

of those fertilising currents of thought without which the government of a country must ever remain a parched-up waste where nothing but dry and dreary rules and regulations rises above the surface. If there is any sphere of activity where the environment has moulded the character of the men, determined the composition of their ideas, and settled their mental outlook, it is that of the Indian Civil Service. It is so completely dominated by its system, tradition, and surroundings that the men who belong to it become a type by themselves. To correct the excesses of their zealous officialism and to mitigate the effects of their passionate attachment to government from without, it is highly necessary that the head of the administration should be a capable and talented statesman selected from outside the circle of bureaucracy; and if more beneficial results are to be expected, such a selection is indispensable.

Every province should be governed by a statesman sent out from England with the aid of an Executive Council including a non-official Indian. Now that the policy of giving the Lieutenant-Governor an Executive Council has been recognised, there is no need to withhold from the provinces the benefit of a Governor trained in the traditions of English public life and accustomed to government of a higher order. Such a change may also be utilised to bring about, unless insuperable objections arise, a necessary alteration in the provincial boundaries. For instance Sind and the Punjab may be incorporated into one Presidency subject to a Governor-in-Council. Because of its natural boundaries Sind should go with the Punjab and not as at present with Bombay. There is no reason why the Central Provinces

should not be split up and absorbed, the Mahratti-speaking portion going with Bombay and the other parts with the United Provinces or Behar. By doing away with the Central Provinces as a separate charge, all the Provincial Governments, with the exception of Berar, Assam, and Burma, may be presided over by a Governor-in-Council. The North-West Frontier Province may very well form a division of the Punjab, and Coorg may go with Madras. The importance of the Residency at Bangalore will not be diminished by the change, just as the Residency in Secunderabad is in no way lacking in dignity for want of another administrative charge. Coorg will also have a larger life and a share in representation on the legislative board, and its intelligent and educated men a wider scope for finding remunerative work. The conversion of the Punjab into one Presidency, with the addition of Sind and the Frontier Province, is a change that will redound to the benefit of British prestige and authority, and at the same time create a decidedly more hopeful outlook for the people of the Punjab. Behar and Orissa are sufficiently large and populous for Presidency Government, and since they have an Executive Council already the change from a Lieutenant-Governorship to a Governorship is only a matter of financial practicability. The moment that the resources of that province develop so as to justify the full equipment of Presidency Government, the conversion should follow. The claim of the United Provinces, with additions from the Central Provinces, for a Presidency Government must become irresistible. As it is acknowledged to be the "premier Indian province," there is no conceivable justification why it should be

condemned to a lower form of administration. By its detachment from India Burma deserves to be a Presidency in itself, and ought to become one when its finances are better developed.

If, however, the finances of any of the provinces now placed under a Lieutenant-Governor should not permit the formation of a Presidency for a long time to come, there is no reason why the Lieutenant-Governor chosen should not be a British politician from outside the pale of the Indian Civil Service. The pay, prestige, and responsibilities of a Lieutenant-Governor are not so wanting in attraction as to make it difficult to obtain the services of distinguished men of ability from Great Britain, provided always that India is not treated as the pocket-borough of the party in power. Now that the policy of offering an Executive Council to a Lieutenant-Governor is definitely recognised and the United Provinces and the Punjab are certain to obtain sooner or later the benefit of this wholesome innovation, there is nothing to militate against the appointment of a Lieutenant-Governor from outside the ranks of the Civil Service. An Executive Council for the Lieutenant-Governor when he is not of the Civil Service is far better justified than when the head of the province is a member of the bureaucracy. The only possible obstacle to such a reform may emanate from the fact that the Civil Service will be deprived of at least four prize appointments. But in this, as in many other cases, the essential consideration to be borne in mind is that the progress of this country cannot be held as lying under an unredeemable mortgage to subserve the personal and financial interests of an official corps. It cannot be too often reiterated that

the time has come to look upon the Civil Service as the servants of India, and to abandon the habit of determining the country's requirements from the standpoint of the interests of that body. One great benefit that will indirectly accrue from the change advocated is that there will be an end to aspirations for promotion on the part of members of the Executive Council of the Governor-General. It is eminently necessary that members of the Supreme Executive Council of the country should not be aspirants for any patronage from the Government, and that their independence should be unfettered by any expectations of favours to come.

The policy that underlies the appointment of an Indian member to the Executive Council of a province has not as yet been given free play. It should be frankly accepted that there is a difference between the innovation effected in the Provincial Executive Council in this respect and that effected in the Council of the Governor-General. In the latter case there was no statutory prohibition of the appointment of any competent Indian, nor was there any need to increase the strength of the Council for the sake of such an appointment. A long-standing and unsound custom had to be broken, and the courageous statesmanship of Lord Morley was equal to the task. In the case of Provincial Councils the law had to be amended so as to allow an increase in the number of councillors in order that the appointment of an Indian might be guaranteed. The object was to ensure, so far as might be expedient, due consideration for the Indian view of things, and the possibility of carrying that view into effect in the administration of the province. This object will be frustrated if the Indian

member should be persuaded either by himself or by others that he is there in the Council as an additional plank of support to the bureaucracy. We do not want an Indian member simply to give expression to those sentiments which the Indian public have been accustomed all along to hear from the lips of Anglo-Indian officials. From an Indian member they can carry neither more weight nor greater conviction, nor be more acceptable or agreeable. Whether on liberalising the constitution of Taluq Boards or on recognising the reasonableness of "local option," the bureaucratic attitude from an Indian is as unconvincing and pointless as from a member of the bureaucracy. It is, if anything, more repugnant to any sense of political rectitude and all ideas of common intellectual honesty when that same individual has, not long before his appointment to the Council, openly and warmly espoused the very convictions and sentiments he now consents to flout with an easy conscience, a cynical disregard of the merits of the question. Such a course will only end in discrediting the reform and disappointing the high expectations to which it has given rise. We do not fail to realise that every member of a Government must feel one of a body and should be loyal to the Cabinet to which he belongs. While this, however, is comparatively easy for the Indian member, it is far more difficult for him to realise that he is primarily there as an unofficial element in an official Council, as a liberalising and representative Indian factor in an administration which is at once bureaucratic, foreign, and self-willed. His position is not precisely identical with that of his colleagues, who, when they left their universities, started life as officials in a

foreign country and have remained so ever since. In order that the Indian member may rise to this conception of his duty and be a live force in the administration, the authorities responsible for his selection directly and indirectly must see that their patronage lights upon men of intellectual courage as well as of intellectual capacity. At the same time the head of the administration should not feel that he has to be at too much pains to appreciate the point of view of the Indian member.

To sum up, the Executive Government of every province must have three co-ordinating factors in it: firstly, the correcting influence of untainted British liberalism (not in the party sense of the word, but in its larger acceptation); secondly, the contribution of the genuine Indian view in the handling and disposal of administrative problems; and thirdly, the official attitude of the Civil Service. Towards such a type of administration every province should tend, and, unless extraordinary difficulties should prevent such a policy, provincial boundaries must be so changed as to facilitate the formation of such administrative charges.

In any case, Lieutenant-Governorships, if financial reasons forbid their being converted into Governorships, should be placed outside the purview of the Civil Service and be offered to men of note and capacity irrespective of party considerations, and, unless altogether impossible, of racial considerations as well. No member of the Supreme Executive Council should be eligible to occupy any office in British India during or after the completion of his term in the Council. This rule may be relaxed, under extraordinary circumstances, in the case of members of

provincial executive councils, but must otherwise hold good as a recognised disability. No member of an Executive Council will then discharge his duties with an eye to future preferment, or utilise his position as a mere stepping-stone to other offices.

SECTION II

Nationalism and Communal Homogeneity

In recent years there have been observable two distinct tendencies in regard to provincial charges which call for mention as having a rather intimate bearing on the proposals contained in this chapter. Ever since the unwieldy character of the province of Bengal, Behar, and Orissa, as it then was, attracted the attention of the Government of Lord Curzon, there has been a perceptible desire to examine the constitution of provincial areas from the communal point of view. The prolonged agitation and widespread discontent which the partition of Bengal created gave a powerful impulse to the recognition of ideas of communal homogeneity in the formation of provinces. That this should have been the case at a time when sentiments of Indian nationalism were in the ascendant may not only seem strange, but may tend to throw an apparently legitimate doubt on the reality of those sentiments. It may also be concluded in some quarters that this contradiction is easily explicable, the partition troubles being mainly the outcome of a spirit of racial antipathy to the exclusive domination of the British element, and the communal spirit disclosing an abiding tendency in Indian character towards disintegration. It is needless to enter into theoretical assumptions as

to the conflicting nature of the nationalist aspirations on the one hand, and the tendency to separation on the basis of communal homogeneity on the other. Nor is it necessary in this connection to analyse the notions underlying what has been termed Indian nationalism. Ideas of racial homogeneity and recognition of racial interests are not incompatible with ideas of communal homogeneity and recognition of communal interests. In fact, on the social side, the genius of Hindu sociology has been to reconcile and co-ordinate the two spirits. When the former is stimulated the latter is also stimulated. It is a process of consolidation throughout the area of the new impulse. There cannot be an impetus to race-consciousness without an awakening of sentiments of communal consciousness as well. It is not that these sentiments signify a separatist tendency, but merely that they point to a transmission of the self-same message from the central dynamic force to the area controlled by it. We are therefore in no way inclined to consider that the demand for the recognition of communal homogeneity as the underlying principle in the constitution of provinces is either a separatist movement or the beginning of a process of disintegration. It is, to refer for a moment to the diversity of climate and the geographical, linguistic, and social conditions of the great continent of India, a perfectly natural tendency which will have to be recognised in the fulness of administrative maturity. But until that time arrives the form of provincial government must remain such as will facilitate and develop popular control and local devolution ; once the former is no longer a tentative or experimental ideal, but an assured fact in adminis-

tration, and the latter an accomplished and everyday experience, the type of provincial government will have to be changed to suit the altered conditions. Then will provincial charges correspond to communal homogeneity, and the life of the community be quickened into greater activity. To believe that that period has arrived now, and to press for the splitting up of any province into smaller units, will be to commit a culpable mistake and to make a thoroughly reactionary demand. For instance, there can be no question but that the Presidency of Madras may well be split up into five definite well-marked provincial charges, that Orissa may advantageously be separated from Behar, that Sind may be constituted into an administrative charge by itself, and that even homogeneous Bengal may be divided into an Eastern and Western Province. The Presidency of Madras falls into five groups by its natural geographical and communal characteristics: firstly, the districts of the Northern Circars and Nellore; secondly, the Ceded Districts, to which may be appropriately added the district of Dharwar in the Bombay Presidency; thirdly, the Baramahal districts of Salem, Coimbatore, and Nilgiris, to which North Arcot may be annexed; fourthly, the South-western Ghats group of Malabar, Canara, and Coorg (including North and South Canara); and fifthly, the Tamil districts of Tinnevely, Madura, Trichinopoly, Tanjore, South Arcot, and Chinglepet, which mainly comprise the ancient Pandya and Chola kingdoms. A similar division of the other provinces of India will make for greater efficiency and communal progress. But to advocate such a policy will be to plead for a process of political asphyxia; to countenance such a change

now will be to permit an irretrievable set-back. The effect of such a change will be a greater ascendancy in civilian domination and a marked decline in the power of public opinion. Authority must devolve on popular bodies to a much greater extent before such a change can prove beneficial. Another lamentable effect of such a departure from the present state of things will be the premature arrest of that influence which one section of the community is now enabled to exercise upon another because the administrative machinery is the common possession of all of them. It will also diminish the momentum which popular progress can now command, while at the same time the form of government will have to be of an inferior order, and thus less capable of promoting popular control and local devolution. The inconveniences and disabilities arising from the present arrangement may, however, be obviated and overcome to a considerable extent by communal efforts in other directions. For instance, a new University movement may do much to strengthen the communal basis of the main groups of each of the presidencies. What the Dacca University is expected to do in the direction of focussing the intelligence and developing the moral and intellectual resources of East Bengal, separate universities for the Andra or Telugu districts, the Kerala and Kanara districts, and the Tamil districts can also be well depended upon to do. Public conferences in these groups, and standing committees for promoting their interests in the field of provincial legislation, can be of immense value in filling the gap left by want of separate administrations. These standing committees, if properly formed and worked, may in course of time

come to possess a recognised and semi-official status and exercise not a little influence for permanent good ; and it is impossible to estimate their ultimate development if they merit the confidence of the Government and win the approbation of the people.

It is in these directions that popular efforts should be made to mitigate the drawbacks of large provincial charges, and at the same time to retain the benefits accruing from a higher form of administration, without which it will be impossible to bring about a relaxation of the stifling grasp of officialism. To forgo these benefits and to split up provincial charges into smaller and inferior units will be to lay the axe at the root of administrative progress through a disastrous zeal for the recognition of the principle of communal and linguistic homogeneity in the formation of provinces. There is assuredly too much political sanity in the country to allow such zeal to obtain any appreciable measure of public support.

SECTION III

Provincial Legislatures

The Provincial Legislative Councils have a non-official majority at present, but not in all cases a majority of elected members. The majority in either case is a small one, since the underlying idea in the constitution of these councils has been that the Government should be able to secure, as far as possible, a majority of votes. Lord Morley himself described the chances of a successful non-official combination in the Provincial Councils as inconsiderable, and sought to secure the acceptance of this part of the Reform Scheme on the ground that,

should there be, notwithstanding, a non-official combination, it only showed the need for the Local Government to reconsider the position. The constitution of the Council and of the electorates has proceeded upon the basis of official members voting at the meetings of the councils and upon a split in the non-official votes as well. If, however, as has been urged in regard to the Imperial Legislative Council, the voting should be confined to the non-official section, the number of elected members will be determined by the needs of efficient representation, and there will be as a matter of course a majority of elected members.

The method of election to each Provincial Council will have to be determined by the circumstances peculiar to each province, but certain broad lines may be common to all, and must rest upon definite and intelligible principles. A system of institutional representation pure and simple in the main will be by far the preferable method until the time is ripe for direct representation. It would be better to go back to the older method of making the *institution* a unit, as it was from 1892 to 1909 under Lord Cross's Act, instead of making a member of an institution a unit as at present. A Municipality is an institution; Municipal administration is an interest, but a member of a Municipal Council is no more than an individual, and there is no reason why he or a member of a District Board, as such, any more than another should be singled out to exercise the franchise. On the other hand, a Municipal Board is a *corporation*, and the interests of a number of corporations may be rightly deemed worthy of being represented in the Provincial Council. This is not

a matter of mere verbal differentiation without an underlying distinction in fact. Under the present scheme, a candidate backed by a larger number of Municipal members and a fewer number of councils may defeat another supported by a larger number of Municipal Boards, but by fewer Municipal members than the former. One who is backed solidly by a few big Municipal Boards will get the better of another with the support of a larger number of smaller boards. The evil is aggravated by including the members of District Boards in the voting group. As a matter of fact, each member, be he a member of a District Board or of a Municipal Council, becomes at present a unit in the *entire voting group*, and acquires a preponderance of value to which he is not entitled as a member of only one board. In other words, he acquires a value *outside* his board, beyond his legitimate sphere of representation. He is entitled to influence the vote of the corporation of which he is a member, and which represents a certain interest; but he is now permitted over and above this to influence the vote of the *whole* group, in which a Municipal Council and not he himself is a unit, and therefore acquires an independent, rather an "extra-legitimate" value. Nor is there any reason why the members of Taluq Boards should be ignored, and the franchise confined to the members of District Boards only. On the whole, the present system is neither a system of direct representation nor a system of institutional representation. It only imparts a fictitious and artificial importance to members of Municipal and District Boards, apart from the Boards themselves, and leaves the Taluq Boards out of account altogether.

A better method by far will be to give a representative to the Municipal Boards of every two contiguous districts, and another to the Taluq Boards within the same area. Generally, two contiguous districts, or three in special cases, where the districts may be small, may form an electoral area, and the Municipal and Taluq Boards in each such area may respectively return a representative. The member for the Taluq Boards will represent rural and landed interests, while the member for the municipalities will represent urban and trade interests. Representing two districts, he will be better able to compare notes; and the area he will have to represent will be benefited thereby, while it will not be too large for a man of brisk business habits and leisure for public work. Such a system is, in fact, better even than giving each district a single representative of the Taluq and Municipal Boards comprised in it. It is more important at this stage of our progress that urban and rural interests should each have a separate and qualified representative than that each district should have a representative for itself without securing such special representation. As a practical outcome of the proposed scheme, however, the representative of the Municipal Boards will generally belong to one district, and the representative of the Taluq Boards will be from the other district of the electoral group; so that while each district will usually have a representative, rural and urban interests will be unfailingly and methodically represented by a system of faultless institutional representation.

Besides the representatives of Municipal and Taluq Boards in each province, there will be the representatives of Zemindars, the great Ryotwari

land-holders, Chambers of Commerce, the Trades Associations, the Indian Bank and Commercial interests, the University, the large body of non-official Teachers of Schools and Professors of Colleges, the planting community, and the Corporation of the Provincial Capital. The representation of minorities, either on nomination by Government or on election by the members of the community, will also be a source of contribution to the Council. The main object will be the representation of Rural, Urban, and other special interests of each province by a *system of Institutional Representation*.

The merit of the foregoing scheme will very largely depend upon the constitution of the Municipal and Taluq Boards and the vitality they possess as self-governing administrative bodies. If the latter should continue to be mere apologies for independent bodies, and the former should have too liberal and debilitating a supply of nominated members, such as they have in many cases at present, their representatives must inevitably be men who will reflect the attitude of the institutions which return them to the Councils. There is absolutely no justification for the present moribund constitution of the Taluq Boards. In every Taluq an electoral group must be formed of men who pay a certain amount of land revenue, provision being made for the representation of most of the villages; and the elected members must in all cases be the majority of the Board. Not only should the constitution of these bodies be liberalised, but they should be entrusted with limited powers without the obligation of obtaining the sanction of the Collector, and in all cases there should be a right of appeal by the Taluq Board to the Board of Revenue or the

Commissioner of the Division as the case may be. In no Board or Council should the official members be permitted to vote. Except in some special cases, the President of the Taluq Board as well as the Chairman of the Municipal Council should be non-officials. The majority of the members of the District Boards should be elected by the Taluq Boards, and the President or Vice-President of the District Board should invariably be non-official. It is unnecessary, however, that the District Board should have the power of voting in Legislative Council elections, since the unit for rural representation will be the Taluq Board.

As regards the powers of the provincial legislatures, if a resolution passed by a majority of the non-official section should be approved by the Local Government, it should not be open to the Government of India to override the recommendation, although it may be provided that on a representation by the Government of India it may be open to modification by the Secretary of State. Nor should it be open to the Secretary of State to seek to modify it except on the initiative of the Government of India. If a resolution passed by special majority of the Council be rejected by the Local Government, the latter should submit the matter to the decision of the Government of India, which will be final. If a legislative bill introduced by the Local Government should be rejected by a special majority, it should become law only as an ordinance of the Secretary of State, on the recommendation of the Government of India, just as in the case of a bill rejected by a special majority of the Imperial Legislative Council. In both cases there should be an ordinance of the

Secretary of State only when a bill introduced in either the Imperial or Provincial Council and rejected by a special majority of non-official members, is considered essential by the Local or Supreme Government and the Secretary of State.

SECTION IV

Double Seats of Government

There is one feature of Indian administration common to the Supreme and Provincial Governments to which we are, with no little reluctance, constrained to refer. Although in itself it may appear of no great importance, it has nevertheless assumed the character of an incorrigible administrative evil, and its correction can be hoped for only by adequate exposure of what has become a settled vice of Indian Government.¹ It has imparted to the authorities at the head of affairs in India the character of a class oblivious to every consideration of public interest and even of administrative decency, because of its stubborn adherence to a custom which an uncommon standard of personal comfort in the discharge of public duties has established in India alone amongst all countries. There are public functionaries and administrative heads in all lands, but not one of them

¹ Mr. Lovat Fraser, formerly editor of the *Times of India*, in his book, *India under Lord Curzon and After*, says as regards the system of exodus: "Not a single administrator in India will ever touch it. From the youngest civilian and the most newly-arrived governor to the retiring member in Council, all unite solidly in defence of the migration to the hills. It is extraordinary what an amount of heat can be generated in India at short notice by attacking the practice of spending many months of the year at hill stations. Eminent civilians will listen unmoved to the strongest criticism of any feature of their administration; say a word against hill stations, and in a moment their hair bristles and they are banging the table with their fists."

would be tolerated for a day if their pretensions to personal superiority on account of their office should make them consider themselves a race of demigods upon earth. It may be best for the British public to imagine what they would do if the British Cabinet should decide to quit the dismal atmosphere of London for over six months in the year and carry on the government of the realm from a place climatically more agreeable. If they should propose to carry portions of permanent offices with them as well, and an adequate clerical and menial staff, we can conceive the scorn on the face of John Bull. If, in addition, they should propose to hold sittings of the House of Commons in their fine-weather resort, where not even a daily paper, nay, not even a weekly journal may be published; far from the proximity of all intellectual and political influences, far from the seats of great banking concerns and centres of commercial activity; in a place particularly difficult of access, where accommodation is the privilege of the uppermost section of the upper few; where all articles are dear on account of the cost of conveyance, and where the climate will suit the Cabinet ministers and them alone—imagination boggles at the consequences of the suggestion. Yet this is precisely what has been going on as a *sine qua non* of British administration in India. The isolation of the governing body from public influences and impulses for the better part of the year is an even greater evil in India than it would be under the conditions of the United Kingdom; because, wherever the British ministers may carry on their work, and wherever a session of Parliament may be held, they will be answerable to the representatives of the people. In India

there is no such responsibility ; and the isolation of the governing body from the provincial capital for a continuous period, systematically, year after year, perfects its character as a bureaucracy that acknowledges no responsibility to the governed. The cost of mere transport of men and records is no inconsiderable item when spread over a large number of years ; and to this have to be added the hill allowances given to the subordinate staff of the Secretariat. The total cost does not, however, end here. Large sums have been spent in fitting up inaccessible hill-tops as summer capitals ; official and residential quarters have been built and improved from time to time at considerable expense, and have to be kept in good repair year after year. The provincial grants to these hill municipalities have to be ungrudgingly liberal in order to provide the conveniences indispensable in a capital city. All this means that the legitimate capitals of the provinces have to forgo that financial sustenance which might have improved their condition in scores of ways. Every administration has improvised a summer capital on a cloud-capped hill, where the major and minor satraps may roam without tiring, hunt in pairs and parties, give stream-side picnics, dine and dance, and again be fit for the morning meet. The demigods of Anglo-India desert the plains at the first breath of summer, not simply because of the heat of the plains, but because they are impelled by the overpowering fascinations of life on the Hills. It has consequently become an axiom of Indian government that no administration should be without a plain and a hill capital, as though British rule would otherwise melt in the heat of the

plains and cease to be. If no such mountain retreat can be had for love, money, or authority, at least a thinly-populated tableland of even and moderate temperature must be found. As soon as Behar became a separate province, the Lieutenant-Governor, who had weathered many a hot season as an official below the rank of a Lieutenant-Governor, set out in search of a hill capital with all the knight-errantry of the Indian bureaucracy. Failing to find one, he lighted upon Ranchi, the plateau of Chota Nagpur, which he equipped as his summer capital at considerable expense, although the municipal condition of the provincial capital (Patna) was a disgrace to any civilised community, more particularly to the headquarters of a Lieutenant-Governor. In mentioning this we attribute to him no peculiar want of responsibility; it only shows what an inordinately strong hold the system has taken, and how little likelihood there is of its being shaken off on the initiative of the Government of India. The significance of the system of exodus is that it is only when an official becomes a Lieutenant-Governor, a member of Council, or one of the Secretaries to Government, that the plains become too hot for him to bear. Judges of the High Court who have to sit for six hours a day hearing intricate questions of law and fact, and to write judgments at home, are content with a summer recess of about ten weeks in the year. Heads of Departments, members of the Board of Revenue, working directors and agents of railway companies and of commercial firms carrying on business of no little magnitude, defend themselves from the heat of the plains as well as they can with the modern aids available. The entire executive officialdom in the

interior, including the Civil Service, has to cope with the weather and work in most cases without even the comforts of electric fans and a sufficient supply of ice. British prestige has not, as a result, been scorched up by the heat, administrative efficiency has not withered out of recognition, nor has any calamity rendered the administration of the country a matter of extraordinary difficulty. But then such persons are all only ordinary mortals compared with those who form the Government. Nothing has emphasised the alien character of those who are authorised to act in the name of British rule in India more than this unblushing stampede as soon as it becomes hot, away to giddy heights far from the post of duty, in delirious and impatient expectation of the joys of the Hills.¹ Plague and cholera, famine and scarcity, may be as bad as they please in the provinces, nay, in the provincial capitals themselves. A war may break out, destined to alter the map of Europe and affecting the very foundations of every part of the British Empire, and nations may be locked in a death combat, but the Indian Governments must have the power to remain like gods on elevated habitations of their own choice, looking down with indifference upon the floating clouds that may or may not carry rain

¹ To quote from Mr. Lowat Fraser's book again: "I have never met any man, Englishman or Indian, outside the services, who did not declare that the hill stations were largely to blame for the growing detachment of the British from the people of India.

"As things are, the high officials swoop down on the various capitals for a brief period in the cold weather, live in their carpet bags, are reluctantly dragged into a whirl of rather dull dinners and dances and receptions, and then vanish again, breathless and exhausted, but happy in the vain notion that they have been really 'in touch with the people.' . . . The enlarged Councils are certainly supplying a valuable corrective; but we shall never get 'into touch' in India to the extent we ought to do until the hill stations are abandoned to the invalids, the ladies and babies."

to the world under them which only lowly millions inhabit. In one case, even the cannonade of their capital city by a German cruiser availed not to alter the customary summer sojourn of the Government of the province, at the very tail-end of the period. The Government of Madras left as usual for the hill-station of Ootacamund in the last week of April, and did not think of departing a hair's-breadth from its time-honoured privilege of staying on the Hills till the commencement of the cold weather, although the war had broken out between Germany and the Allies. Towards the end of September the German cruiser *Emden*, which had sunk a number of merchant vessels in the Bay of Bengal and had established a reign of terror throughout the bay to the knowledge of all the authorities in India, bombarded Madras with all its guns, causing some loss of life, no little damage to property, and a good deal of alarm, shown by the departure of large numbers of people from the city. For many a day following, there was no kind of certainty that Madras had seen the last of the exploits of the plucky and powerful *Emden*. Yet the Governor of Madras did not condescend to break his half-yearly recess on the blue hills for more than "a few days," leaving "the Government" behind him, to visit the capital, which was in so anxious and troubled a state. In spite of the feeling of insecurity which was preying upon the populace, in spite of the fact that thousands of people had left the city in order to be out of danger, it was admitted on all hands, to the credit of the town, that there was little or no panic. The Governor himself bore testimony to this fact at a public meeting which he addressed during his flying visit on that occasion.

“I rejoice,” he said, “to think that it is not only the case, but that it is recognised outside Madras to be the case, that the people of Madras city have, on the whole, conducted themselves throughout in regard to this incident in an entirely worthy, reasonable, and patriotic manner, avoiding all panic, and relying with confidence in the arrangements made for their protection.” What bitterly contrasted with the conduct of the town, and intensified the feeling of insecurity and alarm every night so long as the *Emden* was at large, was the demeanour of the Government in remaining with their backs to their capital, far away from the coast and high up from the plains. In hastening his departure from Madras, the Governor delivered himself of an apologetic sentiment which amounted to no more than a weak-kneed tribute to the system of exodus which a selfish bureaucracy has designed in utter disregard of public interest and in scrupulous obedience to the dictates of its own extravagant standard of personal convenience. Lord Pentland would have been too obtuse if he did not smile at his own ingenious statement, which ran as follows : “It has been a satisfaction to me to have been here during the last few days and to have inspected traces of our foreign visitor, and also to have been able to do what I could to express sympathy with those who have been injured. I have to return to Ootacamund this week, and in about two weeks from now I proceed on tour to the south of the presidency. In two weeks’ time, however, the Government will return to Madras, and you may rest assured that everything will be done to watch over the affairs of this city and all other parts of the presidency.”

When one understands that the time the Governor appointed for the return of his Government to Madras allowed the full lapse of the orthodox period of the summer residence of the Council and the Secretariat on the Ooty hills, one can realise what an illuminating comment that simple passage is on the sense of duty of the bureaucracy in India; it is also an exposition of its loyalty to the cause of Great Britain and the Empire.¹

The evils of this system of exodus will be worse in the future than they have been hitherto, because of the altered conditions since the Reform Scheme came into existence. If up to the present it has been only a culpable waste of money and a reprehensible withdrawal of the governing body from its post of duty, its continuance after the expansion of the Legislative Councils will be not simply a mark of callous indifference to public demands, but a veritable administrative scandal, productive of acute conflict between the forces of public interest and a personal gratification. To hold the meetings of any Legislative Council at a summer retreat, or to put them off until the Government moves to the plains as the weather becomes propitious, and to get through a crowded programme of business at breakneck speed before the commencement of the Budget Session, as has now become the practice, will be to cripple the

¹ During the Budget Session of 1915 notice was given of a resolution that the cost of the exodus be removed from the Estimates. The *Hindu*, the leading Indian daily of Madras, expected that, at least under the conditions prevailing on account of the war, it would merit the acceptance of Lord Pentland's Government. But disillusionment came when Lord Pentland prevailed upon the Hon. Member to withdraw the resolution, although it was open to his lordship, as President of the Council, to disallow it, taking the responsibility of such a step upon himself. Subsequently two resolutions to the same effect were disallowed since obviously their withdrawal could not be compassed. One can easily realise after this experience all that may be possible when the system of exodus is at stake.

effect of the Reform Scheme in important respects. The work of all the Councils has multiplied; more interpellations are addressed year after year; more resolutions are moved inviting a closer compliance with the growing needs of the community, and throwing work of a higher standard and more arduous nature on the official agencies; the Budget debates are becoming more critical and prolonged; private bills are becoming a feature of the Provincial and the Supreme Governments, forcing upon them the responsibility of a well-informed and judicious attitude in regard to all; and necessary Government measures for the redress of long-standing grievances have been left in abeyance. To continue the exodus under these circumstances, when public expenditure is mounting up by leaps and bounds, is to betray a lamentable incapacity to learn. To open the season year after year at Simla, Darjeeling, Nainital, Ranchi, Mahabaleshwar, and Ootacamund, as though India stands to-day where Lord Dufferin left it, is to be like the Bourbons of France, and to remain unchanged when everything else has changed. Such insistence upon an extravagant standard of personal comfort at public expense in the discharge of public duties ought to be definitely abandoned now as a practice altogether indefensible for the future. The Anglo-Indian press has condemned it as strongly as the Indian press;¹ commercial interests have un-

¹ So late as April 1881 the *Statesman* of Calcutta commented on the system of exodus as follows:

• "It is an utter delusion—if indeed anyone in these days cherishes it—to imagine that it is for the benefit of the country that the Government goes up to Simla or comes down to Calcutta. It goes to Simla to get out of the heat, and it comes to Calcutta to escape the cold, and the country has the privilege of paying the expenses. The high officials of the Government are thus able to spend their lives comfortably, and to get rid of all troublesome bonds of sympathy between themselves and the people of the country.

reservedly complained about it;¹ the people who are in and outside Government service, other than those who enjoy the benefit of the arrangement, to whom the accessibility of men at the head of the Administration is a matter of moment, have missed no opportunity of inveighing against a system which combines the vices of Eastern Nabobism with the Western passion for pleasure and with British punctiliousness. Yet there is no sign of a change. The Secretary of State apparently feels the delicacy of interfering in the matter of the personal comfort of his Indian agents; British public opinion has never

From their lives the hardships of a toilsome existence in India have been successfully eliminated, and as they still have work enough to do to banish ennui, they may be regarded as the most comfortable of mundane creatures. As, moreover, the state pays them liberally in consideration of those very hardships, which they have so successfully dodged, they may also be regarded as the luckiest of mortals. But as to governing India—the idea that they govern India is richly absurd. India is governed in spite of them by the men who spend their toilsome years on the parched or streaming plains. That which we call the Government of India, and which is about to spread its wide wings, spangled with silver and gold, and fly away to the mountains is a costly simulacrum. To it we owe wars, taxes and codifications; and such governing as the country gets goes on somehow in spite of it.”

The *Madras Mail*, one of the leading Anglo-Indian dailies, protested about the same time that “To a rich man like Lord Ripon it should be easy to do something more than discuss anew the old question of Hill allowances. Let him decide that it is to the interest of the country and of its public service, that the salaries of officials doing duty on the hills should be reduced by 25 per cent; and the Secretary of State would not be reluctant to sanction this simple act of justice to long-suffering India. Until some such penalty is imposed, the annual Exodus of the Government will justify the annual remonstrance of the public.”

The *Madras Times* only very recently characterised the system “as a scandal of administration that none but Indian administration could breed.”

¹ The late Hon. Mr. R. G. Orr, a much-respected member of the European mercantile community of Madras, moved a resolution on November 29, 1910, to the effect that “in the opinion of this Council it is undesirable that the seat of Government should be moved to Ootacamund for any portion of the year, and that should it be desirable that the heads of Government spend some portion of the year on the Hills that period should not exceed three months.” This motion was seconded by the Hon. Mr. T. V. Seshagiri Iyer, who is now a Judge of the High Court of Madras, and was supported by Mr. (now Sir) Hugh Fraser, Chairman of the Chamber of Commerce and Sheriff

seriously troubled itself with any Indian anomaly : as a result the belief which has been strengthened by so many other factors has received additional proof in the system of exodus, namely, that public requirements in India can scarcely make way against the vested interests of Indian potentates or against British indifference to Indian interests.

The changes we would advocate are :

(1) That the system of exodus involving the recognition of a summer capital should be given up in favour of a system of hot-weather recess, which ought not to involve the absence of the heads of the Government from provincial capitals for more than three months in the year, from the beginning of May to the end of July. This recess should be allowed because heads of Governments under the schemes suggested will be Englishmen unaccustomed to the Indian climate ; its duration will, however, cause them to labour under a necessary and wholesome disability in regard to proceeding on leave to Europe during their term of office.

(2) That even during this period the party of migration should include only the head of the Govern-

of Madras. In spite of this consensus of opinion, the motion was opposed by the Executive and defeated—a fact significant of the weight and reality of the non-official majority in the reformed Councils under Lord Morley's scheme.

The *Englishman* of Calcutta only the other day observed : ' Madras is feeling the absurdity and inconvenience of hill-station Government in a time like the present. The Chamber of Commerce has taken objection to the delay to messages regarding the safety of the sea routes caused by their being sent first to Ootacamund and then to the Port Office. It is perfectly scandalous that needless delays should be allowed in such important messages.' "

* At the time of King Edward's death, when the Government of Madras were at Ooty, the official announcement to the heads of District Administrations had to be made long after the people had come to know of the event. The entire European and Indian official community were wondering why there was no authoritative confirmation of it, or what procedure under the circumstances they were expected to follow.

ment with his personal staff, and not the Secretariat and the members of the Executive Council.

(3) If business should require a meeting of the Executive Council during these three months the head of the Government could come down to the seat of Government, and no Secretariat, Imperial or Provincial, should be liable to be temporarily transferred from the capital city.

(4) August and September should generally be set apart for tours by the heads of Provincial Governments. From October to December one session of the Legislative Councils, Supreme and Provincial, should be held, and the other session from the first week of January to the end of April.

Apart from objections on personal grounds to the foregoing scheme, the most serious that may be advanced is that the meetings of Executive Councils may require the presence of the members of the Council, and therefore the Secretariat and the Council and the head of the Government should keep together. This is more or less a fanciful plea, since at present the subjects under discussion by Council are dealt with by circulation of papers when the Governor or Lieutenant-Governor has necessarily to be absent on tour from his Executive Council. The Council and the Secretariat do not accompany him, but provision is made for the transaction of urgent business. The fact that there will be no society unless the exodus includes a larger number is the greatest factor in the retreat on the present scale, involving for more than half the year the removal of cart-loads of records and the migration of an army of assistants, clerks, and peons to a climate to which they are neither accustomed nor have the necessary means and adapt-

ability to accustom themselves, in spite of the allowances they get. In most cases they are forced to leave their families behind. These consequences, the waste of public funds which they entail, the galling inconvenience they cause to the section of the public who may need to come in contact with the members of the Government and the Secretariat, and, above all, the practical segregation of the Government from the centres of public life and from all those incidents and events which affect the general population, are of no account in the estimation of the pillars of the bureaucracy. Their main concern all along has been to hasten their departure at the first advent of summer to a place a few thousand feet above sea-level, where it will be always afternoon, where society will not jar upon freedom, and where they may have to turn to work as a relaxation from pleasure. If these are not considerations which would guide responsible authorities in England, then we do not see why the exodus should not be altered to the recess suggested above.

The removal of the capital of the Government of India from Calcutta to Delhi has been dictated, no doubt, by considerations of paramount imperial importance. But this ought not to lead to Simla's becoming the virtual capital in consequence of the system of exodus. From Madras to Delhi is distant enough in all conscience, but the summons to the snowy heights of Simla is not only unwelcome but a real abuse of executive power. To Delhi the remoter parts of the Empire must reconcile themselves by virtue of its being the imperial capital *de jure*, but the distance of Delhi ought in all justice to secure the members of the Imperial Legislative Council from

pilgrimage to a still more distant and much more inclement capital *de facto*. For May, June, and July Simla may be the residence of the Governor-General and the members of his Executive Council; but the Imperial Secretariat, an office only should remain in Delhi. The Secretariat should be as incapable of being removed as are the permanent offices in London because of the holiday tours and week-end trips of Cabinet ministers. What is urged here is that there should be no recognition of a second capital as such, to which Government offices would be liable to be shifted for any part of the year, as regards either the Government of India or a Provincial Government. The period of absence from the plains ought not to exceed five months in the case of the Governor-General and his personal staff. Now that Simla and Delhi have the facility of telephonic connection, there is no reason whatever why the Imperial Secretariat should not be permanently located at Delhi. If the disclosures contained in the Mesopotamia Report, the debates that followed its presentation in the House of Commons, and the unanimous verdict of all sections of the Press, British and Indian, do not give the *coup de grâce* to the system of exodus, the British Cabinet will have to be ranked with the Bourbons of France and the Civil Service of India, who could learn nothing new and forget nothing old.

CHAPTER IX

THE JUDICATURE

SECTION I

The Question of Control

No Government, and more particularly no foreign Government, can afford to look upon the machinery it devises for the administration of justice without the deepest concern. Where nine other factors necessary for the esteem and popularity of a Government among the governed may fail, its safety may be assured notwithstanding its defects if its administration of justice maintain the respect and confidence of the people. Political education, social efficiency, capacity for union, sacrifice, and organisation are all indispensable before an unsatisfactory Government can be displaced or reformed by the people under its control. If justice between man and man, or between the rights of the subject and the actions of those who exercise authority over the people, cannot be honestly and independently meted out, then without any of these factors the power of the governed will sooner or later assert itself against the ruling element. An Indian moralist who was also a ruler as great in his own country as Marcus Aurelius, uttered the highest political truth

when he said that the tear which injustice draws from a man will prove more formidable than all the battalions of the gods. The invisible, but none the less the real, support of the thrones of kings and of the seats of the mighty is the justice administered under their ægis. Let the support be impaired, let it be strained and allowed to fall into contempt, and those thrones and seats will assuredly sink from before the sight of men. Those who speak lightly or in a tone of impatience and intolerance against judicial institutions do an amount of disservice to the authority of the Government of which they possibly are not aware. It is easy to speak discouragingly of judicial interference with the Executive, but in all sober truth such interference is no more than that of the physician with the afflicted patient. They might as well follow the advice of Kent and "kill the physician and the fee bestow upon the foul disease." There are some in India who know not when and how to be discreet and decorous, and have not disguised the feeling that in their estimation the High Court is a vexatious body of grandmothers. There are again others who labour under the strange hallucination that if the police, the arm of the law, is rendered more honest and less liable to corruption, it will become less strong and less efficient. Others there are whose article of administrative faith is that, if judicial functions are entrusted to those who are free from executive responsibilities, a great political cataclysm is sure to be the consequence of the change. British justice in India has to be liberated from the tyranny of these notions and allowed to exert its benevolent influence as the greatest power for good that any Government can command. The problem of the

reform of the judicial administration lies here, and we shall elucidate these aspects as briefly as possible.

It is no political flattery to affirm that no institution since the establishment of British power in India has done more to promote confidence in British rule than the High Court. It has come to be recognised as the very palladium of British authority in this country. Its judges, with exceptions few and far between; have upheld the sanctity of human justice, and have looked upon their responsibility as the highest commission that can be entrusted to them by their fellow-men. The confidence of the public in the High Court is so great that the general impression is that the same individual as a judge of a controlling court of inferior status would fail to rise to the level of independence he would reach as a judge of the High Court. Nor is the feeling entirely absent that an inferior court would be liable to be tampered with if it wanted to maintain an attitude of thorough independence of the Executive. Both by prestige and constitution the High Court enjoys a measure of confidence no other court can claim. It is therefore in the best interest of British rule that every province should be under the jurisdiction of a chartered High Court, and that its dignity should be enhanced in all necessary directions. It has been most wisely decided that Behar and Orissa shall have a High Court of their own, without being subject to the anomalous form of double government which their subjection to the High Court of another province cannot but involve. The Punjab has been unreasonably condemned to the control of a Chief Court, and there is every reason for the people of that province to be profoundly dissatisfied with a state

of things that does not place them on the same basis as the other provinces. To place the Punjab judicially under a High Court and administratively under a council form of Government presided over by a Governor or a Lieutenant-Governor sent out from England, will not only ensure a greater measure of satisfaction and attachment but will unquestionably add to the efficiency of the general administration. It is a serious political blunder to believe that anything that cannot inspire popular confidence can really be efficient. The test of efficiency of the right kind, which is not the outcome of a spirit of self-sufficiency, but the result of an anxious desire to fathom the mind of the governed and of an attitude of sympathetic wakefulness, not of supercilious bias, lies in the devotion of the classes and the masses alike to the Government of the country and in their contentment under it. From this point of view the policy of the Government of India in regard to the administration of the Punjab has left a good deal lacking. The constitution of a separate North-Western Province, however unobjectionable from an exclusively military point of view, is yet a reactionary scheme which has far exceeded the actual requirements of the situation. To constitute it a division of the Presidency of the Punjab, placing it under a Commissioner, as well as to incorporate Sind with the new Presidency and to place the entire province under a Chartered High Court, will infuse new life into the people of that part of the country and open out to them a fresh vista of civic responsibility. Such a change cannot but inaugurate a future full of hope; which in many respects will lead to a vast improvement on the present state of sectional bicker-

ings and communal animosities. Detached from a considerable portion of its area on the north-west, separated from its natural coast outlet in the south, placed under the domination of a civilian Lieutenant-Governor, and left to the jurisdiction of a Chief Court, it is no wonder that the Punjab, left without a vivifying impulse and without a cohesive and soundly developed individuality, has been unhappy and distracted. Denied its full scope of activity, mutilated in its formation, deprived of that steadiness which a higher type of judicial and executive administration induces, the Punjab cannot be blamed for seeming to be restless and dissatisfied. Its possibilities have been perverted, its temper has been soured, and its sense of self-respect disregarded. It is condemned to the unenviable pre-eminence of being to-day the only major province which has not a High Court, although it contains within its area the imperial capital of the Indian Empire. To restore to it its natural area and to place it on a footing of equality with the other provinces in the matter of administration will be an act of statesmanship pregnant with the happiest results both for the people of the province and for the prestige of British rule, as well as for the development of British trade. Nor can one belittle the advantages of an administration, with a Governor in Council at the head, extending over the natural area of the Punjab and in immediate contact with the Frontier, which is certain to impress the people on either side of the Frontier as an example of what British rule can accomplish in combining the elements of stability and progress. As regards Burma, a High Court may not be deemed an immediate necessity, but there should be no reservation

in regard to its establishment when financially and otherwise the province is ripe for this development. What we urge is that it should be a recognised and declared policy of British rule in India that the judiciary of every province is to be under a High Court, unless financial reasons do not permit it, or the province in question be exceedingly small or other conditions render it incapable of being merged in a bigger charge.

SECTION II

Provincial Executive, and Judiciary

As regards the relation of the Local Government to the High Court it is necessary to recognise at the very outset that however favourably Indian public opinion may be disposed to this solution, it is impossible to bring about a total severance of contact between the High Court and the Local Government. While a good deal of the judicial administration of every province would have to be vested in the High Court, it will not be possible to avoid a Local Government's exercising a certain amount of supervision over the work of the High Court and that performed by the courts subordinate to it. While on the one hand, therefore, the independence of the High Court and the standing of its judges in the exercise of their judicial authority, should not be subject to interference by any of the powers vested in the Local Government, it is indispensable, on the other hand, that the body responsible for the government of the province should exercise a certain general control as regards the administration of justice. A distinction should therefore be drawn between the strictly

administrative side of the work of the High Court and its independence of the local Executive. The powers now exercised by the Local Government must not only be retained but exercised with a better grasp of the requirements of the litigant public and of the subordinate judicial service. For instance, it is a scandal that, in a presidency like Madras, there should be as many temporary sub-courts as there are permanent ones, and even more. It shows that either the High Court or the Government or both have allowed the institution of courts for the administration of civil justice in the Moffussil to proceed on an unsatisfactory method and almost in a haphazard manner. The judges presiding over these temporary courts, who are literally crushed under the weight of excessive appellate work and the original suits instituted in their courts, without the relief of small causes work, cannot but regard the present system as a grossly unsatisfactory state of affairs. The tendency of Civilian District Judges has been to leave vast accumulations of arrears of civil work, a practice which adds to the cost of litigation, the discontent of the parties concerned, and the public expenditure. The sanction of such a large number of temporary courts after a frightful accumulation of arrears betrays a lack of administrative control which justifies the conclusion that, instead of the Local Government's relaxing its interest in the department of justice, it should exercise a closer supervision. The High Court naturally cannot devote as much time on the administrative side as is called for in the interests of the department. Nor can it forgo the advantage of a certain amount of supervision by Government in the disposal of its own work. The accumulation of arrears in some of

the High Courts is itself a matter that calls for the attention of the Local Government. There are again questions regarding the pay, prospects, and promotion of men in the judicial department, which demand an intimate co-operation of the Government and the High Court. For instance, the deserts of subordinate judges who have done conscientious work with a religious devotion to duty, with little rest and no recreation, at the sacrifice of their health, have failed to receive adequate consideration at the hands of the High Court and the Government alike. They have to try suits of unlimited jurisdiction, and are overwhelmed with work of a most responsible character. Yet the pay of the judge of a court of small causes is more than that of a sub-judge of the first grade, although the jurisdiction of the former is confined only to monetary transactions not relating to immovable property, and is no more important than the same functions of a District Munsif in the Mofussil. The fictitious importance attached to judges of the court of small causes and the civil courts in presidency towns, and the indifference with which sub-judges have been treated, cannot but evoke bitter comparisons in the mind of every hard-working sub-judge. Again, occasions have not been unknown when a whimsical standard of disposal of causes has been set up, not uniformly, but at particular junctures, to the detriment of the deserving members of the service and to the advantage of particular individuals. No little heart-burning has been caused by the arbitrary neglect of just claims, undermining at once the prestige, the peace of mind, and the serenity of temper of the individuals superseded. Supersession in the judicial department, as may be

easily realised, is a matter of more serious concern than in the executive branches of the service. It impairs the prestige of the official as a judge and tends to lower the character of his work in the estimation of the Bar and of his confrères. Of all Government servants the judge is the only one who is exposed to the full gaze of the public during practically all the time he works, who has to come into contact with the most intelligent and critical sections of the population, whose entire work is as an ever open book. That such a functionary should be capriciously dealt with in regard to the promotions automatically due to him, shows a profound lack of appreciation of the machinery of justice. Every judicial officer, and more particularly those who have risen to the position of sub-judge, should be considered as working not only for the pay they receive but for the pay due to them when vacancies in the higher grade occur. If the statistical test as to disposals is to be employed, it should be employed uniformly, as there is neither justice nor meaning in employing it in stray cases or by fits and starts. The idea should not go forth that a judicial officer can supersede all those above him by showing a larger and quicker disposal than the latter have to their credit, as such a test is not only fictitious but extremely prejudicial to the proper dispensation of justice. The tendency to perpetuate cases of permanent supersession in the judicial department cannot be condemned too strongly as a grossly injudicious policy in a department where no man ought to be permitted to remain in service with a stain on his honour. In judicial work the ideal of a race is the worst possible ideal that can be set up, and

those who have to suffer supersession by the operation of such a test will be justified in regretting that they ever entered the service, or discharged their duties conscientiously without being prompted by a desire to leave others of their grade behind them in regard to disposal. Again, the habit obtaining in some of the High Courts, of leaving the prospects of the Indian section of the judicial department more or less exclusively to the control of a civilian judge is open to grave objections, and has often resulted in personal injustice. Those who have practised before him, or served under him when he was a district judge, have an advantage over others, while those against whom he may once form an adverse opinion are left to suffer at his hands time after time. All the judges of the High Court are under the obligation to examine with scrupulous care the claims of the members of the judicial service, without entrusting them to the prejudices of one of their own number who may be misled in his estimate by the reports of interested persons, some of them possibly not above improving their own chances by depreciating others. In a large variety of matters, especially in regard to accumulation of work, the conversion of temporary courts into permanent courts would bring relief to overworked subordinate judges. In questions of supersession the Local Government must continue without undue interference to supplement the supervision and control of the High Court, guarding itself against the attitude of apathy and indifference into which it not unfrequently falls. This does not mean, however, that there is no need to strengthen the prestige or independence of the judges of the High Court in certain important directions. In two

respects it has become necessary to bring about a statutory alteration. In the first place they should be under a statutory disability as to appointments to other places in the service of the Government of India or of a Provincial Government. In proposing such a step we do not imply that a judge of such a tribunal will be actuated in his conduct, demeanour, and judicial attitude by any consideration of winning the approbation of the executive Government of the province. The judges of the High Courts in India have as a body thoroughly vindicated their freedom from such a failing, and have established a reputation for dispensing justice, if not in the fear of God, at least without the fear of man, and rarely prompted by expectations of favour from any quarter. But in this country, at any rate, a sound policy of administration requires that there should be neither promotion nor degradation from certain offices. The judgeship of a High Court ought to be such an office. It ought to be possible neither for the Government to offer another place to a High Court judge nor for the latter to aim at or canvass for another office while he is a member of the High Court bench ; the appointment he holds as a judge of a High Court must be the final one under the Crown in India. The notion implied in such a limitation is that in the view of the Crown this office has no superior. Its independence and its responsibility must be considered sufficiently high to warrant such a limitation. A judge of a High Court must have the satisfaction of having held an office than which in the estimation of the Government there is none more trusted or responsible under the Crown. The tendency to look upon the High Court Bench as a

recruiting-ground for the Indian members of the Provincial or Supreme Executive Council is one that should be checked without the slightest hesitation as detrimental to the dignity of the High Court as well as subversive of the object of the Indian membership of the Council.

In the filling up of vacancies on the High Court Bench, whether permanent or temporary, the Government of the province should have no voice. The matter should rest with the High Court, the Government of India, and the Secretary of State. In the case of appointments from the Bar or the judicial service in India, the High Court itself should make nominations from which the final selection should be made. In temporary vacancies the Government of India may make the appointment from the nominations of the High Court, and in permanent vacancies the sanction of the Secretary of State for India should be obtained, while in those cases where the appointment is that of a practising barrister in England, the selection should rest with the Secretary of State himself. Even in the last case it will be desirable to place the patronage of the Secretary of State on a sounder basis than at present. He should be bound to make his choice from the nominations sent up to him by British tribunals of the status of a Chartered High Court; an arbitrary exercise of patronage is to be deprecated. It may probably be urged that the Local Government should have a voice in the appointment of the judges of the High Court from the Civil Service or the Bar, since the responsibility of administration rests with it. Such an argument in reality means nothing else than that High Court judgeships should subserve the purpose of strengthening the hands of

the Executive, and that the administration of justice in every province should be entrusted to men in whom the Executive has confidence. On the other hand, in the independence of the judiciary lies the real stability of the Executive. It is an exceedingly short-sighted policy to subject High Court judgeships to the patronage of the Local Government—the very body which has day after day to administer the territory within High Court jurisdiction—a body not even responsible to a popular legislature. The crucial fact to be borne in mind in these cases is that the executive Government in India is not a body holding office at the will of the people and answerable to the people; it is therefore essential that the administration of justice should be entrusted to a body of men, every one of whom is in law incapable of being the recipient of any patronage, and whose selection for the office has been independent of the Local Government. The position of the Government of India is different in this respect from that of a Provincial Government, inasmuch as the former is only a controlling body and the actual executive administration of any part of the country is not vested in it. Even in the Government of India the member in charge of matters pertaining to High Courts should be the Law member, who might be better designated member for Law and Justice.

SECTION III

Increasing Number and decreasing Calibre

The rapid increase in the number of the judges of the High Court in every province calls for the anxious consideration of the public as well as the Government of India. It is certainly not conducive to the dignity

or the reputation of a High Court that the number of its judges should increase to such an extent that men of indifferent mental equipment and of no great eminence in any branch of law have to be elevated to the High Court. To illustrate from the experience of one province, the time when at least one of the High Courts in India was at the zenith of its reputation for luminous enunciation of the law and for unsullied judicial independence was when there were no more than five judges of that court. The day when Sir Charles Turner was the chief, and Justices Muthuswamy Iyer, Kindersley, Kernan, and Innes the puisne judges of the High Court of Madras, seems for legal eminence and judicial authority to be destined not to return. The exceptional legal talent, juridical eminence, and imperturbable dignity of the High Court of those days could be attributed to some extent, no doubt, to the fact that there was then greater scope for the display of these qualities in laying down the law. At the same time it cannot be denied that nowadays, while the High Courts have gained in number, they have lost in calibre and distinction. The standard of ability required of a High Court judge in recent times seems to have sustained an appreciable fall, which has been accelerated by the rapid increase in the number of the judges. As an inevitable consequence of this increase, mere mediocrities have been drafted, from among Europeans as well as Indians, and the result has been a lowering in the prestige of the judges. It is scandalous that consideration of creed should be permitted to play any part at all, let alone to outweigh considerations of ability, in filling up vacancies in the High Court; it is lamentable that

to give effect to such a policy men of no marked superiority should be imported from alien provinces ; and it is thoroughly reprehensible that complaints should be heard that any High Court Bench does not contain a representative of a particular sect or community of a district or a group of districts. If there be any sphere of the public service in regard to which such notions ought not to be suffered by the weakest of political constitutions, it is in the highest courts of judicature. The authorities responsible for starting or encouraging such ideas will do well to retrace their steps with an unmistakable and unshaken resolve not to give the slightest room for creating such impressions in the public mind ; for they now threaten to weaken, however unwittingly, the strongest prop and pillar of British rule in India.

None of these changes will lead to the number of judges being kept within reasonable bounds unless the original jurisdiction of the High Court be abolished, and it be constituted *an appellate and controlling court only*, much greater care being exercised in the admission of appeals. The work on the original side must be entirely delegated to inferior tribunals of original jurisdiction, if necessary of different grades, established in the provincial capitals. The original jurisdiction now has reference solely to the criminal and civil cases of the city in which the High Court is situated, and there is no magic about its duties — merely the prosaic fact that the litigants on this side are the inhabitants of the Presidency town. The cases disposed of by the Mofussil courts usually involve much heavier interests than those disposed of on the original side of the High Court. There is no

need, therefore, to place the interests of the litigants in the Presidency town on a separate footing from the interests of those in the *Moffussil*. Competent tribunals of a status inferior to that of the High Court, but of varying grades, must be established in each provincial capital to deal with local causes and commitments, and the High Court should deal with these only in its appellate capacity. In Calcutta especially, where there is not even the saving grace of a city civil court, a suit involving property worth as little as 500 Rs. has to be entertained in the High Court; no wonder, therefore, that the number of its judges is confusingly large. The distinction between original and appellate sides is also injurious, as perpetuating an unintelligible and altogether untenable difference between barristers and vakils in some of the High Courts—a distinction which arose in the archaic order of things obtaining at the beginning of the British supremacy, when there were two sets of courts in British India, the Company's Courts and the Crown Courts. At the present day, however, this distinction is noteworthy only as maintaining that the most talented vakil, eminent though he may be as the jurist of the day, is inferior in status and rightly subject to disabilities compared with a barrister who may be no more than "a failed-matriculate" called to the Bar in England or Ireland. The abolition of the original jurisdiction of the High Court will therefore have the twofold effect of minimising the work of the High Court and of placing barristers and High Court vakils on an equal footing as members of the legal profession in their country. The High Court will also have more time at its disposal for the

better control and supervision of the administration of justice in the province.

To summarise the suggestions: The judicial administration of each major province should be under the control of a single High Court which should be constituted as an appellate and controlling tribunal only. The relation between the High Court and the Local Government should be confined strictly to the administrative side of the department of justice of the province; the judges of the High Court themselves should owe their appointments or their recommendation neither to the Secretary of State nor to the Local Government. For temporary appointments the Government of India, and for permanent vacancies the Secretary of State, should be the appointing authorities, and the nomination should proceed from the High Court only. As regards the appointment of practising barristers from England, the Secretary of State should choose from the recommendation made to him by tribunals of the status of a High Court of Judicature. Whatever benefits and privileges are now enjoyed by those who live within the original jurisdiction of the High Court, unless seeking remedies at its hands as a court of ordinary original jurisdiction, should also, on the abolition of that jurisdiction, be extended to all who are subject to its appellate jurisdiction under suitable provisions.

SECTION IV

The Machinery of Criminal Justice

Turning to the actual machinery of judicial administration, the universal testimony of the public

has been that, while the administration of *civil* justice has proved highly efficient and satisfactory, and calls for few changes of a radical character, the administration of criminal justice has been the despair of the most sincere and pronounced supporters of British rule in India. If there could be two systems of administration of justice side by side, one of which could not be praised too highly and the other could not be denounced too strongly, they are these; yet the bureaucracy in India has been compassing the retention of the latter system as though it were the very ornament of British rule. There is no reason whatever why the public, all classes of the public, should entertain so great a confidence in the one machine and exhibit such deep distrust of and pronounced antipathy to the other, without substantial grounds. Both are equally products of British organisation, both owe their inception to British rule. The attitude of the people is yet so diametrically different in regard to them that, apart from every other consideration, this divergence alone would have created serious qualms of conscience in the minds of those responsible for the good government of the country, were it not for the fact that public opinion in India has been looked upon as worthy of nothing but contempt. If one but looks at the main features of the system of criminal justice in India, one sees that it would have been a negation of all human probabilities had it been other than an administrative blot and a judicial mockery.

√ In the first place, the administration of criminal justice has been made a branch of executive work, and has been treated as a symbol of authority in those whose primary function is the discharge of executive duties.

In the second place, those who dispense criminal justice have been made subservient to the police to an extent that cannot but defeat the ends of justice. In the third place, to complete the demoralisation, the police have been endowed with powers that have made them not only a menace to the innocent as well as the guilty, but a source of danger to the highest interests of British rule. Under the existing method, the entire body of subordinate judges who try alleged criminals as principal or committing courts are drawn from the clerical establishments of the Collector or the Sub-collector of the District, and are placed in subordination to the District Collector, both in his capacity as Collector and as District Magistrate, while he at the same time is the head of the District Police. As a body, they lack independence in the same degree as they deprecate it in others. Starting in life as clerks on an average emolument of a shilling a day, although most of them are graduates in Arts, they work up to the position of sub-magistrate, not only by dint of hard work but by an absolute effacement of their own individual opinions, judgment, and discretion in all those matters in regard to which the Collector may have any say. Further, the prospects of promotion from this position depend entirely on the Collector, to whom they are subordinates in their judicial as well as executive capacity. The Collector is not only an administrator and the head of the magistracy in his judicial capacity, but in his executive rôle is the authority responsible for the peace of the district, has vast discretionary powers in regard to important police investigations, systematically receives the diaries of the Police Superintendent of his District,

and forwards them with his confidential remarks to the departmental head. This same officer can transfer cases which come before the lower magistrates from one to another, take some cases on his own file, and act as an appellate authority in others. He regularly receives their judgments in all cases in order to form his opinion of their magisterial work. In other words, he receives the diaries of the Superintendent of Police and the judgments of the sub-magistrates as a part of his systematic duties. In some parts of the country subordinate magistrates are expected and even required to call on the Superintendent of Police, and we can well imagine that they can rarely refuse to answer questions put to them touching their judicial work. In one notable case in the Madras Presidency some years ago, a European civilian Collector went the length of ordering a subordinate magistrate to offer an apology to a section of the police force from his place in the open court of justice for certain remarks he had made as a magistrate on the conduct of the police.

While this is a singularly good instance to bring out the judicial subordination of the magistracy to the police, it also gives an indication of the traditions which have come to characterise the inferior tribunals of criminal justice under a long-continued system for which no single individual can be held responsible. Many Collectors, the conscientious section at any rate, must find the conflict of duties too severe to be borne in a spirit of equanimity, unless it be that they have got into the habit of administering criminal justice according to police requirements. The people who are the victims cannot with equal readiness reconcile themselves to

a system which is so wanting in the rudimentary principles of fair play. And if one can realise the credentials of the Indian police, the incredible latitude given it by the law of the land in the detection of crimes and prosecution of persons accused of crimes, the low *moral* of those employed in its subordinate ranks, the practical isolation of the controlling officers of the department, whom no correct information as to the misdeeds of their subordinates can reach, and who are content to leave things to their inferiors so long as their behaviour towards themselves is proper enough,—if one can adequately and patiently realise all this, one can fathom the actual delinquency of making the subordinate magistracy a branch of the District Executive.

There is a general official impression that the Indian policeman has been the undeserved object of calumny by educated Indians, and that, even if there is some justification for painting him black, it can only amount to an admission of the low morality of the people of India. This sapient remark has been often indulged in by men who ought to know better than to affirm that, if the Indian policeman is corrupt, it only shows the measure of honesty of the people of the country. One may, however, challenge any force in the world to acquire, under similar conditions, a better reputation than that of the Indian police; placed, that is, under the control of a handful of foreigners who are not only isolated from the bulk of the people and little versed in their vernaculars, but altogether estranged from the daily conduct of a subordinate staff which live and move among the people and is as ill-paid and recruited from such a layer of society as in India! Add to this that the law of the land places tremendous

temptations in the way of this staff, temptations almost equivalent to an abetment of the crimes that may under the circumstances be committed by those who are the victims and not the possessors of the powers with which they are entrusted. If those supercilious apologists who think they have found a poser in coupling the standard of police morality with that of the morality of the people, will only imagine what the state of affairs in such a country as England would be were all the higher offices in the police occupied by a class of people analogous, let us suppose, to the Reddies of the Telugu districts, ignorant of English and living in isolation from the bulk of the population, and compelled to fall back upon subordinates of the meagre pay and extensive powers of the Indian police, they may then appreciate the soundness of their observation.

To look at it from another standpoint: Are there not, for instance, in the Postal Department, employees of the same class as the lower police, entrusted day after day with large and small amounts of money, but nevertheless a credit to the Indian community? Are there not District Munsifs who have maintained a high record for judicial rectitude by the side of the sub-magistrates, in whom the country has not a fraction of the confidence that it has in the former? Are there not civilian District Judges who are models of judicial integrity, who rather than indicate to a District Munsif what his attitude should be as to a suit pending before him, would vacate their office? It is not the standard of morality of any section of the population from which the lower or upper subordinate police or the sub-magistracy of the country is recruited, or the standard of judicial

uprightness of the civilian Collectors, who are of the same class as the District Judges, which lies at the root of the problem. The evils arise, firstly, from the system of recruitment to the *higher* police staff; and secondly, from the provisions of the law as to the powers exercised by the police in the detection of crimes. Purity of criminal justice means the independence of the magistracy, the efficiency of the police, and the practical incorruptibility of both. The first can be ensured only if the magistracy is separated from the Executive of the country, made a branch of the *judiciary*, and placed under the sole administrative control of the District Judge and of the High Court. The head of the District Executive must cease to exercise any control over the magistracy or any kind of judicial function. This may to some extent increase the cost of administration; but economy should be applied in other directions, and not secured by a deceptive satisfaction with a radically unsound system of judicial administration, which at once fails in its objects and jeopardises popular content. There are directions in which to economise is to be not only wrong and unstatesman-like, but culpably indifferent to the best interests of the Government; to stint money for a sound judicial machinery is to stint it on that which makes all governments *primarily* valuable to a people. The fear that the prestige of the Collector will be undermined by his ceasing to be the head of the District Magistracy assumes that his supposed standing is of greater consequence than a sound system of judicial administration. To seek executive prestige under an unjuridical and barbarous device is to sacrifice the prestige of the judiciary, and to

bolster up the position of an official by methods which strike at the popularity of the Government and imperil its hold on the masses. Granting that the lustre of this official body may diminish to some extent, the prestige of British rule will be more than correspondingly enhanced. After all, what a melancholy travesty it is to say that nothing less than an unsound system of judicial administration can safeguard the prestige of the Executive! Does the prestige of a member of a Board of Revenue or of a secretary to Government suffer because he does not exercise first-class magisterial powers and sit in judgment over the decisions of sub-magistrates? Has the prestige of a sub-judge suffered in any way because he has no criminal powers? Every office has its own duties, and no occupant of it can suffer in prestige because he does not combine the powers of another office with his own. It is time to build up the prestige of the Collector as a substantive administrator, no longer retaining him as a mere henchman of the police, which rôle has detracted from his utility as well as popularity. It is far too late in the day to seek to uphold it on such flimsy arguments, and the sooner the Government liberates itself from these notions, the better and more creditable it would be for its political perception.

But no reform and reconstitution of the magistracy of the country can lead to a purified system of administration in regard to criminal justice, unless the reform of the police is also undertaken simultaneously. It is doubtless possible in a strain of righteous feeling to give vent to expressions which may at times appear to be unmindful of the difficulties that beset the Government as regards the

maintenance of peace and security of property on the one side, and the efficiency and honesty of the corps that is employed to secure it on the other. We may also recognise that in every country the police has been looked upon as preferable only to those whom it is employed to keep in hand. Recognising these universal features, and that the police has been the pet aversion of society in countries more advanced than India, nobody who knows the methods of the Indian police can yet rest content with a state of affairs in which it is possible for men to create a hell on earth. Although India has for a long time past been governed by England, in nothing is the difference between India and England more striking or dumbfounding than in the difference between the police of the two countries. Of course we know that, whenever such a statement is made, an avalanche of contrasts between the two countries is hurled forth by the official apologists of the Indian police. Of course we know that a long time must elapse before the Indian policeman can become the pride of the country as the London policeman has become that of the metropolis of the world. It will be long before the policeman's finger can symbolise in India the authority of law, and can command the instantaneous obedience of all sections of society as in England, just as it will be long before the *gharrywala* in the streets of Calcutta can work with the police as the London cabby does ; nor do we expect the Indian policeman to become an actual helpmate to all those who may require his help, from little waifs and strays to men and women unconscious of the danger in which they happen to be ; nor do we suggest that it is an easy transformation to place a Scotland Yard

anywhere in India. Far short of all this, have we not the right to expect that no policeman shall take a man into his legal custody and belabour him when he is helpless, with a view to obtaining a confession of real or supposed guilt? The glory of an English policeman is that he will take it as an indelible mark of cowardice to lay hands in needless violence on any criminal in his custody. Have we not a right in India to be released from the tender mercies of a police force whose first plan of detection is that of "obtaining" a "confession," which seems to feel powerless and paralysed if it cannot procure a remand of accused persons from the custody of the magistrate into its own, time after time if necessary? Is this remand a process of hospital treatment or of mesmeric exercise of will-power, or an opportunity of ministering to an afflicted spirit?

The barbarism of remanding a person accused by the police to police custody is a practice no civilised jurisprudence can tolerate for a moment, and no government which has regard for feelings of humanity can bring itself to sanction for the space of a day. An accused man may have to be kept in detention and not released on bail, but what possible, what conceivable justification can there be to hand him over to his accusers, who are armed with this weapon of legal custody and with what other instruments for the extortion of confessions, the All-seeing Heaven alone can possibly know to the full? Have there not been cases of grievous injury and even death as a result of remand to the police? Have there not been cases in which policemen have been actually convicted of torture? Have there not been instances when men in the agony of pain, in the

anguish of suffering, in unbearable mortification, confessed to crimes they never committed, nay, have gone the length of discovering supposed evidences of an imaginary crime of theirs, when in the end it has been established by irrefutable evidence that there had been and could have been no such crime at all? These cases do not belong to the time of the East India Company, nor even to the dark age of inefficiency that preceded the advent of Lord Curzon. During his viceroyalty two typical cases occurred, one in the District of Jhansi in Central India, and another in the Madura District of the Madras Presidency, before which the scene during the assize at Arras when the true Jean Valjean stood face to face with the Jean Valjean of the police pales into a commonplace triviality. There at least honest policemen were misled by facial resemblance and the imbecility of their victim; here *in the annals of judicial record*, unlike the pages of fiction, there is not even the shadow of such an extenuation. They illustrate the awful and unendurable miracle that police custody may perform in transforming innocence into self-inculcating guilt of a most hideous dye in the case of man as well as woman. In the Madura case, a man had suddenly disappeared after a quarrel, and it was believed that he had been murdered; the suspected murderer and his accomplices were arrested, brought before a magistrate, and were from time to time, as is usual in Indian procedure, handed over to the custody of the police for purposes of investigation and collection of evidence. The principal prisoner confessed to his crime before the magistrate of the place, giving a minute and circumstantial account of how and by whom the

missing individual was murdered, and how the corpse had been disposed of. Other evidence corroborating the murder was also tendered; more than one grave was dug up on the information of the confessing prisoner. When, however, he was about to be committed to the Sessions, the missing man, a village schoolmaster, having heard all about the police proceedings, appeared in court from the place he had reached *en route* to Burma. The above may well pass for a tale invented to do honour to the goddess of justice; but the person of the accused who made the confession exhibited its terrible reality. The district medical officer, Lieutenant-Colonel W. F. Thomas, J.M.S., certified that the accused bore on his person marks of about nineteen injuries, the probable date of which was about a month previously. This certificate was dated the 1st August of that year; but on the 16th July previous the Taluq magistrate, in recording the confession, had made a note, according to law, that the accused had no injuries whatsoever on his person. The injuries, according to the medical officer, were not of a fortnight's duration, but were a month old.

What a lurid light does this throw on the value of confessions to the police, the ways and means by which they are obtained, the veracity of the magistracy recording the same, the consequences of handing over an accused person from the custody of the magistrate to the temporary custody of the police for "collection of evidence," in fact on the whole system of administration of criminal justice *as it obtains to-day*, including the combination of judicial and executive functions and the consequent subordination of the lower magistracy to the police!

In the Jhansi case a woman was arrested on the charge of abandoning her new-born babe ; a number of witnesses were produced to prove the woman guilty, including a *Dhai*, a menial midwife ; and at last even the poor woman herself confessed to the crime, and was sentenced to nine months' rigorous imprisonment. The process of law then pursued its uninterrupted course to the end, no revelation being made as in the Madura case ; but the course of nature cannot be arrested either by the production of police evidence or by the pronouncement of a magisterial judgment. The woman—who was arrested on the charge in February, under magisterial and police custody until her conviction in April, in prison till the following June after her conviction—was discovered to be in an advanced stage of pregnancy, was soon after released, and gave birth to a child in the October following. That is, a woman was convicted, on police evidence which included her own confession, of the crime of abandoning her new-born babe, at a time when she was at the beginning of her pregnancy. In other words, a woman who was delivered in October had abandoned her new-born babe in the previous February ; or, to state the facts in another way, she gave birth to a child in February and to a second in the following October. And to all these miracles she herself gave witness, according to the confessions recorded by the magistrate ! One may well ask, " O Confession, is there a hell by thy side ? "

The policemen concerned in the Madura case were convicted, and possibly those who were concerned in the Jhansi prosecution as well ; but that conviction has nothing to do with the merits of the question before us. That question is : How comes

it that a man confesses to murder when the murdered individual is alive, and identifies his grave when no grave could have contained his body, and when there could have been no crime of the alleged kind any more than a collision between Mars and the earth? That question is: How comes it that a woman confesses to having abandoned her new-born babe when, not by medical testimony, but by the irrefutable evidence of the course of nature no child could have been born to her? The harrowing wails and the heart-rending cries that must have escaped some of the men and women taken into remand by the police, the imprecations they must have heaped upon an authority that makes them liable to such cruelties, the curses they must have called forth on the hour of their birth in unavailing agony, from the tempestuous depths of their unendurable rage, must have appealed to God if not to man; and who knows the ways of Providence in avenging such wrongs? The Indian proverb is "Blow on blow can make the stone mill go." In the hands of an Indian policeman, or, for that matter, any policeman similarly situated, a saint will be ready to become a reprobate, and a reprobate will undertake to perform miracles. The system of remand to the police is at the bottom of a good deal of the problem of police reform, and it is an infamous blot on the fair escutcheon of the British race that it should be suffered to exist when even an imbecile man or child can divine its purpose and utility. If the Indian police cannot get on without such a power it deserves to be summarily disbanded, leaving the citizens to take care of themselves by methods which every society can devise when necessary.

It is impossible, and indeed needless, to attempt to comment on such a system in any language of adequate condemnation; but it is necessary to examine one or two consequences that cannot but be traced to it. If any administrative system can possibly corrupt human nature, this system of remand to the police has corrupted the lower strata of Indian society in a manner few have cared to own. Truth and justice have become bywords with them on this account. The average God-fearing Indian, and they are many in India, has for a long time past come to look upon complaining to the police, unless he can definitely and directly hand over the culprit, as a nameless crime. For who knows to what it may lead to set the police in motion, in cases of mere suspicion, the torture of the helpless, the conviction of the innocent, the escape of the guilty, and the heart-rending mockery of justice? The universal distrust in which the Indian police is held even in cases when its help is needed has sprung up from the conviction that it is far better to suffer than to seek relief at the hands of the police. In solemn seriousness many a man, unless certain of the guilty party, is afraid that a complaint to the police may not only lead him into unforeseen troubles in this world, but have consequences which may pursue him into the other world, visiting upon him in virtue of his complaint a share of the sin it caused to be committed. It is a stock allegation of writers and critics of a certain class that in India the people do not help the police, and scrupulously refrain from all assistance. On the other hand, it will be within the experience even of many civilians that on many occasions they have been able to ascertain all about one Indian from another without

going out of their way to find it out. It is a fact that the people of India are the least reticent and the most communicative ; but their copy-book maxim is " Avoid the police." It is one of the vices of the Indian police to demand more and more. If a villager should happen to say that he did see a particular individual at a certain hour and place, the Indian policeman will demand more from him and bother him out of his life in the sure conviction that the villager is not speaking the whole truth. The Indian has learnt by hereditary experience to look upon the police not only as evil company, but as a danger present and future. As a result, the system has corrupted all that section liable to corruption, and has repelled all those of a better mould.

A third and a much more serious consequence from the point of view of the Government is the distance which it has created between British rule and popular attachment to it. The higher excellences of that rule can, in the very nature of things, reach only a small section, while its defects, especially when they have reference to protection of person and property, must affect the millions, and furnish them with the most convincing data for their judgment of British dominion. The system of remand and recourse to confession that has so long held sway in India, the method of awarding promotion to the police, not by the test of prevention of crime or by detection of property lost, but by the percentage of convictions obtained, and the fact that the higher police Executive are foreigners in the country and out of touch with the people placed under the charge of their subordinates, all have narrowed the scope and capacity of criminology, and enlarged

the domain of oppression and concoction. That class of the people who look upon the police, not as the arm of the law, but as the law itself, not as a service of the Government, but as the Government itself, and know no Government other than the police, have come to believe that they cannot fly from it so long as the "white man's" rule continues. The educated classes, who know how false standards of prestige and an exclusive regard for perpetuation of power and self-interest are largely responsible for these anomalies in the initial usefulness of a Government, have lost their faith after crying themselves hoarse. No grievance has been more persistently ventilated than the combination of executive and judicial functions; nothing has more outrageously scandalised the Indian public than the remand to the police, and what would be, but for its cruelty, the farce of confession. Yet redress of the one has not come into the region of practical politics through the fatal sagacity of the Civil Service; while British parliamentarians, in the ruinous fortitude born of abject ignorance and blighting self-will, have ingloriously fallen foul of men who would invite public and parliamentary attention to the other veritable plague spot of Indian administration! Tinkering suggestions are made as to improving the law of confessions, leaving securely alone the source of the evil, the remand to the police. These makeshift bureaucratic devices, alike inconsequential and deceptive, these visitations of bad temper and tired parliamentary nerves, these perpetual soliloquies by vague officials sitting on the fence and wondering whether to jump or not to jump, and if jump they must, when and how far, have

thoroughly and deeply disgusted the Indian public. The reform of the magistracy can scarcely any longer brook delay or such interested vacillations or disinterested dread of being hustled in the right direction. To infuse a new moral code and modern notions of detection without recourse to remand, to obtain the co-operation of the public by purifying the method, *moral*, and outlook of the force, all this requires a more intellectual class of police officers, both European and Indian, recruited on lines suggested in a subsequent chapter on the Public Service. At the same time, the law, practice, or procedure which allows the handing over of any accused person from the custody of the magistrate or jailer to the custody of the police, presumably for collection of evidence, ought to be utterly abolished. As soon as a person is arrested by the police and brought before a magistrate, he should be in the custody of an officer of the jail, and the police should have absolutely no access to the person awaiting trial, although he may at any time seek an audience of the magistrate for the purpose of making a statement. All communications with him must be made directly in open court, or, in emergencies, in the presence of the jailer; the premises of the jail must be guarded by a section of the Indian sepoys detailed for jail work, and the police should be relieved of the work of guarding and escorting prisoners, whether condemned or on trial. The contact between the police and a prisoner on trial should be limited to the former's giving evidence in open court or receiving evidence which may be tendered in the presence of the jailer and the magistrate. Then there will be purity in police investigation, and the opportunity and temptation to

obtain confessions as an easy road to detection will disappear. Then will dawn an era of real detection and of healthy and fruitful contact between the police and the people, engendering mutual trust. Then, with the other changes effecting a separation of judicial and executive functions, British justice in India will become one of the guardian angels of the throne of Great Britain, and the cause of British ascendancy will be advanced by one more striking addition to the many achievements it has to its credit, and to the benefits it has conferred upon a great proportion of the human race.

CHAPTER X

DISTRICT ADMINISTRATION

SECTION I

More Government on the Spot

THIS was the expression Mr. Gokhale used on the 27th of February 1912 in moving before the Supreme Legislative Council a resolution recommending the constitution of Advisory District Councils. For those who shape the policy of Indian Administration, that expression of Mr. Gokhale's is more valuable than the suggestion contained in his resolution, however attractive the latter may be at first sight to the progressive Indian mind. The resolution recommended a particular method by which more government on the spot could be secured, which was at once beset with difficulties and open to objections. Apart from the fear that they may become perpetual rivals to existing District Boards, Consultative District Councils, as Mr. Gokhale himself frankly anticipated, cannot but develop in course of time the inclination to claim administrative control of a certain type in the management of the district. To subject the head of a district, in regard to its executive affairs, to the authority of a Council, however limited it may be, is to split up the responsibility

of Government in the very unit of administration, an experiment the gravity of which not even those who desire more government on the spot can overlook at present. Although it might have been considered that the recommendation of Mr. Gokhale, whose suggestions to Government were usually marked by a sense of thorough practicality, was so vastly in excess of what the situation demanded as to suggest that he was for a radical recasting of District Administration in India, still there is no denying the force of his main contention for "more government on the spot."

Apart from the particular method that he recommended, the appeal he made for more government on the spot is an appeal compliance with which in some more feasible and less objectionable form cannot be deferred much longer, if the efforts of the British Government in India are not to fall short of their maximum value. The solution of Sir Reginald Craddock, the Home member, which consists in liberalising and invigorating District Boards, may no doubt lead to splendid results if carried out; but it cannot from its very nature lead to more government on the spot and cannot therefore compass the particular end in view. For what the vast bulk of the people in India, those who are affected by District Administration, require more than any representative boards and bodies is *access at regular intervals to the head of the district to represent what they may consider to be their grievances*. Neither Mr. Gokhale's small Advisory Councils, nor Sir Reginald Craddock's liberalised District Boards with increased powers, can furnish such access.

It will be long before representative institutions

in India establish close and effective contact between those who carry on the administration and those whose daily well-being is affected by it. As regards the larger problems to which the government of a vast empire must necessarily give rise, representative institutions to fit the maturity of the people are no doubt necessary and of immense prospective value. Local Boards, securing as they do the association of representative men in the actual work of local administration, serve a most beneficial purpose. But of equal importance is the opportunity for the ryot or the trader to lay before the accredited agent of the *sircar* his grievances, burdens, and disabilities. Relief he may not have in all cases, *but hearing he must have*, and the responsible head of the district must know what the people in his charge desire, whether or not it may be open to him to grant their requests. It is this lack of opportunity that has led them to think of the *sircar* as an agency whom it is not in their power to approach, between whom and themselves the Post Office is the only medium of contact, and to whom all access is barred by an impregnable hierarchy of officials. Is it a wonder that, more often than not, they look upon the *sircar* as impassive, if not unrelenting? It is again this same lack of opportunity for the Collector of the district to know the people's wants directly and systematically, and to ascertain the trend of their leanings, that has powerfully reacted on him, making him a mere official in charge of a machine, instead of an administrator in flesh and blood, and crippling his utility and influence with the people of the district. The argument that the subordinate Executive of the district know all about the wants

of the people is beside the point, since their authority or discretion is not the same as the Collector's. Nor is it of much value to say that it is open to the Collector to be, what he is not now in most cases, a living reality to the people of the district. *For where everything has become a matter of system, nothing new can be effected unless introduced as a part of that system.*

SECTION II

Strike—but Hear

The problem of securing more government on the spot in India is therefore nothing more than that of providing opportunities for direct access to the head of the district in matters of purely local grievances, as a part of the system of District Administration. Such a provision involves the withdrawal of the Collector from a good deal of routine, and its delegation to his personal assistants, who may belong to the Indian or to the Provincial Civil Service. It involves also his complete withdrawal from the exercise of magisterial powers, remaining merely an Honorary Magistrate in virtue of his office. It involves in addition his being required, under rules to be framed by the Local Government, to summon what may be called District Assemblies, at which representations may be made to him, to which replies may be given on the spot or later on in the *District Gazette*. The scope of these conferences should preclude the moving of any resolutions or the taking of votes on any subject, their object being merely to afford opportunity to bring to the notice of the head of the district any matter of local grievance. Inter-

pellations as framed in the Legislative Councils should also be outside their scope. Their object should be neither to take part in the control of the administration nor to elicit information from the authorities, but purely the representation of grievances. The composition of these conferences must be such as to secure the representation by election of groups of villages in every district, all those paying a certain amount of land revenue or income-tax being eligible for the electorate, the maximum number of members elected to be not more than two hundred, and the minimum not less than one hundred. The proceedings of the Assembly should be in the vernacular of the district, with the aid of an interpreter if necessary; and a brief summary with the replies to the representations should be published in the *District Gazette* as a vernacular supplement. Uniformity of procedure in all provinces or districts should not of course be required, but the system should be adapted to local conditions. In all cases these conferences should be presided over by the Collector and attended by the respective heads of District Administration, in the departments of Police, Excise, Forest, etc. Not more than a week's time need be allowed for a single session of the Assembly, and there should be two sessions every year, unless the Collector for pressing reasons and with the permission of the Local Government, dispenses with one of them. A fortnight's time in a year taken away from routine to understand the needs of the people at first hand, and a little more time spent in affording redress wherever possible, will amply repay the honest labours of these hard-worked officials and render them far more useful than at present. After all, the vast majority of the people