. Once therefore, a people has settled in a particular territory they must be said to have taken a considerable step towards nationhood. This general principle however,

cannot be said to exclude nomadic peoples from the possession of many of the characteristics of a *nation*.

(*b*) Race probably counts for less in the making of the nation. As civilisation advances, there can be no doubt that the difference between the White and the Red, the Yellow and the Black races becomes dimmer, though history furnishes us with examples of the most advanced nations being composed of mongrel peoples among whom the varied racial elements are found in different proportions. In such cases the characteristics of one race or other predominate, or become the ruling type, a fact which may be said to account, to a certain extent at least, the difference that exists among European nations.

(b) Race characteristics.

(*c*) Common Language renders possible that dissemination and discussion of opinions and ideals which slowly evolve into a common purpose. It also strengthens the fundamental unity of a people. It is true a nation may exist without a single common language, but on the other hand linguistic and literary unity very often stimulate and exercise a most potent influence on national ideals.

(c) Language characteristics.

(*d*) The effect of religion in modern times as a factor in the development of nations is mainly traditional. It is based on the part which religion played in the past, when people of one persuasion suffered persecution at the hands of a dominating power of a different persuasion. Examples of this are not wanting in the history of our own country, but the most recent example of a nation being created by the establishment of a Church is the Bulgarian nation. It will be remembered that the Scottish nation owed not a little of their national consciousness to their religion, as inculcated by the Scotch Church.

(d) Characteristics of religion.

To these have sometimes been added custom and a common history as factors in the formation of a Nation. The better opinion, on the basis of the lessons of history, is that no one of them is an indispensable factor. The essential principle is the desire and feeling for the formation of a nation. Mill's definition of a Nation brings out the tendency of nations to constitute themselves as individual States. Such a demand for political unity constitutes the surest index to the existence of a national feeling.

Characteristics of custom and common history.

The most essential element of nationhood however is the free acquiescence of the people in the authority of the State. This does not mean that a nation must enjoy full political independence, but it means that the people must accept willingly the obligations of membership of the State. We may take it therefore, that political

freedom is the most essential quality of nationality. The most advanced political thinkers of Europe and America are of opinion that freedom is an element or ingredient of nationality, on the same level, as it were, as race and language but it is not a compound of race and language. It is, something above the factors whose inter-action brings nationality into being. Nationality has its source in the moral and spiritual world and in virtue of such an origin, possesses something that is unique, something that is felt and appreciated, but not easily explained.

The authority of the State.

In his essay on Nationality, Lord Acton attributes the awakening of the theory of nationality to the partition of Poland. This famous measure, and the most revolutionary act of disregard of the wishes of a people, converted what was a desire and a sentiment for a political union and a right towards its perfection into a political claim. "Thenceforward", says Lord Acton, "there was a nation demanding to be united in a State, a soul as it were, wandering in search of a body in which to begin life over again, and for the first time a cry was heard that the arrangement of States was unjust, that their limits were unnatural, and that a whole people was deprived of its rights to constitute an individual community. The essence of the theory of nationality thus stimulated is that the State and the nation must be co-extensive. "It is", says John Stuart Mill, "a necessary condition of free institutions that the boundaries of governments should coincide with those of nationality, and that every social group of a national character should have the opportunity to develop its own form of government".

Lord Acton on nationality.

Mazzini no doubt was somewhat idealistic when he said that the people were penetrated with only one idea, that of unity and nationality. He was charged with the idea that nationalism implied unity. It was a protest against government by foreigners. The source of this idea lies embedded in the theory of Nationalism preached by the leaders of the French Revolution with their cry of Equality. At first the cry was not understood by the revolutionary leaders. Their doctrine appeared entirely contrary to the idea of nations; they taught that the same general principles of government were absolutely right in all respects. This appears to contradict the natural theory that certain national forces would determine the character of the State. But the idea of liberty and equality of all men was based in turn on that of Nature, and when this was not an ideal, it meant that descent was put in place of tradition: That the French were an ethnological and not an

Mazzini's idea of nationality.

Descent gives way to tradition.

historical one. In other words, it was assumed that a unity exists apart from the government and wholly independent of that fact (or the past). Naturally enough, this sense or sentiment of community which formed the theoretical basis of the idea of a common or general will in a free country like England, took the shape of nationalism in countries which were still under foreign domination. The collective will was made identical with nationality and the nation was regarded as an ideal and founded on Race.

CHAPTER VII

Organisation of the State

(*a*) GOVERNMENT

"Everywhere the human being belongs to something which may be called a polity, and is subject to something which may be called *Government.*"[1] These are the words with which Prof. Seeley introduces us to the subject of Political Science. In every organised society or community of persons as in England, or Japan, or India, there must be some machinery to regulate and direct the affairs of the community, that is to say, affairs in which the entire community is interested. These must be for the common good of every member or the greatest number of the community. The machinery, such as it is, is guided by a system of rules having the sanction or presumed to have the sanction of the community. The machinery and the system of rules which perform this all-important work is called *the Government.* Following to its old Greek origin the word means to 'steer a ship'. To 'steer the ship of State'—that is to say, of a nation or people or community, is to direct its movements. The instrument or the agent of direction has, by the usage of centuries, come to signify the "government". It is a modern word for what was in current use in older times as "governance". The true object of this directing agency is the security of life and property, and the well-being and happiness of the whole community. It takes various forms and has always suited to the needs, ideas, prevailing conditions, and the moral, political and intellectual development of the people under its care.

Characteristics of Government.

Governments are divided mainly under three heads: Despotic, Oligarchic and Democratic. To every one of these Aristotle took exception as merely different forms of tyranny. In a despotic government the head rules in his own selfish interest. In an oligarchy it is the few, mainly the wealthy and the more powerful, whose look-out it is, in consonance with human nature all over the world, and in all times, to protect and preserve its own interest. In a democracy it is again the many who strive to promote what is for the welfare of their class to the exclusion of the rest. The Greeks therefore, called these the bad types of government and preferred Constitutional Government, Aristocracy and King-

Forms of Government.

Despotic.

Oligarchic.

Democratic.

[1] Seeley, Intro. Pol. Sci. p. 38.

ship as the three good types, each having for its aim the good of the whole community.

There is a thin but sharp line of distinction between the State and the Government. Government is the organisation of the State; it is the machinery through which its purposes are formulated and exercised. It is a concrete and mechanical substance, the form and particulars of which are determined by the political expediency of each country, while the State is an abstract and general idea which finds expression through its government.

Distinction between the State and the Government.

Government undoubtedly is a government so long as it rests on force. Power to resist attacks internally and externally is a justifying element of the existence of any government. The right of the government to rule is founded upon its power to maintain itself against force from any quarter. The theory that best appeals to the common-sense of mankind is, that Government is based on a compact by which the individual voluntarily surrenders into the hands of a great authority, certain rights and powers, whereby the remaining rights and liberties should be preserved and protected. The State, or more properly its government, is then conceived as having been created to protect rights already in existence.

Government rests on force.

The distinction between a State and government may be recognised in the fact that, between the sovereignty of the State and the power of the people as a community, Government is but the executive. It is the servant for executing the will of the State which is practically identical with popular demand. The Government is an intermediate body between the sovereign and his subjects, for their mutual intercourse, charged with the execution of the laws and the maintenance of liberty, while the State is founded to find a form of association which should defend and protect with public force the person and property of each associate. The individuals of a community enter into a social contract by which each one of them gives himself up to the control of all. He gives himself up to no particular person, so that, each person in the community possesses an indivisible and inalienable portion of the sovereignty of the whole. Government is mechanical, and consciously created to formulate and execute the will of the State. Its form is an arbitrary one and subject to radical change by a single part of the State will. It is a mechanism which has been described as a "functional totality, the construction, regulation, and energising of which is from without." It is not until the State, rising into actual being, that the process becomes a conscious one to the individuals embraced within

Government is the executive of the State.

Government—a mechanism.

it. The common consciousness of a community reaching a definite degree of preciseness is to be regarded as preliminary to the birth of a State. It is therefore, no more possible for a community to fix the instant of its creation as a body politic, than it is for the individual to determine by memory the moment at which he became conscious of his own identity and personality. This, for the simple reason, that the approach of that certain degree of preciseness is only recognisable by the outward manifestation to which it leads. Hence the manifestation is a subsequent development.

(*b*) ADMINISTRATION

Government, however, is an ideal which can be conceived and whose power can be felt. But it has no physical existence. It follows, that in the world of action the necessary exercise of its power can be made only through agents capable of physical action. These agents represent the government and are organised for the different branches of State rule considered under "Functions of Government". And, so that the different parts of the machinery of the government may move harmoniously, without any conflict, one with the other, human genius has contrived and organised an authority over them, called the Executive chief or head. This organisation which extends from the highest executive head to the humblest policeman, or the nearest village *Chowkidar*, forms the entire administration. By it, in India we understand, from the Viceroy, who is the head of the administration down to the village Chowkidar. 'Administration', moreover, indicates the function of the government which is the executive organisation of the State. In other words, it is the function of execution of every limb of the government. It is the sum total of the authority exercised by the government through its executive and administrative agents, high or low. Instances of this principle are not wanting in our own country. It is the duty of the Minister of Finance and the Collectors at every port in India, to administer the law passed by the legislature for the regulation and collection of duties of customs on goods coming into India from other countries. Similarly, it is the duty of the Member for Commerce to look after the management of Railways, Post and Telegraph offices and to administer the affairs of the departments under him generally. A public official, in administering the law, acts on his own motion, in accordance with the laws and the rules laid down under them; a judge in administering the law, does not act until he is called upon to do so

Agents of government capable of physical action.

Executive head.

Administration represents executive organisation.

Indian examples.

by a case or proceeding which comes before him in his court in such form as the law directs.

(c) SOVEREIGNTY

"The State," observes Bluntschli, "is the embodiment and personification of the national power. This power, considered in its highest dignity and greatest force, is called *Sovereignty*. Gradually the name ceased to be given to more branches of administration and came to be limited to the one ruling power in the state and the conception was applied to the concentrated power of the State."[1] Later on the eminent German jurist places this concentrated power in the Legislature. "The legislative power", says he, "is the normal manifestation of the sovereignty of the State."[2] But in an independent political society, according to Austin, the person or the body of persons who has or exercises supreme authority in the affairs of State is the Sovereign. There must be sovereign power in every such society. Without it we cannot move, government cannot exist and the conduct and regulation of our intercourse with our fellowmen become impossible. "The aggregate of powers", observes Sir William Markby, "which is possessed by the rules of a political society is called Sovereignty. A single ruler, where there is one, is called a sovereign; the body of rulers, where there are several, is called the Sovereign body, or the Government, or the Supreme Government."[3] We have nothing to do with the Austinian theory of sovereignty to which most competent authorities, such as Maine and others, have advanced very cogent objections when discussing it from the point of view of a historical jurist. Austin was not a historical jurist, Maine was. It was Aristotle who suggested what the component parts of the sovereign power are. According to him its functions are divided into three categories; (1) the Legislative, (2) the Judicial and (3) the Executive. To the power which is concerned with the legislative functions of the sovereign is entrusted the task of making, altering and repealing laws. To the power which is concerned with the judicial functions of the sovereign, is entrusted the task of interpreting and applying those laws. Similarly, to the power which is concerned with the actual carrying into effect those laws, is entrusted the task of giving effect to them.

Sovereignty defined.

Normal manifestation of the Sovereignty.

Sovereign body.

Categorical division of functions of Sovereignty.

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[1] Bluntschli. Bk. VII. ch. I. p. 493.

[2] Ibid. p. 509.

[3] Elements of Law. p. 3.

The preceding pages have enabled the student to acquire a correct general conception of society and of the formation of the State. Let us now consider how the entire functions, office and action of Sovereignty are composed and reducible, in object, under three general heads: (1) to make and promulgate laws, i. e., Legislation; (2) to determine when and by whom the Law is infringed, to apply remedies and to assign sanctions, i. e., Judicature; and (3) to wield the physical, in the sense of active, punitive and ministerial power of the State, i. e., Executive. A watchful superintendence and adjustment of the entire political machinery is usually considered to belong to the executive. It is a part of the executive function to look after the State finances and their proper use. The Executive has a right and a duty cast upon it to represent the dignity of the State as well as the might of the community, at home and abroad, in its intercourse with other nations. This is a proper field for statesmanship, for the skill of the politician, of the diplomat; for a Machiavelli, for an Akbar, a Peel, a Palmerston, a Tallyrand or a Gladstone. These separate functions which we have enumerated may all be united in one person or vested in separate individuals. Those who are familiar with the history of India will hold Akbar or Aurangzeb to be an example of all three having been united in one. Nor are other examples wanting. The Czar of Russia, the Emperor of China, the Shah of Persia, the Sultan of Turkey, the Roman Emperor, all furnish examples of the triple power being united in one person. Happily they are all gone, never to revive again. In the frame or constitution of the state of Great Britain, or of France, or of the United States of America, or nearer home, of India, each one is, in theory at least separate, and has independent action. Such action is taken individually and separately by the Parliament or the legislature; by the judiciary or the Courts of Justice; by the Crown or the President or the Viceroy, as the case may be, or the Chief Executive without political personality. It follows therefore, that Civil societies or States differ from each other: Principally in the arrangement and distribution of the functions of sovereignty and then in the provisions and character of their respective codes or rules of guidance. And this brings us to the question of what is a 'polity', or the mode of State mechanism which discharges the function of sovereignty? No words could convey a clearer idea than the words of Aristotle who says: "It is evident that every form of government or administration (for the words are of the same import) must contain the supreme power over the whole State, and that this supreme power must necessarily be in

Functional composition of Sovereignty.

Empires of the past as examples.

Difference in Civil societies and States.

Supreme power of the government over the State.

the hands of one person, or of a few; or of the many; and that, when the one, the few, or the many direct their policy to the common good, such States are well governed; but, when the interest of the one, the few, or the many who are in office, is alone consulted, a perversion takes place."

These several modes are distinguished and known to us as a kingdom or monarchy; or an aristocracy, rule of the best or the wealthy; and a polity. Polity is the common name given to all governments though, ever since the days of Aristotle it has been customary to describe it as one in which the citizens at large direct their policy to the common good. The perversion of the monarch is *tyranny*, of the aristocracy is *oligarchy* and of the populace is *democracy*. None of them has the common good of all in view.

Polity as described by Aristotle.

This succinct account of the modes of civil government or sovereignty suffices, as an *a priori* description. In History and in the living theatre of the peopled earth, there are examples more various and complex, severally ranging under one or other of these generic forms. The annals of Great Britain, of the Venetian Republic, of France, and of the American Federal Union—together form a repertory and illustration of all methods of sovereignty.

(*d*) NATURE OF SOVEREIGNTY

The individual has no right independently of the State and beyond its control. The only rules which possess legal validity are such as have received the sanction of the State. It follows logically that the Sovereign political power must necessarily be incapable of legal limitations. Austin reminds us that a monarch or a Sovereign bound by a legal duty must be held to be subject to a higher or superior sovereign. It is true that certain subjects have almost always been left to the free exercise of the individual. That does not mean that these subjects constitute a domain that can never be entered by the State. The individual is defended in this sphere by the power (in the State) that makes and maintains the government. The power that makes and maintains a government is also the power which can destroy it. That power defends a government against all encroachment from any other quarter. Against that power itself the Sovereign has no defence. Sovereignty of the State is thus absolute and unlimited.

Sovereign subject to a superior power.

Sovereignty may be defined in a general way as that term which denotes the highest power of the State: the absolute and perpetual power of the State. In its sovereign character the state appears from

within as that force from which all other political powers derive their validity. If necessary that power may be absorbed again. Outwardly, in its relation with other powers, the state appears as independent and free from external legal compulsion of any sort whatsoever. The result of this position is to render the conception of Sovereignty territorial in character. It is indivisible and hence its exercise must be distinguished from its possession.

Sovereignty is the absolute and perpetual power of the State.

The rulership over all matters that arise on the one hand, between the sovereign and the individuals of which the State is composed, and between the individuals themselves on the other, is the one that impresses us most among the attributes of the State. The State is supreme in giving the ultimate validity to all law. It also determines the scope of its own powers. An eminent political philosopher asserts that the legal characteristic of the State is the obligation through its own will. Yet sovereignty is something more than a collection of power. It belongs to the State as a person and represents the supremacy of its will.

Rousseau teaches us that "power can be divided, will cannot". In that sense Sovereignty in its internal aspects denotes independence or complete freedom from all other external control of a legal character. If upon any one point, however insignificant, its own will be not conclusive, but is legally dependent upon the consent of another power, its sovereignty is destroyed. The British Government has conceded to the Colonies, Dominions and States, such as Canada, Australia, New Zealand, South Africa and Ireland the most complete autonomy of government. In doing so, it has reserved to itself a control that may be of such slight and negative character as to make its exercise of the most rare occurrence. Yet as long as such control exists, the sovereignty of the mother country over its colony is not released. Such colonies, dominions and states must therefore be considered as possessing only administrative autonomy,—not political independence or sovereignty.

Sovereignty as conceived by Rousseau.

Autonomy and sovereignty not in conflict.

All law however, is a formal limitation on Sovereignty. Through laws are fixed the rights and duties of individuals and the manner in which such rights are to be exercised and enforced. Where there is a legal transfer of the power of exercising sovereignty from one body to another, such an act is a surrender of power by that particular governing body. It is not the parting with sovereignty by the State. The state is no more able to transfer its sovereignty than a man has the power to transfer his life or personality.

Limitations on Sovereignty.

(*e*) LOCATION OF SOVEREIGNTY

Having ascertained what sovereignty is and its nature we may proceed to discover the *resting place of sovereignty.* The question then to be determined is whether it is possible to locate that power, the sovereign power in the hands of a definite person or body of persons, or whether the possession of such power is attributable only to the whole people. It will be remembered that by sovereignty is designated the supreme will of the State, and that, that person or body of persons is the Sovereign in whose hands rests the power. He or it can no doubt, in the last resort, impose his or its will *in a legal manner* upon the whole body of persons that constitute the state.

Sovereignty located.

Austin maintains that such a determinate human superior is discoverable in every political and independent Society. It is indeed a condition *sine qua non* to the existence of a State as such. The absolute legal competence of the sovereign is limited, for the authority of the sovereign is sometimes successfully questioned or opposed. Hence *Popular Government* has come to mean, or be synonymous with, the sensitiveness of the ruling powers to public opinion. We are thus forced to the conclusion that Sovereignty rests with the people. Where a determinate human superior not inured to the habit of obedience to a like superior, receives habitual obedience from the bulk of a given society, that determinate superior is the sovereign in that society whether political or independent. Austin however, explains that sovereignty or supreme power is incapable of legal limitations, whether it resides in an individual or in a number of individuals.

Popular government is sensitive to public opinion.

Where limitations on Sovereignty do not exist.

(*f*) SOVEREIGNTY AND THE CITIZENS

If the term "*people*" refers to the sum of individuals comprising the State, "we have," says Bluntschli, "the State resolved into its atoms, and the supreme power ascribed to the unorganised mass or to the majority of those individuals."[1] If "people" means society united and politically organised, it is as much as saying that sovereignty is a necessary ingredient of the State. By the sovereignty of the people we can mean nothing more than the *Sovereignty of Public Opinion.* It is that power which is defined as "the sense and sentiment of the community, necessarily irresistible, showing its power everywhere." Sovereignty is thus in the opinion of Woodrow Wilson reduced

Sovereignty of the people is sovereignty of public opinion.

[1] Bluntschli. Bk. II. ch. iii.

to a "catalogue of influences." Even in a State where every citizen is a member of the assembly, there is no certainty of obtaining an expression of the general will. The conduct of a people assuming a revolutionary attitude towards their government cannot, from a moral standpoint, be justified. From a legal standpoint, their attempt to express their demand in ways other than those provided by law, places them outside the state and makes their action not that of a body politic, but that of a mob. Again, the action of a state may, and often is, determined and limited by claims of other states as much as by its public opinion. One cannot be permitted to argue on that score that sovereignty rests with the individual State, but with the community of States.

Sovereignty whether in the individual State or community of States.

A distinction should always be made between the power of the people exercised by the public and the ultimate political sovereignty. By political sovereignty is meant the highest political power in the state as established through its established organs. Prof. Ritchie designates it as "legal sovereignty", a designation which Willoughby approves but which Austin does not. Austin is said to have made the mistake of not having recognised the distinction between legal and political sovereignty. He denied legal sovereignty to the legislative bodies of the individual commonwealth, and even to the Federal congress where a federal government exists. He places it in the electorate which selected the bodies.

Meaning of political sovereignty.

Legal Sovereignty.

Governmental agents exercise a power delegated or granted to them by the State and not one created by the joint will of themselves and the subjects of the State. Public officials are the agents of the State and not of the people. Rousseau is right in saying that government is established by contract. The value of constitutional government is not that it places society in the hands of the people, but that it prescribes definite ways in which this sovereign power shall be exercised by the State. The value of popular government is that it provides the means through which the wishes of the people may be known and felt. Sovereignty resides in the corporate unit resulting from the organisation of many into one. It is not vested in the individuals constituting such unit, nor in any number of them as such, nor even in all of them, except as organised into a body politic and acting as such.

Power granted by the State, not by individuals.

Value of popular government.

If sovereignty is a power capable of being exercised only through existing governmental agencies, it necessarily follows that the supreme

power is exhibited whenever the will of the State is expressed. By whomsoever or whatsoever body, therefore, the will of the State is expressed or the law created, there we have the sovereignty exercised. The executive and judiciary in so far as they enforce or interpret the will of the State, have no will of their own. They are but implements for the performance of that will which gives to them a political and legal sovereignty. It may no doubt be argued that the ordinary legislature exercises its powers only by right of constitutional law and that, therefore, it voices the will of those that establish this fundamental law. In any given State, it may be said that that organ possesses the final sovereign power which creates those laws that organise the state. And President Wilson continues to guide us when he says that "Sovereignty is the duly operative power of forming and giving efficacy to laws. It is the organic organisation by the state of its law and policy and the sovereign power is the highest originative organ of the State."

When sovereignty exercised.

Legislature exercises powers conferred by constitutional law.

CHAPTER VIII

Powers of the Government

(*a*) EXECUTIVE, LEGISLATIVE AND JUDICIAL POWERS

The law regulates the division of the powers of Government into what are commonly called the *executive*, the *legislative* and the *judicial* departments. The executive power carries out, executes and enforces the law of the land by the machinery afforded by the constitution of the country. Between the Governor-General of India-in-Council and the Governor-in-Council of every Presidency or Province,—they being the supreme executive,—and the humblest constable or village peace officer executing a writ or order of a Court, there is a large body of public officers. They are engaged everyday in enforcing the law of the land in accordance with the rules laid down and practices followed for their direction in every case. The legislature or the legislative power makes law and alters it. In India or in any country governed by a constitution the powers of the legislature are regulated by it. In India there is a Central legislature called the Indian legislature, and in every province there is also a legislature with law-making rights, as well as municipal Councils having certain legislative powers within their own jurisdiction. The judicial power applies and gives a meaning to the law whenever disputes come before the judges in due course and form. Thus judicial power is represented by the judges and Courts duly authorised to administer justice and explain the law in such forms as the law directs and sanctions.

Executive, legislative and judicial powers.

Function of the Executive.

of the legislature.

of the judiciary.

(*b*) DOCTRINE OF SEPARATION OF POWERS

The ultimate aim of good government is to maintain the *liberty of the people*. It has to be preserved against aggressive foreign powers, and also against internal encroachments of ambitious persons and unscrupulous elements within the State. Sober idea of liberty is of a moderate nature. Montesquieu asserts that "political liberty does not consist in an unlimited freedom and that it is only to be found in moderate governments." He further argues that "Liberty is a right of doing whatever the laws permit." From these it appears that the very foundation of a good government which stands for

Good government ensures liberty of the people.

the liberty of its people rests on the evolution of good laws. They are to be founded, either upon customs, or upon definite statutes enacted by the people, or by their representatives. To this a condition may be attached: that there should be an efficient organisation in the state to give effect to the commands of such laws. Such an organisation is ordinarily termed the executive of the State. A similar organisation is necessary to protect the inherent and legitimate rights of every individual member of the State against any abuse of power in the name of law. It should be free from all legislative and executive control of the government. The best safeguard against such abuses is the separation of powers. "It is necessary from the very nature of things that power should be a check upon power." The threefold functions of a State should be so evolved as to secure a complete balance of power within the State. A perfect arrangement of powers between "the legislative, the executive in respect to things dependent on the law of nations, and the executive in regard to matters that depend on civil law i. e., in other words the judiciary," can alone do it. It is a lesson which the English arrangement teaches us.

Liberty rests on good laws.

Safeguard against executive encroachment on liberty.

Threefold functions of the State.

The two chief sources of Montesquieu's political speculation were Roman History and contemporary English institutions. It is from these two sources that he derived his conception of *law and liberty*. These are in fact the very foundations of his political philosophy. Like all the thinkers of his time he looked to nature for the "criterion" of his law. His method however, was quite unlike theirs. He made no endeavour to deduce laws of nature from abstract assumptions of pure reason. He found them in the concrete facts of life both present and past. That laws, in the widest sense of the word, are "the necessary relations springing out of the nature of things," is a peculiar definition which owes its origin to him only. Many political phiolsophers would not agree with such a definition of law. Many of the jurists have ridiculed such an idea. Nevertheless it is certainly a unique definition and it is very important in the subsequent exposition of his theory. Montesquieu excludes from the conception of law the element of arbitrariness or caprice. According to other political thinkers this is one of the essential factors in the evolution of laws. Man in the State of nature, is a timid trembling creature, always panic-stricken with real or imaginary dangers that surround him; the laws of nature are merely those "first unreasoning impulses" which guide him to safety and also make him search for food and other necessary commodities for the preserv-

Montesquieu's theory of separation of powers based upon Roman and English history.

Difference of opinion with Montesquieu.

ation of his life and race. With the formation of society and the development of the human intellect, the old order changes. Men lose their sense of weakness, seek for power over one another and ultimately abuse their political powers, sometimes with disastrous consequences. There is every possibility of all political organisations being corrupted sooner or later, unless the constitutions be so framed as to keep every subordinate institution within its precise limits, each acting as a check upon another, and thus maintaining a uniform balance of power within the State. This is the essential requisite for upholding the liberty of the people. English political institutions are the best means of safeguarding the liberty of the people, and no other European State has been able to approach this ideal of perfection. The dogma that the separation of powers within a state was essential to freedom became the guiding general principle of the makers of the American constitution. The contrast between private and public liberties of the English people, and the despotism of continental powers, attracted the notice of the American colonists whose inordinate love for freedom and antimonarchical sentiments, left no other course open to them but to accept readily a scheme of constitution which seemed to protect private and public liberties of the people more than any other, and more than anything else.

When abuse of political power takes place.

Excellence of English political institutions.

Private liberty and public liberty and despotic power.

Unlike the constitution of England, the American Constitution is a written or rigid constitution, and is not the result of gradual growth. The Americans wanted to set up a constitution of their own on the model of the British constitution, but carefully avoiding all the weak points, such as the royal prerogative, which they considered to be harmful for their own political development and material prosperity. In fact, they wanted to improve upon the British Constitution by limiting the powers of the President, the legislature, the executive and the judiciary, so that, none of these institutions should ever be strong enough to encroach on others. The British Parliament has always been a sovereign and constituent assembly, and the whole of the British Constitution serves as a unified whole, while the American Constitution is made up of several units, each practically independent of the other, though not to the fullest extent, and is thus deprived of that complete unity which is certainly a great safeguard against constitutional dead-locks. This is one of the reasons why so many constitutional dead-locks have taken place in America. The power of the President is limited; he has no direct legislative power,

American constitution a written and rigid constitution.

An improvement is made in the American constitution.

but has the right to veto. He is supposed to be above all party politics and is elected by the people. He stands above the Congress, consisting of the Senate and the House of Representatives, although the Senate has the power of trying the President if impeached before it by the House. The President is not a member of the legislature at all. He is an independent and separate power on whom the people, for the sake of protecting themselves against unfair legislation, have given the special power of veto, and this is undoubtedly a great check on the legislature. He is also the supreme executive officer in the State, and is also the Commander-in-chief of the army and the navy. Even here there are certain restrictions. The annual supply for the army and the navy has to be sanctioned by both the Senate and the House. The Senate and the House also serve as mutual checks and thereby keep the legislature within its legal limits. The Judiciary is also supreme within its own jurisdiction. It has the same power as the British Courts, and is completely separated from the executive. Like the British Courts, the Federal and the State Courts are protectors of law. The judges are allowed to give their judgments freely, and are in no way under the control of the executive or the legislature. The judgments of the American Courts are binding on the executive and the legislature. They are not so with the British Parliament, because the latter can alter the law by amendments after trial, while the American Congress cannot do so as long as the decisions of the courts are legal. So, in this sense the American judiciary has greater power than the British Courts.

English constitution avoids constitutional dead-locks.

American President has special power of veto.

Judges in America as in England are independent of the executive and the legislature.

It is indeed very difficult to say whether the doctrine of separation of powers should be valued more than any alternative theory. The American constitution is a perfect practical example of such a doctrine. However perfect the doctrine may appear in theory, it is quite a debatable point whether it is really so perfect in practice. It has undoubtedly its shortcomings too, but it has suited American conditions and American mentality. The British Constitution has been evolved in peculiar circumstances. If the American constitution had been an exact prototype of the British Constitution, it would not have, most probably, suited American conditions. In drawing up a constitution various other factors have to be considered apart from pure theories. At the same time it cannot be maintained that without total separation of powers there can be no political liberty in the State. It is quite possible to admit that such a doctrine gives

British constitution evolved under circumstances not present in America.

better facilities for the maintenance of political liberty, but it is a doubtful point whether it should be considered the best as a whole.

(c) OBJECTS OF CIVIL GOVERNMENT

We have seen before that in the distribution of rights and obligations the government has for its object the happiness of the community. This proposition appears to rest on four distinct circumstances.

Circumstances upon which the happiness of the Community depends.

1. *Subsistence,*
2. *Abundance,*
3. *Equality* and
4. *Security.*

We arrive therefore, at the conclusion that the object of the government is fourfold, namely, to provide for subsistence, to maintain abundance, to favour equality and to maintain security. They are very little removed from each other, and therefore, the limits which separate these are not always easy to determine. It can however, be justified on the ground of its completeness.

Fourfold object of the government.

Subsistence is included in abundance, but the laws may go much further for one than they would be justified in going for the other. Therefore, they should be carefully distinguished leading to the conclusion that laws cannot do anything directly for subsistence. All they can do is to create motives, that is, pains and rewards, by the influence of which, men would be induced to provide subsistence for themselves. They however, indirectly provide for subsistence in protecting men while they labour, and insuring to them the produce of their industry; security for the labourer, and for the produce of his labour. Such is the benefit of the law. It is above all price. The question then arises whether governments should enact laws directing men not to be satisfied with mere subsistence but to aim at obtaining abundance. Such activity on the part of any government would receive no encouragement, for that would be a wholly unnecessary use of *artificial* where *natural* means are sufficient. The love of pleasure, the fear of want, the active desire of improving our circumstances, will always, when coupled with security, produce new endeavours to make further acquisitions. Wants increase with means; every new want becomes a new principle of and incentive to action. Opulence itself, which is merely a comparative term, does not stop this movement when once it is begun. Seldom or never does a man think that he has enough. The wealth of individuals is

Laws cannot create subsistence, they may create motives.

Function of government in respect of subsistence and abundance.

the wealth of society. None but natural motives are needed to induce men to enrich themselves as much as they can.

Abundance.

Thus *abundance* is gradually produced by the operation of the same causes which produce subsistence. There is no opposition between these two objects of men; on the contrary, the greater the abundance, the greater the security of not being in want of subsistence.

Security.

Security admits of as many distinctions as there are acts which may be contrary to it. Security relates to person, honour, property and condition. Acts prohibited by law, as contrary to security, are *offences* or *crimes*. Security is one of the principal objects of a civil government. This invaluable blessing, a sure proof of civilization, is entirely the effect of legislation, in other words, of the efficiency of the government. Without laws, and consequently without an efficient government to back them, no security, as a result of abundance, nor even certainty of subsistence can exist. The law does what natural feelings have no power to do. Law creates property by creating a certain and durable possession,

Function of law in respect of security.

and has encouraged men to labour beyond the necessities of the moment with the hope of reaping at some future time the benefits of their labour. The government does not say to man, "work and I will reward thee;" but it says, "work and I will secure thee the fruits of thy labour through my legislative activity." If industry creates, it is law which preserves. What in the first instance we owe to the former, we cannot keep without the assistance of the latter. And here liberty, as we have seen before, must give way to security, for there can be no laws for security but at the expense of liberty.

Equality.

Finally, *equality* is among the objects which a government ought to promote, because, in an arrangement intended to procure to all men the greatest possible happiness, there can be no reason for the law to endeavour to procure more to one man than to another.

As a necessary corollary to our idea of *security* we arrive at a notion of property to the origin and attributes of which we have already alluded in chapter II. section (a), but we must not forget to observe here that the mere possession of it does not entitle one to any special privileges in the State. "I can possess" says a most brilliant political

Mere possession of property ought not to give any special privileges.

thinker, Laski, "because I serve; I cannot, morally, possess because someone else has served. There is no justice in a State which exacts labour from some of its members as the price of their life, and allows others to live upon labour in which they have had no

share. Property is therefore never justified, as Burke believed, in a special representation in the State. The only representation there entitled to find place is the representation of persons; and these are entitled, for common needs, to be considered as of equal worth."[1] The schoolmaster, no doubt, does not win the same reward as the great barrister. But it does not mean that the impulses we are eager to satisfy by social organisation are the same in the schoolmaster as in the barrister. The success of a State is to be measured by the degree of power it possesses to realise that equality "in the event."

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[1] Laski—Grammar. p. 88.

CHAPTER IX

Good Citizenship and its Obstacles[1]

Good citizenship involves two fundamental principles. The principle of Obedience and the principle of Independence are among the most effective foundations of a well ordered civil society. Obedience is the result of the surrender of one's will to the will of another, while independence is the result of the assertion of one will against that of another. Either of these could be carried to excess. When so done, they degenerate on the one hand into despotism and on the other into anarchy. Neither of these is desirable in a civil society having a government of a more or less popular type.

Principles involved in good citizenship.

Popular government to which civilised societies, whether in the East or in the West, have tended during a whole century, demands for its success the presence of certain conditions in the body politic. For the proper exercise of the virtues of freedom in a community, each of its members called citizens, must be, as Lord Bryce puts it, capable of citizenship. He must have the *capacity for citizenship*. This capacity is expressed in three different ways. In his possession of sufficient *intelligence* to be able to know and appreciate what is for the good of the community to which he belongs. He should have sufficient *self-control* to be able to allow cheerfully and gracefully the general will, or the will of the community to prevail over his own. Lastly, he is a good citizen who has a *public spirit* in him, a conscience which spurs him on to exercise his franchise, to work for the community and to fight in its interest and for its protection if need be. This last is a rare virtue among civic duties but is often avoided under some pretext or another. One's capacity to be a citizen will therefore be measured by the amount of intelligence he has, to form his own opinion of public affairs. It is a quality which is closely allied to the faculty, called judgment which enables one to choose between right and wrong, between the right and the wrong man for office. Self-control, on the other hand, is not a thing which is easily acquired. But without it, a man is never a good citizen, for he has not learnt how to subordinate his own will to that of the rest of the community,

Capacity for citizenship.

Intelligence.

Self-control.

Public Spirit.

[1] This chapter is founded upon Lord Bryce's famous lectures before the University of Yale on "Hindrances to Good Citizenship".

or the majority of them. To be able to accept the decision of the majority is a great virtue in public life, as much as to be honest and conscientious in the pursuit of the common weal. The great thing therefore is, to promote public or common interest to the exclusion of your own. The citizen who has an axe to grind at the expense of the community, is not worth the name. Above all, the good citizen must have public spirit to devote services to the community, even if they should be at some sacrifice of his personal interests. And the best citizen is he, who has, in addition to the qualities enumerated, the determination to face danger for the protection of the community, and the country to which he belongs. None of these qualities however is, or can be acquired unless there are opportunities to develop or evoke them. Just as a man is made in the school of responsibility, so power brings responsibility and kindles zeal. "Trust the people and they will quickly justify your trust."

Freedom the mother of citizens' virtues.

The virtues which are essential for good citizenship are acquired through *freedom*. Freedom is the parent of virtue only when acquired through long training and experience. Nations fall into the pitfalls of popular government for want of experience in the art of government. The evils incident to the monarchical system of government are said to be "class hatred, corruption, extravagance, the spirit of militarism and the tendency to disorder and disregard of the law". It cannot however, be said that these evils are entirely absent from popular government, or self-government, or even democratic government. Human nature being what it is, though it is improving, they shall be present wherever there is one man and another. Two men are never alike either in features or in temperament, any more than their nature. But the good sets the example and prevails in the long run over the bad and the indifferent. Even in democratic Europe the moral or the political nature of man has not yet come up to the ideal of the responsibilities which self-government imposes. "In no European country", observes Lord Bryce, "is the average citizen what the citizen in a democracy ought to be, and in Switzerland, the country where he seems to have attained the highest level, his superiority may be largely due to the comparative absence of the temptations which wealth brings". Thus the problem and possession of wealth make all the difference in the political temperament and status of citizens.

The student however, has got to fix his eyes upon the average man, the final arbiter of all things connected with the State. Because the government is his in the sense that he has contributed his share in setting it up, and does contribute his share in maintaining it, the final voice in the conduct of public affairs must legitimately belong to him.

In view of that fact the citizen may only disclaim his responsibility at the cost of his rights. "But strictly speaking," continues Prof. Bryce, "there is no average man. Every individual has qualities which make his character more or less different from that of other individuals. Hence the conduct of no single person can ever be predicted with certainty." But if the average citizen falls short of the standard of civic duty required of him there are causes which contribute towards his failure. They are *Indolence*, *Self-interest* and *Party spirit*.

Causes which make man less of a good citizen.

(*a*) INDOLENCE

It is said that the difference that exists between one man and another, is not so much the difference in the circumstances either of their birth or of intellectual superiority or inferiority. The difference is that of habit and of determination. Where one is more successful than another similarly situated, it will be found in ninety-nine cases out of a hundred that he is more active, more determined, more reflecting and more diligent. The less successful man or the failure in life is either lazy or easy-going and slow-moving, who pays no thought to opportunities that may lead to success. It naturally follows that one who is habitually less energetic in the pursuit of his own affairs will be no better in the assiduous discharge of his civic duties. Because a civic duty is shared with the rest of the community, it is none the less a personal duty, a loyal and conscientious discharge of which should heighten a citizen in the estimation of his people. He is a bad citizen who considers that what is "Everybody's business is Nobody's business." A noble example of how best to discharge the duties of the citizen is furnished by the life of the late Prof. Henry Sidgwick of Cambridge. At or about the time of the general election of 1886 Prof. Sidgwick was residing in Davos Platz, in Switzerland. Mr. Gladstone had then propounded his Home Rule scheme for Ireland. Home Rule was then the most prominent question which divided political parties in England. Great political figures were arrayed on either side—for and against. Prof. Sidgwick was opposed to the grant of Home Rule to Ireland, and with a view to a conscientious discharge of his duty as a voter, he travelled all the way from Switzerland where he had gone for rest and change to record his vote at Cambridge against Home Rule. He then went back to Switzerland. This fact which involved considerable trouble and sacrifice, and illustrates what he considered to be his duty, gains further importance when we learn

Indolence.

Prof. Sidgwick's example. He was an ideal citizen.

that the side for which he voted did win at the poll. He fully expected it to win and he knew that that would be the result. You cannot help admiring such singular devotion to civic duty and example of civic virtue.

An equally important civic duty for a citizen is to fight fearlessly for his own opinion honestly formed and in the best interest of the community. This is all the more necessary where he should be in a minority. Our experience is that the smaller the minority the more unpopular it appears to be. It is also the experience of those who watch public life and follow and study public questions that, it is the minority who are more often in the right than the majority. The good citizen therefore, the citizen who has no selfish end to serve will have the courage to face "the multitude hastening to do evil."

Must have sufficient moral courage.

Courage to be raised to the dignity of moral courage must proceed from pure conviction. It is then a genuine virtue. One stands amazed at the sight of the crowd that gather to witness a great football match, or the races on the Viceroy's Cup day, how each one enthusiastically cheers up his favourite side or his favourite horse or jockey. Not infrequently do we find that such cheering leads the side to the goal, or the horse to the winning post. But the psychology behind the cheering is not that he wishes his side, or his horse to win, but he feels convinced that it will win and ought to win. Would that crowd took more interest in civic life and civic duties than in a match or a race. Reading papers, whether in the morning or in the evening, is not enough. Think for yourself, take sides, make up your mind and do your duty.

Another great duty which the average citizen through indolence, tries to avoid is to fight against his country's foes. It is a sin the gravity of which cannot be measured. It is almost a crime. Not less

Lack of energy.

grave is it an offence for the citizen to refuse to take up arms in a civil strife or to help the constitutional authorities to maintain law and order. It is for these reasons, history tells us, that in the ancient republics such neglect on the part of a citizen was regarded as an offence. The citizens of some of the Greek republics were not permitted to be neglectful of their duty to fight except on pain of punishment. In an insurrection he must take one or the other side, and if he did not, he was liable to punishment. It is not simply in India that we are familiar with such neglect of

The best examples are those of England and America.

duty on the part of the citizen. It is no less a fault on the part of the English people and of the Americans, the two most go-ahead, law-abiding and patriotic people in the world. "I have not heard," says Lord Bryce, "of anyone being indicted in England or the United

States for failing to discharge his legal duty to join in the hue and cry after a thief, or to rally to the Sheriff when he calls upon the *posse Comitatus* to support him in maintaining law and order." Perhaps for such neglect an indictment would lie under the law of our own country. But nobody has even tested it, though within recent years bodies of special constables from the civil population to aid in maintaining public tranquillity, in other words law and order, have been enrolled in various parts of the country.

Neglect to exercise functions.

Next comes the difficulty which arises out of the citizen's neglect to vote. It is in the nature of the indolent man to avoid doing what he ought to do in the interest of the body politic, unless he has reached the full height of political or civic consciousness. To consider therefore, that one may mind his "own business" to the neglect of the "business of the State," is a positive hindrance to good citizenship. To rule or help to rule the affairs of the State is business not less important than his own. In fact it is more, for it concerns the entire community of which he is only a part. One who neglects to vote without reasonable excuse is not deserving of the rights and privileges of citizenship. In some of the Swiss Cantons, it is said, that neglect to vote without just cause is visited with a penalty. In our own country the habit of not going to the poll is reprehensible. Still more so is the habit, of those who do go to the poll, to vote either in obedience to influence or to oblige one or to serve an interest. Perhaps less frequently but not altogether unusually are they paid to go. In the one case they are driven to go, in the other they are tempted to go. In a small percentage of cases do they go from a high sense of civic duty.

Shirking of civic duties.

There is yet another form of civic apathy. It is what is called the unwillingness to undertake the discharge of civic functions. There never is a dearth of candidates for legislative bodies, but to civic institutions we hardly ever succeed in sending our best men. And the reason for that is easily explained. Human nature being what it is, men will always try to make themselves famous not by study, reflection and devotion to duty but through a short cut if that is possible. The legislatures afford them that short cut where the reflective man and the earnest student of public affairs gets his chance of earning for himself a reputation, a fame and a name. His less equipped compeer, on the other hand, gets an equal chance to make a name and a notoriety, no matter by what means. This is all that he cares for. In an Indian legislature there are more of the latter than of the former. But if it is true to say, that in England "seats upon local authorities and especially upon municipal councils and district

councils, seldom attract the best ability of the local community" it is equally true to say, that in India their number is still less. Experience tells us that a considerable proportion of them is actuated by selfish motives or self-seeking ends. In Indian cities, large or small, the leading commercial, financial and professional men do not often appear as candidates; they prefer ease, or business, or professional success to public life. Naturally therefore, civic work is left to persons who may not be incompetent, being usually intelligent business men, but whose education and talents are often below the level of the functions which these bodies discharge. Their integrity at times is not quite up to the mark, and unless public opinion in the locality is sufficiently vigilant, assertive and exacting, a high standard of probity cannot either be expected or maintained. And as in England so in India, municipalities and other local bodies have, of late, embarked upon quite a number of works of public benefit and utility. Their revenues have grown so enormously, and their expansion has been so considerable that, mere business capacity and experience for their management is not enough. To them must be added a competent grasp of economic principles, of financial problems, and of administrative problems.

Selfish motives and self-seeking ends.

The excuses that are often made for failure to serve on public bodies are many. There are difficulties no doubt, in the way of educated, talented and public-spirited men entering politics. These are the creations of party organisations, and the louder and the more unscrupulous the party, the greater are the difficulties created by it in the way of honest and self-respecting persons seeking to enter politics. The good citizen here, will do the best he can not to lend support to such organisations, but to encourage good and true men to come forward, and help them to beat down an unfair opposition. Politics bids fair to remain vulgar so long as good and honest men stand out of them, so long as the better educated and more characterful citizens will prefer to keep aloof from them. In his famous lectures before the Yale University on Good Citizenship, Lord Bryce asserted, that "they involve the highest interest of the nation or the city. The way in which they are handled is a lesson to the people either in honesty or in knavery. The best element", continues Lord Bryce, "in a community cannot afford to let its interests be the sport of self-seekers or rogues. Moreover, the loss by maladministration or robbery, large as it may sometimes be, is a less serious evil than is the damage to public morals. If those who have the manners and speak the language of educated men refuse to enter practical politics, they

Excuses made are lame.

Politics made vulgar show.

must cease to complain of a want of refinement in politics. In reality, good manners are the best way in which to meet rudeness; and he who is too thin-skinned to disregard abuse confesses his own want of manliness. The mass of the people, even those who are neither educated nor fastidious, know honesty when they see it, and discount such abuse. When a man is firm and upright, nothing better braces him up and fits him to serve his country than to be attacked on the platform or in the press for faults he has not committed. It puts him on his mettle. It toughens his fibre. It gives him self-control and teaches him how to do right in the way which is least exposed to misrepresentation. It nerves his courage for the far more difficult trials which come when friends as well as opponents censure him, because honour and obedience to his conscience have required him to take an unpopular line and speak unwelcome truths." For the sake of righteousness and in the interest and pursuit of integrity, persecution, no matter on how large a scale, is always a wholesome thing.

Good manners *v.* rudeness.

A vote is never a negligible thing. It is the expression of a considered opinion. The putting the mark on a ballot paper is not an act to be lightly dealt with. The mark carries with it the judgment, the sober judgment of a citizen in respect of his choice of a candidate, or his estimation of him over another. Coupled with it then, is the approval of the policy he supports or offers. If it be merely a question of personal merit of the contending candidates, the citizen should fully inform himself of the relative or comparative merits of the candidates who have offered themselves for his choice. But if the choice has to be made on the knotty problem of policy, it is a sacred duty of the citizen to acquaint himself fully, with the *pros* and *cons* of the problem, before he should arrive at a conclusion by the exercise of his own judgment. In nine cases out of ten it is found that the citizen concerned is not able to read to understand the problem. And where he cannot understand it, it is useless to expect him to properly exercise his judgment. But they are all men of intelligence and common-sense. To educate such a man up to the standard of good citizenship is not an impossible thing at all. The history of European countries, and even nearer home of Japan, teaches us that it has never been even a difficult task if the honest and competent citizen takes the trouble of educating his less competent brother to exercise his judgment. He has got to be educated, not tempted or misled.

'Vote' is a potent instrument.

Newspapers do not always serve as the best guides to political thought. Such is the wise counsel given us by an eminent political thinker, for whatever, says Lord Bryce, "the services of the news-

paper in other respects, it has the inevitable defect of superseding, with most of those who read it, the exercise of independent thought."

Newspapers often mislead.

It is the common experience of us all that newspapers as a rule are partisans in their views. Seldom do you come across a newspaper, unless it is a notable exception which does not put forward a case except by way of special pleading. "Presenting one side of a case," continues Lord Bryce, "addressing chiefly those who are already adherents of that side, putting a colour on the events it reports—it serves up to the reader ideas, perhaps only mere phrases or catchwords, which confirm him in his prepossessions, and by its daily iteration makes him take them for truths. Seldom has he the leisure, still more seldom the impulse or the patience, to scrutinise these ideas for himself and form his own judgment." He should not want to be relieved of the necessity for thinking. Where he considers thinking to be hard work for him he should be characterised as an indolent person. Indolence chokes the growth of civic consciousness. A good citizen therefore stops, learns and thinks and towards this end the contribution of the educated citizen should be unsparing.

(*b*) SELF-INTEREST

In the category of hindrances to good citizenship *self-interest* comes next. It finds expression in various ways. We are not far ahead of the time when even Kings and Queens sought their personal advantages as much as their relatives, friends and favourites. Even those by whom they were surrounded, hardly ever missed an opportunity to serve their personal ends. Coming lower down, the landed magnates and the landowning classes who exercised the largest influence on the authorities controlled and shaped legislation, all in their favour. Therefore, almost a conclusive argument in favour of the extension of franchise and suffrage is that, it would help to secure the general interest of the nation. It would deprive any particular class of overpowering influence in the body politic and far more in the government of the country. Friends and champions of popular rule have condemned the pursuit of selfish purposes, whether by officials or by particular privileged classes.

Self-interest.

Selfish purposes, nevertheless, have always existed in the body politic, whatever the form of government is, autocratic, oligarchic, popular or democratic. "They constitute a grave temptation," says our chief guide, "obscuring with many persons that sense of the duty to think first of the whole community which ought to be the pole-star guiding the citizen's course." Self-interest finds its worst expression in the giving and taking of bribes. The giver is not less a vicious member of society than the taker of it.

Bribes.

He spreads his poisonous contagion over a large circle while the taker makes a notorious sacrifice of public duty to personal ends. Times however, are changing and things are fast improving in all countries. And in India more rapidly than in others, for, as a matter of fact we find that the voter of to-day is morally stronger than the voter of yesterday who felt that, he had no option but to obey the mandate of his landlord or his banker. It is the ballot box and the direct voting which may be said to have brought about the improvement in the situation.

Various forms of self-interest.

The various forms however, of private or self-interest which often pervert civic duty may be briefly stated to be, (1) the buying of votes, (2) the imposing of taxes, (3) tariff duties, import and export, (4) distribution of favours for the purpose of securing votes, (5) the powerful influence exercised on politics by Government contractors, employees and other wealthy men. We have already discussed the mischievous effect of the first of these forms. Under the head of imposition of taxes the classes and masses in a modern state are constantly at war. To carry on the affairs of the State, money is needed, more and more, year by year. The classes exert all the influence and devices they can bring to bear upon the authorities to take recourse to indirect taxes, such as import and other dues. This enables them to obtain relief in proportion to the contribution of the bulk of the people. The masses on the other hand leave no stone unturned to defeat these formulas, for they affect the prices of food-stuffs, and frame a scheme of direct taxation, such as income and property tax. Hereby they are enabled to escape the burdens of them for, property or income tax cannot in equity be too low. They may affect only the upper middle classes and none below them. There is therefore, a continuous warfare which necessarily eliminates all considerations of national well-being and equitable distribution of taxes.

In the same category stands the tariff problem. The voter is either a producer or consumer. If he is the former, he is eager to see a high protective or tariff wall raised, so as to shut out all foreign commodities and imports. Foreign rivals, in his own market, are bound to affect the prices of his own commodities. There should be a tendency, because of competition, to keep down the prices of home goods. On the other hand the consumer desires his needs to cost as little as possible, and to serve that purpose if it should be necessary to remove the wall he would not hesitate to do so. Thus you find, that one set of voters are pledged to support the champions of tariff, and the other the champions of the removal of it. Feud again, in our social life, is an element, in which national interests are likely to suffer.

Titles and *decorations* are not meant so much to appreciate the merits of really eminent men as to bribe those who are men of local influence; that, through their influence they may get together adequate support for the members of the interest by which they have been, rightly or wrongly, honoured. Similarly, large government contracts are disposed of to those who should "in thunder, lightning or rain" stand by the government. "Modern governments", Prof. Bryce tells us, "the governments of cities as well as those of nations, are large employers of labour and large contractors. The more works any public authority undertakes, the more ships it builds, the more cannon it casts, the more roads it constructs, so much the more numerous are the opportunities for gain to those with whom it deals and to those it employs. Whoever has, or seeks to have, dealings with a public authority, has a private interest of his own to study and pursue, distinct from, and usually opposed to, the public interest, for he wishes to sell dear and the public wish to buy cheap". Such things are not at all rare, and even in England, where the ethics of public life are much higher than elsewhere a legal ban has always been placed upon Government contractors to sit in Parliament. This, at best, is only a partial check.

Titles and decorations.

We have yet to consider how employees under the government may help to pervert the discharge of public duty. They desire favourable conditions of service, and above all higher wages and shorter hours of work than they could obtain anywhere else. In their interest they would support those who must uphold their demand even though it may not be normally obtainable in the market. Given the choice, the employees of the government would desire to keep the party which encourages their demand in power. But when all is said it will be found that *Love of money* is the root of all evils. The power of money therefore, "is for popular government the most constant source of danger." It surpasses the evil effects of ignorance, of apathy, of faction and even of demagogism. Its effect is not visible. It is hard to detect, for it is insidious. It spreads promptly and quickly. Indolence affects more people than selfish interest does. "But where," observes our authority, "the influence of sordid personal aims is felt, it is more harmful". And the worst of all effects is that it tells chiefly on the class whose wealth or education or connection with public affairs makes them prominent. And for all this, the leading classes are justly held responsible for, it is they who help to deprave the morality of the community by tolerating or neglecting to condemn with all emphasis a low standard in public life, and sometimes, even by not rising above it themselves. They

Influence of Government officials.

bring about the strifes of different races or class groups in the same state. They again encourage the quarrels of religion. It is they again who claim to be regarded as a privileged class, and as such to maintain all political power, or the bulk of it, in their own hands, to the exclusion of the humbler citizens. They do not hesitate to obstruct the economically poorer classes to improve their moral or material condition by legislation. But the strongest and surest weapon against all these evils is *Publicity*, — wide Publicity, — bold, frank and *unrestricted Publicity* in the Council, on the platform and in the press.

Remedy is publicity.

(c) PARTY SPIRIT

It has been asserted by some historians that *Party Spirit* is a hindrance to good citizenship. Is it? It no doubt is when the party organisation is utilised for party ends as opposed to national ends. It is a hindrance also when the party organisation is in the hands of unscrupulous and characterless agents. On the other hand it rouses political consciousness of the citizen and the political development of the country as nothing else does. And it is from this point of view that we choose to discuss the problem, keeping in view that in India we have yet got to acquire a political consciousness to fit us for the goal towards which we are gradually, but fast, making way. This can best be done by examining the growth of the party spirit, and therefore, of the party system in England where they have brought it almost to perfection.

Party spirit.

It has been said that the British Parliamentary system is "perfected" party government. If that is true of England, it is no less true of other countries where free popular constitution prevails. But the uncompromising fashion in which it is applied to England is not the rule in some. The minority indeed has only one right, that of using all its efforts to become the majority in its turn. In the United States of America the control of administration is the prize of victory in a Presidential election. The vanquished faction gets no chance of office for the next four years. But it can make its influence felt in legislation. The Speaker of the House of Representatives, who is one of the managers of the party dominant in that chamber, will take care that there is a majority of his own associates on every one of the important committees by which the Acts of the Congress are shaped. He would not venture to exclude his opponents altogether. The composition of the Committee is supposed roughly to correspond to that House; so that in each of these legislative chambers, there will be a quota of members of the defeated party able to

take some part in the moulding of legislation. The right of the minority may not in practice amount to very much. It is at any rate never ignored. Similarly, in the French Chamber the various *bureaux* are supposed to be fairly selected from the different groups of which the assembly is composed.

In the conduct of national affairs England tolerates no compromise. She has never done so. "In English domestic politics," said Mr., afterwards Earl of, Balfour, on a famous occasion, "we are never at peace. Our whole political organisation is arranged in order that we may quarrel,—and we always quarrel, sometimes over matters of great importance, sometimes over matters of small importance, sometimes over matters which cannot but be matters of bitter strife, and some which I should suppose might be always dealt with by agreement." English politics are an organised quarrel, and English people accept the results with an equanimity none the less surprising, because they prefer that it should not be explicitly recognised. The division however, into parties is in fact, essential to the operation of every constitutional machinery. The English government, says Lord Bryce, is "a system whose successful working presupposes the existence of two great parties and no more; parties, each strong enough to restrain the violence of the other, yet one of them steadily preponderant in any given House of Commons." If the institutions and their adaptations have in other countries failed to produce expected results, it is to a large extent due to the fact that this condition is found incapable of transplantation. The constitution of the third French Republic is as much dependent upon an elective Parliamentary Cabinet as the English; but while it has assimilated much, it has failed to establish that permanent duality of organised opinion which is the distinguishing feature of English politics, ever since the end of the seventeenth century.

Even before the Reform Act of 1832, England was governed by parties. But in those days parties were organised on a different basis altogether. We get a very clear idea of the organisation of parties in those days in Burke's chapter on the Party System in his Present Discontents. We also know Bolingbroke's attack on the existing party system and his support of the Ideal King. Erskine May observes that, "the germs of party, in the Councils and parliaments of England,—generated by the Reformation,—were first discernible in the reign of Elizabeth." From that time onwards, Englishmen have associated at different times with different parties, under various names, and these parties have represented all throughout the cardinal principles of government, authority on the one side, and popular rights and privileges on the other. Moreover, it is on the whole fairly obvious, that the parties existing before the Reform Act were organised in such a

way as to maintain the power of the oligarchy in the government of the country. The Whigs and the Tories, although fighting for different principles, organised themselves in such a way as to maintain as long as possible the power of the party in power. It is needless to go into the details of the old party system. It is not our purpose to do more than to bring out the merits and demerits of the modern party system which is responsible for the modern party spirit.

In those days, as now, the organisation of parties in the House was represented by the whips which each party had in the Commons. These whips were nothing more than very efficient managers, and they were directed by party leaders. The whips then as now, worked behind the scenes. The duty of the whips was by whatever means necessary to maintain the duty of the party in a State of cohesion and in battle array. If he was a government whip he must see that there was *quorum* present. He must see that the members turned up at the divisions. He must have long-winded speakers ready to hold the floor till sufficient members were whipped up. The office and function of the whip has descended from that of the patronage Secretary or Secretary for political jobs. It was his duty to pay members for their votes and see that they actually did vote. The opposition also had to follow suit and also had a whipper-in. When however, parliamentary morals improved, the whips did not pay members directly but bought seats. Thus did the Parliamentary organisation of parties function outside the House.

This is not all. The people of England became alive to a sense of duty to serve the higher interests of politics, that is to say, to serve the cause of their country and their fellowmen in preference to the social tendencies of human nature to which the early political clubs had been subjected. These no doubt were party clubs founded on political agreement of its members, but the fashion was for the members to meet and enjoy the pleasures of the table. These date from the seventeenth century. It was however, not till the founding of the Carlton Club and its liberal rival the Reform Club, that Clubs came to be regarded as genuine political institutions where political matters were discussed. It was here that political opinions matured. From these institutions political *fiats* issued for the guidance of political associations scattered over the country, London not excluded.

In 1832 the Carlton Club was established in order to strengthen the ranks of the Tories against "Political Unions" agitating for Reform. It was intended to combine the purpose of a Social Club and of a centre for rallying the party, and for political action in general. The note struck at the Carlton Club was invariably and

faithfully re-echoed in the country, because there too in every locality, the local leaders and the mass of electors were united by the same imperceptible ties of social influences. A political committee formed in the club itself kept up constant relations with the local associations or agents, and stimulated the work of electoral registration. The Liberals were not long in discerning the part played by the Carlton Club, and in about 1836, they founded a similar institution under the name of the Reform Club, which in its turn soon became the headquarters of the Liberal party. It also had its political committee, which discharged the same functions as those of the Carlton. In both clubs the threads were held by the party Whips. There they had all their parliamentary following ready at hand, and from there too they could work the provinces. They could no longer do it as in the days when they bought parliamentary boroughs and sold and resold them; the market had by now ceased to exist, but a sort of electoral labour exchange grew up in the clubs. The Whips get to know the capacities and aspirations of the younger men who are the rising hopes of the party. In practical politics there must always be much compromise and mutual concession; and, as Hallam observed, the centrifugal and centripetal forces are both needed to preserve the due balance of affairs. They correspond roughly to the rival party tendencies. There are great evils, as well as great advantages, attending the party system, and there are periods when these evils seem to be brought into a more than common prominence.

CHAPTER X

The Imperial Orbit

(*a*) THE CITIZEN AND THE EMPIRE

The *Imperial idea* has been in operation in ancient, mediaeval and modern times. It has always been marked by the same characteristics.

Caesarism opposed to Freedom.

Caesarism and *freedom* have never existed together. They can never co-exist. Rulers of Asiatic empires of antiquity without exception were despots. They were the absolute masters of the lives, liberties and properties of their subjects. In their turn Asiatic nations have always been what they were in days of antiquity, what they had ever been. Primitive political slavery is an important feature in the early history of Asiatic countries. Free citizenship is conspicuous by its absence in them. In ancient Europe the establishment of the Roman Empire brings the same fact to light. The circumstances which led to the gradual transfer of power from the ancient Roman citizens to the absolute master who knew his own mind and could impose his will firmly upon the people were manifold. The Roman aristocracy had degenerated and become unfit to guide the destinies of the State. Generations of conquest after conquest, and consequent annexations, had made the State so unwieldy as to make it difficult, if not impossible, to be kept well under the control of the Senatorial Government at Rome. On the other hand the Roman citizens had become too numerous and widely scattered to be able to meet all together in the *Comitia* for the performance of public duties. Nor was the degenerated character, from a variety of causes, of the Roman citizen less responsible than the Roman aristocracy for the decline and fall of Rome. To these are added the efforts of the ignorant, indolent, hungry and unruly Roman mob who were enabled to dominate the *Comitia* by thoughtless extension of franchise to them. The ancient Roman citizen became a thing of the past and slavery took its place.

In oriental monarchies, the state of things has remained unchanged from remote antiquity to our own day. The Sovereign delegated his power and authority to a number of governors and satraps. Each one of them exercised in the province or dependency in his charge the powers and dominion which the sovereign exercised over the whole kingdom. Within the sphere and scope of his authority every one was an absolute master for the purpose of raising taxes, collecting troops and making what laws he chose regarding the lives and property of the subjects of his sovereign who was also their sovereign. The Pashas

of the Ottoman Empire exercised until the other day their unlimited power over the territories and dependencies over which they were appointed by the Sultan to rule. From Persia and China came the same story, and even Japan did not tell a different tale until 1890 when she came to have a constitutional government of her own. The people of the Eastern States enjoyed no freedom. They were in a State of more or less complete political slavery and subjection to their rulers and governors.

Constitutionalism in the east.

Turning to the dependencies of Greece and to the subject allies of Athens we find a slightly better state of affairs. The dependent City-States could not be regarded as having been subjected to any kind of oppression. In most cases the subject communities retained their own constitutions, laws and modes of administration. In others they even enjoyed the privilege of maintaining their own fleets and armies. Usually they were under the control of Athenian governors or military Commanders. Under Athenian control again they directed and regulated all their foreign relations. Judicial administration in respect of the more important cases was vested in the Athenian tribunals and not in any courts of the dependency. The dependencies of Sparta differed from those of Athens in having their Governments made oligarchical, in the internal affairs of which the Spartan heads interfered more largely than their compeers, the Athenian governors. These are only a few examples of Greek communities in a loose state of dependence. There are others in which this state of loose dependence was by degrees converted into one of strict dependence. In these the citizens became transformed into members of the superior State either by being admitted to all its rights of citizenship, or by being kept as subjects without any political privileges. They were otherwise free. Where this was not the case and the more or less loose kind of dependence was permitted to exist, it may be instructive to compare the rights of the subject state with those of the Municipal governments in modern States. A modern Municipality has no powers of general administration or legislation. Such functions as it is allowed to function are no doubt important for the welfare of the community. They consist in the care and provision of efficient sanitation, good roads and their lighting arrangements and nothing more, while the citizens of a modern Municipal town are entitled to a larger share in the civic and political life of the town. They are entitled to send representatives to the parliamentary assembly which imposes taxes, makes laws and even regulates and superintends foreign relations. The Greek dependencies had to submit to the entire control of their foreign affairs by the supreme or dominant city-state.

When we take into consideration the status of the British Indian

citizen we find that in theory he occupies the position of that of a citizen of a Roman province. The difference lies not only in the fact that the two greatest of the world's Imperial dominions, the Roman and the British, are separated from each other by centuries of annihilation, devastation and progress but also from the fact that while the Romans as well as their citizens were professors of an old-world heathenism, our rulers are Christians holding sway over a vast population of Hindus and Mahomedans. But that is not all. In order to be able fully to realise our position as citizens we should for a moment consider the state of things that existed previous to the establishment of British rule. The only really living political entity that existed in India, the only bond of union and fellowship among men, over and above the family tie, was the village community. The monarch enthroned at a distance cared only for his taxes. He exacted them from the village communities. Other extraordinary demands on special occasions on the villagers were made as a matter of course. The villagers were left to take care of themselves in the event of a foreign invasion. If they had any resources left them well and good, if not, they must suffer every imaginable kind of misery and trouble without any protection being given them from their tax-gathering monarch. When the foreign invader had done his worst in plunder and devastation he thought it wise to depart. He would not prolong his stay for it was unprofitable. The village population then returned to their old haunts and lands, resumed their usual occupation. They put their houses in order as best as they could. This is the sum and substance of their situation as citizens of the Indian monarchies, Hindu and Mahomedan.

British Indian citizen and Roman citizen.

Village communities.

All this is now changed and for the first time we have been enabled, under British rule, to feel that we are the subjects of a single sovereign. The sovereignty extends over the whole Indian continent. Every educated man has learnt to feel that British rule means peace, toleration and fair play for all. He feels that every one has rights, responsibilities and interests intimately bound up with the existence of that rule. We are aware of the fact that we are reaping immense advantages by being part of a great and world-wide empire. The fact that our future progress, economical and political, is assured by being a part of the British commonwealth is not a myth. It is therefore our duty to prove ourselves worthy citizens of the Indian State so as to make the future of the Indian people worthy of their place within the British (Empire) Commonwealth.

Our sovereignty over the whole of India.

What is the exact place of India in regard to citizenship? India is

a dependency ruled by English governors. It takes its place alongside the dependencies of the class to which Roman provinces belonged.

India's place in the Empire.

But the divergence in practice between the two is wide as the poles. The administrative systems prevailing in the Roman provinces and in India have often been compared and contrasted. It is not our purpose to enter into a comparison between the two. We may however, roughly indicate a few of the salient features of both so as to have a clear idea of the contrast that lies between our citizenship in British India and the citizenship that obtained in the Roman provinces.

In both, the ruling state sends governors, and in both the administration is subject in the last resort to a controlling imperial authority at home. In Rome, however, the governors received no salaries, as they were supposed to serve the state from motives of public duty, but they were entitled to levy contributions from the provincials for their own support and that of their suite or court, and they might also receive voluntary gifts. They could not be removed during their term of office, nor could any complaints be brought against them while still in employment, as they were constituted the supreme military and civil authority in their provinces. Even afterwards, they could only be brought to trial either criminally before the people or civilly before judges chosen from the senators, and so there was very little chance of their being found guilty. Hence the provincials were much oppressed. The military forces occupying the province were maintained in free quarters, and were daily paid from the contributions of the provincial inhabitants. The provinces had to pay tribute, and this was raised by the imposition of various taxes which were farmed out among oppressive and extortionate Roman contractors, who were allowed to grow rich at the expense of the people. The natives were looked upon as conquered subjects who retained their character as enemies and might at any moment assume that character, and one of the recognised principles of Roman provincial administration was that the exactions of the rulers should be as large as possible so as to transfer as much as possible of the sinews of war to the Roman state from its possible future enemies. Moreover, the governing class resorted to all sorts of open violence, cruelty and torture in the effort to transfer to Rome all the productions of art and industry in the provinces. The Roman money-lenders were also encouraged and helped in every way to drive hard bargains against the provincials. All these iniquities were perpetrated without intermission impartially in times both of peace and war, and they grew with the growing degradation, corruption and ineptitude of the government of the republic in the days of its decline, till at last the establishment of Imperial rule brought with it some change for the better.

India is no doubt a dependency ruled by British governors under the authority of the British Sovereign and Parliament, but what a contrast is it to a Roman province subject to the rule of the Republic. We pay no tributes. We are not subject to any illegal and arbitrary exactions at the pleasure of irresponsible governors or their dependants. We pay no taxes which are not determined according to fixed rules as to their nature, amount, manner and time of payment. We make no special payments for the support of the army. We have every part of civilised administrative machinery in thorough working order. We are trained in the arts of self-government, in Municipal and rural areas. We are taught to believe that every chance of making progress in civilised life will be afforded us, and we are gradually learning to have faith in ourselves as future citizens of a wide, powerful, growing and enlightened empire, the greatest the world has seen.

Comfortable as is our position and cheering as are the prospects of the future, we still clearly understand that India is in theory at least a dependency. Indians feel that they must improve their political position. They aspire to take an honourable place among the citizens of the British Empire. There is no real disaffection among our educated men so as to overthrow England's rule. We may safely say that throughout the continent of India there is a growing feeling that our vital interests are for ever bound up with the fortunes of the Empire. This feeling in favour of political improvement and emancipation has found expression not only in meetings of political associations, but also in the published opinion of eminent Indians. India must work up towards a British Colonial constitution. When our foremost men of the age and men of cool head, steady aims and sober judgment, could express opinion like this, no one can deny the legitimacy of Indian political ambitions and aspirations, if we are to understand that those ambitions and aspirations are to be utilised so as to promote the progress of India towards unity and influence as a strong, useful and respected member of the British Empire.

The theme, that India cannot do without Britain requires no enlargement. Britain's need of India is equally great, if not greater. Without India the British Empire would never have been there,—certainly not in its present form. Ever since the reign of Elizabeth, India has supplied that stimulus which England needed most but never got from anywhere else. The maritime enterprise of England is entirely due to her desire to reach India. Her naval and military supremacy as against Holland and France is unquestionably due to her struggle to obtain India. The wealth of England and her prosperity during the past four hundred years is admittedly due to her trade with India. Without India, the richest part of England, Lancashire would be

bankrupt. To her possession of India is due England's present Imperial prestige. Finally, to India England owes "the most magnificent example of disinterested devotion and loyalty the world has ever seen. Down through the ages will be handed the splendid story of the scene in the Peer's Chamber when was read the Governor-General's message containing that Homeric roll call of India's Chiefs and Princes." It is typical of the unity of the Empire.

(*b*) TREATY

The student has now had an idea of what a State is namely, that it is the highest form of organised human association, individual or corporate. We see that every State in the words of Aristotle, "is an association of some sort and that every association is formed for the attainment of some good". It is clear that while all associations aim at some good, the one which is the highest of all and includes all, will aim at the highest good of the highest number in the highest degree. This is what is called the State. He may now be introduced to some obligations which a State undertakes on behalf of its own people with other states. These are usually done by what are called *treaties*. A treaty is a contract between two or more States, relating to peace, truce, alliance, commerce, or other international relations. It is a document which embodies such contract in modern usuage formally signed by plenipotentiaries appointed by the government of each state. It is binding upon the States which are signatories to the document. But there are two extreme views of the question of how far and how long treaties are binding on the parties, also, of the question of what kind of sanction must they have. According to one view treaties are absolutely binding irrespective of time or changing circumstances. According to the other view treaties are mere forms depending for their strength on the force behind them and the circumstances in which they are to be enforced. Neither of these views may be said to be valid. We have to admit that conditions change, and that treaties made under one set of conditions may be vitally altered if there has been a material change in the circumstances. Treaties get out of date. National interests are modified. One generation will not be bound by the arrangements of its predecessor. To some extent this means that treaties are relative. The trouble therefore, is, that this tends to make them unreliable. It also tends to introduce into them the element of insecurity. It then becomes a ready instrument of unscrupulous national ambitions. It makes it open for statesmen to argue at any time that circumstances have changed and that there-

Characteristics of treaties.

Where lies the strength of the treaties.

fore, the agreement is not binding. But to say that treaties are never binding is a negation of all moral and political principles. We inherit treaties from a previous generation. There is rarely a complete break with the past. In both parties to an agreement something must remain of the similarity of view and of sanctity of obligations.

(*c*) IMPERIAL FEDERATION

Arising out of the problem of federation the topic of *Imperial Federation* occupies a prominent place in British Imperial politics. Various schemes have been suggested to bring about a closer union of the colonies with England. The first requisite for a successful union is as Prof. Dicey put it, the existence of a group of States ready and desirous of forming a union. Their willingness to unite can only be founded upon a recognition of mutual advantages in respect at any rate of certain class of purposes.

England has always been desirous of such an union. A country limited in area and in the extent of her natural resources and yet with a population far in excess of the latter must necessarily be dependent in no small measure upon the possession of foreign markets where she can buy and sell without handicap. Hostile tariffs of foreign countries obstruct the sale of English manufactures, and England is essentially a manufacturing and industrial country. Mutual commerce with the colonies in these circumstances should be encouraged. There should also be a combination in opposing the hostile tariffs of other countries. Not less important is the problem of mutual defence and protection, to enable the Empire to maintain its international position. These are considerations which have drawn England towards federation.

While this is the position of England, that of the colonies is different. They feel that their natural resources have not been fully exploited; that they have not a surplus population; that culturally and industrially they have not arrived at that stage when they can take part in foreign politics. But along with the northern country they feel the harmful effects of hostile tariffs upon the prices realised for their raw produce. Their export trade at present consists mainly of this. They also feel the necessity of taking their share in maintaining adequate naval and military forces for defensive purposes. These are the two considerations on which they feel that an *union* with the strong and resourceful mother country would be of mutual advantage even though geographically they may be placed far apart.

For purposes of a practical federation called the imperial federation there is consensus of opinion in favour of it. A federal form of

government might be planned out to which should be entrusted such subjects as,

(1) Foreign affairs.
(2) Naval and military forces and defence.
(3) Inter-colonial, home, and foreign trade and commerce.
(4) Imperial finance.
(5) Postal and Telegraph Services.
(6) Immigration and emigration.
(7) Aliens and Naturalization.
(8) Census.
(9) Currency, coinage, weights and measures.
(10) Merchant shipping and navigation.
(11) Lighthouses, beacons, buoys, etc.
(12) Sea-fisheries.
(13) Marriage and divorce.
(14) Patents and copyrights.
(15) Extradition and
(16) Courts of Appeal.

BOOK II
TYPES OF GOVERNMENT

CHAPTER I

Forms of Government

(*a*) THE END OF GOVERNMENT

Government admittedly is a means to an end and the value of a means always lies in its adaptation to the end. That means is regarded to be the best which is best fitted to procure the end we have in view. What is the proper function of Government? In other words what is the end and purpose of Government? Just as there are different states of society, so the functions of government are dissimilar in different states of society. But a government does no good by going beyond the limits laid down in the constitution. If it does, it only does evil. The aggregate interest of society, the entire well-being of Society have therefore to be respected and kept in view. In doing so we have to look for a classification of the various interests. It helps us to discover the conditions of each, to build up the theory of the best possible government.

The end and purpose of Government.

(*b*) ORDER AND PROGRESS

Order and *Progress* are very attractive terms. Looked at from an analytical point of view they are both unscientific and incorrect. Whether in its limited sense of obedience, or in its wider sense of preservation of Peace, order expresses the attainment of a condition of Government rather than its purpose. When we give to *Order* the largest possible meaning, including in it all that *Progress* does not contain, the conditions of Order and Progress will remain the same. For instance, the qualities in the citizen that make for *Order* lead also to Progress. Any means, therefore, that conduces to *Order* conduces also to *Progress*. The police, taxation and finance are examples of this theory. *Progress* in one line may not mean *Permanence* in all lines; but progress of one kind means permanence of the same kind. Progress includes order, but order does not include Progress. It is best, therefore, to say that *Government aims at Progress*. According to Mill even this is not a good criterion for it expresses "move on" but only implies "prevent falling back." Mill therefore, bases his theory of the excellence of a government, (a) on the qualities of the persons that compose the State, (b) on the quality of the machinery of the State.

Meaning of order and progress.

The promotion of virtue and intelligence of the people of the State is the primary function of its government. To organise the moral, intellectual and active element that exists in the people so that they may operate with the greatest effect on public or on their common affairs. Education and the conduct of public business appear to be two different functions, more of kind than of degree. The latter, (conduct of public business), differs little from State to State while the agency of national education depends on the immense variety of states in point of culture and development. The duty of the government is to help people to rise to the next step without endangering the remaining steps. You train a savage to obey you by arbitrary and despotic methods, while you train the slave who already knows how to obey his master's order to get accustomed to obey the law. Herein lay the superiority of the Greek constitutional methods. They led their people from the lower to the higher level without endangering the further degrees of progress.

(*c*) REPRESENTATIVE GOVERNMENT

It is said that *Representative Government* is really the best form of government. It has also been asserted that where there is a good and benevolent despot, if such a person could be found, despotic monarchy indeed would be the best form of government. No ideal can be more unfounded than that. Suppose such an ideal despot were found and he makes it his business to do everything for the nation. The nation as a whole remains passive. Its activities individual and collective, remain dormant with results far worse than that, for it is not in human nature to care for a thing for which he has not to work and to exert. The Government, however benevolent, of the ideal despot, therefore, leaves out the principal element in the idea of good government, namely the improvement of the people themselves.

The best form of Government.

The ideally best form of government is that which is conducive to the greatest amount of beneficial consequences, immediate and prospective. Such a government may be conceived in one in which the Sovereignty or supreme controlling authority is vested in the people, every one of whom may have a voice in the exercise of that ultimate Sovereignty. Here every citizen is called upon to discharge a public function, local or general, the aggregate of which is the Sovereignty of the State. Such a system of representative government is stated by John Stuart Mill to enjoy a twofold advantage:—

Sovereignty in the people.

(*a*) it is more favourable to present good government; (*b*) it promotes a higher form of national character.

John Stuart Mill's estimate.

From a variety of considerations, best judges have come to the definite conclusion that the only Government which satisfies all the exigencies of the Social State, is one in which the entire body of the people of the State participate. But it is evident that all cannot participate individually or equally. Since that is so, the ideal type of a perfect government must be representative.

Participation of the whole people.

This brings us to the question of what are the social conditions to which representative government is applicable. The answer is that representative government cannot exist where, (*a*) the people are not willing to receive it, or, that they are hostile to any change, or, (*b*) when the people are not willing to do what is necessary for its preservation or, (*c*) where the people are not willing to discharge the functions which it imposes upon them. On the other hand there are cases in which John Stuart Mill is of opinion that Representative Government might possibly exist, but in which some other form of government would be preferable. An instance in point would be where the people have yet to learn the most important lesson of civilisation, which is *obedience*; obedience to law and to constituted authority. The people may be obedient, yet too active. In such a case a military career under a military leader is what they require to be under proper check. If they are too passive, the statesman would give them a central authority such as France had between Hugh Capet and Richelieu. If they are found to be too local in their outlook they require for good government a central authority, supported by representative institutions, but free from their control. As against that it has been asserted that, government of one or of a few may, when properly guided, have a tendency to cure some glaring evils which stand in the way of success in representative government. Such evils as strong prejudices, obstinate adherence to old habits and ignorance are always insuperable obstacles to representative government, though ground for Representative Government may be prepared even by the rule of an alien people who have a firmer and more practical character and belong to a more advanced state of society. The ground may also be made ready by the rare accident of a monarch of extraordinary genius, such as, Charlemagne, or Peter the Great, or Themistocles, or William of Orange. A small but leading portion of the population itself, markedly superior in civilisation to the mass may also contribute very largely to the formation of representative government.

Applications of conditions of representative government.

Obedience to law and to authority.

Alien rule may pave the way for representative government.

There are again some people who desire to exercise powers over

others. From their history it is evident that the British people do not belong to that category. What they want is quite in consonance with the aims of representative government. They have no passion for governing. They let themselves be governed by their higher and more intelligent classes. But no people are so fond of liberty as they. There is therefore, a readiness on their part to resist authority when it oversteps the limits.

English people do not love to govern.

(*d*) FUNCTIONS OF REPRESENTATIVE BODIES

Keeping in view the idea of Representative Government, and the particular forms in which the idea has been clothed by historic development, the essence of it is that, the whole people or some numerous portion of them, exercise through deputies periodically elected by themselves the ultimate controlling power. In this sense the British Government is such a representative government. Although there, the mastery is not given to the people by written law, and the Crown possesses many and great powers, yet they are nullified by the political morality of the country.

English government is representative government.

In every constitution there are to be found provisions for a power which is the strongest of all. Constitutions can only work if they give the mastery to the power which in fact is the strongest. In England that power is the popular vote which is the secret of the stability which characterises the British constitution. But then the question arises what are the actual functions to be individually discharged by the representatives of the people in a Representative Government. There is a radical distinction between controlling the business of the government and actually doing it. Representative bodies control all operations of the government without actually taking part in such operations. They are not expected to administer. An instance in point would be a Joint Stock Company having a Managing Director or Managing Agent to look after the business of the company. An assembly is never fitted to administer any branch of public business requiring skilled knowledge of the peculiar principles applying to it. Representative bodies need concern themselves no more than to see that the persons chosen to deal with them are the best and proper persons. In matters of legislation Mill suggests that a numerous assembly is little fitted for the direct business of *Legislation*. Here we need specialists to draft the law. The work of legislation ought to be done by experts forming a select law

The strongest power in England is the popular vote.

Representative bodies control operations, not take part in them.

The rule of the survival of the fittest.

Commission. The Representative assembly should have little to do with it beyond giving or withholding the national sanction to it. The precious privilege of tinkering legislation with motley hands should be sparingly used. A commission such as is suggested represents the element of intelligence while the Representative body represents the element of will.

(*e*) DEMOCRACY

Democracy means rule of the "*demos*", but 'demos' is used to describe not the whole people, but the masses in contradistinction to the classes. Democracy as opposed to Monarchy and Oligarchy, means the rule of the many or majority. But rightly understood, democracy means the rule of both classes and masses. It is the rule "*of the people by the people for the people.*" Democratic government therefore, is that form of government which reflects not only the will of the people, but also the voice of the people in the conduct of governmental affairs. When I say a "democratic King", I mean to convey that the King consults the interest of the people; that in no way refers to democratic government. The theoretical foundations of democracy are, that all men are created equal and endowed by their Creator with certain inalienable rights; that sovereignty resides in the nation; that all citizens are equal in the eye of law; that they have equal powers in making laws and have equal opportunities for all dignities and emoluments; that each one of them is allowed to hold any opinion he likes in religion, society and politics. Thus we find that liberty and equality are the two essential attributes of Democracy. If liberty of the citizen is taken away, democracy becomes a sham. Democracy is the self-government of the country and guarantees the independence of citizens. There must be civil liberty, religious liberty, political liberty and individual liberty. *To be least governed is to be best governed.* Government is a means to self-government and increased governmental control is a check on our nature. If you have faith in the dignity of human nature, you must give him liberty. If you are impressed with the savagery of human nature you must control him. Democracy possesses and stimulates faith in the dignity of human nature. 'Live and let live' is the guiding principle of democracy. Democracy also guarantees equality. Civil equality means that all the citizens should possess the same status in the sphere of private law; political equality means that all the citizens have a like share in the

Right understanding of Democracy.

Where all citizens are equal in the eyes of law.

The bad one is governed the better he is governed.

Principle of Democracy is "live and let live".

Government of the country; social equality means that there should be no formal distinctions (drawn either by law or custom) between different ranks and classes. Democracy stands on the assumption of natural equality which means, that all men are born free and equal.

Democracy wants every citizen to grow and develop in his own way; it has therefore hastened the progress of education. Knowledge is diffused among all citizens irrespective of any differences in rank and wealth. Attainments in learning and science do not make men wise in politics, so democracy trains people in the art of government by throwing opportunities to all. "*Educate your masters*" is the slogan in politics brought forward by the surging tide of democracy. Democracy has given us two notable things viz., the gift of suffrage and the gift of learning. Education makes a man fit for civil and political responsibilities. Democracy has also affected religion and religious practices. With the growth of universal education, fostered by democracy, the rational spirit holds the man and everything is tested in the furnace of criticism by rational reasoning. Any belief, rite or practice which has not the support of reason goes to the wall. It is democracy which has darkened the future of the pulpit; the influence of the church will decrease as democracy progresses. Democracy by bringing about general consciousness makes people vocal. The people begin to complain of their grievances; they protest against any check on their activities; they begin to believe in agitation in making others think in their own way. Thus the press grows, public opinion becomes a force and party government is recognised to be inevitable. Democracy is responsible for the growth of the press, and the press is responsible for the progress of democracy. Democracy guarantees the freedom of discussion, and it is discussion which drives people to get at the truth. All goes well if the people have truth and the freedom to discuss it. Public discussion is the life-blood of free-governments. The newspaper, apart from its business side, ought to be the purveyor of truth and the disinterested counsellor of people. In a democratic state, all power springs from the people. Government by the people means government by the consent of the people, because, government by the whole people is not a feasible proposition. How should we know the consent of the whole people? Therefore the system of voting comes into vogue. You are asked to choose the people whom you like or in whom you have confidence. And the government by your representatives means government by yourselves. The duty of the representative is to reflect his voters'

Object of Democracy is growth and development.

"Now that we have made them our masters, let us educate them," said Lord Grey.

Public opinion and party government.

Function of newspapers.

opinions in all matters and to submerge his own. A true representative performs the function of a gramophone. But public opinion is confused and incoherent, varying from day to day and from month to month. Public opinion is helpless when complicated matters are up; public opinion is given the lead and shaped by the leaders. Therefore, able and characterful representatives cannot possibly follow the pendulum of public opinion; they often create it. To get at public opinion by means of vote, the wisest and the most foolish are often put on the same level. Opinions are thus counted and not weighed. Public opinion is a congeries of all sorts of discrepant motives, beliefs, fancies, prejudices and aspirations. It is really difficult to get at what is really the public opinion. Public opinion is a mirage and if you follow it, you will find yourself after something which is illusory and illusive. Therefore, the strongest and the most serious hold the field. Public opinion being crystallised has given birth to parties. Party system is an attribute of democracy. It is called into existence for the promotion of a particular set of doctrines and ideas. It represents the adhesion of many minds to the same opinions, and the congregation of a number of men acting together under the banner of common beliefs and opinions. It is through the party system that public opinion is focussed. Nowadays, elections are run on party lines; election expenses are often defrayed from party funds; representatives work together and harmoniously for party discipline. Party system has brought forward the conception of the rule of the majority. In a democratic country, parties are inevitable. They bring order out of the chaos of a multitude of voters. Party-strife is a sort of education; parties keep a nation's mind alive. Party is bad when it turns out to be a caucus. Whether party spirit will work for good or evil in public life depends upon the citizens themselves.

Government by representatives means government by yourself.

Leaders shape public opinion.

Public opinion is fickle.

Birth of the party system.

Party system is an assertion of the principle of the rule of the majority, not of the *Caucus*.

Thus we have seen that popular government is the best form of government. *Self-government is always better than good government.* When the general will becomes the sovereign, we applaud it as the best. Democracy as ideal is welcome, but as a political arrangement it has failed. It has broken down in Italy and Spain, and is viewed with suspicion in China and Russia; but its principles have triumphed everywhere. Democracy is to be welcomed as a release from autocratic rule. Government is a technical art and none but

Self-government and good government.

the skilled can do it. Government cannot possibly be carried on by inefficient hands. A demagogue as a foreign Minister, an honest peasant as the Air Minister, a lady singer commanding highest votes as the Army Minister, a miner as the President of the Board of Trade,—all these are ridiculous conceptions, even to a democrat. When you take the ablest men over the heads of the people at large, it is an offence against the ethics of democracy. Even in a full-fledged democratic country, a mysterious caucus in the background rules the State. That is so according as democracy is a success or a failure. Democracy as an ideal is appreciated. Where then is the need of stimulating it from the background. Democracy has not been favourable to the freedom of the individual. There is no liberty of action or freedom of conscience. Man is organised into a high level of technical efficiency and man thus behaves like a machine. Democracy is confused with low tastes; thoughts and beliefs are standardised in all democracies and mind is mechanised. Human affairs are not conducted best by the lottery of the ballot box. The assumption that "all men are equal" is an illusive idea; democracy can guarantee only equal opportunities for all. Popular vote has no meaning with reference to high and noble things. Einstein's theory cannot be decided by popular vote; the cult of the beautiful cannot be decided by popular opinion; art and culture do not grow nor thrive in or upon the ballot box. Money power in politics is seen in its nakedness in a democratic country. Everything is bought and corrupted by money. If you are a legislator, you may be bribed by the capitalists to pass legislations in their favour. If you are a labour leader, you may be corrupted by the capitalist employers to sacrifice those whom you are supposed to lead. If you are an administrator, you are expected to keep quiet over the iniquities of the capitalists through the intoxicating influence of lucre. If you are to be a leader, you must have bank-balance, instead of brain-balance or you need the backing of millionaires instead of intellectual experts. Love of money is ingrained in human nature and miracles can be performed by money. The greatest foe of democracy is money. Money will always have power. The corroding influence of money cannot be eliminated but it can be held in check by educating the conscience of the people to a high level of honesty and truth. But power cannot be taken away from wealth so long as wealth exists.

Failure of democracy.

Democracy has had a tendency to curb individual liberty.

Popular vote is no sure guide.

Power of pelf.

Power can be checked.

Thus we find that the fundamental principles of democracy are, first, that the government should rest on the active consent of the

governed, and secondly, that any honest and self-respecting citizen is on the average as well qualified as another for the work of the government. By "active consent" is meant the consciousness of the citizens that they can alter the structure or action of their Government if they chose to go through a certain process. By the "consent of the governed" is meant that the majority of the citizens will have a voice in the government. Here "consent" does not mean that all must be agreed, but that the dissentient minorities must submit to the majority. To elucidate the second point that any citizen is as well-qualified as another for the work of government, it must be said that administrative posts should go to the best qualified candidates, irrespective of any other extraneous consideration. Even democracy acknowledges that the skilled should replace the unskilled. Democracy rightly understood does not mean the sacrifice of efficiency at the altar of inefficiency, the sacrifice of the rich minority at the altar of the poor majority. It does not look to the sacrifice of any interest; it looks to the promotion of every interest. Democracy does not stand for revenge; it is based on love.

Fundamental principles of democracy.

Active consent and consent of the governed.

Democracy properly understood.

(*f*) RESPONSIBLE GOVERNMENT

We have already seen what is meant by responsible government. The old view of the government is that the people have nothing to do with the laws but to obey them. *Responsible government* means that the government should be responsible to the people. Self-government may not be responsible government, but responsible government is ultimately self-government in the sense that all administrative actions are subjected to the watchful criticism of the governed, though responsible government may be conceived without self-government. In a responsible government the freedom of speech, the freedom of the press, the freedom to assemble peacefully for consideration and emphatic statement of political grievances etc. should be recognised beyond dispute, otherwise responsible government is no more than a name. If the government is to be a responsible one, the constitution must be flexible. Where there are a body of "rules" which cannot be changed in the ordinary way, the responsibility of the constitution to the ruled suffers a checkmate. In a responsible constitution, certain fundamental rights are to be enumerated with which there cannot be any tampering.

Responsible government may not be self-government.

When responsible government is a sham.

(g) THE FEDERAL STATE

What is a federal state? A State which has a group of parts, and those parts express general desire to maintain their respective political separateness as well as their fondness for union in the larger whole, may be roughly called a *Federal State*. A Federal State as a whole is made up of parts politically co-ordinate and constitutionally separate. If the political autonomy of the parts be a reality, it is federal. If the autonomy of the parts can be overruled by the central Legislature, it is an unitary state. "Federalism" to be complete must satisfy three important conditions. It must be shown (1) that the autonomy in the parts is considerable; (2) that the compositeness of the State finds expression in the structure of the common government; and (3) that the constitutional process of changing the constitutional division of powers between the Central and Local Governments is determined in harmony with the principle of Federalism. Let us consider these points one by one. As regards the first point, it would not be enough if the local government possesses independence in certain matters; it is not even enough that there is a clear-cut division of the powers and responsibilities of the governments of the parts and the common government of the whole. All these are also found in an unitary State. The principle of federalism is that the federated parts are to be independent for internal matters whereas they have a common government for external matters. As regards the demarcation of internal and external matters, there are sure to be differences but that is a different matter. When matters have been well-marked, the residue may be left with the governments of the parts or with the common government, the Central government being preferred. Prof. Sidgwick however, holds a contrary view. Without disturbing the governments of the federated parts, the common government must have the power of enforcing the fulfilment of international obligations.

Formation of federal States.

Distinction between federal and unitary.

Autonomy, compositeness and constitutional process considered.

As regards the second point it should be noted that it is a characteristic of federal polity that the part-states should somehow fit in the structure of the common government. As regards the third point, it is an inviolable principle of federalism that the ordinary central legislature has no power to modify the division of power between itself and the legislatures of federated states. In an unitary state, the Central Legislature can give powers to the parts, and can also take them away; in a federal state, the division is rigidly fixed by the constitution. Such rigidity is resented by practical statesmen because

the limitations of human foresight are obvious, and it is an irrational idea that one generation should by the constitution bind its successors for all time to come in scorn of the changes of social needs and conditions and also of human thought. Every practical statesman feels the need of a modifying organ as distinct from the Central Legislature, and that, it would be a sufficient guarantee against hasty work, if the process of changing a constitutional rule be made more difficult than that of ordinary legislation. It must not of course, be contended for a moment that a federal constitution ought not to be stable. Stable it must be, but stability should not be permitted to check growth.

Federal union distinguished from federal state.

A federal union is distinct from a federal State. A federal union is a confederation of States. Where states unite for a permanent common action and a permanent organ of common government is established, they go beyond a mere alliance and assume the character of a Federal State. It is difficult to mark the exact point where the "confederation of states" passes into the "Federal State". As long as the federal states retain the right of withdrawing from the confederation, they must be regarded as independent states Confederated. If the states, though confederated, retain independence in their relations with the foreigners, they form themselves merely into a federal union but not into a federal state. Suppose the alliance is permanent, and the common government have relations with the foreigners,—these two elements are not enough for the character of a federal state. There must be "a federal legislature whose laws in certain matters are binding on the citizens as individuals, a federal judiciary to decide, in the last resort, whether these laws have been obeyed or not, and a federal executive that in enforcing the laws and collecting taxes, deals normally with individuals, as such." According to Prof. Sidgwick, the habit of divided allegiance is an essential characteristic of a well-organised federal state, whereas in an unitary state, allegiance is not divided. Where there is a question of divided allegiance, difficulties present themselves in a conflict between the common government and the government of the part. In an unitary state where there is no divided allegiance, the legality of any command is tested in the law court. But in a federal state there must be set up a supreme court independent of the common and part governments to decide the legality of any command where there is a conflict.

Federation and confederation.

Divided and undivided allegiance.

The chief advantages of a federal union on the part of small states, are military and economic gains. By an alliance with others they

protect themselves against the encroachments and aggressions of powerful neighbours. Confederation helps the states to resort to elaborate tariffs with a view to exclude or hamper the competition of foreign producers in their markets. It is by confederation that the individuality of the states is preserved without sacrificing union. Federal union is a transitional stage. It can last for a long time. With the growth of mutual intercourse and when inconvenience of diverse laws and narrow provincialism are keenly felt it may in process of time pass into a federal State. From this standpoint, an unitary state, if well-managed, is an ideal one; the difficulties are of administration and of accommodation of differences which are sure to exist in different parts.

Advantages of a federal union.

(*h*) THE UNITARY STATE

In a large modern state where the unitary system prevails, a city is selected as a political centre where the supreme legislature meets, the courts decide and superior officials in the executive departments transact business. But for facilitating administration and avoiding cost and delay, there are local legislatures, local tribunals and local executives, having considerable amount of internal work. Local Governments may be independent in their work but legally and ultimately, they are subject to the subordination of the Central Government. In the interest of efficiency and economy local governments are endowed with vast powers in deciding and executing many important functions. The local governments must have powers because the fundamental principle of democracy is that the inhabitants of every portion of the state should be made to feel that they have a voice in the administration, and if everything is conducted from a political centre, the citizens of other administrative areas become only mute citizens. In such matters as education, sanitation, poor relief, services, the local governments must have independence, otherwise the governed would fail to make their grievances felt, or to reap any advantages. Therefore, in an unitary state, the vigorous development and independence of local government is essential for the effective working of representative government. If the local governments possess little power, it means that there is the danger of overburdening the central government with work. Therefore, following the principle of the division of labour, even an unitary state feels called upon to divide the governmental work between the centre and the local, with no idea of introducing the dangerous doctrine of divided allegiance. But too much power should not be given to the local government so that there may not be any

Unitary system of government.

Unitary government.

successful resistance to the Central government by the local organs. This balancing of governmental functions between the central and local is a very delicate task. In an unitary state, there is another problem of the division of areas, bound up or separated by mutual affinities or local jealousies.

The Government of India is now an unitary state. But the Indian Statutory Commission (1929) and the Round Table Conference in London (1931) endorsed the idea of a federal state for India. Many of the notable Indian statesmen who were advocates of the unitary state, gave way to the ideal of federalism, with a view solely to accommodate the Indian Princes within the Federal State. The federal structure of India will justify itself if the Indian States confederate themselves to the Indian Federal State. The government of the United Kingdom is of an unitary type, and the government of the United States is of a federal type.

(*i*) DOMINION STATUS

Let us now see what dominion self-government means. As far as internal affairs are concerned, the dominions are fully sovereign states, having a cabinet form of government. From the constitutional point of view, the dominion states are sovereign in internal matters, but from the legal point of view, they are not so. The Imperial Parliament does not dare interfere in the internal government of the dominion though its legal right to do so is undoubted. But there are other points which show that the dominions still hold a subordinate position. The judicial committee of the Privy Council as the final court of Appeal in Dominion cases has the effect of modifying their autonomy to a certain extent. The highest British Court of Appeal is not the Judicial Committee of the Privy Council but the House of Lords. In the case of Campbell *vs.* Hall it was laid down that the British Colonies are subject to the paramount authority of the Imperial Parliament. The Colonial Laws Validity Act of 1865 and the Merchant Shipping Act of 1894 are nothing but checks upon the autonomy of the dominions. The Dominions owe allegiance to the Crown exactly in the same degree in which other members of the Imperial system owe theirs! But it must be pointed out that conventions are being established to negative those laws, and if the tendencies are studied aright, they point to the fact that sovereignty of the dominion states, external and internal, is gradually but surely gaining ground. It is moreover gradually being organised. The Imperial Conference of 1926, accepted the following formula: "They (Britain and the Dominions) are autonomous Communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic and external

affairs, though united by a common allegiance to the Crown and freely associated as members of the British Commonwealth of Nations." Prof. Keith opines that the resolution is not an accurate statement of the existing law. The weight of opinion however is in favour of its accuracy. Mr. Chamberlain called the Dominion states which have voluntarily accepted one crown and one flag, and which in all else are absolutely independent of one another, as "sister states", equals of the United Kingdom in everything except population and wealth. Lord Curzon said of the Dominion Governments as "partners" as free as themselves, and with aspirations not less ample and keen. Sir H. Campbell-Bannerman called freedom and independence the essence of the Imperial connection. Mr. Lyttelton talked of practical equality of status and Mr. Balfour of formal equality and so forth. It is now established that England cannot declare war and sign treaties without reference to and the concurrence of the Dominions, if they are in any way involved or affected. Though in foreign affairs and defence, the responsibility of the dominions rests with the British Foreign Secretary, there is no obstacle to the Dominions claiming separate and independent foreign representation. Canada has actually appointed a Minister Plenipotentiary at Washington. It has also been laid down that, in future a treaty in which the whole Empire is concerned, is to be signed separately for Great Britain and Northern Ireland, and all parts of the British Empire which are not "separate members of the League as one separate entity, and for each of the Dominions as a separate entity." It may be mentioned in this connection that India is a member of the League of Nations.

It is true that there are limitations on the autonomy of the Dominions, but, for all practical purposes they are to be of no avail. Firstly, the appointment of the head of the executive government is vested in the Crown but the policy of consultation is likely to be carried further, and the Governor will be made in effect a nominee of the Dominion Government. Secondly, the Governor has certain powers or prerogatives for the maintenance of law and order, but it may be affirmed that the Governor would not refuse to act anywhere except on the advice of Ministers. Thirdly, the Governor has certain definite obligations in the case of the exercise of the prerogative of mercy and he is not bound to support the recommendations for honours put forward by his ministers. The dissolution of Parliament and the dismissal of Ministers,—all these powers belong to the Governor. There are cases where the Governor is to act as an Imperial officer. But political good sense and conventions have proved that the prerogatives are no obstacles to sovereignty of the people; they simply exist for research students of constitutional history and not to offer any practical difficulty. From the point of view of International law, the Parliament of a Dominion

is inferior to the Sovereign Parliament, but in practice the difference is not noticeable. The Dominion Parliament cannot make a man a British subject throughout the whole of the British dominions; the Dominion Parliament cannot authorise any declaration of war, or the making of peace with a foreign power; the Dominion Parliament cannot alter the succession to the throne of the United Kingdom and the British Dominions beyond the seas, or change the title of the King; the Dominion Parliament cannot extinguish itself on its own motion; the actual powers to federate cannot be conferred by the Dominion Parliament; the Dominion Parliament cannot merge itself in some other form. All these hypothetical cases go to show that the Imperial Parliament has a superior function and a superior status. From the practical point of view, they are not of very great importance and the fact remains that the Dominion Parliament is to all intents and purposes, sovereign.

It must be conceded that there are technical points in which the Dominion is yet to show its sovereignty, though the signs of the time are all in favour of the Dominions. The British Dominions are no longer colonies because the colonial status is a worn-out, by-gone theory. The marks of inferiority of the Dominions are: the selection of the Governor on the advice of Imperial Ministers; the power to withhold assent to Acts of Parliament or to disallow such Acts even if assented to by the Governor; the power to pass Imperial Legislation applicable to the Dominions; and the subjection of the Dominion courts to the control of the Judicial Committee of the Privy Council. Should the Dominions want to achieve independence or declare themselves independent, it must be achieved by a treaty, ratified by the Imperial Parliament. In the legal sense, the dominions are a dependency, but for all practical purposes and from the constitutional point of view, the Dominions are equals of the British Government. The British Empire, or to put it in a democratic language, the British Commonwealth recognises the principles of adjustment and accommodation, and the sovereignty of the Dominions is conceded, though it is strewn with legal complexities.

CHAPTER II

The English Constitution

Every Government is instituted to secure the general happiness of the Community, and especially to protect the person and property of every individual. Constitutions are established to ensure the good administration of the government, by giving the people some direct or indirect control over their rulers, and also a share in the formation of the laws.

Government secures the general happiness of the community.

The *English Constitution* differs from most others in its formation. It was formed very gradually. The restraints upon the abuse of Power were not imposed until the evils were felt. Consequently it is the result of long experience. It is exactly suited to the peculiar circumstances of the nation.

English constitution result of experience.

The government established in England by the Norman Conqueror was a feudal despotism. The land was divided into fiefs, which were for the most part given to the Norman Lords or Barons. They were invested with absolute power over the lives and fortunes of their vassals. There were no written limitations to the power of the King over the barons; but Henry I, eager to secure partisans in his usurpation of the Crown from his brother Robert, granted a Charter of privileges to his nobility. This Charter contained also a few stipulations in favour of the great body of the people.

Early government in England.

The conditions of this Charter were flagrantly violated, until at length, in the reign of John, the barons, with a powerful body of their adherents, appeared in arms against the King. They thus forced him to sign the Magna Charta, the great foundation of English liberty. Though this Charter was principally designed to protect the nobles from the encroachments of royal power, it contained some important provisions in favour of general liberty. This is a clear proof of the growing power of the people.

The Magna Charta.

When the importance of Commerce began to be understood, it was found necessary to secure the trading towns and communities from the exactions of their powerful neighbours, for, in the Middle Ages piracy and highway robbery were deemed honourable professions by most of the feudal nobles in Europe. To protect trade, charters of incorpor-

ation were granted to several cities and towns. By them they were released from dependence on a feudal lord, and permitted to enjoy a government of their own choosing. A gradual change took place through the country in consequence of the adventurous and reckless spirit of the Norman barons. Some sold their fiefs to raise money for joining the crusades; others wasted them piecemeal to support their tenantry and dissipation. Thus from various causes a body of small landholders began to grow up, independent of the great barons, and looking to the crown for protection against them.

Gradual changes taking place.

When the Earl of Leicester took up arms to restrain the capricious tyranny of Henry III, he summoned a parliament to sanction his designs. In order that the voice of the nation might be more clearly expressed, he invited the counties to elect Knights of the shire, and the cities and towns to send deputies, to aid in these consultations. This appears to have been the first attempt to form a house of Commons, but the origin and early progress of that branch of the legislature is involved in great, not to say hopeless obscurity.

The beginnings of the House of Commons.

The Commons were generally courted by the King as a counterbalance to the power of the nobility. When the civil wars between the rival houses of York and Lancaster had thinned the ranks of the barons, and annihilated much of their influence, the royal power became supreme, and so continued during the reigns of the five sovereigns of the house of Tudor.

Houses of York and Lancaster.

The Commons, however, during this period had been silently collecting their strength. On the accession of James I they insisted on their privileges with a pertinacity, which led to a long struggle between the King and the Parliament. In this contest the majority of the House of Lords espoused the cause of the Commons. At length Charles I was coerced into granting the Petition of Right, which secured many valuable constitutional privileges to the people. But passions had been excited in the struggle which brought on a Civil War, that ended in the overthrow of the monarchy.

Charles grants Petition of Rights.

In the reign of Charles II, the celebrated Habeas Corpus Act was passed. By it personal liberty became secured to the subject; but the perfection of the British constitution was completed in 1688, when James II was hurled from the throne for his arbitrary principles. The right of parliament to regulate the succession to the crown was established, and the liberties of the people were secured by the Bill of Rights and the Act of Settlement.

Habeas Corpus, Bill of Rights and Act of Settlement.

Since that period no important change was made in the Constitution until the passing of the Reform Bill in 1832, by which the decayed boroughs lost the right of sending members to parliament, their privilege being transferred to the larger counties and more important towns.

Reform Bill of 1832.

The legislative power of England is placed in the Parliament, which consists of three parts, the King (or Queen), the Lords, and the Commons.

The Crown of England is hereditary, but Parliament has the right to alter the line of succession. After the abdication of James II, the right of succession was limited to Protestants, and on the impending failure of Protestant heirs to Charles I, the settlement was extended to the Protestant line of James I, viz., to the princess Sophia of Hanover, and the heirs of her body being Protestants. The present reigning family is descended from the princess Sophia, and holds the throne in right of her parliamentary title.

Conditions on which the Crown of England is held.

The duties of the sovereign are described in the Coronation Oath. They are, first to govern according to law, secondly, to execute judgment in mercy; and thirdly to maintain the established religion.

The *prerogatives* of the sovereign are, the making of war and peace; sending and receiving ambassadors; pardoning offences, conferring honours and titles of dignity; appointing judges and subordinate magistrates; giving or revoking commissions in the army or navy; and rejecting bills proffered to him by the other branches of the legislature. He is the head of the national church, and nominates to vacant bishoprics, and other ecclesiastical preferments.

The King's prerogative.

But the king can only exercise these prerogatives through his ministers, who are responsible to the nation for every act emanating from royal authority. Hence arises the aphorism that "the King can do no wrong," his ministers being alone answerable.

Among the incidental prerogatives of the sovereign may be mentioned these,—that no costs can be recovered against him; his debt is to be preferred before that of a subject; no suit or action can be brought against him, but all claims upon him must be made by petition in Chancery.

There are certain privileges also conceded to the royal family: the Queen Consort retains her title and dignity after the death of her husband She may remove any suit in which she is concerned to whatever court she pleases without any of the usual legal formalities. The King's eldest son is by his birth Prince of Wales, and by creation Duke of Cornwall and Earl of Chester. All the king's children receive the title of "Royal Highness."

Privileges of the Royal family.

The House of Lords is sometimes called the upper house of Parliament; its members are either temporal peers, whose dignities are hereditary, or spiritual peers, who sit only for life. The Scottish representative peers sit only for one parliament, the Irish representative peers for life. A peer may vote by proxy; but each peer can only hold the proxy for one absent peer. The House of Lords can alone originate any bills that affect the rights or privileges of the peerage, and the Commons are not permitted to make any alterations in them. Peers can only be tried by the House of Lords, and this house constitutes the court in which officers of State are tried on impeachment by the House of Commons; it is also the last court of appeal from inferior jurisdictions. Each peer may enter his protest on the journals when a vote passes contrary to his sentiments, and assign the reasons of his dissent in writing. When sitting in judgment his verdict is given "on his honour"; the same form is observed in his answers on Bills in Chancery, but in Civil and Criminal cases he must be sworn.

The House of Lords and its principles.

Composition of the House of Lords.

The House of Lords (January 1, 1931) consists of Princes of the Blood Royal who are all

Dukes	4
Other Dukes	28

(Duke—This title was unknown in England till the reign of Edward III, who, in 1335, created his son, Edward the Black Prince, Duke of Cornwall.)

Marquesses	40

(Marquis—Richard II in 1385, conferred the title of Marquis of Dublin. This is supposed to be the origin of the title in England.)

Earls	231

(Earl—This is a very ancient title, having been in use among their Saxon ancestors. In those times it was an official dignity, having a jurisdiction over the place from which the title took its name. Soon after the Norman conquest, William I created several Earls, allotting to each the third penny arising from the pleas in their respective districts. That grant has, however, long since ceased and in lieu of it the earls now receive a small annuity from the Exchequer.)

Viscounts	111

(Viscount—The title of Viscount is of much more recent date; the first we read of being John Beaumont, who was created Viscount Beaumont, by Henry VI, in the year 1439.)

Barons	504

(Baron—In English history we often find the word Baron used to denominate the whole collective body of the nobility. When, after the Norman Conquest, the Saxon title of Thane fell into disuse, that of baron succeeded; and being the lowest title among the nobles, was very generally applied as the term Lord now is; with this indeed, it appears to be synonymous.)

The above are temporal hereditary peers of England holding English peerages.

Peers of Scotland (elected to each Parliament)... ...	16
Peers of Ireland (elected for life)	28
English Archbishops	2
English Bishops	24
Lords of Appeal in ordinary (appointed for life) ...	6
Making in all	994

Eligibility for the House of Commons.

The House of Commons consists of members chosen by Counties, Cities, Boroughs, and Universities. Formerly a property qualification was required of all members, with the exception of the sons of peers and the representatives of the Universities; but this qualification was abolished by an Act passed in 1858.

Aliens, clergymen, judges, returning officers in their respective jurisdictions, officers of the excise, etc., those who hold pensions of limited duration, contractors with government, and some others exposed to external influence, are ineligible to sit in parliament.

The franchise.

The right of voting for members of Parliament was given by the Reform Act to leaseholders in counties seised of lands or tenements worth ten pounds a year, to tenants-at-will farming lands at a Rent of fifty pounds a year, and to holders in fee simple of lands or tenements of the yearly value of forty shillings. In cities and boroughs, the right of voting was given to resident householders whose tenements were worth an annual rent of £ 10 but the rights of freemen in the old constituency were preserved for the term of their natural lives.

There was therefore, the household franchise under which a man had to occupy as owner or tenant for twelve calendar months a dwelling house in the borough. To be entitled to the lodger franchise, one had to reside in the same lodgings as the sole tenant for 12 months, such lodgings being of the clear yearly value (unfurnished) of £ 10. The Representation of the People Act of 1918 abolishes the voting qualification of the property owner, freeman and lodger and requires qualified age and residence for six months or the occupation of land or premises of the annual value of £ 16 for business purposes for six months.

Composition of the House of Commons.

The House of Commons contains:—		
English county Members	230	
Universities	7	492
Cities and Boroughs...	255	
Welsh County Members	24	
Welsh Universities	1	36
Cities and Boroughs	11	
Scotch County Members	38	
Scotch Universities	3	74
Cities and Boroughs...	33	
Northern Ireland County Members	8	
University	1	13
Cities and Boroughs	4	
Making in all ...		615

In order to understand the manner in which the public business is transacted in Parliament, it may be observed, that discussions generally arise on a motion being made by a member and seconded by another. It is then put from the chair in the shape of a question. On each of these motions every member is entitled to be heard once, but he may rise again to explain, and the member who originates a motion is allowed to reply.

Committees are, first, those of the whole house, which may be to consider certain resolutions, with respect to the nature of which considerable latitude prevails; or the house resolves itself into such committee to consider the details of a bill, the principle of which is never discussed unless on its several readings; or there may be committees for financial purposes, as those of "Supply", or "Ways and Means". Secondly, there are select Committees, chosen by ballot or otherwise, for some specific purpose, the numbers composing such bodies seldom exceed twenty or thirty members. Occasionally these are declared committees of Secrecy. Thirdly, election committees, which are strictly judicial tribunals, and whose duty it is to try the merits of controverted elections. Fourthly, committees on private bills.

Committees of the House.

When the whole house is in committee, the Speaker vacates the chair and some other member is called on to preside. He sits in the seat of the senior clerk. The mace is then placed under the table. For Committees of Supply, and Ways and Means, there is a chairman, who receives a salary.

Committee of the whole House.

The prorogation of parliament is an act of the Crown; but either House may adjourn its sittings to the next or any future day; a debate

also may be adjourned; motions of adjournment may be made at any time, and repeated at the pleasure of any member.

When a motion has been made upon which the house is unwilling to vote, there are formal modes of avoiding a decision, among which are passing "to the other orders", or moving "the previous question." The former means, that the house should take no further notice of the matter,—but proceed to the other business appointed for the day; the latter, that a vote be previously taken as to the expediency of their coming to any decision on the question raised. If "the previous question" be decided in the negative, the motion on which it bears is only got rid of for the time, whereas a direct negative to the motion itself would mean proscription of it for the remainder of the session, as well as a denial of its principle.

How questions are shelved.

With respect to a bill, a motion that it "be read this day six months" is a mode of throwing it out without coming to an express declaration against the principle of the measure.

The sovereign, we have already said, is the fountain of executive justice. Law, however, whether criminal or civil, is administered by the judges. With the exception of the Lord-Chancellor they hold their offices during good behaviour. No man can be tried for any offence until the grand jurors of his county have decided that there is reasonable ground for the accusation. He is then made over to a jury of his equals, and their verdict is final. No man can be tried twice for the same offence. The old rule used to be that when a person was convicted by a jury there was no appeal but to the mercy of the King. That however, is no longer the law. By an Act of 1907 a court of Criminal Appeal has been set up. Now every person convicted on indictment, i. e., convicted at Assizes or Quarter Sessions, may appeal against his conviction. This appeal may be on a point of law, or against his sentence, or, with the consent of the presiding judge or the Court of Criminal Appeal itself, on a question of fact.

Sovereign is the fountain of justice.

The Houses of Lords and Commons differ from each other not only in their constitution but also in respect of their powers and methods of procedure. It is in the House of Lords, for instance, that the Sovereign meets the Parliament. It is in the House of Lords that the formal ceremonies connected with the opening or proroguing of the legislature are gone through. On these occasions, as also when the royal assent is given to public or private bills, the "faithful Commons" merely attend in their Lordships' House. On the other hand, the House of Commons has an individuality of its own. It is yearly be-

Lords and Commons in relation to each other.

coming more and more marked. Its powers and privileges are enormous: it is in the Lower Chamber exclusively that the national estimates are voted, and it is in the Commons that the majority of important legislative proposals are initiated. The Royal Assent to bills, which alone can convert them into Acts of Parliament, is always given in the House of Lords, more frequently by commission than otherwise; and it is a curious circumstance that French Language is still employed in connection therewith.

The clerk of the Parliaments is an officer of the House of Lords, by whom, in conjunction with the clerk Assistant and the Reading Clerk, are performed such duties as making minutes of the proceedings, swearing peers and witnesses, and signifying the royal assent to bills which have passed both Houses.

(*a*) PRIVILEGES AND SAFEGUARDS

Constitutional privileges.

The right of public meeting and the right to petition Parliament are two important constitutional privileges. The maintenance of what is called "the liberty of the subject" forms a valuable part of the English Constitution. Its chief safeguards, independently of the mode of making laws, are (1) administration of justice on the trial of accused persons; (2) the general prevention of illegal imprisonment; (3) the definition and limitation of the duties of the police.

Trial by jury.

To the first category belong (a) the institution of "trial by jury", which secures a fair trial by 12 persons chosen at random from the body of the people, having nothing to hope or fear from the Executive; (b) the protection accorded to jurymen, by which they cannot be made civilly or criminally responsible for their verdicts; also the protection of their functions from possible encroachments by judges; (c) the independence of the judges, secured by the enactment which makes their commission "during good behaviour," of great protective value and renders them irremovable except upon a joint address from both Houses of Parliament. An example of the second class of safeguards is the rule which secures that any one whose liberty is restrained shall have an opportunity, under the writ of *Habeas Corpus,* of having the ground of his restraint judicially investigated; of being speedily brought to trial if accused, and of suffering his imprisonment at a fixed place, not at the discretion of the Executive. The right to claim damages in a civil action for illegal detention, and the rule that "excessive bail shall not be required," belong to this class of safeguards.

Independence of the judges.

Habeas Corpus.

The last class is concerned with the definition and regulation of the duties of the police, especially in respect of subjecting suspected persons to a preliminary judicial investigation. Depending as these safeguards do, on fine distinctions as to when a "warrant" is necessary in bringing an accused person before justices, they cannot be here discussed. It may however, be noticed that there is a fixed constitutional principle which extends no protection to the officer who executes "general warrants," or "warrants to apprehend all persons suspected", without naming or describing anybody specifically, or "to apprehend all persons guilty of a crime therein specified". They are *ab initio* illegal.

No arrest without warrant.

(*b*) LIMITED MONARCHY

Under the constitution of England the supreme political authority is vested in the King or Queen, and the two Houses of Parliament. It is conceded that in every constitution which is the growth of ages, and which exercises sway over mixed populations, "there must be two parts, first, that which excites and preserves the reverence of the population,—the dignified part—and next, the efficient part, those by which it in fact, works and rules." The distinctive merit of the English Constitution is that while its "efficient part" works more easily and simply and better than any instrument of government which has yet been tried, its "dignified part" is still as capable of exciting and sustaining enthusiasm as when the King was his own Prime Minister.

Supreme political authority.

Dignified part and efficient part.

The secret of the efficiency of the English Constitution lies in the close union of the executive and legislative power of which the connecting link is the Cabinet.

Executive dependant upon the legislative.

(*c*) THE CABINET

By that word, which is technically unknown to any Act of Parliament or in official proceedings, is meant a Committee of the legislative body, selected to be the executive body. All the same it is a Committee, which has the power of advising the dissolution of the assembly which indirectly appointed it. Though appointed under one Parliament, it can with the permission of the sovereign, appeal to the next. It is nominated by the Crown, but being also responsible to Parliament, it consists exclusively of statesmen whose opinions agree in the main with the majority of the House of Commons. Among the

Cabinet a committee of the legislature.

members of this Committee are distributed the great departments of the Administration. Each minister conducts the ordinary business of his own office, without reference to his colleagues; but the most important affairs of every department, and especially such matters as are likely to be the subject of discussion in Parliament, are brought under the consideration of the whole Ministry. When Lord Salisbury's third Ministry came into office in 1895, a Cabinet Committee for National defence was constituted, composed of several members of the Cabinet including the Secretary of State for War and the First Lord of the Admiralty. The functions of this body were never clearly defined, and they in no way limited the responsibility of the Cabinet as a whole. In Parliament, the Ministers are bound to act as one man in all questions relating to the Executive Government. If one of them dissents from the rest on a question too important to admit of compromise, it is his duty to retire.[1] While the Ministry retains the confidence of the Parliamentary majority, that majority supports them against opposition, and rejects every motion which reflects on them or is likely to embarrass them. If they forfeit that confidence, or if the Parliamentary majority is dissatisfied with the way in which affairs are conducted, it has merely to declare that it has ceased to trust the Ministry, and to ask for a Ministry which it can trust. By the system of the present party arrangements, an organised body of politicians will be always found ready to succeed them; "His Majesty's Opposition" being as much a part of the polity of England as the Administration itself. It is remarkable that a body wielding such vast powers as the Cabinet should hold all its decisions in secret. No official record or minute of any kind is kept of its proceedings, and even a private note is never heard of. The chief of the Cabinet is the Premier or Prime Minister.

Minister responsible for his own Department.

Committee of the Cabinet.

Party government.

The opposition.

(*d*) THE PRIME MINISTER

Besides being a Privy Councillor, he usually, though not necessarily, holds the office of First Lord of the Treasury. He was not officially

[1] This rule has been allowed to be departed from by the so-called National Government of England in 1932. The Government headed by a Labour Prime Minister Mr. Ramsay Macdonald and consisting of a large majority of Conservatives and a sprinkling of Liberal and Labour politicians allowed its Tory (Protectionist) Chancellor of the Exchequer Mr. Neville Chamberlain to bring in his prohibitive tariff measures which were on the 4th of Feb. 1932 stoutly opposed by Sir Herbert Samuel, the Liberal (Free trader) Home Secretary in the same Cabinet. Thus the House of Commons, for the first time in its long history heard a Minister speaking against his colleagues in the Cabinet. It appears as though the beginning of the party system in England is in sight. It may also mean the dismantling of the Cabinet System.

recognised until about the end of 1905, when by a Royal warrant he was given a precedence immediately after the Archbishop of York. Otherwise he has no legal primacy over the other members of the Cabinet; this is, indeed, necessarily the case in a body which has itself no legal status. He, like the Cabinet, is the creature of convention. Generally, he combines with the position of Prime Minister the office of First Lord of the Treasury. But this must not be taken to be an invariable rule for, within living memory we have known Mr. Gladstone being both Prime Minister and Chancellor of the Exchequer, and both Lord Salisbury and Mr. Ramsay Macdonald being their own Foreign Minister. In official precedence the First Lord of the Treasury ranks below many of the other Ministers. The Prime Minister is selected by the Sovereign, whose choice, among natural-born subjects, is nominally unrestrained, but is, in fact, limited to the leaders of the party which can command a majority in the House of Commons. When charged by the Sovereign with the task of forming an Administration, he proceeds to the selection of occupants for the various offices, and submits their names for the approval of the Crown. The old constitutional maxim, that "the King can do no wrong" is now literally true. His acts are really the acts of his ministers; and his ministers are responsible to the House of Commons, not merely as of old for any breach of the law, but for the general course of their policy. This must accord with the opinions of the majority of that House, or else, in conformity with a constitutional usage, which is practically as binding as a legal enactment, the Ministers are bound to resign office.

The Prime Minister.

Meaning of 'the king can do no wrong'.

(e) ELECTION TO COMMONS

With certain exceptions any male of full age may be elected to the House of Commons. English and Scotch peers are entirely disqualified, but Irish Peers (with the exception of the 28 Representative Peers) may be returned. All English, Scotch, and Irish Judges, Clergymen of the Established Church of either of the two kingdoms, Roman Catholic priests, holders of various offices specially excluded by Statute (including revenue officers), persons who have been convicted of certain offences, aliens (unless a certificate of naturalisation has been granted to them by the Secretary of State, and they have taken the oath of allegiance), imbeciles, Government contractors (except contractors for Government loans), and sheriffs and returning officers within the constituencies for which they act,—all these are disqualified.

Peers ineligible for the House of Commons.

Other disqualifications.

No candidate requires any property qualification, and no member receives any payment of allowance whatsoever from the country for his service in the House or on any Committee thereof.

The Speaker is the first to take the oath and subscribe the roll in a new House of Commons, and is followed by the other members, who come to the table without any ceremony, and are presented to him by the clerk. Members returned after a general election are introduced by two other members. The form of Oath is as follows:—

Oath of allegiance.

"I, — — — — — —, do swear that I will be faithful and bear true allegiance to His Majesty King George, his heirs and successors according to law. So help me God." Quakers, Moravians, Separatists, and others are permitted to make an Affirmation to the same effect as the oath; and by 51 and 52 Vic., ch. 46, every person upon objecting to being sworn, and stating, as the ground of such objection, either that he has no religious belief, or that the taking of an oath is contrary to the dictates of his conscience or his religious belief, shall be permitted to make an affirmation, instead of taking an oath, in all places and for all purposes where an oath is and shall be required by law.

(*f*) DISABILITIES

Succession to a peerage of England, or of the United Kingdom, disables the person so succeeding from being elected to, or from sitting or voting in the Commons. A seat in the House is vacated by death, or an acceptance of any office to profit under the Crown; and there are also certain disabilities attached to bankruptcy. All the principal members of the Government, namely, Ministers of the Crown on accepting office, vacate their seats, but are eligible for re-election; but the vacating rule does not apply to such offices as Secretary to the Treasury or other similar appointments which are not held direct from the Crown. A change from one office held direct from the Crown to another does not involve going again to the constituency.

Who are ineligible for the House of Commons.

(*g*) CHILTERN HUNDREDS

No member of the House can, as a matter of fact, resign his seat, but this end is attained by his acceptance of the "Chiltern Hundreds". No office having emolument attached can be conferred on a member of the House of Commons without his vacating his seat, and therefore, by obtaining the stewardship of His Majesty's Chiltern Hundreds or the stewardship of Northstead, a member, may rid himself of his duties. In other words, the acceptance by any member of either of these offices operates to vacate his seat.

Disqualification may be acquired.

When a seat becomes vacant during a session, a new writ is moved for at the commencement of an ordinary sitting, generally by one of the whips of the party to which the late member belonged. Provision is also made for the Issue of Writ during the Recess without the intervention of the House. It is enacted that the Speaker may, on the production of a certificate signed by two members that a member has died, or has accepted an office held direct from the Crown, or has been called to the House of Lords, or that the seat has become vacant by the bankruptcy of a member, order a writ to be issued for a fresh election to fill the vacancy thus caused. But a writ may not be issued during the recess on the acceptance of the Chiltern Hundreds or of like offices. The Lunacy (Vacating of Seats) Act of 1886, provides a procedure by which the seat of any member who may have been received into a lunatic asylum shall be declared vacant.

Issue of election writ.

(*h*) OBJECTIONS

Any person on the list of electors may object to the name of any other person appearing therein. Written notice of such objection must be given both to the overseers and to the person objected to. On a given date, the overseers publish a list of the names of all persons who have sent in claims or have been objected to. Copies of the lists that have been published are then forwarded by the overseers to the clerk of the peace of the country, or (in the case of municipal boroughs) to the town clerk. He prepares an abstract of such lists of claims and objections, and transmits it to the revising barrister for the district. Revising barristers are appointed every year, for London and Middlesex by the Lord Chief Justice, and for other places by the senior judge of assize. The barrister so appointed makes a circuit and holds open court for the revision of the List in each borough and at or near every polling place in the country. The clerk of the peace, or town clerk, and the overseers, must attend. The revising barrister has power to examine witnesses on oath, to hear claims and objections and to insert or omit names as he finds just. An appeal lies from his decision to the King's Bench Division of the High Court, but no further appeal is allowable without its express sanction. The list of voters as settled and signed by the revising barrister is sent, in the case of a county, to the clerk of the peace, who must have it printed in a book and delivered to the sheriff. In the case of a borough such list is sent to the town clerk, who must have it printed in a book and delivered to the returning officer. The clerk of the peace or town clerk must keep printed copies of the Register for sale at a fixed price. The register is conclusive evidence that the persons therein

Objections registered and disposed of.

named have the qualifications annexed to their respective names. In the case of any person not having his name on any list of voters, or in case of his receiving a notice of objection, he should apply to the Registration Agent for his district of the political party to which he belongs. Such Agents are appointed and paid by the various party organisations in most constituencies. They make it their business to know the intricacies of the law on the subject.

(*i*) METHODS OF ELECTION

Under the provisions of the Ballot Act, the returning officer is required, in the case of a county election within two days after the day on which he receives the writ to give notice of election. In the case of a borough election he has to do it on the day he receives the writ or the following day. The day of nomination is to be fixed as follows: in the case of an election for any borough other than a district borough, not later than the fourth day after the day on which he receives the writ, with an interval of not less than two clear days between the day on which he gives the notice and the day of nomination. The candidate is nominated in writing, subscribed by two registered electors as proposer and seconder, and by eight other electors, who must also be registered in the same constituency. If at the expiration of one hour after the time appointed for the election no more candidates stand nominated than there are vacancies to be filled up, the returning officer forthwith declares the candidate nominated to be elected. If at the end of one hour more candidates stand nominated than there are seats to be filled up, the returning officer adjourns the election to take a poll. The poll is to take place on such day as the returning officer may appoint, not being, in the case of an election for a country or district borough, less than two or more than six clear days, and not being in the case of an election for a borough other than a county, three clear days after the day fixed for the nomination. Sundays, Christmas Day, Good-Friday, and any days set apart for a public fast or thanksgiving, are not counted.

Election procedure.

Where an equality of votes is found to exist between any two or more candidates at an election for a county or borough, and the addition of a vote would entitle any of such candidates to be declared elected, the returning officer may give such additional vote. In such circumstances he may exercise his franchise only if he is a registered elector of such county or borough. He may not in any other case vote at an election for which he is the returning officer. But the returning officer may, if qualified, decline to give the casting vote; and if he be not qualified, or if he declines to act, the names of the two candidates are endorsed on the writ and a double return made. Neither

candidate returned may vote until right to the seat has been determined. A petition may be presented by a person alleging himself to have been the candidate; the petition may be presented on various grounds, and it may allege bribery and corruption. Thus, where there has been an equality of votes, and the casting vote has been given by the returning officer, or where a double return has been made, the seat may be claimed on petition. The voting papers would then be scrutinised by the Court, and some deductions would probably be made on the ground of spoiled papers, disqualification of the voter, and such other grounds, which would reduce one party's number more than it would be the figure of the other. All election petitions are tried by two judges, who determine and report to the Speaker whether the member petitioned against, or what other person, if any, was duly elected, or whether the election was void. When corrupt practices have been alleged, the judges report also whether any such practices have been committed, and if so, whether it was with the knowledge or consent of any candidate and the nature thereof. The Report contains further the names of the persons proved to have been guilty of such corrupt practices, and whether during the election there was an extensive prevalence of such practices. When such a report as the latter is made to the House, it is usual to appoint a Royal Commission, on whose report, if it discloses a serious state of things, the writ for a fresh election may be suspended, so that the constituency remains temporarily unrepresented. Any Member, returned for two or more places in any part of the United Kingdom, is to make his selection for which of the places he will serve, within one week after it shall appear that there is no question upon the return for that place.

Tie solved and double return made.

Corrupt practices.

(*j*) PARLIAMENTARY PROCEDURE

A word as to the parts of the House which the different sections of Members occupy, may be added here. The benches are fixed in two long rows, extending on either side from the chair to the bar, and each row is divided midway by a narrow passage known as the gangway. The front bench to the right of the chair and above the gangway is the Treasury Bench, and upon it sit the leader of the House and as many of his ministerial Colleagues as can find accommodation there. The other benches on the ministerial side are occupied by supporters of the Government. By ancient custom the two members for the city of London may sit on the Treasury Bench on the first day of the meeting of a new Parliament.

(*k*) THE FIRST COMMONER

The first duty of a newly constituted house is the election of the Speaker. As a rule, the former Speaker is re-elected until he retires, usually with a peerage. First of all, the "Faithful Commons" are summoned to the House of Lords, where the Commissioners are seated in their ceremonial robes. The Lord Chancellor, on behalf of the king, announces that, as soon as the members of both Houses shall be sworn, the causes of His Majesty calling the Parliament together will be declared. On their return to their own chamber, the Commons proceed to elect a Speaker.

Procedure in connection with the election of the Speaker.

(*l*) THE ELECTION OF THE SPEAKER

The candidate sits near a corner and, for the time, he is like one of the ordinary members. His election is proposed and seconded by two parliamentarians of experience. There being no one in the chair, the clerk of the House of Commons points silently, with outstretched finger, to the member who is to address the House. The member then rises and proposes the election of the Speaker and the other members second and support the proposal. On thus being duly recommended by his mover and seconder, the Speaker-elect submits himself to the will and judgment of the House and the election being confirmed by its cheers, he is conducted to the chair by the mover and seconder. Then the Prime Minister and the leaders of the great parties congratulate him on his election, expressing confidence in his impartiality. On the second day the Commons are summoned to the House of Lords. The Speaker, in court attire, follows the party, the Sergeant-at-arms carrying the mace, a sign indicating that the Speaker-elect is not yet invested with authority. It is necessary that his appointment should receive the approval of the Sovereign. The Speaker-elect takes up his position at the bar of the House of Lords. He then announces that the choice of the Commons has fallen upon him and that he submits himself, with all humility, for His Majesty's gracious approbation. Then the Lord Chancellor declares that the King most readily approves and confirms his election. Thereupon the Speaker, on behalf of the Commons, makes claim to "all their ancient and undoubted rights and privileges." It is a sturdy claim which cannot be resisted. So the Lord Chancellor, on behalf of the Sovereign, most readily confirms all privileges "which had ever been granted to or conferred upon the Commons by any of his royal predecessors." The Speaker then returns to the House of Commons with full authority and the mace is now borne shoulder-high by the Sergeant-

Ceremony of the election of the Speaker.

at-arms as a symbol that the election of the first Commoner has been ratified by the King. The Speaker, on resuming his seat, reports that the King is pleased to approve the choice of himself by the Commons, and once again thanks the Commons for their confidence. Then he takes the oath, standing, and his transformation from an ordinary member into the august Speaker is complete.

(*m*) DISORDER IN THE HOUSE

The Speaker has complete control over the general discipline of the House. In the case of grave disorders arising, the Speaker may, if he thinks it necessary to do so, adjourn the House or suspend a sitting.

Control of disorder in the House.

Members are often called to "order" by the Speaker. Members "named" for disregarding the authority of the chair or for abusing rules by wilful obstruction on a motion made and carried, can be suspended. Members are released from suspension on their tendering an apology to the House.

(*n*) POWERS OF THE SPEAKER

The most striking feature in the procedure of the House of Commons is the great power vested in the Speaker. He must abstain from debating, unless in Committee of the whole House; and even then he rarely takes advantage of his right. The member of the House, who is elected to the office of Speaker, usually acts quite independently of party considerations. He never votes, save when the numbers happen to be equal. In such a case he gives the casting vote. The chief duty of the Speaker undoubtedly is the preservation of order. In this respect the rules of the House of Commons are very stringent. The Speaker may hold office until a dissolution. Should the office become vacant during a session, the new speaker then elected is presented for the royal approbation. He does not claim the privileges of the House. The Speaker has his official residence in the Palace of Westminster, and receives a salary of £5,000 per annum. He ranks as the first Commoner, and is usually awarded upon retirement a pension of £4,000 a year and a peerage.

Duties of the Speaker.

Tenure of office of the Speaker.

(*o*) FORMATION OF THE CABINET

When a general election has given a majority of seats in the House of Commons to one of the great political parties, the King sends for

the leader of that party and asks him to form a ministry. This leader then selects from his party the men whom he thinks best fitted to fill the various offices of State, and invites them to serve under him as Prime Minister. If they accept office, the Government is vested in their hands with the approbation of the king. They hold the government for so long as they retain the support of a majority in the House of Commons.

Formation of the cabinet.

(p) ITS UNITY

From time to time the Prime Minister calls a meeting of the Cabinet to discuss ordinary business or any special matter that may have arisen. Each Minister is responsible for the administration of his own department. He must know and approve of the general policy of his colleagues. The whole Cabinet thus makes itself responsible for the administrative acts of all of its members. If a minister disapproves of the conduct of any part of the administration which his colleagues endorse, he must resign.[1]

Unity of the Cabinet.

(q) DEFEATS

The opposition is always on the alert to watch the measures of the Government of the day. There are votes of censure and snap votes. When voting on estimates, members call into question the propriety of the departmental administration of a particular minister. In pursuit of their move they may propose a reduction in the minister's salary. When such votes are carried, the Cabinet in defence of political honour and as a matter of political practice, resigns and the Prime Minister hands over the seals of office to the Sovereign.

(r) ITS CONSTITUTION

The cabinet Council is somewhat loosely constructed. Though it has long been the acknowledged centre of Government, it is not recognised by law. Its meetings are in private, and no record is kept of its proceedings. It does not always contain the same ministers, and new members can be added by the Prime Minister by merely summoning them to the Council. The cabinet, as a Committee of the Privy Council, must always contain the Lord President of the Council. Other members are the Lord Chancellor, the Chancellor of the

The cabinet a committee of the Privy Council.

[1] Vide footnote at p. 123 infra.

Exchequer, the Secretaries of State for Home, and for Foreign Affairs, for India, and the Dominions and Colonies, the Secretary of State for War, and the First Lord of the Admiralty, the Secretary of State for Air, the Lord President of the Council and the President, Board of Trade. In addition to these, the Prime Minister may confer a seat in the Cabinet upon any other minister whose services he values and wishes to secure. There are commonly as many as nineteen members of the Cabinet. This is an unwieldy number for confidential debates. There has therefore, grown up within the larger council an "inner Cabinet" of the more important ministers on whose judgment the Premier specially relies.

(*s*) ITS RELATION TO PARLIAMENT

To carry on the affairs of the State, the ministers must retain the support of a majority in the House of Commons. Parliament fought hard to establish authority over the King's ministers in the days before the civil war. It can call for papers to be placed on the table of the House, and can move resolutions. This authority is secured by the absolute control of the public purse which the House of Commons exercises. A minister must explain his plans to the House of Commons before it will grant him the money he needs to carry them out. Private members have the right to question ministers on any matter touching their work, and on some days these questions have numbered as many as a hundred.

Cabinet in relation to Parliament.

(*t*) THE SESSION

Parliament must meet every year, so as to vote the money needed for the expenses of Government. In the reign of James I, Parliament refused to grant supplies till it had obtained redress of its grievances. It still claims its right to examine the conduct of the Government before granting supplies, and grants them for only one year at a time. A great part of the session, therefore, is taken up with a careful examination of the items of expenditure. The session generally extends from February or March till the middle of August. An autumn session may be called for in exceptional cases, as on the outbreak of the South African War, in order to provide the money needed to meet the emergency.

The meeting of Parliament.

(*u*) THE KING'S SPEECH

Parliament is summoned by the King, and the session is opened by the reading of the King's Speech in the House of Lords. This

ceremony may be performed either by the King himself, or by the Lord Chancellor, or a Commissioner. The speech, which is drawn up by the ministry, refers briefly to any recent events of importance in home and foreign affairs. It also outlines the business for the ensuing session. Parliament acknowledges the King's speech in an address, which is made the occasion for comment and general debate on the policy of the Government as outlined in the King's speech.

The opening of Parliament.

(*v*) THE BUDGET

Early in the session the Chancellor of the Exchequer presents his budget, or financial statement, for the year beginning with April. Before this, however, the estimates must have been laid before the House, and sums granted to meet the expenses of the Army and Navy and the Civil Services for a few months. Any additional charges not foreseen in the previous estimates must also be met before the new budget is taken up. The budget speech is always awaited with great interest both in the House and in the country. If the Chancellor of the Exchequer finds that his revenue for the next year is likely to be larger than he needs, he is able to reduce the taxation for the year; on the other hand, if his expenditure is likely to be larger than his revenue, he must find the money to meet it.

Presentation of the budget.

Budget Statement.

(*w*) SUPPLY

The rules of procedure of Parliament are very carefully prescribed, and very strictly observed. This is necessary in an assembly numbering six hundred and fifteen members if the debates are to be orderly and to the point. The first act of a new Parliament, as we have seen, is the election of the speaker, to be its spokesman and representative, and to preside over its debates. "Mr. Speaker" is the authority on all points of order, and is constantly appealed to during debates. When greater freedom of debate is wanted than the ordinary rules admit of, the speaker leaves the chair and a chairman takes his place. The House is then said to be "in Committee" and members are allowed to speak more than once on the same question. Thus we have the Committee of Supply, which votes sums of money for certain objects; and the Committee of Ways and Means, which finds the money required and grants the sum to meet these votes. The last stage of supply is reached when the grants are gathered together into an Appropriation Bill, and then sent to the House of Lords, to be approved by them before receiving the Royal assent.

Committee of the whole House.

(x) LEGISLATION

But Parliament has other important functions besides criticism and supply. A living nation is constantly outgrowing its old laws, and must be all the time remodelling them, or making new ones to meet new needs. Every year sees a host of new bills introduced in Parliament, but very many do not live to tell the tale. Certain nights are set apart for private member's bills, and members draw lots for the right to introduce their Bills. It thus often happens that a private member tries in vain year after year to introduce a bill in Parliament. Bills promoted by the Government stand naturally on a different footing. Coming from the Minister who is responsible for the administration, they may be supposed to be of national importance. Moreover, they are likely to be supported by a majority in the House. They, therefore, have precedence over all other bills.

Variety of work of Parliament.

(y) STAGES OF A BILL

On an appointed day, the bill is brought up for its first reading. If the bill be an important one, its provisions may then be explained and discussed. Generally, however, the first reading is a mere form, after which the bill is ordered to be printed and circulated. At the second reading the principle of the bill is discussed and voted upon. The next step is the committee stage, when the bill is considered clause by clause. If it is a question of taxation, the bill must be considered by a Committee of the whole House; but most bills are sent to be examined by smaller committees. After the bill has passed through Committee, the Speaker resumes the chair. Any changes that may have been made in Committee are reported to the House. In the report stage the work of the Committee may be amended. Finally, the bill is read a third time, and, if it is passed, it then goes to the House of Lords. There the same procedure in different stages is repeated except that the first reading is omitted. Similarly, if the bill is introduced first of all in the House of Lords, the Commons, when they receive it, omit the first reading. In case of a disagreement between the two Houses over a bill, each House sends the other a written statement of its reasons of disagreement, and in this manner a compromise is generally reached. When a bill has passed through both Houses of Parliament, it receives the royal assent and becomes the law of the land.

Stages of a bill in the Commons.

In the Lords.

(z) THE OPPOSITION

We have made no reference so far to "His Majesty's opposition". They form a recognised part of the Parliamentary machine. Indeed,

the very arrangement of the House suggests this. It is divided into two parts by a gangway down the middle. The ministerial benches occupy one side, on the Speaker's right, and the opposition benches facing them on the other. The opposition make it their business to criticise the Government on every occasion. They endeavour, moreover, by all the means in their power, to defeat them and secure office for themselves. So truly is the opposition a part of the English Parliamentary machine, that, for example, it has been the custom to allow the opposition to determine to a large extent the order in which the votes of supply shall be taken up for discussion. The vigilance of the opposition ensures the country against hasty legislation and careless administration.

Efficacy of an opposition.

(*aa*) THE PARTIES

We see in a survey of British history how constant the division into parties has been. We read of the Roundheads and the Cavaliers, the Whigs and the Tories, the Liberals and the Conservatives. In other countries we find the same state of things. But rarely do we find a country that has been able to settle its differences in the peaceful and lawful manner which has been an outstanding feature of English political history. It is better, if there must be parties, that men should be divided by broad differences of principle and temperament, such as divide, for example, Liberals and Conservatives, rather than by blind attachment to party leaders. The old two-party system has now gone. The Irish Nationalist party had long been a power in the House, and the general election of 1906, introduced the then new and vigorous Labour party. If a party wishes to make its views effective, it must be united and well organised. One cannot, of course, expect complete agreement within a party any more than within a state. On the other hand, just as it is false patriotism that causes a man to dislike another nation, so it is false loyalty that blinds a man to the merits of another party. Only when we remember that there are honesty and high purpose in all political parties, can we hope to preserve dignity and honour in the conduct of public affairs.

Parties founded on difference in Principles.

(*ab*) THE KING'S ARRIVAL AT THE LORDS

In early days the crown was conveyed to the House of Lords by water, and to-day this custom is brought to mind by the fact that the King's Burgomaster rides on the carriage containing the crown. In accordance with the official order of precedence, the great officers of state assemble at the royal entrance, beneath the Victoria Tower, at

the Palace of Westminster, on the occasion of the opening of Parliament by the King, in order to receive His Majesty upon alighting from the state carriage. There he is received by the Duke of Norfolk with all homage as the premier nobleman and Duke.

(*ac*) DAILY MESSAGES TO THE KING

The daily transactions of Parliament are conveyed to the King by the Comptroller of the King's household. This appointment is necessarily held by one of the Government whips who is a member of the House of Commons. His Majesty receives the Comptroller in audience alone, so that no interference could be supposed between the monarch and the representative of the Commons. On the contrary when the representative of the House of Lords attends the King with a message, His Majesty marks the difference by having the Lord-in-waiting in attendance in the same room.

(*ad*) H.M.'s MOST HONOURABLE PRIVY COUNCIL

The Privy Council is a body of persons who are nominated by the sovereign without any patent or grant, and who, upon taking the oath of office, are at once qualified members. A privy councillor must be a natural born or naturalised British subject, and, as he is created by the sovereign, so he can be removed from the list at his pleasure. It is customary to include in the body the royal princes and the archbishops; several of the principal officers of State and of the Household become privy councillors by virtue of their office; the principal Secretaries of State are of course sworn of the council before they can take part in the deliberations of the select number of the body known as the Cabinet Council; the Judge Advocate General is always included; and the rank is bestowed upon Ambassadors and the principal Colonial Governors, and frequently upon respected politicians who may never have been in office, as an honorary distinction. Frequently, in recent years, colonial and Indian statesmen of eminence have been appointed, and in '97 all the premiers of the self-governing colonies, who, by invitation officially attended the celebration in London of the Diamond Jubilee of H. M. the Queen Victoria, were added. The only Indian so appointed hitherto is the distinguished orator-statesman Mr. V. S. Srinivasa Sastri. Any privy Councillor may act as a justice of the peace.

Members of the Privy Council.

(*ae*) THE LORD PRESIDENT OF THE COUNCIL

The Lord President of the Council is appointed by letters patent under the great seal. His duty is to manage the debates in council,

to propose matters from the sovereign at the council table, and to report to His Majesty the resolutions taken thereon. It is only on rare occasions that the whole body of members assembles at the Council table. One of these instances is at the demise of the Crown, when it is the duty of the Privy Council to meet and proclaim the new sovereign. For the ordinary business of the Council only those who are summoned attend. The number thus called upon is usually very small, and consists generally of members of the party in power. Among other important functions of the council may be mentioned (1) the granting of charters of incorporation to public and private bodies, and (2) the bringing into operation by means of orders in council the provisions of such statutes which Parliament leaves to the executive to enforce, temporarily or permanently at such time or times as it may deem necessary and desirable. Royal proclamations summoning or proroguing or dissolving Parliament, and for many other purposes, are made by and with the advice of the Privy Council before being issued.

Meeting of the whole Privy Council.

Several public departments have grown out of or are even now Committees of the council. The Board of Trade although it is now an entirely separate department, is still officially entitled the Committee of Council for Trade. The Education Department—for which there has been substituted a Board of Education, charged with the superintendence of matters relating to education in England and Wales,—was a committee of the Privy Council. There is still a Universities Committee which reviews the statutes made under the Oxford and Cambridge Universities Act, a function performed by the Scottish Universities committee with reference to Scottish Universities. The Judicial Committee controls the appellate business from the Dominions, dependencies and colonies. It is provided by Statute that certain of the Colonial and Indian judges, acting or retired, and eminent Indian lawyers who may have been appointed members of the Privy Council, shall be members of this last committee. Included among the powers and duties of the Board of Agriculture and Fisheries are many which were formerly discharged by the Agricultural Department of the Privy Council.

Council divided into committees.

For the first time in history, Mr. Amir Ali, a retired judge of the Calcutta High Court, was appointed Privy Councillor to act on the Judicial Committee of the Privy Council. He was succeeded by Lord (Baron Satyendra Prosonno) Sinha of Raipur upon whose untimely death the office went to Sir Benode Chunder Mitter, both in their time eminent practitioners in the High Court of Calcutta. Before

Indian members of the Judicial committee of the Privy Council.

however, the country really commenced to reap the benefits of Sir Binode's great legal learning he died leaving his profession, and indeed the Judicial Committee of the Privy Council the poorer for it. Thereupon, a Parsi gentleman, Sir Dinshaw Mulla, one of India's foremost living lawyers has been appointed to take his place. The loss which India and the Judicial Committee of the Privy Council have sustained by the death either of Lord Sinha or of Sir Benode Mitter will be fully compensated by the presence in it of this eminent Indian jurist. All Privy Councillors are addressed as "the Right Honourable".

CHAPTER III

The United States of America

The Constitution of the United States of America holds a singular interest. It was born of war. Prior to the war of liberation, the states that later became known as the United States, thirteen in number, were separate British colonies, each with its own distinct history and antecedents. Each of these thirteen colonies was governed by a Governor appointed by the English King, with separate legislative Assemblies, some of which were set up by the Royal Prerogative. It was these thirteen separate and distinct colonies that on July 4th, 1776, published what they themselves described as a "unanimous declaration" to the following effect:—

Constituent States at the liberation.

"That these United colonies are, and of Right ought to be, Free and Independent States; that they are absolved from all allegiance to the British Crown, and that all political communication between them and the State of Great Britain is and ought to be totally dissolved; and that as Free and Independent States, they have full power to levy War, conclude peace, contract alliances, establish Commerce, and do all other Acts and things which Independent States may of right do."

Declaration of Independence of July 4, 1776.

Thus, the thirteen colonies became by their declaration thirteen Sovereign, Free and Independent States. They were prepared by war to defend the independence they had declared. The necessity of common action in such a war, however, led them, as free contracting parties, to draft certain articles of confederation. These Articles were drafted on November 15th, 1777. They were ratified by each of the thirteen States at various times, the final ratification being by the State of Maryland on March 1st, 1781. By these articles the contracting States pledged themselves to common action in certain fundamental matters, such common action to be determined by a body described as the Congress. The use of the word Congress is significant, inasmuch as it reveals the strictly international aspect of this confederacy. The Congress was in fact, and in effect, an international conference, which, under the stress of the war, was endowed with certain administrative powers. The fundamental principles underlying the confederation are clearly stated in the first three Articles.

Articles of confederation.

Congress an International Conference.

Article I. The style of this confederation shall be "United States of America".

The three most important articles of the Confederation.

Article II. Each State retains its sovereignty, freedom and independence, and every Power, Jurisdiction and Right, which is not by this confederation expressly delegated to the United States in Congress assembled.

Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever.

Thereafter from time to time to suit new conditions and new requirements the constitution was amended and expanded until on the 17th of September, 1787, the present Constitution was adopted and ratified. In it provision was made for further amendments if necessity arose. It lays down that the Congress may by two-thirds vote of both Houses, propose amendments to the Constitution. Alternatively, the Congress may upon the application of two-thirds of the several States, call a convention for proposing amendments. In either case these amendments must be ratified by the legislatures of three-fourths of the several States within the union, or by convention in three-fourths thereof.

Amendments as occasion arose.

Government of America, republican.

The Government of the United States of America is republican in form, practice and essence. It is a federation of States and its government a federal government by which we understand a form of Government of which the essential principle is that there is a union of two or more States under one central body for certain permanent common objects. In the most perfect form of federation the States agree to delegate to a supreme federal government certain powers or functions, inherent in themselves, in their sovereign or separate capacity, and the federal government, in turn, in the exercise of these specific powers acts directly, not only on the communities making up the federation, but on each individual citizen.

(*a*) THE CHIEF MAGISTRATE

The President of the United States of America is the *Chief Magistrate,* or the head of the *Executive.* He is elected for a term of four years by an electoral college, and is re-eligible. The electoral college consists of electors appointed by each state, equal to the whole number of Senators and Representatives to which each State may be entitled

President the head of the Executive.

in Congress. Their only functions are the elections of the President and the Vice-President respectively of the United States. The President must be a natural born citizen and of at least thirty-five years of age. He must moreover, have been for fourteen years at least a resident of the United States. In case of his death, resignation, or inability, the Vice-President takes his place. The newly chosen President of the Senate is and has the title of Vice-President. In case of the inability of both President and Vice-President, the Secretary of State, and after him, in order of the creation of their offices, the other members of the Cabinet act as President until the disability of the President is removed or a new President is elected. The President is the Commander-in-Chief of the army and navy, and the air forces of the militia in the service of the Union. He may be impeached by the House of Representatives and tried by the Senate, for treason, bribery or other high crimes and misdemeanours. In exercise of his powers he may convene Congress in extraordinary sessions.

The President of the Senate is the Vice-President of the Republic.

President is the head of the fighting forces.

(*b*) HIS POWERS AND DUTIES

It is the duty of the President to inform the Congress from time to time of the State of the Union and he may recommend measures to the Congress. This is known as the "President's Message." Bills passed by the Congress must receive the President's signature in order to become law; but bills not returned by him to the Congress within ten days (Sundays excepted) after they have been presented to him, become law in like manner as if he had signed them. The President has power to veto any bill or resolution passed by the Congress, but subject to the power of the Congress to pass the same after reconsideration by a two-thirds majority in each house. It is the President who appoints and commissions all federal officers but with the advice and consent of the Senate. With similar advice and consent he may make treaties. He has power to grant reprieves and pardons to offenders against the laws of the United States, except in case of impeachment.

The President's message.

President's power of veto.

(*c*) THE CABINET

The Cabinet of the United States of America consists of eight members chosen by the President. His selection however, is not final for it does not take effect until approved by the Senate. The members of the Cabinet are not members of the Congress, so that they may not have seats in it. They hold office during the pleasure of the President

The President's Cabinet.

and are removable by him. The Cabinet, each member of which is at the head of an executive department, meets in consultation with the President concerning matters of policy and administration. The members of the Cabinet are (1) the Secretary of State (Foreign Secretary), (2) the Secretary to the Treasury, (3) the Secretary for War, (4) the Attorney General, (5) the Post Master General, (6) the Secretary for the Navy, (7) the Secretary for the Interior (Home Secretary) and (8) the Secretary for Agriculture.

Eight members of the Cabinet.

(*d*) THE LEGISLATURE

A. The Senate

The Senate of the United States is composed of two Senators from each State in the Union, chosen by the State Legislatures for six years, one-third retiring every two years. One is not qualified to be a Senator unless he is 30 years of age and must have been a citizen of the United States for nine years and be a resident of the State which he represents. Every Senator receives a remuneration of 5,000 dollars a year with mileage. As we have seen, the Vice-President of the United States is the President of the Senate chosen by the electoral College. He has a vote in the Senate only in case of a tie.

Composition of the Senate.

Remuneration of members of the Senate.

Members of the Senate are divided into various standing Committees, chosen by the Senate itself. They act in the preliminary examination and shaping of measures proposed to be brought up for consideration and voted on. No meeting of the Senate is a valid meeting unless a majority of members are present.

In concurrence with the House of Representatives the Senate makes the laws. It has power to confirm or reject all appointments to office made by the President of the United States, as also all treaties. Its members constitute a High Court for the trial of impeachments.

Provision for trial by impeachments.

B. The House of Representatives

The House of Representatives is composed of 435 members (after the census of 1920) elected for every two years by the people of the States in the proportion roughly of one representative for every 150,000 inhabitants. Each state however, is entitled to at least one member, whatever its population. He must be of the age of twenty-five years and besides having been a citizen of the United States for seven years, be a resident of the State from which he is

Composition of the House of Representatives.

chosen. Every representative is in receipt of a remuneration of 5000 dollars with mileage.

Speaker of the House.

The House elects its own presiding officer, called the Speaker who appoints the various standing Committees into which the House is divided. Almost all the acts of the House are under the control of one or other of these Standing Committees. The presence of a majority of Members constitutes a valid meeting of the House which may originate, and, in concurrence with the Senate, pass resolutions and bills. Bills relating to the raising of revenue must, as in all progressive parliaments, originate in the House, but may be amended in and by the Senate. The House of Representatives has sole power of impeachment.

Money bills in sole control of the lower house.

(e) POWERS OF THE CONGRESS

Congress all-powerful.

The Congress has power to levy and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States. But all duties, imposts and excises are uniform throughout the United States. It has power to borrow money on the credit of the United States. It can regulate commerce with foreign nations, and among the several States, and with the Indian Tribes. It can establish an uniform rule of naturalization and uniform laws on the subject of bankruptcy throughout the States. It coins money and regulates the value thereof, and of foreign coin, and fixes the standard of weights and measures. The Congress can provide for the punishment of counterfeiting the securities and current coin of the United States as it can establish post offices and post-roads. It promotes the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries. It constitutes tribunals inferior to the supreme court. It defines and punishes piracies and felonies committed on high seas, and offences against the law of nations. To the Congress belongs the power of declaring war and granting letters of marque and reprisal. It makes rules concerning captures on land and water. It raises and supports armies, though no appropriation of money to that use is allowed for a longer period than two years. The Congress provides and maintains the navy. The Congress is entitled to make rules for the government and regulation of the land and naval forces. It also provides for calling forth the militia to execute the Laws of the Union, suppress rebellions and repel invasions. Lastly, it can make all laws which shall be necessary and proper for carrying

Enumeration of its powers.

into execution the foregoing powers; as also all other powers vested by the Constitution in the Government of the United States, or in any department or office thereof.

(*f*) THE JUDICIARY

The judicial power in the United States is vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior courts, hold their offices during good behaviour, and at stated times receive for their services a fixed sum by way of compensation which cannot be diminished during their continuance in office. The judicial power therefore, extends to all cases of law and equity arising under the constitution, to the laws of the United States, to any treaties made, or which may be made under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the union is a party; to controversies between two or more States, between a State, and citizens of another State, between citizens of different States, between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign States, citizens, or subjects.

Tenure of office of Judges.

Their jurisdiction.

In all these cases, except in those affecting ambassadors or consuls the Supreme Court has only appellate powers. All criminal trials, except in cases of impeachment, shall be by jury. Treason is defined to consist in levying war against the United States, or in adhering to their enemies or in giving them aid and comfort. There is no conviction for treason except on the testimony of two witnesses to the same overt act, or on confession in open court.

CHAPTER IV

The Swiss Confederation

In the year 1874, the Swiss confederation resolved to consolidate the alliance of the confederated members, and to maintain and increase the unity, strength and honour of the Swiss nation. They therefore, adopted a Federal constitution of which the following is a brief description.

The confederation resolved upon.

The peoples of the twenty-two sovereign Cantons of Switzerland united in the alliance, namely: Zurich, Berne, Lucerne, Uri, Schwyz, Unterwalden (Upper and Lower), Glaris, Zug, Freiburg, Solothurn, Basel (City and Country), Schaffhausen, Appenzel (the two Rhodes), St. Gall, Grisons, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchatel, and Geneva formed together the Swiss Confederation. The object of the Confederation is to ensure the independence of the country against the foreigner, to maintain peace and order within its borders, to protect the liberties and rights of its members, and to promote their common prosperity. These cantons are sovereign so far as their sovereignty is not limited by the Federal Constitution, and as such they exercise all rights which are not delegated or surrendered to the Federal Power. All Swiss people are equal before the law. In Switzerland there are no subjects with nor any privileges of rank, birth, person or family. The confederation guarantees to the cantons their territory, their sovereignty within the limits of the Federal Constitution, their constitutions, the liberty and rights of their people, the constitutional rights of the citizens, and the rights and powers conferred by the people on the authorities.

Constituent parts of the Confederation.

The parts are sovereigns within their own limits.

The cantons are required to demand from the confederation its guarantee of their constitutions. This guarantee must be accorded, provided first, that the constitutions contain nothing contrary to the provisions of the Federal constitution; secondly, that they ensure the exercise of political rights according to republican forms—representative or democratic; and thirdly, that they have been accepted by the people and can be revised when an absolute majority of citizens so demand.

Their constitutions guaranteed by the Confederation.

Without going into the details of the multifarious arrangements that exist between the cantons for the regulation of political and administrative relations *inter se*, we may, for the benefit of the student, go into the broader question of the areas of activity of the confederation. To begin with the control of the Federal army and of war materials provided in accordance with the law is vested in the confederation. In case of danger, the confederation has also the right of exclusive and immediate control over all men incorporated in the Federal army, and of all other military resources of the Cantons. Laws as to the organisation of the army are enacted by the Confederation. The execution of military laws by cantonal authorities within cantonal boundaries takes place under the supervision of the confederation; so also military instruction and the arming of troops. The confederation undertakes public works of utility to Switzerland as a whole. The utilisation of water-power is under the supreme control of the confederation. The confederation has the right to legislate upon the transmission and distribution of electrical energy. Legislation affecting navigation is within the province of the Confederation. Fishing and hunting are within the regulating power of the confederation. Legislation relating to construction and the working of railways is within the province of the confederation. Customs duties are within the province of the confederation but Federal import duties are regulated on three principles, that materials necessary to the industry and agriculture of the country must be taxed as lightly as possible, that the same principle should apply to commodities necessary for the maintenance of life and that articles of luxury must be subject to the heaviest taxes. Federal export taxes are based on principles of moderation. All revenues from the customs duties belong to the confederation. Certain beverages and spirituous liquor, such as *absinthe* are banned by the confederation. The liberal professions are regulated by the confederation. Factory legislation is in the hands of the confederation which also controls posts, telegraphs, motor vehicles and aerial navigation. The confederation exercises exclusive rights in regard to coinage and to the issue of bank-notes. The system of weights and measures is determined by the confederation which has the monopoly of the manufacture and sale of gunpowder as well as of Stamp duties throughout Switzerland. The confederation has power to legislate in regard to civil capacity and to other matters of civil law though the organisation of the judiciary, legal procedure and the administration of justice remain vested in the Cantons. With regard to penal laws exactly the same rule obtains. The confederation forbids sentence of death and cor-

Their political and administrative relations.

What falls within the Sphere of authority of the confederation.

poral punishment. Above all, it forbids the bleeding of animals for slaughter which have not been previously stunned.

(*a*) THE FEDERAL ASSEMBLY

Divisions of the federal assembly.

The Supreme power of the confederation is exercised by the Federal Assembly, composed of two divisions of Councils, viz.:—

A. The National Council.

B. The Council of States.

A. THE NATIONAL COUNCIL

Composition of the National Assembly.

The National Council is composed of deputies elected by the Swiss people in the proportion of one member to each 20,000 of the total population. Fractions greater than 10,000 are reckoned as 20,000. Elections to the National Council are direct, and are conducted on the principle of proportional representation. Every Swiss person of the age of 20 who has not been excluded from the rights of active citizenship is an elector. As such he is eligible for membership of the National Council which is elected every three years. The National Council elects its own Chairman and Vice-chairman from among its member.

B. THE COUNCIL OF STATES

Composition of the Council of State.

This Council is composed of forty-four deputies from the Cantons, each canton appointing two.

(*b*) POWERS OF THE FEDERAL ASSEMBLY

The following are the more important matters within the competence of the Federal Assembly.

Matters within the sphere of authority of the Federal Assembly.

1. Laws dealing with the organisation and mode of election of the Federal authorities.

2. Laws and decrees dealing with matters which the constitution assigns to the Federal Authorities.

3. Salaries and Allowances of members of the Federal Departments and of the Federal Chancellery.

4. The election of the Federal Council, the Federal Tribunal, the Chancellor, and the Commander-in-chief of the Federal Army.

5. Alliances and Treaties with foreign States and confirmation of treaties made by the Cantons between themselves or with foreign States.

6. Measures dealing with the external safety and the preservation of the independence and of the neutrality of Switzerland and the declaration of war and conclusion of peace.

7. Guarantee of the constitutions and the territorial integrity of the cantons, the maintenance of peace and order and the internal safety of Switzerland.

8. Amnesties and pardons.

9. The control of the Federal army.

10. The enactment of the annual budget, and the approval of State accounts and decrees authorising loans.

11. General supervision of Federal administration and the Federal courts.

12. Appeals against decisions of the Federal Council relating to administrative disputes.

13. Conflicts of jurisdiction between the Federal authorities.

14. Measures necessary to ensure the due observance of the Federal constitution, the guarantee of the Cantonal constitutions and the fulfilment of Federal obligations.

15. Revision of the Federal constitution.

(*c*) THE TWO COUNCILS

The two Councils meet separately and for certain purposes they meet in joint session under the presidency of the chairman of the National Council. At these, decisions are reached by a majority of all the members of the two councils voting jointly. But both councils must meet once a year in ordinary session on a day fixed by the Standing orders. No transaction of business in either council may be considered valid unless there should be present an absolute majority of the total number of members. In both, questions are decided by an absolute majority of those voting. One is an important adjunct to the other, for, no law, decree or ordinance can be made except by agreement between the two councils. The constitution does not invest the Federal legislation with the character of the last word on the subject, for, every federal measure may, upon the requisition of 30,000 active citizens or of eight Cantons, be submitted to the vote of the people for acceptance or rejection. Members of both councils, each one of whom has the right of initiating laws, decrees, and amendments of the constitution, are enjoined to vote without instructions. Meetings of the councils are normally public.

Meeting of the two Councils.

(*d*) THE FEDERAL COUNCIL

The supreme directing and executive power of the confederation is exercised by a Federal Council composed of seven members who

are appointed for three years by the two Councils in joint session. They are chosen from among all Swiss citizens eligible for the National Council. The members of the Federal Council are precluded from holding any other office of profit under the confederation or in a canton, or engage in any other calling or profession. It is the president of the confederation who presides over the Federal Council, the presence of four members of which constitutes a valid meeting. These members have the right to speak in both sections of the Assembly but not to vote. They may also initiate a proposition or discussion therein. There are certain important business entrusted to the Federal Council which need not detain us. Even though the business of the Federal Council is distributed among its members by departments its decisions emanate as from a single authority.

Direction of authority by the Federal Council.

(*e*) THE FEDERAL CHANCELLERY

The Federal Chancellery, under the chancellor of the confederation, acts as the Secretariat of the Federal Assembly and the Federal Council. The Chancellor is elected for three years by the Federal Assembly and holds office concurrently with it.

The Chancellor of the confederations.

(*f*) THE FEDERAL TRIBUNAL

The Federal Tribunal exists for the administration of justice in Federal matters. Citizens eligible for the National Council may be appointed to the Federal Tribunal the members of which, called judges, during their term of office, cannot occupy any other position; either in the service of the confederation or in that of a Canton, nor follow any other calling or profession. The judicial power of the Federal Tribunal extends to civil cases, (1) between the confederation and the Cantons, (2) between the confederation of the one part, and corporations or individuals of the other part, when the latter are plaintiffs and the matter in dispute reaches the degree of importance prescribed by Federal legislation.[1] The Federal Tribunal also has jurisdiction in regard to loss of nationality and disputes between Cantons concerning the right of citizenship of a commune.

Judges of the Federal Tribunal.

Jurisdiction of the Federal Tribunal.

With the assistance of a jury the Federal Tribunal has jurisdiction to try cases of high treason against the confederation and of revolt and violence against the Federal authorities, of crimes and offences against the Law of Nations, of crimes and political offences which

are the causes of, or are consequent upon, disorders necessitating the intervention of the Federal army, and of charges against officials appointed by a Federal authority when brought before the Tribunal by that authority.

The Federal Tribunal also has jurisdiction in regard to, conflicts of jurisdiction between the Federal authorities of the one part and the Cantonal authorities of the other part, disputes between Cantons in matters of public law, and complaints of violation of the constitutional rights of citizens and complaints by individuals of violation of concordats and treaties.

(*g*) FEDERAL ADMINISTRATIVE JURISDICTION

The Federal Administrative Court has jurisdiction in regard to administrative disputes in Federal matters referred to it by Federal legislation. It also has jurisdiction in disciplinary cases in Federal administration referred to it by Federal legislation, in so far as such cases are not reserved to a special jurisdiction. Similarly, the Administrative court administers the Federal laws and treaties approved by the Federal Assembly.

Administrative Jurisdiction of the confederation.

(*h*) REVISION OF THE FEDERAL CONSTITUTION

The Federal constitution may at any time be wholly or partly amended or revised. Such revision is effected through the forms required for passing Federal laws, namely, like the ordinary laws of the country. A demand could be made by not less than 50,000 Swiss voters for a total revision of the Constitution. In such an event the matter may be referred or submitted to the people who vote 'yes' or 'no.' Such reference or submission is called the *Referendum*.

Amendment of the Constitution.

The Referendum.

CHAPTER V

The Union of South Africa

Constituent parts of the Union.

The union is composed of the colonies of the Cape of Good Hope, Natal, the Transvaal, and the Orange River Colony. These Colonies are united in a legislative Union under one government called the Union of South Africa. The Union was formed in the year 1909.

(*a*) THE EXECUTIVE

Governor-General, head of the Executive.

The Executive Government of the Union is vested in the King, and is administered by His Majesty in person or by a Governor-General as his representative. The Governor-General is appointed by the King and holds office during his pleasure. He exercises such functions as are assigned to him by the Crown from whom he receives a sa laryof £10,000 a year. This money of course comes out of the consolidated Revenue Fund of the Union.

Executive Council of the Governor-General.

The constitution provides the Governor-General with an Executive Council to advise him in the Government of the Union. They are chosen and summoned by him and sworn as executive councillors and hold office during his pleasure. Their number may not exceed ten and when appointed to administer different departments of State they are styled the King's Ministers of State for the Union. Each one of them is required to be a member of either House of Parliament. The command-in-chief of the naval and military forces within the Union is vested in the King or in the Governor-General as his representative.

(*b*) THE PARLIAMENT

The legislature of the Union.

The legislative power of the Union is vested in a Parliament which consists of the King, the Senate and the House of Assembly. There must be at least one session of Parliament in a year, namely 12 months. The Parliament shall meet and assemble at such place and time as the Governor-General shall appoint. He prorogues as well as dissolves Parliament. He may dissolve both Houses simultaneously or the House of Assembly only as he pleases. The tenure of office of a Senator appointed by the Governor-General-in-Council is not affected by any dissolution of the Senate.

Each province or State is represented in the Senate by eight senators elected jointly by the members of the provincial council and the members for the province of the House of Assembly. Senators hold office for ten years unless the Senate is sooner dissolved. This is the elected portion of the Senate. The other portion is represented by eight Senators nominated for a similar term by the Governor-General-in-Council. The qualifications of a Senator are stated to be that he must be of thirty years of age; be qualified to be a voter for the election of members of the House of Assembly in one of the provinces; has resided for five years in the Union; be a British subject of European descent and in the case of an elected Senator be the registered owner of immovable property within the Union of the value of not less than five hundred pounds over and above any charge thereon.

Representation of the constituent parts in the legislature.

Qualifications of the representatives.

The Senate chooses its own President who holds office at the pleasure of the Senate. All questions in the Senate are determined by a majority of votes of senators present other than the President. He has however, a casting vote in case of an equality of votes. The presence of twelve members is necessary to constitute a meeting of the Senate for the exercise of its powers.

President of the Senate.

(c) HOUSE OF ASSEMBLY

The House of Assembly is composed of members directly chosen by the voters of the Union in electoral divisions of the four provinces or States of the Cape of Good Hope, Natal, the Transvaal and the Orange Free State. The qualifications of a member of the House of Assembly are that he must be qualified to be registered as a voter for the election of members of the House of Assembly in one of the provinces; have resided for five years within the limits of the Union and be a British subject of European descent. The life of the House extends to five years, but it may be sooner dissolved by the Governor-General. The House elects its own President called the Speaker from among its members who may be removed by a vote of the House. All questions in the House are determined by a majority of votes of members present other than the speaker. He has however, a casting vote in case of an equality of votes. The presence of thirty members is required for a properly constituted meeting of the House of Assembly. As is usual in all constitutions there are provisions for

House of Assembly or the Lower House.

Qualifications of members.

The Speaker and his functions.

filling up vacancies or for holding by-elections both for the Senate and for the House of Assembly.

Oath of allegiance.

Every Senator and every member of the House of Assembly has, before taking his seat, to make and subscribe before the Governor-General, or some person authorised by him, an oath or affirmation of allegiance in the following forms:—

Oath:—"I, *A. B.*, do swear that I will be faithful and bear true allegiance to His Majesty the King, his heirs and successors according to law. So help me God."

Affirmation:—"I, *A. B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to His Majesty the King, his heirs and successors according to law."

A person cannot be a member of both houses at the same time, but a Minister of State who is a member of either House has power to sit and speak in the other, but to vote only in the house of which he is a member. There are present the usual disqualifications to be found in all constitutions. In the case of the South African Union these are enumerated to be, a conviction for a crime or offence resulting in a sentence of imprisonment for a term of one year without the option of a fine, unless amnesty or a pardon has been granted, or a period of five years have elapsed between the imprisonment and the election. An undischarged insolvent or a person of unsound mind so declared by a competent court are equally disqualified. Another form of disqualification is the holding of an office of profit under the crown within the Union, save in the case of one who is a Minister of State, or a pensioner, or of one who is in the retired list of His Majesty's naval and military forces, or of the forces of the Union. Each Senator or member of the Assembly is in receipt of a salary of £400 a year. It is not however, a consolidated salary for it is liable to deduction of £3 for every day of absence from the duties of the chamber. Each House of Parliament is entitled to make rules and orders with respect to the order and conduct of its business and proceedings. At a joint sitting of both houses the Speaker of the House of Assembly is to preside with power to apply its rules of procedure as far as practicable.

Disqualification for membership of the legislature.

Each house is its own master.

(*d*) POWERS OF PARLIAMENT

Parliament has full power to make laws for the peace, order, and good Government of the Union. Laws for the appropriation of revenue or moneys or for imposition of taxation must originate in the House of Assembly. The Senate may not amend any bill so far as it imposes taxation or appropriates revenue or moneys for the services of the

Field of activity of Parliament.

Government. The Senate may not amend any Bill so as to increase any proposed charges or burden on the people. The House of Assembly has no power to originate or pass any vote, resolution, address, or bill for the appropriation of any part of the public revenue. The House cannot originate any tax or impost to any purpose unless such appropriation has been recommended by message from the Governor-General during the session in which such vote, resolution, address, or bill is proposed. In the event of any difference between the Senate and the House over a bill the matter may be dealt with in this way. The house may or may not accept the amendment or suggestion of the Senate. If it does not it has power to consider and pass its own measure with or without such amendments in the next session. In that event the Governor-General may convene a joint sitting of both houses to deliberate and vote together upon the measure. The result of the joint sitting as affirmed by an absolute majority of the members of both houses present is accepted as the decision of the legislature. The Governor-General, on his part, may signify his assent to any bill in the King's name or he may withhold it or may reserve it for the signification of the King's pleasure. A bill reserved for the King's pleasure is not to have any force unless and until, within one year from the day on which it was presented to the Governor-General for the King's assent, the Governor-General makes known, by speech or message, to each of the Houses of Parliament, or by proclamation, that it has received the King's assent.

(e) THE PROVINCES

The chief Executive Officer of the province, called the administrator of the province, is appointed by the Governor-General-in-Council. All executive acts are done in his name. The administrator who is preferably a resident of the province, holds office for a term of five years, and is not removable except by the Governor-General-in-Council for sufficient cause. The constitution lays down that the sufficiency of the cause must be brought to the notice of both Houses of Parliament within one week from removal.

Administrative head of a province.

(f) PROVINCIAL COUNCILS

Each province has a provincial Council consisting of the same number of members as are elected in the province for the House of Assembly, but not less than twenty-five. The franchise qualification is the same as for the House of Assembly in the province. A person would be disqualified for the provincial council on exactly the same

Provincial legislature.

grounds as for the House of Assembly. The statutory life of the Council is three years during which it may not be dissolved, so that, it can expire only by effluxion of time. The Chairman is a member of the Council, elected by his fellow members, who have the authority to frame rules for their own guidance and, for the conduct of the proceedings of the Council. These rules, however, must have the approval of the Governor-General-in-Council before they can have full force and effect. Freedom of speech prevails here as in the federal houses of Parliament.

Life of Provincial Councils.

(g) EXECUTIVE COMMITTEES

In each province there is an Executive Committee of four members elected by the Council from among its members whose duty it is to assist the administrator in the management of the affairs of the Government. The Committee lasts as long as the Council itself, and is elected by each new council. Subject to the approval of the Governor-General-in-Council, the Executive Committee may make rules for the conduct of its proceedings in which the rule of the majority prevails.

Provincial Executive Committee.

(h) POWERS OF PROVINCIAL COUNCILS

The most important powers of the Provincial Councils include the power of direct taxation within the province in order to raise a revenue for provincial purposes, to borrow money on the sole credit of the province with the consent of the Governor-General-in-Council for regulating education, other than higher education, agriculture, for establishing hospitals, charitable institutions, municipalities and other local institutions, and for controlling roads, outspans, ponts, bridges, markets, pounds, fisheries and game preservation. No act of the Provincial Council however, is permissible if it is repugnant to any Act of Parliament. For purposes of finance the provincial council has a provincial revenue fund which takes the place of the Consolidated Fund of the Federation.

Provincial Councils and their powers.

(i) THE SUPREME COURT OF SOUTH AFRICA

The Supreme Court of South Africa consists of a Chief Justice, the ordinary judges of appeal and other judges. They are appointed by the Governor-General-in-Council and are not removable except upon an address from both houses of Parliament in the same session. Their remuneration which is fixed by Parliament may not be reduced during their continuance in office.

The Judiciary.

The Union does not encourage any appeal to the Privy Council but does not prohibit it either. From the appellate division of the Supreme Court of the Union an appeal may be taken to the King in Council, but by special leave the area of which may be restricted by the Union Parliament.

(*j*) FINANCE

All revenues, from whatever source arising, over which the several Colonies have power of appropriation vest in the Governor-General-in-Council. There are two funds, the Railway and Harbour Fund and the Consolidated Revenue Fund. Into the former all revenues raised or received from the administration of the railways, ports and harbours are appropriated to their purposes. Into the latter all other revenues raised or received are appropriated for the purposes of the Union subject to certain charges specified in the Constitution Act. The first charges on the Consolidated Fund are the annual interest of the public debts and the sinking funds. No money may be withdrawn from either funds except under appropriation made by law. A board of three Commissioners with a Minister of State as Chairman thereof manages and controls the railways, ports and harbours of the Union. The Commissioners who are appointed for five years are not removable except by the Governor-General-in-Council for cause assigned. The Auditor-General keeps a check upon the spending departments and holds office during good behaviour. He may not be removed except on an address presented to the Governor-General-in-Council by both Houses of Parliament.

Consolidated Revenue Fund, Railway and Harbour Funds.

Railway Board.

CHAPTER VI

The Dominion of Canada

The geographical unity now known as Canada was created by an Act of the Imperial Parliament in 1867. Prior to that Act the name Canada was only applied to the two provinces of the Dominion of Canada. These provinces are now known as Ontario and Quebec, but prior to 1867, they were known respectively as Upper and Lower Canada. The Dominion of Canada is now formed of the nine provinces of Ontario, Quebec, Nova Scotia, New Brunswick, British Columbia, Prince Edward Island, Manitoba, Saskatchewan and Alberta, together with the Yukon and North-West Territories. Inasmuch as the last three of these Provinces were formed since 1867, at the time of the passing of the constitution, the two Canadas formed the greater part of the territory of the Federation, and much the more important part of the population.

Dominion of Canada formed in 1867.

(*a*) EXECUTIVE POWER

The Executive Government and Authority of and over Canada is vested in the King. The Government of Canada is carried on by the Governor-General with the aid and advise of a Council styled the King's Privy Council for Canada. Persons who are to be members of that Council are from time to time chosen and summoned by the Governor-General and sworn in as Privy Councillors. Members of the Council may also be, from time to time, removed by the Governor-General. The command-in-chief of the Land and Naval Militia, and of all Naval and Military forces, of and in Canada, is declared to continue and be vested in the Crown.

Head of the Executive in Canada.

(*b*) LEGISLATIVE POWER

There is one Parliament for Canada, consisting of the King, an Upper House styled the Senate, and the House of Commons. The privileges, immunities and powers enjoyed and exercised by the Senate and by the House of Commons and their respective members are defined by the Parliament of Canada. They may however, never exceed those which existed at the passing of the Dominion Act of 1867.

Canadian legislature.

(*c*) THE SENATE

The Canadian Senate consists of seventy-two members who are styled Senators. For purposes of the Senate, Canada is deemed to consist of three divisions, Ontario, Quebec, and the Maritime Provinces of Nova Scotia and New Brunswick. These divisions are equally represented in the Senate, each by twenty-four Senators whose qualifications may be summarised as follows:—(1) A Senator must be of the full age of thirty years, (2) he must be a natural born subject of the King or a subject of the King naturalised by an Act of Parliament either of England or of Canada, (3) he must have a minimum property qualification, and (4) he must be a resident of the province for which he is appointed. The Governor-General is authorised to summon in the name of the King and under the Great Seal of Canada qualified persons to the Senate; and, subject to the provisions of law every person so summoned shall become and be a member of the Senate and a Senator. Again under directions from the Crown the Governor-General may summon three or six qualified persons representing equally the three divisions of Canada to the Senate. As a matter of practice this provision has seldom been taken advantage of. Under no circumstances however, can the number of Senators, who hold office for life, exceed seventy-eight, elected and appointed combined.

Composition of the Senate.

Who are eligible for the Senate.

Though a life appointment, a Senator is not precluded from resigning his seat which moreover becomes vacant in any of the following events. If he absents himself for two consecutive sessions, if he acknowledges allegiance to a foreign power, if he is adjudged bankrupt or insolvent, if he is convicted of treason or felony, or of any infamous crime, and if he ceases to have the property qualification. A vacancy by resignation in the Senate is filled by the Governor-General by summons to a fit and qualified person. The president of the Senate is appointed by the Governor-General and may be removed by him. In the Senate the rule of the majority prevails in all questions, but when the votes, including that of the president who has a vote in all cases, are equal, the decision is deemed to be in the negative. Fifteen members present form a valid meeting, that is to say, a *quorum*.

Senators are life members.

Limited scope of the rule of the majority.

(*d*) THE HOUSE OF COMMONS

The Canadian House of Commons consists of one hundred and eighty-one members, of whom eighty-two represent Ontario, sixty-five

represent Quebec, nineteen are elected for Nova Scotia, and fifteen for New Brunswick. Like the members of the Senate the members of the House of Commons are summoned by the Governor-General in the name of the King under the Great Seal of Canada. When constituted, the House elects its own Speaker who presides at all its meetings, which are considered proper only when twenty members including the president are present. Here also the rule of the majority prevails in respect of all questions considered and voted upon by the House, the President having only a casting vote in case of equality of votes. Each house functions for five years, unless sooner dissolved by the Governor-General, and the Parliament of Canada has power to increase the number of members of the House of Commons, without disturbing the proportion of representation of the Provinces prescribed in the Constitution Act.

Composition of the House of Commons.

(*e*) MONEY VOTES

Bills for the appropriation of any part of Public Revenue or for imposing any Tax or Impost must originate in the House of Commons. Notwithstanding this rule the House of Commons is not empowered to take into consideration any proposal involving money votes unless recommended to the House by a message of the Governor-General, in the session in which the vote, resolution, address, or bill as the case may be, is proposed.

Money bills.

(*f*) ROYAL ASSENT

All Bills passed by the Houses of Parliament must receive the assent of the Governor-General in the name of the Crown before it can be placed on the Statute book. He may decline to give his assent or he may reserve a Bill for the signification of the Pleasure of the Crown. As soon as a Bill is assented to, it is incumbent on the Governor-General to forward an authentic copy thereof to one of His Majesty's Principal Secretaries of State in England. Within two years from the receipt thereof the King may disallow the measure. It will thereupon be annulled by the Governor-General, by Speech, or Message, or Proclamation, but the one which is reserved for the signification of the Pleasure of the Crown does not acquire any force, unless and until within two years of its presentation to the Governor-General for assent, the King's Pleasure is signified by Speech or Message, to each of the Houses of Parliament, or by Proclamation that the Crown has been pleased to assent to it.

Procedure followed in obtaining Royal assent.

(*g*) EXECUTIVE POWER IN THE PROVINCES

At the head of each province there is an Executive officer, styled the Lieutenant-Governor, appointed by the Governor-General-in-Council by Instrument under the Great Seal of Canada. He holds office for five years during which he is not removable except for just cause. The fact of removal must forthwith, or at the earliest opportunity, be communicated to the Houses of Parliament. Each Lieutenant-Governor is aided by an Executive Council whose number may vary according to the importance of the Province, though usually the Attorney-General, the Secretary and Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public works are members of the Executive Council. As a body they have all the powers, authorities and functions which vested in the head of the province before the union of Canada in 1867.

Head of the provincial executive.

(*h*) LEGISLATIVE ORGANISATION IN THE PROVINCES

Each province has a legislature of its own with powers restricted to provincial matters only. In some of the provinces they have a bicameral system. In Ontario the legislative authority is the Legislative Assembly composed of eighty-two members, all elected. In Quebec there are two chambers, the Upper called the Legislative Council, and the Lower called the Legislative Assembly. The Council is composed of twenty-four members, all appointed by the head of the Executive in the name of the King, by Instrument under the Great Seal of Quebec, their qualifications being identical with those of the Senators for the province. Ten members present form a quorum here, where the president, also appointed, has a vote in all cases, but no second vote in case of equality. When the votes are found to be equal the decision shall be deemed to be in the negative. The Legislative Assembly of Quebec is a larger body. It has sixty-five members all elected upon a broad franchise. It is provided that the Assembly of each province shall meet at least once in twelve months and shall last for four years. The legislative organisation of Nova Scotia and New Brunswick with one chamber each is not dissimilar to the arrangement of the two Assemblies we have described above.

Provincial legislature.

(*i*) LEGISLATIVE POWERS OF PARLIAMENT

The Parliament of Canada may make Laws for the Peace, Order and good Government of Canada and has exclusive jurisdiction over

certain matters. Among others they are:—The Public Debt, the registration of Trade and Commerce, the raising of money by Taxation, the borrowing of money on Public credit, Postal Service, Census and Statistics, Defence, Salaries of Civil Officers, Navigation, Light Houses, Inland Shipping and Fisheries, Currency, Coinage, Banking, Weights and Measures, Bills of Exchange, Bankruptcy, Patents, Copyrights, Naturalisation, Marriage, Divorce and Criminal Law and Procedure.

Legislative powers of Parliament.

(*j*) POWERS OF PROVINCIAL LEGISLATURES

These powers are enumerated to be as follows:—Direct taxation within the province for provincial purposes, borrowing on the sole credit of the Province, the appointment and payment of Provincial officers, sale of public lands or forest timber, hospitals and charitable institutions, municipal institutions, local works, incorporation of companies, marriage, civil rights, administration of justice and imposition of punishments whether by fine, penalty or imprisonment for enforcing any provincial law.

Powers of provincial legislatures.

(*k*) JUDICATURE

The Governor-General appoints the Judges of the superior, district and county courts in each province, except those of the Courts of Probate in Nova Scotia and New Brunswick. The judges of the Superior Courts hold office during good behaviour and are removable by the Governor-General on an address of both the Senate and the House of Commons. In Quebec the bar is the recruiting ground for Judges of all the Courts in the province.

The Judiciary.

(*l*) FINANCE

The Consolidated Revenue Fund of Canada is permanently charged with the costs, charges and expenses incidental to the collection, management and receipt thereof as a first charge. After this come the interest on Public Debts and the salary of £10,000 of the Governor-General as second and third charges respectively. Subject to these charges the Consolidated Revenue Fund of Canada is appropriated by the Parliament of Canada for the Public Service. The Consolidated Revenue Fund of Canada is further responsible for contributions by way of supplement to the provinces for the support of their governments and legislatures. This annual grant in aid of each province is fixed by statute in the proportion of eighty, seventy, sixty and fifty thousand dollars to the respective provinces of Ontario, Quebec, Nova Scotia and New Brunswick.

Money Votes.

CHAPTER VII

The Commonwealth of Australia

Creation of the Commonwealth of Australia in 1900.

The Commonwealth of Australia was created by a constitution passed by the Imperial Parliament, in 1900. Prior to the passing of that Act British Australia consisted of the British provinces of New South Wales, Tasmania, Victoria, Western Australia, South Australia and Queensland. Each of these had its separate Legislature, the creation of Acts of the Imperial Parliament.

(*a*) GENERAL

The Federal Parliament.

The legislative power of the Commonwealth is vested in a Federal Parliament, which consists of the King, a Senate and a House of Representatives. It is called the "Parliament" or the "Parliament of the Commonwealth". The King is represented in the Commonwealth by a Governor-General who is empowered to exercise such powers of the crown as are expressly assigned to him. He holds office during the pleasure of the Crown but subject to the constitution of the Commonwealth. He receives a salary of £10,000 a year from his employer, the Crown. Parliament is summoned by the Governor-General once at least in every twelve months on a day and at a place appointed by him. He prorogues the Parliament and dissolves the House of Representatives.

(*b*) THE SENATE

The Senate or the Upper House.

The Senate is composed of Senators from each State forming the Commonwealth, directly chosen by the people of the State. The Senators are chosen for a term of six years. If for any reason the place of a senator becomes vacant before the expiration of his term of office, the Houses of Parliament of the State for which he was chosen, choose a person until the expiration of the term, or until a successor has been elected. The Senate elects its own president from among the members thereof. If, for two consecutive months of a session a Senator fails to attend to his duties without the permission of the Senate he is deemed to have vacated his seat, one-third of the whole number of senators including the president who has only one vote, without a second or a casting vote, forms the quorum.

(c) THE HOUSE OF REPRESENTATIVES

The House of Representatives is composed of members chosen on a system of direct election based on proportional representation of the states in the Commonwealth. Their number is twice as large as the number of senators. With certain restrictions, the Parliament may make laws enlarging or reducing the size of the House of Representatives whose life extends to three years, though, it may be sooner dissolved by the Governor-General. The principle of one man one vote prevails in the constitution, and the franchise is prescribed by the law of each State concerned, but as nearly as possible it must be on identical basis. The fundamental qualifications however, are that the elector must be of the full age of 21 years, with a residence qualification of 3 years to his credit, and be a natural-born British subject, or a naturalised British citizen of the United Kingdom or a Colony. The House of Representatives, like its sister the Senate, is entitled to elect its own chairman from among their number, who ceases to hold the chair the moment he ceases to be a member of the House. As in the Senate, so in the chamber, a member is deemed to have vacated his seat if he should be absent from his duties for two consecutive months in a session without the permission of the House. A quorum is made up when one-third of the members are present in the House. Procedure in it is regulated by themselves. Unlike in the Senate, here the speaker or the chairman has no vote unless the numbers are equal, and then he has only a casting vote.

The House of Representatives or the Lower House.

The Chairman of the House.

Its quorum.

All members whether of the Senate or of the House of Representatives must take the oath of allegiance that "I, A. B., do swear that I will be faithful and bear true allegiance to His Majesty King George, His heirs and successors according to law. So Help me God!" or subscribe to an affirmation in the form that "I, A. B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to His Majesty King George, His heirs and successors according to law." The normal qualifications of citizenship are a *sine qua non* for the enjoyment of franchise for either house of the Parliament. Members of either house are entitled to a remuneration of £400 a year and are the sole judges of the mode in which their powers, privileges and immunities may be exercised.

Oath of allegiance.

(d) POWERS OF PARLIAMENT

Subject to the constitution, the powers of Parliament are wide and many. It has the general power to make laws for the peace, order,

and good government of the Commonwealth with respect to (1) Trade and Commerce, (2) Taxation, (3) Bounties, on the export of goods, (4) Public debts, (5) Posts and Telegraphs, (6) Naval and Military defence, (7) Light houses and beacons, (8) Meteorology, (9) Quarantine, (10) Fisheries, (11) Census and statistics, (12) Currency and coinage, (13) Banking, (14) Insurance, (15) Weights and measures, (16) Bills of Exchange and Promissory Notes, (17) Bankruptcy, (18) Copyrights and Patents, (19) Naturalisation, (20) Marriage and Divorce, (21) Service and execution of civil and criminal process (22) Judicial proceedings, (23) Immigration and emigration, (24) External affairs, (25) Land acquisition, (26) Control of Railways, their construction and acquisition, (27) Industrial disputes, and (28) the Federal Judicature. The authority of the Senate over legislation is concurrent with that of the House of Representatives except in matters relating to the appropriation of revenue and imposition of taxes. The sole authority in respect of these, rests with the lower house and the Senate cannot in any way amend or alter them. In the event of any disagreement between the Senate and the House the matter is set at rest in this way. The House may or may not accept the amendment or suggestion of the Senate. If it does not, it has power to consider and pass its own measure with or without such amendment after an interval of three months. In such an event the Governor-General may dissolve the Senate, and also the House, if the latter is within six months of its expiry by effluxion of time. Should however the same difference continue upon the same measure, the Governor-General convenes a joint sitting of the Senate and the House. The result of the joint sitting as affirmed by an absolute majority of the members of both houses present is accepted as the decision of the legislature. But the final stage is not yet reached. The Governor-General may yet withhold his assent to the measure, or reserve it for the pleasure of the Crown, who may disallow the same within the space of one year from submission.

Area of authority of Parliament.

The houses in conflict.

(c) THE EXECUTIVE

The executive power is vested in the Crown, and is exercisable by the Governor-General as his representative, with the advise of the Federal Executive Council, the members of which are sworn as his councillors and hold office during his pleasure. The members of the Federal Executive Council are also called Ministers of State. Their number may not exceed seven, and to each one of them are allotted departments as may be prescribed by the Parliament, or the Governor-

Head of the Executive.

General. They are in receipt of an aggregate salary of £1,200 a year. The Command-in-chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the representative of the Crown.

(*f*) THE JUDICATURE

The judicial power of the Commonwealth is vested in a Federal Supreme Court, called the High Court of Australia. It consists of a Chief Justice and such other judges, not being less than two, as the Parliament may prescribe. Judges of the High Court are appointed by the Governor-General-in-Council and are not removable except by him on an address from both houses of Parliament. Such address must be passed by the houses in the same session and could be based upon no other ground than misbehaviour or incapacity. The High Court has jurisdiction over all courts whether original or appellate, and on points of law over the orders of the Supreme Court of any State. The Constitution allows no appeal to the King in Council (the Privy Council) from a decision of the High Court, upon any question as to the limits *inter se* of the constitutional powers of the Commonwealth, and those of any State or States, or *inter se* of the States themselves. Exception is made only in cases where the High Court has certified that the question involved is one which ought to be determined by His Majesty in Council. The original jurisdiction of the High Court extends to matters relating to treaties, affecting consuls, in which the Commonwealth is a party, in which the dispute is between the two States or, between residents of different States or, between a State and a resident of another State or, in which a mandamus or prohibition or injunction is sought against an officer of the Commonwealth. In addition to these the Parliament may, from time to time, confer original jurisdiction upon the High Court in certain cases specified in the constitution. Personal security is guaranteed in the constitution by a provision that no trial on indictment of any offence against any law of the Commonwealth can take place except by a jury.

The Judiciary.

When an appeal to His Majesty in Council lies.

(*g*) FINANCE AND TRADE

Into the details of the financial provisions in the constitution we need not enter. It will be sufficient for the student to know what the general provisions are, that all revenues or moneys raised or received by the Executive Government of the Commonwealth shall form one consolidated Revenue Fund. It can be appropriated for the purposes of the Com-

Finance and Revenue.

monwealth only in the manner laid down and subject to the changes and liabilities imposed by the constitution, and that no money can be drawn from the Treasury of the Commonwealth except under appropriation made by law.

(*h*) THE CONSTITUENT STATES

Subject to the above provisions each state has a constitution of its own, autonomous in every respect, legislating for and organising the finances according to the individual necessity of each State.

CHAPTER VIII

The Irish Free State

The Government of Ireland Act of 1920 provides for separate Parliaments and Executives for both "Northern" and "Southern" Ireland. The Act gave birth to what is known as the present Ulster or Northern Ireland administration. Southern Ireland however, refused to accept the arrangement and insisted to have a separate Act of her own on the basis of her demand which we shall presently notice. Ireland comprises 32 counties of which 26 belong to Southern Ireland. These were united into a government established as a result of the Treaty signed in December 1921 between the British Government and a Sinn Fein delegation. The Treaty received the approval of both the British Parliament and of the members of Parliament of Southern Ireland elected under the Government of Ireland Act of 1920. It was subsequently ratified by Parliamentary legislation styled the Irish Free State Act, 1922.

Parliaments and executives of the two Irelands.

The Irish Free State Act.

Under the terms of the Treaty a Provisional Government was constituted in January 1922. It was empowered to discharge the functions of a government for a period of one year only, namely for the period of the year 1922. This Government drafted the constitution of southern Ireland. The Imperial Parliament accepted the same with certain modifications. Thereupon, the southern Irish Parliament sat over it as a Constituent Assembly and accepted it in its final form. It was formally enacted by the British Parliament and promulgated by Royal Proclamation in December 1922.

The Constituent Assembly and the acceptance of the draft constitution.

Under the Treaty the Irish Free State of which the recognised language is the Irish language, is recognised as a co-equal member of the community of Nations forming the British Commonwealth of Nations. The English language is also recognised as a co-extensive language with the Irish. The constitution places the inviolability of the liberty of person above all other fundamental rights. Among the other fundamental rights are freedom of conscience and practice of any religion, the right of children to attend schools without attending religious classes, the right of every citizen to receive free elementary education, the right of public meeting for purposes not opposed to public morality and the right of the State to national resources

The Free State an equal partner in the British Commonwealth of nations.

Statement of fundamental rights.

of national importance. All private exploitations are under State supervision.

(*a*) LEGISLATIVE

The legislative arrangements are that the legislature which is to meet at Dublin is to consist of the King, the Senate and the Chamber of Deputies. Citizens of both sexes of full age are entitled to vote for election to the Chamber, while election for the Senate is made by citizens who have reached the age of 30 years. Voting is by secret ballot. Before a member is entitled to take his seat in either house he has to take oath of allegiance to the King. He is exempt from arrest within the confines of the Parliament house, and also, while going to or leaving it, except in cases of treason, felony or breach of the peace. Freedom of speech is absolutely guaranteed in either house which makes rules for its own guidance and elects its own chairman. The decisions of the house are determined by a majority. Members are paid for their services and enjoy free travelling facilities to any part of Ireland.

The Legislature.

Privileges of the legislature.

The constitution makes it compulsory to hold at least one session in the year and it is the representative of the Crown who summons and dissolves Parliament in the name of the King. The sittings of Parliament are public and a *camera* or private sitting cannot be held except with the assent of two-thirds of the chamber. The election to the chamber is by representation in the proportion of 1 member for every 20,000 but not more than 30,000 of the people. Under the constitution the parliament has power to fix the total number of members of the chamber and to revise the constituencies every ten years. General elections are held on one day—a public holiday.

Meetings of the legislature.

(*b*) THE SENATE

The Irish Senate is composed of citizens who have done honour or rendered public service to the nation, or who represent important aspects in the life of the nation,—the Irish nation. There are fifty-six Senators exclusive of those who represent the Universities each one of which is entitled to elect two. In all therefore there are sixty members. The minimum age qualification of the senators is thirty-five years and their term of office is twelve years. This is really the period of the life of the Senate during which one-fourth of the members exclusive of the University members vacate office every three years. Their places are then filled up by a panel on a system of

Composition of the Senate or the Upper House.

proportional representation. In case of the death of a senator, his place is filled by a vote of the Senate.

(c) CONSTITUTION OF THE CHAMBER

First and foremost is the right of the Chamber to consider money bills to the exclusion of the Senate. A certificate of the chairman of the Chamber as to what is a money bill is what they ordinarily go upon, unless it is challenged. In such an event the matter is referred to a chamber of privileges, composed of three members of each house, with the senior Judge of the Supreme Court as its Chairman. Their decision is final. All other matters may originate in either house; where the representative of the Crown fails to accord assent to a measure it is dealt with in accordance with the usage in force in the Dominion of Canada, namely that he withholds the King's assent, or that he reserves the Bill for the signification of the King's Pleasure.

Composition of the Chamber or the Lower House.

The constitution confers no power on the Irish Parliament to declare any law existing at the date of the commencement of the constitution as repugnant to the law of the land. But it has power to create subordinate legislatures from which the care and management of the Army, Navy and the Air forces are excluded. The right to raise and maintain armed forces for such purposes as are enumerated in the Treaty, belongs exclusively to the Parliament which may establish functional or vocational councils.

Restricted powers of Irish Parliament.

The Constitution provides for the suspension, on the demand of two-fifths of the members of the Chamber of any bill, except money bill or other urgent Bill already passed. Such suspension shall not be for more than ninety days during which it must be submitted to a referendum of the people whose verdict shall be final. A direct voice of the people in matters of legislation is secured by the provision that, on the petition of 50,000 voters, Parliament is bound to consider proposals for laws. The Irish State however, cannot be committed to war without the assent of its parliament except in case of actual invasion. Amendment to the constitution is permissible but not beyond the terms of the Treaty or without a Referendum.

Suspension of Bills.

(d) THE EXECUTIVE

The Executive Council or the Cabinet of the Irish Free State consists of 12 members, four of whom are members of the Chamber, and eight selected by citizens from among themselves, who are not in the chamber, but are eligible for election thereto. These latter enjoy all the privileges of membership

The Irish Cabinet.

except the power to vote. The Governor-General of the Free State is appointed as the Governor-General of Canada, and remunerated as the Governor-General of Australia, the remuneration being a charge on the funds of the State. It is the executive who prepare the budget and all executive authority is vested in the King, exercisable according to the usage of the Dominion of Canada.

The executive authority in all colonies, as in Great Britain, is vested in the Crown. It is exercised by the Governor on the advice of an executive Council of the colonial Ministers of State. These are in a similar constitutional position to Ministers in England and are the leaders of the party in power in the legislature. The Governor must act on their advice in the same way that the Crown acts on the advice of its Ministers at home, except where Imperial interests are involved. The position of the Governor is similar to, but not identical with that of the Crown in Great Britain. The Governor, who holds office only for a few years, lacks the experience and prestige of the Sovereign, and his opinions carry less weight with his admirers; he has less influence but more power than the King. He can still decline to accept the advice of his ministers if he feels that he can find others to take their place; and he can refuse the request of a cabinet to dissolve the legislature on an adverse vote if he considers that another ministry can be formed. But even the limited degree of independence accorded to a Governor is exercised more and more rarely, and colonial Governors tend to accept the advice of their Ministers where formerly they would have used their own discretion. The Act of Parliament creating the Dominion of Canada lays down that its Government is to be "similar in principle to that of the United Kingdom". This short phrase summarises the constitutional position of the self-governing Dominions.

The Colonial Executive.

(*e*) THE JUDICIARY

The parliament of the State is empowered by the Constitution to establish Public Courts, Courts of first instance as well as of final Appeal, but their judicial power cannot go beyond what has been definitely laid down in the constitution. The number and functions of the Judges are prescribed and the terms of their appointment and conditions of their service are fully defined. In times of peace no special courts or courts-martial may be established to exercise jurisdiction over civil population, and in times of war such special courts can function only in cases where civil courts are closed, or non-existent. A soldier not on active service, may not be tried by any court-martial for an offence cognisable by the civil courts. No person, save in case of summary jurisdiction, may be tried without a jury on any criminal charge.

The Judicature.

CHAPTER IX

The Egyptian Constitution

(*a*) THE OLD ORDER OF THINGS

Nominally a dependent of Turkey, between 1879 and 1883, Egypt was under the dual control of France and Great Britain. In the latter year, however, Great Britain intervened after Arabi Pasha's rebellion, and since then practically governed the country until 1923. The British occupation, at first regarded as temporary, by force of circumstances and through Egypt's misfortune, became firmly established, and the predominant position of Great Britain was formally recognised by France by the Anglo-French Agreement of the 8th of April 1904. The French, German and other Governments also assented to very considerable modifications in the international arrangements established in Egypt, for the protection of foreign land-holders, the modifications being embodied in a Khedivial Decree annexed to the agreement. The British Government in its turn gave an assurance to those Powers that their commerce with Egypt should enjoy most-favoured-nation treatment for thirty years.

The early history.

There was a British Agent at Cairo, who had a seat in the Council of Ministers, in which, with the Khedive as President, rested the real legislative authority. There were, however, provincial councils for local affairs. In July 1913, the previously existing General Assembly and Legislative Council were amalgamated into one, termed the Legislative Assembly. This body consisted of 89 members, of whom 66 were elected and the rest nominated by the Khedive on the advice of the British Agent. The whole system of representation was at the same time improved by the introduction of elections in two degrees, with one elector delegate for every 50 inhabitants. In the event of a minimum representation not being secured at the elections, an Organic Law required the Government to serve such representation. The Legislative Assembly was given a certain power of initiative which was not possessed by its predecessors, but certain matters were reserved from the Assembly, such as the service of the Civil List, and all questions concerning foreign Powers and the relations of Egypt with them.

Constitution of the early legislature.

The judicial system was somewhat complex, the consular Courts trying cases of crime brought against foreigners of the same nationality, while the native Egyptian Courts were occupied with Civil

actions between Egyptians and crimes by them. There were also Courts of religious law for Mahomedans. Mixed tribunals which were instituted in 1875, dealt with Civil actions between persons of different nationalities, or between Egyptians and foreigners, and to some extent with Criminal offences of foreigners. They were set up for a period of five years and renewed practically for periods of five years. The Chief religion is that of Islam, Moslems numbering over 10,000,000, but there are about 8,00,000 Christians, of whom over 7,00,000 are Copts with the Patriarch of Alexandria as their head. In 1917 about 7 per cent. of the population over 7 years of age could read and write; the remainder were illiterate, though progress was being steadily made. In 1906 the Supreme Council of Education was reconstituted, and a department of Agriculture and Technical Education established, and in 1910 local education apart from the many Government Coptic and Moslem schools that there were, was handed over to the Provincial Councils.

Complexity of the Judicial system.

The Population Problem.

(*b*) THE NEW ORDER OF THINGS

From the old to the new order of things which was promulgated by a royal rescript on the 19th of April 1923, as the constitution for the "Kingdom" of Egypt it was a remarkable progress. There never has been witnessed in the history of any country the establishment of a constitutional monarchy but through catastrophe and the disaster of a revolution. The organic law of Egypt of 1883, was modified by several subsequent enactments, the most important of which was that of 1913, which brought into being a new Legislative Council with powers wider than the previous legislature ever possessed. This Council held its first session in 1914. The great European War following close upon its heels prevented it from becoming an effective body and in fact from holding any further sessions. Negotiations for the framing of a reformed constitution were kept up ever since, and about the time of the famous announcement of Mr. Montagu in 1917, regarding Indian Reforms, the Egyptian demand as voiced by the greatest Egyptian of the day, Zaglul Pasha, for freedom and independence grew in volume, firmness and resoluteness.

Modern History.

Zaglul Pasha and the new Constitution.

(*c*) THE RIGHTS OF MAN

By the first clause of the instrument of the constitution Egypt is declared to be a Sovereign State, free and independent. Its sovereignty is recognised to be indivisible and inalienable, and its Government to be a hereditary monarchy with representative institutions. The most

important of the clauses, however, in the instrument of the constitution is that which declares the Rights of Man, rights of the Egyptian people. It lays down that, "nobody may be arrested or put in prison except in accordance with the prescriptions of the law, and that domicile is inviolable, except that a search may be carried out in the cases prescribed by law, that correspondence is secret, except in cases prescribed by law, that press is free within the limits traced by the law of the land, that preventive censorship is forbidden, that right of teaching is free, provided that the teaching is not contrary to public order, and that the right of association is unfettered, subject to the control of the ordinary law of the Country." It must not be supposed that there are any special laws for the control of these fundamental Rights of Man. The constitution further provides that all Egyptians are to be regarded equal in the eyes of law and that they shall enjoy civil and political rights irrespective of race, language or religion. To public functions and offices of the Kingdom, Egyptian nationals alone are admitted, foreigners being taken in only in exceptional cases, and on sufferance. It may be of interest to us here to know that the number of foreigners in the service of the Egyptian Administration, notwithstanding the fact that millions of European monies are invested on the soil and the industries of the Kingdom, is being rapidly reduced under a general provision in the constitution enabling all foreign officials who desire to retire from the service, to do so on special terms of compensation. Advantage no doubt has been taken of this provision by a small minority of foreign officials in Egypt, mostly by those who have nearly earned their pension, even though the amenities of official life are not half as agreeable as they are in India.

Fundamental rights enunciated in the constitution.

Equal political rights.

(*d*) THE PETITION OF RIGHT

All Egyptians and citizens of the Kingdom have an inherent right to petition public authorities in the case of expulsion from Egyptian territory or of imposition of a penalty of general confiscation of property, or interference with liberty of one's conscience which is held absolute. One of the cardinal principles of the constitution is the provision for compulsory elementary education for children of both sexes. It is to be free in all public "Muktabs" or infant schools.

Inalienable rights to petition.

(*e*) THE SOURCES OF GOVERNMENT AUTHORITY

There is a special chapter (Chapter 3) in the Egyptian constitution which deals with the distribution of the powers of the State. It

lays down as a fixed principle that, all powers of the Senate emanate from the nation, and eventually leads the sovereign authority into the hands of the King who must act with and not apart from the people, a principle held by jurists all over the world to be the fundamental basis of constitutional monarchy. The conversion of Egypt from absolute to constitutional monarchy is the latest example in political science of how constitutions shape themselves when made, not granted!

Origin of executive authority.

The basis of constitutional monarchy.

(*f*) THE LEGISLATIVE POWER

The Legislative power of the Kingdom is vested in the King acting with the Senate and the Chamber of Deputies. An exception is made in the case of emergent legislation authorised by the King by Decree during an interregnum between two sessions of Parliament. But immediately upon the meeting of the next session of Parliament, and in such a case it has been enjoined that an extraordinary session shall immediately be convoked, the legislation by decree shall be submitted for approval. If approved, it finds its place upon the Statute Book; if rejected it stands spent-out and ceases to have the force of law.

The King, Senate and the Chamber of Deputies.

(*g*) THE EXECUTIVE POWER

King Fuad is recognised to be the supreme head of the state. It is in the name of the King that all laws of the realm, which must, to have their force, be sanctioned by him, are promulgated. There is a power of veto residing in the King but it is restricted to such narrow limits that it is surprising to know that he is practically powerless. A Bill voted by Parliament but not approved by him may, upon his request within one month, be re-examined by the legislature and passed again by a majority of two-thirds in each Chamber. It then acquires the right to be recognised as law and must be promulgated. Should it fail to obtain the requisite majority, it may be brought up again in a subsequent session of Parliament, when the normal rule of the simple majority will be sufficient for its acceptance by the king, who otherwise exercises all executive powers together with the Council of Ministers.

Head of the Executive of the State.

(*h*) THE KING

When so advised by his Ministers the King may dissolve the Chamber of Deputies or the lower Chamber, and may also adjourn not

beyond a month a session of Parliament. A repetition of adjournment of Parliament in the same session is not permissible without the consent of both Chambers. An extraordinary session of Parliament under circumstances such as we have seen before, or when necessity has arisen for the declaration of martial law, or as the French call it *etat de siege*, or when an absolute majority of either Chamber requires him by vote to call it, is convoked by the King who, as in every other monarchy, is the fountain head of all titles and ranks. That is not all. The King is responsible for the organisation of all public Services. A point of great constitutional importance may be noted here. It is that as the King has got the power to declare martial law when necessary, it is incumbent upon him to immediately bring such declaration to the notice of Parliament, for them to maintain or cancel it, even if he should have to convene an extraordinary session of it for such purpose.

Prerogatives of the King.

Of the military forces of the Kingdom, the King is the supreme commander. Except an offensive war which can neither be commenced nor carried on by him without the consent of Parliament all wars are begun, as peace terminated and treaties concluded, by him. He may not enter into any alliance offensive or defensive, or into preferential commercial relations. Nor can he enter into such a pact as might involve the modification of the territory of the State or a devolution of its sovereign rights, or a modification of a charge on the public treasury, or any infringement of public or private rights of Egyptian citizens. All these lie exclusively within the sphere of activity of Parliament.

The King the head of the fighting forces.

The Ministers through whom the King exercises his powers are appointed and dismissed by him. Though the throne of Egypt is secured to the heirs in the dynasty of Mahommed Ali, the succession to it is regulated by a rescript of April 1922, and by a procedure which must receive the sanction of Parliament. Into its details we need not enter, beyond mentioning the fact that failure on the part of a successor to the throne to take the constitutional oath involves a forfeiture thereof, and entitles the Ministers as a Council, to exercise the constitutional powers vested in the King.

(*i*) THE MINISTERS

At the head of the administrative services is placed the Council of Ministers. From this all foreigners and the members of the royal family are excluded. The council which is a cabinet, acts on the principle of joint responsibility of Ministers, some one or other of them along with their President must be held accountable for every act of the King in connection with affairs of State. Unlike any

Council of Ministers composed of nationals only.

other country in the world the Egyptian Ministers, may or may not be in either Chamber, but their right to address it whenever they deem it necessary is fully recognised in the constitution. A vote of want of confidence in the Ministry can be moved in the Lower Chamber only, which alone by a majority of two-thirds may decide to impeach a minister for any offence committed in the exercise of his functions. An alternative mode of bringing a minister accused of mal-administration or mal-practice to book, is prescribed by requiring him to take his trial, after the French fashion, before a special Court of Justice, composed of 16 members,—8 including the President being judges of the highest native Court, and 8 senators drawn by lot,—who must be divided in the proportion of not less than 3 to 1 for a conviction under the Penal Code of Egypt.

The Administrative court.

(*j*) THE PARLIAMENT

The Parliament is composed of two Chambers, one Upper, being the Senate, and the other Lower, called the Chamber of Deputies.

The Senate:—The Senate is composed of elected and nominated members in the proportion of three-fifths and two-fifths respectively. The elected members are returned from among ministers, diplomatic representatives, Presidents and members of the Court of Appeal or Tribunal of equal rank, general attorneys of the State, heads of the order of Advocates, officials of the rank of Director-General or higher, whether active or retired, the higher ranks of the Moslem *ulema*, ex-Deputies of Parliament, who have been members of two legislatures, owners of property paying an annual tax of £E150 or persons having an annual income of not less than £E1,500 and concerned in financial, commercial or industrial enterprises, or following one of the liberal callings, by the three Mudiras or Governor's provinces of Alexandria, Cairo, and the Canal Zone, on the basis of a member for every 1,80,000 inhabitants or a fraction thereof representing not less than half that number. A senator holds office for ten years, half their number being renewed every five years. The President of the Senate is nominated by the King, but the Vice-Presidents are elected by the members for a term of two years only.

The Senate or the Upper House.

The Chamber of Deputies:—This is entirely an elected Chamber on an universal male suffrage basis; the Chamber of Deputies is the more important of the Two Houses of Parliament. Members are returned by the three *Governorates*, each 60,000 inhabitants or a fraction of their number, representing not less than half, having the right to return one Deputy who must be at least thirty years old, and

The Chamber of Deputies or the Lower House.

is entitled to hold office for five years, irrespective of the mandate of his electors. The Chamber elects its own President and Vice-Presidents. It is the duty of the King to summon the meeting of Parliament in the month of November each year, for an ordinary session, extending over at least six months. In default, the Parliament, the two Chambers of which must sit simultaneously whether in ordinary or extraordinary session, may meet of its own right. The usual procedure with which we are familiar in India for the consideration and submission of a Bill obtains under the Egyptian constitution, but the quorum for the consideration of a resolution in either Chamber is pretty high. It is half the total number of members of the Chamber concerned.

As in India so in Egypt, when the Chambers have to sit together, the presidency of the Congress—a joint session is so called—belongs to the President of the Senate, and there must be an absolute majority of each Chamber in order that any resolution may be passed.

(*k*) THE JUDICIARY

Judicature.

The general principle that Judges of all grades are independent of all authority in the State and are not subject in the administration of justice to any authority other than the law of the land is firmly and clearly established.

(*l*) LOCAL GOVERNMENT

Local Government.

The Constitution of Municipal and Provincial Councils is almost on a par with Indian conditions, under which certain towns and villages have municipalities or unions of their own, and declared by law to be juristic persons. Their organisation and functions are determined by special laws embracing certain principles, but always under the control of the Government.

(*m*) FINANCE

Finance and Revenue.

The Constitution prescribes that no tax which has been imposed by law can be modified or suppressed except as provided by law, nor can any fresh financial liability be incurred without the consent of Parliament. But the most important restriction which our legislators will not be a day too soon to take up in India is that which is imposed upon all concessions having for its object the exploitation of the natural resources of the country, or services of public utility or monopolies. They cannot be accorded otherwise than by special law for a limited time, in the form of private legislation which under the constitution has, in the first place, to be placed before a committee having authority to decide whether it shall be submitted to the Chamber at all.

(*n*) GENERAL

Islam is the State religion and Arabic the official language. Subject to international agreements conducive to social order, extradition of political refugees is prohibited. Nothing can be done under the constitution which might affect the obligations of Egypt towards foreign States, or the rights which foreigners have acquired in Egypt by virtue of laws, treaties or established practice. The King is without any dispensing power. The power to suspend the constitution may be taken advantage of under one pretext only, namely, in time of war or of a 'State of Siege'. It is, however, for a temporary period. And a further safeguard against any abuse of the suspending power is that under no pretext whatsoever, can the meeting of Parliament, as laid down in the Constitution, be interrupted. Save the fundamental principles which have been guaranteed by the constitution, such as the representative or parliamentary character of the Government, the order of succession to the throne, personal liberty and equality, all other items in the constitution is liable to revision on the motion or initiative of either the King, or the Chambers, whose decision in a meeting assembled as the Congress, is not of any force unless backed by a two-thirds majority of each House present, in the proportion of two-thirds of its total strength.

The constitution of which the above is but a bare outline came into full force on the 1st of January 1924. Under it Egypt is subject to complete parliamentary Government, and it is for the Egyptian people now to prove, by the manner in which she will assure the application of the constitution, that she is truly fitted to incur the high responsibilities which she has assumed and was always willing and eager to assume.

CHAPTER X

Japan

The most prominent of oriental governments is that of Japan. We shall rest content only with a bare outline here. The history of Japan is almost as ancient as that of China, the Emperor being the representative of a Dynasty which claims to have possessed the throne since B. C. 660. The laws of Japan, formerly based on those of China, have now been radically reformed upon European models. The Criminal law particularly is an adoption of the Code Napoleon, with such modifications as are found to be suited to the conditions of the country and the temper of the people. The police are modelled after European fashion and the civil law is characterised by the prominence given to the family instead of the individual as the social unit. The Judicial system much resembles that of France. The High Court or the Court of Cassation is at Tokyo. This is the highest court in the empire, but there are appeal courts at Tokyo, Osaka, Nagoya, Hiroshima, Nagasaki, Miyagi and Hakodate. The court of Cassation is composed of seven Judges and the Courts of Appeal of five each. Of District Courts there are 49 each with three Judges, and of sub-Districts with original jurisdiction only there are three hundred and ten, each being presided over by a single Judge.

Early History.

After the revolution of 1868, the Japanese Government was reconstituted on the model of what obtained for one thousand years. The more important reforms however, in the administrative system of Japan were effected between 1882 and 1889, the general result of which was the substitution of a constitutional form of Government for an autocracy which had outlived the storms and stress of several centuries. It is a constitutional monarchy the principal author of which was Prince Hiroshimi Ito. In 1888 the local administration was reorganised, on the lines of the French Prefectural system. For purposes of local administration there are three cities, Tokyo, Kyoto and Osaka, and forty-three departments administered by Prefects, the local assemblies having a large voice in the management. The Hokaido (Yezo and the Kuriles) and Formosa are separately administered by a Governor-General respectively. Korea also has a Governor-General. On the 11th of February 1889 was promulgated what may be called the Magna Charta of Japan. It provides for the Imperial succession, defines the prerogative of the Crown and the privileges of the people.

The revolution of 1868.

It declares the obligation of the people to pay taxes and to serve as soldiers, guarantees them against arrest, imprisonment, trial or punishment except by due process of law. It grants freedom of residence and conscience, and provides that no man's house shall be officially entered without a legal warrant. Two houses of Parliament on the model of the English House of Lords and House of Commons were established as the accredited legislature of the Empire. The House of Peers consists of Princes, noblemen and the landed gentry, with a fixed proportion of the lower ranks of nobles elected by themselves, some of the highest taxpayers chosen locally, and also a fixed proportion of members nominated by the sovereign. In 1930 there were 215 titled members and 163 non-titled. The House of Representatives or the Lower House consists of 772 members, voting for whose election is by secret ballot. The members of the House of Representatives are all paid.

(*a*) THE JUDICIAL SYSTEM

The constitution of Japan says that the judicature shall be exercised by the courts of Law which are organised according to law. The law determines the qualifications of Judges and no judge can be deprived of his position except on the score of criminal sentence or disciplinary punishment. All laws require the sanction of the Imperial Diet. The constitution of Japan was promulgated in 1889, and took effect in 1890.

The Judiciary.

The present Law of the organisation of the Law Courts in Japan proper was originally enacted in February 1890. It has since been amended in various directions by subsequent legislations. The following are the ordinary law courts:—

1. *Ku Saibansho* or Local Court.
2. *Chiho Saibansho* or District Court.
3. *Koso In* or Court of Appeal.
4. *Dai Shin In* or Court of Cassation.

In Japan proper, that is to say, in those territories that formed the Empire of Japan before the Chino-Japanese War of 1894-95 with the subsequent addition of Shaghalien there is one *Dai Shin In* or Court of Cassation, seven Appellate Courts, fifty District Courts, sixty-two branches of District Courts, and one hundred and eighty-four Local Courts. In Japan ordinary Law Courts are not established according to the different classes of subjects they deal with, such as probate, admiralty or divorce Courts. With the exception of such matters as fall within the jurisdiction of special Courts, ordinary law courts exercise jurisdiction both in civil and criminal matters. In the lowest Court, called the *Ku Saibansho*, one judge, sitting alone with the clerk of the Court, is competent to discharge judicial functions. In

Courts above the grade of a district Court a judge sitting alone is not competent to discharge his functions. All cases must be heard and tried before a division or a department of the court composed of three judges in a District or an Appellate Court, and of five judges in the Court of Cassation. Attached to every court there is a Public Prosecutor's Office. In criminal matters it is the duty of the Public Prosecutor called the Procurator to conduct the prosecution on behalf of the Crown and to ask the law court to apply the laws against the defendant, and to see that the sentence of the court is properly executed. In civil matters, if the Public Procurator deems it necessary to do so, he may ask the Court to give him notice of trials, that are coming up that he may have an opportunity to express opinions at the hearing. Generally in all matters relating to administration of justice, it is the duty of a Public Procurator, as the guardian of public interests, to see that judicial administration is carried on in accordance with law. A Public Procurator is independent of the law courts, although he is an officer of the Court in the same sense as the barristers are. He is amenable to the orders of his superior officer. There is a Procurator-General attached to the Court of Cassation, a Chief Procurator attached to each Appellate and District Court. There is a Procurator also attached to each Local Court. A Public Procurator is subordinate to his official superiors, and the difference between a Public Procurator and an ordinary administrative officer, in point of tenure of office is that, while an ordinary administrative officer holds office during the pleasure of the Crown, subject to a certain measure of protection offered by an Imperial ordinance governing the status of Civil functionaries, a Public Procurator cannot be divested of office against his will except by way of criminal sentence or disciplinary punishment.

Law reforms.

The foundation of a liberal and progressive policy in Japan was laid in the year 1870, when a general penal code entitled "*Shinritsu Koryo*", or "Principles of new Statutes", was promulgated. That law was mainly based on the principles of Chinese Criminal Law of the Ming Dynasty. In 1873 it was replaced by a body of laws called "amended laws" in which European ideas were more or less adopted. In 1880 a penal code based on the principles of the French Penal Code and drafted by a French jurist, Boissonade, was promulgated after a careful revision by the Senate which was a deliberative assembly created by the Emperor Meiji in 1875. That Penal Code took effect in 1882, and marked the beginning of Japan's adoption of laws based on the principles of European jurisprudence. Simultaneously with the creation of a deliberative assembly called the *Genroin* or Senate, the Court of Cassation was created in 1875 for unification of judicial interpretation. When the Government

decided in 1881 to establish a national assembly ten years after that date, the late Prince Ito and other statesmen of the period, foresaw the danger of dividing with the Diet the responsibility of enacting organic and other laws that would be needed in assuring the people of the benefits of a constitutional form of Government. Thus most part of the Civil Code of Japan, the Commercial Code, the laws relating to the organisation of Law Courts, the law of Administrative litigation, the Law of Disciplinary punishment for the Judges, were all enacted in the year 1880, before the meeting of the Imperial Diet.

(*b*) THE PREROGATIVES OF THE EMPEROR

The Prerogatives of the Emperor are five. They are:—

1. The right of convoking, opening, closing or proroguing the Imperial Diet, and of dissolving the House of Representatives.

2. The right of issuing any emergent ordinances when the Imperial Diet is not sitting, to be submitted for its approval at the first opportunity in the next session.

3. The right of issuing or of causing to be issued the ordinances required for putting the laws in operation or for maintaining public peace and order.

4. The right of taking the supreme command of the Army and Navy and of determining the organisation of the service.

5. The right of declaring war, making peace and concluding treaties and the right of proclaiming a state of siege.

(*c*) THE HOUSE OF PEERS

Composition of the House of Peers.

The House of Peers is composed of (a) Princes of the Blood; (b) Peers (Princes and Marquises are to sit in virtue of their right when they reach the age of 25); (c) Counts, Viscounts and Barons are to elect their representatives selected from among their own respective orders; (d) men of erudition or who have rendered distinguished service, nominated by the Emperor; (e) representatives of the highest taxpayers elected from among themselves, one from each prefecture. Each of the three inferior orders of Peerage may not return more than one-fifth of the total number of Peers while the non-titled members should not exceed in number the aggregate strength of the titled members. The age limit is 25 years for members belonging to the ranks of (a), (b) and (c); 30 years for the rest. The term of office is seven years for members under (c) and (e) all the others being life members. At the end of the last year the House was composed as follows:—

Princes of the Blood, 8; Princes, 10; Marquises, 21; Counts, 25; Viscounts, 32; Barons, 45; Imperial nominees, 50; Highest tax-payers, 30; Total 221.

As a rule the members of the House of Peers do not belong to any political parties; they are simply formed into groups or coteries consisting of members of the same rank or same class.

(*d*) THE HOUSE OF REPRESENTATIVES

This House is composed of members returned by male Japanese subjects of not less than 25 years of age and paying a direct tax of not less than 10 yens=about Rs. 20 a year. The incorporated cities containing not less than 30,000 inhabitants form independent electoral districts, and are entitled to return one member, while a larger city containing more than 1,00,000 inhabitants is to elect one member for every 1,30,000 people. The rural districts are to send one member at the rate of 1,30,000 inhabitants approximately, each prefecture being regarded as one electoral district. Election is carried on by secret ballot, one vote for one man and a general election takes place every four years. Every Japanese male subject who has attained the age of 30 years is eligible, exclusive of those who are mentally incapacitated or are deprived of civil rights. Property qualification has been totally expunged by the Law of Election of 1900.

Composition of the House of Representatives.

The House which originally consisted of 300 members has now been enlarged to a house of 381 members of whom 181 come from urban areas and the rest from rural districts.

(*e*) POLITICAL PARTIES

Representative Government in Japan dates from 1890. Party men are often men devoid of means and are moreover moved more by selfish considerations than by conviction. They therefore, fail to command respect among ordinary people. Thoughtful men keep aloof from politics, while businessmen, who, in a moment of enthusiasm enter the House, hasten to get out of it. All the same, party politics in Japan as elsewhere, are considered a necessary expedient in administration in the absence of a better alternative.

There is a total absence in Japanese politics of a conservative and sociological element as an organised power. All the political parties equally avow progressive policy and there is but little to differentiate them as to platform.

(*f*) ALLIANCE AND POWER

The bitter lessons learned from the too headlong attempts to take the citadel of the bureaucratic government by storm taught the political parties that in discipline and constructive talent they had to learn much, and that the bureaucratic government is too deeply rooted to be overthrown by assaults. The parties therefore, arrived at the wiser plan of co-operating with the leaders of the bureaucracy. It was in pursuasion of this mature view that leading Japanese statesmen joined hands with the administrators of the bureaucratic government, and tried to gradually infuse the spirit of democracy among the bureaucratic statesmen. The plan has so far worked admirably.

Bureaucracy exists in two distinct shapes in Japan, as an administrative expediency of the Prussian nature, also as an ultra-constitutional body which is opposed to the spirit of party politics. In the latter sense, Japanese bureaucracy is represented by the "Genro" or the Elder Statesmen, the Privy Council, the House of Peers and their followers. These bureaucrats hold that the idea of Government being responsible to the people's representatives is preposterous and inadmissible in a country like Japan. They should be responsible solely to the throne. However, the number of these extreme thinkers is steadily dwindling.

(*g*) ADMINISTRATIVE DIVISIONS

For convenience of administration, Japan Proper is divided into 3 municipal prefectures, 43 ken (rural prefectures) and Hokkaido. The island of Formosa and the peninsula of Korea may be left out here, being still placed under the semi-military control of Governors-General and therefore, entirely distinct from the rest so far as the administrative system is concerned. Of course, this is still more the case with Southern Shaghalien and the Kwantung Provinces. The 46 prefectures and Hokkaido comprise, as returned at the end of December, 1915, 636 gun or kori (sub-prefectural counties), 71 cities, 1,296 rural towns, and 10,920 villages. The average number of population in the counties and cities are respectively 77,000 and 128,000 and that of towns and villages 3,500.

(*h*) ADMINISTRATIVE ORGANIZATION

In each prefecture a Governor represents the Central Government administratively while a local assembly represents the rights and interests of the people. A *gun* is a miniature prefecture and possesses an executive chief and an assembly. Cities, towns, and villages are *bona fide* self-governing entities.

(*i*) PREFECTURAL ASSEMBLY

A prefectural assembly is the guardian of local finance and exercises parliamentary control over the finance and other matters of its own prefecture. Citizens residing in the prefecture who pay a national tax of at least ¥3 a year are entitled to elect the members of the assembly, while those who are eligible to be members must pay a national tax of not less than ¥10. The term is four years.

Each prefecture has an assembly and a council, the latter to amplify the resolutions passed by the other.

A prefectural assembly is composed of at least 30 members, this being for a smaller prefecture containing under 700,000 inhabitants. An additional member is to be elected for every 50,000 inhabitants for a prefecture of over 700,000 to 1,000,000, and so on. A prefectural Council undertakes to amplify the resolutions passed by the Assembly whose work it may also see under trust. The Council is composed of ten honorary members for a municipal prefecture and seven for an ordinary, all elected from among the members of the Assembly. The prefectural Governor acts *ex-officio* as head of the Council, together with two high officials of the Local Office. The *Gun* (County or District) administration does not differ in organization from that of the prefecture, the difference being one of degree. The Administrative Head is appointed by the Home Office as in the case of the Governor, and he acts *ex-officio* as Chief of the District Council. The property qualification of the electors of District Assemblies does not differ from that of the larger assemblies, but that of candidates eligible is ¥5. The District as administrative organ is considered superfluous in some sections and its abolition has repeatedly been tried by the Seiyu-kai party.

(*j*) CITY, TOWN AND VILLAGE

"City" or urban community is clearly distinguished from "town" and "village" or rural community, for purposes of self-government. The former constitutes an independent self-governing body and enjoys various privileges. It is also burdened with obligations. "City" is financially and politically independent, but in this respect that rural community forms part of the District in which it is situated. Cities have their own Assemblies and Councils, the former deliberative and the latter executive. The qualification for franchise and eligibility is the payment of at least 2 national taxes for over two years, and so on. In the City Council the Mayor acts as the Headman. The Council is absent in towns and villages, and their respective Headmen undertake the executive duty in compliance with the will of the Assemblies. Mayors are nominated by the citizens and appointed with the sanction

of the Emperor, and the Headmen of towns and villages are similarly nominated with the approval of the Prefectural Governors. The law bearing on the civic corporations was amended in 1911.

(*k*) COMMUNAL IMPROVEMENT

As means of communal improvements, there are the co-operative societies and the Hotoku-Sha, young men's societies, old men's societies, land-owners' societies, and citizens' societies, etc. Young men's societies exist in almost every town or village and are moral and educational in character. They are secular bodies and in many cases the societies undertake road-making and other work of public utility. Land-owners' societies have for their object the encouragement of tenant farmers, of subsidiary work by them, and other matters calculated to improve farming. Citizens' societies generally exist in urban districts and are intended to spread knowledge of self-government.

(*l*) ENCOURAGING SELF-GOVERNMENT SPIRIT

In order to encourage the spirit of self-government the Home Office inaugurated in 1910 the praiseworthy practice of giving monetary grant to 45 villages, village headmen and societies which have shown exemplary work. Lately, these recipients of honour numbered 75 throughout the country.

(*m*) YOUNG MEN'S ASSOCIATIONS AS COMMUNAL ORGANIZATIONS

Young Men's associations, as secular organizations to promote communal interest, have existed throughout the country from former times. In not a few cases they existed merely as social bodies and too often for frivolous purposes, but the majority were of a more serious character and were devoted to promoting knowledge on farming, general education, and other matters conducive to communal benefit. The authorities, specially on the alert, since the 1904-5 war, to recognize and foster all affairs judged to contribute to national prosperity and strength, decided to take steps for encouraging the healthy growth of these associations. In Sept. 1915 the Ministers of Home Affairs and Education, after consulting with the War authorities, issued an instruction over their joint signatures to the Prefectural Governors, enjoining it upon them to properly guide the Y. M. A.'s in their jurisdiction, to the end that, they may be made to serve efficiently as organs for encouraging and furthering the culture of the members, and for inculcating the idea of good citizenship, of thrift and diligence, always founded on the spirit of patriotism and filial virtue. At the same time the Vice-Ministers of the two Departments issued circulars as to

the *modus operandi*, and suggested that the membership should be confined to the boys who have completed the six years' national education, or of similar status, and those not more than 20 years of age, that the local school-masters, local town or village heads or persons of similar status be made to supervise over the associations, and that they should be made self-supporting. As lately reported by the Prefectural Offices, except Hokkaido, 29,561 associations existed throughout the country.

BOOK III

GENERAL ORGANIZATION OF THE GOVERNMENT OF INDIA

INTRODUCTORY

General History of the Development of Government in India

EARLY HISTORY

The grant of the *Dewani* is the first landmark in the history of the British Indian Government. Its effect was to give over to the English Government the entire "*Dewani*" of the province, and thus to transfer to them the absolute government over twenty-five millions of people and an annual revenue of four crores of rupees. The *Dewan* of a Province, was an officer of the Mogul government whose duties were to superintend the collection of Revenue, and try all civil causes arising within the boundaries of his province. The "*Subadar*" was the Viceroy of the district; in this case the two offices were often combined in one person. The '*Adalat System*' followed in the footsteps of this Imperial grant in the year 1765. The gift of the Emperor consisted of the '*Dewani*' and the '*Nizamat*'. Thus was transferred to the Company the management of all the affairs of the Army and the Police, with full Revenue, Civil and Criminal jurisdiction throughout the entire provinces of Bengal, Behar and Orissa.

The Dewani.

Inauguration of the Adalat System.

Clive's system founded on that of the Mogul empire was as follows:—

(1) *Revenue.*—Established at Murshidabad was a central office which superintended the collection of the revenue. It appointed European Supervisors with Indian officials over the various divisions and districts. It kept all the accounts of the entire province. It was not till 1772, that Warren Hastings obtained permission to place the entire administration in the hands of European officers. The revenue "Supervisors" then became "Collectors" and the central office was removed from Murshidabad to Calcutta.

Revenue system.

(2) *Criminal Courts*—called "Provincial Courts" were established in each district, and regulated at Calcutta by a Central Mofussil "*Nizamat Adalat*", or Supreme Criminal Court for up-country stations.

Fouzdari Courts.

(3) *Civil Courts.*—These were presided over by the "Collectors", or "Supervisors", who thus combined in their own person the respective offices of revenue and civil jurisdiction. They had native officers under their control, and administered Hindu and Mahomedan law.

Dewani Courts.

(4) The "*Fouzdari Adalat*" was a Central Criminal Court in each district, presided over by the judge, assisted by a "*Kazi* or *Mufti*". It was appointed for the trial of the more serious offences.

The Adalats:— (*a*) Fouzdari.

(5) The "*Sadar Dewani Adalat*" and the "*Sadar Nizamat Adalat*" were the Chief Civil and Criminal Courts of the Presidency of Calcutta. The "*Dewani Adalat*" was presided over by the Governor and members of Council with Indian law officers, and was at once a Court of original jurisdiction, and of appeal from sentences of the mofussil Courts where the matter in dispute was of a higher value than Rs. 500/-. The "*Nizamat Adalat*" was under the Presidency of a Chief Officer called the "*Darogha*" with Indian Law Officers. Its business was to confirm and revise all sentences of the "*Fouzdari Adalat*" and other Criminal Courts when they involved the infliction of capital punishment or fines of more than Rs. 100/-. It was also a Court of Criminal appeal.

(*b*) Dewani.

(*c*) Nizamat.

The Chief Civil Court in a district, was called the "*Dewani Adalat*"; and the Chief Criminal Court, the "*Nizamat Adalat*,"— the Nizam being the Chief Criminal Judge.

Besides these Courts there was an authority given to the principal "farmers" of revenue in each pergana to hold Courts, wherein they should deliver final judgment in Civil matters, where the subject in dispute was of less value than Rs. 10/-. And all Collectors and senior merchants were made justices of the Peace.

Revenue farmers.

The grant of the *Dewani* was followed soon after by the Regulating or the Reconstruction Act of 1773, which brought in Parliamentary control over the English settlements in India. Besides rendering the establishments of Bengal, Bombay and Madras independent of one another, it made them directly responsible to the East India Company. By this Act a loan of one million from the public funds was to be granted by the Treasury. No member or proprietor was in any case to have more than four votes in the Court. The Governor of Calcutta was to be called "Governor-General", having supreme command over all the Presidencies. He was to be nominated by Parliament every five years. By it a "Supreme Court" was established at Calcutta, presided over by learned English lawyers, having Civil, Criminal, Admiralty and Ecclesiastical Jurisdictions. It was also constituted a Court of Record, of "Oyer and Terminer," and of Quarter Sessions. A Chief Justice and 5 Puisne Judges were appointed to carry on its duties.* The powers of the Supreme

Regulating Act of 1773.

Governor-General of Calcutta.

Supreme Court established.

Court were many. It could try all actions arising amongst Europeans in Bengal, Behar and Orissa. It could try and determine all causes against the Company or the subjects of the Crown, instituted by Indians, who had property in Bengal, Behar and Orissa, whether these actions were real, personal or mixed. It had or was given an equitable jurisdiction similar to that of the Court of Chancery in England. It was a Court of "Oyer and Terminer" over Fort William in Calcutta, and the surrounding factories, and was one of Probate and Divorce. With reference to all British subjects in the Presidency, it could appoint guardians of lunatics and infants. Its jurisdiction in Civil, Criminal, Admiralty and Ecclesiastical matters, as noticed, was full. Appeals from its decision lay to the King in Council. These appeals which were originally granted by the Royal Charter of 1726 were, by that of 1781, made to apply to suits of the value of Rs. 50,000/-. The Order in Council of 1838 brought down the value to its present figure, namely, Rs. 10,000, while an Act of the Governor-General in Council of 1863 gave appeals in Civil suits of below the prescribed value provided, the High Courts certified them to be fit. And as in the territories over which the Company acquired the *Dewani*, so in the provinces acquired by conquest, or otherwise, did the Company exercise all the essentials of Sovereignty from the very moment of their acquisition. This however, is not a question free from doubt. For much of it the manifestly clashing and imperfectly worded Acts of Parliament, passed at a great distance from the scene, and without adequate materials, and knowledge of the country, are responsible.

Jurisdiction of the Supreme Court.

Appellate Jurisdiction.

By the plan of Warren Hastings, which was partially adopted people were to have their own laws administered to them; and by one of the rules promulgated by him "*Maulvis*", or expounders of the Mahomedan law, and "*Pundits*" or interpreters of Hindu Law, were appointed to attend regularly in each Court. In the year 1780, when the Governor-General in Council was invested by Parliament with the power of making laws and regulations for the newly acquired countries, the "Rule" of Warren Hastings already referred to was unanimously made law in India. The 27th section enacted that, the "*Koran*" should be the standard of law for Mahomedans, and the "*Vedas*" or "*Dharma Sastras*" for the Hindus.

Plan of Warren Hastings.

The effect of this Act of Reconstruction upon the state of the Company at home was beneficial. In India it worked less satisfactorily, owing to the circumstances of its having been drawn up by a Parliamentary Committee, who were all more or less ignorant

Act of Reconstruction or the Regulating Act.

of the actual state of affairs in the country. The Regulating Act of 1773, may properly be called the first constitutional document relating to India. It was supplemented by the India Act of 1784, whereby was created the Board of Control. This Board was to direct the political affairs of India leaving all business matters to the Company to whom was given power to appoint all officials, the nomination to the highest posts requiring the assent of the "Crown". The arbitrary and oppressive manner in which the East India Company had carried on their government and business in this country had excited the indignation of fair minded Englishmen. They therefore, joined hands in bringing about the Act of 1813, which abolished the trading monopoly of the Company in the East, except in China. Among other reforms, direct parliamentary control was introduced into the Government of India by the Act of 1833, while by that of 1853 a deathblow was dealt to the East India Company. The culminating point, so far as the Company was concerned, was reached in 1858, when the Crown assumed the executive administration of the country. Its effect was that, the Crown became the Chief Executive Officer of the Government of India, with all the prerogatives of his position under the Common Law of England. Three years later in 1861, was ushered in the Indian Councils Act. It expanded the constitution of the Executive and Legislative Councils in India, since extended by the Acts of 1892, 1909, and 1919.

Charter Act of 1813.

Charter Act of 1833.

Transfer of the Government to the Crown.

CHAPTER I

The Secretary of State for India

THE INDIA OFFICE

The Extensive country which was thus transferred to the Crown consisted partly of large tracts under Indian Rajas and Chiefs and partly of territory under the rule directly of the East India Company. The Indian Mutiny of 1857, brought in its train the abolition of the East India Company and the direct assumption of the Government by the Crown. With the Company its Court of Directors was sent into retirement. A new office in the British Constitutional system was created under the name and style of the Secretary of State for India. He was to take the place of the President of the Board of Control. As the President had a Board to advise him in matters of Indian administration, so the new Secretary of State, who was given a seat in the Cabinet, came to have a Council of advisers. It was composed of retired Indian officials of experience and some banking and financial experts, to assist him with advice and the results of their experience. This Council was to be called the Council of the Secretary of State for India. By the Act of 1858, certain broad principles of administration were laid down. It was further accompanied by what is called the Queen's Proclamation, better known in this country as, the "*Magna Charta*" of India. The connection of the Crown with India became closer, when, in 1876, under the "Royal Titles Act", the Queen of Great Britain and Ireland assumed the title of Empress of India. Ever since 1833, the Parliament of the United Kingdom has been supreme over India. That position, however, became firmer by the Act of 1858, though the British Parliament never attempted to legislate directly for India. It has always acted through its agent, the Secretary of State for India, on the principle of ministerial responsibility. The Statutes relating to India, are in the nature either of constitutional documents or financial provisions.

Abolition of the East India Company.

Secretary of State for India—a new office.

The Council of India, the Queen's Proclamation, the Magna Charta of India.

The authority of the Crown over Indian administration, is exercised by the Secretary of State for India, subject to the rights and powers reserved to his Council, and to the Parliament itself. In practice, he inherited all the powers and duties of the President of the Board of Control,

Secretary of State, the Council and the Parliament.

and in law, he has inherited more. As a member of the British Cabinet, he is directly responsible to the British Parliament and, in his turn, represents its authority. As a member of the Cabinet, and also a Privy Councillor, he advises the Crown in matters relating to India. His administrative responsibility is shared by his colleagues in the ministry. In obedience to a fixed constitutional principle, they must stand or fall with him, and now, more than ever, that his salary is placed upon the British estimates. Under his guidance and direction, the business of the India Office in England is conducted by the members of his Council. These members have a right to be consulted by him in all matters relating to India, except those which are of an urgent or secret nature. The determination of such urgency or secrecy rests solely with the Secretary of State himself. Though obliged to consult them, he is not bound to act up to their advice, if such advice is in opposition to his views, except of course, in matters relating to the expenditure of Indian revenues, and the raising of sterling loans for and on behalf of India.

Secretary of State advises crown in Indian questions.

Opinion of Council not binding on the Secretary of State.

Under the Act of 1858, the members of the council of the Secretary of State for India, commonly called the India Council, were to be appointed for life. Their period of service subsequently was reduced to 10 years. By the Council of India Act of 1907, it was again reduced to seven years, reduced further to five years by the Government of India Act which is the source of constitutional law as it obtains in India at present. They are nominated by the Secretary of State from among retired Indian officials, mostly Civilians. Occasionally a retired judicial officer, who has not been a member of the Civil Service, has been appointed. They are men of administrative, financial or military experience in India, who have served or resided in the country for a period of at least 10 years, not prior to five years immediately preceding their appointment. A financial expert of English experience is generally associated with them. They control the disbursement or expenditure side of the finances of the various provincial administrations in India, and generally carry on the business of the Government of India in England. They do all these for, on behalf, and in the name of, the Secretary of State for India, who alone, without reference to the Council, is responsible to the Parliament and, through it, to the people of England. Theoretically speaking, therefore, our government

Members of the Council of India appointed for life.

Appointed for a period of seven years only.

Qualification of Councillor.

Their functions.

is subject, through the Crown and the Secretary of State, to the will of the British people expressing themselves through the House of Commons. In practice, the authority of the British elector is direct and tangible by reason of the fact, as we have seen before, that the salary of the Secretary of State, and also of a portion of his staff, are placed upon British estimates. Until the introduction of this principle the British elector under the constitutional system of his country had no direct control over the Government of India. No doubt the Indian Budget used to be placed before the House of Commons. It was however, only a formal matter, for the Budget lost none of its force if it were not, or even if it were not assented to by the House. In the case of the other departments under the British constitutional system, the salary of the Secretary and the maintenance of his staff are placed upon the British estimates, including that of the Secretary of State for the Colonies. That is to say, the British people have the power to call for a reduction of the Colonial estimates, and otherwise call the Colonial administration to account. A strong Cabinet with a substantial majority at its back, and a strong Secretary of State for India with a strong Viceroy at the head of affairs in India, could easily flout the will and feeling of the British public, in respect of any particular item of Indian administration. Under the old rule, under which Indian revenue and not the British Exchequer was responsible for the salary of the Secretary of State, parliamentary control over India was not a reality. This contention of the Indian people was fully endorsed by Mr. Montagu and Lord Chelmsford. In their eagerness to enable parliament "to take a real and continuous interest in India," they "advised that the Secretary of State's salary like that of all other ministers of the Crown should be defrayed from Home revenues and voted annually by Parliament."

Parliamentary Control under old rule unreal.

Hence new rule.

As at present constituted the Secretary of State is assisted in his government by a Council, called the Council of India, or the India Council, of from 8 to 12 members, holding office for a term of 5 years, consisting both of Englishmen and Indians, with experience of Indian affairs. Three of these are statutory natives of India. These need not be drawn from the Indian services or from the retired list. In practice, six out of ten such appointments hitherto made have been men who were not connected with the actual administration of the Government in India. One is, and generally has been, a financial expert of English reputation, and the rest recruited from the retired list of the various Indian services. In some matters it is necessary for the Secretary of State to have the majority of the Council in agreement

Composition of the Council.

with him. In others he is independent of his Council, who are in such cases merely advisory.

GOVERNMENT OF GREAT BRITAIN

The British Isles are governed, as you know, by the Ministers of the King. The functions of the King-Emperor himself, in regard to actual government, are of a formal character, and his other functions though important, do not concern us here. The Ministers of the King form a Cabinet, who, together decide all questions of gravity or complexity. Each Minister is entrusted with some special duty, such as the Home affairs of Great Britain, Foreign affairs, Indian affairs, etc. The Minister of Indian affairs is called the Secretary of State for India. The King selects the Prime Minister from among the members of the Houses of Parliament, and the Prime Minister in turn, chooses the other ministers, likewise, from the members of the Houses of Parliament. The Prime Minister can only remain in power while the House of Commons has confidence in him. If he goes out, all the other ministers go out with him, and the King has to select another Prime Minister, who has to get together another set of Ministers to form the Cabinet.

The Ministry or the Cabinet in England.

SECRETARY OF STATE: HEAD OF THE INDIAN GOVERNMENT

Thus you see, so far as India is concerned, the head of the government as we have noticed, is the Secretary of State, subject to the Cabinet. And the Cabinet is ultimately responsible to the British people who elect as their representatives the members of the House of Commons. They may be made to take interest in matters Indian in proportion to the interest we take in our own affairs.

The Secretary of State for India has to submit to Parliament every year reports of the moral and material progress of India, and to render an account of its Revenue and Expenditure. He can remove any important official in India from the Viceroy downward. No expenditure can be incurred from the revenues of India without his sanction, which, for facility of business is largely delegated to the Government of India.

CHAPTER II

How the Government of India is Organised

At the head of the Government of India is the Viceroy and Governor-General in whom is vested the supreme authority, both executive and legislative. As the representative of the Crown, the authority for the ancient method of legislation by the King, in the form of Ordinances and Proclamations is vested in him. It is used in cases of emergency, and for the better administration of the country of which he is the Chief Executive. His is a Crown appointment, and he is invariably chosen from among the ranks of English statesmen and administrators of repute. The Viceroy holds office usually for five years, though, there is no strictly defined limitation upon the period of his service. There have been occasions in our history when the period of service of a Viceroy has, by the pleasure of the Crown, been enlarged. The latest instance in point is the extension granted to Lord Hardinge, whose term of office was, in the usual course, to have expired in August 1915, but, by the pleasure of the Crown, extended to March 1916, an extension of seven months beyond the usual period. Strictly speaking, the Governor-General is merely the President of the Council, with a casting vote in case of equality. Ordinarily he is bound by the opinion of the majority of his Council. He has however, a reserve power to overrule such majority where in his judgment the adoption of its opinion might lead to the interests of the British possessions in India, or the safety or the tranquillity of the Empire being jeopardised, and essentially affected. The dissentients in the Council, on the other hand, reserve to themselves the right to require him through any two of them, to circulate the circumstances of their dissent, and to submit the same to the Secretary of State for India in Council. Of the powers vested in him personally, the principal may be said to be his power of making and promulgating ordinances, in cases of emergency, for the maintenance of the peace, tranquillity and good government of the empire. These remain in force at a stretch for a period of six months only. The Viceroy is the controlling authority over the legislation of his own legislature, and of the provincial Councils in India. This is evidenced by the

Viceroy and Governor-General, head of the Government in India.

His period of service.

Extension may be granted.

His Council and his powers in it.

The Viceroy's Law-making power.

fact that without his assent no legislative measure of any of the Councils in India can have the force of law. Under certain circumstances, he may also reserve a measure for the expression of the pleasure of the Crown. Certain measures, such as the raising of fresh loans, the imposition of fresh taxation, and measures affecting the religious or social customs or usages of the people of the country, and the political or military transactions of the Empire, cannot be legislated upon, without the previous sanction of the Viceroy and Governor-General. He receives a large salary apart from the sumptuary or other allowances to which he is entitled. In fact he is the best paid (£ 17,066 a year or Rs. 21,333 a month) servant under the Crown or within the British Empire. In the event of his incapacity through illness to carry on the government of the country, or demise, the practice is for the senior Governor of any of the three Presidencies of Bengal, Bombay and Madras to act as his *locum tenens*, until the appointment of a new Viceroy. In the event of his absence on leave out of the country or such other causes a similar practice is followed until his return from leave. This is a privilege to which he, like the Commander-in-Chief, and the Heads of Provincial Administrations, was not hitherto entitled during their tenure of office. They have become entitled to it by virtue of the Government of India Leave of Absence Act. In early Viceregal history the practice followed was not uniform for we have more than one instance of the senior member of his Council acting for him.

His power to control legislation.

The Viceroy's remuneration.

Provision for acting appointments.

"It is said that the Viceroy has the right of initiative, the India Council has the right of revision and the Secretary of State the right of veto or approval, subject, of course, to the final authority of Parliament." The India Council Act of 1861, made over some important powers of legislative initiation to the Viceroy. This was founded upon the celebrated despatch of Lord Canning of 1859. To "Clemency" Canning as he was nicknamed by his Anglo-Indian contemporaries, must belong the credit of having for the first time in British Indian history, vigorously pushed forward the claim of Indian representation on the Council. It now came to be composed of not less than six, nor more than twelve additional members. Half of the members were to be independent persons, either European or Indian. There were besides these additional members, ordinary members, better known as members of the Executive Council. Lord Canning did not stop here. He recognised the claims of provincial governments to have local councils of their own, to enact laws

Initiation in legislation.

Canning, the father of the Indian Legislative Council.

on local subjects only. The proposal included similar privileges of independent membership attached to them, the Governor-General's council having all the time supreme power over them, and to pass or enact laws in spite of them, for the whole of India. Nine years later, however, i. e., in 1870, disputes arose over such powers between the then Secretary of State, the Duke of Argyll, and the Viceroy, Lord Mayo. It resulted in it being laid down by and under the authority of the British Cabinet of which Mr. Gladstone was the Chief, that the Government of India were merely executive officers whose duties were to carry out the orders and instructions from the Government at home. Four years later, a similar controversy arose between Lord Salisbury on the one hand, and Lord Northbrook on the other. It was reasserted that all important measures should first be communicated to the Secretary of State for an expression of his opinion. Forty-five years later, it was reserved for Lord Curzon as Secretary of State for foreign affairs, to authoritatively declare and lay it down on behalf of the English Cabinet that the Indian Government under the Secretary of State for India was only a "subordinate branch" of the English administration. Students of history will remember that as Viceroy of India, Lord Curzon strenuously and angrily protested against the "subordinate" theory of Mr. Broderick, (now Viscount Middleton), the Secretary of State for India, in a controversy between himself and the masterful personality of Lord Kitchener on a question of great constitutional importance. He could not thereby save his own discomfiture and eventual fall from Viceroyalty in 1905. To the credit of Lord Hardinge it must be said that, he, as the personal representative of the King Emperor, and as Governor-General in Council—i. e., as the Head of the Government of India always maintained an attitude of independence. But they are not all as able, as statesmanlike, as patient, as strong and as firm against Whitehall. It may be safely said that the practice has now been finally settled that all important measures of legislation, or of declaration of policy, contemplated by the Government of India, must be placed before the Secretary of State. Any opinion that he may express thereupon must be obeyed or acted upon.

His recommendation for the establishment of provincial legislative Councils.

Government of India merely executes orders of Home Government according to Gladstone.

Lord Salisbury maintains the same view.

Lord Curzon opposes the view.

Independent attitude of Hardinge.

In important matters Secretary of State's opinion final.

The Viceroy and Governor-General of India is the immediate administrator of the country. The Secretary of State does not interfere

with the Governor-General and his Council in the ordinary routine of business. As the representative of the King Emperor in India, a country where personal government is so very prominent, and has been the rule for centuries, the Viceroy is always looked upon as a just and kind administrator. The Governor-General has the power of making treaties and arrangements in Asiatic countries and in acquiring and ceding territories.

Ordinary routine business not interfered with.

The gradual accumulation of powers in the hands of the Viceroy and the variety and growth of public business have necessitated the expansion of his 'Cabinet, more familiarly known to us as the "Executive Council." Its earliest appearance in British Indian history is under the Regulating Act of 1773. The personal animosity which subsisted between Warren Hastings and Sir Philip Francis, led to the notable change from Government by majority of votes in the Council to the Governor-General being empowered to overrule them in special cases. From that day the progress of Council government has been one of steady evolution. It culminated in the distribution of all public business among the members of the Executive Council, the determination of whose number depends upon the pleasure of His Majesty. It now consists of seven gentlemen of ripe experience in Finance, Education, Health and Land, Law, Commerce and Railways, Industry and Labour, Home affairs, and Military affairs. The Law Member did not gain access to the Executive branch until after the Charter Act of 1853. He had however, to go out in 1859 to come back as a permanent figure in 1861. With the growth of constitutional administration in India it was deemed necessary that he should have a seat in the Council. In order moreover, to bring the practice into line with the civilised constitutions of Europe and America, particularly of England, the Law Member was in 1861, made a full member of the Council. Over the deliberations of the Executive Council of seven the Viceroy presides. Every act of the Council runs in his name, namely, the Governor-General in Council as a corporate body.

Executive council of the Governor-General—its early origin.

Present composition of the Executive Council.

Admission of the Law member into the Council.

The Council ordinarily, but regularly, meets once a week. All questions of foreign policy, local measures and such like matters are discussed and decided in these meetings. Measures also for the legislative council are prepared here. The ordinary members are appointed by the Crown like the Governor-General himself, for a period of five years. There is no definite rule as to who should be selected

Meetings of and transactions in the Council.

as members of the Executive Council within the qualifications we have already mentioned. The proviso therefore, to appoint all Indians or more than one Indian is not a matter of statute, but is observed in practice. These appointments are entirely in the gift of the Secretary of State for India. It is his duty to submit names to the Crown for acceptance. It is believed that the Secretary of State selects some one of a panel recommended to him by the Governor-General. But the Secretary of State's choice is not limited to the names submitted to him by the Governor-General. He is not prevented from advising His Majesty to appoint any person as a member. Since the meetings of the Council are held once a week, all the members are present as a rule, though the presence of a single member besides the Governor-General or a Vice-President named by him in his absence, constitutes a quorum. The Viceroy merely presides over the deliberations of the Council. He is nominally associated with every act of the executive government. All orders run in the name of the Governor-General in Council except those in respect of which he possesses statutory powers, such as certificates and ordinances. Only for the sake of convenience and speedy despatch of business the work of the various branches of the administration is divided between himself and the several members of his council. In this division he does not leave himself out, for he remains in charge of the Foreign Department, so that he is his own Foreign Minister. The seven members of the Council including the Commander-in-Chief who may or may not be a member of the Executive Council of the Governor-General, divide the various departments of administration between themselves. In cases of extreme emergency only, can the Viceroy or his Councillors act independently of the Council. Such an act however, has got thereafter to be ratified by the Council. Ordinary routine business is carried on under an implied authority, as it were, of the Council. Questions affecting negotiations and transactions with Indian Chiefs, and Princes, and States, and other important matters of local and provincial interest, are laid before the Council for its decision at weekly meetings. Legislative measures are prepared and discussed here before being brought forward in the Legislative Council. These executive members, technically called the Ordinary Members of the Council, are appointed by the Crown for a period of five years only. They could be added to by the inclusion of one or other of the Governors of the three Presidencies should the Council happen to meet within the limits of his jurisdiction. This

Councillorships are Crown appointments.

Selection rests with the Secretary of State.

Orders run in the name of the Governor-General in Council.

Viceroy can act independently of the Council.

last rule has now been abrogated under the Act of 1919. Ever since the year 1909, Indian gentlemen in gradually increasing numbers have been associated with the Viceroy in the Council. There is no statutory rule as to which of the six Councillorships (except the Army) should go to them, or for that matter, to anybody. The Home and Revenue Departments have invariably had for their Chiefs, members of the Indian Civil Service of ripe and mature experience. Beyond that, not less than three of them shall have been in the service of the Crown in India for at least 10 years, and one a lawyer, a barrister or since 1919, a Vakil of 10 years' standing. The law lays down no other qualification for membership. In practice we have got now three non-service men in the council, of whom two are Indians, and one an European, in charge of the departments of Education, Health and Land, Law and Finance respectively.

Provincial Governors no longer members of the Governor-General's executive Council when the Council meets in their respective territories.

Qualifications of members.

The new department of Commerce and Railways not infrequently make excursions into regions of experts outside the Indian Services as a recruiting ground for its chief. The Legislative Department has always had a lawyer at its head. Each of these departments has a Secretary of its own styled, "Secretary to the Government of India, Department of etc." whose function is to carry on the ordinary business of the department. Important matters are reserved for the decision either of the member in charge, or of the Council, in case of difference of opinion between the Secretary and the Member. The Secretary has moreover, certain definite rights of access to the Viceroy direct, and over the shoulders of the Member. An order in Council is issued by the Secretary to whose department the matter relates.

Secretary for each Department.

Secretary has direct access to the Viceroy over the heads of member-in-charge.

For legislative purposes the Governor-General's Council was expanded in the year 1909, into a Legislative Council of official, and either nominated or elected non-official members, who, until recently had been all selected. In pursuance however, of the policy enclosed in the momentous announcement of the 20th of August 1917, the Indian Legislature is now bicameral and is composed of two parts. The upper chamber called the Council of State with 60 members, of whom 33 are elected and 27 nominated is a new introduction in the Indian administrative system. The lower chamber called the Legislative Assembly with 144 members, of whom 103 are elected and

Expansion of the Legislative Council in 1909.

41 nominated has been expanded, so as to constitute the foundation of a Parliament in India. They are elected not as hitherto by electoral colleges, but upon the basis of a franchise considered broad enough for a first instalment towards the goal of Indian enfranchisement.

Representative government and legislative activity.

In countries where the representative element exists in the governmental system, legislative activity is no more than an echo of the wants and needs of the community who entrust their welfare and interest into the hands of their representatives in the legislature. The history of their constitution or legislation is a record of their progressive history. It is an unmistakable index to the growth and development of their national institutions. A history of representative institutions, which includes the history of legislation also, need not concern itself with war or peace, material or moral progress, Commerce, Finance or Education, Hygiene or Sanitation. No more need it concern itself with the various classes of the community, and still less with the general condition of the country. They will all be faithfully reflected in the deliberations and the acts of the assembly convened for the purpose of making laws. Such however, has not been the case in India up till a recent period. Here, unlike in other civilised countries, the whole business of legislation had entirely been in the hands of a small but able body of officials who represented the great Presidencies and provinces comprising British India. As matters stood, by position, education, official and social habits of life they were removed from the people of the country for whom they undertook to legislate. It is maintained that the independent classes were represented but inadequately. The influence the representatives of the independent classes were in a position to exert upon the deliberations of the Indian legislative assemblies was but infinitesimal. Their powers and privileges were circumscribed within very narrow limits. The limitations placed upon the liberty of speech even in the Council Chamber itself were such as to minimise the usefulness of the noble institution which we owe to the British Government in India. Many of these regulations have no more than academic interest now, and are relegated to the back pages of history. They have all been considerably modified, some amended and others eliminated. A large body of new rules have been introduced under the constitutional law obtaining, to suit the spirit of the times and the growing aspirations and fitness of the people for parliamentary institutions. In the Councils there are in addition to officials and representatives of the classes, gentlemen, known as nominees of the government.

Civil Servants not real representatives of the people.

Old rules of the Council no longer obtaining.

The Government of India therefore, consists of the Viceroy and his Executive Council who must always act together. In rare cases only the Viceroy may act on his sole responsibility. As Viceroy, he is the representative of the Crown, as Governor-General, he is the head of the Government of India.

Crown appoints the Viceroy.

The Viceroy is appointed by the King-Emperor on the advice of his ministers, and is usually a British nobleman with experience in administration. He is aided by an Executive Council and by a legislature, as we have seen, of two chambers. In this, as in the case of the Legislative Councils, the British administration has tended more and more towards placing confidence in the people of the country. From the traditions of his own country the British administrator is, and ought to be a firm believer in taking the public into his confidence, for the more they know of the real facts, the more he may rely upon their support.

THE GOVERNMENT OF INDIA

The Government of India is the Supreme authority in India, subject to the Secretary of State, and supervises, within well defined limits, the administration of all the Indian Provinces and Feudatory States to which we will return later on. It has, by delegation, the disposal of all the revenues of India, and until recently, allotted such part of them to each provincial government as it thought fit. Under the new constitution, the adjustment of income and expenditure has been so arranged as to allow the Central Government the exclusive use of certain sources of revenue, and the Provincial Governments the inclusive use of certain others. The business of the Government of India is conducted by the following departments: Foreign, Army, Home, i. e., Civil Service (Justice and Police), Legislative, Revenue and Agriculture, Public Works (Irrigation, Roads and Buildings), Finance, Commerce and Industry, and Education.

ITS DEPARTMENTS

The *Foreign Department*, deals with independent States like Afghanistan and Nepal, and the Political Department through specially appointed Residents or Agents, with the Feudatory States ruled by the Indian Princes, is directly under the Viceroy himself.

The *Army Department* is under the Commander-in-Chief who has hitherto been the Military member of the Council.

The *Legislative* or law-making department is under a legal member who must be a barrister or a pleader of a High Court of standing. This department is under an Indian member.

The *Finance Department* which is concerned with income and expenditure, and the department of Commerce and Industry which includes trade, shipping, mines, factories, excise, customs, salt, post and telegraph, are usually under expert members, sometimes brought out from England. Railways form a separate sub-department of Commerce and Industry under a Railway Board.

The *Department of Industries and Labour* has now come to be placed under an Indian member.

Railways and Commerce form a separate department and the other departments are usually under members of the Civil Service who have special experience of the work in question.

The *Department of Education, Health and Land* is under an Indian member, he having succeeded another.

All questions of an ordinary nature are decided by the Secretary in charge of the department, while important matters are submitted to the member-in-charge. Special questions on which there is a difference of opinion between the member-in-charge and the Secretary of the department, or involving a general policy, are submitted to the Council. Orders of the Council are then issued by the Secretaries in charge. It should be remembered that the Secretaries are Secretaries to the Government and not to the member-in-charge.

Besides the members of Council and Secretaries of departments, there are several other offices, some of them of recent creation. These officers are something like ministerial officers but under one or the other department of the Imperial Government. Their function is generally that of advising the Provincial and Imperial Governments. These officers are the Inspector General of Agriculture, of Forests, of Excise, etc., the Director General of Education, of the Indian Medical Service and of Statistics. The Director General of Post Offices and Telegraphs, the Railway Board, the Central Revenue Board and the Tariff Board exercise authority in their respective departments, either as an advisory or an executive body under the respective departments to which they are directly subordinate.

THE CAPITAL OF INDIA

The seat of the Government of India used to be at Calcutta, moving to the Simla Hills in the hot weather. Now the Capital is Delhi which has been taken out of the Punjab and made into a separate Province under a Chief Commissioner.

CHAPTER III

Provincial Governments

THE PROVINCES

Political divisions of India.

British India is divided into 10 major and 5 minor provinces. The ten major provinces are Madras, Bombay, Bengal, the United Provinces, the Punjab, Burma, Behar and Orissa, the Central Provinces, Assam and the North-West Frontier Provinces. Each of these is administered by its own local government or administration partly under the control of the Government of India.

The five minor provinces are Ajmere, Coorg, the Andamans, British Baluchistan and Delhi. They are governed by officers, called Chief Commissioners, under the control of the Political Department of the Government of India. They are therefore, directly under the orders of the Governor-General. All these political divisions lead into one another in regular chain, the village into the taluka and subdivision into the district, the district into the division, the division into the province and the province into the country.

THE PRESIDENCIES

Administrative arrangements; Presidency Governors appointed in England by the Crown.

Madras, Bombay and Bengal are known as Presidencies. Each Presidency or Province is under a provincial government consisting of a Governor, in the case of the former usually appointed from England direct, and in the case of the latter locally appointed from the Indian Civil Service with an Executive Council in respect of the "reserved" subjects, of four other colleagues of whom two are Indians, and one at least must have been at the time of his appointment, in the service of the Crown for twelve years. As in the case of Members of the Supreme Council, they are appointed by the Crown on the advice of the Secretary of State. The ordinary business of Government is distributed between the Members. The Governor can overrule his Council though, usually, the view of the majority prevails. This is one part of the Executive. The other part of the Executive consists of the Governor and Ministers and deals with the "transferred" subjects. As a general rule, the Executive deliberates as a whole. Yet there are occasions when the

Power of the Governor to overrule his executive councillors who are appointed by the Crown.

Governor would prefer to discuss a particular question with that part of the Government which is directly responsible for it. At the time of his appointment the Governor, whether appointed in England or in India receives from His Majesty the King Emperor certain imperative instructions for his guidance as such. The most important are that he must maintain a high standard of efficiency in the administration and encourage religious toleration, co-operation and good-will among classes and creeds. He must have proper regard for the financial solvency of his government and promote measures for the moral, social and industrial welfare of the people. He must encourage them in every way to fit themselves to take their due share in the public life and the government of the country. The instructions enjoin upon him the duty of holding joint deliberations of his Councillors and Ministers. This is a most salutary instruction the object of which is to make the experience of the Councillors available to the Ministers and the knowledge of the Ministers as to the wishes of the people available to his official advisers, the Councillors. He must have respect for the opinion of the Council as expressed through the Ministers. He is specially required to take every legitimate measure for the maintenance of the safety and tranquillity of the province and to protect the interest of the minority therein. The strongest power however, in the hands of the Governor is his power to "certify" measures even if they should not be approved by the Legislative Council. But here also there is a restriction upon the exercise of the power. It is applicable to measures relating to the reserved subjects, that is to say, in respect of those for which he is responsible to the Government of India and to Parliament. It is not applicable to transferred subjects in charge of Ministers. It is sparingly used.

Instructions to the Governor.

Councillors and Ministers helpful to each other.

Power to "certify".

Certificate applies to reserved subjects only.

THE MINISTERS

The Governor is required to nominate from among the elected members of the Legislative Council two or three ministers. These ministers conduct public business relating to Education, Agriculture and other transferred subjects just as the members of the Executive Council do with respect to business connected with the reserved subjects. Only the ministers must convince the Council that the management of their departments is wise and for the greatest good of the greatest number. If they do not succeed in doing this, the Legislative Council may refuse to sanction

Requirement of Ministers.

Responsibility of Ministers.

the expenditure of the money which the Minister needs for the conduct of the business in his charge. The Council may moreover, refuse to vote his salary. The Council may also censure him.

Tenure of office of Ministers.

It is needless to point out that the Ministers hold office during pleasure of the Governor. In theory, each one of them is responsible to the Council and retains office only so long as he enjoys their confidence. The members of the Executive Council however, in charge of reserved subjects are placed in a more fortunate position for, they hold office for five years no matter what the opinion of the Council of their work may be. They are therefore, independent of the Council, though the tendency of the Council has been to bring them under control and criticism, as much as the Ministers themselves. This with a view to influence them to shape their administrative policy according to the will of the people.

Executive councillors better placed than Ministers.

The system of government we have described is known as Dyarchy which we shall consider more in detail hereafter.

THE PROVINCE

Provincial Governors are men of Indian experience and service men as a rule.

The other major provinces, the United Provinces, the Punjab, Behar and Orissa, Burma, the Central Provinces, Assam and the North-West Frontier Provinces are also governed by Governors who are appointed as the Presidency Governors are, but on the advice of the Viceroy. In all other respects the frame of the government in the provinces is similar to that in the Presidencies. The provinces and the Presidencies are generally termed the "Governor's Provinces".

THE PROVINCIAL LEGISLATURE

In each of the Governors' Provinces an enlarged Legislative Council has been established. They differ in size and composition from province to province. A substantial majority of the members of the Legislative Councils are elected by direct election on a broad franchise which is all important. It is the arch upon which the edifice of self-government must be raised. Thus in Bengal we have 113 elected members against 26 nominated by the Governor. In Madras they are 98 against 29, in Bombay they are 86 against 25, in the United Provinces they are 100 against 23, in the Punjab they are 71 against 22, in Behar and Orissa they are 76 against 27, in the Central Provinces they are 54 against 16, in Assam they are 39 against 14 and in the North-West Frontier Provinces they are 28 against 12.

Size of the Provincial Councils.

THE ELECTORATE

Hitherto it had been the privilege of the rich and the highly educated to vote at elections for the Council. The Act of 1919, has enfranchised a very large number of people of sound common sense and perfect business instincts. The franchise has been so arranged that many small ryots and many other people with but little property now have a vote. Thus the members of the new Legislative Councils are able to speak for a larger proportion of their own fellow men than their predecessors in the Council did before 1921.

Enlarged electorate.

THE "TRANSFERRED" SUBJECTS

It has been decided that in managing certain kinds of business the provincial Government shall no longer be required to act according to the wishes of the Government of India. Instead, the Government will be required, in managing these matters, to satisfy the new Legislative Council. These matters which are managed according to the wish of the Legislative Council are called "transferred subjects". They include Education, Agriculture, Sanitation, District, Local and Taluka Boards and Municipalities and other important matters. Thus in these, which are under the control of the Ministers, the Government must satisfy the Legislative Council and not the Government of India that they are wisely managing the affairs of the province.

Liberty of action in the conduct of business in relation to transferred subjects.

THE "RESERVED" SUBJECTS

All other subjects and departments of administration which are not controlled by the Ministers are called reserved subjects in charge of Members of the Executive Council. As of old, these are under the control of the Government of India, though the composition of the Legislative Council leaves its members enough opportunities to influence their management according to the will of the representatives of the people.

Reserved departments responsible to the Government of India.

THE MINOR PROVINCES

The minor provinces are governed by either Lieutenant Governors or Chief Commissioners. Both are appointed by the Viceroy but the appointment of the former is subject to the approval of the Crown. They are always promoted from the Indian Civil Service. It may, however be noted that no Lieutenant Governor under the new constitutional arrangement has hitherto been appointed.

THE PROVINCIAL SECRETARIATES

The heads of Governments, whether a Governor, or Lieutenant-Governor, or a Chief Commissioner, are usually assisted by five Secretaries, of whom three are Civil Secretaries and two Public Works Secretaries. The Civil Secretaries are the Chief Secretary, the Revenue Secretary, and Financial and Municipal Secretary. One of the Public Works Secretaries is in charge of Roads and Buildings, the other in charge of Irrigation and Railways. Except in the case of the Public Works, the Secretaries are drawn from the Civil Service. To each department may now be attached an Under Secretary selected from the elected members of the Council. He should assist his departmental minister or member as the case may be, and represent him and the department to which he belongs in the Legislative Council. This provision in the Act however, has not hitherto been taken advantage of.

The Secretariate arrangement.

The unit of administration everywhere is the district. We have more than 350 districts in British India. The average area of a district is about 4,500 square miles and population about 2,50,00. They vary greatly in size and population. The largest in area are in Madras and Burma and the smallest in the United Provinces.

Administrative unit.

Each district is under a Collector who is also the Magistrate. In some parts of the country this official is styled Deputy Commissioner. He is the local representative of the Government in its general dealings with the people. As collector he is responsible for the collection of revenue; he regulates the relations between the Government and the agricultural classes, who form nearly two-thirds of the total population, and settles disputes between landlords and tenants.

The Collector-Magistrate and his duties.

The Collector has to keep a careful watch over the general condition of the District. In times of famine or agricultural distress, relief and other remedial measures are under his care. It is his duty to guide and control the working of municipalities. Until recently over some of the more important ones he was the presiding officer.

In his other capacity he is called the District Magistrate, and as such, is responsible for the peace of the District. He has a general supervision over the local police. He also controls the subordinate Criminal Courts and conducts a portion of the original and appellate criminal work.

The District Magistrate; his duties as magistrate.

Each district is split up into a number of subdivisions. They are in charge of subdivisional officers called Deputy Collectors and Magistrates, who are usually members of the Provincial Service, and in important

The Subdivision. Deputy Collector-Magistrate.

subdivisions junior members of the Indian Civil Service. The functions of the subdivisional officer in his subdivision are practically those of the Collector in the District.

The Divisional charge, Commissioner of the division.

In all the major provinces, except Madras, districts are grouped together into divisions under a Divisional Commissioner. He has the general supervision of work in these districts and is a Court of appeal in revenue cases.

The Board of Revenue.

The intermediate authority between the commissioners and the Local Government, in revenue matters is the Board of Revenue. Bombay has no Board, and of the major provinces, the Punjab and Central Provinces have their Financial Commissioners who perform the functions of the Board.

CHAPTER IV

Feudatory States

BRITISH POLICY TOWARDS FEUDATORY STATES

Nothing can be worthier of its best traditions than the policy pursued by Great Britain in the case of the Feudatory States governed by Indian Princes belonging to the old ruling Houses. The words of the Royal Proclamation are:—

The Queen's Proclamation of 1858.

"We hereby announce to the Native Princes of India that all Treaties and Engagements made with them by or under the authority of the Honourable East India Company are by Us accepted, and will be scrupulously maintained; and We look for the like observance on their part.

"We desire no extension of Our present territorial Possessions and while We will permit no aggression upon Our Dominions or Our Rights, to be attempted with impunity, We shall sanction no encroachment upon those of others.

"We shall respect the Rights, Dignity, and Honour of Native Princes as Our Own; and We desire that they as well as Our Own subjects, should enjoy that Prosperity and social Advancement which can only be secured by internal Peace and good Government."

The policy actually followed, however, has been even more liberal, for, not long afterwards, Mysore was voluntarily restored to its old ruling house without the pressure of any agitation, after it had been under British rule for 50 years. And, again, more recently, in the year 1908, the Maharaja of Benares was granted the rights and privileges of a Feudatory Chief over his extensive possessions. Where the British Government has had to interfere in the internal affairs of any Feudatory State, it has always done so with the object of correcting abuses or improving its solvency.

Rendition of Mysore and of Benares.

It is a circumstance on which Indians may congratulate themselves, that this policy has been well justified by results, and many of these states are now organised and equipped in accordance with the most up-to-date standard. They have produced, or given scope for the display of a high order of statesmanship on the part of those of our countrymen who have acted as Ministers.

Success of British Policy.

Hyderabad under the Nizam has maintained its own Postal System and Currency and State Insurance for its officials; Art and Industry have been stimulated by State patronage; and no difference is made between its subjects of different religions. Mysore has developed Engineering and Agricultural enterprises, and the co-operative combination of its people, in an admirable manner. Baroda is well known for its liberal institutions and free education, so that, it may truly be said that the Gaikwar of Baroda is a ruler whose views of social and educational reforms, are far more advanced than those of any public man in India. The enlightened policy of His Highness has now perfected and advanced an orderly system of administration. The credit of building up the institutions which his people want belongs mainly to the ruler himself. The Maharajas of Bikanir and Patiala had the honour of taking part, on behalf of India, in the Imperial War Conferences held sometime ago in London; and to the Maharaja of Alwar and the Maharao of Cutch belongs the credit of having represented us in the Imperial Conferences held there year after year.

Some Progressive States.

The Feudatory States in India can do many things which the British Government cannot. Some of them have already fostered in their people instincts of Self-government. In Industrial enterprises they may go far ahead of the British if they choose, and provide object lessons for the people of British territories, as the British Government is not in a position to co-operate with Indians in semi-commercial enterprises. Social reforms can always be brought about by them, for, unlike the British Government they are not apt to be suspected of harbouring a desire to subvert the peoples' religious beliefs. They can always be sure of the sympathy of the people, for the Ruler of the State is one of them. The Feudatory States are eagerly watched by the Indian people, for they have a great race to run. And it is becoming more and more clear that the Feudatory States have a glorious part to play in the political future of India.

Their special Facilities.

On the other hand we have British India advancing politically in rapid strides and in view of the rising tide of constitutionalism—sweeping over the whole of British India, there is the spectacle of the Ruling Princes of India desiring to rise to the occasion. They are desirous of admitting their loyal subjects to their birthright of personal liberty, and good and progressive government. There are at the present day Rulers of Indian States, who, in culture, breadth of vision and sane and wise political outlook are quite the equals of any administrator to be found in British India. The policy of non-interference

Progress in the States.

with the internal affairs of the Indian States, to which the British Government stand pledged, is the reason which has impelled and encouraged the Rulers to march along with the times. Signs are not wanting. They are visible to those who keep themselves abreast of the improvements, reforms and developments that are daily taking place in the various States of India. They do not stand to-day where their fathers had left them. There is abundant evidence of the strong desire on the part of the Princes of India, in their wisdom, to accelerate the time when they can feel it. It is the desire of the Princes to say with pride that they rule over a people who are brave, intelligent, educated and resourceful, and, above all chivalrous, and not those who are lifeless and listless. They know that if their people are happy and contented and prosperous they will send more to the coffers of the State. The ever-increasing faith in the Rulers, one notices in the subjects of the States, may be said to be the result of due regard on their part to the true interest of the governed. It is fostered among the Ruling Princes by the British policy of progressive rule in British India. Genuine representative institutions may have been absent in them, but there has been no lack, except in a few notable instances, of a consistent policy in the administration of justice, organisation of education, assessment of taxes and control of the press. Princes of our own day are determined not to show any lack of appreciation of the suggestions that have often been made from various quarters, responsible and authoritative, that in order to bring their administrations up to a high state of efficiency, they should follow in the wake of their more enlightened brothers, and take effective steps, *inter alia*, for the spread of education, the opening up of new industries, the overhauling of their administrative machinery, and greater co-operation between their government and the people. In their achievement of these lies the strength of their demand from the British Government of concession for greater autonomy in their internal administration. If some of them have got it, it is because they have deserved it and have won it. Our Princes fully appreciate that one of the potent causes of the prosperity of trade, commerce and industry is the bringing their executive, judicial and legislative administration, into line with what obtains in British India. Confidence in the sense of fairness, justice and equity of State administration, both judicial and administrative, should have to be inspired. History does not bear testimony to one solitary instance of the prosperity, due to growth of trade, commerce and industry, of a State where the executive is not above reproach and the judiciary does not command the highest respect. An eager desire therefore, on the part of our Princes to move along with the times is noticeable.

The British Government cannot and does not desire to resile from the position it created for itself on the 20th of August, 1917. It means to gradually realise the principles enunciated in that famous announcement. It is true that a more generous declaration has never in the history of nations been made by any ruling power towards a subject people.

Montagu announcement of 1917.

Paramount Power, whether in political law or in constitutional law, means nothing more or less than the King in Parliament—The king as the creator of the Government of India, be it of the Dominion type or of the present type. The constitutional law of England does not recognise any power more paramount than the King in Parliament. The fundamental legal principle is that the sanctioning authority is also the "controlling" authority. Any government therefore, established in British India, even if it should be of the Dominion type, by Parliament with the sanction of the Crown cannot escape the "control" of the self-same Parliament. To be more accurate, of the King in Parliament. So long as the British connection is maintained with British India any government that may be constituted with and under the authority of the King and Parliament, would clearly be the King's Government. It must be presumed to be such, as much as the present Government of India. The Canadian Government is no other than the King's Government in Canada, as much as the Government of Australia or of New Zealand or of South Africa. A study of the various forms of the oath of allegiance in the different self-governing Dominions will convince anybody that it is the King's Government that prevails there, and no other. The Oath in South Africa is as follows:—"I do swear that I will be faithful and bear true allegiance to His Majesty the King, His heirs and successors according to the law, so help me God," while in Canada it is, "I do swear that I will be faithful and bear true allegiance to His Majesty." Even in the latest of the free governments, the Irish Free State, the Oath is to "bear true faith and allegiance to the constitution of the Irish Free State and to be faithful to His Majesty King George V, His heirs and successors by law, in virtue of the common citizenship of Ireland and Great Britain and her adherence to and membership of the group of nations forming the British Commonwealth of Nations." Compared to these the Oath in India, "to be faithful and bear true allegiance to His Majesty the King, Emperor of India, His heirs and successors" will be found to be equally comprehensive and differing in no point or import from

Supreme power is the King in Parliament.

In Canada and Australia, New Zealand and South Africa the control is that of the King in Parliament.

Also in the Irish Free State.

Control ascertainable from the oath of allegiance.

those of the self-governing Dominions. It is difficult, therefore, to see what constitutional objection could there be to allow a new government framed on the Dominion model stepping into the rights and obligations of the present Government of India. The present Government of India with all its catholic and beneficent outlook as illustrated in the Queen's Proclamation, stepped into those of the illiberal and personal government of the East India Company in 1857. Constitutionally, it would be the same Government of India, only founded upon a different model anticipated in the declaration of the 20th of August, 1917.

CHAPTER V

The Legislatures

We have seen what the Governor-General's Executive Council is. Another part of the government which, until 1920, aided him in the administration of India was the Indian Legislative Council. It was also known as the Supreme Legislative Council. Its functions were chiefly legislative, but it had power to ask questions of government on matters affecting public interest and to discuss them. Under the Act of 1909, this Council consisted of the members of the Viceroy's Executive Council, and sixty other members, called 'additional members' of whom 27 were elected, either directly or indirectly, and 33 nominated by the Governor-General himself. Under the Government of India Act of 1919, there has been a complete revision of the composition of the Indian Legislative Council, along with an enlargement of its size. Under the new arrangement the Indian legislature is bicameral, that is to say, it is composed of two chambers: the Council of State and the Legislative Assembly.

The Legislative Council.

Under the new arrangement a second chamber known as the Council of State, with a total membership of 60, of whom not more than 20 may be officials, nominated by the Governor-General, has been created. The object is to make assent by both bodies, namely, the Council of State and the Legislative Assembly the normal condition of legislation. The Council of State is meant to be a revising chamber and possesses a senatorial character. The qualifications of candidates for election are so framed as to secure men of the status and position worthy of the dignity of a revising chamber. It is elected for a term of 5 years.

The Council of State.

The size of the Legislative Council of old has been increased to 140 members, and the name changed to the Legislative Assembly. It is more truly a representative body in that as many as one hundred of its members are elected not by delegates but by direct franchise. Subject to the authority of Parliament, which still remains the supreme legislative authority for India, as for the rest of the Empire the legislative power of the Assembly is unlimited. It can discuss the budget, but a vote upon it is not in all cases binding upon the Government, if the Governor-General in Council should be prepared to 'certify' that the money or the grant is essential. The Legislative Assembly is elected for a term of three years, but like the Council of State may be dis-

The Legislative Assembly.

solved by the Governor-General at any time just as the King may dissolve Parliament at his pleasure.

The genesis of a legislative measure in India is described as follows: "A member of the Council conceives an idea. Perhaps it is suggested to him by some official in high position, in one of the minor Provinces; perhaps it is developed from the depths of his inner consciousness. At any rate, he turns it over in his thoughts, and convinces himself that such and such measure is required. He discusses it, perhaps with a colleague; and after the scheme has simmered a little in his mind, he applies for leave to bring in a bill, having given three days' notice to the Secretary. If the motion be carried in the affirmative, the member sends the bill to the Secretary, with a full statement of objects and reasons, and any other paper which he considers necessary. The draft bill is then printed with the statement of objects and reasons and a copy forwarded to each member. A translation of it is also made into the vernacular, for the use of members who cannot read English. After fourteen days have elapsed the bill may be introduced; and on that day, or any subsequent day to which the discussion may be postponed, the principle of the bill, and its general provisions may be discussed. If the Council so decide, the bill is referred to a select Committee for report, and, together with the statement of objects and reasons, is published, in the English and vernaculars, in the official Gazette."

Origin of legislative measures in India.

The structure of the legislative Councils, as they were constituted before 1920, was based upon the Indian Councils Act, of 1909. The passage of that Act will ever be associated with the name of Lord Morley of Blackburn better known perhaps as "John Morley." The Act of 1861 gave five ordinary members to the Viceroy's Executive Council. The Commander-in-Chief, if appointed, was to be an extraordinary member along with the Head of the administration of the Presidency where the Council may or should at the time be sitting. A Lieutenant-Governor of a Province or the Chief Commissioner of an administration was regarded as no more than an "additional councillor" should the Council be meeting within his jurisdiction. They had no position in the Executive Council of the Viceroy under any circumstances. The Act gave to the Council moreover, twelve additional members of whom six must have been non-officials. Be it remembered, that the Act of 1861, which for the time admitted the Law Member of the Viceroy's Council into its executive deliberations was in modification of that of 1854. The "Legislative Councillors" including the Chief Justice and another Judge of the Supreme Court of Calcutta were then

Morley-Minto Reforms.

Early Reforms.

appointed by the Government of India to assist in legislating, for the whole country. The judicial element was ousted by the Act of 1861. Since then, legislation in this country has gone on without the assistance of the courts except as consultants, in matters relating to the existing law of the country. In 1908 Mr. Gokhale described the Morley-Minto changes as modifying the bureaucratic character of the Government. He thought they offered the elected members responsible association with the administration. He looked to local self-government to provide the real school for political education. He referred to the everyday problems of administration, legislation and finance, as constituting the centre of the position. In respect of these, he believed that the reforms would amount almost to a revolution. In place of silent administrative decision there would be open discussion. The control of the government of India over finance would be largely substituted control by means of discussion in the Councils. Such concessions were large and generous and imposed responsibilities in their turn. The Morley-Minto councils gave the Indian members a power of challenge and obstruction without responsibility. That structure did not admit of development to suit the growing political aspirations and consciousness of the people. All that could be done with it was to increase the popular element, and thereby deprive those responsible for the government of the power of obtaining necessary legislation. Faced with such a problem His Majesty's Government resolved to create a new structure which would be in consonance with the announcement of August 1917. We have noticed already what has been done to realize that determination in the Central Government. The changes introduced in the constitution of the provincial governments are more revolutionary than was claimed for Morley-Minto reforms by no less a person than Mr. Gokhale. The revolutionary character of the changes brought about by the Government of India Act of 1919 will be fully appreciated when we examine how, from an autocratic aspect of the constitution, the provinces came to be transformed into partly self-governing administrations. Each province now consists of a Governor. In the case of Bengal, Bombay and Madras, he is appointed direct from England. In the case of others he is appointed on the nomination of the Governor-General. Each has an Executive Council of not more than four members, half of whom are Indians. One of these at least at the time of his appointment must have been in the service of the Crown for twelve years. With the assistance of the Executive Council the Governor manages what are called the "Reserved Departments," such as Finance, Law and Order etc. There are others called the

Mr. Gokhale's description of Morley-Minto reforms.

Montagu Reforms revolutionary in character compared to earlier reforms.

"Transferred subjects" which are in charge of Ministers whose acquaintance we have made in an earlier chapter. As in the case of members of the old Council, the members of the Executive Council are appointed by the Crown on the advice of the Secretary of State while the Ministers are appointed from amongst the elected members of the Legislative Council. The ordinary business of Government is distributed between the members of the Executive Council and the Ministers, the Governor having the power, in certain events to overrule them. Usually however, the view of the majority prevails. As a rule the executive body composed of members of council and ministers are to deliberate as a whole, but there may be occasions when the Governor would prefer to discuss a particular question with that part of the Government which is directly responsible for it. To the ministers are assigned certain branches of public administration for the proper carrying out of which they stand responsible, in a parliamentary sense, to the Legislative Council of which they are elected members.

Description of reforms in the executive under the Montagu scheme.

Joint deliberation of the executive—the Councillors and the Ministers, is the rule.

Equally important changes have been brought on the legislative side in the size and composition of the councils. The provincial legislatures are designated Legislative Councils. They differ from province to province, and a substantial majority of members are elected by direct election on a broad franchise. It is the arch upon which the edifice of self-government in every civilised country having a constitutional government, is and must be raised. Thus in Bengal we have 113 elected members against 36 nominated by the Governor, in Madras they are 98 against 29, in Bombay they are 86 against 25, in the United Provinces they are 100 against 23, in the Punjab they are 71 against 22, in Behar and Orissa they are 76 against 27, in the Central Provinces 54 against 16, in Assam 39 against 14, and in the North-West Frontier Provinces they are 28 against 12. These members are representatives of and responsible to a much larger proportion of their fellow countrymen most of whom are small ryots and other citizens, with but little property qualification than their predecessors in the old Councils were. As of old, the Governor under the law is responsible to the Government of India and ultimately to Parliament, for the administration of the reserved side of his Government. His Ministers are responsible to their respective Councils for the transferred side. But the strongest weapon which the Governor-General can wield against his legislature and the provincial Governor against his, in

Size and composition of the provincial legislatures.

Responsibility of the Provincial Government to the Government of India and Parliament.

respect of reserved matters only, is not applicable to matters relating to "transferred" subjects at all. It is what is known as the "certificate" procedure in emergent cases only. But if these are drastic changes, they point to the signs of the time. Because England took six hundred years to reach her present form of government it would be hard to conclude that Eastern races under England's guidance could not assimilate it sooner. Athens started and perfected her governmental system in a generation, while France, mistress of her own fate did it in six months. Once the ground is explored and rails laid down the wanderer can travel with the speed of the flying Dutchman. Many centuries elapsed before Newton discovered the Law of Gravity. Every schoolboy now learns it without much difficulty. As in Physics so in Constitutional Politics. "When a Positive State," we are told by Comte, "is definitely established in any single centre, its extension to the race requires in no case a repetition of the phases proper to the primary movement."

The "certificate" rule.

The nominees of the Government are invariably either officials, or retired officials of the Government, or gentlemen of rank and position, or commercial people. They are essentially men of strong common sense and practical ability and experience. The gentleman in charge of a bill is often a member of the Indian Civil Service. The gentleman who drafts the bill is also a civilian.

The nominated members.

Generally speaking the legislative councils in India, except as a matter of concession in a specified number of cases, are without any executive powers or responsibilities. Occasionally they might make excursions into the regions of the executive composed entirely of members of the Indian Civil Service. It therefore, becomes necessary for the Government to have in the "House" supporters numerically strong to weaken, if not actually to withstand, a troublesome and strenuous opposition. Such in short is the composition and function of our Councils into the various details of which we need not enter.

Legislative Councils have no executive powers.

COUNCIL GOVERNMENT SOUL OF INDIAN ADMINISTRATION

And the existence of a council has been held to be vital throughout our history, whether of our own times or of the days of our forefathers. Kautilya says, "Kingship is possible only with assistance. A single wheel cannot move,—hence he shall employ ministers and have their opinion." Opinions, however, have varied on the best number of Councillors. The school of

The Hindu Ideal.

Manu says twelve, of Brihaspati sixteen, or Ushanas twenty, but the latest political philosopher of India, Kautilya, concludes in favour "of as many members as the needs of the dominion require." The final decision rested nominally with the King, who sent his order in writing to the officials, but the order bore his seal, without which it was not valid. "It was the signet which was the King, and not the personal King," says Panchatantra. It further records that the seals of the departmental ministers were also necessary and that "the Royal order was thus the order of the Ministers."

Details given in Sukraniti.

The Sukraniti gives the following details: The King, seeing and studying the document, should place his handwriting wherever he likes. The Mantri, the Chief Justice, the Learned Adviser as well as the Ambassador should write, "This document has been written with my consent." The Amatya should write, "Well-written is this." The Sumantra then should write, "Well-considered." The Pradhana should write, "True". The Pratinidhi is to write, "It can now be approved." The Crown Prince should write, "It should be accepted." And finally the priest is to write, "Approved." They should put down their seals over it at the end of their writing. And the King is to write and sign, "Accepted". As it is not possible for the King to see fully all details owing to the pressure of work (multiplicity of duties), the documents are generally to be examined by the Crown Prince and other advisers, who are to write upon it and affix their seals. And the King should at once write, "Seen."

CHAPTER VI

Principle of Hindu Polity

It is a law and fixed principle of Hindu Polity that the King cannot act without the approval and co-operation of the Council of Ministers. The law-sutras, the law books, the political treatises are unanimous on the point. Even in the edicts of Asoka, the highest type of a Hindu despot, we find the Parishat, the Mantri-parishat mentioned as a body and probably as opposing the King. Edicts addressed to royal princes as governors of provinces are addressed to the Prince-and-his-Ministers. All the grants published in Ceylonese inscriptions are made by His Majesty and his Council of Ministers. When King Dasaratha died (according to the view prevalent in the first century B. C.), the Ministers are said to have held a Council and decided that some one of the Ikshakus must be appointed King immediately. Instances of Kings following wise counsel of their ministers are numerous. Radhagupta closed the treasury to Asoka when he wanted to squander away public money on Buddhist monasteries in his senility. Rudradaman in his inscription states that his council and ministers of public works opposed the proposed repairing of the Sudarshana lake at Girnar, whereupon he had it repaired out of his private purse. Such interesting instances could be multiplied *ad infinitum*.

Council of ministers or Mantri-Parishat.

ENGLISH CONSTITUTION STILL GROWING

The Sepoy Revolt of 1857 was at once a resting place and a fresh starting point in the history of the development of the Indian Constitution. It is still in the making, and so is the English, with only this difference that, while here our constitution is being made or expanded by Parliament according as our demand is insistent, there they are perfecting their constitution which had progressed far enough to make the Revolution of 1688 possible. That is a fresh point of departure in the history of the English Constitution. The Magna Charta was already there. The Petition of Right was there. The Habeas Corpus also was there. The three formed the Constitutional Code when England started upon her career of Revolution because Sovereign after Sovereign had shown an unconquerable disposition to regard them as dead letters. Matters would not be smoothed until England was permitted to claim her rights and liberties which her kings had infringed. The claim was

Bulwarks of the English Constitution.

made in the Declaration of Rights without whose acceptance in its entirety as embodied in the Bill of Rights (1689), neither William nor Mary would have had the chance of putting on the Crown, destined to be mightier than ever adorned the head of a Roman Caesar. Scarcely has any addition of equal importance been made to those Constitutional Charters, unless it be that the Act of Settlement is one by legislative action. The Reform Acts of 1832, of 1867, and of 1884 are in their nature amendments of the machinery of the Constitution to suit modern conditions. The franchise in England now rests upon the Representation of the People Act of 1918, said to be a comprehensive statute which repeals in whole or in part a hundred other earlier statutes, beginning with the reign of Henry VI. In other words it is a consolidating Act. They pretend to do no more than supply defects, and rectify abuses where they existed, but made no alterations in the Constitutional principles which are the pride of England and upon which she will stake her existence. A similar history could not be repeated in India where, with the awakening of the people, an organism born practically in 1773, was gaining life and periodically gaining vigour, through Legislative enactments, beginning with the Government of India Act of 1858, and ending with that of 1919, form the landmarks upon which the Constitution of India is based.

POLITICAL INSTITUTIONS OUGHT TO BE REGIONAL PRODUCTS

Even if political institutions were taken to be accidental by-products of history, they could not be imported wholesale from abroad. In truth, they are regional products. The true test of a people's self-governing capacity is their capacity for fresh institutional construction from within, in response to the forces of the given region and environment. The Legislative Councils in India are designed to be a regional product, such as the one with which we, in British India, started upon our career of Council Government under England's auspices in 1861. Under the present forms of representation they serve informally and rudimentarily the purposes of a referendum and an initiative, more especially where constitutional developments and implications have to be kept in view. It may be pointed out that the peculiar and significant characters of this regional type,—viz., a referendum limited to general principles, and the form of representation through a body emerging from the people, adapt the institution to Indian conditions. They assimilate the Indian tradition of Panchayats and Graminas (village elders). They also obviate the objections, theoretical as well as practical, which may be urged against the referendum in its ordinary form. Besides, as will be presently seen, this is more in

consonance with the requirements of law-making and its component process in any modern State. The members of the Council, emerging as they do from the body of the people, should bring mandates regarding the people's wants, desires and grievances. They should make their own recommendations about the general trend of legislation, of taxation as well as of administration, as referred to them. They will thus serve, however informally and rudimentarily, the two important ends of initiation and reference. Such a body must be the epitome of the people, and its *raison d'etre* requires that at the commencement it should be comprehensive but not large. It should have the character of a conference of selected delegates, sober, well-meaning and level-headed, of the entire people of the State. While the Executive Council on the other hand should have a different end, and therefore, a different composition. It ought to shape and formulate legislative measures to secure the well-being of the people, by ways and means acceptable to the representatives of the people. Such a body must be composed of persons who have a large outlook, who can understand the theory and art of government,—who have some habitude and experience of public affairs, or have served the country under different forms of government. It ought to be, not an epitome of the people, but a committee embodying their collective wisdom and virtue. The Indian scheme should be so mapped out as to meet the regional requirements of the country. It may be adopted with slight necessary modifications according to the prevailing conditions and environments of each province or presidency.

CHAPTER VII

Comparison between the Old and New Order of Things

Everybody knows that under the new arrangement Governments in India are differently constituted. What is the difference between the new arrangement and the old? What new powers and responsibilities have been given to the people of the different provinces, the people of the country?

Under the old order of things the Governors in the case of Presidencies and Lieutenant Governors in the case of provinces, including the Presidency of Bengal had the management of affairs of the territories within their jurisdiction. In some, as in Bengal, Bombay, Madras, United Provinces and Behar and Orissa, they were assisted by an Executive Council composed of officials and not more than one non-official. The Governor was required to satisfy the Government of India that he was conducting the affairs of his charge wisely. Under the old system there was a Legislative Council (the number of members varied in different provinces) of official and non-official members of whom the former with those nominated by the Governor himself formed the majority. The number of the elected were always in a minority.

Conditions under the old order of things.

These Councils had some power. No new Law could be passed without their consent. Members of the Councils could obtain information as to the policy of the Government by asking questions. They could also acquaint the Government with the wishes of the people by moving and passing resolutions. But there were two principal reasons why it was decided to make the new arrangement which obtains now. In the first place the Government was not bound to follow the advice of the Legislative Council. It was responsible to the Government of India and therefore, was bound to follow their instructions. If the advice of the Legislative Council happened to agree with the instructions of the Government of India well and good. If not it could be neglected. In the second place we must remember that more than half the members of the Legislative Council were officials, or men nominated by the Government, and that the rest were persons elected by the votes of a limited number of men—important persons in the country, such as big landholders, large income-tax payers and so forth. This was a most unsatisfactory state of affairs and it was therefore urged, that more members should be elected and many more people should have a voice in the election.

In the scheme under which we live the most important points are these. First, the great majority of the members of the Legislative Council are elected. There are a vastly larger number of members in the new Legislative Council, and of these the majority are elected. Further, it is not only the rich men and those who have academic qualifications who are allowed to vote at an election. Many small ryots and many other people with but little property are entitled to vote at an election. Thus, the members of the Legislative Council are enabled to speak for a larger proportion of the people of the province.

Conditions under the new order of things.

The second important point is this. It is now a fixed rule that in managing certain classes of business the Government is no longer required to act according to the wishes of the Government of India. Instead, the Government is required to manage these matters to the satisfaction of the Legislative Council. The matters which are managed according to the wish of the Legislative Council are called transferred subjects. They include, Education, Agriculture, District and Local Boards and Municipalities and other important matters. Thus in these matters the Government must satisfy the Legislative Council and not the Government of India, that they are being properly managed. And for this purpose the arrangements made are these. His Excellency the Governor nominates from among the *elected* members of the Legislative Council two or three Ministers. These Ministers conduct the business, as we have just observed, relating to Education, Agriculture and the other transferred subjects just as the members of the Executive Council did under the old order of things. They must satisfy the Legislative Council that they are conducting the business wisely. If they do not succeed in doing so, the Legislative Council can refuse to sanction the expenditure of money which the Minister needs for the conduct of the business.

There are many other points in which the new arrangement gives new powers and new opportunities to the people of the country. The two most important are those which have been noted above. We will later on detail the subjects which are managed by the Ministers as also who are entitled to vote at elections. Meanwhile, it will be well to remember this. Most of you who read this will be entitled to vote for a member of the Legislative Council. His Excellency the Governor selects Ministers from among the members of the Council, who will be chosen by you. They will have to consider what steps should be taken to improve Agriculture, whether it is possible to set up new schools, whether all parents will be compelled to send their children to schools, what should be taught in the schools, whether

District Boards should be required to make new roads in the villages and whether they should be permitted to levy more cesses to do so. All these and many other important questions the Ministers have to decide. They have to consult with the other members of the Legislative Council and persuade them to agree. If the Ministers do not decide wisely or if the other members of the Legislative Council will not listen to them even if they decide wisely, then the business will be spoilt and the people may suffer. Therefore, if you are entitled to vote for a member of the Legislative Council, it is important that you should vote for a man who is likely to judge such questions wisely and to give his support to a Minister who has made a wise decision. This too should be remembered, that when giving these new powers and responsibilities to the people of India His Majesty the King Emperor promised that further powers and responsibilities will be given if it is found that the people of India do make a wise use of what is already entrusted to them.

CHAPTER VIII

Who Chooses the Members

Who chooses the members of the Legislative Council is a very important question. We will endeavour to answer it as briefly as possible.

Four big officials have seats in the Council. A considerable number, namely those who are selected and *nominated* by the Governor are similarly accommodated. Some among the nominated are chosen to represent the depressed classes and other small minorities. Of those

The Electorate.

who are elected by the people and the communities and interests, the chief are the European mercantile interest, the European small trading interest, the planting interest, and as a community the Europeans, the Anglo-Indians, the Indian Christians, the University graduates, the Hindus and the Mahomedans. Presidency towns have separate representation of their own.

All this is arranged district by district in each province or Presidency. Each one of these districts send two or three members to the Council. We will now consider how are the people enabled to

The election Roll.

choose the members. The officers of the Government in each district prepare a list showing the names of all persons who are allowed to take part in choosing the members of the Legislative Council for that district or any electoral area.

After this list has been prepared, those people who desire to become members of the Legislative Council will make their wish known. They then hold meetings and send notices to the persons

Work on the Roll.

whose names appear on the list. This is what is known as offering as a candidate for election. The officials then give notice that on a certain day those whose names are on the list will be required to choose the members of the Legislative Council. In the meantime, the candidate or candidates who have offered themselves carry on a vigorous campaign, each in his own behalf through friends, relations and other supporters. Those who wish to take part in choosing the members will be required to attend

The polling booth.

on that day at certain places within the electoral area. These places or offices are called polling stations. At the polling station an officer called the polling officer will hand you a piece of paper showing the names of the persons who have offered themselves as candidates for election to the Council.

He will instruct you to make a mark against the name of the persons whom you choose to support to become members of the Legislative Council. This you may call "giving a vote" for those persons. Those persons to whom most votes have been given, or in whose favour the largest number of votes have been recorded will be declared to have been chosen as members of the Council. Arrangements are made in this connection so that you can make your marks in secret. Thereafter, no one will be able to find out to whom you have given your vote. Therefore, when you give your vote you need not be afraid that such and such a person will be angry if you do not vote according to his orders. Unless you tell him, he cannot find out to whom you have given your vote. This is called "ballot voting" which secures the exercise of independent judgment by every voter. Where a voter cannot read and write, the officer at the polling station is required to explain to him how to record his vote for the person to whom he wishes to give it. It will not be necessary for him to tell the officer the name of the person for whom he wishes to vote.

Recording of votes by ballot.

QUALIFICATION OF ELECTORS OR VOTERS

We have stated elsewhere that the persons whose names are entered on the list, will be allowed to record their votes in favour of their candidates. The question then arises who are the persons whose names are entered on the list? We will take the liberty of giving the student a fair idea of the persons whose names ought to be entered in the voter's list without going into unnecessary details.

Roughly speaking it may be said that all Zamindars or landlords, patnidars or lessees who are not landowners and their sublessees, graduates, income tax payers and even small ryots owning or cultivating land assessed at a minimum annual valuation are voters. The minimum valuation differs in various provinces, according as they are more or less rich. And in order to allay the fears of minority communities it has been provided that a certain number of seats must be ear-marked for them, to be voted for by electors belonging to each particular community.

The franchise.

A person is a qualified elector,—

(*a*) for a non-Mahomedan constituency who is neither a Mahomedan nor a European nor an Anglo-Indian; and

(*b*) for a Mahomedan, European or Anglo-Indian constituency according as he is a Mahomedan, European or Anglo-Indian;

If such person possesses the further qualifications chief of which are that he,—

Qualifications of an elector.

(1) has paid, during and in respect of the previous year or, as the case may be, during and in respect of the year preceding that in which the electoral roll is first published under prescribed rules such as that he has paid—

(*a*) municipal taxes or fees of not less than Rs. 3 or if in a cantonment area, municipal or cantonment taxes or fees of not less than Re. 1-8, or

(*b*) road and public works cesses under the Cess Act, of not less than Re. 1, or

(*c*) chaukidari tax under the Village Chaukidari Act, 1870, or union rate under the Village Self-Government Act, 1919, of not less than Rs. 2, or

(*d*) income-tax; or

(2) is a retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces.

A person is a qualified elector for a Presidency town constituency who has a place of residence therein—

(1) during the previous year—

(*i*) was entered in the municipal assessment-book as an assessee.

Residential qualification.

(*a*) the owner and occupier of some land or building in the town separately numbered and valued for assessment purposes at not less than Rs. 150 per annum, or

(*b*) the owner or occupier of some land or building in the town separately numbered and valued for assessment purposes at not less than Rs. 300 per annum:

Be it noted, that the payment of such assessment or consolidated rate for the previous year, or of the Income-tax, and before the preparation of the electoral roll, is a condition precedent to his right to vote.

A retired, pensioned or discharged officer, non-commissioned officer or soldier of His Majesty's regular forces is also a qualified voter.

In an European Constituency however, the elector must have a place of residence in the constituency and must have the qualifications prescribed for an elector of any urban or rural constituency included in the area of such European constituency.

Similarly in the Anglo-Indian constituency one who has a place of residence in the province and has any of the qualifications prescribed for an elector of any urban or rural constituency is a qualified voter.

Provision thereafter is made for joint families. Where property is held or payments are made jointly by the members of a joint family, the family shall be adopted as the unit and the person qualified shall

be the manager of the family provided other requisite qualifications exist.

A person is not qualified as an elector for a general constituency by virtue of any property held or payment made as a trustee, administrator, receiver or guardian or in any other fiduciary capacity.

SPECIAL CONSTITUENCIES

In a special constituency such as that of the landholders a person is qualified as elector who has a place of residence in the constituency and who during the previous year,—

(*a*) has held in his own right as a proprietor one or more estates or shares of estates and paid in respect thereof land-revenue amounting to not less than Rs. 4,500 or road and public works cesses amounting to not less than Rs. 1,125.

A person is qualified as an elector for the University constituency who has a place of residence in the province and is a member of the Senate or an Honorary Fellow of the University, or a graduate of the University of not less than seven years' standing.

(1) Chamber members of the Bengal Chamber of Commerce and permanent members of the Indian Jute Mills Association and of the Indian Tea Association, and of the Indian Mining Associations, are qualified respectively as electors for the constituency comprising the Chamber or Association of which they are such members but they must have places of residence in India.

These in brief form the substratum of constituencies for election to the various legislative Councils. The details no doubt vary according to provinces but the foundation and principles everywhere are the same.

CORRUPT PRACTICES

We will now give the student an idea of what constitute low practices so as to disqualify a voter to be an elector or a candidate to be elected.

In a country such as India where elections on the western model are in their incipient stage and people have not yet got quite accustomed to them lapses occasionally do and must happen. The early history of elections in other countries tell the same story. English history teems with instances of gross practices before the electoral reforms. Our provisions therefore, against such lapses are that a gift, offer or promise by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, of any gratifications to any person whomsoever, with the object, directly or indirectly, of inducing—

(*a*) a person to stand or not to stand as, or to withdraw from being, a candidate, or

(*b*) an elector to vote or refrain from voting at an election, is not permissible any more than a reward to—

(*a*) a person for having so stood or not stood, or for having withdrawn his candidature, or

(*b*) an elector for having voted or refrained from voting.

Next we have the prohibition of any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, by any of the means (*a*) such as violence, injury, restraint or fraud and any threat thereof; (*b*) any threat to a person or inducement to a person to believe that he or any person in whom he is interested will become or be rendered an object of divine displeasure or spiritual censure; with the right of any person to stand or not to stand or to withdraw from standing as a candidate, or with the free exercise of the franchise of an elector is a corrupt practice which will deprive an elector of his vote and a candidate of his right to be elected.

The procuring or abetting or attempting to procure by a candidate or his agent, or by any other person with the connivance of a candidate or his agent, the application by a person for a voting paper in the name of any other person, whether living or dead, or in a fictitious name, or by a person who has voted once at an election for a voting paper in his own name at the same election is regarded to be a low practice.

The publication by a candidate or his agent, or by any other person with the connivance of the candidate or his agent, of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal of any candidate, which statement is reasonably calculated to prejudice such candidate's election is a false statement to deprive him of his vote.

There are some further objections. They are as follows:—

The receipt of, or agreement to receive, any gratification, whether as a motive or a reward,—

(*a*) by a person to stand or not to stand as, or to withdraw from being, a candidate; or

(*b*) by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting or any candidate to withdraw his candidature.

Any payment or promise of payment to any person whomsoever on

account of the conveyance of any elector to or from any place for the purpose of recording his vote.

The hiring, employment, borrowing or using for the purposes of the election of any boat, vehicle or animal usually kept for letting on hire or for the conveyance of passengers by hire:

Provided that any elector may hire any boat, vehicle or animal, or use any boat, vehicle or animal which is his own property, to convey himself to or from the place where the vote is recorded.

The incurring or authorization of expenses by any person other than a candidate, or his election agent, on account of holding any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, unless he is authorized in writing so to do by the candidate.

The hiring, using or letting, as a committee-room, or for the purpose of any meeting to which electors are admitted, of any building, room or other place where intoxicating liquor is sold to the public.

The issuing of any circular, placard or poster having reference to the election which does not bear on its face the name and address of the printer and publisher thereof.

CHAPTER IX

What Business do the Ministers Manage

Elsewhere we have tried to explain what the objects of the new arrangements are, and who are the voters who elect members of the Legislative Council. You will remember that Ministers are chosen by His Excellency the Governor from among the members whom you choose for the Legislative Council. You will remember also that His Excellency the Governor with these Ministers is required to conduct certain kinds of business in accordance with the wishes of the members of the Legislative Council. What then are the matters which are managed by the Ministers? The most important are the following:—

You are perhaps aware that the District, and Local Boards, Unions, Panchayats and Municipalities conduct their affairs according to the rules prescribed by the Government. They also frequently seek for help from Government. It is the duty of a Minister to attend to these matters, and to advise and help the district and local and union boards, panchayats and municipalities. Next a Minister is required to conduct the business relating to hospitals and dispensaries and the arrangements that are made to improve public health and keep away disease. A Minister again has to deal with matters connected with the education of our boys and girls in schools and colleges. A Minister also gives orders to the Public Works Department regarding roads and buildings. The control of the Agricultural and Veterinary departments and of the Fisheries, if there are any in the Presidency or the Province, belongs to the Minister, and it is to the Minister that the Registrar of Co-operative Societies looks for orders. The Registration Department is subordinate to the Minister who has also to decide questions relating to the religious and charitable endowments. Again a Minister has the control of the Department of Industries including development of industries such as spinning of cotton and weaving of cloth, tanning leather, dyeing, pressing groundnut for oil-cake, etc. Lastly it is the Minister who has to conduct the business of the Excise and the Abkari departments. It is for him to consider whether the *arrack* and *toddy* should be manufactured as hitherto, or whether any change should be made. A subject of the highest importance in the building up of the nation is Education. The entire department of national education is now in the hands of Ministers so that, our own representatives are now in a position to shape it for good or evil.

These are the most important matters which His Excellency the Governor manages with his Ministers. They cannot manage these matters contrary to the wish of the members of the Legislative Council who are elected by the people. They must therefore, be able to persuade these members that they are managing the business wisely.

You can therefore, easily see how important is the business which the Ministers are required to manage in this way and, rest assured, there is nothing more important for a people than the education of their children and the improvement of agriculture for a country so essentially agricultural as India. Besides these the other matters which the Ministers are required to manage, are, as we have seen, very important. The promotion and maintenance of the health of the people is a matter of supreme importance. The formation of co-operative societies comes next after it. To the Minister the people ought to be indebted for helping them to establish new industries in the country, so that, our countrymen may learn to make and manufacture for themselves the articles which they now have to get from foreign countries. If this is done, the wealth of India will be increased, and the coolies and artisans will earn good and decent wages. It is the lookout of the Minister to decide how it can best attain its object.

It is therefore, very important that you should choose suitable men to send to the Legislative Council. They must be men who understand what will be useful to you, and what is likely to be harmful to you. They must be able to give good information to the Minister about your needs. They must be ready to support a Minister who is acting in your interest and to your benefit and to oppose a Minister who is acting foolishly or dishonestly. Such an incident is not rare in the annals of Indian history,—dishonest Ministers dishonestly procuring lucrative jobs and appointments under the Government, and in their own departments, for their near relations. If therefore, you do not take the trouble to send suitable persons to the Council, the Ministers, morally, culturally and intellectually weak, as most of them have hitherto been, will not be able to manage the affairs properly. The result is manifest. National interest suffers and business is spoilt.

CHAPTER X

The Spending of the Taxes and Revenue which we pay

Apart from the matters which are managed by the Ministers there are certain others which the Governor is required to manage with the aid of his Executive Councillors. In regard to these matters His Excellency has to satisfy the Government of India that he is managing them wisely. The most important of these matters are the collection of the land revenue, giving relief in time of famine, the management of irrigation works and forests, and the matters connected with the law courts, jails and the police.

There are yet certain other matters which are managed by the Government of India. In regard to these the Government of India must satisfy the Secretary of State for India and the British Parliament that they are managing them properly. The most important of these is the maintenance of the army which is required to defend India from foreign enemies and to check internal commotion. Besides this the Government of India have to maintain the railways and build new ones, they have to coin rupees and issue currency notes as required, and to manage the Post and Telegraph offices and many other things. Certain other arrangements have been made to give Indians a larger share in the Government of India. For the management of all these classes of business, which we have enumerated, here and elsewhere, much money is needed. Considerably more funds are required for their developments hereafter. Where does all this money come from? It is money which we pay as taxes, e. g., land revenue, income-tax, abkari tax and salt tax. All these taxes are paid into the Government treasuries. How does the Government arrange how much money should go to the Government of India and how much should go to the provincial governments?

The money received from certain taxes goes to the Government of India. Thus the money paid as income-tax, the customs duties which are levied on goods exported or imported go to the Government of India. These are its most important sources of revenue and from these it has to meet the cost of the Army, the Railways, Posts and Telegraphs and other things. The proceeds of other taxes go to the local governments. The land revenue therefore, that we pay goes to the government of our own province. Besides this, the revenue of the Abkari department, the profits of the Forest department, the profits from the stamps used in Civil and Criminal Courts and other taxes go to our own government, that is to say the government of the province in which we live.

I have explained how the Ministers share with the Governor the responsibility for the conduct of certain departments, such as the educational department and the Agricultural department and many others. I have also explained how the Executive Councillors deal with the business of other departments, such as the Police department and the Forest Department and Irrigation. These undoubtedly require money for their upkeep and management. Under the old order of things the Government prepared an account which showed the amount of money which it expected to receive from the taxes during the year. The same account showed how much money it proposed to give to each department to carry on its business. This account is called the "BUDGET". You know that under the present arrangement some of the departments are managed by the Ministers and some by the Executive Councillors. The question therefore, naturally arises as to how much money should the Ministers have and how much should go to the Executive Councillors for the management of their respective departments. It is not unnatural that both Ministers and Executive Councillors should wish to get as large a share as possible of the revenue accumulated in the hands of the government, so that the work of their departments may be carried on as well as possible. Thus an Executive Councillor may wish to have 20 lakhs more assigned to his department for raising the pay of the village officers. At the same time a Minister may wish to have 20 lakhs more assigned to his department for raising the pay of the village schoolmasters. Suppose there is only 20 lakhs to spare. How are they to decide how much money is to be given to the schoolmasters according to the wish of the Minister, and how much to the village officers according to the wish of the Executive Councillor? In such an event the Ministers and Executive Councillors sit together and discuss the question and agree how the money should be apportioned. It is as if the members of a joint family were dividing up the revenues of the joint family property. If they cannot agree, the Governor is required to apportion the money between them. You will see that the arrangement is not without its faults. The Governor cannot be an arbitrator. He is called upon to decide in his own cause. The concern of the Executive Councillor in difference with the Minister is his, and the interest of the Executive Councillor is no other than his. The responsibility to the Government of India and to Parliament for those departments is his, more than that of his Councillors with whose aid only he manages them. On the other hand his responsibility in respect of the ministerial departments is minimised while that of his ministers to the legislature is full and effective.

After the Governor with the Ministers and the Executive Councillors have decided how much money should be apportioned to each depart-

ment, they lay the budget before the Legislative Council. The Council can then approve of the proposals, or they can pass a resolution that the expenditure proposed to be incurred on such and such an object should be reduced. Thus the legislative council can pass a resolution that it is not right to spend 10 lakhs in raising the pay of police constables or village officers, or they can pass a resolution that it is not right to spend 10 lakhs in opening new schools. If the matter is one which has to be managed by the Executive Councillors, the Governor-in-Council can incur the expenditure without accepting the opinion of the Legislative Council, if he thinks it impossible to conduct the business of the department properly without incurring the expenditure. But, if the matter is one which is managed by the Minister, then the expenditure cannot be incurred unless the Minister can persuade the Legislative Council to change its opinion.

Generally speaking, it may be said that the provincial Government cannot levy any new tax or pass a new law without the consent of the Legislative Council. But in very special cases, if the Legislative Council refuses to pass a law, the Governor may pass the law himself, and submit it for approval to the Parliament and the Crown. The Governor may do this when the proposed law concerns those subjects which he is required to conduct with his Executive Councillors, and he can only do this when the new law is necessary to enable him to conduct the business to the satisfaction of the Government of India. He cannot pass a law without the consent of the Legislative Council if the law relates only to the matters which he is required to manage with the Ministers according to the wishes of the Legislative Council.

For these reasons you will see the supreme importance of considering whom you should send as suitable men to the Legislative Council. You will have to send men who are likely to judge rightly about agriculture, education, and co-operative societies and such matters. They must be capable of a right judgment. They must be men of common-sense, and if, of education and culture also, so much the better for the community and for the Council. They should have the balance of mind to see how much money the Ministers should ask for these objects, for the repair of irrigation works, the improvement of the forests, and how much they should have for the pay of the village officers and police constables, and other matters, which are managed by the Executive Councillors. It is good that there should be more schools and more agricultural officers, and money will therefore be required for these things. But if the police constables, the village chowkidars and revenue officers cannot live without taking bribes, owing to the smallness of their pay, there will be much trouble for the ryots. Be care-

ful, therefore, that the men whom you choose for the Legislative Council are sensible men, and have no axe of their own to grind. When you are choosing a manager to manage the joint property of your family you would exercise care. Do not be less careful in choosing a manager to manage the joint property of the entire people of your province. If you choose carelessly the property will go to rack and ruin, and in this connection the student cannot do better than read the chapter on Hindrances to good citizenship in Book I over and over again, and let the principles enunciated there guide him as a political citizen.

CHAPTER XI

Finance and Revenue

You have now had an outline of the system of Government by which India is governed. I will proceed to give you a few details in regard to some of the more important organisations and functions, on which I have touched and which every government has to perform, showing you the nature of the concrete progress attained by India.

1. IMPERIAL FINANCE

With the exception of a system of finance introduced by Raja Todar Mall under the Emperor Akbar, India has not known a financial system during several centuries. Even under British rule the system has gradually had to grow to what it is. Before 1858, the entire control of all the finances throughout India, was in the hands of the Supreme Government. A messenger worth Rs. 5 a month could not be employed without the sanction of the Governor-General-in-Council. Detailed projects of the pettiest or most urgent works had to be submitted to the Government of India for approval and sanction.

Financial system—Past and Present.

It is in their financial system that the English have scored over their predecessors in rule. Todar Mall's was more a revenue than a financial system. It was the Regulating Act of 1773, which for the first time brought into being the central Government in India. There existed as you know three separate governments of Madras, Bombay and Bengal, each independent of the other, financially and administratively. In the interest of economy and administrative harmony this arrangement should long ago have been done away with. The Regulating Act invested the Governor-General with powers of financial and administrative superintendence over Madras and Bombay. That superintendence was neither complete nor effective. Therefore, it failed in its purpose. Then came the Charter Act of 1833 which subordinated the Governors of Madras and Bombay to the authority in Calcutta, in administrative as well as in financial affairs. Under British rule therefore, the system has grown to what it is. Expenditure was restricted but there was no budget estimate. The Act of 1858, gave the Secretary of State entire control over the revenues of India. He has only made over a part of his powers to the Government of India under the rules and regulations laid down from time to time.

It was in the year, 1860, that the system of annual budget estimates was introduced by Mr. James Wilson. It included sanctioned grants for each sub-head in every province and district. Under this system, which had been in force till recently, budget estimates for the Indian Empire were compiled from the sanctioned estimates for each province and department, and the final estimates were made public before the beginning of the year. They were then laid before the Legislative Council and discussed by the popular representatives there, who were entitled to make suggestions or offer criticisms.

Budget system.

Every department and official was bound to keep expenditure within the sanctioned grant. Failure of crops, or famine, or sudden outbreak of war, might prevent the fulfilment of the sanctioned estimates of revenue. In any of these cases the department, or the official, had to report to the authorities at once, for orders. Without such orders he could not make any outlay in excess of the sanctioned grant, even if the same was necessary. Hence, all expenditures were under the control of the Government of India, and behind it there was the control of the Secretary of State for India in Council. As for the Legislative Council, which to some extent represented the people, no tax could be increased or reduced without its consent.

Here it may be mentioned that a long succession of wise statesmen have helped India gradually to realise the sacred principle on which Englishmen all over the world are so insistent and on which in their own country they have often staked their existence. "No taxation without representation" is an essentially English principle and all the world over it is borrowed from England. First, the legislative Councils were given the power only to discuss questions of taxation. Occasions for such discussion did not arise until the Finance Minister in the Governor-General's Council and the member in charge of the Finance Department in the Provincial Council proposed a new, or to enhance an existing, tax. For thirty years the Councils of 1861, continued to enjoy this meagre concession. In 1892 Lord Cross brought in his Indian Councils Act which further extended the budgetary right. The members were allowed the full and free criticism of the financial policy of the Government. It did not, of course, make it incumbent on the Government to accept any recommendation made by them. The Government may accept or reject the suggestions as they please. The concession granted enabled the Government to remove misapprehensions and to answer criticism and attack. They profited by the criticisms delivered on a public occasion with a due sense of responsibility by the most competent representatives of unofficial India. On the other hand, the gain of the Indian people was that they got the opportunity to review the financial situation. In place of these

reviews, being carried on by an irresponsible and even malicious press, they came to be uttered by responsible persons in a public position. The interest of finance also gained by the increased publicity and the stimulus of a diligent and close scrutiny.

The idea of budget responsibility gained another step in 1909, with the Morley-Minto reforms. Under them the Council could be divided upon a resolution relating to finance. The result of the division had no binding force upon the Government. Under the present arrangement the legislatures could be divided upon every demand for a votable grant. Its decision is binding unless rejected or overridden by restoring the grant in question by means of a "Certificate". The budget is presented each year to the legislature during February and March. In presenting the budget the Finance member makes a statement reviewing the agricultural, trade and the general economic condition of the country during the year previous. The statement includes all important modifications or variations, made upon the revenue and expenditure, and surplus and deficit of the closing year. It also includes the revenue and expenditure of the coming year. It includes moreover, the variations of the ways and means of the closing year, from those suggested at the presentation of the budget thereof, and the ways and means of the coming year. A general discussion of the principles of taxation and revenue and ways and means follows the presentation of the budget. The next and the final stage is the voting of demand for grants. In the case of the Central budget more importance is naturally attached to the opinion on it of the lower chamber or the Legislative Assembly, than to that of the higher chamber or the Council of State. The reason is plain.

It should be observed here that the budget is not the same thing as the Finance Bill with which we are familiar. The budget represents the debit side or the expenditure part. To meet this expenditure ways and means must be found, namely, the necessary funds for the credit side. This is done by means of ordinary legislation in the form of a Bill called the Finance Bill. It is formally introduced immediately after the budget statement is made and the budget presented and on the same day. The Finance Bill therefore, is in the nature of an act for supplies.

Having now obtained an idea of what the budget is, we will go on to a consideration of what it deals with. It deals with revenue and expenditure. Of the former, the principal heads are Customs, Income-tax, Salt, Opium, Land revenue, Excise, Stamps, Forest, Registration, State and Subsidised Railways, Irrigation, Posts and Telegraphs, Administration of Justice, Police, Ports, Agriculture, Industries, Mint, Currency, Stationery and Printing. Of the latter, the principal heads are Customs, Income-tax, Salt, Opium, Land revenue, Excise, Stamps,

Forest, Registration, construction of Irrigation, Posts and Telegraphs, interest on public debts, sinking fund, general administration, administration of justice, Jails, Police, Ecclesiastical, Education, Medical, Agriculture, Industries, Aviation, Currency, Mint, Civil works, Famine, Railways and Army.

It should be noticed here that the entire operation of the finance in India is under the supervision of an officer of very high rank, called the Auditor-General. Originally he was subordinate to his departmental chief the Finance Member. With the introduction of the Reforms it was thought desirable, for the better efficiency of the financial control, to make the Auditor-General quite independent of the Government of India. His is now a statutory appointment made by the Secretary of State in Council tenable during the pleasure of the Crown. The reason for this is quite clear for, as a subordinate to the Government of India he cannot be expected to keep that close and fearless check upon the spending powers and spending operations of that very government. His pay, powers, duties and conditions of employment are fixed by the Secretary of State in Council. He is debarred from holding any post under the Government of India after he has vacated office. This no doubt is a salutary change. It would have been better still if the Auditor-General in India had been placed on a footing of equality with his prototype in the English administrative system. The Comptroller and Auditor-General in England is the servant of the House of Commons and is responsible to no minister. His is a statutory appointment and it is impossible for any government, however strong, to dismiss or override him. He sees that no department either misspends or diverts a grant. His reports to the Public Accounts Committee criticise the spending departments with a refreshing candour. More and more in his work as auditor is he concerned with efficiency—with the merits as distinct from the regularity of expenditure. He cross-examines the accounting officers on all the points where payments appear to him questionable. As a result of his examination and enquiries he is often able to detect cases of waste and extravagance, where he discovers anything wrong, or a department or a member of the government breaking the law, he immediately reports the matter to the speaker who submits it to the House of Commons.

The Auditor-General in India is not so fortunately situated. He is not armed with all those weapons and powers either. The Auditor-General in India is appointed by the Secretary of State for India under rules framed under the Government of India Act. As such, he is no doubt placed outside the sphere of control of the Government of India. But there are certain matters which, by rules made by the Secretary of State, are excluded from his purview, such as the trans-

actions of the military department. His reports are to the Secretary of State in whom by law the revenues of India are vested. In the event of any breach of the canons of expenditure his duty ends when he has reported it to the Central or the Local Government concerned. The Government interested may take such notice of it as they like. It must however, be observed that on the principle of audit of accounts being made the basis of effective financial control, a healthy practice is growing up in India,—that of the Auditor-General coming in direct contact with the Legislature through its Public Accounts Committee. This is a gradual realisation of the practice which obtains in England, in the House of Commons.

The function of the Public Accounts Committee is to secure conformity to the determinations of the legislature. There is such a committee attached to every legislature, to the Assembly as well as to each of the Local Councils. In each case it is appointed at the beginning of the session. Its task is to deal with the audit and appropriation accounts of the Governor-General and in the provinces of such other matters as may be referred to the Committee by the Finance Department. Its chairman is always the Finance Member himself, unlike in England. There, he is generally a distinguished member of the opposition. The work of the Committee is a valuable part of the legislative control of finance. Its business is to see that money voted by the Assembly has been spent within the scope of the demand granted by it. It has to bring to its notice every re-appropriation from one grant to another grant. In the provinces it has to see that all legislative grants have been applied to the objects which the legislature prescribed. It looks into causes as well as consequences. It may censure improper expenditure as well as improper accounting. It exposes waste and inefficiency. With the report of the Auditor-General before it, it examines the accounts, administers advice and reproofs and even punishes when necessary.

PROVINCIAL FINANCE

In 1870 Lord Mayo decided that large financial responsibilities should be given to Local Governments. He made over to the provincial governments the entire management of certain heads of civil expenditure, allotting to each fixed grants to provide the necessary funds, and leaving them full discretion to spend those grants to the best advantage. All this, of course, was subject to the Government of India rules and to the final authority of the Secretary of State. Local Governments thus came to have a complete control over expenditure from all funds raised for local purposes. The introduction of the system saved much correspondence and friction, and led to

Delegation of financial powers to Provinces.

efficient and economical administration, by creating direct interest in the Local Governments. The provincial system was then carried beyond that point, in that the control of all expenditure was delegated to the Local Governments. The permanent interest of the provincial authorities in the growth of their revenues was secured, for they had the management of all heads of revenue in their hands.

In 1877-79 the Government of Lord Lytton made a material change in the terms of the financial settlement concluded by Mayo. Mayo's scheme effected a large reform, but the services in which the provinces were given an interest were few. The Local Governments therefore, felt no interest in developing the revenues raised through their agency. Lytton's Scheme gave them financial responsibility in regard to other heads of expenditure. It assigned to them the financial control of services connected with general administration, land revenue, excise, stamps, land and justice. It gave them the revenues raised from law and justice, excise, stamps and the license (now income) tax. It was soon discovered that the local Governments were not sufficiently interested in the development of any revenues other than those assigned to them. To encourage them in this direction fresh settlements were made in 1882 by Lord Ripon. Save receipts from customs, salt, opium, posts and telegraphs which remained wholly Imperial, all receipts from forests, excise, license, stamps and registration were divided equally between the Government of India and the provinces. Receipts from law and justice, public works and education were provincialised. Since these settlements, those of 1882, were quinquennial, they were revised in 1887, 1892 and again in 1897 without much changes. The year 1904 witnessed an important new departure. It was the initiative of the system of *Quasi*-permanent settlement of Lord Curzon.

The advantages of the *Quasi*-permanent settlement were many. The encouragement given to local governments to improve their finances was the chief of them. It brought some relief to the mind of the provincial governments for, they were free now to develop their own economic resources and to economise their administration in order to strengthen their economic position. Frequent causes of irritation which existed for generations between the superior and the subordinate governments were brought to a termination. But the final stroke was struck by Lord Hardinge by his permanent settlement of 1912. The announcement of August 1917, changed the whole aspect of affairs. Its underlying principle is delegation of responsibility. That was the principle involved in the announcement, consistent of course with the security of the permanent services. Arrangements for contributions to the Government of India by the provincial governments were settled on the recommendation of Lord Meston. Their

Quantum was fixed but from the provincial points of view it was unsatisfactory for it left the provinces poorer.

Reserved Revenues.

There were, however, certain revenues which were not allowed to go out of the control of the Supreme Government, such as Opium, Salt, Customs, Post Office, Telegraphs, Mint, Currency, Tributes, etc. Nor did the provincial finance-system deprive the Secretary of State or the Government of India of their control and responsibility, for they retained the right to modify the provincial financial arrangements, either at given periods, or when special need arose.

Larger delegation.

It has been the consistent policy of the Government of India to give more and more power to the Provincial Governments over their own finances, and we are now on the eve of realising a Provincial Autonomy so complete that, when it comes into full operation, it will have given the provinces of India by a stroke of the pen what it has taken other parts of the world years of arduous struggle, and even bloodshed to attain.

Financial devolution.

Since substantial provincial autonomy is the real object, the provinces have been freed from the control of the Government of India. This means more satisfactory provincial development. Upon an estimate being made of the scale of expenditure required for the upkeep and development of the services which appertain to the Indian sphere, the resources with which to meet this expenditure have been secured to the Indian Government. All the other revenues belong to the Provincial Governments which are held wholly responsible for the development and maintenance of all provincial services. There are no divided heads of revenue now and revenues are either Indian or Provincial. In addition to what were the Reserved Revenues of the Government of India they have taken income-tax and general stamps giving the provincial governments exclusive use of land, irrigation, excise and judicial stamps revenues. It follows that famine relief and protective irrigation works become provincial concerns and no longer Indian concerns. This arrangement may leave the Government of India with a large deficit. In order to supplement this, contribution from each province to the Government of India has been assessed. To be fair to all provinces, the assessment has been made on the basis of a percentage of the difference between the gross provincial revenue and the gross provincial expenditure.

On the fundamental basis of the Imperial budget the provincial budget is founded. Its procedure is identical with what obtains in the central legislature at Delhi. The budget is, as we have seen before, nothing more than a suggestion for the allocation of revenues. As at Delhi, so in the provinces, the head of the administration has extra-

ordinary powers over finance. He has powers to supersede any vote in the Council under what are called emergency powers. But they have reference to the reserved subjects only, not to the transferred. In these respects all provincial expenditures are controlled by the Secretary of State, the Government of India in the Finance Department and the Audit Department. This is the general rule to which transferred subjects are not subject.

The Finance Department has various important duties to perform. In charge of a member of the Executive Council assisted by a Secretary, it controls the accounts relating to loans granted by the Local Governments. It advises on the financial aspect of all transactions relating to all such loans. It looks after the safety and proper employment of the Famine Insurance Fund. It examines the report on all proposals for the increase and reduction of taxation and borrowals. It frames rules for the guidance of the finance and revenue officers. It prepares estimates of total receipts and disbursements of the year. It examines and advises on all schemes of new expenditure and prepares the budget statement. It examines and lays the audit and appropriation report. The Finance Department is responsible for all expenditure connected with the payment of interests and sinking fund charges. It makes provisions for payment of salaries and pensions of all Imperial service officers or officers appointed by the Secretary of State for India and of judges of the High Courts. Above all, it is the duty of the Finance Department to see that every rule regulating expenditure of money and sanction of grants is strictly adhered to. Departure from them is permissible only where the case is an urgent one.

LAND REVENUE

Akbar's Revenue System.

The object of Akbar's revenue system was to obtain a correct measurement of the land, to ascertain the amount of the produce of each unit of land and to fix the government demand. For the first object he introduced a uniform standard of measurement. He also improved the instrument of mensuration and took steps to make a complete measurement of all the cultivable lands of the Empire which were divided into three classes according to their productiveness. The amount of each sort of produce yielded by a unit of each class was ascertained. The average of three years was assumed to be the produce of a unit, and one-third of such produce formed the Government demand. The quantity of produce due to the Government being settled, it was commuted into a money payment. All these settlements were at first annual, and afterwards were made for 10 years, because the annual system proved vexatious and expensive.

The thing that concerns the welfare of India is land revenue administration. The thing that concerns the interests of the mass of the people of India is the system under which land revenue is administered. Akbar's revenue system was only an improvement upon what was introduced by Sher Shah. But where Akbar scored over Sher Shah was in making new revenue partition of the country into divisions. Each division yielded Rs. 2,53,000 as land revenue. This great reform however, contained no principles of progressive improvement. It held out no hope or encouragement to the ruled to better their condition either.

Under British rule during the past fifty years revised settlements of land revenue demand have been made for even longer terms of years, on moderate and equitable principles. At these settlements careful surveys have been made of all holdings and records of rights in the land. As in Akbar's time, so under the British the periodical settlements proved vexatious and expensive. To avoid this a system of village records was introduced with the help of which the settlement officers can do their work with the least inconvenience and trouble to the people.

The British System.

Settlements are made now in a comparatively short time and are less expensive. So moderate is the Government demand that even in thinly peopled tracts like Burma and Assam the cultivated area has doubled itself within 50 years. During the same period in the Central Provinces, Berar and in parts of Bombay it has increased from 30 to 60 per cent. Even in the thickly peopled province of Oudh it has increased by 30 per cent. The general rise of prices, partly due to the facilities for trade and commerce under the British regime, has moreover, enabled the agricultural classes to pay their land revenue more easily than before.

Revenue settlement.

The extension of Railways and Roads has provided outlets for surplus agricultural produce. It has caused a general rise of prices in remote districts which were land-locked fifty years ago. Without these the agricultural classes would not have received the vast sums of money they do receive now. The receipt of more money has enabled them to raise their standard of living and to pay their land revenue more easily than before. Harsh processes for the recovery of land revenue are rare now. As a rule, it is paid punctually.

Akbar's settlement.

The student may now have a brief idea of the range of revenues in India, Imperial and provincial.

The famous land settlement of Hindusthan made by Akbar was based on one-third of the gross produce of each field. The present

assessment of the Punjab represents from one-tenth to one-fourteenth of the gross produce. In British India the present land revenue represents an average charge of eight annas a bigha of cultivated area. Fifty or sixty years ago land revenue formed half the total public income of the country. It is now less than one-fourth.

The above facts go to show how unfair is the charge so lightly levelled by irresponsible people, of India being bled white by the extortions of British rule. No doubt an efficient government such as we now enjoy, must be paid for at a higher rate than one less efficient; but, as the children of the soil, who can afford to do the same work at a less charge, can more and more replace imported administrators, this cost will automatically diminish. The process is already to some extent going on, but its complete development needs must take time to perfect.

PRINCIPAL SOURCES OF REVENUE AND EXPENDITURE

The principal sources of Revenue of the Government of India are (1) Income-Tax, (2) Customs, (3) Salt, (4) Land Revenue, (5) Excise, (6) Stamps, Judicial and Revenue, (7) Registration, (8) Railways, (9) Posts and Telegraphs, and (10) Currency and Coinage. Those are again the principal heads of expenditure in addition to the Army, interest on debts, home charges such as pensions and annuities for which India gets no return, and which are not spent in the country, administration of justice and police.

Since the war, customs has become the most important source of revenue in India. It is an Imperial Department responsible to the Government of India and administered by Imperial officers. At each of the five principal ports of India, Calcutta, Bombay, Karachi, Madras, Rangoon, there is a principal collector of customs with assistants under him in charge of subordinate ports within his jurisdiction. Apart from the clerical, he has a large staff of responsible officers under him, appraisers and preventive officers. The duty of the former is to assess the proper value of goods imported into and of dutiable goods exported from any port. For such purpose they have the power to require the production of original invoices, broker's notes, policies of insurance or any other document which may help them to ascertain the real value of the goods in question. The duty of the latter is to keep a watchful eye, lest dutiable goods should be smuggled into or out of India. Nearly half of the income of the Government is derived from this source—an expansive source of revenue.

In every province there is a Commissioner of Income-tax appointed by the Governor-General-in-Council, in consultation with the local

Government whose duty it is to realise a tax upon all incomes, except agricultural incomes, above Rs. 1000 a year and a super tax in addition to the Income-tax on all incomes above Rs. 30,000 a year. He has under him an assistant Commissioner to help him in the work of supervision. The actual work of assessment and recovery of the taxes is done by the Income-tax officers under them. These taxes are assessed upon a verified return of incomes submitted by individuals, but more often by an actual examination of their books of accounts. It is the most equitable of all available forms of taxation.

Salt revenue is derived from three principal sources. They are the Excise duty on Indian Salt, customs duty on imported salt and sale of Government salt. Nearly 50 per cent. of the local salt is either manufactured or mined by the Government and, on the rest a license fee is levied leaving the remainder subject either to an excise or customs duty.

Land Revenue is a most important source of revenue not liable to variation except under extreme conditions. Up till 1920-21, it was divided between the Government of India and the Local Governments. It belongs entirely to the provinces now, even though administered by a member of the Executive Council in each province, and not by a Minister whose acquaintance we have made in an earlier chapter.

Excise revenue is derived from taxes levied upon spirituous liquors and intoxicating drugs. The incidence of excise taxation per head of population in India is an average of 8 to 10 annas which must be considered to be a very high figure in a country where the people are abstainers by habit and tradition. With the transfer of the excise department to ministerial control the country may look forward to a better state of things. A reduction of revenue consequent upon a change of excise policy may be the outcome. Excise is now a provincial revenue.

Stamp forms a considerable revenue in India. It has two aspects: Judicial and Revenue. Judicial is the proceeds of stamps used in all matters before civil, criminal and revenue courts. Revenue stamps are those used for all commercial transactions recorded in writing while the revenue derived from the registration of documents is credited under the head of Registration. Both these are items of provincial revenue now.

Railways, Posts and Telegraphs and Currency and Coinage are sources of Imperial revenue.

CHAPTER XII

Local Self-Government: Rural

The basis of the civic consciousness of European communities is to be found in their political centralisation. The basic principle of Indian Society is undoubtedly to be found in its dependence upon family, caste and communal traditions. In India, like anywhere else they like and are eager for each other's company. If notice is taken of the rise of villages then it will be realised that it is nothing but the history of a few families settled and grouped together in a particular place. A man selects a spot where it is most convenient for him to settle. It may be near or within measurable distance of the field he cultivated. To that place he invites his friends and relations to come and settle. They may thus live together and be helpful to each other in their daily life, and more so in their hour of trouble and difficulty. Thus a settlement gives rise to a village and when the same is situated on or near the bank of a river or a large railway or industrial centre is liable to grow into a town. Towns may be of more or less considerable size, and of greater or less prosperity according as the volume of business carried on in it is small or large.

The inconveniences of village life before the advent of British rule in India were many. The village fields were ill-cared for and village tanks were little better than cesspools. Epidemics because of insanitary surroundings always stared the village people in the face. Their occasional outbreak resulted very often in the complete depopulation of a village. Our people had neither the means nor the knowledge to put matters right, nor to improve them for the future. They were unable to help themselves. Dacoities were of frequent occurrence and communications difficult, and sometimes impossible. Good roads were absent, and railways and telegraphs were unknown. The growth of a corporate village life was not easy of attainment. The prosperity of the village was necessarily limited in proportion. The postal system and the newspapers were not there to inform the householder, or the family man, of what was happening outside his small village or town, except at great cost and inconvenience. The village headman was the chief authority who could sin against the village with impunity. If he was a bad man he could do what he liked to serve his own ends. Forced labour was the least among his mischievous follies. He was the little Raja who could command anything in the possession of the village and anybody in the village. His word was law. All that he cared for

was personal authority and personal gain. In these circumstances, the village could not but be self-centred and isolated. Progress, improvement and prosperity were unknown there. The result was want of life and feeling in the village itself.

With the advent of the British in India, the condition of things which had existed for centuries began to change. Famines, floods and pestilence they have not been able to remove, but then, nobody can fight against the forces of nature. If we have the will to combat them, their violence, when they actually visit, can certainly be mitigated. From a study of their own country we get a wonderfully clear perspective of their character — it is their resourceful and liberal nature within a conservative skin, eager to adopt and effect any improvement when necessary. If the village life of India is more prosperous now, it is because the English have introduced new arts and industries. If it is more life-giving, it is because the English have introduced all the convenient channels of communication and locomotion. If our village life is more healthy, it is because of the activity of the sanitary department, and also because the Government has brought medical relief to every door. The villagers themselves have not undergone any material change. Still the village life is happier because the village officers have improved in character along with the character of the rule that controls them. They are more honest and more watchful of the happiness of the people. They have not got the power to do what they like. They may not defy the established law of the land any more than the meanest villager himself. Police supervision is more close so that, dacoities have nearly disappeared and thefts have become rarer. Revenues are collected at fixed intervals and at fixed rates, no matter whether it is a good or a bad year. In extreme cases, namely, in years when there is a failure of harvest the Government have never hesitated to remit the revenues totally or partially. Wells, canals and tanks have been provided in abundance to supply good drinking water to the people. Newspapers and cheap literature are introduced in the village to enliven its life. Any misconduct on the part of the village officers may be brought to the notice of the district authorities. The village is now a part of the district so that, there is a continuity of life in the two, just as there is a continuity in the district and the province, and there is a continuity in the province and the whole country at large. The troubles of every village may now be said to claim and to have the sympathy of the whole country.

In British India, also, the ultimate aim of the Government of the people by the people has been enunciated from the very beginning. Let me put down here for you the noble words of the Marquis of Hastings, at one time Governor-General of India.

"A time not very remote will arrive when England will, on sound principles of policy, wish to relinquish the domination which she has gradually and unintentionally assumed over this country, and from which she cannot at present recede. In that hour it would be the proudest boast and most delightful reflection that she had used her sovereignty towards enlightening her temporary subjects, so as to enable the native communities to walk alone in the paths of justice, and to maintain with probity towards their benefactors that commercial intercourse in which we should then find a solid interest."

Government by the people.

As I have said, the people of India had a natural aptitude for governing themselves, and the system devised by them remained substantially unchanged, in spite of repeated invasions which sometimes resulted in the conquerors gradually imposing on them their cruder customs and ideas of government. This capacity of the Indian people has been recognised by the government of the British people than whom no people have the political instinct more keenly developed, and our ancient institutions are gradually being remodelled to suit modern conditions.

In all the major provinces—a complete chain of local authorities has been established. All over the country the village constitutes the first stage, or territorial unit, of Government organisation. And groups of villages go to form the larger administrative divisions such as tahsils, subdivisions, and districts. The typical Indian village has a central residential site, with an open space for a pond and a cattle stand. Around this nucleus stretches a cultivated area, and sometimes common grounds for grazing or wood cutting. The inhabitants pass their life in the midst of these simple surroundings, welded together in a little community with its own organisation and government (differing in character in different types of villages), its body of detailed customary rules and its little staff of functionaries, artisans and traders. It should be noted, however, that in certain portions of India, e. g., in the greater part of Assam, in Eastern Bengal and in parts of the Madras Presidency this kind of village does not exist. The people there, live in small collection of houses or in separate homesteads.

Local Authorities.

The village, all the same, remains the unit of administration, and it has been the aim and object of the Government to foster a common village feeling and interest. In order to do that, attempts have been made to revive the village council, tribunal, or Panchayat of old. A Royal Commission has definitely laid down recommendations to the effect, that the system should be gradually and tentatively applied, according

Village Institutions.

to the different degrees of homogeneity or natural intelligence which the villagers possess, the Panchayats having, to begin with, limited powers of control, their powers being gradually increased as they grow more and more fitted for them. A beginning has accordingly been made in some of the more advanced villages all over the country. There is first the village 'Union' which corresponds to the English parish. It consists of an important village, or a group of villages, with a small council of prominent residents at the helm of affairs. The most important function of the 'Union' is to see to the improvement of sanitation. They are required as far as possible, to find their own funds, for which purpose, they are empowered to levy a small tax on houses.

In keeping with the spirit of the rule at home with which they are familiar the English have always had a cautious but well-defined plan of self-Government in India. In pursuance of that policy they have now built up in Bengal a system of rural self-government. These village authorities are vested with the powers and duties necessary for the management of village affairs. And so that they may exercise their powers for the greatest good of the greatest number they have been entrusted with the power of self-taxation. The village authority which is called the Village Committee, exercises a general control over the *dafadars* and *Chowkidars* of the village and is vested with power to provide for village sanitation, conservancy and drainage. The village committee deals with the erection of buildings, water supply, village roads and bridges, and it also manages primary schools and dispensaries.

Village self-Government.

With a view to minimise the ravages of litigation, power to try petty civil and criminal cases without the help of lawyers, has been conferred on members of village committees. There is no doubt about the fact that much of the abuses and misfortunes of litigation are due to lawyers in our Courts. The proposed village Courts, composed as they are of village elders, are calculated to be able to do substantial justice between contending parties.

Village Courts.

Ordinarily no appeal from the decisions of village Courts is allowed, but in the case of criminal trials, the sub-divisional magistrate, or the District Magistrate where there is no sub-divisional magistrate, may order a retrial, if there is a serious failure of justice. In case of a civil suit, the District Judge may make a similar order for similar reasons.

Appeals.

The number of members of the Village Committee varies from six to nine. Two-thirds of the whole number are elected, and the President of the Committee is a person elected by themselves from their number.

Composition of the Village Committee.

The Village Committees are grouped in circles under Circle Boards, each of which consists of 15 members of whom two-thirds are elected and one-third nominated by the Commissioner of the Division.

Supervision.

The Chairman of the Circle Board, like the Chairman of the Village Committee is elected by its members. Its Chief function is to supervise the work of the village committees within the circle and to co-ordinate their plans. In case of incompetency or wilful neglect of duty both the Circle Boards and Village Committees are made subject to the control of the District Magistrate, and the Commissioner of the Division. It is hoped that when the system of village self-government is fully established and developed all over the country, direct relationship will be established between the Government and the village population who form 90 per cent. of the people.

Next above them are the Local Boards, one in each subdivision, corresponding with the English District Councils. The Local Boards have enlarged powers. The local affairs of every subdivision of a district, or two such subdivisions combined are looked after by the local board. It is a connecting link between the union committee and the District Board. It is a body usually of six or more members, two-thirds of whom are elected from among male persons of the full age of twenty-one years. They must be residents within the area under the authority of the local board. They are eligible if they are already members of the Union Committee, within the area of the board, or have paid a sum of Rs. 5/- on account of road cess during the previous year, in respect of lands held by them within the area. They are also eligible if they have paid Rs. 20/- as license tax for any trade or calling. Persons having an annual income of Rs. 1000/- within the area, or being graduates or licentiates of an Indian University, or pleaders or muktears, are also eligible. All persons eligible for the local board are deemed qualified for the District Board which consists of not less than nine members. The natural life of both the local and district boards is ordinarily for a term of three years. At the head of all these are the District Boards which take rank with the English County Council, the most important local institution in the political system of England. The powers of the District Boards are very full and complete, but their exercise is always subject to the supervision and control of the Government for which purpose, it retains a certain amount of control over their affairs.

Local and District Boards.

POWERS AND DUTIES OF DISTRICT BOARDS

The powers and duties which the local board performs are exercised only as agent of and subject to the control of the District Board. The

District Board has very wide powers, in a sense autonomous, except in certain matters which we shall notice hereafter.

They are responsible for the maintenance and control of all primary and middle schools within their jurisdiction when these are under public management. The District Board offers grants-in-aid to other educational institutions, even if it may not have any control over them. Its functions in connection with the education of the district are performed through an education committee. This committee is composed of the Deputy Inspector of schools of the District, three or four members of the Board and some residents of the district not being members of the board. It may establish and maintain charitable dispensaries where necessary. It controls and administers them as well as hospitals. Besides public works constructed by the Board itself, it has to maintain in a proper state of repair all roads and other public works such as bridges, channels, buildings and other property, movable and immovable, transferred to its care. It may contribute whether by way of loan or by way of grant to the development of transport facilities in its area. Toll on bridges is collected by the Board and one of the principal functions of the board is the improvement of the sanitation of the district. To some of the boards are also entrusted the charge of vaccination and famine relief and the census of the district.

FINANCE OF THE BOARD

It is in their control of finance that the powers of the District Board come most prominently in our view. Dues, realised from whatever source, form what is called the District Fund. Its accounts are in charge of a committee called the Finance Committee. The Finance Committee has power to make disbursements of every description for which the Board is responsible. The most important salaried functionary of the Board is the District Engineer. The head of the Board called the Chairman, and his deputy called the Vice-Chairman, are honorary officers having a wide knowledge of local needs and conditions.

DEVELOPMENT OF LOCAL INSTITUTIONS

The year 1871 saw a wide development of these Local and District Boards. This was as much owing to local needs as to the decentralisation scheme of Lord Mayo. The law therefore, empowered them to levy rates and administer their funds. Later on, Lord Ripon reorganised and expanded the whole system, and under his orders of 1881-82 we have now Boards all over the country. Each member of the Local Board is expected to have local knowledge of and interest in his administrative unit. The local Boards are under the general control of the District Boards to which they are entitled to send delegates as full members thereof.

INTRODUCTION OF ELECTIVE PRINCIPLE

The principle of election is the basis upon which the District, the Local, and the Union boards are founded. The Board is elected every three years. In the total, two-thirds of the Board members are elected, the rest being nominated by the Government so that the non-official element preponderates. The Chairman of the District and Subordinate Boards is elected by the members thereof from among their elected number. In thus allowing the members to be chosen in accordance with the wishes of the majority of voters in the district, we find the seed of representative government in India.

The elective principle has moreover, been introduced in varying degrees everywhere, except in the North-West Frontier Provinces where it has been abolished since 1903. The people of the North-West have been misjudged for there is no convincing proof of the fact that they are not yet fit to enjoy a privilege the exercise of which demands self-control and an abiding respect for law.

The powers which these Boards exercise are delegated to them by the central or the provincial authority, which may also take them away, as has occasionally been done in cases where the Boards or the Municipalities have grossly mismanaged their affairs. They are therefore, all subordinate to the central authority. The Boards derive their revenues from local rates, as also from grants from general revenues.

Relaxation of Government Control.

The Government of India has recently adopted the most salutary policy of proposing to minimise government control over Municipalities and District Boards. On the one hand the method of election of members and selection of the Chairman, the executive head, is to be so reformed as to avoid interference with the representation and authority of the people concerned; and on the other, the restrictions in connection with government sanction for the raising and expenditure of funds are to be relaxed. This points to the progressive fitness of the people for self-government.

Functions of the Boards.

The duties of these Boards are various. They are called upon to spend their revenues for the construction and improvement of roads and bridges. Hospitals, vaccination, drainage, water-supply, primary education, markets and rest houses are also committed to their charge. The public roads of the district are under their control, and are kept in order by them. The drainage of the district is constantly looked after by inspectors whose duty it is to report anything wrong to the District Board. The existence of any infectious disease within the district, or the local area, must be notified to the District or the Local Board, whose duty it is to see that proper precautions are taken to prevent the disease from spreading.

Boards and Legislative Councils.

The Boards are linked to the Legislative Councils by a system of direct representation of those who are subject to their jurisdiction and have interests of very small annual rental value on them. They thus afford ample scope for their public spirit to rise to the greatest heights.

England the Educator.

The policy which has actuated the English Government to introduce and establish the boards and municipalities in the country is to train the people up in the art of self-government. Administration of public affairs is the first principle of a civilised government, the noble object being to make it responsible to the people. The responsibility could be granted only by stages and in degrees as the people prove their fitness for it. No doubt in time will follow the full measure of representation in the local self-governing institutions of India as the people show greater public spirit, self-sacrifice and fellow-feeling.

CHAPTER XIII

Local Self-Government: Urban

We now come to the self-government of larger towns. From very early times in British Indian History the Presidency towns had some form of municipal administration. Originally they were established under Charters and subsequently recognised by Statute. The term 'Municipality' is now very familiar to those of us who live in towns and cities where there is a municipal organisation, but we should be careful not to mix up Municipalities with District or Local Boards of which we were speaking in the last section.

"A Corporation aggregate," says Lord Coke, "is only an abstraction and rests only in intendment and consideration of law. It is invisible and immortal; it has no soul; neither is it subject to the imbecilities of the body." Every corporation has a name and a domicile, that is to say it must belong to some definite locality. A Corporation expresses its will as a general rule by its common seal. A municipal corporation acts in a double capacity, public and private. In its public capacity it acts as the agent of the State for local administration and enforcement of its sovereign power. In its private character it transacts private business for hire, as for instance, when it undertakes to supply to the inhabitants utilities and facilities of modern life. The primary objects of a municipal corporation are the public welfare and municipal government. It is an institution designed for the local government of important towns and cities. Government by municipal corporations is the highest form of local self-government. Local assemblies of citizens constitute the strength of free nations. "Municipal institutions" says De Tocqueville, "are to liberty what primary schools are to science. They bring it within the people's reach. They teach people how to use and how to enjoy it. A nation may establish a system of free government but without the spirit of municipal institutions, it cannot have the spirit of liberty." Municipal corporations have no other source than sovereign power. They are therefore, created by Statute. Every Municipal town is governed by what is called a Corporation, consisting of a Chairman and a Council. The Council is usually subdivided into Committees each one of which controls some particular branch of municipal business, such as the town funds, the drainage, the lighting of the streets, sanitation, etc. Besides these corporate officers, there are also other executive officers. They are the Health Officer, the Engineer, the Assessor and in larger municipalities, a Chief

Municipal Corporations.

Executive Officer and also a Secretary. They are invested with certain powers, all for the benefit of the public. The authority of these officers is created by law. Their power and authority is special and limited and not general. Their right to act in a given case must be ascertained and determined. These officers are not permitted to perform their official duties beyond the limits of the powers of the corporation they represent. Implied powers as a rule, have no application to their acts. Their efficiency no less than their ability is a most important element in the municipal structure. And efficiency when combined with elasticity presents a perfect system of municipal administration. In these Municipalities the elective element has been introduced on the well-known British principle of "no taxation without representation". Persons whose names appear on the election roll are entitled to vote at an election of the municipality concerned. The roll is an official list of persons entitled to vote. It is prepared annually by the authorities. Excluding the nominated members of the municipal Council, all other councillors are elected by voters who are enrolled in the election roll. Detailed provisions are made as to who are to be included in the roll. Generally speaking every person of the male sex who has attained the age of 21 years and who pays the qualifying taxes, or who is the owner of immovable property within the local area paying the qualifying taxes, or who is a graduate, is a qualified voter. In certain cases occupiers of immovable properties are also qualified. Companies, firms, undivided families or other associations or bodies of individuals who are otherwise qualified are also voters. And the general rule is that whoever is a voter is also qualified to be a councillor.

General election of Councillors ordinarily takes place once in three years. Election to fill a casual vacancy takes place on such days as may be prescribed. Vacancies are of two kinds, ordinary and casual. Ordinary vacancies occur when the councillors go out of office in due course at the expiry of their term of office. Casual vacancies occur by death, non-acceptance of office, resignation, continuous absence, bankruptcy, conviction, and such other cases when the councillor becomes disqualified.

Early corporations.

Under the East India Company local committees were formed for the management of local affairs in the district of some of the provinces of India. In towns similar bodies called Panchayats or "Councils of five elders" still survive. These bodies, however formed, and of whatever age, had no administrative powers. They could only advise, but their advice might not have been followed. In the first stages of self-government it is but proper that the people should receive a training in the art, and larger powers be given to them as they become more experienced. Originally the

members of these bodies were nominated by the Government, but even then they had not the final control of local affairs in their hands, lest they should mismanage them, and thus delay the gradual introduction of real Self-Government. The Commissioners were, however, empowered to manage municipal affairs and to levy various taxes.

In 1870 a wider system of Municipal Government was initiated. Laws were passed for every province of India under which urban affairs were placed in the hands of local bodies. They were partly nominated from among the people themselves. Roughly speaking about half the members of the municipalities were elected. The rest were nominated by the Government whose business it is to see that the affairs of country are being managed well. The elective principle has since been extended and the tendency of the Government is to extend it still further, with due regard to the capacity of the people of the localities concerned.

A wider system introduced.

FUNCTIONS OF MUNICIPALITIES

Municipal functions as such may be divided into groups; those which when established at a cost may be made self-supporting, and in the best of circumstances may produce a revenue for the benefit of the entire city government, and those which are discharged for the promotion only of the welfare of the city. But whatever kind they are, they are designed for no other end than the welfare of the public and especially of the communities where they are established. To this end their functions must be exercised. But the man in the street understands municipal functions to be divided into two classes, Governmental and municipal. Governmental functions are those which affect the public welfare generally. Municipal functions are those which affect the special benefit and advantage of the community within the corporate boundaries. Governmental functions are legal duties imposed by law upon the Corporation. It may not omit to perform them with impunity. It must perform them at its peril. These functions are what are called mandatory and peremptory. They may be enlarged or reduced at the pleasure of the State. Certain municipal functions are imperative, others discretionary. These latter are those which the corporation is at liberty to undertake or ignore at its discretion. Municipal functions broadly speaking embrace public instruction, public protection, including herein the health and morals of the citizens and the relief of the poor. They are the very foundation of civilised life. But nowhere is the conception of municipal functions more active than in the civic life of Germany. There the city holds itself responsible for the education of all. It is responsible for the provision of amusements

and the means of recreation. To the civic institution the young of the community must look for such provision or adaptation of their training as would enable them to gain a livelihood. There the municipality is responsible for the life of families, for the moral interests of all, for the civilising of the people, and for the promotion of individual thrift. The development of advantages and opportunities in order to promote the industrial and commercial well-being is entrusted to its care as much as the supply of common services and the introduction of conveniences.

The most important functions of a municipality may be enumerated as follows:—(1) water-supply, (2) drainage, (3) scavenging and cleansing, (4) street lighting, (5) regulation of disorderly houses, (6) control of factories and trades, (7) of markets, (8) control of foods and drugs, (9) the care of the sick and restraint of infectious diseases, (10) control of vaccination, (11) registration of births and deaths and (12) control of education.

We will briefly notice them in their order.

Water-supply.

One of the first essentials of sanitation is a supply of pure and wholesome water for drinking, cooking and other purposes. All municipal corporations are empowered to provide for a system of water-supply for their local area. An abundant supply of pure water is absolutely necessary in the interest of health of the inhabitants. For this purpose they may acquire lands and streams and execute such works as would serve their purpose. They may stop any waste or misuse of water.

Drainage.

Another important duty of a municipality, next perhaps to water-supply, is the duty to provide and maintain an efficient system of drainage within its local limits. It is in the interest of public health that the drainage system must be kept in a proper and efficient order. And for this purpose certain important municipalities are authorised to register qualified plumbers through whom only can the drainage works be executed.

Scavenging and cleansing.

For the health and comfort of the inhabitants it is necessary that solid refuse should be got rid of. It cannot be sent into drains and sewers. It must be removed and disposed of so as not to cause nuisance. Whether street or road sweepings called public refuse, or refuse or sweepings of a private house called private refuse, they cannot be permitted to accumulate that they should become a nuisance and endanger public health and safety. The duty of dealing with private refuse is imposed upon the individual citizen as well as upon the municipal authorities. For their temporary deposit or final disposal public receptacles, depots and places are always provided.

Street lighting.

For the safety of the public in streets or highways appropriate means are and should always be provided for by the civic authorities. To that end the lighting of streets is a matter which cannot be neglected by any municipality.

Disorderly houses.

The existence of a brothel or a common bawdy house is regarded to be a nuisance in any locality. It is a house or room in a house kept for immoral purposes which under the law a municipality is empowered to suppress in certain events.

Control of Factories or Trades.

Within the local limits of any municipality no place may be used for any dangerous or offensive trade. No place moreover, can be used for any purpose which may endanger life, health or property unless the owner or occupier has obtained a licence for the purpose. There are certain trades specifically mentioned which are licensable, and the object of the licence is to keep the factory or the trade under the control of the corporation.

Markets.

A market is a public place for buying and selling. It is a place to which persons desiring to buy or sell articles may repair. Here things necessary for the subsistence or for the convenience of life are sold. Strictly speaking, the authority to establish and regulate markets falls within the police power of the State, but this power is delegated to the corporations. The object is to inspect and control the sale of articles of food intended for human consumption. Preservation of the health of the community makes such inspection and control of prime necessity. It further enables the municipalities to prevent the creation of any monopoly of the right to sell any particular articles.

Foods and Drugs.

In the interest of public health municipal corporations are invested with powers for regulating the preparation and sale of articles intended for the use of man as food or medicine. Rules there are which prevent and control the sale of unwholesome food. They also check the adulteration of articles of food or of drugs.

Care of the sick and restraint of infection.

It is permissive, but not obligatory upon municipal corporations to provide hospitals for the sick. They are however, required to take steps for the prevention of infectious or dangerous diseases within their limits. And for the purpose of municipal law those diseases are said to be, cholera, smallpox, diphtheria, erysipelas, scarlet fever, typhus, typhoid, enteric and plague.

Vaccination is defined as "inoculation with the material *vaccina* or the cow-pox, for the purpose of protecting the person so inoculated

from an attack, and especially from a severe or fatal attack, of small-pox". It is a term therefore for a method of protective inoculation against small-pox. It consists in the transfer to the human being of the eruptive disease of cattle called cow-pox (vaccina). Vaccination is more or less compulsory in every municipality. Its operation is performed by a licensed vaccinator, free of charge. A small fee may however be levied when performed at the private residence of a person.

Vaccination.

Municipal corporations are required to keep in their offices a register of all births and deaths. The father or mother of a child born within the municipality, or in their absence the occupier of the house in which the child is born is obliged to report the fact of the birth to the authority concerned. Similarly the nearest relative present at the death of any person is under an obligation to report the fact to the authorities.

Registration of Births and Deaths.

Education is one of the purposes upon which municipal funds may be lawfully expended. The education of the masses within its local limits, is, in fact, one of the chief duties of a municipal corporation. Without their education you cannot expect them to satisfactorily comply with sanitary rules and regulations. Improvements in public sanitation of large towns are mainly dependent on their education. Mass education is a problem in which the municipalities are, and where they are not, ought to be, specially interested. It is a hopeful sign of the times that within the last few years the major provinces have passed laws making primary education compulsory and free. In some, these laws apply to all local areas and in others, as in Bengal, they begin with municipalities with power to extend to other local areas. In this sphere of municipal activity, like the *Urbs prima in Indis*, it is Bombay which leads all other municipalities.

Education.

For secondary and vocational education the Indian municipalities cannot be said to have done anything yet. While in Germany observes Prof. Shah and Miss Bahadurji "though the provision of secondary education is the duty primarily of the State, the local authorities are by no means indifferent to the importance of a municipal activity in this behalf, and some of them have even gone the length of making such secondary and technical education compulsory and free, while some others even help largely deserving students by means of exhibitions. Berlin has 29 higher schools of different types, 8 of which are lycees for girls; Dresden has 12 and Leipzig 11. In the Berlin Municipal continuation schools special classes for 40 occupational groups are provided, including apprentices and others engaged in building, metal, clothing and food trades, barbers, shop

assistants and unskilled labourers, with an aggregate attendance of 36,000". In India the activity of municipal authorities is grievously behind the need of the time.

Prevention of infant mortality is a crying necessity in India. It is due mainly to the supply of impure and adulterated milk to the babes needing pure and plentiful milk. Care of children is a supreme task imposed upon every municipality. It is therefore, their duty to make all arrangements for maternity homes and the most perfect provision for the supply of pure milk and unadulterated food for babies and their mothers independently of any facilities they have. A race of healthy children is an unmistakable source of vital and economic strength to the Municipal corporation concerned.

Milk-supply.

The municipal bodies are empowered to raise funds with the advice of the government for local purposes. They are also in receipt of grants of public money from the Government. All the general principles of Local Self-Government apply to the administration of the municipalities. Their expenditure however, is subject to the law and to the general control of the Government. The general functions of Municipalities are many and varied and are similar to those of District and Local Boards. Questions of health, of management and maintenance of hospitals, of construction and up-keep of roads, of the founding and control of schools and other local affairs are all entrusted to their charge.

A seat on the municipal board carried with it considerable honour and prestige, though it is attended with no pay or gain of any sort. It is a responsible position and a member of a municipal board, if he does not choose to be only a figurehead, has opportunities of making himself a highly useful member of society. So in the larger towns the municipal elections are generally keenly contested. The greater the contest the more the evidence of life in the people and of the interest they take in their own affairs. If England is great it is because every Englishman takes an interest in local affairs and does his duty to his own parish or village.

Public life.

There are now over 1000 municipal towns in all India with a total revenue of over six crores. The largest municipal towns are Calcutta, Bombay, Madras, Rangoon, Lucknow, Benares, Allahabad, Lahore, Poona, Dacca, Nagpur and Cawnpur and between them they contribute not less than 80 per cent. of this total revenue. The municipalities are connected by a system of direct representation with the legislative councils, each district group returning one or more members according to the size and number of municipalities in the district.

Powers of Local Bodies.

The most important power which is vested in the various forms of Local Self-Government—Unions, Local Boards, District Boards and Municipalities—is the power to raise money from the electors by means of what are called *rates* or *cesses*. Rates and Cesses are imposed upon the people of a locality by local authorities for local purposes only. They differ from taxes in that the latter are imposed by the central authorities upon the whole country for national purposes. One is collected by local officials, the other by government officials.

EXTENSION OF ELECTIVE PRINCIPLE

It may be noted here that the elective principle of Self-Government has been extended to other public institutions, such as for instance, the Senates of Indian Universities. In every sphere of our activity the system of Self-Government is thus sure to go on developing with the intellectual and moral development of the people.

CHAPTER XIV

Government Activities of Public Benefit

1. IRRIGATION

Construction of canals in India belongs to the second half of the 19th century. They have certain definite advantages over rivers for they do not suffer either from floods or droughts. They may moreover, be constructed when they are needed. In view of the superiority of artificial waterways, the question arises why canals were not begun to be constructed before the middle of the 19th century. Their need had been recognised in the 17th century, in France and Holland. These countries were an example. But nearer home, the example of England, where the canal system began in the 1st half of the 18th century, was there. It could not be followed, for two obstacles impeded their construction. Transport facilities were needed chiefly for agricultural produce and for these it did not seem profitable to embark on expensive constructions. Secondly, there was the difficulty of obtaining the necessary capital. With the development of coal and other industries in India, and of trade and commerce, capital became more readily available, and expensive canal constructions were taken up.

Irrigation Canals.

It was not long before the economic effects of the canal system were felt. The economic effects of canal constructions have not been slow to be recognised. They immediately brought down the cost of transport to about one quarter. The stimulus, trade and industry thus obtained, was great. Great was the facility placed at the disposal of manufacturing industries by the easy and cheap transport of raw material, so that transport revolution may be said to have been the means of bringing about an industrial revolution in India. The defects of the canal system however, ought not to be lost sight of. These defects are relative rather than absolute in that, there is neither a national scheme nor a general system of canalisation. They are made anywhere for irrigation purposes; nor is there a through line of communication. Transport through canals is not remarkably speedy either, for they cannot always take the shortest route owing to the peculiar configuration of the country.

The most important public works in British India have been the canals and other irrigation works. By them water is carried to the fields in parts of the country where the climate or character of the agriculture requires it. Flood waters are kept from washing the fields

by embankments. There are the Sone and Orissa canals in Bengal, the Lower Ganges, the Agra and the Betwa canals in the U. P., the Periyar and Kurnool canals in Madras, the Nira canal in Bombay, the Sirhind, the Chenab and Jhelum canals in the Punjab, and the Jumna Canal in Sindh. The latest is the Sukkur Barrage. These have converted waterless and desert tracts into prosperous agricultural colonies. The ryots have not only been enriched by them, but are protected from famine and loss of cattle which drought always causes. In fact Punjab and Sindh depend for their very life upon canal irrigation, inasmuch as 98 per cent. of the area cultivated in those two provinces depend upon canal water. Altogether an immense tract of country, which used to remain barren, has now been converted into a veritable granary of luxuriant crops.

In addition to further bold projects of irrigation which, when completed, will surpass even the achievements of the past, the British Government, which is nothing if not both practical and thorough, has left no sources of water-supply or water-storage neglected. In each province, the means of water-supply best suited to it,—canals, tanks or wells,—are scientifically investigated and mathematically laid down, so that we may have a continuous programme which may be pursued in ordinary years, as an insurance against bad years when they come. Thus a sustained policy of hydraulic works, the best protective against famine, is secured, and if, as the Hindus say, no merit is higher than that earned by the gift of water, the Government in India have earned it in a pre-eminent degree.

Systematic extension of Irrigation.

2. RAILWAYS AND ROADS

RAILWAYS

The most striking of England's achievements in India are the railways. They have two enormous advantages. Speed in transport of goods is a great factor where market has to be gained quickly. It also provides facilities for warehousing raw materials,—such as coal, building materials. And just as canals are connected in their origin with agricultural produce, raw materials and coal, so are railways. They carry food from prosperous districts to famine-stricken provinces, and convey the surplus products in different parts of the country to big trading centres or seaports, and thus enable them to find the best market. In short, we can now turn over our money ten times as fast and profitably as when we had not these advantages, to say nothing of the increased security of transit and transport. Lastly, railways give the country a great addition to its military strength by furnishing the means for a rapid movement of troops and supplies.

Railways moreover, have had a marked effect on the economic life of the country. They have contributed enormously to the growth of trade in the country. They may be said to be a most important factor in the growth of industry, quite as much as the canals, the construction of which has yet to be developed. As a means of concentrating labour in a given locality the railways offer easier facilities than any other mode of transport. With the larger demand for labour the working classes must be said to have benefited most by the introduction of railways in India. They may be moved from one place to another more easily, and mobility is said to be a most important factor in establishing a standard life. The benefit derived from the cheapening of commodities is better realised than described, for competition is made more effective because no district has now a monopoly of goods. And while we say, that they tend to promote the expansion of towns in their wider territorial limits, we cannot lose sight of the fact that they are responsible for the growth of slums and congestion in towns. Thus while the very facilities they offer are a boon on the one hand they may be regarded to be a curse on the other.

The effect of railways on agriculture may be said to be partly good and partly bad. Good, inasmuch as they offer the rural producer larger and better markets, and bad, because they make rural exodus easy and accelerate extension of rural industries.

Travelling has a great educative value both for mind and heart, and the growing fellow-feeling amongst the different parts of the country is due to the facilities for travel which we now enjoy. We go now 400 miles instead of 10 miles a day, and at one-sixth of the old cost. The rates charged for travelling compared to European charges are very low,—in the proportion of one to four. It has been estimated that the producers, traders and passengers of India benefit to an amount equal to Rs. 10,00,000, by reason of this cheapness alone. The saving of time is also not an inconsiderable pecuniary benefit.

Lastly the railway service gives employment to nearly 6,00,000 persons of whom over 5,60,000 are our countrymen. Moreover, railways in India are not merely commercial enterprises, but they have been laid along tracts of country where they do not pay their way, only as a protection against famine.

ROADS

The early roads in India were bad. Nowadays we consider it proper that all public services should be carried on by specialists and supported by compulsory taxes. In other times the idea was that public services should be carried on by all the citizens. A mediaeval towns-

man was required to keep watch and ward over walls, streets and hedges. In addition he was required to be a soldier. These were the duties imposed upon the local community as a whole almost down to the reign of the Queen Victoria. State intervention began from about the rule of Lord William Bentinck as a result of the breakdown of the earlier system.

Growth of traffic must have given rise to untold inconveniences and innumerable complaints. The main roads were brought under either central or provincial control. This entirely new system made it possible for the roads to be adapted to traffic instead of *Vice Versa* as in early days. It means scientific methods of road construction and repairing, necessitating the employment of trained officials and competent labourers, so that the construction of roads in India has, within the last century, not only not been neglected but carried on with care and diligence. The roads are the arteries of communication. These with their feeder roads facilitate access to railway stations, and the whole country is now covered with a supplementary net-work of roads carrying on the good work being done by railways.

3. THE POST OFFICE

The Postal System.

The Indian Postal system has several unique merits. In their own country the British people have not yet been able to bring the postage on letters to below one penny, which is equal to one anna. There, as in India, a post card costs a half-penny, equal to our half-anna. But there at that cost neither the letter nor the post card can travel more than 400 miles from one end of England to another, while here a letter $2\frac{1}{2}$ tolas in weight and a post card at $\frac{1}{2}$ anna are carried from Bhamo (on the Borders of China) to Quetta in Baluchistan, a distance of over 3,000 miles.

Some time before 1858 a postal system on the English model had been introduced into India. It bore uniform low stamps for all distances. But since that date the system has been greatly extended and improved. There are over 2,50,000 miles of postal route now, in place of 30,000 when the Crown took over the administration of India. There is now not a village of any importance which has not got a post office. Where there is not a post office there is a post box, so that no locality with any population to boast of now lacks postal facilities.

The boon that the postal system has been to the country may be appreciated from the fact that over a 1,000 million letters and packets pass through the post office every year in India.

The activity of the Indian post office is many-sided. To facilitate the circulation of money among our villagers the Indian Post Office

has devised the money order system under which we get the money safely carried for a small payment. If it is lost in any way, or delivered to the wrong person, the law makes the post office liable.

Money orders.

The post office moreover, undertakes to deliver parcels to any part of India or of the world, and will hold itself responsible for their safe carriage in consideration of a slightly larger payment by way of insurance. The postal savings bank has helped our people to deposit their pettiest savings and to earn a fair interest thereon. It is thus teaching them to be thrifty as is shown by the fact that there are now 16,60,424 depositors of whom nine-tenths are Indians; the total value of the deposits being over Rs. 15,32,12,517.

The Savings Bank.

Under the law the post office has the sole right of carrying and distributing letters, packets and newspapers in and within India. This monopoly has made the Post Office a very profitable source of income to the State, while enabling it to do its work cheaper than any private company could possibly manage. One has to pay a visit to such an important postal centre as the General Post Office of Calcutta, or of Bombay, to be impressed by the fact that the pitch of enthusiasm, excellence and speed with which our vast postal business is carried on, is beyond all praise.

Advantages of state monopoly.

4. TELEGRAPHS

Equally important is the present telegraphic system with its 3,00,000 miles and more of wire in place of 3,000 in 1858. The number of messages that pass over these wires, annually, is enormous. The fee is small, and at a cost within the reach of the poorest, one can get news of a friend, or the state of a business, in an hour's time from any part of India. A Calcutta merchant may now ascertain the daily fluctuations of the market at Cawnpur or Nagpur by means of the telegraph, and need not lose good bargains by waiting for days for a reply by post. Fancy what would be the state of business if the posts and telegraphs were stopped and closed even for a short time.

Telegraphs.

Payments also may now be made by wire. By putting in a sum of money in the telegraph office at Calcutta, with the necessary commission, I can effect the immediate payment of the same to my creditor or my brother in the farthest corner of India. Several millions of rupees are thus sent by telegraphic money orders every year.

Telegraphic remittances.

How beneficial the postal and telegraphic systems have been to our

countrymen is proved by the fact that their activity is increasing beyond calculation year by year in every department of their work.

The Cable.

The cable, an extension of the wire, connects India with all foreign countries, even the most distant, so effectively that, though the cost may be a trifle greater, Calcutta can get news from London almost as soon as it can from Bombay—a marvel which sounds like a dream of the Arabian Nights or a fancy of a mythological age.

CHAPTER XV

Law and Order

1. ADMINISTRATION OF CIVIL JUSTICE

The improvement that has taken place in the administration of Civil Justice in India since the transfer of the Government to the Crown is remarkable. It may now bear comparison with the efficiency of any system existing anywhere in the world. The laws have been simplified and codified and it is a settled rule, never departed from except in very backward provinces, to appoint to judicial offices men of high education and upright character, who before their appointment have received a sound legal training. In nearly 90 per cent. of the causes before the Courts, Indians are the Judges.

Efficiency of Judicial Courts.

Sixty years ago there were two superior courts sitting in each Presidency town, Calcutta, Bombay and Madras. They were the Supreme Court and the Sudder Court. The Supreme Court had no appellate powers, but exercised original jurisdiction over residents in the Presidency towns, and in certain cases, over European British subjects outside those limits. The Sudder Court had no original jurisdiction but was the highest Court of Appeal in this country. Appeals lay before them from tribunals all over the country, except those in the Presidency towns.

Early Judicial Courts.

The present system which gives us a High Court or a Chief Court, or a Judicial Commissioner's Court, in full control over all courts, civil and criminal, in the province is a greatly improved one. The judges of the High Courts are appointed by the King and may be removed by him only, so that they are beyond the control of the Local or Indian Government. Thus, even when the people have claims against the Government itself, they may be sure of an impartial hearing. The strongest bulwark of British Rule in India is this impartial administration of Justice.

The Present System.

According as a province has advanced in education, justice is separated from executive or police administration, leaving no direct connection between the two. Burma is the only province where the administration of Civil Justice is not altogether dissociated from executive, police and revenue work. Minor criminal cases are tried in all provinces by officers who exercise executive and revenue powers.

Judicial and Executive Functions.

Everywhere the District Magistrate has the police, revenue and executive work in his charge. He has, moreover, an executive control over all subordinate magistrates within his jurisdiction. This is a system which has often been found fault with, though it is admitted that it has its advantages too. Moreover, it is not a creation of British rule in India, but is as old as the East itself. The British system is the most perfect to be found anywhere in the world. There the stipendiary magistrates are a body apart from the executive staff. It is to be hoped that the British system will in time be extended to India.

Not very long ago, civil actions about small sums of money were so expensive that poor people chose to suffer injustice rather than go to law. Courts have now been provided where Civil Justice can be had at as little cost of time and money as possible. These inferior Courts have been found so useful that people are well satisfied with them. The simplicity of their methods has made them popular.

Cheap Justice.

Under the present system, if you want the help of the Law Courts to realise any small sum of money due to you, you have first to go to the Munsiff. If you are dissatisfied with his decision, you can appeal to the District Judge. And if you are still dissatisfied, you may place the matter before two Justices of the High Court, or the Chief Court, or the Judicial Commissioner's Court, as the case may be. But if the sum in question happens to be a large one, you begin with the Sub-Judge or the District Judge, and then go on to the High Court, and finally to the Privy Council, the members of which are all men of great legal learning. From the decision of the Privy Council there is no further appeal. Thus you see, that in order to guard against possible errors of judgment all Civil cases may be tried no less than three times over.

Various grades of Courts.

No legal system is perfect. "Going to law" is perhaps a more expensive business than it ought to be. People should therefore, think twice before taking their differences to the Law Courts. Every effort should always be made to settle all kinds of disputes by a reference to good sense, mutual accommodation and friendly arbitration.

2. ADMINISTRATION OF CRIMINAL JUSTICE

Now let us turn from Civil Justice to criminal justice. The Moghul arrangement was, that all capital cases should come before the Nawab Nazim himself at head-quarters, and other cases of an important nature should go before the Naib Nazim. Fouzdars and Kotwals had jurisdiction over offences of a minor nature. In the Mofussil the Zamindars exercised unlimited criminal jurisdiction. They were

Criminal Justice under the Moghuls.

required to report decisions of capital cases only to the Nawab. In all others there was no check or control over them.

Since India came to be under the direct rule of the Crown, the number of Criminal Courts has largely increased, so that we have not now to travel far to seek redress from wrong. The Penal Code has simplified the law of Crimes, as the Criminal Procedure Code has put the method of enquiry and prosecution on a systematic footing. The higher Courts are there to keep the lower Courts in check. It is no small privilege for our countrymen that they should have obtained the benefit of the system of "trial by jury" without any of the troubles which the English themselves had to suffer to get it. It secures them the right to be pronounced guilty, or declared innocent, by the verdict of their fellow citizens. The jury are judges of facts, and the Judge is the judge of law. Where trial by jury has not been extended there are Indian assessors who help the Judge to arrive at a correct conclusion on the facts of the case. In the case of the Jury their verdict is binding upon the Judge, but he may or may not accept the finding of the assessors. There is now no district in the Presidency of Bengal where the system of Jury trial does not prevail.

Criminal Justice brought to our door.

The results of the present system of Criminal trials and appeals are highly satisfactory. With the progress of the training of the Magistrates the length of Criminal trials has become less, and with the growth of their education and the increase of their salary has come a much higher standard of honesty and sense of duty. Fifty years ago there was only an honorary magistrate here and there. We have now over 5,000 of them in all India, dealing with petty crimes in towns and rural tracts. Their decisions as a rule, give satisfaction. Their procedure is fairly correct, and a great many of them take a real interest in their public duties.

Criminal trials.

The administration of Criminal Justice has deterred violent crimes in India, while its healthy influence upon minor crimes is even more marked. Religious or caste disputes are not of frequent occurrence in our day. Minor officials are purer than they ever were before, and commercial dealings are carried on with a higher sense of honour.

The net result.

3. POLICE

The ancient police system of India consisted of a headman and a watchman in every village. They formed the backbone of the police machinery. They do so, even now, in a large measure. The headman was more of a Magistrate under whom the watchmen worked. The duties of the watchman were to keep watch at night, and find out all arrivals and departures. He had to observe all strangers, and report

suspicious persons to the headman. He was expected to know the character of every man in the village. It was his business to detect the thief in case of a theft in the village. If he traced the thief to another village to the satisfaction of the watchman there, his responsibility ended, the watchman of the new village taking up the enquiry. The watchman of the last village to which the thief was traced was answerable for the stolen property, or else the villagers themselves. Their office was hereditary and they were paid by the produce of an *inam* (free grant) land, and by a small tax on each house in the village. The watchman, therefore, was the servant of the whole community. This ancient system answered its purpose fairly well.

The Ancient Police system.

The Moghuls retained the system, but appointed at the head of a group of villages a supervising officer, usually a revenue officer, who was also a Magistrate. The spies under their system, however, were not quite the same functionaries as the detectives of the present day. With the decline of the Moghul power their police became hopelessly inefficient. Petty Chiefs and Zamindars did pretty much as they liked, and even harboured criminals or winked at crime for a share of the booty. The watchman was no longer responsible for stolen goods or for their value. The village organisation lost all their power of self-protection.

The Moghul Police system.

This was the order of things when the British came, and they at once set themselves to work to bring about an improvement.

Though still capable of further improvement, our modern Police system has largely helped to secure the safety of our lives and property. The Criminal Procedure Code carefully defines the powers of the several grades of police officers. It limits the number of cases in which the police may arrest. It restricts the time for which they may detain suspected persons without bringing them before a magistrate. So generally, the law keeps the Police under proper order and control.

Present Police system.

The present Police system was begun in 1861, and comprises a Chief Officer at the head of the district police. He is separate from the judicial staff, but is subject to the control of the chief executive officer of the district, the Magistrate. He directs and manages the police and their work all over the district. Great improvements have been made in the status, the pay, the education and behaviour of the force. The position of the village watchman has not been lost sight of. His duties are now clearly defined and regular payment of his monthly wages is secured to him. Recent laws have made the village

policeman a member and servant of the village community. He is always under the legitimate control of the "village elders". The urban watchmen have been, under British rule, united into a body of town police with duties confined to their respective towns. In time of trouble and pressure, well-to-do and respectable townsmen and villagers are expected to work as constables. Among their other duties the police are to see that municipal and sanitary rules are observed by the people and that excise, forest, infanticide and criminal laws are not broken.

Modern Police Efficiency.

Owing to the Police administration of the British, the country is now free from the gangs of dacoits and Thugs and professional thieves which used to infest it. The days when men could commit murder with impunity are gone for ever. Gang robbery is fast becoming a thing of the past.

The merits of the system should enable us to put up with equanimity the admitted defects due to the personnel of the police force, who have not yet risen to a high level of civic consciousness. It might help us to do this when we remember that most of them are after all our countrymen, and the higher the moral heights to which we rise as a people, the better will become the character of those who will be paid to police us.

CHAPTER XVI

Material Progress

1. FAMINE RELIEF

Against famine, India is now ever so much better fitted to fight than she was fifty years ago. Over many tracts of India the rainfall is occasionally short, or not timely, and sometimes it fails altogether. Such disasters cause loss of crops and want of food, resulting every now and then in scarcity, and more rarely in a regular famine.

Famine Relief.

Happily, these crop failures never afflict the whole of India at the same time. Prosperous provinces, therefore, are able to spare their surplus food for their suffering brethren. In the old days there was but little of systematic thought or action to take advantage of this fact. Moreover, there were no effectual means for doing so. Prosperous tracts could not help famine-stricken areas by sending them food in time. The death-rate was, consequently, terrible and larger tracts of country often lay desolate for years.

Under British rule, famines no doubt have been frequent, but their ravages are being minimised and their effects last less long. In the last great famine of 1899, as many as 25,000,000 of people were affected, but the railways carried $2\frac{1}{2}$ million tons of grain into the affected areas. Not one-tenth of this quantity could have reached these areas, and been distributed in time, before British rule. One can easily imagine how great would have been the death-rate without this timely help.

A fund known as the Famine Insurance Fund is maintained by the Government of India in which a certain sum of money is kept year by year. In years of famine money for the relief of the stricken is drawn from this fund. In prosperous years portions of this fund are spent on preventive measures such as irrigation works, feeder railways and other public works.

Famine Insurance Fund.

There is also a scientific department called the Meteorological Department which makes periodical reports about the rainfall and other atmospheric conditions. Its reports afford a fair guide as to whether it is likely to be a year of drought or unseasonable weather, thus giving timely warning upon which test works are at once opened in any area of apprehended famine. If people flock there, willing to work at famine rates, relief operations are undertaken which give them work enough to earn a meagre livelihood, till the next harvest.

Meteorological department and relief works.

Those who are aged and infirm, and otherwise unfit for work in relief operations are granted gratuitous relief. The Government also often remits rents and taxes in famine areas.

If respectable people in India hate anything, it is begging, or living on public charity. This reluctance is worthy of respect and so far as possible it is respected by British administrators. Millions of the unfortunate have been provided with warm clothes and blankets, and medical and dietary aid has been brought to them. Orphans have been taken care of, and relief with scrupulous privacy brought home to the respectable destitute, and to Pardanashin women too proud to beg for relief. The Government opens its treasury for *taccavi* advances, and its officers, from the Viceroy and Provincial rulers downwards, go all over the country, and do not hesitate to visit the affected areas personally, even though cholera, plague or other epidemics be raging there.

Increase of Population in spite of Famines.

The mere fact that in spite of famines, the population in British India has, during the last 10 years, increased by ten millions, while that of the Native States in the plains of India decreased by 4 millions, speaks volumes for the material benefits, sometimes so unreasonably disputed, derived by India from her present administration.

2. TRADE AND MANUFACTURES

Economic condition of the Middle Class.

All over the world the middle classes form the backbone of the nation. This is seen in the history of Europe. This was also the case in our Country in the past. But owing to changing conditions due to the physical and moral impact of the West upon our Country we now find ourselves with a broken back! On the one hand the standard and cost of living has increased to a degree undreamt of by our forefathers, who lived their simple, useful lives well enough without any of the modern luxuries; on the other, a large and annually increasing number of our young men are thrown upon the world after years of grinding in schools and colleges divorced from all real touch with life, and with a smattering of book learning as their sole stock-in-trade. They are thus fitted for no higher work than petty clerkships or such-like subordinate services, the supply of which is, and must be, considerably below the demand. This class of unskilled labour is so poorly paid that the remuneration they earn can hardly keep their body and soul together, much less enable them to bring up their families, or provide for other dependants, with anything like decency. Their economic condition has become one of chronic, pitiable want, and their sufferings are reflected in the emasculation of the whole nation.

The only thing which our leading men have thought of doing, during all these years, for these unfortunates, is to beg of the Government to be more liberal in providing them with lucrative employments. But surely our duty consists of much more than only that! On the one hand our social leaders could have advised our people not to saddle themselves with families till they could provide for them; on the other, our English education should have taught us, much earlier, that the regeneration of our Country cannot be brought about by increasing the number of clerks, but that we must direct our attention to the production of what we require for ourselves. In other words, it is obvious that we should try to take our share in trade, commerce and manufacture, by means of which not only will those who take an active part therein earn more for themselves, but there will be more of the necessaries of life for the whole country.

We pride ourselves on the immense resources of our country, but of what avail to us will they be if we neglect to make use of them? Rice, for example, grows in our country, but it must go all the way to Europe before it can come back to us as starch. The same is the case with too many of our raw products. In Bombay, no doubt, our more enterprising countrymen have done justice to the cotton which grows on that side by starting mills for its manufacture. In Bengal the Tea industry is attracting indigenous capital and enterprise, but the manufacture of jute has not been seriously taken up by our countrymen, in spite of the example of many jute mills run by English Capital. And on every side we see examples of possibilities neglected, or opportunities allowed to be captured by others. Thus no adequate effort has been made by our countrymen to develop our mineral resources. Our Gold, our Coal, our Mica, our Manganese, all these are left to foreign enterprise, though the solitary example of the Tatas is there to show what can be done with one mineral, iron, alone.

India's neglected Resources.

If, therefore, such men as Tatas deserve our esteem and gratitude, does not the enterprise of Englishmen who have shown us such brilliant examples of what can be done by joint-stock enterprise and organisation in almost every line of business, also deserve to be respected and imitated by us? By putting our Capital together in joint-stock enterprises, and employing expert advice and assistance by paying for it, why should we not be able to do what they have shown us can be done, by the exercise of mutual trust and business methods?

British example.

In the future, as in the past, the development of India will be closely bound up with the control of the sea. So long as mankind is what it is, nations, no less than individuals, will be moved from time to time by envy, hatred and greed, to aggression. The conformation

of our country and the habits of our people render it extremely improbable that for many years to come India will develop into a great sea power, nor need she so long as she has the mercantile and military marine of the British Empire, but it depends upon herself what her standing within the Empire will be. Will she be, as in the main heretofore, merely a producer of raw materials? Let us hope not. We have a vision of an India in which the great natural resources of the country will be developed within her own boundaries, an India to be built up by the endeavours of her youngmen, by your endeavours rightly directed into those channels of industry and manufacture which water the tree of national strength and prosperity. Such an India will trade on equal terms with the sister nations of the Empire.

Hopes for the future.

There was a time when India held a commanding position in the textile industry, so much so, that she not only supplied her own wants but also had a large export trade. This was out-paced and eventually destroyed by the competition of European machinery and superior organisation. When we realised this we were driven to the Swadeshi movement, but this was neither wisely guided, nor steadily and systematically pursued, so that it ended in a puerile and negative boycott. Instead of providing ourselves with cheaper commodities we thought of thrusting away the cheap necessaries of life which had come to our door. Instead of trying to learn, and making earnest and sustained efforts, we adopted a policy of reviling others and closing our eyes to our own defects. This was hardly the way to set about to regenerate our industries.

Unwise Methods.

In spite of our shortcomings, however, and owing to European enterprise, the expansion of trade in India has been such that it can now take rank with some of the most prosperous countries in the world. Apart from what we sent to foreign ports, different provinces and districts now largely exchange commodities. The Government has not been wanting in efforts by means of museums, exhibitions and stores in different parts of the country to encourage our rural manufactures and home industries. As for our external commerce, our Tea, Jute, Coal, Mica, Petroleum and Cotton are not only supplying different parts of the world, but affording employment to millions of men who otherwise would have been thrown on our already overburdened land.

Expansion of Trade in India.

Nevertheless, Agriculture must always remain one of the chief industries of India. Here also the Government has made systematic efforts for its improvement. Since 1870, there has been established in every province a Department of Agriculture. It collects and makes public early information as to the probable yield of crops. It starts and maintains

Importance of Agriculture for India.

model and experimental farms for the purpose of discovering and popularising new methods and new crops, and of training experts. At Pusa in the province of Behar, there is a Central College of Agriculture where higher scientific agriculture is being taught, and may be expected in course of time to be of the greatest benefit to our vast agricultural populations. Then there are the Botanical Gardens in Calcutta, Bombay, Ootacamund and Saharanpore; the museums of Bombay, Madras, Lahore, Lucknow, Nagpur and Rangoon which have an educative value of their own.

The Modern Banking System.

The Modern Banking system, which is essentially a system introduced by the British, is the very life blood of all the vast commerce and trade to which I have referred above. This was unknown under the Moghul Government, or before them. Our money-lending institutions, which are flourishing all over the country, are perhaps a good beginning which may be developed if we can only learn combination and mutual trust, into a vast Banking business, which would immensely facilitate the development of our internal trade and pave the way for our taking a share in the exchange Banking of the world.

The main point which I should like to impress on you is, that we should look on British enterprise, not as a rival to be reviled or sneered at, but as an educative example to be pondered over from which lessons of vital importance to our future development are to be learnt.

3. EMPLOYMENT OF INDIANS IN THE PUBLIC SERVICES

Queen Victoria's Proclamation of 1858, is the great Charter upon which we Indians take our stand. In obedience to that Charter, and also to Acts of Parliament, our rulers have steadily associated us with the government of our country. In the Council of the Secretary of State for India, three Indian gentlemen of fame hold their seats and not very long ago the Under-Secretary of State for India was Lord Sinha of Raipur. In the Viceroy's Executive Council there are three Indian gentlemen of great eminence in charge of the Departments of Education, Law, and Railways and Commerce respectively; each one is a part of the "Government of India". The unofficial members of the various legislative Councils are for the most part our countrymen. They represent local bodies or special sections of the community.

Indians in high Judicial Offices.

There is not a judicial tribunal in India, high or low, where we have not had our share of representation on the Bench. Some of the most eminent Judges of the seven High Courts of Calcutta, Bombay, Madras, Allahabad, Patna, Rangoon and Lahore have been Indians. Out of

a total number of one hundred and five High Court Judges, forty-five are Indians including the Chief Justices of the High Courts of Allahabad and Lahore. The Chief Court of Oudh has Indians on its bench, nor is the Court of Judicial Commissioner in the Central Provinces without its Indian element.

The Superior Officers of the Civil administration are drawn chiefly from the Civil Service of India. This service, admission into which is by open competition, consists of 1319 persons of whom about 60 are Indians. In the year 1912, a Royal Commission was appointed with statesmen and administrators both Indian and English as its members. Prominent amongst them were Lord Ronaldshay, sometime Governor of Bengal, Sir Abdur Rahim, lately a member of the Bengal Executive Council and a judge of the High Court of Madras, Sir Frank Sly, lately Governor of the Central Provinces and the late Mr. Gopal Krishna Gokhale, a Mahratta gentleman of rare distinction in the public life of India. Within recent years there has not been a countryman of ours who has been held in higher esteem than Mr. Gokhale, by the Indian and European communities alike, whether here or in England. He was a bold and fearless critic of the Government and its measures. His criticisms, however, were tempered by sense, reason, and above all, moderation; so that he was one of the most effective of the critics of the Government. Upon his death in the year 1914, Englishmen who were his life-long political opponents, came forward and vied with one another to do honour to his memory. In accordance with the recommendations of this and a subsequent Commission known as the Lee Commission a number of appointments in the Indian Civil Service are hereafter to be competed for year by year in India. Among its other recommendations are those which tend to improve the pay and position and number of Indians in the various other branches of the Public Service in India.

The Civil Service of India.

But His Majesty's Government have conceded beyond the recommendations of the Royal Commission. They insist that thirty-three per cent. of the recruitment for the Civil Service of India shall immediately be made in India with a further addition of one and a half per cent. annually until the situation has been examined by a further commission to be appointed before long. It may be worth while to note that the right of the Indians to compete for the Civil Service examination in England remains unaffected by this concession.

Further concessions.

The remarkable progress made will be evident when I tell you that, sixty years ago, there were no Indians on the Bench of any Supreme or Chief Court, or in the Legislative Council or in the Civil Service.

In the year 1886, Lord Dufferin's government appointed a commis-

sion to enquire into the whole question of our employment in the public services of India. This commission recommended that in the Superior grades ordinarily held by members of the Civil Service certain offices should be thrown open to members of the Provincial Service. The recommendation was given effect to in 1891. These are called "listed posts," appointments to which are made by the promotion of able and devoted public servants from the lower services. Such posts include executive headships of divisions and districts as also District and Sessions Judgeships. They are all posts of the highest importance. The number of "listed" posts is gradually being increased as opportunity occurs.

Further facilities for Indian officials.

The Provincial and Subordinate Services comprise bodies of competent public servants who have the details of the work of administration in their hands and are open largely to Indians. The Provincial Civil Service comprises subordinate Judgeships and Magistracies and the great number of the Executive. Magisterial and Judicial posts are filled by its members. The Indian Medical Service, the highest branch of the Medical department in India, is open to Englishmen and Indians alike. There is a very healthy rule adopted in 1879, that appointments made in India and carrying a salary of Rs. 200 a month and upwards should ordinarily be held by natives of India. No such appointment may therefore be made to defeat that rule except by special sanction. We know that unless a very strong case is made out the rule is strictly observed. The Members of the Provincial Service manage by far the greater part of the business connected with administration. They dispose of the greater part of the magisterial work. The Civil Courts, other than the Courts of Appeal, are entirely manned by Indian Judges. There is perhaps no country even in wealthy Europe where public servants equal to the members of our Provincial Civil Service in rank are so well paid.

Provincial and subordinate Civil Services.

Under British rule all branches of the legal profession are open to the natives of the soil. And there is no post in the higher or in the provincial Engineering services to which men recruited from the Indian Engineering Colleges may not rise. Similarly Indians of learning, ability and academic distinction cannot be shut out of any office in the imperial or subordinate educational services. Honorary posts, such as magistracies, memberships of self-governing bodies, and fellowships of universities, are open to all qualified citizens. Needless to say, Indians have proved themselves quite fit for all these responsible offices, and it is also a matter of congratulation that the training we receive by holding such posts is more and more fitting us for taking a larger share in

Other services.

and eventually of the entire responsibility of the management of our own affairs.

The general purpose of the reforms which have been introduced required some change also in the military policy of England. There was an universal desire among Indians for extended opportunities of military service. The lot of the Indian soldier has been considerably improved, though much remains to be done but the measure which Indian opinion values most is the grant of British commissions to Indian officers. The justice of the demand is acknowledged and a certain number of King's commissions to Indians has already been granted. Race should no more constitute a bar to promotions in the Army than it ought to in the Civil Service.

The Army.

CHAPTER XVII

Public Health and Culture

1. SANITATION

As I told you at the outset, sanitary measures were not regarded as a matter requiring systematic organisation in the old days. Even under the East India Company they had not acquired the importance which they have had since 1858. Up till then the sanitation of large cities and cantonments only was cared for. Our Mahomedan rulers or the Hindu governments before them made no attempt whatsoever to ascertain the facts relating to death and disease over the country. A perfect system of sanitation can be established only when we know the period when certain diseases appear, the death-rate due thereto and the means of prevention. To ascertain the real state of affairs a system has been introduced under which we are obliged to register deaths and their causes. The statistical information so made available enable us to know what are the local diseases and the percentage of the population suffering from them with fatal effect, and once the true causes are known it does not take long for modern science to find out the means to check them.

Importance of Statistics.

The supply of filtered water and the construction of waterworks have greatly aided in driving out local diseases. More than 100 Municipal towns are now furnished with water-supply system. Many of them, such as those in the Presidency towns of Calcutta, Bombay and Madras, are on a large scale, and are constructed on the most approved modern methods. The prevalence of plague has made the government direct its attention towards improving the dwellings of the poor. That is not all. Further to improve the health of the people, and to afford them protection from epidemics, grants-in-aid are made from the general revenues. The constant attention of trained experts are always employed to solve the sanitary problems of our town life.

Sanitary measures.

If the progress of sanitation in rural areas leaves much to be desired, that is due not only to the lack of funds, but the habits of our own people are also to blame. Our countrymen find it difficult to get over their old deep-seated prejudices and the lax ways of life into which they had fallen. Nevertheless, rural sanitation being in the first instance vested in the village or district authorities, of which I have already told you, it

Co-operation of the people necessary.

is satisfactory to note that, provided they have funds at their disposal, these bodies are ever ready to adopt measures calculated to improve public health.

Popular apathy to sanitary improvement is giving way to a recognition of its advantages, but it should give way faster. Indians are noted for their personal cleanliness but a due sense of public cleanliness yet remains to be cultivated. In the larger towns of Calcutta and Bombay things have steadily improved, but village habitations are still ill ventilated and overpopulated. The village site is dirty, and is allowed to be poisoned by stagnant pools; moreover, the villagers further pollute these pools by using them for every kind of purpose. The local bodies who are responsible for sanitary improvements cannot do much unless the people also cultivate healthy habits, which are at the very root both of a healthy body and a healthy mind.

2. HOSPITALS AND DISPENSARIES

A hospital is a place where outdoor patients are given medicines free, and indoor patients are taken in, accommodated, nursed and cured. A dispensary is a place where only the maladies of outdoor patients are attended to, and medicines dispensed gratis.

One great aim of British rule in India has always been to carry to the houses of people the benefits of scientific surgery and medicine, and continued efforts have been made to make them popular. The use, however, of our indigenous drugs and systems of medicine has never been discouraged. There are numberless civil hospitals and dispensaries at which millions of sufferers are treated every year either as indoor or outdoor patients. To the several Medical Colleges established under British rule we owe the very large number of medical men, trained in modern surgery and medicine, who are now scattered all over the country. Those who cannot afford to call in their services at home have the hospitals and dispensaries of which in the year 1930, there were as many as 5,469, where no less than 49,988,339 persons received medical aid as outdoor patients and 797,222 were indoor patients. Unfortunately the old-fashioned section of our countrymen have got certain baseless prejudices against availing themselves of these proffered benefits. But it is surely better to be in a hospital, where all that is possible will be done by trained medical men, than to risk a death of agony at the hands of a quack.

Extensive Medical Aid.

The Lady Dufferin Association founded in 1888, for providing medical aid to women and children, is an institution of which advanced Europe would be proud. Here nurses and midwives are trained

up and sent out to alleviate the sufferings of the poor women, who had formerly to put up with their ailments, at great discomfort and perhaps permanent deterioration of their health, relying only on such simple remedies as they themselves knew of. Zenana hospitals are also maintained, where women may get professional attendance with due privacy.

Medical Aid for women.

Thus if the stress and strain of modern conditions, the interrupted drainage due to railways, the greater spread of epidemics owing to facility of communications,—if all these have inevitably brought about more liability to disease, it is clear that the Government has not been behindhand in grappling with the problem, and a mere glance at the health statistics of big towns like Calcutta, Bombay or Madras, where the results of modern hygiene are most clearly to be seen, compared with those of the surrounding country largely left in their natural conditions, will be enough to convince one that a proper appreciation of the teachings of modern science is all that is needed to combat successfully the strain of modern economic conditions; and while the Government cannot be blamed for the advent of the latter, the introduction of the former is certainly to their credit.

Modern Problems solved by Modern Methods.

3. EDUCATION

One of England's great men was Lord Macaulay, who as Law Member persuaded the Government of India to open the doors of Western education to the people of the country. It was at his instance that the government of Lord William Bentinck declared that "His Lordship in Council is of opinion that the great object of the British Government ought to be the promotion of European Literature and Science among the natives of India, and that all the funds appropriated for the purpose of education would be best employed on English education alone."

Introduction of English Education.

The system of education continued to bear excellent fruits until 1882, when the government of Lord Ripon decided to improve it so as to make further and more rapid progress. In that view he appointed an education commission which recommended a further extension of the principles and policy of education laid down in the despatch of 1854.

It was in the year 1857, that the three great Universities of Calcutta, Bombay and Madras were started. To these some undergraduates were immediately attracted. In the meantime education departments had been formed in the larger provinces. Along with them the grant-

University Education.

in-aid system, which has done so much for the growth of Indian education, had been begun, with the result that great numbers of colleges have grown out of the 13 in existence in 1858.

The earliest year for which complete statistics are available is 1865, and the latest, 1920. If we compare the figures of the former with those of the latter we cannot but wonder how rapidly we have advanced. In the year 1865, there were in all India 26 colleges with about 1,600 undergraduates. In the year 1920, we have had as many as 147 colleges with about 42,000 undergraduates in the country. Of these 34 colleges are in Bengal with 15,921 students, 7 colleges in Bombay with 3,475 students, 37 colleges in Madras with 8,284 scholars, 40 colleges in the U. P. with 25,850 scholars, and 10 colleges in the Punjab with 3,514 scholars. Nor do the Central Provinces or the new province of Behar and Orissa lag far behind.

There are now firstly the five great universities, of Calcutta, Allahabad, Bombay, Madras and the Punjab established by the Government and later additions are those of Patna, and the three unitary universities, the University of Dacca, the University of Lucknow and the Hindu University of Benares, which promises to have a great future before it. A Moslem University at Aligarh on the lines of the Benares Hindu University is an accomplished fact and six more, one in the Central Provinces another in Burma, the third of an unitary character at Delhi, one at Agra, the fifth, the Annamalai University at Annamalainagar near Bezwada and another in the Andhra province have already been started. The management of the affairs of the universities is in the hands of Fellows, the majority of whom are nominated by the Government, the remainder being elected by the Senate, or its faculties, or by the body of graduates of the University.

The model Indian State of Mysore has now an University of its own; so has the State of Hyderabad, and it is in the contemplation of the Gaikwar one of the most enlightened and cultured princes in India, to have an up-to-date University devoted to scientific education for his own State of Baroda. It is reported that the progressive state of Travancore will not be long to be in line with Mysore and Baroda in this matter.

Our Universities are fast becoming a power, for the whole system is being changed and their management is rightly and gradually being made over to men whose occupation is to teach. The Vice-Chancellor is nominated by the Chancellor who is always the head of the administration of the Province.

Our reconstituted Universities have been put upon a basis which, if judiciously maintained, will place high education in India on a

par with the best University education anywhere in Europe, or in America.

The greatest benefit of high education has been the rise and growth of self-consciousness in India. The desire for self-government and the spirit of nationality are the products of English education acting on Indian minds. It has been decided that India shall be a partner in the Empire, with progressive steps in self-government as she proves her fitness for them. We have to fit ourselves for freedom, for it has come to stay. In the heat of the recent discontents, which are the flotsam and jetsam of the Great War, we must not ignore the essential and predominating fact that it is to British rule and English education that we owe our national self-consciousness. The movement of non-co-operation in so far as it is not directly reactionary, is a product unchecked by a study of the history of the British doctrine of freedom.

Effect of High Education.

The government is moreover taking steps to bring primary education to the door of every Indian of School-going age. In that view they have set themselves to the task of increasing the number of primary and secondary schools, and have year by year steadily added to their number until we have now 1,30,000. This is not to be the final number. Not very long ago the Viceroy declared that, "It is the desire and hope of the Government of India to see in the not distant future some 91,00 primary public schools added to the 1,00,000 which already existed for boys, and to double the 4½ millions of pupils who now receive instruction in them." It is an elaborate system and broadly speaking the plan of education is the same everywhere. Thus the outer gates of knowledge may be said to have been thrown open to all.

Primary Education.

The proportion of children passing the several standards has gone on increasing. The numbers reaching and attending secondary schools have steadily advanced till in 1920, there were 45,18,004 boys and 9,28,004 boys and 9,28,846 girls on the rolls of 1,31,712 secondary or primary schools. Besides these there is a vast number of pupils in private schools. There are normal schools for training men and women teachers in every province. The education department maintains a staff of able inspecting officers to visit and examine all the schools on the lists.

In ancient times the goal of education was to make the rising generation fit for the state. It was expected that the citizen would be able to help the state in times of peace and war when required, and in fact, apart from the state they would have no separate existence. The ruling idea of education is to educate a man as a reasonable being free to determine his own life and conduct. If that is so, it is necessary that the masses of the people should take their proper share in the moral and

Extension of Primary Education.

material welfare and progress of the country. Our political advancement also must be in proportion to the education we receive. There can be no greater mistake than to suppose that the ignorance of the masses is the best guarantee for a firm Government.

Early in the history of their rule the English people recognised this fact. The history of primary education in India before the British is not very clear. We had no doubt our seats of learning. But we do not know how far the masses of the people had the benefit of an organised educational system. We are not in a position to say how far primary education, in the sense in which it is used now, prevailed in India before 1835. Ever since the days of Lord William Bentinck our rulers have been vigorously pushing the cause of education in this country. Early in their history in India they recognised the fact that the condition of the masses could be raised only by education and by nothing else. In that view and with the most enthusiastic support of the people a system of compulsory primary education has been introduced by the Government in almost all the major provinces of India.

Compulsory Primary Education.

To begin with, primary education has been made compulsory within municipal areas in the Presidencies of Bengal and Bombay and in the province of Behar and Orissa. Very wisely the municipal area has been chosen to be the first field of operation for it is always the centre of light and culture. It is proposed, however, to extend the system to areas within the jurisdiction of District and Local Boards which in Bengal have recently been constituted into union committees. We should take the fullest advantage of the system introduced by the Government but left in the hands of school committees composed of our own men. Let the masses of the people be educated and elevated and our country will advance in rapid strides in every department of public life. Educate the people and you have solved the problem of raising the condition of your masses.

Female Education.

The Zenana and the caste system offer peculiar difficulties in India to the education of our girls. The Bethune College in Calcutta is the only Ladies College in India; but mixed education of boys and girls is permitted in all the colleges under Government control and in several town and village schools. For all that, it cannot be said that sufficient attention has been paid to this important branch of education, and the fault lies largely in the apathy of our countrymen.

Medical Colleges and Schools furnish yearly a growing number of graduates and certificated practitioners. They do duty at hospitals and dispensaries and a very large number of them find useful and lucrative careers in private practice. The Lady doctors employed by the Lady

Dufferin Association also spread the knowledge of medicine, surgery, and nursing among the women of the country. For higher studies in the applied sciences of physics and chemistry we have those great institutions, the College of Science of Calcutta, and of Bombay and the Tata Research Institute of Bangalore. All the three owe their existence to the munificence of patriotic Indians of great eminence either in Law or in Industry or in Commerce.

Scientific Education.

Technical branches of study, such as engineering, mechanical, electrical, etc., are now drawing a larger number of youths than they did 20 years ago. There are well equipped Engineering Colleges in all the three Presidencies of Bengal, Bombay and Madras. In the U. P. the Benares Engineering College and the Roorkee Civil Engineering College rank as high as the best of Engineering Colleges in England. The three former are affiliated to their respective universities and besides these there are some engineering schools. There is a dearth of technical schools in India, but considerable facilities are offered by the workshops attached to the Railway lines in India. They take in suitable apprentices for training and employment after going through a complete course. The Agricultural Colleges of Pusa in Bengal, of Sabour in Behar, and of Madras are doing useful work.

Technical Education.

The number of students that go into law is extraordinary. It is evidently the most popular profession with the educated classes in India,—a fact to be regretted. It cannot, however, be denied that the present generation of trained lawyers have done much to improve the administration of justice in India.

Legal Education.

Education was formerly confined to privileged classes only. The gates of learning have now been thrown open to all, irrespective of sex, caste or creed. Every subject of His Majesty may claim primary education as a birth-right. Moreover our latter-day schools and colleges afford the best training ground for the idea of equality and fraternity, inasmuch as boys of all races, religions, and castes pass the most impressionable period of their lives there, together, and with every opportunity for the formation of friendships based on an understanding and mutual respect for each other's traditional and personal acquirements.

India is rich in intellectual ability which does not as yet enjoy adequate opportunities of training and self-development. Alike by the methods of vernacular and of western education, mental power of the Indian youths should be husbanded. It should also be applied effectively to the tasks of citizenship, professional duty, learning, scientific research and self-Government. Our system of education is gradually being modelled

Our Educational Needs.

upon the excellence of the eastern traditions of philosophic culture and the western methods of critical investigation. Such a combination is likely to bear rich fruits in new manifestations of thought and culture. The development of education from the primary schools to the highest stage of University study, has very strong, if not the strongest, claims upon the public resources of India and upon the generosity of private benefactors.

A substantial advance in the direction of national education has been made by the establishment of the department of Archaeological Survey. The relics of our great and glorious civilization are guarded and preserved by this department. If our past has been great, surely our future will be great also, for out of the past comes the future. Our temples, mosques, monuments, tombs, pillars and inscriptions,—what art and beauty, what eloquent lessons lie hidden in them. The sad neglected condition of these innumerable records of our history aroused the sympathy of the British Administrators who with their characteristic thoroughness resolved to recover and preserve them so that they may stand for all times to come as a visible memento of the mighty past of the country, whose destinies, under God, were placed in their hands.

National Education.

Research work done in this field would have two important results. It would give us ample materials for studying our ancient literature and history, and would help the British to respect our past. Upon this respect, mutual esteem would flourish.

A noteworthy sign of the times is the foundation of the Victoria Memorial Hall in Calcutta, which is intended to be a monument of the sacred memory of the great Queen Empress and a reminder for all time of the vigour and many-sided activity of British rule.

Every living and healthily growing system of education has behind it a social ideal implicit or explicit. It is the ideal which gives it power. In order to have a spirit of responsible freedom in its education, a people must be responsible and free. Young India resents subordinate status and wishes the Indian peoples united by the bond of a common destiny, to be captains of their own fate. The irresistible trend of things is towards the political regeneration of India. That regeneration will no doubt be found compatible with close voluntary alliance with Britain. The right policy for Britain as regards India should therefore be, as it is, to aim avowedly at alliance, not at military or administrative control; at co-operation, not at subjection.

The Ideal.

4. LITERATURE AND NEWSPAPERS

The rapid growth of education in India has necessarily increased the output of books, magazines and newspapers. The growth of current

literature has been more remarkable in India than in any other country. Sixty or seventy years ago there were only a very small number of vernacular papers and these were all published at or near Presidency towns. Now every town has a newspaper, Vernacular or English, and many have more than one. That this is the result of the diffusion of education, both primary and secondary, cannot be denied. There are more than 400 English newspapers in India with an average circulation of 1,500 copies. But the more widely read and distributed papers are in the Vernaculars. Of these there are about 1,000 with an average circulation of 4,000 copies. There are also about 3,000 magazines published in India.

The Press and Literary Output.

At its start the Press was jealously watched by the authorities and the fetters under which it was put were enough to keep self-respecting men clear of journalism as a profession. It was under the Marquis of Hastings, in 1818, that the censorship of the Press was abolished with the result that abler men came in. Sir Charles Metcalfe and Lord William Bentinck, two men of rare liberal views were the principal benefactors of the Indian Press. To Metcalfe is due the credit of having emancipated the Press, subject to certain conditions which, however, were never enforced. With its emancipation the Press improved in tone and status and has steadily gone on doing so until the present day when many able men, both English and Indian, are engaged in the noble profession of journalism. It educates public opinion such as nothing else can.

Improvement of Press upon Liberation.

At the time of the Mutiny, Lord Canning again placed the press under restraint, but for a year only, until the heat and passion of that unfortunate incident had expired. In 1878, Lord Lytton introduced a reactionary policy by depriving the Vernacular Press of its freedom. The policy did not survive more than four years, for immediately upon his arrival Lord Ripon once more freed the Press. Things remained in this state until 1910, when Lord Minto brought in the Press Act which makes seditious writings punishable. Lord Lytton's Act applied to Vernacular journalism only, while that of Lord Minto applied to English and Vernacular journals alike, and was thus not equally invidious. The operation of the Act, in the hands of those who had the administration of it in their charge, was not above reproach, for they did not fail to make offensive discrimination with wonderful regularity and perhaps studied alacrity. Realising the unjustness of the Act Lord Reading repealed it in 1922. But the very same provisions, in a more stringent form reappeared upon the Statute Book under Lord Willingdon in 1932. But this is under a promise of repeal.

Vernacular literature.

Not less important is the growth of Vernacular literature, as represented by books. Over 10,000 books are registered in British India each year. It must, however, be admitted that all this literary activity yet leaves much to be desired in the way of substance and quality.

CHAPTER XVIII

Principles of British Rule

No student of history need be told that British rule in India was not the result of any studied or deliberate policy of conquest. The English people came to India, as did other European peoples, to trade. The country was then divided into innumerable rival factions and contending elements; it was in fact on the verge of political chaos. In the resulting quarrels British traders and mercenaries got mixed up, partly by way of adventure, partly in self-defence and partly at the request of one or other of the contending parties. The inevitable result was that the strength of character of the British and their power of organisation brought them to the top. But once having come to the top their practical mind suggested further and better organisation of themselves and looked for fresh fields and pastures new. Force of arms had little to do with British victories. Nor is there any foundation to the story told us that the Indian Rajas were faithless and that they very often violated the terms of their treaty with the East India Company and thus all their wars were brought about. It is a mistake to suppose that the means which the Romans employed to acquire and build up their Empire in the Near East were those by which the British became possessed of their Empire in India. The unfortunate native rulers of India could not drill their troops on European model. They could not manufacture arms of a type superior to those of English make, nor could they master the art of warfare of their English friends.

For our present purpose, however, we shall take it that during these preliminary struggles it was but natural that some of the meaner qualities of the different parties should have come into evidence. But it can serve no useful purpose to use this as a handle for decrying this party, or that. What is of much greater importance is to note that when the British nation found itself in power, it did not recklessly abuse such power. On the contrary it eventually rose to the height demanded by the great part which Providence thus called upon Great Britain to play. When it was found that Government by the East India Company, originally a profit-making concern, led to undesirable situations, the British people did not hesitate to take over the supreme responsibility of sovereign power.

PRINCIPLES LAID DOWN EARLY

It was a great Englishman, John Stuart Mill, who first pointed out that "if there is a fact to which all experience testifies, it is that when

a country holds another in subjection, the individuals of the ruling people who resort to the foreign country to make their fortunes are, of all others, those who most need to be held under powerful restraint. They are always one of the chief difficulties of the Government." And long before Mill, the great Macaulay, who at one time was Legal Member of the Government of India, declared from his seat in the House of Commons that in the "stupendous process of the reconstruction of a decomposed society"—and anybody having the most superficial knowledge of our history will admit that our society at the time was decomposed to the core—"we have to engraft on despotism those blessings which are the natural fruits of liberty."

And, later, it was Queen Victoria the greatest of British Sovereigns who voiced the best feelings of her race when she proclaimed on the 1st of November 1858:—

"We hereby announce to the Native Princes of India that all Treaties and Engagements made with them by or under the authority of the Honourable East India Company are by us accepted, and will be scrupulously maintained; and we look for the like observance on their part."

"We desire no extension of our present territorial possessions; and while we will permit no aggression upon our Dominions or our Rights, to be attempted with impunity, We shall sanction no encroachment on those of others. We shall respect the Rights, Dignity, and Honour of Native Princes as Our Own; and We desire that they, as well as Our Own subjects, should enjoy that Prosperity and that social Advancement which can only be secured by internal Peace and good Government."

And "it is Our further Will that, so far as may be, Our subjects, of whatever Race or Creed, be freely and impartially admitted to Offices in Our Service, the duties of which they may be qualified, by their education, ability, and integrity, duly to discharge."

* * *

And....." It is Our earnest desire to stimulate the peaceful Industry of India, to promote Works of Public Utility and Improvement, and to administer its Government for the benefit of all Our Subjects resident therein. In their Prosperity will be Our strength; in their Contentment Our Security; and in their Gratitude Our Best Reward. And may the God of all Power grant to Us, and to those in authority under Us, Strength to carry out these Our wishes for the good of Our people."

Her Majesty was so deeply anxious about the right spirit being introduced into the proclamation that she insisted upon her Prime Minister to draft it himself, having rejected the one already drafted by

the First Secretary of State for India. She desired Lord Derby to "Write it himself in his excellent language, bearing in mind that it is a female Sovereign who speaks to more than 100,000,000 of Eastern people on assuming the direct Government over them after a bloody civil war, giving them pledges which her future reign is to redeem, and explaining the principles of her Government. Such a document should breathe feeling of generosity, benevolence and religious feelings pointing out the privileges which the Indians will receive *in being placed on an equality with the subjects of the British Crown*, and the prosperity following in the train of civilisation."

RE-AFFIRMATION

Twenty years later on the occasion of the Delhi Durbar in 1877, in delivering the message of Her Majesty, Lord Lytton, the Viceroy avowed that, Indians whatever their race and whatever their creed, have a recognised claim to share largely with their English fellow-subjects, according to their capacity for the task in the administration of the country they inhabit. "This Claim," the Viceroy went on, "is founded on the highest justice. It has been repeatedly affirmed by British and Indian Statesmen and by the legislation of the Imperial Parliament. It is recognised by the Government of India as binding on its honour, and consistent with all the aims of its policy."

Her Majesty's determination to abide by the principles of the proclamation was re-affirmed in her reply to the Address of Congratulation of the Bombay Municipal Corporation on the occasion of the Jubilee of her reign in 1887. Her Majesty delivered herself in these words. "Allusion is made to the Proclamation issued on the occasion of my assumption of the direct Government of India as the Charter of the liberties of the Princes and Peoples of India. It has always been and will continue to be my earnest desire that the principle of that Proclamation should be unswervingly maintained."

This policy was ratified and confirmed by her Successor, King Edward VII, in his proclamation of the 2nd of November, 1908. Apart from repeating every word of what his saintly mother proclaimed the King said that, "steps are being continuously taken towards obliterating distinctions of race as the test for access to posts of public authority and power." The King moreover desired "the progress which had already been made in this direction to be firm and sure as education spreads," and India gains greater experience. It is upon the authority of King Edward that we have it, that "the welfare of India was one of the objects dearest to the heart" of His Queen Mother. And we see how Edward VII, inherited that feeling from her.

Similarly King George V would not let the occasion of his accession to the throne go by without solemnly repeating these assurances. The words which he used after referring to the two earlier proclamations are equally worthy of His Imperial Majesty. "These", His Majesty said, "are the charters of the noble and benignant spirit of Imperial rule and by that spirit in all my time to come I will faithfully abide." We find that King George has consistently kept those high principles of Imperial rule of his father and grand-mother before him, for again on the occasion of the Coronation Durbar at Delhi in 1912, His Majesty assured us that our welfare and happiness were dearest to his heart, and that nothing could move him from his determination to see India happy and contented and her rights and privileges carefully protected and maintained.

INDIA'S CONSCIOUSNESS

While all these principles were materialising England set before herself the task of imbuing the Indian mind with the same ideals of duty, honour, fair-play and good-comradeship between the fellow workers as the best of *Sahibs* was traditionally supposed to possess. No doubt in the history of Indian political activity the political teachings and philosophic thought of Europe have played a very important part. England made the bright youth of India read Mill on 'Liberty', Macaulay on 'Warren Hastings', Carlyle on the 'French Revolution', Burke on the 'American Taxation', on the iniquities of England's rule of India, and other books of political and social theories in which patriotism, law and love for fellow countrymen were handled in a way as to stir the depths of the susceptible and impulsive Indian mind. Voltaire, Rousseau and Zola have for long been absorbed by Indians quite as much as by the Turks and the Egyptians. Even the German Neitzsche produced an impression in Calcutta, Bombay and Madras in no way less considerable than in Constantinople and Tokio. Nor is this all. Ever since the appearance, for however short a time, of the Swami Vivekananda on the field of her intellectual activity, India began to realise that the Hindu and the Mahomedan mind can only flower if it is not cut off from the Hindu and Mahomedan tradition and religion. She fully realised that there is more intellectual virtue for a Hindu in the Upanishads of old, Vivekananda of yesterday and Rabindranath, Aurobindo and Gandhi of to-day and for the Mahomedan in the Koran, and the Persian poets and philosophers whose modern disciples Iqbal and Najruh Islam must claim for themselves their fair share of credit. All this however, is to the credit of England and for all times in history shall proclaim her glory such as nothing else can; for having brought peace and order in a country which had not known them for centuries and which had been the

hunting ground of adventurers from all parts of the world; for having brought emancipation within reach and measurable distance in a land which had been enslaved for a thousand years. No other nation in the history of the world can boast of a record so noble as that of England in India notwithstanding all the faults and defects in her administration, and the excesses perpetrated at times by some of her overzealous officers.

The sickly sentiment called theory expressed in Kipling's silly phrase "the white man's burden", is resented to-day from one end of the country to the other. Quarter of a century ago the superiority of the west in might, majesty, wisdom, science and religion was never doubted except by those who were recognised as "uneducated" or some "old-time agrarian", or "a religious bigot". Given equal opportunities India realises that she can, as indeed she has, produce men of equal eminence whether in science or in literature and of greater eminence in philosophy and religion. In fact her superiority in any department of human activity, except in the art of warfare with all modern implements, is seriously questioned. And here again, the Indian firmly maintains that, placed on equal terms he will not give his European compeer an opportunity to take the palm, such as was witnessed in the Battle of Marne or the defence of Gallipoli.

THE MONTAGU ANNOUNCEMENT

And lastly we find the entire British people through their representatives voicing sentiments no less noble. On the 20th of August 1917, the Secretary of State for India made an announcement which shall always remain a landmark in Indian history. "The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of increasing the association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India, as an integral part of the British Empire." They have decided that substantial steps in this direction should be taken as soon as possible. Here the offer to gradually lead India on to self-government is firm and definite, and she may well rest assured that the advance in that direction is bound to be in proportion to her fitness for it by virtue of her education, integrity and sense of responsibility. Indication no doubt of the new principle enunciated by Mr. Montagu was given by Lord Hardinge in his Coronation Durbar despatch to the Secretary of State dated the 25th of August 1911. But the fact that these words define for the first time in an authoritative fashion the goal towards which British rule in India is working and the means by which that goal is to be reached

must not be lost sight of. In them there is the end of one epoch and the beginning of a new one. They both clearly define the end towards which all future policy must shape itself and inaugurate a policy of a new type. Hitherto serious doubts were entertained in responsible quarters as to what was the end of British rule in India and to a clear-cut policy for the achievement of that end. No such doubt ought really to have existed after the great Proclamation of 1858 but it is no use disguising the fact that Viceroys like Lords Lytton, Dufferin, Curzon and Chelmsford contributed not a little towards it. Indians fondly believed that they had secured a Magna Charta in the great Proclamation. True it was one. But in all periods of history Sovereigns have been known to have proposed what their servants without hesitation disposed. If the terms of the Charter have been given the go-bye it is the fault of the people to whom it has been granted by a gracious and pious sovereign. Magna Chartas are not enough unless the people are united in their determination to see that their spirit and letters are respected. The Dominions have compelled Britain to give the widest interpretation to the terms of their Charters while India busy in her own petty communal and party squabbles have allowed the terms of her Charter to be whittled down and explained away by sophistical process till at last casuistical Viceroys and Governors have threatened to throw it into the waste paper basket as a "scrap of paper". In the same way attempts are being made in high quarters to explain away the sacred principle of "Indianisation of services". Not very long ago the head of the Government of Bombay in an after dinner speech is reported to have said, "I do say, quite frankly, that sometimes one gets a little tired of hearing of Indianisation. I see no reason why Indians and Europeans in this country should not work together in the future, as they have done in the past, for the benefit of India and of Britain."

When Indians speak of Indianisation, they mean that the scales of pay in the services of this country should be based on the Indian standard, that the services should be under the control of the Indian legislature or legislatures, and that no special inducement should be offered for foreign recruitment. It is not meant that Britishers should be excluded from the Indian services in all conditions and under all circumstances. If the Britishers are willing to come to India on these conditions they are welcome to compete with Indians in public examinations held in this country, but if India feels that she does not require Britishers to man her services there is no reason why she should be made to offer them special privileges. If this is true of the services, it is more potentially true of those who are engaged in either trade and commerce in India, in other words those who are in the country for exploitation under discriminating rules and laws which favoured them. These are

the people who in the words of John Stuart Mill, cited earlier in the Chapter (ante) must "needs be kept under powerful restraint", a view which was, with scrupulous fairness and honesty, endorsed by Sir Charles Wood, late Lord Halifax, the grandfather of the last Viceroy, in Parliament in 1861 as being particularly applicable to the relation between England and India. If the friendship and goodwill of India mean anything to England, for which she was most eager during the war and on which a large section of her justice-loving and fair-minded people are keenly intent she must fulfil the pledges and promises she has repeatedly given and made of her own accord, without any external pressure, without reservation and without further delay. Goodwill and friendship of India cannot be won by denying her the right of self-government and the right to determine her economic future. The path of reconciliation between Indian and British interests does not lie in or through the "safeguards" which are demanded by self-seeking men with vested interests for what is unlawful and illegitimate, or through propaganda carried on their behalf by mercenary agents and publicists.

THE OLD AND THE NEW

The announcement marked a clear break with the old policy in accordance with which India had been governed by Great Britain. India was being ruled by a system of absolute government although from time to time her people were given an increasing share in the administration of the country, and opportunities of influencing and criticising the Government. But a historical survey of the development of British administration in India, such as has been made in the introductory Chapter to this Book (ante p. 187) would show that despite the growth of local institutions, of legislative councils and of the Indian element in the services, the country still continued, to all intents and purposes, under an absolute Government. This was hardly the fault of her administrators, for the ultimate responsibility for the Indian Government lay not with them, but with the British Parliament who have hitherto taken little or no interest in Indian affairs. Until therefore, Parliament took action, no radical change, such as was absolutely necessary in order to open the way for the conversion of an absolute into a progressively responsible government, was possible at all. So late as 1909, when the Morley-Minto reforms were introduced, Lord Morley himself emphatically repudiated the idea that the measures were in any sense a step towards parliamentary Government. He was right, for his reforms were based upon the principle that the executive government should retain the final decision on all questions. It is true that some degree of popular control over legislation was established by the provision of non-

official majorities in the provinces; but this step was in no way in the direction of the progressive realisation of responsible government. The Morley-Minto reforms were essentially a continuation of the system which had previously existed. Such was not the case with the announcement which Mr. Montagu, the Secretary of State for India, made in the House of Commons on the 20th of August, 1917. In effect it meant this: that England promised to take us through a period of apprenticeship in the art of governing our own country; that during this period all business of Imperial concern should be reserved in her own hands and be managed on her behalf by her permanent Civil Service as hitherto and that the same principle should apply to some provincial matters, especially the question of the maintenance of law and order and that the residue of provincial business would be made over to ministers who should be selected from among our chosen in the legislature; that these would form our training ground; that a large majority of the members of our legislatures would be elected at first by a small electorate which shall be enlarged with the growth of political consciousness in the voter; that during this period at any rate her Governors would have the power of checking and controlling the legislatures if for lack of experience they should ever go wrong; that a Royal Commission would come out in 1929 with instruction to report after enquiry how during this period we have got on, and if the report is favourable to us a larger measure of home-rule should be given to us, but if unfavourable, the period of apprenticeship might be prolonged. She means us to have home-rule ultimately but not before we have proved our fitness for it. The propriety or the ethics of the principle however is a debatable point. Do you learn better under a guiding hand than when you have opportunities to make mistakes for yourself and learn from them and be a wiser man as you learn. And if mistakes must be made whether by Indians or by the Indian Civil Service why get them made by an agency far costlier than India can afford? The principle enunciated in the announcement therefore is something new and from it, the future historian of India will probably date the successive epochs of constitutional development of the country. The principle was considered so sacred that the joint committee insisted it should be included in the preamble to the Government of India (Reforms) Act so as to raise it to the dignity of a fixed principle of the constitution of British India.

In announcing on the 25th of December 1919 the Royal assent to the Government of India Act of 1919, otherwise known as the Reform Act, under which the entire basis of administration in India has been changed in the direction of placing a considerable part of it under popular control, and the gradual introduction of it over the rest, His Majesty was equally emphatic in his determination to start India on

the road to responsible government on the earliest possible opportunity. Its complete installation is only a question of time, perhaps a few years. But what are a few years in the life of a nation? His Majesty exhorted India on the one hand, and commanded his officers on the other, to co-operate with each other for the realisation of the desired end. Needless to say, that Co-operation will lead India on to her goal sooner than is expected, cordially supported as she is in her endeavour to fit herself for self-government by the better mind of the entire English people. The object of the new departure was none other than to found a government upon the consent and co-operation of the people governed. The crucial question is whether the Government of India Act of 1919 will serve to achieve that object.

EMPIRE AND SELF-RULE

The greatness of the Mogul Empire depended upon the liberal policy that was pursued by men like Akbar. They availed themselves of Hindu talent and assistance and identified themselves as far as possible with the people of the country. The appointment as Under Secretary of State for India and thereafter as Governor of an Indian Province of Satyendra Prosonno Sinha, created Baron Sinha of Raipur, in the district of Birbhum in Bengal, appealed to the imagination of India. Guided by its own principles the British Government had done what the greatest of the Mogul Emperors, Akbar, did in the sixteenth century. It rejoiced the heart of India for it was the first time that a native of India had figured in the British Government at home. It clearly marks a stage in that development of the Indian Self-Government which it is the determination of His Majesty's Government to express and for which it stands. For the first time India comes within the orbit of the Empire. But it is not easy to judge how far India is herself ready for complete self-rule. It is difficult to say in what degree internal differences of racial temperament and outlook may delay organic unity in Indian nationality. The communal problem in India has for a couple of decades been an acute one. It has, since the introduction of the Reforms, been made acuter by the zeal, enterprise and adventure of those upon whose title to fame, glory and leadership posterity must pass a severe verdict. But it must be said to the credit of truly cultured and right thinking men of all communities, that they fully recognise that the Muslim deserves well of India. Not that all he has brought to her is good, but his rule introduced into the country an ordered system of administration whose framework, though not the spirit, persisted through the succeeding days of confusion and from which the British Raj admittedly has largely borrowed. Unity within the borders of India as opposed to extra-territorial patriotism is an essential pre-requisite to India attain-

ing self-government. It is not too much to ask that the majority community should make concession for the furtherance of that pre-requisite, or the paramount power, which is the trustee for the welfare of the teeming millions of India should feel impelled to exert its influence to secure the interests of backward and unprogressive minority communities. Nobody however can assert that political democracy, in its present western form, will be found congenial to India or compatible with her internal peace, and with the development of her social welfare. It may however, be pointed out that in political education and therefore, in what educational ideas pre-suppose, England is prepared to give India, if she asks for it, what she considers best for herself. England is by no means convinced that she has yet found a form of political organisation or of Government which fully meets the many-sided needs of her national life. She is determined however, to allow India to make her own experiments with freedom, and leave it to her to work out the adaptations of the idea of freedom which may best meet her temperamental and social needs, though she insists that Britain and India must march together. Her best minds however, realise that there can be no greater calamity than India making up her mind that she was without a self-respecting place within the British Commonwealth.

What then is to be the ultimate goal of India's efforts? The conception to keep before our mind is that the India of the ultimate future will be a sisterhood of States, self-governing in all matters of purely local or provincial interests, in some cases corresponding to existing provinces, in others, perhaps modified in area according to the character and economic interests of her people. Over this congeries of states would preside a Central Government representative of, and responsible to, the people of them all, dealing with matters, both internal and external, of common interest to the whole of India, acting as arbiter in inter-state relations, and representing the interests of all India on equal terms with the self-governing units of the British Empire. In this picture there is a place also for the Indian States. It is possible that they too will wish as they have wished to be associated for certain purposes with the organisation of British India, in such a way as to dedicate their peculiar qualities to the common service without loss of individuality. In the beginning no doubt India was a mere dependency and Europe seemed to loom hopelessly large in this idea of "Empire". This is no longer so. England is slowly but steadily giving up her predominance to the more scattered parts of the Empire, and the time cannot be far distant when India will come into her own, and take her rightful place among the Nations. The growth of responsible Government is not likely to weaken the Imperial bond. If it did, the process would be fraught with danger, for only

within the safe shelter of the circle constituted by the Commonwealth of Nations will India find the conditions necessary to the full attainment of the completest nationhood. But there is every reason to suppose that the realisation of responsible Government will strengthen, and not weaken the tie of Empire. The experience of a century of experiments, all goes to prove that as power is given to the people of a province as of a Dominion to manage their own local affairs so does their attachment become stronger to the Empire which comprehends them all in a common bond of union. The existence of national feelings or the love of, and pride in a national culture, so far from conflicting with, seem even to strengthen, the sense of membership in a wider Commonwealth. The Empire does not depend upon community of race or religion. England knows this very well and fully realises the fact that it depends upon a common realisation of the ends for which it exists, the maintenance of peace and order over wide stretches of territory, the maintenance of freedom and the development of the culture of each national unit of which the Empire is composed. These are aims which appeal to the imagination of Indians, and in proportion as self-government develops patriotism among them, it may be expected that we shall see the growth of a conscious feeling of organic unity with the Empire as a whole. And in this connection it may be noticed that to an awakening of political consciousness in our rural classes is due the extension of the electoral system which is responsible for the insistent demand among them for better and wider education, for vocational training and for greater opportunities in availing themselves of character building institutions such as co-operation and a new and more intelligent interest in all that concerns their economic welfare. One conversant with early Indian institutions will at once feel convinced that Indian people do not need much educating to be able to discharge their responsibilities in a scheme of self-government upon a basis of franchise sufficiently wide to include the meanest villager in the country.

FEDERATION AND EMPIRE

The very expression "Empire" is perhaps already out of date. Germany was an Empire and so was Rome, but Great Britain is ever tending to become a Federation, a community of States, of nations, of peoples, under one flag. In this type of Empire there is not, as in the other past Empires of Europe, any idea of assimilation of the weaker to the stronger, of the East to the West. But rather, as in the Hindu *Samrayas* of old, each nation, each race, is left free to develop into greater manhood along with the lines of the special culture, it has acquired or inherited, in conformity with the principles of self-

government, Freedom and Liberty. If we have to distinguish the British Empire from the empires of the ancient world, we should be inclined to say, that her supreme distinction lies in this; she is the nursery of freedom. In other words, this British Empire does not stand for any enforced unity, or standardisation of its different parts, but a fuller, richer and multifarious life among each of the peoples that compose it, to the glorification of their common humanity. It is a commonwealth which must have at its disposal the spiritual treasures of all its parts. The true ideal is a great commonwealth of free nations, wherein all shall develop themselves to the finest flower of their own natures and be held together by a common loyalty to a great conception of liberty in unity. In such an arrangement the Anglicisation of India any more than the Indianisation of England, has no place.

No people known to history have ever set up for their own guidance principles so high and so noble for the government of a subject country and it should not be forgotten that however great the British Sovereign and people may be, they cannot make the people of India great. That is in their hands alone. Now that order has once again been evolved in India out of the threatening chaos which the *Pax Britanica* served to avert, opportunities have been placed in their way, such as they dared not even dream of half a century ago. It is now for them to display the strength, the intelligence, and the character to avail themselves of these opportunities. No one need feel that he cannot take his share in the great work of Co-operation for the political regeneration of India, because he is not rich or has only a limited capacity. In the words of Mr. Gokhale, one of India's most devoted and wisest patriots: "There is work enough for every lover of his country. On every side, whichever way we turn, only one sight meets the eye, that of work to be done; and only one cry is heard, there are but few faithful workers." Each one has only to employ his gifts and opportunities to the fullest extent, and his duty to his Country, to his King and to his God, will be done.

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