

student and the administrator what, in the absence of European control, they may reasonably expect. It is essential that we should know what happened in India before our time, that we may fully realise the nature of those spontaneous tendencies which we must either use or sternly check in the interests of the common weal. In no part of our business is this knowledge more important than in that part which is connected with the protected native states; for the reason that the adventitious pressure of the superincumbent Western civilisation is lighter there than it is anywhere else, and therefore in those states the natural movements of native society are less impeded.

In many or most of the Rájput States the origin of the ruling house is lost in the mists of time; but an examination of the structure of society points to conquest by tribe over tribe, by race over race, as the source of political authority. Of the states that arose in the eighteenth century some grew out of the usurpations of provincial governors, themselves the officials of Muhammadan conquerors; others were the prize of successful freebooters; some were formed by the partition of Marhatta conquests achieved by systematic pillage or systematic levy of blackmail. From the events of that century, from the events of authentic Indian history at large, it is easy to illustrate the remark that robbery on a large or small scale is a usual foundation of Oriental despotisms. And, just because where there is little learning traditions are often lasting and strong, we may have to consider whether the selfishness, the indifference to human suffering, the lust of gain, which were the originating principles of power, may not be passed on from prince to prince, inculcated by hereditary officials, and thus dictate a persistent course of sinister policy.

If we suppose an Indian Machiavelli advising an Indian prince of the last century, he might tell him that wars are good because towns may be plundered and depredations provide subsistence for troops; and conquests are good because more territory means more revenue. 'Your neighbour rajas,' he might say, 'are your natural foes, because your loss of territory would be their gain. Beyond their limits you may find allies, just because their further borders march with the domains of other rajas fearing and hating them as you do those who are nearest to you. In your own territories and outside of them there are manifold causes of enmity—race hatreds of Hindustanis against Mar-





hattas, of Sikhs or Punjabis against Afgháns or Purbias, bitter religious antagonisms, Sikhs against Musalmáns or Musalmáns against Hindus or Shías against Sunnis; and, still fiercer state or family feuds, starting from the seizure of some borderland or town, or the slaughter, foul or in fair fight, of some relation or ancestor. You must study these causes of quarrel, and use them to unravel plots, to upset over-powerful men, to take a lucrative side in the wars of other princes. In your internal administration be hard, but not so hard as to drive the *ryots* away, for on their toil depends the land-tax or rent which is both your private and public income. Your tax-gathering officials will cheat you if they dare. You must squeeze a rich one now and again; flog and imprison him and make him disgorge; and when you have done this, restore him to his place. In the will to despoil they are all alike, and one who has made a good pile is probably a clever fellow, sharp at finding out how much extortion the *ryot* can suffer without flight. In the disposal of your wealth, remember that hoards of solid cash are probably your best investment, because in troublous times the bigger battalions have the best chance of success, and the more cash you have to spend on troops, the larger will be your following. Be ever on the watch against rebellion and treachery. Who knows when your kinsmen or paid commanders may sell themselves to your foes for the sake of your own place or better prospects? Of course there are rebels and rebels; it would be stupid to punish all alike. If a lord of broad acres has gone into outlawry with a strong following, a compromise may end your domestic war. If a rebel, however, is wholly in your power, banishment is a good penalty, but imprisonment and blinding are safer; and if capital punishment is necessary, the sentence should be executed with circumstances of publicity and horror, so as to strike terror far and wide. If, however, the offender is a near relation or a Bráhmaṇ or anyone else whom it would be a scandal to kill openly, you can send him away to some distant hill fort, where a daily drink of a decoction of opium will do the business for you within a reasonable time. Above all things, be jealous of all external symbols of power. Peasants have risen to be princes; many a deposed prince wanders a suppliant in foreign lands; many a principality has vanished like the shadows devoured by the spreading darkness of a moonless night. Hold fast to your *rāj*, to your own sovereignty, lest





by some evil chance it begin to slip from your grasp. Does a neighbouring chief or one of your own vassals abate one iota of his customary respects? Be sure he meditates alliance with your foes or defiance of your authority. Does some far-off potentate, who claims your allegiance in the field, omit to award you an expected dress of honour or title, or does he assign to you or your envoy a lower place in Durbár? Doubtless he intends your disgrace and ruin and the annexation of your territory. If you are dishonoured, men will think your power is on the wane. Your foes will see their opportunity; of your professed followers, many will be prompt to join the side that promises to win; more, dreading vengeance if they resist, will tender an easy submission to your enemies. Be wise, therefore, in time, and give evidence of your strength by keeping the insignia of your rank inviolate.'

I do not affirm as a fact that advice like this is offered now; much of it is inapplicable in the altered circumstances. But those who know most of native states and their ways may consider how far the spirit of this advice may sometimes actuate that which is still given.

I cannot attain my object of stating what I believe to be the truth about native rule without some allusion to superstition and cruelty. It is, I suppose, a mark of advancing civilisation that these vices cease to characterise avowed, public, customary acts, the provisions of the penal law, and penalties imposed in the course of justice or by the authority of the state. Of course superstition and cruelty are in no way peculiar to native rule. Torture, as a means of collecting evidence whilst the prisoner was in custody, was never recognised as a part of the law of England. But it was practised in England for the purpose of obtaining evidence under Henry VIII., Edward VI., Mary, Elizabeth, James I. and Charles I., not only in political cases but also in the case of common crimes. There is good authority for believing that in the sixteen years, 1644 to 1660, 109 people were hanged under English law for witchcraft. Probably the last execution under our law for this imaginary offence took place when three persons were hanged at Exeter in 1682; but there were many later trials. Nor must we forget the frightful tortures and judicial murders perpetrated in Europe in the name of religion. Gross as is the list of Indian crimes, I know of nothing more appalling to humanity than the cruelties of the Spanish Inquisition. I understand that



Llorente, in his history of that Inquisition, reckons that up to 1809 no less than 31,912 persons were burnt alive in Spain. It is said that the last executions in consequence of the proceedings of the Inquisition took place in 1826, when a Quaker schoolmaster was hanged and a Jew burnt.

When contemplating a serious undertaking Ranjít Singh sometimes used to cause two slips of paper, one expressing his wish and the other the reverse, to be placed in a copy of the *Granth*, the Sikh scripture. A little boy was then sent for and told to bring one of the slips and the Maharaja accepted the augury. The night before he met Lord William Bentinck, the Governor-General, at Rupar, on October 26, 1831, Ranjít Singh entertained apprehensions that some treachery or foul play must be designed. He consulted his astrologers, who advised him to take with him two apples and offer them to the Governor-General and his secretary. If these apples were at once taken without demur, the omen would be good. The Maharaja acted on this advice, and presented the apples, which were freely received.

We have founded several universities, many colleges, and many thousands of schools; the English language and Western ideas have spread and are spreading; but it would be a great mistake to suppose that the frame of mind which suggested these puerilities can never nowadays influence the counsels of native states.

The cruelties of Haidar Ali and Tippoo were exceptional in the annals of Indian atrocities; they were perhaps equalled by the savageries of the Delhi emperor Muhammad Tughlak, who was probably mad; they were, I think, worse than anything that can be laid to the charge of the Marhattas or the Sikhs. But they actually occurred within historical times in a Hindu state under a Muhammadan Government. I may instance a few cases, all of which I take from the pages of Wilks. There is a distinction, however, between the cruelties of the father and those of the son. Haidar Ali was deliberately cruel from an unfeeling policy which aimed at the extortion of wealth and the security or establishment of his power by striking terror. Tippoo was cruel from bigotry, from fear, from inability to control the tyrannical impulses of a mind so weak, so brutal, and so vain as to incur some suspicion of insanity.

In 1763, when engaged in the conquest of Bednur, Haidar captured the trifling post of Eitoor, garrisoned by a hundred men. He caused the noses and ears of these men



to be cut off, and in that state dismissed them to spread terror before him. On one occasion his life was attempted by eighty Afghán prisoners who had cut down their guard. Many of these men were killed at the moment. Of those who survived to the next day he ordered some to 'have both their hands and feet chopped off, and in that shocking state to be thrown into the highway, at considerable intervals from each other, to announce to his new subjects and to passing travellers the terror of his name.' The remainder were ordered to be dragged to death by elephants. One man survived this frightful punishment, and was seen twenty years afterwards by General Close. Once and once only is it recorded that Haidar showed compunction. On invading Coorg in November 1773, he proclaimed a reward of five rupees for each Coorg head which should be brought before him, and sat down in state to distribute the rewards. About seven hundred heads had been paid for when a man brought in two with features still showing in death a special beauty. 'In cutting off such lovely heads,' asked Haidar, 'did not your heart burn within you?' And he immediately ordered quarter to be given and the decapitations to cease.

He had a department of torture which was a branch of his department of police. One of his dewáns, or ministers of finance, Chinneia, was tortured, plundered, and dismissed in 1768. The next dewán, Assud Ali Khan, died in 1772 under torture inflicted to extort money which he did not possess. Another minister, the Bráhmaṇ Shamia, excelled all his predecessors in the well-understood practice of exhibiting a balance against a proposed victim by means of false vouchers and false witnesses. But the spirit of the rule of Haidar Ali is best understood from the testimony of an eye-witness, the missionary Schwartz. In July 1779, Mr. Schwartz was sent by the Madras Government on a mission to Haidar to sound his views and assure him that the British authorities desired peace. Mr. Schwartz arrived at Seringapatam on August 25, 1779, and thus describes what he saw there:—

'Haidar's palace is a fine building in the Indian style. Opposite to it is an open place. On both sides are ranges of open buildings, where the military and civil servants have their offices, and constantly attend. Haidar Naik can overlook them from his balcony. Here reigns no pomp, but the utmost regularity and despatch; although Haidar sometimes



rewards his servants, yet the principal motive is fear. Two hundred people with whips stand always ready to use them. Not a day passes on which numbers are not flogged. Haidar applies the same cat to all transgressors alike, gentlemen and horsekeepers, tax-gatherers and his own sons. And when he has inflicted such a public scourging upon the greatest gentlemen, he does not dismiss them. No! They remain in the same office, and bear the marks of the stripes on their backs as public warnings; for he seems to think that almost all people who seek to enrich themselves are void of all principles of honour.

‘Once of an evening I went into the palace, and saw a number of men of rank sitting round about; their faces betrayed a conscious terror. Haidar’s Persian secretary told me they were collectors of districts. To me they appeared as criminals expecting death. But few could give a satisfactory account, consequently the most dreadful punishments were daily inflicted. I hardly know whether I shall mention how one of these gentlemen was punished. Many who read it may think the account exaggerated, but the poor man was tied up, two men came with their whips and cut him dreadfully, with sharp nails was his flesh torn asunder, and then scourged afresh; his shrieks rent the air.’

The forcible expatriation of the Christians of Canara by Tippoo is well known. To quote his own description of this atrocity: ‘Sixty thousand persons, great and small, of both sexes, were seized and carried to the resplendent presence . . . being formed into battalions of five hundred each, they were honoured with the distinction of Islám.’ The true number was about thirty thousand; all the males of every age were circumcised. Colonel Wilks states that, so far as could be ascertained from conjecture, one-third of the whole number did not survive the first year. Haidar did not succeed in tranquillising Coorg, and Tippoo entered the country with an army, and for the time restored quiet. ‘If rebellion,’ he declared, ‘ever be repeated, I have made a vow to God to honour every man of the country with Islám.’ Another rebellion occurred. Tippoo entered Coorg in two columns, burned and destroyed the open country, and compelled the inhabitants to take refuge in the woods. He then despatched his troops in detachments to all parts of the frontier, so as to surround the province; and caused them to contract the circle thus formed, ‘beating up the woods before them, as if dislodging so much game.’ They



then closed in 'on the great mass of the population, male and female, amounting to about 70,000, and drove them off like a herd of cattle to Seringapatam, where the Sultan's threats were but too effectually executed.' I pass over the poisonings, hackings to death, and other murders of prisoners of war, the seizure of 20,000 masons and other men to carry on the works at Seringapatam, the wholesale mutilation of the garrison at Benda, and other instances of barbarity. I will only add the account of Tippoo's conduct towards the garrison of Oochingy, a strong hill fort belonging to a recalcitrant *poligár*. The fort was taken in 1793, and the general who took it ordered five handsome boys from among the prisoners to be emasculated for future service in the harem of the Sultan. Tippoo was delighted with the hint, and directed the whole garrison to be treated in the same manner. The command was obeyed. All the adults died. Colonel Wilks (ii. 282, *note*) had seen and conversed with some of the younger survivors.

It was a common saying 'that Haidar was born to create an empire, Tippoo to lose one;' and there is no doubt of the great capacity of the father or of the imbecility of the son. It is not necessary to multiply instances of cruelty due to the acts or orders of capable or incapable native chiefs. For a few examples of cruel usages either tolerated by former rulers, or, when we found ourselves able to direct their suppression, so far rife as to call for express provisions, it will suffice to look to some of the engagements with native states and to some of the old regulations.

Many of the engagements refer to the practice of *sati*, which was not declared illegal and punishable by the criminal courts in British territory till December 14, 1829. Lord William Bentinck was then Governor-General, and the first instance which I have traced of an undertaking on the part of a native chief to prohibit *sati* occurred in 1833, during his lordship's term of office. Upper Assam was granted in that year to Raja Purandhar Singh, who engaged 'to abstain from the practices of the former Rajas of Assam as to cutting off ears and noses, extracting eyes, or otherwise mutilating or torturing;' and further bound himself not to permit the immolation of women in *sati*. Between 1836 and 1842 agreements directed against *sati* were taken from the chiefs of Ahmadnagar, Junagadh, and Jafirabad, from seven chiefs in Rewa Kanta, and from seventeen in the Orissa Tributary Mehals. The Gaekwar of Baroda appears



also at this time to have undertaken to put down *sati*, and in 1839 the Raja of Sattára took measures to that end. Some later engagements include other practices opposed to British laws. Thus the *sanads* or grants of the chiefs of Taroch (1843), Mandi and Suket (1846), Biláspur, Patiála, and Jhínd (1847), Chamba (1848), Patiála and Jhínd (a second time), and Nábha (1860), and Farídkot (also for a second time in 1863), prohibit *sati*, female infanticide, and slavery or slave dealing. The Mandi, Suket, and Biláspur chiefs are specially bound to prevent the burning or drowning of lepers, and there are express words in the Chamba *sanad* prohibiting mutilation.

This is not the place for a disquisition on *sati*; but Bernier's description of what he actually saw at Lahore brings to mind the thousands of cases, under native rule, and under British rule also, before the resolution was formed to forbid the practice, in which innocent girls and women were forced or resigned themselves to an agonising death under the influence of a pernicious theory of morals or religion. 'At Lahore,' he says, 'I saw a most beautiful young widow sacrificed, who could not, I think, have been more than twelve years of age. The poor little creature appeared more dead than alive when she approached the dreadful pit; the agony of her mind cannot be described; she trembled and wept bitterly; but three or four of the Bráhmans, assisted by an old woman, who held her under the arm, forced the unwilling victim toward the fatal spot, seated her on the wood, tied her hands and feet, lest she should run away, and in that situation the innocent creature was burnt alive.'

As for evidence of barbarous practices contained in the old regulations, Bengal Regulation IX. of 1793 provided that no criminal should suffer the punishment of mutilation. 'The reverence paid by the Hindus to Bráhmans' (I quote Harington's 'Analysis,' vol. i. p. 397), 'and the injury to caste and credit which ensues from being the cause of their death, have, in some parts of the province of Benares been converted into the means of setting the laws at defiance. On the approach of a public officer to serve any judicial or revenue process, or to exercise any coercion on the part of Government over the Bráhmans in question, they have been known to lacerate their bodies with knives or razors; or to swallow or threaten to swallow poison, or a powder declared to be such; or to construct a circular enclosure called a



*kurh*, in which they raise a pile of wood or other combustibles, and place within the area an old woman, with a view to sacrifice her by setting fire to the *kurh*, in which case it is believed that after death she will become the tormentor of those who occasion her being sacrificed. It has also been a practice with the Brāhmans referred to, on their not obtaining speedy relief for any loss or disappointment, and upon any public process being issued against them, to cause their women and children to sit down in the view of the officer charged with such process, to brandish their swords, and threaten to behead or otherwise destroy their females or children on the nearer approach of the officer; and instances have occurred in which, from resentment at being subjected to arrest or other coercion, they have actually put such menaces into execution. A proclamation was issued throughout the province of Benares, on July 7, 1799, for the purpose of putting a stop to the murder of women and children in the manner above described; and provisions for the same purpose, as well as for preventing the construction of a *kurh* and the commission of any act of violence, or the threat of it, under the circumstances stated, are contained in the first ten sections of Regulation XXI., 1795.'

The well-known practice of sitting *dharna* appears to have been sometimes aggravated by the threat of suicide. Regulations of 1795 and 1803 dealt with female infanticide amongst a particular class of people in Benares and the Ceded Provinces, and Regulations of 1797 and 1803 subjected to the penalties of murder the putting of people to death for being versed in or practising sorcery. The practice of sacrificing children by exposing them to be drowned or to be devoured by sharks or alligators, prohibited by Regulation VI. of 1802, does not appear to have been authorised by any Hindu or Muhammadan Government.

It is time now to sum up the result of this laborious inquiry. Apart from the subjection of individuals to the influence of cruelty or superstition, what were some of the permanent causes making for misrule in native India unredeemed by the strong civilising control of the British protectorate? There was, I think, an intellectual defect which may be described as want of system; an inability to follow out principles of public conduct to their less obvious consequences, to devise, or even to perceive the need for rules ensuring the stability of institutions and assigning





clearly-defined limits to delegated authority. If we regard law as consisting of those rules of conduct which, in civilised societies, form the subject of legislation and are enforced by courts of justice, there were numerous bodies of law—Muhammadan law, Hindu law, the unwritten customary laws of tribes and castes and localities; but there was not that reverence for law which in Europe is in all probability very largely due to the influence of the Roman law and to the teaching of the Roman Catholic and other Christian Churches. So far as there was a germ out of which the respect for law might have grown, it was to be found in dislike to actions plainly opposed to custom and tradition. There was a deeply-rooted and widespread conviction that there could be no rule to which exception could not be made if agreeable to the discretion of the chief or of any of his delegates. The chief was set above the law; it did not limit his authority by any constitution. There was no legislation for the improvement of law. The administration of justice was extremely imperfect; the absence of any law of succession to the throne in Muhammadan states, and the uncertain operation of the customary rules of succession in Rājput states, led to discord and intrigue, often excited or fomented by the women of the palace. Indefiniteness of control over dependent chiefs, indefiniteness of the authority of appointed deputies, were standing incitements to revolt and usurpation. The great space which should be filled by constitutional law stood empty; and the attraction of that vacuum again and again brought on the hurricane of war.

But the moral defects were more serious than any want of system or want of legislation and habitual observance of laws. Given the legal habit of mind and the disposition to obey the law, mere want of system will work in time its own cure. Nothing could be more unsystematic than the growth of English constitutional law and of the English criminal law; yet each has a certain symmetry due to the efforts of many generations in moulding it to a form suited to our national life. If the chief was set above the law, or, indeed, practically and not merely theoretically regarded as a personage to whom no laws applied, and more particularly if the origin of his power was recent, so that restraining customs had had no time to grow up, it was natural that he should look upon his subjects as existing for his convenience, and rule with an eye, not to their good, but to his own wealth and power. There may have been some rare excep-





tions; but usually, I think, there was no idea of governing for the general good. There was a grasping, mercenary, selfish spirit in the administration, callous to suffering, greedy of gain. This spirit was apt to pervade all ranks. It led inevitably to judicial corruption. In peaceful times it would tempt men to various forms of exaction. With the relaxation of authority more violent evils would appear. Robbers would openly prey upon society; and those whose duty it was to prevent their ravages would be bribed to inaction by a share of the spoil.

All this is merely to say that government by system and in accordance with moral principle and for the general good is civilised government. Government at discretion for the benefit of the ruler, with indifference to the welfare of the subjects, is the earlier state of things which is superseded by civilisation. I have tried to give a correct account of some Oriental governments; and I have been insensibly led to use language which almost describes one of the fictions surviving in our own law from the time when the rules they purport to express corresponded with realities. Indeed, that the king can do no wrong is not entirely a fiction even now; though no one could say that an English king or queen is set above the law. The rule may be taken as one of the many links in legal history that connect the East and the West. It reminds us that Asia is not the only continent where there have been tribal chiefs and hereditary despots. The notion that all kings, all governing bodies, all officials of governments, should be merely stewards of public interests and trustees for the general weal is comparatively new even in Europe. It is idle to be either angry or surprised because this idea is rarely, if at all, discernible in India under Oriental rule, in the India of the Moghals, the Sikhs, and the Marhattas.



## CHAPTER XV

### NATIVE RULE UNDER THE PROTECTORATE

It is unhappily beyond doubt that some of the characteristics of imperfect civilisation described in preceding chapters as existing under native rule in parts of India which are now British territory are to be discerned in certain native states long ago brought within the British protectorate. In many of these states there are defects by no means as yet eradicated by British influence. There are tendencies in many places making for misrule, which, in the absence of watchfulness, or if the paramount power at any time shrinks from the responsibilities of its controlling position, will certainly issue in corruption, oppression, and violence. In some places these evils have appeared and become notorious, and interference has been necessary to put them down.

In offering the proofs of these conclusions I find myself in a certain difficulty. I have here to deal with facts and events of which some are quite recent, and few occurred more than thirty years ago. It is necessary to avoid giving pain to living men whose errors have been appropriately noticed by the Government of India, or to distinguished houses naturally jealous of the reputation of their former chiefs. Moreover, correspondence relating to the misgovernment of native states is, for obvious reasons, usually of a confidential character; and it would be a breach of trust for an official like myself to publish, with all particulars of names, places, and dates, accounts of occurrences at present recorded only in the Indian Secretariats or the India Office, and not meant for the public eye. At the same time instances of misrule in native states seem essential to my argument, because the existence of misgovernment is the justification of British intervention; and if this treatise is to be of use, as I venture to hope it may be in a moderate degree, to officers who are beginning political work in India, it is desirable to forewarn them of some of the defects



in native administration against which, in the course of their official duties, they may have to contend.

Bearing in mind these considerations, I propose to adduce certain illustrations of evil tendencies or misrule in native states, all of which are taken from official records to which I have had access. But in order to avoid any breach of confidence I shall be careful to suppress names of persons and places, and, as far as possible, indications which might show whether the state spoken of is a Hindu or a Muhammadan one. I shall also avoid specifying dates in any such manner as to give a clue to identification. In this way each case brought forward will serve the purpose of a specimen to be coolly considered without prejudice or partisanship; and no state need take to itself an unfavourable description which has been designedly made anonymous for the reasons just explained. I shall, of course, allege no imaginary instances of misconduct or error. In stating matters of fact in this anonymous fashion I shall scrupulously follow the records and often use the exact words therein employed. Where I can properly dispense with reserve I shall gladly do so.

I will begin with barbarous practices or punishments in native states under British supervision. I quoted in the last chapter the old Regulations directed against the sacrifice of women for the purpose of intimidation, and it might be supposed that no such case could occur in India now. But, as a fact, a case of the kind has occurred within the last ten years. In a native state, which I shall not name, some Bráhmans of four separate clans had held a village for many generations, and asserted that it had been granted to them free of revenue by a copper deed, which could not be produced. According to the traditions of the village, nine sacrifices had taken place in former times, the localities of three of them being still marked by masonry platforms. Probably no grant had ever been made; but the Bráhmans, by these inhuman expedients, had coerced the state authorities into abandoning their just claims. The land revenue of the village was assessed in 1853, and thirty years later an officer of the state nearly quadrupled the assessment. The sum thus fixed was never realised. A reduced assessment approximating to the former was proposed; but the Durbár, or court of the state, refused to ratify it, and directed that the land should be measured and assessed as in other villages. As a protest against the order, it was agreed at a





village meeting that the four heads of clans should sacrifice themselves, and thus bring a curse on the state authorities. The mothers of two of the heads of clans offered themselves as substitutes, and two other women were named for sacrifice on behalf of the other two clans. The two mothers were burnt alive in the presence of the whole village and of residents of neighbouring villages who had been warned to attend. There was probably no intention of burning the other two women, as the two heads of these clans wounded themselves and sprinkled their blood upon the pyre, thus symbolising their own sacrifice. When the two aged women were believed to be dead, their hands were cut off—one hand could not be severed owing to the fierceness of the flames—and were carried away by the ringleaders, I suppose to be laid before the authorities. There was a police post of the state within a mile of the village; two clear days elapsed before the declared intention of performing the sacrifice was carried into effect, but no attempt was made to put a stop to it. The chief of the state tried the offenders and sentenced eighteen to various terms of imprisonment. He also dismissed and fined the officer in charge of the police post, and dismissed the men under his orders.

In another native state within the last twenty years the intervention of the political officer prevented the execution of a threat on the part of some Sidhs to commit *samādhi*, that is, to commit suicide by burying themselves alive, for the usual purpose of intimidation. These Sidhs were Hindu religious mendicants who had settled down to cultivation; and the matter in dispute was the levy of a relief or fine—a *nazrāna*—on the accession of the chief. An official of the state explained by a sort of Irishism that these Sidhs 'were in the habit of committing suicide with a view of intimidating the *rāj*,' and that two men had already died from self-inflicted stabs.

Less than thirty years ago a certain state was under the administration of an incapable council of regency. Gang-robbery and other violent crimes were rife, and the son of one of the members of the council was sent into the districts for the purpose of hunting up offenders. He began well, but presently constituted kine-killing a capital offence, and inflicted barbarous punishments on captured offenders. One man, after being beaten and tortured till he confessed to having eaten cow's flesh, was tied to the leg of an elephant and dragged along the ground till he was flayed. He was



then buried with his head above ground and left to die of starvation. I am bound to add that when the son of the member of council was tried some years later for having ordered this atrocious execution, he was acquitted. He was, however, convicted of having caused another prisoner, accused of the same imaginary offence, to be tortured by the extraction of two of his teeth. This man died two or three days after the outrage. The son of the member of council was brought before the Political Agent and made a full confession. The council, influenced by his father, permitted him to escape, and several years elapsed before he was brought to justice.

Perhaps people unfamiliar with Indian society might have some difficulty in believing that native governments could treat the slaughter of kine as an offence of the first magnitude. I therefore quote from the Quarterly Report of the Proceedings of the State Council, Kashmir, from April 18 to July 31, 1889 (published by authority), the following passage:—‘On a suggestion made by the judicial member of the council, six prisoners from the Jammu jail and four from that of Srinagar were released in honour of his Highness the Maharaja’s birthday, *preference being given to life-convicts for cow-killing, who had undergone eight or nine years of their term of imprisonment.*’ The italics are mine.

I take from the same report a quaint instance of superstition. ‘A custom,’ it is said, ‘prevailed in Jammu territory by which, on payment of a fee of 50 rupees, any person believing himself to have been injured by sorcery could get hold of the witches, traced by certain magicians, and, with the aid of the police and the revenue courts, compel such witches to withdraw their ominous influence. This practice had the effect of subjecting so-called witches to a most cruel treatment, while, at the same time, it enabled magicians and sorcerers to make the best use of their tricks in extorting money from women accused of witchcraft. On a reference from the judicial department, setting forth the evils of the practice, the state council directed that the courts be strictly enjoined not to entertain such complaints against witches, and the practice of receiving the customary *nazrdna* fee from such complainants was discontinued forthwith.’

In another state in a different part of the country it was found necessary, some four or five years ago, to deprive the chief of all authority in the administration, because he had



proved by his public conduct his unfitness to rule. One of the facts stated in this case by a responsible European officer was that the chief had been practising by magic against the life of his eldest son. The rites were carried on with great secrecy, and proof of them was necessarily difficult. But, after reading the very circumstantial statements made in the report, I have no doubt of the truth of the allegation. That it was made and believed to be true by the officer on the spot is a sufficient index to the state of society.

In the case of another chief it was reported—also within the last five years—that an adventurer of low origin and an astrologer had become the principal favourites. These two obtained a complete command over the chief by means of an impostor who pretended to have spiritual communion with the ghost of the chief's father. The power of this ghost over the chief's destiny was supposed to be unlimited. Every act of the chief's life was regulated by the dictates of the ghost as announced by this medium. The ghost told the chief what to eat, what to avoid, where to go, and when and how to answer the recommendations of his public advisers. Every night before the chief retired to rest the medium drew magic circles round his bed, and pronounced exorcisms to keep away the evil spirits who—so the chief was assured—would otherwise tear him to pieces.

I need draw no sort of veil over the Jhabua case of 1865, because a notification was published at the time in the 'Gazette of India,' directing the discontinuance of the chief's salute of eleven guns on the ground of his having knowingly permitted a case of mutilation to occur at his capital. He was also fined 10,000 rupees, and other persons concerned in the affair were duly punished. The facts were that a temple built and endowed by the chief's mother had been plundered; a man named Kesia was charged with the offence, but, before the investigation was complete and when he had not as yet been found guilty, he was mutilated by the amputation of one hand and one foot. The order for this atrocity appears to have been given by the mother of the chief, and it was found that the chief himself was cognisant of it.

So far I have quoted instances of barbarism or superstition which, however significant, are here shown as isolated. I will now bring forward some general descriptions of particular tracts of country or states, with regard more especially to the administration of justice, the collection of





revenue, and the general security of life and property. I may without objection quote an account of Central India, given in 1867 by an officer who had had considerable experience of states in that part of the country. The time is fairly remote; great improvements have since been effected in many quarters, and the report itself is couched in general terms without specification of names of places or persons.

This officer, so far as his experience went, had found the system of native government loose and disjointed, and prevaded by a spirit of mutual suspicion running from the chief to his minister and thence downwards to the lowest official. The persons charged with the administration of justice were frequently uneducated and generally corrupt. In one case the post of chief officer of justice was sold to the highest bidder. While the poorer classes had to pay for justice, men of position or wealth were allowed to imprison their debtors or to seize their houses and property on their flight. Prisoners for public offences were considered inconvenient; fines—a source of revenue—were imposed even in heinous cases. Favouritism led to immunity; for instance, in one state a personal attendant of the chief roamed over the country seizing and driving away cattle on the pretence that they were without owners, and no one dared to complain. Thieves inhabiting some of these states carried their petty depredations into British districts, and gave a portion of their plunder to the chief, either in kind or by way of a yearly contribution. The life led by the few prisoners incarcerated was most deplorable. The officer making the report had 'seen such men stowed away in the most obscure part of a fort, surrounded by filth, themselves unwashed, unshorn, almost unclad.' 'But sometimes,' he adds, 'there are men who are treated even worse than these prisoners. I have known of a Thákur, calling himself a noble, tying up to a tree by his wrists a man obnoxious to him, quite close to a populous city where the Ráni, then the head of the administration, held her court. The unfortunate victim, after being beaten, has been wounded with a spear, and then cast, with his sores open and bleeding, into a place of confinement, uncared for and unattended; maggots sprang up in his sores, and finally death released him from suffering.' If a treasury was drained, a demand would be made on wealthy bankers, who would advance the money and recover it with exorbitant interest from the proprietors of the land. The banker extorted from the proprietor, the proprietor



from the cultivator, and the cultivator 'gave his last farthing, and prayed to be left alone.'

I turn to a state of an entirely different type in a distant part of India. Here, some five-and-twenty years ago there were frequent outbreaks due sometimes to a disputed succession, sometimes to the tyranny and cruelty of the chief. The administration was corrupt and disorganised. The principal officers were generally foreigners—that is, natives of other parts of India—and their main object was to make money. Appointments were freely bought and sold year by year. The army was found to be in a mutinous condition, and its pay four months in arrear. The troops were partly paid in rations, and the local officials who had to collect and supply grain for them were obliged to pay part of their collection in advance and recouped themselves by oppressing the peasantry. The chief was charged for the keep of the horses of the body-guard, which the peasants were compelled to feed. Cartmen and cattle were kept to maintain miles of strong hedges used as drives for deer. The cartmen appropriated the provision allowed for the cattle, made the peasantry feed the cattle, and, like the horse-keepers of the body-guard, committed other extortions. The chiefs of this state kept in the harems a number of procuresses, whose business it was to look out for women, and any good-looking women were at once seized and married by the chief, whether they had previously been married or not. The chief lived in constant dread of assassination; the officials in fear of ruin, disgrace, and death. There was a pension list, which contained a number of names of women whose husbands had been prime ministers and had been killed by order of the chief, their lands confiscated and a small pension given to the widows and daughters. Between 1819 and 1867 there had been ten prime ministers, of whom five were executed or murdered by the chief, one had to escape to save his life, one was thrown into prison, and of one, who died a natural death, the property was subsequently confiscated. In many parts lands were entirely deserted, and—a rare occurrence—numbers even of bankers and traders had left the chief town.

These disorders were long ago cured, the state falling under British superintendence during a minority. In another state, again of another type, it was found within the last five years that, notwithstanding ample resources, the treasury was empty; corruption and disorder prevailed in every department, and the chief was surrounded by low and



unworthy favourites. There were heavy arrears of salaries in all departments; at one time the army had not received the cash portion of its pay for eighteen months. A foreigner, that is, a native of another part of India, a mere theorist without practical knowledge, was appointed Minister of Revenue and Finance. He largely augmented his own and the prime minister's salary, and procured appointments on high pay for a number of men from his own part of India. The relations of the Minister of Finance and Revenue with his colleague did not long remain friendly, and in a trial of strength with the Prime Minister, the foreigner was compelled to resign. The state lent money to traders, and in this and other ways officials, traders, artisans, and cultivators became heavily indebted to the public treasury. Appointments were sold or given to people with powerful interest; and the men most secure in tenure of office were some of the debtors of the state, because half their pay was forfeited in discharge of their obligations. It was said that the judicial machinery was thoroughly bad, and that the only reason why the people submitted to the existing style of administration was that they could bribe the officials, who then would not press them to pay their debts to the state. The cultivators were reduced to the condition of labourers, the population was diminishing, and the former occupants of land were being steadily ousted from its possession, which was passing to officials enriched at the public expense.

These details illustrate the thorough corruption that may overtake a native administration under a weak or incapable chief. I will now point to some germs of more violent disorders, which, if examined, suggest the reflection that, after all, we are not far yet from the confusions of the last century, and that deep in existing societies lie predatory instincts which, in the absence of strong control, might soon fill whole provinces with pillage and alarm.

In a state where there was a good deal of corruption and the torture of prisoners was not unknown, a colony settled not long ago, consisting of the descendants of Thugs. In 1888 there were in three villages 800 of these people all told. They had no occupation except theft, robbery, and the disposal of stolen goods. Skilled in disguises, the men travelled about by rail to great distances, to the Deccan, to Ajmere, to the North-West Provinces, to Bengal, to Bombay, bringing back plunder to their homes. They were on good terms with the local police, subordinate officials, and lessees,





to whom, it is said, they paid a regular percentage of their ill-gotten gains. The ruler of the state ordered the colony to be broken up, and the local *názim* passed on the order to his subordinates. To these orders not the slightest attention was paid. Efforts have now been made to reclaim these criminals, but are not likely to have much success till trustworthy men can be obtained for the charge of police stations, and till the men obtained are sufficiently well paid.

In a circle of three states not less than 400 miles from the villages of these Thugs, a formidable band of robbers was lately making depredations. In the four years ending February 1889, twenty-two villages had been plundered by daring gangs, forty-seven murders committed, fifty-one persons wounded, and about 200 hostages carried off, of whom many were ransomed at enormous gain to the brigands. Measures were taken, with success, to break up the band. Three European officers, all of whom came under fire, and twelve non-commissioned officers of the native army were employed. The officer in command organised an intelligence branch; and within a year three of the men employed in it were killed by the brigands for giving information. In the end, thirty-two of the proclaimed band were killed or captured and eighty of their adherents were arrested. It remained to reorganise the police forces of the states.

In a state situated in territory intervening between this group of three and the state from which the Thugs set out on their distant expeditions, gang-robbery, in late years, became very prevalent. In a comparatively short time a criminal organisation originated by one man so extended its operations that in place of a single band no less than seven or eight bands established themselves in different parts of the country. Each band had its own head-quarters, and they paid monthly wages to men for supplying them with information. In 1885 and 1886 arrangements were made to attack and break up these gangs. The native officer employed, marching through some fifty or sixty miles of country, found robbers roaming about in large gangs of fifty to a hundred men, mostly carrying fire-arms. His own force was too small to cope with them, and at that time nothing effective was done. Dread of the vengeance of these robbers or dacoits deterred the villagers from giving assistance. The command party was then strengthened by troops and in other ways, and the dacoits moved northwards and robbed a village in a party said to be 150 strong. The native officer marched after





them, and in a tract of some 120 miles length he found the population in a state of terror ; for instance, on arriving at a certain village after sunset he could induce no one to open his house or furnish him with supplies. ' In the villages,' so the report ran, ' jewellery and valuables are all carefully buried or hidden ; but should the dacoits on attacking a house not find the property they expected, they practise the greatest barbarities on the persons of the men and women of the house to compel them to disclose the place where their property is concealed.' Eventually several of the leaders were shot, the gangs were dispersed, and the people recovered confidence.

These illustrations have been adduced to show that the battle with cruelty, superstition, callous indifference to the security of the weaker and poorer classes, avarice, corruption, disorder in all public affairs, and open brigandage is by no means over even at the present day. In pointing out that the tendencies which produced anarchy in India in the eighteenth century are still at work in some places at the end of the nineteenth century, I gladly acknowledge that many native states are well administered ; and I fully hope that, in course of time, most, if not all, of them will be able to establish a system of administration probably less strict, less thorough, less active, less imbued with European theories than our own, but at least equally well suited to the existing state of society. In the statement submitted to Parliament exhibiting the moral and material progress and condition of India during the year 1889-90, I have counted forty-eight native states of which the administration is praised, either for general excellence, or because the finances are sound, or because there has been improvement. In making out this list I have not excluded the cases in which the management is temporarily entrusted to British or native officials appointed by the British Government either on account of the minority of the chief or for other reasons. It is one of the advantages of the whole system that, without any upset of the indigenous chiefships, occasional spells of administration by officials trained under the British Government habitually occur in one part of the country or another.





## CHAPTER XVI

## THE LIMITS OF BRITISH INTERPOSITION

IN this book it is nowhere intended to institute any formal comparison between British and native rule. The benefits of the direct administration of British Indian territory by the European and native servants of the British Government have been so often described, and are, indeed, so manifest, that it is not necessary to add on that subject a single line. The working of the protectorate is less fully understood; and that is a matter which it is my endeavour to illustrate both here and in other parts of this volume.

The tendencies which, if uncontrolled, set towards corruption, plunder, and oppression are nothing but the play of human character in the circumstances of life; and character is formed not merely by individual experiences, but also by inherited capacities and impulses and inherited traditions. In the untold ages during which India has been thickly populated, our century of supremacy is a mere span; and it is really absurd to suppose that in a few generations many millions of people will show any general revulsion from habits of mind engrained in their forefathers by the experiences and events of, at the very least, three thousand years. We may be able to see the influence of the past more clearly in Native India than in British India; but we need not be blind to that influence in those parts of India where our responsibilities are most pressing and most direct.

For these reasons, I am in no way concerned to assert that some of the evils described in former chapters have not existed or do not exist in British territory. With superstition, indeed, no one can charge the British authorities. It is inconceivable that British police or revenue courts should be employed to counteract witchcraft; or that a Lieutenant-Governor should seek advice, through a necromancer, from his father's ghost. But who would be prepared to say that the corruption of underlings on low pay, the occasional



torture of prisoners by the police to procure confession, the prevalence of gang-robbery in certain tracts, and the sheltering of thieves by village headmen and others of a certain position, are things unknown in British districts? The important point is that, when these things do occur in our own districts, we are free to put them down by the most direct and efficient means at our disposal. That is not the case in native states. There are limits to British intervention; limits varying with the history of the relations of any particular state to the British Government, the strength and known character of the native administration, and the disposition of the ruling chief to seek or reject advice in the conduct of his business. It is therefore difficult to define these limits in any general language; and to attempt to do so in any authoritative way would, if the line were drawn too much on one side, alarm the native courts, and, if too much on the other side, embarrass the British Government itself in its never-ceasing contest with injustice, oppression, and cruelty.

In dealing, therefore, with this delicate subject, I may be allowed to repeat what I have said in the preface, that I can offer nothing for consideration but mere personal opinions, which are unauthoritative. I can merely advise that in many, perhaps in most cases, certainly not in all, a certain attitude of mind will probably be expedient. All that I say in this chapter is subject to these remarks.

In former parts of this treatise it has, perhaps, been abundantly shown that the British Government desires the preservation of native states; and I believe that policy to conduce directly to our strength in the country, and further to be largely based on a recognition of the many advantages to the people themselves conferred by the existence of a considerable portion of territory governed, under adequate supervision, by native rulers. This belief is in no way impaired by the occurrence, in certain cases, of misrule and oppression.

Starting from this principle, the prevailing attitude of mind should be one of great reluctance to interfere. The continuance of native rule being one of our objects, even when interference is forced upon us we should studiously avoid any action which may prove an obstacle to that continuance. Whilst ordinarily ready to help a native administration with our advice, if sought, we should never obtrude it, and on giving it should be careful not to lessen the





responsibility of the chief. We should never permit our name to be used as a cloak for questionable measures; and cases may no doubt occur in which the wisest thing we can do is to decline to advise at all. If remonstrance becomes our duty, the case is altered, and we must then speak with candour and consideration. Subject to certain exceptions, to be noted presently, we should have no wish to interfere so long as peace is preserved, reasonable security afforded to life and property, and justice administered with tolerable fairness. It is the plain duty of a native chief to govern his own territory in a proper way. He is responsible to the paramount power for the general success of his administration. Power and responsibility go together; it is unjust to insist on the responsibility if we undermine the power. That we shall assuredly do if, without grave cause, we interfere between the chief and his subjects or subordinates. If we have to act at all, the safe rule is to act always through the chief with a watchful regard for his reputation and dignity—his *izzat* in the native phrase—unless and until incapacity for rule or deliberate persistence in misrule is proved by a course of conduct. Who is there entrusted with power and able and willing to exercise it well that will not rightfully resent even inadvertent usurpation of his authority? In any degree to ignore or set aside a chief in matters affecting his state, whether by inadvertence or in zeal for the general good, is to wound him where he is most sensitive, and the more justly sensitive in proportion to his energy and ability. Injudicious interference produces a double mischief. It demoralises the chief; no man, be he ruler or subordinate, will do his work well if he feels that he is distrusted or degraded; and it stimulates disaffection and intrigue. Be the ruler strong or weak, there will probably exist in any considerable state parties prepared for turbulence if the opportunity offers, or for intrigue in the hope of bettering themselves by a change of rulers or ministers. If incomparably the strongest authority in India shows by the acts of its servants that it has lost confidence in a particular chief, that is not unlikely to be accepted as a sort of signal for the recalcitrant to persist in their disobedience or for the intriguers to take heart. In this view, interference is a most serious matter; for if we weaken or discredit the existing government we must be prepared, should occasion arise, to set up another in its room.

There are, however, cases in which interference is as



plainly the duty of the paramount power as good government is the duty of its feudatories. As the guardian of the general peace of the country, the supreme government cannot stand by and see disorders grow up by which that peace may be threatened. It was ruled more than twenty years ago that in no case would civil war be permitted in any state of India; nor would any state be permitted to attack any other state. It was held in 1873 that a chief who had sent an armed force of about one hundred men to arrest a man in the territory of another chief (where they attacked and plundered a house, killing one man and wounding another), was guilty of a breach of allegiance to the Crown; and the offending chief was fined 10,000 rupees and compelled to apologise to the British Government. But, short of any actual outbreak of war or rebellion, there may be gatherings of turbulent nobles jealous of some ancient rights or restless because the chief has called in strangers to be his ministers, or because his orthodoxy is not above suspicion or is perhaps already gone; or in some hill-state bands of peasants may pour into the chief place and, without any disturbance, surround the palace, sitting there as a declaration that they have grievances which must be redressed; or the peasants may go further and seize on some obnoxious minister and place him in confinement; or the marauding of freebooters may reach such a pitch that a whole country-side may live in a state of terror. In all such cases the sound question—if there is time to ask it—seems to be, Can the native administration deal with the matter? If it can keep the peace without aid, that is best; if not, aid must be given. But any interposition necessarily means that both sides must be heard. If we repress disorders due to injustice or misgovernment, we must see that the causes of the disorders are removed. I may add that it is well understood that our troops must not be employed in a native state without the express sanction of the Government of India.

One case, then, in which interference is necessary is when the general peace of the country is endangered. Another case is when misrule has reached such a pitch that rebellion would be morally justifiable; and there may be conditions of misgovernment, far short of that, when interposition becomes a duty. I quoted, in describing the affairs of Baroda, the language used by Lord Northbrook to the Gaekwar. Viceroy's have held similar language to other chiefs on other





occasions. There is a letter from Lord Hardinge addressed in 1848 to a chief, who shall be nameless, which expressly declares that the British Government cannot submit to the stigma of tolerating oppression. That Government—so the letter runs—‘never can consent to incur the reproach of becoming indirectly the instrument of the oppression of the people committed to the prince’s charge. If the aversion of a people to a prince’s rule should, by his injustice, become so universal as to cause the people to seek his downfall, the British Government are bound by no obligation to force the people to submit to a ruler who has deprived himself of their allegiance by his misconduct.’ Lord Hardinge went on to say that if, in spite of friendly warnings, the evils of which the British Government might have just cause to complain were not corrected, it would be necessary to have resort to direct interference. In 1886, Lord Dufferin personally warned a chief that the British Government could not countenance oppression and misrule. The chief of a great native state, his lordship said, was not maintained in his position that he might neglect the welfare of his subjects and give himself up to indolence and the gratification of selfish desires.

The cases of grave disorder or gross misrule are clear. Whether, in any particular case, there exists such a degree of misgovernment that interposition is expedient, is necessarily a question of fact upon which there can be no general rule. At all events, except for some heinous crime, no chief would be deprived of his authority until remonstrances addressed to him in such a way as not to impair his authority had given him opportunities of amendment. The mere absence of improvements and of the active, energetic style of administration which we often see in British districts, is not, I think, a case for remonstrance. Sir John Malcolm long ago said that all dangers to our power in India are slight in comparison with that which is likely to ensue from our too zealous efforts to change the character of the inhabitants. I would not unreservedly endorse the remark, for I think there are other equal or greater dangers, but there is weight in it, and, to my humble judgment, it appears that one of the great advantages of the existence of more than 600,000 square miles of native territory is that in more than a third of the whole country progress, if not always and everywhere sure, is at least nowhere too rapid. I believe it is a good thing that about a fourth of the total population





should proceed along the path of civilisation at their own very easy pace. There may, of course, be cases where the inertness of the central authority, and its callousness to the welfare of all except the army, the court, and the priestly classes, may be gradually bringing about serious misgovernment. There may be no outcry, no widespread discontent, no glaring iniquity; but, either from the idleness and incapacity of the chief or from his jealousy of other authority, there may be a complete block of business. It may be impossible to get any long and intricate case decided, because the chief either will not or cannot deal with it himself and will not allow it to be dealt with by his subordinates. There may be a slipshod style of work in all departments; the administration of justice may be slow, careless, often corrupt. At the capital we may see a veneer of civilisation, and a number of officials with high-sounding titles of state. Five miles away there may be complete neglect of the most elementary requisites of efficient administration, and no money may be spent on any object that is not religious or military or directly remunerative. If to neglect and suspicion be added avarice, if there be deliberate attempts to break the tenures of large classes of the peasantry, if taxes are laid upon the peasants heavier than they can bear, if without trial men are seized and imprisoned and their property confiscated, the time is at hand when forbearance towards the chief becomes a wrong to his people, and when remonstrance, if unheeded, must give way to direct measures of reform.

When a whole administration is infected with greed and suspicion and heartlessness, it is not ordinarily very difficult to see what ought to be done. The most difficult cases are those which arise in particular instances of alleged misconduct or injustice. Here, I think, the general rule is that the complaints of individuals should not be taken up. It is the business of the chief to redress such complaints if proved to his satisfaction. If the government of the state is fairly good, and if the complaint is directed against an act done in ordinary course by revenue authorities or in the administration of justice or in settling state ceremonials, it is ordinarily right merely to transmit the complaint to the chief for his disposal. The only exception I need mention here is when we have given a guarantee to individual subjects of a chief that certain rights of theirs shall be respected. This may happen, for instance, when British territory has





been transferred to native rule; but such pledges are extremely embarrassing, and should be undertaken, if at all, with great reluctance and caution. We may come to hear, however, by petitions or general rumour, of occurrences such as all chiefs know must be put down everywhere, or such as imply a certain amount of political insubordination. Amongst these are mutilation and other barbarous punishments, such as impalement, *sati*, *samādh*, the torture of prisoners, the forcible conversion of subjects to a new religion, and the punishment or persecution of individuals or their families because they have taken service with or complained to the British authorities. These are all strong symptoms of misrule; and though allegations under the last two heads should be heard with the greatest caution, because they may easily be the fruit of intrigue or contumacy, or gross and substantially false exaggerations of a mistaken though not unnatural bias, well-authenticated complaints under any of these heads cannot be ignored. These are matters at least for inquiry and explanation, and, if proved to the satisfaction of the British authorities, for warning, reproof, or punishment.

On the whole, we may say that the obligation of occasional interference arises because it is the duty of the British Government to maintain the general peace of the country, and to give the inhabitants of native states freedom from misrule. It follows that the best limit to British interposition is the effectual one of good government. Chiefs who govern well need not, I think, have any fear of interference prompted by officious zeal. The British Government has responsibilities upon it which are heavy enough without its seeking to add to them. Good administration, however, is not easy; it requires experience, capacity, constant hard work; for a chief, we must add good and trustworthy advisers. If any chief does not happen to see such men amongst his ministers, he can usually get others for the asking, as in another chapter I propose to explain.



## CHAPTER XVII

## SOME ADVANTAGES OF NATIVE RULE

WITHOUT repeating what has been said in Lord Canning's despatches, I purpose in this chapter to discuss some advantages of native rule. I shall bear in mind benefits to different classes of the population in native states, to the native governments themselves, and to the British Government, but I shall not rigidly distinguish these topics from one another, for the reason, amongst others, that we may rightly regard any benefit to a native state as a benefit in which the British Empire participates.

I will touch first upon the question of popularity. There are two senses in which a government may be said to be popular. It may meet with general approbation because it is known to be just in intention and is efficient in protecting substantial interests; or it may elicit affection not unmingled with awe, because it strikes the imagination of the people, because its proceedings are generally intelligible to them, because the high birth of the ruler has a recognised hereditary claim on general regard, and because there is a sympathy founded on identity of race and religion between the ruler and his subjects. In the second of these senses, I think native rule, when fairly well conducted, is likely to be more popular than British administration. It will be noted that some of these elements of popularity—a part of those which strike the imagination and all that depend on the world-wide sentiment of reverence for illustrious birth—may attach to the imperial government of her Majesty the Queen-Empress, as distinguished from the mere administration of British districts by British officials. It must further be observed that the last element of popularity—identity in race and religion between the ruler and his subjects—is far from universal in native states. There are numerous instances—instances which occur in some of the most important states in India—in which the chief differs in race or creed or both, either





from the mass of his subjects or from great masses of them.

I do not think it by any means a trifling remark that the show and ceremony of a native court have a political value. A chief will himself regard a proper retinue and the due observance of state ceremonials as marks of *izzat*—that is, of self-respect, reputation, and dignity, a feeling cherished as we cherish honour, to which, indeed, it is nearly akin. The principal men, those admitted to his Durbár, his court or levée, will hold that the social consideration which is paid to them depends largely or entirely on their place and reception and proofs of the favour of the chief, and will gladly join in stately formalities, wearisome indeed to people accustomed to the pleasures of a European capital, but interesting enough to men brought up to look upon them as important matters of business, from which reputation may accrue. The shopkeepers, peasants, artisans, and menials have, by education and condition, a keener relish for spectacular than for intellectual pleasures, and will gaze with admiration and enjoyment on the pomp and colour of an Oriental procession, on the troops and gilded carriages, the bedizened horses and elephants, the brocades and uniforms, the jewels and arms. It is true that on important occasions we hold Durbárs on the native model, and, thanks greatly to the help of our native advisers, often, I believe, with success. But we have to learn as a lesson what comes, as it were, by nature to a native chief and those about him; we have to guard against impatience of ceremonial, an impatience due partly to the modern spirit which pervades our minds, partly to our eager desire to get through as many as possible of our multitudinous tasks; and the parade of the symbols of power to which, by taste and from press of business, we resort as seldom as may be, is a daily experience at the capital of a native state. I have driven in such a procession as I have mentioned through the chief town of a native city; and on thinking of group after group of men raising their hands to their foreheads on the approach of the chief, and saluting him with the low murmuring cry of ‘Maharáj, Maharáj,’ I cannot but recognise in that greeting indications of loyalty differing in kind from the respect paid to British officials. I hasten to add that I do not see why it should not differ in kind. If the same thrill passed through a native crowd on the approach of a prince of the blood or a viceroy, I should feel much more satisfaction than surprise. That over one-



third of India chiefs who are, in Indian phrase, the parents of their people have the chance of attracting this loyalty to themselves is, I think, a fact of much political importance. Loyalty to a chief who is himself loyal, implies a corresponding allegiance to the paramount power. The sentiment is also conducive to order and good government in the particular state ; and I think the parade of power has an effect both in kindling and in maintaining it.

Upon the immense advantage which any Government enjoys if its measures are generally understood by the people affected by them, it is unnecessary to enlarge. For the peasants and traders the main points are the general security of life and property, the close adjustment of taxation, from season to season, to the means available to pay it, and the administration of their own customary laws in accordance with caste and tribal traditions. If these ends are fairly well attained, methods that we should regard as irregular and unsafe will not impair the popularity of a government. To convict a housebreaker, without summoning the witnesses or holding any trial, on the mere report of the police-officer who made the local investigation, to arrange for the restitution of stolen property by the levy of a fine on a whole village community some member of which is believed to be concerned in the theft, to assume as self-evident without any local or other inquiry some rule of custom as applicable to a question of inheritance or adoption, are measures which we might regard as questionable or highly improper ; but I think they would be more intelligible in a native state than the release, in consequence of some technical flaw in the evidence, of a murderer of whose guilt there was no moral doubt, or than the application to the disputes of peasants of Sanskrit texts and Muhammadan legal expositions of which neither of the parties had ever heard. As for rich and powerful men, it is expecting too much of human nature to suppose that in any state of society there will not be many of them who will prefer the style of government under which they can, for their own objects, make most use of their wealth and family and social connections and interest. Wealth tells in litigation everywhere ; but if it is found in some places that to give presents and to make interest are things directly conducive to gain or advancement, will the men who are able and willing to profit by these expedients prefer a style of government under which presents are condemned and their own family and social connections and interest count





in judicial matters for nothing at all, and in other matters for very little? Is it likely that men of this kind will understand or sympathise with the principles of impartial administration?

Indeed, in those British provinces where native aristocracies to some extent survive, I feel that in making appointments to the public service we are in danger of attaching too little weight to good birth. There are two sets of influences pushing us in that direction: there is the English feeling that the prizes of public life ought to be open to all and that fitness should be the sole criterion of eligibility; and there is the outcry of a considerable number of Indians educated in English, who are quite prepared to apply Western doctrines of equality so far as they favour their own claims. Whatever theories may be held as to fairness and fitness in this matter, it is indisputable that good birth is, as a fact, a very powerful instrument for producing willing obedience. In such an empire as India there is much more risk in endeavouring to shape society according to our notions of what it theoretically ought to be, than in carrying on the administration as efficiently as possible with the means at hand. It is difficult enough to govern the country even efficiently; and we should not neglect the advantage of good birth in those by whose aid we rule. In native states the principle of high birth as a qualification for positions of great trust and responsibility has a wide and striking operation, and that is one of the many reasons for which we may hold that the maintenance of native states is advantageous to the empire.

Religious neutrality, a first principle of British Indian administration, is necessarily distasteful to the priestly classes, both Hindu and Muhammadan. Yet no one will deny that it is both right and politic that the traditions and legitimate expectations of those classes should be taken into consideration. It is extremely difficult for us to meet these expectations; for our principle is that we show neither favour nor disfavour on religious grounds. If this principle has arisen from the peculiarity of our position, there is another, brought by us from the West, which unfavourably affects these classes in common with others of great influence. We have an abstract sentiment, as Sir Donald McLeod long ago said, that a government has no right to bestow upon a few the income which properly belongs to the public at large. 'This has led us'—I quote Sir Donald, whose knowledge of the





country and of our proceedings no one will impugn—to inquire into the validity even of small grants with a rigour and to resume them with a freedom which have given much offence, especially in the case of endowments; while, when grants have been declared valid, they have in a large majority of cases been confirmed by forms so rigid and legal as to become the subject of contention in our courts, even as against the Government itself, so that the people cease to regard them as gifts from the Government. In thus acting, we have without doubt been guided by a sense of right and justice; but the course pursued, nevertheless, conveys to an Oriental mind the impression of a burlesque of liberality.' A Hindu or Muhammadan Government will probably have no scruple founded on any theory as to the proper disposal of state income to deter it from making religious endowments or providing priestly classes with feasts or fees or other means of support; and if the mass of its subjects are of the same creed as the chief, it is likely that a free hand in these respects will increase his popularity.

It sometimes seems to be supposed that Englishmen are specially able to resist the seductions of theory, and that they succeed as administrators because they doggedly limit themselves to the decision of particular cases as they arise, and refuse to be committed to large principles and sweeping generalities. Indeed, I am not sure that it is not occasionally claimed as a merit of some measure or course of action that it is founded on no theory at all. In language of this sort there is often a good deal of affectation or political disguise; and perhaps amongst the circumstances that make it enduring, or even effective, in our own country are our national familiarity with the fiction that judges merely apply the law to individual cases and the extreme difficulty of passing any comprehensive measure through the House of Commons. To me it appears that one of the greatest merits of British Indian administration, and one of its chief claims to take a high rank in the general history of political development, is the singularly bold and comprehensive use that has been made of a number of important theories—of political theories, for instance, in the foundation of the Empire and the subsequent conduct of our relations with native states; of economic theories in the assessment of the land revenue, in famine relief, in moulding land tenures in all provinces; and of Benthamite and Austinian theories of jurisprudence in the codification of the law. Unless there



were in all important departments of state well-considered rules tolerably consistent alike with each other and with accepted principles, I do not see how it would be possible successfully to manage so vast and complicated an empire. This wealth of rules and principles, though likely to be very valuable to Western nations taking the lead of the more backward peoples of the earth, does not tend to make the British Indian style of government more intelligible to the great uneducated majority.

Natives of India are apt to look, in all matters of government, more to persons than to systems; but by the nature of our situation in that country we are compelled to look more to systems than to persons. In a native state hereditary officials may be kept in the same part of the country all their lives or from generation to generation, and in the lowest ranks we have local officials, such as the village headmen and accountants, whose appointments are partly regulated by hereditary claims. But in the higher ranks amongst officials, European and native, who would have the charge of districts or sub-divisions of districts, or be employed on the district staff—amongst, that is, *tahsildars*, deputy-collectors or extra assistant commissioners, assistant collectors, and their immediate local superiors, and also amongst the judicial staff generally—there is a constant state of flux. It often happens that an officer holds the same charge for not more than three or six months, and shorter tenures occur. Men accumulate local knowledge and experience at very different rates of speed; but few can master a district thoroughly in less than a couple of years. Every effort is made by administrative authorities to keep down the number of transfers; but the necessities of leave, sickness, promotions, retirements, and other casualties, and the demands for the services of officers at head-quarters for special duty within, and for special and other duties outside, their own provinces, are so pressing that transfers in very great numbers take place every year. The *tahsildars*, or native officials in charge of sub-divisions of districts, are affected by these arrangements, because they are temporarily promoted to fill the places of the extra-assistants at the bottom of the list. A great deal is done to mitigate the inconvenience caused by these short tenures of office; district officers are required to leave memoranda for the guidance of their successors; the district settlement report is at hand; in the village records and village note-books there is an immense mass of detailed local





information readily available ; and valuable gazetteers, each in itself an elaborate treatise descending to minute particulars, have been compiled for almost every district in India. More than this, almost every department of business is thoroughly systematised. In my own province, for instance, there is a Land Revenue Act, with elaborate rules under it ; there are the revenue circulars of the Financial Commissioners, and the consolidated judicial circulars of the Chief Court ; we have a police code, an education code, a jail manual, a municipal manual ; an Irrigation Act, with subsidiary rules ; and there are in force in the Punjab, in common with other provinces, a forest code, a public works code, and the codes of the financial department, the civil account code regulating treasury and other financial business, and the civil service regulations respecting leave, pay, and travelling allowances. In fact, the great measures of codification of the law have been followed or accompanied by numerous codifications of departmental rules, consolidating scattered instructions and settling moot points.

This state of things has both advantages and disadvantages. A good native official in a native state who has been born and bred in the part of the country where he is serving will not need gazetteers and village note-books to supply him with local knowledge. Without effort he will be acquainted with the little histories of the local notables ; he will know all about their family connections, their quarrels, their objects in life ; for his own locality, the whole map of castes and tribes, with its cross-lines of feuds and party divisions, will be continually in his mind ; he will be able to say what villages shelter criminals, what lands will suffer from flood or drought in the variations of season. Knowledge of this kind is habitually acquired by European officers in British districts, especially by settlement officers and district officers who stay for some time in one district ; but it is not acquired without effort, and frequent transfers, lawyer-like dependence upon codes and rules, the quantity of legal and departmental matter that each officer has to master, the unceasing requisitions of heads of departments, and the excessive writing of reports, are obstacles to its quick acquisition. It is obvious that such a native officer as I have supposed would have an advantage for administrative work over any officer, European or native, new to his charge, however well that officer might be posted up in Acts and circulars.





The greater permanence of the official staff is thus, I think, one of the advantages of native governments; and it extends to the chief himself and to the highest officers of state, though removals may occur in those offices from party spirit, from intrigue, from caprice—causes of official changes from which we are free in British Indian territory. In British India the growth of departmentalism has preceded and accompanied the consolidation of departmental rules. I believe that growth to be the specialisation of function which inevitably accompanies political advance; but if it is inevitable there is the more reason that we should carefully note its effects. The head of each department naturally ascribes most importance to the work with which he himself is charged; and the district officer has to satisfy each and all of the heads of departments. There is a danger that the district officer, who ought to be the responsible governor of a small province, may become the mere local agent of a number of departmental heads. I am sure that the majority of district officers are men of too much strength and capacity to drift into that position; and I am sure, too, that Indian districts should not be administered from head-quarters, but on the spot. It is, however, obvious that if timely remedies be not applied, the zeal, energy, and activity of heads of departments, all of whom are picked men, will impair local initiative and local responsibility. In this way I come to consider it a political advantage that the frontiers of native states are barriers to the ever-rising tide of departmentalism. It is true that native states have departments of their own; public business cannot be efficiently carried on without some distribution of its parts; but in small states a chief who himself administers his territory will be practically the head of all his departments, and the local initiative and responsibility will be his own. In larger states we may trust to the conservative influence of tradition. The principle of Oriental governments is to concentrate all authority in a single hand. The principle of departmentalism is just the reverse: it is to divide the supervision of different kinds of public business amongst a number of different officials. I do not think it is at present likely that native administration will press that principle too far.

I compute that a Punjab district officer requires to have at his elbow some seventeen volumes of laws and rules, including three thick volumes of Acts and Regulations applicable to the Punjab and some good editions of the Indian





penal code and the codes of civil and criminal procedure. He must have a general acquaintance with the principles underlying all these books, and must know his way all over them, so as to be able, in the hurry of business, to apply any section of any of them to any set of facts with at least a reasonable chance of avoiding error. These Acts and instructions contain the expressed essence of an immense mass of official experience and political thought, the outcome of both Eastern and Western government, of both Eastern and Western economic and legal theories. The habitual use of this comprehensive equipment is obviously an official training of great value, and in principle these remarks apply to all British provinces. Even the frequent transfers have their use. In the course of a few years an officer sees many parts of the country; he is ready to apply the usual system anywhere, and learns this or that part of it the more thoroughly according as one set or another of administrative measures has local prominence due to local needs; and the narrowness of view and want of versatility which often accompany long residence in one place are thus avoided. All these advantages are shared in a considerable degree by assistants, both European and native. It may thus be claimed for the British system that it provides elaborate means for supplying any want of local knowledge and an admirable education in administrative skill.

In various ways native states participate in the benefits resulting from this systematic training of our officials. The skill and knowledge acquired are directly applied to the native administration when a picked European or native officer is deputed to be the superintendent of a state during the absence, illness, or minority of a chief. In these and some analogous cases it is sometimes preferable, or even obligatory under treaty, to constitute a council of regency. Such a council may often be appropriately strengthened by one or more native officials trained in the British service. On many other occasions and for many other purposes the Indian Government transfers the services of its officers to native states. Thus, hospital assistants and assistant-surgeons and other medical officers are deputed for the charge of dispensaries in native states and for other medical appointments; and some of our experienced native officials have gone to native states as settlement officers, heads of revenue departments, or chief judicial officers. I could name many such cases; and the transfer is almost invariably made at the





request of the state concerned for the benefit of its administration. The system is an excellent one. It opens out to our large establishments of native officials congenial and promising careers. It shows the native states that we feel a genuine interest in the excellence of their institutions and the successful management of their affairs; and if, as time goes on, it should be our endeavour to link these states to us by firmer ties, and to extend to them, by means they will most readily welcome, the benefits of our experience, there is no way in which this can be better done than by lending them, at their own request, the services of some of our trained and capable officers. Such men lighten the native administration; and their double experience of different methods of public business enables them both to detect and remedy the weak points in a native government, and probably also to perceive where our own system is too unbending. Nor are we here embarrassed by guarantees to the subordinates of the chiefs. Transferred officers continue their subscriptions for leave and pensionary allowances and retain a lien on their appointments under the British Government. Thus, if the arrangement does not satisfy either the chief or the transferred officer, it can be terminated forthwith. So far as my experience extends, these arrangements very rarely fail. Usually a chief asks for a man with certain specified qualifications, and the Local Government concerned, after a careful consideration of its list, sends him the best man it can spare for the objects indicated.

The political value of the maintenance of native states in the British Indian Empire, regarded as a whole, may be shown from another set of considerations. Some principles upon which we in our position must inevitably act are either out of harmony with native feelings and beliefs or, if acceptable from motives of self-interest, not such as ordinarily inspire enthusiastic attachment. Impartiality, for instance, is one of the great foundations of our political strength; but it is partiality that elicits the warmest feelings whether of dislike or affection. To hold the balance evenly between conflicting claims and interests of great magnitude, as in the reform of the land tenure of a province or the revision of rules for admission to the public service, may win respect from many, regard from very few. Each side in such a discussion will probably obtain less than its advocates demand, and may easily be discontented with several of the concessions made to the side opposed to it. Persons belonging to neither side may





view the discussion with indifference, unless they are taught to believe that some of its results may unfavourably affect their own interests. In India, though it is the business of officials to try to make the measures of Government understood, there is no Government party outside the official ranks to proclaim aloud the benefits of the prevailing policy. On the other hand, there are many individuals who aim at importance or popularity, or the extended circulation of their newspapers, by criticising fairly or unfairly the measures of Government. It is difficult even for a good native ruler to be as impartial as a British Lieutenant-Governor; but the very partiality of a chief, whether it be founded on class feeling or political instinct or religion, is likely to endear him to certain classes of his subjects. If I am asked whether I seriously contend that the partiality of a government may be a recommendation of it, I would reply that the point bears on the congeniality which may exist between an administration and those who are affected by its acts. A perfect government would be absolutely impartial; but if we could imagine a perfectly good and wise population, there might be need still for co-operation, but restraint and conciliation would be anachronisms. Is our own parliamentary government impartial? Is it not rather true that administrations rise and fall according to the favour they show or promise, or are expected to show to particular class interests?

The political, economic, and legal theories I have mentioned stand in very different relations to native convictions and sentiments. The political theory that there should be a paramount power and that the feudatory states should owe it allegiance, is, in my belief, quite in accord with native feelings and traditions. I have dwelt at length on the tendency of Indian society towards such a form of polity as is now established; and the centuries during which the Delhi Empire was powerful gave that tendency a special strength and expression. In working out subsidiary rules to give effect to this political theory we have been influenced to a slight extent by international law; but we can scarcely be said to have crossed native sentiment because we have rejected the claim advanced in more than one quarter that the relations between the paramount power and certain of its feudatories should be regulated by international law exclusively, as if they were equal and independent authorities. In political law generally, as now understood, I do not think we seriously cross native sentiment, except, indeed,





that some would prefer the impossible continuance of unfettered Oriental despotism. The reason is that the whole system, generalised from experience gathered in India, is fundamentally a native system; though it is, as compared with any political conditions which preceded it, wider in extent, far surer and stronger in application, and more humane, both in its opposition to palpable cruelties and in its regard for those who, by their situation, are most helpless.

The general principles of the land revenue administration and of famine prevention and relief stand on an analogous footing. Our present land revenue administration is a native system improved. If it has been touched by Western theories of the economic advantages of security of tenure, still in practical application they may have largely coincided with the native view—founded, perhaps, more on the value of cultivators when waste land is abundant than on any theoretical considerations—that the immediate cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupies. Famine prevention is a new idea, and meets with no opposition. If an unenlightened native administration were to attempt famine relief at all, it would probably accumulate vast stores of grain, forbid exportation of food-stuffs, and attempt to regulate prices by authority. We do not agree; but in acting on a different opinion we have no deep-seated sentiment to override. As to the desirability of famine relief works, there would be unanimity. Our general plans of famine relief and prevention could not have been elaborated without the aid of political economy; but they have this in common with the land revenue administration, that they have been framed on wide experience of the country and on a most careful and extended examination of its physical conditions and of the varying state of native society in different parts. The governments of native states can, if they wish, have the advantage of our work and conclusions in respect of the improvement of the land revenue administration. As a fact, we often lend them the services of our settlement officers, European and native. They can also make themselves acquainted with our famine policy, and will, no doubt, do well to act upon it. In any case, they share in the benefits of extended railway communication and of the increase in the food supply of the country due to the construction of Government canals.

It is more difficult to indicate the probable relation of



some of our chief legal principles to native ideas. I shall not attempt any adequate discussion of this matter, which, by itself, is a theme for another treatise. I must, however, briefly notice it in pursuance of my general argument. 'To myself,' says Sir Henry Maine ('Early History of Institutions,' pp. 398 ff), 'the most interesting thing about the theory of utility is that it pre-supposes the theory of equality. The greatest number is the greatest number of men taken as units; "one shall only count for one," said Bentham emphatically, and over and over again. In fact, the most conclusive objection would consist in denying this equality; and I have myself heard an Indian Brāhman dispute it on the ground that, according to the clear teaching of his religion, a Brāhman was entitled to twenty times as much happiness as anybody else.' It is palpable to every one that men are not equal; they are no more equal in rank, or birth, or brains, or morals, than they are in stature or physical strength. But the actual conformation of native society gives this obvious fact a very special importance in connection with the application of legal theories. We, too, have our social compartments; but the barriers between them are more easily overstepped, and are not guarded by any religious sanction. For this reason, amongst others, we are not shocked if for certain purposes these barriers are ignored. But when we proceed to hold in India that men and women, Brāhman and sweepers, Rājput and Chumār are equal before the law, are equal, indeed, for any purposes whatsoever, we approach a line on which our acts may easily become, in the eyes of the native community, either positively shocking or positively absurd. The theory of equality cuts right across the grain of a society where the most familiar fact, the one thing that more than any other affects all daily life and social intercourse, is the separation of all men into castes and tribes. We can see—and no one has done more to make this evident than Sir Henry Maine himself—that the units of archaic societies are groups rather than individuals; and in India we can specify with certainty some of the groups—the family and the village, the tribe and the caste. But the theory of utility and the theory of equality, regarded as working rules of legislation, really belong to the advanced state of society in which they appeared. Pushed to their logical conclusions, they ignore all groups and treat individual men and women as the units of which society is composed. 'Assume,' says Sir Henry





Maine, 'a numerous and tolerably homogeneous community; assume a sovereign whose commands take a legislative shape; assume great energy, actual or potential, in this legislature, the only possible, the only conceivable principle which can guide legislation on a great scale is the greatest happiness of the greatest number.' These assumptions are large; but all of them, except the one most vital assumption, fit the case of India. The community is not tolerably homogeneous; it is, indeed, extraordinarily heterogeneous, far more heterogeneous than is generally known or supposed. For this reason it is of great consequence in India that we should never forget that the theory of equality is nothing more than one of those assumptions, perfectly legitimate when a science is in a deductive stage, which stand in need of immediate and often extensive correction when they are taken as practical guides. Just as in pure political economy we assume that the chief human motive is the desire for wealth, so for purposes of legislation we assume that all men are equal; and we make that assumption the basis on which we apply the principle of utility. Neither assumption is quite true; both assumptions are perfectly legitimate for special purposes if it is understood that they are assumptions and nothing more. From what source, then, in Indian legislation are we to derive the immediate and extensive corrections which may be necessary when we take this mere legitimate assumption as a practical guide? Perhaps the best answer to that question will be given by a philosophy of law which has yet to be written. In jurisprudence, as in some other great departments of thought or inquiry, methods of observation seem to be succeeding deductive methods, with the usual result of the reconstruction of the science. The time may be approaching when the theory of equality and the theory of utility will be partly superseded, partly re-stated and improved by the theory of evolution. If it be true that societies grow like other organisms, that at any epoch of growth their various parts, including their customs, laws, and institutions are correlated to each other, that the whole conformation of any society and the shape and prominence of its several parts are produced by adaptation to the environment, and that the successive types of society gradually change till the type which we regard as civilised is attained, it is obviously important that we should recognise this truth in legislating for numerous heterogeneous societies





standing at very different stages of development. From this point of view we should always inquire what are the organic characteristics of any given society, the characteristics, that is to say, which mark its stage of growth, and what would be the probable direction of its development if it were left to itself? To solve these problems something more is needed than a new philosophy of law; their solution depends on a new philosophy of human progress. If we could ascertain the laws of human progress, the practical art of government, where the governing body is more advanced in civilisation than the races under its rule, would be an imitation of nature; we should continually endeavour to move the less advanced societies along the paths which those laws define, though probably at a rate of speed quite unexampled in their history.

Austin means by general jurisprudence 'the science concerned with the exposition of the principles, notions, and distinctions which are common to systems of law; understanding by systems of law the ampler and maturer systems which, by reason of their amplitude and maturity, are pre-eminently pregnant with instruction.' By a process of abstraction, by disregarding peculiarities and concentrating attention upon common elements, he then proceeds to arrive at and enumerate certain 'principles, notions, and distinctions,' which are, in his opinion, necessary subjects of general jurisprudence. He distinguishes general jurisprudence from the science of legislation, which he treats as a branch of ethics. It is obvious, however, that we may easily take as an end of legislation a coherent system of law mentally put together from a comparison of systems of law evolved in refined communities. I think we have done this to a large extent in Indian legislation, using, naturally enough, the English system of law more than any other. The great Indian codes have been composed by jurists familiar with refined systems of law, and they have then been widely circulated to local authorities, with inquiries directed to ascertain whether there are any local objections. There is an obvious danger in such a process. On the theory of evolution, if the customs, laws, institutions, and tendencies of a given society are correlated with its stage of growth, the safest presumption is that rules suitable for an advanced society are unsuitable for one less civilised, and the burden of proof should be on those who maintain that they are suitable. But when a bill is sent by the Legislative De-





partment of the Government of India to a Lieutenant-Governor for opinion, this presumption may easily be reversed. Though the bill may contain rules taken from 'a system of law as evolved in a refined community,' the presumption is that the Supreme Government has considered them suitable for enactment in India. The burden of proof will thus lie on those who state objections; and, though the criticism of details and drafting may be voluminous, objections of principle, the very objections which should be most carefully weighed, will rarely be brought forward by local authorities. From pressure of other business, habits of discipline, a praiseworthy desire to avoid embarrassing the Supreme Government, and a sensible wish to leave experts to do their work in their own way, these authorities will offer objections of principle as seldom as they can.

This, however, is not the place for a discussion of the principles of Indian legislation, and the object which has induced me to make these remarks should now be briefly explained. Against the danger of enacting rules of law unsuited to Indian societies because they are suited to societies more advanced, the existence of native states is a valuable safeguard. In our legislation we need not consider the characteristics of society in these states, for our laws do not of their own force apply to them. On the other hand, any state may, by its own act, adopt any of our laws that it pleases, and on adoption make in them such modifications as it thinks fit. So far as it acts without pressure, it is likely, in putting our laws in force, to follow the line of development which is natural to it in the altered environment due to the general pacification of the country and the spread of civilised rule. There are cases, as in Berar and Mysore, where we have undertaken the administration and introduced our own laws. These cases apart, many states have adopted some of our laws or the general spirit of them. For purposes of Indian legislation, I think it would be an exceedingly useful thing to inquire which of our laws the principal native states have of their own motion adopted, and with what modifications the laws adopted are enforced. It is an advantage for the states to be able to accept as much or as little of our most laborious and careful legislation as they choose. It would be an advantage to us to know how this discretion has been exercised. From such an inquiry as I here suggest we should doubtless gather important knowledge as to the kind of laws for which the country is





prepared. I believe one result of any such inquiry would be to accumulate further testimony to the remarkable value of the Indian penal code.

If the pursuit of some such ideal code as Austin may have thought it possible to construct from the materials of the maturer systems may be one of our temptations in India, I think another closely allied temptation is to look upon rules resulting from our own national experiences as principles of universal applicability. Some consequences of the theory of equality and of our assumption that our own particular set of legal remedies ought to be applied in the East may now be seen in operation in India on a very extended scale. We have assumed that agriculturists and money-lenders ought to be on an equal footing before the law; and that all debts, subject to the exceptions usually made in refined systems of law, ought to be recoverable by suit in a court of justice. The consequence has been that in many parts of the country the traditional relations between the peasants and the village bankers and grain dealers have been radically altered; the bitterness of class feeling thus generated has occasionally shown itself in murders and riots; we have had to pass what is practically an insolvency law for several districts of the Deccan; and the suggestion or assertion comes from many quarters that property in land is slipping from the hands of the old, dominant, land-holding tribes into the grip of the trading classes; and that by mortgages, no less than by out-and-out sales, many of the old tribesmen are sinking almost into the position of serfs under the money-lenders. The Government thus has to face a political and social question of the first importance; and a commission is now sitting at Poona to examine the results of the Deccan legislation and to make proposals for dealing with agricultural indebtedness in India at large. It seems possible that if, in the first instance, we had relied less on our legal theories, and had adverted more closely to the conditions of native society before British rule, and to the changes brought about in that society by the pacification of the country, we might have refused to permit the irresistible strength of our judicial authority to be used for the recovery of debts which might well have been left on their old footing, or on the footing of debts of honour; or that if we had so far yielded to our Western proclivities as to allow these cases to come into court at all, we might have better adjusted our rules of law to the incapacity of an uneducated





peasantry for success in litigation. We might, for instance, have refrained from making the assumption that the agriculturists and the money-lenders are equally able to maintain their own interests in days when some of the old conditions of native society have been reversed. Opportunities of oppression, which formerly belonged to bold and violent men, can now be most readily seized by masters of chicanery. It is no longer the bravest and strongest man that can best guard his own possessions. Nowadays the man who best understands how to entrap his adversary in legal meshes has the best chance of stripping him of his property in the courts of law.

Again, in Indian administrative history, in the discussion of Indian measures in our own day, we frequently meet, in various forms, with the questions of separating judicial from executive functions, of severing the functions of magistrates from those of the police. It is clear enough that in early societies functions are often combined in the same person which are assigned to several or many in later times. In fact, in civilised societies, the organs of the society are more highly specialised. In debating or dealing with these Indian questions I think we are more apt to consider the merits in our own society of that degree of severance of functions at which English institutions may have arrived, than the stage of growth of the various Indian societies whose affairs we may be regulating. No doubt facts are often too strong for theories of English origin. After some see-saw of opinion, we should not now permit the demands of revenue collectors to be contested in the civil courts. The administration of the police in Indian districts, though vested in a police officer known as the district superintendent, is under the general control of the district magistrate throughout his local jurisdiction. In a recent authoritative exposition of the duty of an Indian magistrate it is said that he must not merely hold the balance, as in civil litigation, between opposing advocates, but is bound to satisfy himself before acquitting for want of proof that the sources of evidence have been exhausted, and to take all reasonable precautions that guilt does not go unpunished. In England, from a variety of causes, some social and some political, our criminal law became in many particulars unjustly severe. Its cruelties were mitigated mainly by the bench and bar insisting on technicalities and moulding the law of evidence in such a manner as to give accused persons great op-



portunities of escape, partly by juries refusing to give effect or full effect to certain bad laws. In the sequel the national conscience awoke to the iniquities of the statute-book and our criminal law was reformed. The traditions which have been formed in our minds by all this history are powerful in India in proportion as men who have been trained in those traditions take part in legislation and the administration of justice. I do not deny the value of these traditions for ourselves in our own country; I only say that they have been formed by circumstances of our national history in a particular stage of our national growth, and that we should be cautious in assuming that they have an equal value or equally general value in India.

Native states are devoid of them, except so far as they learn them from ourselves; the traditions of these states as to the union of functions of government and the administration of criminal justice are of another kind. In the few cases in which our methods of administration have been introduced wholesale into native states, there is little more to be learnt as to their suitability or working than in British territory. In some cases our methods have been to some extent adopted under pressure, and the instructive element in the case may diminish in proportion to the degree of pressure. But where native states have voluntarily adopted methods founded on our traditions, we may feel our position greatly strengthened by the convergence of view. If no unnecessary pressure be exercised, native states spontaneously tend to become admirable fields for administrative experiment, to which, in our passion for uniformity, we have, in British territory, too little recourse.

The governments of native states are thus fortunate in possessing a local option with respect to the laws and measures devised for British territory by the British authorities at the cost of great labour, and after much wider experience than any one state can command. The local option, however, does not extend merely to the acceptance or rejection of a fixed system; except, I think, in the two cases, to be mentioned presently, of posts and telegraphs. Except in these cases, and in the absence of any express stipulation to the contrary, a state government can modify the acts and rules it resolves to apply in such a manner as to suit its own ideas and circumstances. This option, if discreetly exercised, should afford experience and suggestions of much value to the Supreme Government.





In the case of posts and telegraphs the advantages of uniformity throughout the whole Indian Empire are too obvious to need statement. A state that wishes to enjoy the full benefit of the imperial postal and telegraph systems can do so on entering into a convention or agreement, which must be ratified by the Governor-General in Council. A postal convention would provide for a mutual exchange of correspondence, parcels, money orders, and Indian postal notes between the imperial post and the state concerned, on the understanding that the exchange would be governed by the rules given in the 'Indian Postal Guide' for the time being, and that details and procedure not otherwise provided for would be settled from time to time by the Director-General of the Post Office of India and the state Durbár, acting in direct communication with each other. The state and the British Government would each bear the cost of conveying mails and enjoy the income of inland postage and from commissions on orders and notes within the respective territories. The income derived from foreign correspondence would accrue to the British Government. The rates levied by the state would not be in excess of the rates charged by the imperial post. The arrangements made for extending telegraphs to native states would be somewhat similar. The British Government would construct the line and, at the option of the state, would either charge it with the cost or require it to pay interest on the capital expended. The line would be managed and worked entirely by the officers of the Telegraph Department of the Government of India, and the state would pay the cost of repairs, maintenance, and establishment, and enjoy any surplus income that might accrue after these charges were defrayed. The state would agree to apply to the line the British Telegraph Act, and any Acts or rules that might, at the time or thereafter, be applied to telegraph lines in British India. The line would further be open to the inspection and supervision of the Director-General of Telegraphs, and of any officer deputed by him for that purpose.

On the difficult and very important question of railway construction in native states I do not propose to enter in any detail. But I may properly conclude this review of some of the advantages which native states derive from their position in the British protectorate by a few general remarks on the investment of capital by native states when



the capital is their own and on the development of the resources of native states when the capital belongs to Europeans.

Large accumulations of funds in the hands of native governments are not unknown. Sometimes a chief of the old school has, from traditional motives, amassed vast hoards of rupees. Sometimes during a long minority, when expenditure on retinue and ceremonies is curtailed or the state is managed by a careful superintendent, a considerable surplus becomes available. The best thing a native state can do with its available capital is to return it to the taxpayers in the shape of such public works as will benefit the state at large, and some of which may also yield a good state income. These works will usually be schools, colleges, and hospitals, roads and bridges, railways, canals, and other sources of irrigation. If a state wishes to construct a railway or an extensive irrigation work requiring much professional skill, I think it very improbable that the Government of India would refuse to act upon the principle of the telegraph agreements. The chances are that the Imperial Government would be willing both to lend the services of its officers for the preliminary surveys, and to undertake on suitable terms the construction of any work satisfactorily shown to possess good financial promise. In this way states might have the benefit of the advice, the trained ability, and the wide experience of the Indian Public Works Department. If projects for useful public works were not needed or would take a considerable time to prepare, I should advise the investment of the surplus state funds in Indian Government securities. There are reasons which lie on the face of Indian history why native states may object to become pecuniarily indebted to the British Government. Their ministers may think, not without justice, if regard be had to old times exclusively, and if the policy inaugurated by the Proclamation of 1858 be overlooked or insufficiently trusted, that the indebtedness of the state may result in interference in internal concerns, in the assumption of the government of part of their territories, even in annexation. These considerations do not apply to the converse case of the state lending money to the British Government. The money so lent would, in time of peace, be applied to the construction of productive public works in British territory; and an enlightened prince might be glad to further the





general progress of the empire and to secure for his state, in common with the rest of India, the indirect benefits which that progress involves. To some chiefs these benefits might appear too remote or even visionary; or they might argue that the benefits would in any case be theirs, as the Government would raise the money and construct the works whether any particular chief did or did not subscribe to the loan. But all would be able to see that the investment of state funds in British securities would be a proof of their own loyal belief in the stability of the British Government; and the investment would conduce to that stability, possibly in a slight degree by the deepened interest the state would have in the maintenance of the present position—though I think too well of the general loyalty of native chiefs to attach much weight to that argument—principally by the good effect the fact of the investment would have on public opinion. Finally, the state would get a good rate of interest and an unimpeachable guarantee. The funds being public funds, there would be much the same objections as in the case of trust money to their investment in any dubious concerns.

An Act of Parliament passed on July 20, 1797 (37 Geo. III. chap. 142, sec. 28) recites that the practice of British subjects lending money to the native princes in India had been productive of much mischief and the source of much usury and extortion, and goes on to declare that no British subject may lend any money to, or be concerned in raising any money for, native princes without the consent of the British Indian authorities; that any person so doing may be prosecuted for a misdemeanour; and that all bonds, notes, assignments, or securities for money held or enjoyed for the benefit of any British subject contrary to the meaning of the Act shall be null and void. These provisions are still in force; and it may be said, in more general language, that the governments of native states cannot deal with European capitalists for the purpose of obtaining capital to invest in state undertakings, except with the previous consent of the Government of India or the Secretary of State. I understand that it has been the usual policy of the Government of India to withhold its consent to any direct dealings between native states and European capitalists. An exception was made some years ago which resulted in the appointment of a select committee to inquire into the formation and promotion of the Hyderabad Deccan Mining Company.





A perusal of the report of the committee suggests that the usual policy was sound, and that there is no middle course. Either all direct communications must be forbidden or the native states must be allowed an entirely free hand. The latter course is evidently impossible. The company might be a foreign one, or the shares of the company might come by transfer into the hands of foreigners; but foreign countries cannot be allowed to have any influence in native states, or any pretext for concern in their affairs. The agents of the company in England might be used to agitate impracticable claims; in the state itself they might bring about a repetition of some of those evils against which the statute of 1797 was aimed. The governments of native states would have neither the strength nor the knowledge to hold their own in a European money market; they would be saddled with onerous conditions, and on any failure to meet even fair liabilities the Government of India would be urged to objectionable interference, perhaps amounting to the sequestration or annexation of territory. For all these reasons it is to be hoped that the Government of India will maintain the usual policy.

It does not follow that native states need be shut off from one of the greatest benefits that has resulted to India from its incorporation in the British Empire: I mean the flow in that direction of British capital seeking investment. The Government of India can raise money on its own securities, and lend the money so raised to native states. This plan is likely to become more and more practicable as time goes on. Any objections on the part of the officials of native states will lose strength as the convictions gain ground that we wish native states to manage their own affairs without interference, and that we do not desire to annex or sequester their territories. We should omit no opportunity of promoting the growth of these convictions, for the reason, amongst many others, that they may conduce to the material development of native states.

Another plan would be for the Government of India or the Secretary of State to negotiate with British capitalists, the native state being duly consulted throughout, and having the full benefit of the arrangements made. Here we should have a great deal of extra work, and practically some financial responsibility with no direct financial gain. If, however, we can advance the prosperity of native states, I do not think we should hesitate on any of these grounds. The most serious matter would be that, whatever disclaimers





were put forward, the Government which conducted the negotiations could hardly avoid a moral guarantee for success in the undertaking. I am not sure that this is a disadvantage. It would completely exclude mere speculators. With those whose object it might be to make money by traffic in shares or land-jobbing the Indian Government would have nothing to do. On the other hand, there would be much greater safety for *bond-fide* investors. Practically, the risk of the Indian Government would be so considerable that it would contemplate no undertaking founded on borrowed capital in a native state unless it had the same assurances of the probable financial success of the work as it would require in the case of projects in British territory. My own view is that, for the sake both of the native state and of the *bond-fide* British investor, it is only right that the Government of India should have such assurances in the case supposed. There is no other authority that the *bond-fide* British investor ought to trust in the matter, or that he would trust if he knew the facts.

Other plans might be devised. One is suggested by actual experience in my own province, the Punjab. The Sirhind Canal—a magnificent work, of which the main and branch channels are altogether 542 canal miles in length, and the distributories 4,413 miles—commands an irrigable area of 500,000 acres in British territory and 278,000 acres in native states. It has been constructed, under suitable agreements, at the joint cost of the British Government and the states benefited, and the income is shared in proportion to the respective contributions. I think this principle might be extended to works falling wholly within native territory. The state might find part of the cost and the British Government the rest, and each might have its proportionate share of the proceeds. Here again it would be necessary, as is right, that the work should be financially sound.

Cases might occur in which a railway or irrigation work might be a very proper investment for state income, though the project could not be shown to satisfy the strict rules which have been laid down for limiting the outlay of money borrowed by the Government of India to works which can certainly be declared to be remunerative. To prevent famine or secure adequate political objects concessions might be made; but the safe general rule here would, I think, be that the state should wait for the work till it could find the money from its own resources without borrowing.



## CHAPTER XVIII

## THE CONSTITUTIONAL POSITION OF NATIVE STATES

IN England we are in the habit of describing as unconstitutional acts which are opposed to the principles of the British Constitution; and perhaps it is that habit which leads us to apply the epithet 'constitutional' to governments which have been framed on the same general model as our own. In one sense, there is no government without a constitution. Every government—even an Oriental despotism—must have some rules or customs by which it is maintained, and which at least assert its powers, if they nowhere clearly limit them. We may, indeed, without impropriety, speak of the constitution of a tribe, a village community, a municipality, a local board. But the laws or customs which regulate such constitutions as these cannot, in ordinary parlance, be called constitutional law; and no doubt there is a current distinction, founded on real differences, between states which possess and those which do not possess a constitution. I suppose the term 'constitutional government' is often used as a synonym for representative or popular government, and, having regard to this use of the expression, it would be a violation of usage to speak, without explanation, of an Oriental despotism as possessing a constitution. For the purposes of this chapter it is necessary to give to the word 'constitutional' a signification wider than that in which it is applied to popular or representative governments. I will here venture to use it in application to governments which are established or maintained by, and are conducted in accordance with, constitutional law.

By constitutional law Austin (i. 230) means 'the positive morality, or the compound of positive morality and positive law, which fixes the constitution or structure of the given supreme government.' He goes on to explain that 'against a monarch properly so called,' or against a sovereign body in its corporate or collegiate capacity, constitutional law is



positive morality merely, or is enforced merely by moral sanctions, though it may be enforced by legal sanctions against the members of the sovereign body considered severally. I do not think it is worth while to discuss the case of constitutional law enforceable against a 'monarch properly so called.' It is straining language too much to speak of any constitutional law under a pure despotism. No doubt, according to Austin's analysis of sovereignty, a sovereign body, no less than a despot, is absolute. But it is really only a verbal proposition that the power of a sovereign number is incapable of legal limitation. The difficulty in any state enjoying representative government, the still greater difficulty in any empire composed of a vast number of states of different kinds, is to determine with reasonable precision of whom the sovereign number consists. It would probably be a fruitless task, and certainly one beside my present purpose, to inquire how the sovereign number is made up in the British Empire, India and all the colonies being included in that term. It will suffice to note here how far Austin's definition of constitutional law may appear inadequate for present objects.

The contrast between moral and legal sanctions is not, I think, exhaustive; there may be penalties which could not be enforced in any court of justice—penalties of an administrative or political character, such as the recall of a viceroy or the deposition of a chief—which may play a very important part, by the possibility of their infliction, in securing the observance of rules of constitutional law. These and similar cogent penalties, such as censure and the deprivation of honours or rank, cannot properly be described as merely moral sanctions; and, when they are not expressly authorised by any statute law, it would be an abuse of language to call them legal penalties merely because no court of justice would interfere to prevent their infliction or to award damages or order restitution. And, further, constitutional law does much more than fix the structure of a given supreme government. It regulates the working of a government as well as its form, and it always imposes certain limits—not, indeed, on the power of the sovereign number when discoverable, but—on the discretion of the individuals who are from time to time entrusted with the exercise, on behalf of the community, of those various functions which, taken together, make up sovereignty. These limits, though not excluded by Austin's definition, do not, I think, receive in it



the prominence they deserve. They may be limits of various kinds, statutory or enforceable through courts of justice, or administrative or political, or merely moral. I shall not attempt any exact definition of constitutional law. I will merely endeavour so to describe it as to suit the purpose in view. I will therefore say that I here mean by constitutional law the rules and principles of law in the Austinian sense, and of usage, which determine what person or persons are to be supreme in any state or assemblage of states, in what manner the sovereignty is to be shared amongst those who exercise it, and with what restrictions the principal functions of sovereignty—legislative, judicial, fiscal, military and naval, political and diplomatic—are to be discharged by those to whom they are entrusted.

The British Empire, as a whole, is a constitutional empire—that is to say, the numerous and very varied governments of which it is composed are established or maintained by constitutional law—and the general government of the empire, including India and all other dependencies and the self-governing colonies, is conducted in accordance with constitutional law, though there are states within the empire which possess nothing that could, in ordinary language, be described as constitutional law for the regulation of their internal affairs.

The question that I have to answer in this chapter is: What is the constitutional position of the Indian native states in the British Empire considered as a whole? In the Indian Constitutional Statutes the states which are under the government of native rulers, subject to the paramount power of the Crown, are usually described as being in alliance, or in subordinate alliance, with the East India Company or the Crown, as the case may be. There is no real difference between the two expressions; for an alliance of any of these states with the paramount power is necessarily a subordinate alliance. But the truth is the Statutes preserve a phraseology which was correct when we were rising to the position of the paramount power, but has long ceased to correspond with facts. The relations between these states and the British Government will appear in their true light if we regard them from some point outside the empire. What is the position we assign to these states in diplomatic relations with a foreign Western power? In a convention with the French Government (which will be found in the third schedule of the Indian Act, No. VII. of 1871) we practi-





cally define a native state as any Indian state which is under the protection or political control of her Majesty, or of which the Government has acknowledged the supremacy of the British Crown. The functions of protection, control, and supremacy are exercised by the Government of India on behalf of her Majesty. The states are therefore subordinate to the Government of India; and the Government of India has its definite place, assigned by statute law, in the general constitution of the whole empire. We thus have to take into view two sets of relations: those of the Government of India to the general Government of the empire at large; and those of the Government of India to the protected dependent states. If we have a fairly adequate idea of these two sets of relations, we shall see where the Indian native states may be supposed to stand in the general scheme of the British Empire.

It would be premature to attempt to bring so complex a growth as that of the Indian Government under any simple and comprehensive formula. Probably, no one is yet in a position to formulate any laws of political growth with any certainty; and, in the endeavour to discover these laws, it is, perhaps, best that attention should first be directed to the simplest cases. The case of the Indian Government is specially complicated, because it is a case of a government which is, from one point of view, that of a dependency; from another point of view, the supreme government of ceded and conquered territory; from yet a third point of view, the paramount power of a vast assemblage of feudatory states. But in the British Empire, which touches some, at least, of the primitive or, if I may so call them, the mediæval races of mankind in Asia, Africa, America, and Australasia, there is an ample field for the study of the simple cases—that is, of the institutions which sprang up amongst the comparatively backward races before their contact with civilisations more advanced than their own. So good are our opportunities for this study, that it will be a matter of some national discredit if our countrymen do not take and keep the lead in this branch of scientific inquiry.

If a full analysis of the growth of the Indian Government is likely to have more scientific value some time hence, we may at any rate refer just now to some obvious considerations which will doubtless be borne in mind hereafter when their true weight and place can be determined by means of wider knowledge of the laws of political development.





Clearly, the Indian Government, as it now stands, is the result partly of our national character and history, partly of such social and political growth as India itself exhibited. Derived from political contact between the West and the East, the Indian Government has both Eastern and Western lineaments; and this combination of things new and old accounts for part of its complexity. Of late we have habitually brought to the East our Western ideas of politics and policy; and if at first we laid aside our national traditions, we were long ago forced, by the pressure of national opinion exercised through Parliament, to resume so much of them as it was at all possible to apply in the tropics. In the long run we have in India been much more true to English traditions than is often supposed; but Indian traditions have from the outset been so strong that our Indian form of government is—I will not say more Asiatic than European, but—of a type which belongs to the past of Europe, not to its present. It is, indeed, of the type of the great Roman empire before its decline.

In Indian constitutional law, as in the great Indian codes, we have produced a new amalgam by blending together what we have brought with what we found. In so much of the codes as relates to the constitution of the courts there is a very large proportion of Eastern elements. But in the rest of the codes,—though there are Oriental touches here and there, and some concessions to Oriental custom and sentiment,—we have, in the main, an improved and simplified version of English and Western law.

In Indian constitutional law, as in the law constituting the courts, Eastern material preponderates. At the summit there are councils of Western origin—the councils of the Governor-General and of the Governors of Madras and Bombay, historically derived from the mercantile boards at the three Presidencies, and the Council of the Secretary of State, historically derived from the Court of Directors and the Board of Control. The Legislative Councils of the Government of India, Madras, Bombay, Bengal, and the North-Western Provinces and Oudh are also the product of Western ideas on the nature of law and legislation, and are similar in type to nominated legislative councils in some of the Crown colonies of other parts of the world. The rest of the structure is Indian, or has been moulded by English hands in conformity with Indian experiences and necessities. Even at the summit we see the influence of Asiatic empire in the





power of the Secretary of State (with exceptions that have little or no practical importance) to overrule his council, or, in cases of urgency or which in his opinion require secrecy, to act independently of them; as also in the power of the Viceroy to adopt or reject, on his own authority and responsibility, measures which, in his judgment, essentially affect the safety, tranquillity, or interests of India or any native state. I know of no stronger testimony to the vital connection between certain forms of government and certain stages of social or political growth than that the British nation, through Parliament—both imbued through and through with a conviction of the excellence of popular or representative institutions—has established for India a government which is more like a reconstituted Delhi empire, greatly improved and strengthened, or a Roman empire undeformed by slavery and cruel usages, than any Western government except that of Russia. The Romans had not any advantage which we may have derived from the former existence of an empire which was broken to pieces before the work of construction began; but, like ourselves, they were nurtured in popular traditions, and they established an empire which is literally replete with close resemblances to the great Eastern empire of our creation and time. The fact that the coincidences have been entirely undesigned is additional proof of the working of inevitable laws. I see a confirmation of the same view in the circumstance that in the same period of time the same race of men has, in two different hemispheres, established two great assemblages of states and provinces of types standing at the beginning and end of Western civilisation. In America, Englishmen, freed from the pressure of the old society which they had left, founded a federation bearing throughout marks of those tendencies which are already transforming Europe. In India, Englishmen, constrained by the pressure of the archaic society which they found, built up an empire exhibiting close likeness to that great empire from which all European civilisation springs. In the United States of America and in our own involuntarily Romanised empire of the East we see two great types of the possible future and the actual past; and both have been evolved by the British race in different social and political environments. We may please ourselves with the reflection that the adaptation of institutions to facts has been due to the strong common sense and political instinct of our race, and it would be unjust to deny that the success



in each case is largely ascribable to our national training in political life. But, to judge at least from Indian experience, the adaptation has been so little the result of any consciously formed design that we may fairly attribute most of it to the irresistible impact of the facts themselves. Nor is there in this view any more fatalism in politics than there is fatalism in the whole of science. In politics, as in science, our power of controlling the operation of natural law is very limited. But the better we understand natural laws the better is our chance of being able to bend them to our own purposes.

In truth, if we look to the general growth of political institutions in civilised societies, without limiting our view to the histories of particular nations, it will not escape us that the great movement of modern centuries is from feudalism to federalism. In a minute of March 24, 1864, on the affairs of the Káthiawár States, which I quoted in the first chapter, Sir Henry Maine observed that 'Europe was at one time full of imperfectly sovereign states, although the current of events has for centuries set towards their aggregation into large independent monarchies.' Whilst the old currents of events still advance in certain channels, new currents arise to mingle with and sometimes to absorb them. The principle of federation had swept over the United States and Switzerland long before the year of the revolutions; but perhaps we may consider that, in many countries, the current which set from feudalism to monarchy had spent its force when, in 1848, constitution after constitution was granted by autocratic or almost autocratic kings. At all events, the growing ascendancy of one leading principle of federation is a remarkable characteristic of our own time.

A federation of states is usually contrasted with a confederacy, in which a number of states join in a permanent alliance without the surrender of any rights of sovereignty; and it has been supposed that the supreme central government in a federation must include or consist of representatives appointed by each state; and that 'in the inception of a federal union there must be voluntary agreement to the constitution among all the constituent states' (J. B. Kinnear, 'Principles of Civil Government,' pp. 70, 77). In speaking, however, of the growing ascendancy of a leading principle of federation, I mean something different from a mere increase in the number of federations of states. One leading principle of federation may be operative without any federation of states pro-



perly so called. That leading principle is, I think, the combination of local autonomy with common defence. The aggregate of powers or privileges which make up sovereignty may be so divided that a central authority has the control of all relations with states not included in the union, and the right of organising and using some, not necessarily all, of the common naval and military forces. The control of foreign relations would comprise diplomacy and the right of making war or treaties. The other powers of sovereignty might be exercised by the states included in the union; or some of them—notably those affecting national debt, customs taxation, currency, posts and railways—might be in the hands of the central authority. The list of powers exercised by the central authority might include other matters; but these other matters would not be numerous, and all powers not exercised by the central authority would be exercised by the several states themselves. In all such arrangements, whether there is an actual federation or not, the central authorities are charged with the common defence, and the local authorities are charged with the regulation of their own local affairs, as is the case in federations.

If we go a step or two further, and add that in the same union some states might have many more of the powers of sovereignty left to them than others; that the central authority might consist conceivably of one person, possibly of few, determined in different unions in a great variety of ways; and that states might be brought into or constrained to remain in the union, not only by compact, but by conquest or cession; or might be created as members of the union by delegation or grant; we should then identify a leading principle of federations with the leading principle of protectorates. And this abstract identification is useful for the purpose of remarking the enormous spread in our own day of the combination I have noticed, that of local autonomy and common defence. It exists in our world-wide empire. It exists outside that empire in parts of every continent. Where states or provinces within an empire stand on the same general level of civilisation, they tend to combine in unions of a federal type, as in the United States, the Argentine Republic, Canada, and, we may perhaps hope, Australia, Switzerland, the German Empire, and the Austro-Hungarian Empire, or more generally in Teutonic Europe, America, and possibly Australia; whereas, in the other





quarters of the globe, in Asia and Africa, the Western races are establishing or have established protectorates over races whose degree of civilisation falls short of their own. The Latin races of Europe have reached the stage, not of federation, but of constitutional government. Russia is still in the earlier epoch of absolutism.

It seems, indeed, a political discovery of some consequence that sovereignty can, at least ideally, be divided in any manner we please amongst great combinations of states for their general advantage; and perhaps there is some scientific interest in the remark that the present importance of the divisibility of sovereignty and the tendency to unite local autonomy with common defence are consistent with known laws of development; greater variety of function and greater specialisation of parts being well-known marks of the higher forms in organic nature. And the use that may be made of the division of sovereignty—which, I may remark in passing, is the antithesis to the earlier union of all functions of sovereignty in the single hand of a chief or king—should have enormous influence on two great factors in human progress: the general peace of great empires or of the world, and the amount of variety in human character which is due to or connected with the laws and institutions of particular societies. A healthy variety, admitting of experiment, discovery, and different rates or stages of social advance, is secured by local autonomy; and peace is secured by entrusting to a common or central authority the common defence. Chronic warfare is a disease of the infancy of nations; and it has been outgrown or suppressed or checked by federations or protectorates as between a vast number of states in every quarter of the globe. As time runs on, there may be a growing disposition to require the central authority to regulate matters on which any states or large sections of the community are bitterly opposed; and conversely matters of public business which everyone agrees should be regulated everywhere in the same manner.

I must not, however, pursue these speculations here. The object of this chapter is to describe the constitutional position of the protected dependent states within the empire. Since they are subordinate to the Indian Government, we now come to discuss the place of that Government in the British Empire as a whole. The position of the Indian Government is defined by Indian constitutional law, which may be regarded as consisting of four great parts or branches.





One part deals with the relations of the Indian Government to Parliament through the Secretary of State and his Council in England. Another part defines the constitution of the supreme Government in India and its relations with the Indian Local Governments and provincial Administrations. A third part lays down the principles which regulate some of the chief Indian establishments, the Civil Service, the High Courts of Justice, and the ecclesiastical establishments. And the fourth part, consisting mainly of usage, is that with which this book is concerned—the rules and principles governing the relations between the paramount power and the feudatory states. To enter fully upon these various topics would be to write a separate treatise on the three branches of Indian constitutional law, which are not now immediately before us. But some allusion, however slight, to these branches is indispensable in order that our immediate subject may be fully understood.

What, it may be asked, are the three great constitutional ties that bind together that vast and complicated whole known as the Britannic Empire? They are, first, the supremacy of Parliament; secondly, the power of the Crown, advised by responsible ministers, to veto subordinate legislation; thirdly, the like power of the Crown to make war and peace, and treaties. As a matter of constitutional principle the first and third of these ties extend to every colony and dependency, from Canada to Fiji, from Hong Kong to the Cape; and the second tie extends to every colony or dependency that possesses a legislature. As a matter of constitutional practice, the relations between the central Government and the different classes of colonies are conducted in different ways. There would be the greatest reluctance to veto the legislation of any great self-governing colony. There is good authority for holding that parliamentary legislation on any subject of exclusively internal concern to any colony possessing a representative assembly is, except in extreme cases, unconstitutional. There have even been signs of a disposition to give the great self-governing colonies a certain share in the treaty-making power with reference to matters of commerce; for instance, in negotiations upon certain commercial questions pending between Canada and Spain a representative of Canada was given joint plenipotentiary powers with the Ambassador at Madrid; and on other occasions representatives of Canada have, under the sanction of the Foreign Office, taken a prominent part in negotiations with foreign



countries. But after we have given such circumstances as these their proper weight, the fact remains that, though some strands of the triple ties, the veto and the parliamentary power of local legislation, in the case of some colonies and for all ordinary purposes, may have been attenuated to the merest gossamer, constitutionally the ties themselves still ramify to every part of our complex empire.

The official classification of the colonies is well known. There are the Crown colonies, in which the Crown has the entire control of legislation while the administration is carried on by public officers under the control of the Home Government; the colonies possessing representative institutions but not responsible government; and the colonies possessing both representative institutions and responsible government. If we were to attempt to bring India into this classification, we could only place her in the first of these classes; but, in truth, she belongs to none of them. India stands apart as a great subordinate empire, consisting of a number of governments and administrations, and a much greater number of dependent states. Nevertheless, the three great constitutional ties bind India no less than they bind Malta or Mauritius. 'No lawyer questions,' says Mr. A. V. Dicey ('The Law of the Constitution,' p. 104), 'that Parliament could legally abolish any colonial constitution, or that Parliament can at any moment legislate for the colonies, and repeal or over-ride any colonial law whatever. Parliament, moreover, constantly does pass Acts affecting the colonies, and the colonial no less than the English courts completely admit the principle that a statute of the Imperial Parliament binds any part of the British dominions to which that statute is meant to apply.' We need not here discuss the qualifications to which these remarks may be subject in the case of the self-governing colonies. All I have to point out is that they apply to India. The Indian Government is constituted by a number of Acts of Parliament which any Parliament could alter or repeal. The legislative council of the Governor-General has no power to repeal or to enact anything inconsistent with the Indian Constitutional Statutes or any Act of Parliament 'in anywise affecting her Majesty's Indian territories or the inhabitants thereof' passed since August 1, 1861, the date of the enactment of the Indian Councils Act, and many Acts of Parliament affecting India have been passed since that date. The Viceroy may withhold his assent from a law made by his council, or reserve the measure for the signification of



the pleasure of her Majesty ; and when the Viceroy has given his assent to a law so made, her Majesty may signify through the Secretary of State in Council her disallowance of the same. The powers of making war and of making treaties are peculiarly distributed with regard rather to former than to present circumstances. The language of the statute of George III. (33 Geo. III. c. 52, s. 42) reminds us that in 1793 there were no telegraphs. At the present day it may be assumed that any question of guaranteeing territory or commencing hostilities which appeared likely in any way to affect imperial interests would, if there was not time to write, be referred by telegraph for the orders of the Secretary of State. When the Secretary of State sends any order to India directing the actual commencement of hostilities by her Majesty's forces in India, the fact of such order having been sent must be communicated to both Houses of Parliament within a time fixed by law. As to the power of the Governor-General in Council, we may paraphrase the law as it stands by saying that technically the sanction of the Secretary of State is not required to the declaration or commencement of war in India provoked by hostilities or warlike preparations made against ourselves or any protected dependent state ; but, in the absence of this provocation, that sanction is required to treaties for making war or guaranteeing territory. Other treaties, or more properly engagements, with Indian native states may be made by the Governor-General in Council. In this behalf the powers of the local governments and administrations are much more restricted, as will presently appear.

The legislative supremacy of the Viceroy and his council is secured by means which, in a general way, resemble those employed to secure the legislative supremacy of Parliament in the empire at large. Just as Parliament can legislate for any part of the Britannic Empire, so the Governor-General in his legislative council can make laws for all Indian territories under the dominion of her Majesty. Laws made by the legislative councils of Madras, Bombay, Bengal, and the North-West Provinces and Oudh require the assent of the Governor-General, and are subject to disallowance by the Crown. For provinces which at present have no legislatures—the Lieutenant-Governorship of the Punjab, and the Chief Commissionerships of Burma, the Central Provinces, Assam, Ajmere, and Coorg—laws are made by the legislative council of the Governor-General. There is a power also resembling





the power of the Crown under certain enactments to make Orders in Council. In districts notified under a statute of 1870, which include some whole provinces and many localities in other parts of India, the Governor-General in his executive council can make regulations which have the force of law, and are subject to the like disallowances as Acts passed in the legislative council. The legislative powers of the local legislative councils are undoubtedly too much restricted; but I need not go into that subject here further than to say that some well-known defects in the law on this point will possibly be remedied in the pending Indian Councils Bill. Amongst several restrictions likely to be retained, one is that no provincial legislature may take into consideration any law affecting the relations of the Government with foreign princes or states, except with the previous sanction of the Governor-General. The treaty-making powers of local governments are defined in the old statute of 1793 to which I have referred above. I may describe the law by saying that no local government or administration may issue any order for commencing hostilities or levying war, or negotiate or conclude any treaty of peace or other treaty with any prince or state (except in cases of sudden emergency or imminent danger, when it shall appear dangerous to postpone the hostilities or treaty), unless in pursuance of express orders from the Governor-General in Council or the Secretary of State; and every treaty so made must, if possible, contain a clause subjecting it to the ratification or rejection of the same authority. But in practice it is well understood that all agreements with native states, including postal and telegraph agreements, must be ratified by the Governor-General in Council. The exceptions warranted by law would probably be inoperative at the present day, now that orders can be sought and given by telegraph.

Notwithstanding the restricted powers of the local governments and administrations, they have the political superintendence of an immense number of states. But, before I discuss that subject, I have to remark that the resemblances between the structure of the Britannic Empire and the structure of the British Indian Empire point alike to Western influences and the working of similar causes of growth. The charters granted by James I. in 1609 to the London Company of Virginia, by Charles I. in 1629 for planting the province of Massachusetts Bay, by Charles II. in 1661 to the East India Company, are alike in this, that





they all delegate some of the essential attributes of government. The neglect of the home authorities and their inability to control distant settlements left the colonies in America and the presidencies in India, in their early history, each to pursue a separate course. The Virginians enacted that the Governor should not tax the colony except by the authority of the General Assembly. The men of Massachusetts, in 1634, established representative government for themselves, and in 1652 coined their own money. Both in India and America union was forced upon colonies or presidencies by the stern necessities of self-preservation. Massachusetts combined with three of the other four New England colonies in an offensive and defensive confederacy, due to the presence of Dutch settlers on the Hudson, of French settlers in Nova Scotia, and frequent hostilities with Indian tribes. The Navigation Laws, the Stamp Act, and the import duties led the American colonies to unite in self-defence against ourselves. In India there was no voluntary combination of the three Presidencies; the union, which was soon seen to be essential to the preservation of our power, was imposed upon them by an external authority. The Regulating Act of 1773 forbade the Presidents and Councils of Madras and Bombay to make war or treaties without the previous consent of the Governor-General and Council of the Presidency of Fort William in Bengal; and even after this, in 1775, the Government of Bombay made, on its own authority, a treaty with the Mahratta pretender, Raghoba, which the Bengal Government disallowed.

Security, indeed, the primary necessity of self-preservation, is at the root of political combinations so far apart, not only as the United States of America and the British Indian Empire, but as feudalism and federalism. Protection was the great thing sought by feudal submission; and military service in the wars of his feudal lord was one of the chief duties of a vassal. The advance from feudalism to federalism cannot be brought under the general formula of progress from status to contract, because the feudal tie, though by virtue of its hereditary character giving birth to a new status, originated, or was supposed to originate, in a compact; and the federal tie, though often originating in a compact between provinces or states, may be formed in other ways. Feudalism was based upon the land; federalism is based upon legislation. Feudalism permitted private war between the dukedoms and counties and other lordships



under a common suzerain; it even elaborately regulated private war. It is of the essence of federalism that there shall be no war between the members of the federal union, that no member shall alone have the right of making war, and that disputes between the several members of the union, or conflicts between their laws, shall be settled by peaceful means. The disorders and violence of feudalism were mitigated or corrected by the growing power of kings, and the overgrown power of kings was, in its turn, restrained by representative institutions. It would be fanciful to press too far an analogy between general European history and the history of Indian legislative councils. The tie that binds the several local governments and administrations to the supreme Government is not feudal or truly federal, but imperial. These diverse territories are the provinces of a great empire, and the councils are formed by nomination, not by election. Still, the growth of the whole system presents some features which may be recognised elsewhere.

It may be worth while to follow up that remark by a brief historical retrospect. Before the application to India of the Charter Act of 1833, the Indian Regulations, constituting three different bodies of statute law, had been passed by three separate legislatures. A succession of enactments had given the Governor-General in Council control over the Governments of Madras and Bombay in political matters, in revenue matters, in all matters whatsoever. But it does not appear that the Governor-General exercised any direct control over the Governor in Council at Madras or Bombay in the matter of making laws, nor were the Regulations passed at Madras and Bombay submitted to the Governor-General in Council for approval. The legislative powers of the Governor-General in Council were limited to the presidency of Bengal. The Act of 1833 withdrew the legislative powers of the Madras and Bombay Governments, and centralised all legislative authority in India in the council of the Governor-General. The legislative council under this Act was identical with the executive council, except that the law member was entitled to sit or vote in the council only at meetings for making laws and regulations. This made little difference, as he might be invited to attend at other meetings. Discussion was not public, and it was not necessary that it should be oral. Practically the Acts passed at this time were nothing but the orders of the executive Government, put into the form of enactments by specially appointed





draughtsmen, and possessing the force of law. Two natural consequences of extreme centralisation—over-pressure of business and defect of local knowledge—were found to produce certain evils. In 1853 the legislative council was strengthened and altered by the introduction of legislative councillors, of whom two were English judges of the Supreme Court at Calcutta, and the rest nominated representatives, one each for the several great provinces, appointed by the Governors for the Presidencies, by the Lieutenant-Governors for the Lieutenant-Governorships. Finally, the Indian Councils Act of 1861 formed the first great measure of the much-needed policy of decentralisation. It revived in an improved shape the legislative powers of the Governments of Madras and Bengal, and provided means whereby legislative councils might be established in any province in India. A legislative council was forthwith established for Bengal, has lately been established for the North-Western provinces and Oudh, and ought soon to be established for the Punjab. In the early days the presidencies, as soon as they acquired any political power, bore marks of resemblance to the petty states that on the disruption of the Moghal empire were formed all over India. When legislative authority, other than the mere power of passing by-laws for factories and small settlements, came to be exercised, we see it first somewhat aimlessly suffered to lie in hands that used it independently; then tightly concentrated in a central council; and at length equitably redistributed by formal enactment. Legislative authority is only one amongst many powers of Government, and its history in India fills an extremely minute place in the general history of civilisation. But in India, by the peculiarities of our position, we have often been impelled, in the course of a few generations, through ranges of administrative history which many nations have taken centuries to traverse. The three stages of separation of authority, its concentration and its definite redistribution by law, may at least remind us of the three far greater, far more important, stages in another continent of feudalism, absolutism, and federalism.

It is not necessary to enter at any length upon what may be called the internal structure of the Indian governments. Parallel to each other stand the judicial and the executive services. The judicial service consists of long series of graded courts, the powers diminishing by well-marked steps from the top to the bottom, and security being



afforded for the proper administration of justice by a very strict supervision exercised by the higher judicial officers over the courts next below their own, and by great freedom of appeal, which, however, does not follow quite the same course in all parts of the country. The composition of the executive service is well known. The pivot of the whole mechanism is the district charge. Below the officer in charge of a district, called in some provinces the magistrate and collector, in others the deputy commissioner, are the native officials and European and native assistants in charge of sub-divisions of districts, and other assistants, native and European, at head-quarters. Above the district officer, except in the Madras Presidency, are commissioners of divisions, each division comprising a number of districts. The commissioners, in revenue matters, are, except in Bombay, subordinate to Boards of Revenue or Financial Commissioners, and these in their turn are subordinate to the Local Government or Chief Commissioner. Such is the general type: there are variations in detail in different provinces. The Bombay Presidency, for instance, has no Board of Revenue or Financial Commissioner, and in some provinces the separation between the judicial and executive services is much less complete than in others. In the older provinces, Madras, Bombay, Bengal, and the North-West, the summit of the judicial service, like the summit of the executive service, is partly of Western composition. As the executive councils are derived from the old mercantile boards, and the legislative councils from Western ideas of legislation, so the high courts were formed by the amalgamation of the old supreme courts—English courts of justice transplanted to India—with the old courts of indigenous origin, the Sadr Diwāni and Sadr Faujdāri Adālat. With this exception, the whole system is of Indian derivation. It may be traced back to the reforms instituted by Warren Hastings in Bengal after a long series of blind experiments and miserable failures. It was in Bengal that we first had any extended territorial dominion; and it was by means of our experience there that, at the cost of many mistakes and much misgovernment, we worked out most of the principles of administrative organisation which have since been applied, with many improvements and some local variations, to all parts of British India. It is worth noticing that in the two great systems which are mainly indigenous, the administrative organisation and the protectorate, we started on the path of



reform with a purely Western equipment. In other parts of this work I have shown how little applicable to India were the Western principle of a balance of power and the Western notion of non-intervention. Towards the end of last century it was an idea current in England that the only way to prevent oppression was to subject every one to actions in courts of justice for illegal acts. Accordingly, when jealousy and indignation were aroused by the ill-gotten gains and thoroughly Oriental proceedings of the Company's servants in Bengal, a supreme court was established in Calcutta for the purpose of applying this check. Violent collisions followed between the supreme court and the Governor-General and Council. In the Cossijurah cause, to quote Sir J. Fitzjames Stephen (*Nuncomar v. Impey*, vol. ii. p. 5), 'the Council opposed the execution of the process of the court by military force, and substantially confined its jurisdiction by the same means within the town of Calcutta.' In 1781 an Act was passed (21 Geo. III. c. 70) which yielded the two main points for which the executive Government had been contending. It enacted that the supreme court should not have jurisdiction concerning the revenue or acts done in collecting the same according to the practice of the country or the Government regulations; and it enabled the Government to frame regulations for the provincial courts, and thus to provide for them a legal and stable foundation. The rapid collapse, in the early history of the administration and the protectorate, of ideas derived exclusively from our domestic experiences and the condition of Europe, suggests caution in future experiments.

The official organisation for the affairs of the protectorate has some features in common with the administrative organisation in British territory. There is a strong political department under the immediate orders of the supreme Government, which, in the gradation of its ranks and the official discipline of its members, resembles, in a general way, the commissions administering British provinces. At the head of the list, corresponding with the Chief Commissioners, are the Agents to the Governor-General for Rájputána and Central India and at Quettah. The Residents in the important states of Hyderabad and Mysore are on an equal footing. Indeed, all these officers are actually Chief Commissioners of adjoining British territory, or discharge the functions of a Local Government for foreign territory administered by British officers. Thus the Governor-General's





Agent at Quettah is Chief Commissioner for British Baluchistan; the Governor-General's Agent in Rájputána is chief Commissioner for Ajmere; the Resident at Hyderabad exercises the powers of a Local Government in respect to Berar; and the Resident in Mysore is Chief Commissioner for Coorg. There are other Residents of less rank, usually under some intermediate authority, as the Resident at Jaipur under the Governor-General's Agent for Rájputána, and the Resident at Gwálior under the Agent for Central India. The title of Governor-General's Agent is given to a Resident of the second class at Baroda. A step lower down in the official scale are the political agents, arranged in several grades, and below them, again, the assistant political agents.

*Abolished.*

Geographically, the native states may be divided into two great classes: those under the Governor-General in Council and his Agents, and those where the intermediate authority of a Local Government or Administration is interposed between the state and the supreme Government. It is a well-understood principle, and one entirely consistent with the responsibility of the supreme Government for the foreign relations of the whole Indian Empire, both internal and external, that all the most important states in India should be included in the first class. That class may further be subdivided into (1) the states where the Resident or Agent corresponds direct with the Government of India, and (2) the states under the general supervision of an Agent to the Governor-General, assisted by a staff of political officers, most of whom have local charges, sometimes limited to a single state, but more often including several states grouped together. To the first of these sub-classes belong the Nizam's dominions, Mysore, the Gaekwar's dominions, and Kashmir. Excluding the Baluchistan agency, which does not fall within the scope of this book, the second sub-class includes the twenty states of Rájputána and the 136 states of Central India. According to the return of 1886, which I quoted in a former chapter, there are five states under the Government of Madras, 368 states—very many of them petty states in the Káthiawár peninsula—under the Government of Bombay, 26 states under the Bengal, two under the North-West, 33 (the figure should be 34) under the Punjab Governments, and fifteen and twenty respectively under the Chief Commissioners of the Central Provinces and Assam.

In respect to the political staff, the Local Governments and Administrations follow the same general plan as the





Government of India. But it frequently happens that the officer in political charge of a state or group of states is also the officer in administrative charge of the surrounding or adjoining British territory. Thus in the Punjab, the Kapúrt-thalla, Mandi, Faridkot, and Suket states are under the commissioner of the Jullundur division; the Chamba state is under the commissioner of the Lahore division; the Maler Kotla, Kalsia, Pataudi, and Loháru states are under the commissioner of the Delhi division; and the Simla Hill states, twenty in number, are under the deputy commissioner of the Simla district, who, in his political capacity, is designated the superintendent of the Hill states. There is no local political officer for the four most important Punjab states, the Lieutenant-Governor himself being agent for Patiala, Jhínd, Nábhá, and Baháwalpur. Under the Government of Madras there is a resident in Travancore, but the political agents for Bunganapully and Sandur are the collectors of the Kurnúl and Bellary districts. A similar arrangement is usual in the Bombay Presidency. According to the latest return I have at hand, the collectors of nine districts in that presidency were also political agents for some state or group of states.

As to the duties of all these political officers, the part they take in supervising the native administration varies greatly. The guiding principle is usage, and that varies with the history of the state, the nature of its special relations with the British Government, the character of its government, and the share of sovereignty which belongs to it. I will take an extreme case, probably indicating the maximum of interference—the case of a state, which shall be nameless, in Southern India. The chief of this state is bound by treaty to pay the utmost attention to such advice as the British Government shall occasionally judge it necessary to offer to him, with a view to certain specified objects and to any other objects connected with the advancement of his interests, the happiness of his people, and the mutual welfare of his state and the British dominions. This very wide power of offering authoritative advice is freely exercised. The prime minister is usually a native officer who has been trained in the service of the British Government. The British resident is kept informed of all important affairs, supervises the courts of justice through the minister, advises on the selection of judges, is consulted before any judge is removed, approves sentences of capital punishment



before the chief confirms them, accords his approval to proposed laws before the chief sanctions them, and generally gives on all measures of consequence advice that cannot be disregarded, though the measures themselves are mostly initiated by the minister, and can be finally adopted only by the chief. This amount of control would be quite without precedent in the case of any Punjab state; and probably there is less interposition in the internal affairs of native states in the Punjab and Rájputána than in other parts of India. On the other hand, it is tolerably clear that the states which are most nearly assimilated in style of administration to the neighbouring or surrounding British territories are to be found in the Indian peninsula under the Governments of Madras and Bombay.

However wide may be the authority of any local political officer, there are some points touching the prerogative of the paramount power which must always be referred for the orders of the Government of India. These include the succession to the chiefship, and conversely any measure amounting to the deposition of the chief, the use within the state of any forces of the British Government, and any formal agreement or engagement of a nature resembling a treaty or convention. Exchanges or readjustments of foreign territory, or rules for the extradition of criminals as between states, would always stand in need of sanction from the same authority. It is well established that British territory may be ceded to a native state only by the Government of India, with the sanction of the Secretary of State. Generally it is only the paramount power that is entitled to decide who shall be the chief of a state, what his territory shall include, and what shall be his engagements with the British Government.

In so far as the whole scheme of the protectorate depends upon the divisibility of sovereignty, its formation illustrates one striking tendency of modern legal ideas. If we were to compare or contrast British India and the British Indian protectorate, taken together, with any self-governing colony, the best to select for the purpose would be Canada, though, doubtless, Australasia, if ever the proposed union should be completed, would also present points of analogy. Canada and India are alike in possessing a long land-frontier—a matter of great consequence in connection with the general military defence of the whole empire. In the Canadian Dominion there are seven provinces, each with a separate





Lieutenant-Governor, each with separate legislative powers. In India and the protectorate there are four Governorships or Lieutenant-Governorships with separate legislative powers, a number of other provinces for which laws are passed by the Council of the Governor-General, and a very much greater number of states to which the territorial laws of the various councils, as distinguished from the personal laws relating to British servants and subjects, do not of their own force apply. The list of subjects reserved for the Central Parliament in Canada presents a striking similarity to the list of subjects on which the local councils in India are forbidden to make laws except with the previous sanction of the Governor-General. Both lists include, amongst other things, certain matters relating to the currency, the Post Office, public debt, patents and copyrights, and the military and naval services. The great contrast lies in the type of province or state. Notwithstanding the separate legislative powers of nominated Indian councils, there is less likeness between any Indian province and a Canadian province than between any Indian province and a large, well-managed native state. We see here the effect of history. In the East, where indigenous forms of government had grown up before our time, we have by law and usage set constitutional limits to the mere discretion of personal rule. In the West, where, except for dwindling Indian tribes, the land was altogether empty, the representative institutions of England have reproduced themselves.

Another important point of comparison or contrast concerns the supremacy of Parliament. Parliament is undoubtedly competent to pass laws for any Indian province. It is perhaps only theoretically competent to pass laws for any Canadian province. I shall not discuss the question whether Parliament is competent to pass territorial laws for native states; for if there were any strong political necessity for the application of a particular territorial law in parts of a native state where jurisdiction is not vested in the British Government, the constitutional course would be to induce the chief to introduce the law on his own authority. But apart from the currency of laws, the political supremacy of Parliament is undoubted. The states are subordinate to the Government of India; and that Government is both created by Parliament and responsible to it. Even in respect of the currency of laws—and I have explained in the first chapter how British laws have become current in



foreign territory—the powers of the Governor-General in his legislative Council to pass laws applicable personally to British servants and subjects in native states, and the power of the Governor-General in executive Council to apply laws to territory of which the jurisdiction has been ceded or otherwise acquired, depend ultimately on parliamentary legislation.

The political supremacy of the Crown, whose functions, under our constitution, are exercised under parliamentary control, is clearly seen from what I may call the double allegiance of the subjects of native states. There is, so far as I am aware, no official recognition or sanction of any doctrine of a double allegiance. The soundness, however, of such a doctrine will, I think, easily appear from a few obvious considerations. Allegiance is the obedience rendered by a subject to a sovereign. If the sovereignty is divided, the obedience must be divided, and in like proportion. Correlative with the legal duty of allegiance on the part of the subject is the moral duty of protection on the part of the sovereign. We extend protection to the subjects of native states, first, as against gross misrule; secondly, as against all enemies of the British Government by our general measures for the defence of the empire; and, thirdly, in our ordinary relations with foreign powers, because we give the subjects of Indian native states in foreign countries the same protection that we give to native Indian subjects of her Majesty.

Again, this doctrine of a double allegiance may be illustrated by our practice in extradition. In making an extradition treaty with another power we agree that our subjects shall, in certain cases, be compelled to render obedience to foreign laws in consideration that the subjects of the foreign power shall, in certain like cases, be compelled to render obedience to our laws. It is well understood that when a foreign power is entitled to demand the extradition of an offender from British Indian territory, it is entitled to make the same demand in regard to offenders resident in the dominions of native princes and states in India, for whose political relations with foreign powers the Government of India is responsible. It would merely be necessary to ascertain whether the demand was justified by the treaty engagement with the foreign power. If so, it would be complied with; nor could any internal extraditional arrangements as between the native state and the British Indian





Government be allowed to interfere with the due discharge of our international obligations. The practical consequence is, that for all purposes of our relations with foreign powers the subjects of Indian native states must be regarded as subjects of her Majesty; that is, to this extent, though not to this extent only, they are in allegiance to the Crown.

Although, as a matter of fact and practice, Acts of Parliament do not of their own force apply to Indian native states, there are certain statutory provisions by which these states are more or less affected. I have already mentioned some of the provisions which secure to the supreme Government in India the control of the relations of the British Government with these states; and I referred in the last chapter to the restrictions on the loan of money to these states by British subjects. The Act of 1858, which transferred the government of India to the Crown, declares that all treaties made by the East India Company shall be binding on her Majesty; and in this way, and by virtue of subsequent engagements and grants, the constitutional position of individual states comes to be fixed partly by written instruments, partly by constitutional usage and law. Upon the enormous detail of the immense number of written instruments which bear on the powers and duties of particular chiefs it is no part of the design of this treatise to enter. On the contrary, part of the object in view is to prepare the mind for the study of the relevant documents when our relations with any particular state come under consideration. The other statutory provisions affecting native states are mainly concerned with those powers of the Governor-General in Council to make laws for its servants and subjects to which I referred in the first chapter, and with the authority of the Governor-General in Council to empower high courts to exercise jurisdiction in respect of Christian subjects of her Majesty resident in native states.

To complete this review of the constitutional position of Indian native states I shall have to notice certain customary obligations of native rulers not elsewhere treated in sufficient detail. That subject must be reserved for the whole of the next and a part of the final chapter. The next chapter will also be the most appropriate place to mention certain provisions of the Indian codes of civil and criminal procedure which have special reference to native states.

Meanwhile, I will briefly sum up the conclusions so far apparent. The states are subordinate to the Government



of India, and that Government is subordinate to Parliament. The states are therefore subordinate to Parliament, though it does not legislate for them. The states may also be subordinate to intermediate authorities, officers of the Government of India or of the provincial governments, or more directly to the provincial governments themselves. But these intermediate authorities exercise strictly limited powers; the treaty-making power and the determination of successions are in the hands of the Government of India, which also itself regulates the business arising with all states of great importance. This position of the Government of India is secured by a number of statutory provisions; and an immense number of written instruments guarantee the powers or the perpetuation of native states and, taken with usage, define the relations of particular states to the paramount power. Native rulers are under certain other obligations which may or may not be mentioned in written instruments, but which can be enforced as a part of constitutional usage whether so mentioned or not.

The subjects of native states owe a double allegiance—to their own chief and to her Majesty the Queen-Empress. For purposes of the international obligations of the British Government towards foreign powers, the whole map of India is red. Foreign powers have no concern with our domestic division of sovereignty. In our relations with them we must regard the subjects of native states as subjects of her Majesty; a position which necessarily follows from the fact that we prohibit the states themselves from having any relation whatsoever with foreign powers.

Finally, from the point of view of the duty of good government, native rulers may be regarded as the agents or great hereditary officers of the British empire at large for the administration of part of its varied possessions. No doubt the chiefs are much more than this; for the essence of their position is that they exercise many of the functions of sovereignty, that they rule for life and from generation to generation, and that their high birth gives them at once rank in the empire such as few of its mere officers attain. But that the view just stated is true, though not exhaustive, few or none will doubt who realise the attitude of the Delhi emperors towards the great *zamindars*, and of the Marhatta Peshwas towards the great Marhatta commanders, and who bear in mind the official origin, the origin by grant of the British Government, and the past history of many Indian states.





## CHAPTER XIX

## SOME OBLIGATIONS OF NATIVE RULERS

THIS chapter is a supplement to the chapter just ended, because it gives further details regarding the constitutional position of the chiefs of Indian states under the British protectorate. But the matters which will here come under discussion are necessarily of a dry and technical character, and possess little, if any, general interest. A reader who refers to this book merely for information, with no professional or political object in view, is advised to omit the perusal of this chapter and to limit himself to a glance at the heading in the table of contents. To a jurist who might regard the gradual growth of a new branch of jurisprudence as worthy of attention, some of the points about to be discussed may, perhaps, possess the sort of attraction that belongs to a legal curiosity. For the rest it will suffice to say that this chapter is mainly addressed to those who are now engaged, or are likely to be engaged, in the practical business of the Indian political system, or who may be employed in establishing or working any similar system in any other part of the world. Such a commodity as the experience gained in the British Indian protectorate has a wider market in proportion as the present fashion of setting up protectorates extends.

I propose to touch as lightly and briefly as possible on some prerogatives of the Indian Government, on some well-understood arrangements by which the administration of justice, both in British and native territory, is facilitated, and on some of the ways in which native states are expected to contribute to the strength and efficiency, and particularly to the military strength and efficiency, of the paramount power.

There are some prerogatives of the paramount power which carry with them corresponding obligations, not indeed of so binding a force as those of allegiance or good govern-





ment, but such that the breach of them, if deliberate, would amount to a breach of amity. On such obligations there is ordinarily no need to insist. They would be generally accepted and acted upon readily enough as matters of friendship and courtesy. They do not touch the internal sovereignty of feudatory states. They regulate certain points of ceremony or convenience in the external relations of these states with the suzerain. In such points of ceremony, as, for instance, in the grant or recognition of titles and the regulation of precedence and salutes, the rule is necessarily laid down by the supreme authority; though it is based as far as possible on custom, and in framing it the greatest care is taken to give all just expectations their due. The question of coinage may be considered in the same connection; though here, except in regard to the opening of new mints, the policy is understood to be to abstain from authoritative regulation. Of the wisdom of that policy there can be little doubt; for the right to coin money is an attribute of internal sovereignty that is highly valued in the native states that enjoy it.

The document which granted Lord Clive's *jāgīr* directs that Colonel Clive, a European, be favoured with the title of 'Flower of the Empire, Defender of the Country, the Brave, Firm in War'; and I have heard on good authority that at a much later date General Ochterlony received from the King of Delhi the title of *Nasir-ud-Daulat*, which is perpetuated in the name of the cantonment of Nasirabad. The days, however, in which Europeans received these Oriental titles have gone by. Some fifteen or sixteen years ago an Oriental title was indeed conferred by the authorities of a native state on a European tutor of the minor chief; but when the matter came before the Government of India regret was expressed that a previous reference had not been made to the British Government, the title was not recognised, and the ruling given implied that no titles conferred upon European British subjects by native chiefs could be recognised without the sanction of the Queen. In an earlier case the council of a certain state announced that a title had been granted to a native Indian subject of her Majesty in the service of the state, and prayed that it might be recognised by the British Government. After some discussion, this was done. There is another leading case on the subject, but I need only say that, while no general rule has been promulgated, the view that would probably be taken, should the point arise again, is that, though no interference would be exercised in regard to titles





granted with discretion by native rulers to their own subjects, titles ought not to be given to British subjects, European or native, without the consent of the British Government.

In the grant of Oriental titles which would be recognised by the British Government, there may have been eccentricities in the past which it is unnecessary to particularise. It is now, I believe, clearly established that the power to bestow or confirm such titular distinctions in India rests exclusively with the Viceroy as the immediate representative of her Majesty the Queen-Empress. Many Oriental titles, besides the familiar titles of maharaja, raja, and nawáb, are still in use, both for ruling chiefs and for others; and the whole subject since the transfer of the Government of India to the Crown has been treated with much more care and attention, and, I may add, liberality, than at any earlier period. To a very long list of Oriental titles we have added the English titles of 'his' or 'her Highness' and 'Sir.' The title of 'Highness' is restricted to ruling chiefs, who are entitled to a salute of not less than ten guns, either permanently or as a personal concession. As a matter of courtesy the principal wives and widows of all who bear or have borne the title of 'Highness' may also be addressed by that title. The prefix 'Sir' goes with appointment to knighthood in the Orders of the Star of India and the Indian Empire. The Muhammadan rulers of India freely awarded personal distinctions both in the way of titles and in permissions to use certain badges or emblems of rank, such as palankeens, cushions of state, canopies, standards and kettle-drums, elephants with gold trappings, and so forth. In one instance we ourselves formally allowed to an important chief the use of fans of peacocks' feathers; and it was reported that this gave great pleasure to the chief himself, his family and people. But we never regularly adopted a practice of granting such permissions; and indeed under British rule there is no restriction on any individual using any of these emblems of rank at his own pleasure. The principle that the sovereign right of conferring titles and other marks of distinction on natives of India should properly be exercised by the British Government direct, instead of, as formerly, through the medim of the pageant court at Delhi, was first asserted and established by the Marquis of Hastings at an early period of his administration. A resolution reciting this fact and defining the grounds upon which titles would be awarded was issued by the Government of India in 1829; and in 1837 the Orders of





Merit and of British India were instituted for the reward of native soldiers of the Indian army. After the transfer of the administration of India from the East India Company to the Crown, the whole subject of the grant of titles and honours was very fully considered in communication with the Local Governments. The object was to make the principles of the subject as clear and as well-understood as they were under the Moghal Empire, and as they are in the United Kingdom. Practically, the result was the foundation in 1861 of the Order of the Star of India, and in 1878 of the Order of the Indian Empire, which in 1887 was enlarged by the addition of knights commanders and knights grand commanders. In matters of ceremony I do not know of any wiser step than the establishment of these orders. As Sir Charles Trevelyan said in the course of the discussions of 1859, the 'craving after distinction is an element of great power.' The proper use of this desire enables us to reward merit, to stimulate endeavour, and to strengthen attachment to our cause. Most fortunately there is no doubt that Indians of rank and position wish to share our honours and think highly of them. Both of these orders are open to Europeans and natives alike. They would have entirely missed the mark had they been restricted on any principle of race. All should be united in the service of the empire; and the constitution of these orders is a recognition of that truth. And it is fortunate, too, that the emblems and ceremonials of these orders, modelled on ideas handed down to us from mediæval Europe, are eminently suitable to a society which, as I have shown at length, was rapidly tending before our day to certain kinds of feudalism. A great many ruling chiefs are members of these orders; and I rejoice to say that amongst the companions of both orders are to be found subjects and servants of native states. This is important, because it shows that good service in a native state is recognised as good service on behalf of the empire.

It is stated on good authority that a long war between the Bombay states of Kolhápúr and Sávantvádi was occasioned by the Emperor of Delhi granting to the Sávantvádi chief the use of fans of peafowls' feathers. If we are sometimes tempted to regard unsympathetically the great anxiety felt by native chiefs, and still more, perhaps, by the high officials of native states, on the subject of ceremonial distinctions, we shall do well to remember that even in Europe breaches of etiquette have led to wars, and that salutes and





the complimentary interchange of official visits are still very elaborately regulated by the laws, treaties, or declarations of great powers. The procedure of officers of ships of war of different nationalities in exchanging visits in port is prescribed by the concurrence of the maritime powers; and it is curious that a custom precisely resembling the Indian custom of *misāj pursi*, has to be observed by naval commanding officers. On the arrival of some important ruling chief, a couple of officers are at once deputed to inquire after the health of the visitor; so, too, a naval commanding officer, on the arrival of a ship of war of another nationality, has to send one of his officers to the ship to offer the customary courtesies. The British and French naval regulations and the military regulations of the United States are very minute on matters of ceremony. The questions who is to salute first and what is to be the number of guns have formed up to recent times the subject of international stipulations. In the period from 1721 to 1829 there have been between European countries many treaties dealing with salutes. No doubt maritime states are tending to adopt a uniform system, and salutes are now divested of all idea of domination or supremacy. But the importance which is still attached in Europe to the exchange of international courtesies should enable us to understand why it is that any omission, however inadvertent, of the honours due to a native state may be resented or deplored as a disgrace or a punishment.<sup>1</sup>

The very fact that these states are not on the equal footing of the independent powers of European necessarily makes them the more jealous of ceremonial privileges. In Europe, in the case of ceremonies in which ambassadors or other high officials or commanders take part, it is understood that if the salutes and other honours and the relative rank of the representatives of the different nations cannot be adjusted by pre-arrangement, the dissenting party will withdraw from the ceremony. But this form of protest is not open to the rulers of native states. To attend a ceremonial assemblage at the behest of a superior is an acknowledgment of allegiance; to be wilfully absent without excuse is a mark of disrespect amounting to contumacy. Every feudatory chief must accept the place and the degree of honour which

<sup>1</sup> The illustrations from international law in this paragraph are taken from Halleck, pp. 107-123.





the Viceroy assigns to him. Refusal to do so, evinced by absence from the durbár, would be visited by censure and deprivation of honours. As the right of protest which equal powers possess is disallowed, it is all the more incumbent on those who advise on the conduct of our Oriental ceremonies to be careful to give every chief his due.

Practically, most of the burning questions of precedence have been settled, or, if unsettled, can be avoided by foresight and considerate plans. Salutes have been regulated by a series of orders in council; and records of precedents entering into minute details for the regulation of ceremonies are maintained both in our offices and in those of the native states. There is a distinction worth mentioning between personal and dynastic salutes. A dynastic salute is attached to a chiefship; but a chief may be allowed, as a personal distinction for his own lifetime, an extra number of guns. Such a concession is much valued; it is a mark of favour due probably to distinguished loyalty or services, high personal attainments or able and efficient administration. It is satisfactory to note that at least fourteen feudatory chiefs now enjoy personal salutes.

The only return I have been able to obtain of the coinage in native states was compiled so long ago as 1877. I have, however, ascertained that in 1885 the Government of India had no later information. According to these old returns, there were, about the year 1875, twenty-six states which coined silver and three which coined copper only. Of the states coining silver, two or three also coined gold.

The question of coinage in native states is obviously a delicate one, and will not bear frequent handling. It must be left largely to the commercial interests, the good taste, and the loyal spirit of the Durbárs concerned. In the early years of this century a great many mints in the smaller native states in Málwa and Bundelkhand were authoritatively suppressed; but it is highly improbable that such action would be taken now. In 1870 it was held that there were great political and general objections to directing the closure of mints in native states, and that nothing should be done beyond pointing out to native chiefs at suitable opportunities that it would be for the advantage of their states if they would co-operate in making the Indian coinage uniform, and would assimilate their own coinage to that of the British Government. But the reopening of disused mints would not be allowed, nor the establishment of new mints by states





that have not hitherto exercised the privilege without question. Mints are permitted, when they are permissible at all, only at the capitals of states, and not in the territories of petty chieftains and nobles subordinate to a feudatory of the empire. Objection would be raised if a state were to issue debased coinage, or the coin of any extinct dynasty, or of any other state. It may be mentioned that the Rao of Kutch and the Maharaja of Jaipur have set an excellent example in this matter. The Rao of Kutch, in 1846, proposed to Sir Charles Napier that the British Government, as the paramount power, should have its name superscribed on native coins; and the Rao, after the mutiny, resolved to strike his coin in the name of her Majesty. The Maharaja of Jaipur about the same time expressed a desire to call in his current coin which bore the name of the King of Delhi, and to issue a new currency bearing some reference to her Majesty the Queen. This becoming and graceful offer was accepted with appreciation; but if similar offers are made elsewhere they must be spontaneous. On such a point no one would press a native government.

Next after certain questions of prerogative we may consider certain means for facilitating the administration of civil justice. Some of the provisions of the Code of Civil Procedure under this head operate of their own force without further action on the part of the executive Government; other provisions require a specific order or notification, promulgated by an executive authority, to bring them into play. The provisions of the first of these classes relate generally to the service of the summonses of British courts and the issue of commissions to examine witnesses. The provisions of the second class have reference to the peculiar position of ruling chiefs who trade or own immovable property in British territory, or, when the courts of native states have risen to a proper level of efficiency, admit of the execution of their decrees and the service of their summonses in British territory, just as if the state courts were British courts. The provisions are thus either a part of the ordinary judicial routine, or pay special regard to the measure of sovereignty enjoyed by native rulers, or recognise by appropriate concessions the improvements which may be effected in the administration of civil justice in native states.

The summonses of British courts may be sent by post to defendants or witnesses residing out of British India, or may be served through the British resident or agent, or a super-





intendent appointed by the British Government, or by a court established or continued in foreign territory by the authority of the Governor-General in Council. British courts may issue commissions for the examination of persons residing at any place not within British India; and the general provisions of the code as to the execution and return of commissions apply to commissions issued by courts situate beyond the limits of British India and established by the authority of her Majesty or of the Governor-General in Council, courts situate in any part of the British Empire other than British India, and courts of any foreign country for the time being in alliance with her Majesty.

It is considered generally undesirable that the rulers of native states should acquire immovable property in British territory; but if they do so, the acquisition has no effect upon sovereignty or jurisdiction, and, as proprietors, they have merely the same rights as British subjects. As a fact, many ruling chiefs own house property, and some have large landed estates in British territory. A recognised foreign state may sue in the courts of British India to enforce the private rights of the head of the state or of its subjects. Persons may be specially appointed by Government to prosecute or defend any suit on behalf of a ruling chief; and any such chief may be sued in a competent British court with the consent of the Government. The consent may not be given unless the chief has instituted a suit in the court against the person desiring to sue him, or trades within the local limits of the court, or is in possession of immovable property situated within those limits, and the suit is brought with reference to such possession or for money charged on that property; but no consent is necessary if the plaintiff sues as a tenant of immovable property held or claimed to be held from the ruling chief. In petty or other litigation the dignity of a chief may be saved by a direction that he is to be sued in the name of an agent or in any other name. The principles seem to be that if the chief chooses to submit to the jurisdiction by bringing a suit, the courts are open to him and the law takes its course; but he cannot ordinarily be subjected to the jurisdiction without a special order, which will not be made unless by his own act, or as a consequence of his double position as a proprietor in British territory and a ruling chief in his own territory, he steps or is obliged to step outside his state, and thus to descend from his place of sovereignty and to put





himself on a level with the mass of her Majesty's subjects under the law.

By notification in the 'Gazette of India' it may be provided that the decrees or summonses of the ordinary courts of native states may be executed or served by British courts, the procedure of the courts of the states selected for this privilege being thus recognised as substantially as good as our own. This is a useful and satisfactory way of encouraging and rewarding progress. In respect of decrees and summonses, courts in native states established or continued by the authority of the Governor-General in Council—as, for instance, courts so established within residency or cantonment limits—are on very nearly the same footing as British courts; but I need not here enter into any further detail.

In connection with the administration of criminal justice I propose to notice certain provisions relating to the trial of European British subjects and the difficult and intricate question of extradition.

As a general rule, the ordinary courts of native states do not try European British subjects. It is not necessary that they should do so; for when a European British subject commits an offence in a native state he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found. Under a statute of 1865 (28 & 29 Vict. chap. xv. sec. 3), and under the Foreign Jurisdiction and Extradition Act of 1879, British officers are appointed justices of the peace in foreign territory for the purpose of taking up cases in which European British subjects are concerned; and the most conveniently situated high courts are invested, for the several territories, with original and appellate criminal jurisdiction over European British subjects of her Majesty, being Christians, who are resident in native states. There is nothing novel or exceptional in the enjoyment by Europeans of a right of ex-territoriality of this description. Mr. Tarring remarks ('British Consular Jurisdiction in the East,' p. 3) that when Richard III. in 1485 appointed Lorenzo Strozzi, a merchant of Florence, to be the consul of the English merchants at Pisa and in the adjacent countries, the office of a judge formed part of the duty of the consul. As the idea of state sovereignty made progress, consular jurisdiction over British subjects in respect of offences committed by them in foreign lands was surrendered throughout Christian





Europe to the territorial authorities; but it lived on in Muhammadan countries, and, as British commerce and enterprise spread over the world, was extended, with enlargements, to other countries of the far East and the far South. Under the Foreign Jurisdiction Acts, Orders in Council have been issued regulating the exercise of her Majesty's jurisdiction in Morocco, the Ottoman dominions, including Tripoli and Egypt, Muscat, Zanzibar, Madagascar, Siam, China, Japan and Corea, the Western Pacific, West Africa, and South Africa (*ibid.* pp. 5, 36, 37). A personal law for European British subjects in countries which are not Christian countries is thus the general rule. Indeed, even in British India itself, not so very long ago, a European British subject could not be brought to trial in any but the presidency courts; and, under the law as it stands at present, the powers of British Indian magistrates and courts of session to try such subjects are much restricted. Trial by a mixed jury may be claimed practically in all serious cases, and no court but a high court can try the case if the offence which appears to have been committed is punishable with death or with transportation for life.

Twenty years ago it was expressly declared that no native state could be allowed to try a European British subject according to its own forms of procedure and punish him according to its own laws. Personally, I see very little objection to such a rule; not only because it harmonises with practice in many countries outside India, but because in India itself the idea of a personal law attaching to people of a particular caste or creed is a fundamental part of the whole theory of society. If we administer Muhammadan civil law where Muhammadans are concerned, and Hindu civil law where Hindus are concerned, I perceive no breach of impartiality in causing certain highly valued rules of British criminal law to be administered in the case of European British subjects. In all these cases we simply recognise what each class looks upon as its birthright. As a fact, the rule promulgated twenty years ago has been modified by later orders. It is obviously inconvenient that the moment a case passes the narrow boundary which separates civil from criminal questions the state courts should be paralysed because one of the parties is a European British subject. When the alleged offence is trivial or merely technical, as in some cases of criminal trespass or obstruction of a right of way, a trial might be left in the hands of the state





courts. The same might be done if the offence were one against the law of the state, as, for instance, a fiscal law, and not against British law; and, lastly, if the laws and courts of a native state are on a satisfactory footing, a European British subject who has taken service in the state may usually be left to the jurisdiction of the native courts, subject only to the right of the political officer to interfere on sufficient grounds. In the states of Cochin and Travancore, in consideration of some special circumstances, and more particularly of the efforts made by these states to conduct their judicial administration on enlightened principles, certain magistrates of the state courts who are themselves European British subjects and Christians have been allowed to exercise the same powers in regard to European British subjects as are exercised in British territory by European British subjects who are magistrates of the first class and justices of the peace. These various exceptions, grafted on the present general rule that the courts of native states do not try European British subjects, can be admitted, because before our courts can try a European British subject for an offence which he is supposed to have committed in a native state, the political agent, if there be one, for the territory in which the offence is alleged to have been committed must certify that, in his opinion, the charge ought to be inquired into in British India. If the case is one in which the state court ought to be allowed to try the European, this certificate should be refused. We need not consider the possible difficulty that there might be no political agent. For reasons upon which it would waste time to enter, it is not likely to arise.

It will readily be seen that under a practice such as I have just described there is no substantial question of extradition within the limits of India so far as European British subjects are concerned. The general rule is that they are tried by British courts, whatever the place of the supposed offence. The immense mass of official correspondence and of legal and political dissertation which has accumulated in India on the question of extradition has reference in the main to the extradition of subjects of native states and of native Indian subjects of her Majesty. Usage on matters of extradition so limited is still in rapid growth; I am tempted by the extraordinarily voluminous character of the official discussions to say even in redundant growth. A glance, however, at the map of India suffices to show that an immense quantity of busi-



ness must necessarily arise under this head. The boundaries of British and native state territory coincide for enormous distances, and the jurisdictions are often intimately interlaced. I am unable altogether to pass by a subject which fills so large a space in Indian political law; but I shall touch upon it very slightly for the reasons, amongst others, that I am confident that its present stage is not its last, and that if its present stage were likely to be its last I should much regret the circumstance.

In the case of states over which the British Government claims no supremacy, such as the frontier state of Nepal, extradition is an affair of international law, and is regulated by treaties on the principle of reciprocity. Within the limits of India there are some native states with which the Government of India has in former times concluded treaties of extradition; and there are many states which have in various agreements engaged to surrender criminals. But though some existing treaties may stand in need of modification, new extradition treaties or agreements with the internal states of India are not now required. The paramount power can demand the extradition of any person if it is considered necessary to make the demand as an act of state; and extradition to native states can be granted under an Act of the Indian legislature, independently of any treaty.

Indeed, most of the Indian native states have no extradition treaties, and extradition to them is regulated by the enactment in question—the Foreign Jurisdiction and Extradition Act of 1879. This Act is a new edition of one that was passed in 1872, and, in at least one very important particular, is much more liberal to native states than the old rules which were in force in former days. There is a despatch of the Court of Directors of 1836 which laid down that British subjects apprehended in British territory for offences committed in native states should be amenable only to British tribunals, but that the subjects of native states, wherever apprehended, should always be amenable to British courts for offences committed in British territory. This want of reciprocity—in so far as it was operative, it amounted to a refusal to surrender British subjects in any case—was justified at the time as a prerogative of the paramount power, and ‘on the ground of the inequality in the state of civilisation and of jurisprudence under the British Government and that of native states.’ But under the law as it now stands, no distinction is made for purposes of extradition between the





subjects of native states and the native Indian subjects of her Majesty. The surrender of both classes is lawful; the surrender of a British subject—that is, of a native Indian subject of her Majesty—may be granted in certain carefully defined cases, the discretionary power of the political agent to refuse extradition and to dispose of the case himself being regulated by rules framed under the Act by the Government of India. In the absence of treaty provision to the contrary, the general custom has been for political agents to retain jurisdiction if the accused person is a servant of the British Government or an officer of the British Government employed in connection with the state. In other cases the political agents would grant extradition if the courts of the state, either by custom or by express recognition of the Governor-General in Council, were in the habit of trying native British subjects so surrendered.

It is important to notice that the Act supplies alternative methods of procedure. The native state, relying solely on the Act, may apply to a political agent for a warrant against a fugitive offender; and district magistrates in British territory will comply with the warrant if granted. In this case the political agent has the discretion just described. Or the native state, relying on a treaty or on usage, may address a requisition to the Governor-General in Council or to any local government, and the Government applied to will order a magistrate to investigate the matter, and on the receipt of his report will decide whether the accused person is to be surrendered or not. The existence of these alternative courses of procedure side by side illustrates the transitional condition of the whole question.

When native states demand the surrender of their own subjects who have escaped beyond their jurisdiction, the practice is to grant extradition either in accordance with the terms of the treaty, if any, or in accordance with the law. The rules under the Act of 1879 take proper securities that an offender shall not be given up for a merely political offence, that the offence is grave enough to warrant extradition, and that a *prima facie* case of the guilt of the supposed offender is established.

The Act expressly declares that nothing contained in it shall affect the provisions of any treaty for the time being in force as to the extradition of offenders; and that the procedure provided by any such treaty shall be followed in every case to which it applies. It has usually been held



that this declaration does not prevent a native state possessing an extradition treaty from taking advantage of the speedy procedure of the Act and applying to a political agent for his warrant. A state, however, must not vacillate between the Act and its treaty, choosing in particular cases the method which would best serve its own turn. It must either consistently abide by the treaty or consistently adopt the procedure of the Act. In practice it is found that the Act is superseding the treaties. If in any case the procedure under the Act directly conflicts with the procedure contemplated by a treaty, and if, notwithstanding the readiness of both the contracting parties to have recourse to the Act, legal difficulties might arise in consequence of such a conflict, there would obviously be no difficulty in negotiating the necessary additions to treaties in force.

So far we have been considering extradition from British territory on the demand of native states, or from state territory on the demand of the British authorities. Offenders in one native state may, however, take refuge in another state; and the means adopted for the disposal of cases of this nature are necessarily affected by the general principle which prohibits diplomatic intercourse and diplomatic relations between the different states. If it is desirable that two or more states should come to an understanding as to their mutual responsibilities, the object can be attained by rules framed in the name of the British Government, to which the states may be invited to assent, or by separate engagements between each state and the British Government. There are local varieties of practice in the matter of what we may call interstatal extradition; and sometimes the simple and patriarchal rule has been maintained which reserves all interjurisdictional cases, as they are termed—that is, all cases where the parties belong to different states—for determination by the political officers of the British Government. It will suffice to take two illustrations—one from Rājputāna, where the protectorate was a frontier protectorate till the Punjab was annexed, and where primitive institutions are still in their vigour; the other from Central India, where our predominance followed that of the Marhattas, and where, for that and other reasons, the measure of sovereignty left to smaller chiefs was less than in many other parts of native state territory. In neither of these cases is extradition an immediate object of the system; and it is only incidentally that under both systems the arm of





justice may reach out to capture fugitive offenders. But both illustrations have a certain value and interest of their own. The Central India illustration will show the willingness of the Supreme Government to grant greater authority to ruling chiefs when their methods of administration have been improved; and the Rájputána illustration will suggest that it is not after all very difficult, when the preliminary local knowledge has been obtained, to make our regulations harmonise with the actual facts of early societies. The Rájputána rules are, I think, admirable; they are the direct result of local experience, and they maintain such primitive expedients for the repression of crime as blood money, the hue and cry, and the track law.

In a land where forays were the favorite mode of excitement, and where a bold, restless, partly feudalised baronage was always ready to contest at the sword's point any supposed encroachment on its privileges, it was specially necessary to deal with two things: with the plunder of merchants and travellers, and with the practice of sheltering outlaws who, when they had become disaffected towards their own chief, or he had in any way incurred their vengeance, would use the asylum of a neighbouring state as their starting place for raids on his territory. *Vakils*, or representatives of the several Rájputána states, have long been accredited to the Agent of the Governor-General at Ajmere; and some fifty years ago Colonel Sutherland, the then Agent, finding that little justice was done by referring a case to the *vakil* of the state against whose subjects a complaint was made, adopted the plan of assembling a *pancháyat* or committee of the *vakils* of the principal states at Ajmere to deal with cases of mixed jurisdiction. From the action of this court, robbery soon received a check, and most of the old plunder claims were quickly disposed of. Such was the origin of the existing rules for the courts of *vakils* in Rájputána. The courts—the principal one is at Mount Abu, and there are others at Udaipur, Jaipur, Jodhpur, and Deoli—investigate criminal cases which cannot be decided by any one state. In entire accordance with the spirit of primitive law, and, I may add, of international law, the rules under which these courts act look to groups—to states and villages—for reparation. The courts may apportion the responsibility as they think fit between the states concerned. Ordinarily, the primary liability falls on the state within whose territories the offence has been committed. Next



after this in liability is the state in which the offender is followed in hot pursuit, or in which he is proved to reside, and which has not surrendered him. Last comes the state in which the stolen property is discovered, when the inhabitants cannot account for its possession, and have taken no measures to restore it. The state into which the track of offenders is carried must take it up and carry it on. In cases of cattle theft or of the pursuit of mounted robbers, a refusal on the part of the village where the tracks are lost to permit search for the animals renders the village liable for the whole value of the stolen property. The British districts of Ajmere and Mhairwarra are accounted a Rājput state for the purposes of the rules. Five *vakils*, inclusive of those belonging to the states interested, make a quorum; but when British interests are involved, or at the request of the members, or in cases of importance, the Agent to the Governor-General or his assistant in the upper court at Mount Abu, or the local political agent in the lower courts elsewhere, sits as president with four or more members and has a casting vote. Subject to this rule, political officers superintend the courts and confirm or cancel their decisions, but do not, as a rule, interfere with or control their deliberations unless the members cannot agree. The upper court at Mount Abu, however, is under the superintendence of an assistant who usually conducts the proceedings in person. The courts can award compensation and blood-money and can punish with fine and imprisonment. Death sentences and sentences of imprisonment passed by a lower court for a term exceeding seven years require confirmation by the Agent to the Governor-General. When the perpetrators of some violent crime cannot be caught, blood-money may be awarded according to the loss sustained; but the life even of a man of the lowest rank may not be valued at less than one hundred and fifty rupees, and the award is forbidden if the blood be shed by men defending their own lives or property. All sums awarded, whether as fine, blood-money, or compensation, are recovered from the states held to be responsible, not from individuals.

We thus have here an excellent specimen of primitive usage, recognised, tamed, trained, and made to work for the pacification of a wild country. If similar specimens were less rare, it would be much less difficult to govern India. In Western Mālwa it appears to have been the practice till quite lately for the political agent or resident, as represent-





ing the paramount power, to adjudicate in all cases, both civil and criminal, in which the parties concerned were subjects of different states. In 1887 it was represented that circumstances had changed; that the great states of Indore and Gwalior had now more or less completely organised systems for the administration of justice; and that it was a slight upon their courts that they should be deprived of jurisdiction merely because one of the parties was the subject of some other state. It was thereupon arranged to deal in Western Málwa with these interjurisdictional cases in the same way as they are dealt with in other parts of Central India. Civil cases are to be left alone, except when there is some palpable miscarriage of justice. In criminal cases the political agents will not interfere when any of the larger states are concerned; and an offender, to whatever state he may belong, will ordinarily be tried in the state where the offence was committed. But political agents may demand justice for an inhabitant of a foreign state in the event of his clearly having been deprived of it. I may add that in 1889 half a dozen states in Central India accepted some very simple extradition rules prepared by the political agent in Bhopal, and these rules may have since been extended to other states.

Leaving now the subject of extradition and interjurisdictional cases, the next obligation of ruling chiefs that I will notice is their responsibility for the secure passage through their territories of the imperial mail and parcel post. Every native state in the territory of which the imperial mail or parcel post is robbed is *prima facie* liable to pay to the British Government the full value of whatever is taken or destroyed by the robbers; and to pay such compensation as the British Government requires to carriers of the mail or other persons, or to their families, in the event of the carriers or other persons being injured or killed in connection with the robbery. The track law is applied to a certain extent; for if a mail robbery is committed in the territory of one state, and the tracks of the robbers are carried into the territory of another state, and there lost, the *prima facie* liability for the robbery would usually be shared in equal proportions by the state in which the robbery occurred and the state into which the robbers were finally tracked. But a native state to which any such *prima facie* liability attaches may plead in extenuation that its police arrangements are efficient; that it has displayed zeal and energy in bringing,



or attempting to bring, the robbers to justice; or that the robbery was committed, without complicity or contributory negligence on the part of its servants or subjects, by a servant of the British Post Office.

There are many other matters, some of local, some of imperial concern, in which the zealous co-operation of native states is expected and has often been afforded. Obligations relating to military affairs are in some cases imperative, and, when this is the case, are directly deducible from the responsibility of the British Government for the external defence of all native states. The paramount power must necessarily determine the geographical distribution and the movements of its own forces. Hence it follows that native states must permit the establishment of British cantonments or the occupation of forts within their limits when, in the opinion of the British Government, this is required in the general interests of imperial defence; and all native states must at all times allow the passage of British troops through their territories. On the other hand, native states act in regard to external defence only in subordination to the supreme power; they may not, therefore, move their troops beyond their own territories without permission. The right of the British Government to regulate the fortifications and armies of native states and their supplies of munitions of war also follows from its supremacy. In former times the right to regulate armaments often formed the subject of treaty stipulations. But it exists independently of treaties. I may here once again borrow the language of Sir Charles Aitchison, from an unpublished note. 'Independently of treaties,' he says, 'the British Government could not, either in justice to itself or with due regard to its duty towards native governments, permit native states at their pleasure to erect first-class fortresses, or manufacture unlimited stores of arms of precision, or maintain excessive armies. Formidable fortifications in false positions would be of the utmost danger to the empire in the event of an invasion or insurrection. Large armies may be a source of danger not only to the empire but to the state which entertains them. It was the inability of the Gwalior durbar to control its army that brought on the war of 1843. The Sutlej war was due to a similar cause. Extensive armaments are not required by native states for purposes of self-defence. They are either wasteful or hostile, requiring in either case unnecessary additions to the forces which the paramount power maintains. Warlike





preparations of a subordinate state, especially if carried on secretly, indicate distrust of the British Government or an intention, if opportunity be afforded, of isolating itself from imperial interests. In either case the British Government not only has the right to interfere and remove the cause of danger, but it would neglect its duty as the supreme power in India if it failed to do so.'

But some obligations relating to military affairs may be undertaken voluntarily, and may become a conspicuous sign of the loyal co-operation of ruling chiefs. In this connection I shall describe in the next chapter the arrangements lately made for the organisation of corps of imperial service troops in native states.

Obligations relating to fiscal affairs and to imperial communications are usually derived from agreement. I am not aware of any general ruling on the point, but I offer the opinion that it would be a breach of comity on the part of any native state so to order its fiscal arrangements as to damage the finances of the paramount power. Many states have agreed to prevent the smuggling of opium. It is often necessary to invite native states to look into the working of their excise administration, so that our taxation of spirituous liquors may not be nullified by the easy transit across an unguarded border of liquor that is untaxed or very lightly taxed. The salt administration of Upper India has been immensely facilitated by the lease of the Sambhur Lake salt source from the Jaipur and Jodhpur Durbárs. At least thirty-five states, including several of the most important states of India, have either ceded or agreed to cede lands for railway purposes. In some old cases full sovereignty was also ceded with the railway lands. But in practice this kind of cession has been found inconvenient. It is better to obtain the cession of jurisdiction only; and the exercise of the jurisdiction can then be very easily regulated by an order of the Governor-General in Council notified under the Foreign Jurisdiction and Extradition Act. In these cases no treaties are required, nor has any particular form of agreement been prescribed by Government. It will suffice if it be clearly specified that the state cedes full jurisdiction and administrative control short of sovereign rights over all lands and premises occupied or required for railway purposes. Having regard to these precedents, and to the great benefits which states derive from the construction of railways within their limits at no cost to their revenues. I think it



may be taken as a rule that, when a railway is constructed in state territory at the expense of the British Government, no state will refuse (1) the land free of cost, (2) the cession of the necessary jurisdiction, and (3) the abolition of transit duties, if any exist, so far as regards the railway traffic. Native states intending to construct a line of rail or telegraph or telephone lines are expected to report the fact. In respect to railways, this requirement was justified about ten years ago on the ground that the Government of India is charged by its position with the defence of the continent, the maintenance of a general postal system, and the direction of through traffic, and is therefore bound, without undue interference in detail, to obtain information regarding the construction of lines which may enter into the general system, and to claim such a voice in their regulation as may be sufficient for the discharge of its duties.

Looking back on the usages discussed in this chapter, we can readily see that many of them, particularly those connected with the administration of justice, are in a condition of rapid and often complex growth. The responsibility of the paramount power for the general defence of the country, its prerogatives in regard to titles, salutes, and precedence, and its right to regulate jurisdiction in the case of European British subjects, are matters admitting of no doubt and apparently standing in need of little, if any, further definition. Even here, however, it is obvious that as new circumstances arise fresh consequences may be seen to follow from accepted principles. In the administration of civil and criminal justice, in fiscal policy, in the extension of railways and other means of communication, in all the public functions and undertakings which come into existence or gather importance and complexity with the advance of civilisation and the greater frequency and intimacy of intercourse between the subjects of neighbouring states, there is great scope for future development both in British and in native territory; and therefore the customary rules of political law which at present touch these matters settle some points only in a provisional fashion and necessarily leave many others undefined.





## CHAPTER XX

## INDIA AND IMPERIAL FEDERATION

IN this treatise, dealing with certain portions of Indian history and the development of certain political and legal ideas, very little has been said on material progress in India. I have, indeed, briefly noted the enormous addition made to our political strength in the country by the telegraphs and railways; and if it were not for them the political system, which I have tried to describe, could not be worked. This is a text requiring no comment; but I may be allowed to add here that perhaps no engineering achievements in India are more remarkable than those which have at length, after great and costly efforts, culminated in the successful bridging of the great Punjab rivers. Looking from the south side of the Sutlej opposite Phillor, a soldier or civilian on the march in the Punjab may see before him a railway bridge more than a mile long spanning one of these vast rivers, which are so erratic in their course that, when a bridge is built, extensive works are also needed to keep their waters in the original channel. Amid the mists of a chilly Punjab morning in the cold weather the further end of the bridge will be lost to view in the dim distance. To some, perhaps to most, there would be nothing in the sight of such a railway bridge that could appeal to the heart or touch the imagination. But then so much depends on our associations. To anyone serving in the Punjab, or indeed in India, the Sutlej is an historic river. For years it was practically our frontier, the line demarcating the respective spheres of influence of Maharaja Ranjit Singh and the British Government. It was on this river that the battle of Sobraon was fought with the Sikhs—our most formidable foes when their army was against us, our best and staunchest friends amongst the native population when the Punjab had frankly accepted the result of two wars, but the army of



Hindustan rebelled. The bridge crosses the old frontier; and is thus a symbol of the change that has transformed the dominions of Ranjit Singh into a British province. It is a symbol also of other changes, not indeed as yet actually transforming India, but leavening many archaic societies in all parts of India with new capacities and new ideas. It reminds us of the courage, the energy, the willingness to learn, the patience that, in spite of many failures, many bad mistakes, have in the end triumphed over great physical and moral difficulties, and have united together in one coherent and rational system a vast and complicated empire of most diverse territories and states. As we gaze on that bridge stretching away to a vanishing point on the other side of the river, as we gaze on that river itself, unceasingly carrying its vast weight of water from the far-off Himalaya to the distant sea, we may well ask what is to be the goal of our swift progress in India? what the destiny of those great ever-moving forces which our civilisation has crossed, and which it taxes our best strength and wisdom rightly to guide and control?

Am I to attempt any answer to these questions? That is a problem that faces me as I draw to the end of this book. Obviously, no complete or confident answer is possible. But surely it is desirable that some of us, and particularly those whose profession and duty it is to undertake administrative work in India, should try to form some idea, however imperfect, of the ultimate aims of Indian government, and of the true direction of those social and political tendencies in India which, owing to the events of the last hundred and fifty years, have now set in new courses. Many of those men who are best able to help others in so difficult a task are, by their official positions, compelled to keep silence. A civil officer on furlough is temporarily out of office; and, subject to what I have said in my preface, I am free to speak if I have anything to say. Assuredly I do not suppose that I am capable of doing more than offering a few suggestions to those who, like myself, think it is worth while, or even a clear matter of duty, to devote some labour and thought to these questions; which, though necessarily incapable of full solution except by time, are fascinating by reason of their magnitude, their difficulty, and their connection with the future of the British empire. In the course of my service, in the course of the studies undertaken for the purpose of writing this book, some suggestions have





occurred to me; and on the whole I think it will be right and proper to mention them here.

I have spoken of the Indian empire as possessing a coherent system; but on a closer view we shall recognise that it possesses two systems—the political and the administrative systems—each exhibiting certain likenesses to the other in official discipline and service organisation, and both united by the common control of the supreme Government. Neither of these systems is like any form of government or other political arrangement in Western Europe; both of them are intimately connected with the past of India; but both differ widely from anything that ever was produced, or could be produced, by purely indigenous means. In both the impact of unwonted forces has welded old materials into a new shape; in both the products of Oriental semi-civilisation, molten in a furnace of anarchy which was lit up before our day, have been poured into moulds of Western manufacture. But in the system for the administration of British territory the Western pressure and influence have been far more powerful than in the political system. At some points on the surface of the administrative system there are patterns and a polish which recall, if they do not reflect, the West. Out of eight governments which may in time have separate legislation, only four have them as yet. But when we consider the relations of these governments to the Central Government, absolute as their subordination is, we see that the type, so far as it may be derived from Western institutions, though imperial and not federal, has certain peculiarities which are common in federations. On the other hand, the political system is of a feudal type. The inchoate feudalism of India, in the abnormal conditions of pacification and legality, has resulted in a strong and flexible growth unlike anything that is now elsewhere in the world, and, with qualifications, capable of being described as a new variety of feudalism. The whole product is not really in character so new as it seems; for the rulers of Indian feudatory states in many ways resemble the client-princes of Rome, and the present Indian feudalism and the old European feudalism were alike formed by the fusion of ideas of civilised law and government with the warlike customs of primitive races and tribes. I have remarked on the progress in Europe from feudalism to federalism. Here, as often happens in India, the beginning and end of history seem to meet.





There is a sort of feudalism in the political system; there are traces of the ideas of federalism in the political system. And both are in active operation side by side in an empire which is comparable with that of Rome.

It has been well said that the problem of Imperial federation is the problem of the whole future of the British empire. The word Imperial is sometimes used to describe despotic authority supported by military power; and it is objected that imperialism and federalism, considered as the voluntary union of States on representative principles, are directly opposed, and that it is a solecism to speak of any one system as simultaneously both Imperial and federal. This objection does not seem to be important. If Imperial federation is a convenient phrase, with a sufficiently well-known meaning in common acceptance, we need not hesitate to use it because the two words taken by themselves may have meanings which are altered when they are brought into juxtaposition. At any rate the phrase has, so far, more general currency than the alternative expressions, Britannic or national federation. By such words as empire and Imperial throughout this book, except where the contrary appears from the context, as in allusion to the Roman empire under the emperors, I have intended to refer to groups of States united in federations, or to groups of states and provinces under the supremacy of one state or paramount power. And I have pointed out that the division of sovereignty in the British empire generally, including the British Indian protectorate, has points of resemblance to the division of sovereignty effected in federations.

The Committee of the Imperial Federation League has sanctioned and circulated an answer to the question, What is Imperial federation? The sanctioned answer says that 'Imperial federation is a means of securing the continued union of our nation throughout the world by removing the danger to union caused by two great anomalies in the present Imperial system. These are that: (1) At present no one of our great self-governing colonies—not even the Dominion of Canada—has any recognised voice in Imperial affairs. They are liable, therefore, to be involved in all the consequences of war, without having had any share in controlling the policy that had led to it. (2) On the other hand, the people of the United Kingdom not only bear the entire cost of the naval, military, diplomatic and consular services all over the world, the protection and advantages





of which in war and peace are shared equally by their colonial fellow subjects, but they may have at any moment to undertake and bear the whole cost of a war entered upon solely to maintain the interests of any one of these colonies.' The answer contains further explanations and a brief account of the work of the League. The essential propositions are, I think, four in number. First, the permanent unity of the empire is desirable. Secondly, the self-governing colonies ought to share in the control of 'Imperial policy,' which I take to mean primarily foreign policy, but to include the internal policy of the empire, that is, the policy in respect to relations between the mother-country and the self-governing colonies. Thirdly, adequate provision should be made for organising and administering the common defence of the empire, on the basis of an equitable apportionment of the expense. Fourthly, the existing rights of local parliaments as regards local affairs should be left untouched.

In all this there is not a word relating to India. Hitherto, the League in all its public acts and resolutions, has had the self-governing colonies in view. I do not doubt that the League has done wisely to abstain, so far, from bringing any Indian question into the discussion. There was no need to do so when the objects in view were to give expression to patriotic sentiment and to influence public opinion. But when any project for preventing the disruption of the empire by a closer union of its parts comes to be seriously entertained, it will be impossible to leave the long array of Indian provinces and states out of consideration. Any such project must deal with the organisation of common defence, and by that question India is vitally affected.

On June 18, 1891, Lord Salisbury, in replying to a deputation from the Imperial Federation League, said that it was mistaken modesty on the part of that society to claim as a virtue that they had no 'cut and dried' scheme. 'I think,' he said, 'we have all of us come to the time when schemes should be proposed, and without them we shall not get very far.' He pointed out that to make a united empire, like Germany or the United States, out of the scattered elements of the Queen's empire, we have to find a zollverein and a kriegsverein,—a union for war and a union with respect to customs policy. I shall not here pursue any question in regard to a zollverein. The difficulties are glaring; and there is a general agreement amongst those interested in the proceedings of the League that the question





of a *kriegsverein* is more pressing. 'A *kriegsverein*,' said Lord Salisbury, 'means some common control of foreign policy, and a common control of foreign policy means a balance and appraisal of the voting value of the various elements of which the empire is composed, and when you come to tot up that calculation, you cannot leave our Asiatic dependencies out of sight.' It is, of course, possible to interpret Lord Salisbury's remarks as amounting to a polite *reductio ad absurdum* of the objects of the League; as indicating that a *zollverein* is impracticable, because the colonies and the mother-country have divergent views on fiscal policy; and that a *kriegsverein* is impracticable, because you can neither avoid the Indian question nor give India self-government. I do not believe that this was the meaning which Lord Salisbury intended to convey, and I am confirmed in that view by his speech at the opening of the colonial conference of 1887. Nor is this the sense in which the League accepted the advice offered to it. On the contrary the challenge has been taken up, and a strong committee has been appointed by the League to draw up definite proposals, and certain proposals have been formulated by the High Commissioner for Canada in the October number of the "Nineteenth Century" magazine. A *zollverein* forms no part of the present programme of the League. Amid the scattered elements of Her Majesty's empire, one of the elements in a *kriegsverein*,—an organisation for common defence,—exists already, though it is a very important question how that organisation should be improved. As regards the other element mentioned by Lord Salisbury,—a common control of foreign policy,—it will suffice to point out here that India, in a manner consonant with Indian history and with the type of government which that history has evolved, is already represented in the supreme councils of the empire. There is the Secretary of State for India in the Cabinet and the House of Lords, and the Parliamentary Under Secretary of State for India in the House of Commons. In the repetition of such conferences as that of 1887 seems to lie the best hope of giving the self-governing colonies a voice in Imperial affairs. If such conferences are held in future, and if the Secretary of State for India, when any matter affecting Indian interests comes or is likely to come under consideration, can take his part in the conference as a member, we need not fear that Indian interests will be overlooked. Even if the habit of holding such con-





ferences were to result in the formation of some Imperial council as a recognised part of the constitution of the empire, the representation of India on such a council by one or two of the chief members of the Indian Government would make no change either in the constitution of the Indian Government itself or in the relations between the supreme Government in India and the Secretary of State. At present, the Secretary of State for India guides Indian policy in accordance with the views of the Government of the day. He would continue to guide Indian policy in accordance with the views of the supreme Government of the empire, even if in the structure of that Government there had been some constitutional change.

No doubt the special importance that attaches to the work of the League lies in the fact that the present union is precarious. Both at home and in the colonies there are some tendencies that make for disruption, and it is at least a natural hope that these tendencies may be counteracted by some change in our political organisation. On the other hand circumstances have occurred in countries so far apart as Canada, India, and Australia which may have facilitated consultations on common defence and hastened the rescue of Imperial and foreign policy from the vacillations of party politics. In colonial conferences it may be somewhat easier to arrange for the representation of a central parliament or government dealing with national defence and the military and naval services than for the representation of a number of separate states united only by their common ties to the mother-country. This facility, such as it is, the present constitution of Canada affords; and it may hereafter be afforded by the constitution of Australia, if the Australian colonies do not finally abandon the project of forming a federation on the lines of that of the great Dominion. In India the consolidation, already effected in Canada, and possibly, if not at present very probably, impending in Australia, has been brought about in a different way and by an entirely different history. All the essential powers of defence and of making war and peace and treaties and agreements with native states, have been drawn into the hands of the British Government and the Government of India, by the constitutional law applicable to the supreme and local governments and administrations and by the principles of the British protectorate as applied to the Indian states. It is obviously a great advantage to the cause of Im-





perial unity that constitutionally the supreme Government can represent all the numerous governments and states in India, so that no separate negotiations with them are necessary for the purpose of promoting that cause. As to the desirability of an Imperial foreign policy, steadily pursuing its own course whichever way the wind of party blows, I suppose none can doubt who have at heart the strength and the good name of the British empire. In one aspect the problem of Imperial federation is the problem of separating Imperial from local politics. The habit, were it ever formed, of holding representative Imperial conferences on Imperial affairs would tend, I think, to the accomplishment of that separation. It might also have a steadying effect on foreign policy; just as the habit of holding European congresses promotes concord and common aims amongst the great powers. By appealing to the resolutions of successive conferences, the ministers of either party, successively in power, might gain fresh forces of resistance and propulsion; of resistance to clamour for humiliating or dangerous change, of propulsion on a line determined by the common sense of representatives from all parts of the empire.

The second anomaly condemned by the Imperial Federation League—that is that the mother-country bears the entire cost of Imperial services and of wars undertaken in colonial interests—is not without mitigations. The most important of the immediate results of the colonial conference of 1887 was the agreement made with the Australasian representatives for the increase of the Australasian squadron by five fast cruisers and two torpedo gun-boats to be retained within the limits of the Australasian station, and to be provided, equipped, manned and maintained at the joint cost of Imperial and colonial funds. In this way some of the self-governing colonies have contributed to the total naval strength of the empire. Many colonies have incurred considerable or even great expenditure on their local defence; a matter by no means to be overlooked, because if the colonies did not provide for it, the cost would fall on the Imperial Government. It appears from the papers of the conference of 1887 that at that time in the Dominion of Canada, the available force of active militia, together with the permanent corps, amounted to nearly 37,000 men; in the Australasian colonies the total armed strength was no less than 34,000; and at the Cape and in Natal there were trained forces of 5,500 and 1,500 men respectively. There





were, however, in each case, large reserves which could be drawn upon in case of need. The self-governing Australian colonies also have taken measures for the defence of their own ports; and it was said at the conference that the defences of Port Phillip and Port Jackson, if regard be had to their geographical position, are amongst the strongest in the world.

In the case of India the anomaly to which the League directs attention has no existence at all. India pays the cost of all Indian services, and of the British troops employed in India. The Indian Government is also charged with at least its fair share of wars undertaken wholly or partly in Indian interests. The guarantee that it shall not be charged with more than its fair share is a statutory one. It is contained in the Act of 1858 for the better government of India (21 and 22 Vict. c. 106 s. 54), and is to the effect that 'except for preventing or repelling actual invasion of Her Majesty's Indian possessions, or under other sudden and urgent necessity, the revenues of India shall not, without the consent of both Houses of Parliament, be applicable to defray the expenses of any military operation carried on beyond the external frontiers of such possessions by Her Majesty's forces charged upon such revenues.'

Perhaps enough has now been said to show that a long course of events has prepared India for representation in Imperial conferences without any appraisalment of the voting value of Indian populations. To meet the criticism that the Secretary of State could only be metaphorically said to represent India, I would ask whether any responsible person—I mean any statesman or official who would have to act on his own recommendations if accepted—is prepared to say that we ought to have for India an elected Secretary of State, or Viceroy, or High Commissioner, or Parliament? The so-called local self-government movement in India was, in reality, a very wide extension of certain methods of local administration which were already operative in a few localities. It certainly did not give to municipalities and district boards political control which even local governments are constitutionally incapable of exercising. It was useful as a measure of decentralisation; but it also applied a mixed system of nomination and election to many boards and committees for local affairs. The step from the local administration of petty local affairs by partially nominated committees, with powers closely limited by Acts and rules,





to the control of the action of the Supreme Government by representative assemblies would be essentially revolutionary; that is to say, it would reverse the position of subjects and rulers, and fundamentally change that Indian constitution which has been gradually formed, not merely by Indian statesmen, but principally by the British nation and parliament. I suppose that few persons by experience fitted to take any active share in the responsibilities of Indian government would advocate such a step. India is not the place in which we can afford to try headlong experiments in the application of Western theories to societies far less advanced than those in which the theories arose. I use the expression in no party sense; but I would earnestly recommend that the attitude of mind in which we should approach the question of India as connected with Imperial federation should, above all things, be eminently conservative. India has her own path of progress, which she is pursuing rapidly enough. England should leave India to her own development; and we need not fear the result. There would be far more risk in tampering with the constitution of the Supreme Government than in liberalising, as time goes on, the constitutions of the local legislatures. I think I have already shown that there has been a greater advance towards Imperial unity in India than in any other outlying portion of the British empire. When the time comes—if it ever does come—for giving practical consideration to schemes for the closer union of different parts of the empire, the position of India, if left unaltered in principle, will not impede but facilitate a practical decision.

The alternative which is usually discussed in the case of the great self-governing colonies is, that they should become independent federations or states. That alternative in the case of India is wholly impossible. To our knowledge, from the early years of the fourteenth century, with some intervals of anarchy, a great part, usually nearly the whole of India, has been under foreign rule. If we imagine the British Government removed, India would nevertheless fall under foreign rule again. One great movement of modern centuries has been the partition by Europe of the rest of the world. It has been completed in North America, completed in Australasia, completed, but not in the same sense, in South America. In Asia and Africa it is in active progress. Already Russia is on one of our frontiers and France is on the other. If we were to relinquish our Indian supremacy,





the probability is that either Russia or France, or both, would attempt to seize the prize. If either succeeded—for perhaps either or both might fail—would the interests, would the passions of the British nation suffer either to remain in undisturbed possession? What would the British people say to the exclusion of British trade? What would the Australian people say to the establishment of a great Russian or French empire on the shores of the Indian Ocean? But suppose that either to avoid a rupture with Great Britain, or because they were involved in European wars, or in compliance with the advice of a European congress, both Russia and France were to hold aloof. ‘Independently,’ says Sir Henry Maine (‘International Law,’ p. 5) ‘of any other benefits which the Indian empire may confer on the collection of countries which it includes, there is no question that were it to be dissolved, or to fall into the hands of masters unable to govern it, the territories which make it up would be deluged with blood from end to end.’ I think that statement will be doubted by no one acquainted either with the history of the decline and fall of the Moghal empire, or with the state of Northern India during the Mutiny. As before, nearly all over the country, numbers of hereditary chieftains, numbers of freebooters and adventurers, would set up for themselves. Every one able to rally round him a sufficient number of armed men would fight for his own hand. Is it imagined that in this great game for political power our countrymen would not be invited to cut in? Is it supposed that they would decline, or accept and play worse than their predecessors? Surely our countrymen in the present generation are not less bold and enterprising and adventurous than our countrymen and Frenchmen of a century and a half ago! In the absence of Russians and Frenchmen, what was done by Dupleix in the Carnatic, by Bussy and Raymond in the Deccan, by Perron in Northern India, by George Thomas, who founded a short-lived petty state in Hissár, nay, what was done by Clive and Watson themselves in Bengal, would be done over again by English, or Irish, or Scotch. It would be done, in all probability, both better and more quickly, even if no one had the genius of Clive. Does our experience of former achievements go for nothing? For nearly a hundred and fifty years we have been accumulating knowledge of the country, and for one European that in the middle of the last century understood the political condition of India, there are now many





hundreds in all manner of employments—in the civil service, in the army, in commerce, at the Bar—who are not a whit behind the majority of Englishmen in spirit, resolution, and political capacity, and who know immensely more of India than did the Bengal civilians in the time of Clive, when officers had to be brought up to Bengal from Madras because the Bengal officers had no political experience. Even if we revert to the first supposition, and assume that Russia or France, or both, or that adventurers from those nations, would appear on the scene, I do not myself believe that the play would end differently. When in the last century the question in India was settled between France and ourselves, we had not the advantages of knowledge, of experience, of being first in the field. There is enormous strength in India which can be effectively utilised under European guidance; and we have had lessons, some of a terrible kind, as to the conditions under which some of it can be utilised with safety. To my mind it seems quite idle to contemplate the relinquishment of British supremacy in India. If we could imagine the British nation guilty of so weak, so cruel, so foolish a repudiation of its responsibilities, considerable territorial power would once more be acquired by British adventurers, parliament would not leave them the sovereignty they had won, and, in the end, the British empire in India, after a period of war and anarchy, and great misery to the people, would be established for a second time.

In all this I have, I confess, assumed that the British nation will not lose its naval supremacy, and this brings me to the interest I conceive India to possess in schemes of Imperial federation. The safety of the coaling stations, the adequate protection of the great trade routes, the sufficient numerical strength and fighting power of the fleet, are as vital to India as they are to the colonies. In the consideration of the common defences of the empire, the importance of naval defence needs no explanation. I should hope that the habit of holding conferences of delegates from all parts of the empire on Imperial affairs would be a safeguard against relative deterioration in the strength of the navy. I have hinted at the close interest of Australia in the military defence of the Indian empire. India, on the other hand, is not without interest in any military strength to which Australia may attain. If, for instance, in 1857, before the fall of Delhi, we could have telegraphed to Sydney or Melbourne for the help of men of our own race, and ten thou-



sand Australian soldiers, properly equipped and furnished with the munitions of war, could have been brought to Calcutta in swift steaming ships and sent up country by rail, many hundreds of European lives might have been saved, and revolt and disorder would have been more quickly repressed, not only by dint of the mere addition to our available forces, but by the great addition to our prestige which we should have gained from the unexpected aid of the Southern Continent. The appearance of soldiers from Australia might, for instance, have suggested to the mutineers that their policy of exterminating the English was as ignorant as it was ruthless. It is this sense that the colonies are a part of our own strength in the world, that the colonies may furnish armies of our own race, and that circumstances may arise in which we may need their assistance, that I miss in all expressions of equanimity at the prospect of the British colonial empire being dissolved. The very fact that a large part of our land forces consists of men of races that differ from our own, suggests to me the pressing importance of keeping under our own flag great communities of men of our own race who, unless we alienate them by some folly or injustice, will assuredly aid us in time of need.

It is sometimes suggested that it is a piece of cant to pretend that we maintain our British Indian empire in the interest of Indian populations. We may be advised that it is more honest to confess that we maintain that empire solely for our own interests, and perhaps in the long run more judicious to be candid, because no one is deceived by the pretence. I do not deny that it is our interest to maintain the connection. According to the published returns of the sea-borne foreign trade of India for the year ending March 31, 1890, the total imports were of the value of 86,656,990*l.*; and the total exports for the same period 105,366,720*l.* With the United Kingdom the trade consisted of imports valued at 52,899,106*l.*, and exports valued at 39,140,596*l.* The excess of the total annual exports over the total annual imports which, in the five years ending March 31, 1889, averaged sixteen and a half millions sterling, represents the cost of the English branch of the Indian administration, savings from salaries remitted to England, furlough allowances, payments for British troops, stores, and material, the profits of private trade, and the interest on sterling debt incurred for India in England and generally on British capital invested in India. Taking into





consideration the Indian trade and the services, civil and military, the number of families in the United Kingdom which would suffer loss or ruin if the connection with India were severed must be enormous. Obviously those who have substantial interests in Indian trade, in Indian stocks and other investments, and in the pay or pensions of the Indian services, are as much entitled to the protection of their interests as any other class of Her Majesty's subjects. As regards the individuals composing this exceedingly numerous class, our duty seems to be either to maintain our position or to compensate them if we voluntarily abandon it. I need not add that the value of the interests affected would be so great that practically no adequate compensation would be possible. For loss of trade, if India were to be plunged in anarchy or to fall under the dominion of a foreign power, I suppose no compensation could be contemplated. How great, in the latter case, the loss of trade might be we may gather from facts published in the official review of the trade of India for 1889-90. In the last four years a large import trade from Russia to India has sprung up, which consists almost entirely of petroleum from Batoum. The exports to Russia, comprising chiefly raw cotton, seeds, and indigo, are of an average value of four and one-third millions of rupees. The yarn and cotton spun and woven by the Russians from this raw cotton are sent to Central Asia, where Indian cottons are rigorously excluded by the Russian regulations. Indigo from India is also kept out from the same region by heavy duties, and the people are compelled to obtain the dye or dyed stuffs through Russia. In the case of either anarchy or foreign conquest, the dividends on Indian stocks or on shares in Indian guaranteed railways would have either to be repudiated or to be paid by the British taxpayer. Pensionary charges could hardly be repudiated, and the British taxpayer would have to pay.

But it is unnecessary to pursue this line of argument. The value of India to British pecuniary interests does not require to be proved. I have said so much because I wish to point out that the value of the connection is reciprocal. If we were to lose by restrictions on trade, so would India. One of the greatest material benefits that our paramount position has conferred upon the country is that it has opened it to the fertilising influx of British capital. The Indian Government has many faults; the present system has been gradually formed at the cost of many errors. The present





system does not square—I do not say this is one of its faults, but as a fact—it does not square with the political theories, I was about to say of the last generation, but it would be more correct to say of those who have not yet disestablished the law of nature and set up the doctrine of evolution in its room. But the present Indian Government is certainly very much better than any native government which preceded it, or than it is likely that any native governments would prove to be which, after a period of anarchy, might succeed in temporarily establishing themselves in independence till India was again conquered by a Western power. The present Indian Government is also probably better than any Government which might be set up in India by any other Western nation. As Mr. J. Boyd Kinnear shrewdly remarks, the probability is that any other European power would govern India much worse than we do, were it from nothing more than want of experience. ('The Principles of Civil Government,' p. 214). We of the present generation have not made the British Indian empire. We have inherited its vast interests, its vast responsibilities; and I look upon the responsibilities as twofold. We owe a duty to a very numerous class of our fellow-countrymen who would suffer grievous loss if that empire were to pass into other hands. We owe a duty to the 286 million inhabitants of British Indian territory and Indian native states who, in such an event, would be exposed to plunder, war, oppression, and reconquest. If we are to weigh one duty against the other, I would say that our duty to the Indian populations is more pressing than our duty to our fellow-countrymen; not merely because of the great preponderance of numbers in India, but because the evils to which India would be exposed would prove beyond measure worse than any pecuniary losses, however ruinous, of our own. It is not, however, necessary to compare these duties; we may act upon both without weighing one against the other. To discharge both we must retain, to the best of our ability, the paramount position that we hold.

In partial answer, then, to one of the questions from which I started, I would say that one of our great aims in India should be to contribute to the strength and permanence of the paramount power. It does not follow that within the realm of peace maintained by that power there should be no growth of nationalities. I have so far been considering the relations of India to the rest of the British



empire, and I now come to the internal political arrangements of India itself, which are more closely connected with the general subject of this book. I shall presently have something to say on ideas of nationality in India; but first I wish to remark that in India we already possess a working *kriegsverein*.

As to one of the two elements in a *kriegsverein* already mentioned, the whole foreign policy of India is, as I have often said, controlled by the British Government. As to the other element, the Indian share in the organisation of common defence has of late received great attention. I was present at Patiala on November 17, 1888, when Lord Dufferin, in a very important speech, explained the policy of the Government of India in regard to certain loyal offers which had been made by native chiefs. Lord Dufferin said that in 1885, when war seemed imminent on the north-west frontier, the native princes of India came forward in a body to place at the disposal of Her Majesty's Government the whole resources of their states. Again, in the year of Her Majesty's Jubilee, many rulers of native states offered to contribute in a very liberal way to the defence of the empire. The Government of India did not think it necessary, or in all respects desirable, to accept from the native states the pecuniary assistance which they so freely tendered; but it asked the chiefs who had specially good fighting material in their armies, to raise a portion of their armies to such a pitch of general efficiency as would make them fit to go into action side by side with the Imperial troops. This policy has been carried out. In a large number of states Imperial service corps have been organised, which are available to join the Imperial forces in time of need. According to a telegram in the 'Times,' dated June 28, 1891, the Imperial service corps raised in Kashmir, the Punjab States, the Rájput States, Gwálor, Rámpur, and Mysore, then included forty and a half squadrons of cavalry, twelve infantry regiments, one mountain battery, and some camel and transport corps and sappers, in all nearly 16,000 men. These troops were said to be fit for service in every respect. They have been organised with the advice of Lieut.-Col. Melliss, assisted by thirteen British officers.

With reference to this very interesting movement, I would venture to suggest for the consideration of those who are acquainted with feelings and possibilities in the colonies, whether the principle upon which we have acted in this





matter in India is not so far correct as to be capable of wider application. We do not ask the states to contribute to the cost of our forces; we ask them to organise efficient forces of their own; and in order that they may have the less difficulty in doing so, we place skilled advice at their disposal. The whole question of naval defence rests on a different footing; but limiting myself to military defence, I would ask whether we should not gain a great moral and material addition to the strength of the empire if there were in the great self-governing colonies special forces, equipped, armed, and disciplined in a uniform way, available for service in Imperial defence side by side with the troops of the United Kingdom. As in the case of the Indian states, it would not be necessary that all the forces of the colony should be brought up to the same level of efficiency. But any further discussion of this subject would here be out of place.

I come now to the question of nationalities in India. I often see in published writings such expressions as 'the Indian people,' or 'the people of India' used as though there were but one people in the British Indian empire; and I have noted down the remark that 'railways may make India a nation.' It appears to me that it is incorrect to use such a phrase as 'the people of India,' except in the sense in which we may speak of the people of Europe or the people of America. What we call India is, in one aspect, an assemblage of a vast number of races, tribes, and castes; in another aspect, a group of numerous countries divided into provinces and states. India is no more inhabited by one people than Europe is, if by 'one people' we mean millions of individuals animated by a common feeling of nationality. There is probably as much difference between a Hindustani and a Kunbi of the Deccan as there is between a Pole and a French peasant; there is probably more difference between a Bengali and a Punjabi Sikh than there is between a Greek and a Highlander. It is a common experience for a stranger on arrival in a foreign country to suppose that the inhabitants, foreigners to him, are all very much alike. His eye is not educated to perceive the differences. So it is when we first glance at the surface of Indian society. There is a tinge over the whole of it which an unpractised eye is apt to mistake for a single colour. As we become habituated to the examination of what lies before us, we find that the surface is really a mosaic of extraordinary diversity and irregularity, the roughly-shaped materials of races and tribes



and creeds and castes, and their innumerable sections and divisions, being jumbled together in no decipherable patterns, one set of materials predominating here and another there, leading sets constantly reappearing at great distances, and the whole resembling a map entirely composed of petty fragments of states intermixed inextricably, with endless interlacing of jurisdictions. If we cleave the surface and penetrate to the underlying structure, we come across evidence, if not of design, at any rate of causation. There is stratification everywhere. Untold ages of immigration and migration, of wars and conquests, of the spread, decay, and petrification of creeds, have heaped tribe on tribe and race on race and religion on religion. The lines between each layer are still sharply cut, and we see that these are the mines from which the varied materials of the surface mosaic were drawn, and that the causes of caste lie deep in history.

The distinctive characteristic of Indian society is not nationality, but caste; and in the order of development I think the caste stage of society is earlier than the national stage, but later than the tribal stage and derived from it. We are familiar with the fourfold classification of Mann, with the enumeration of Bráhmans, Kshatriyas, Vaisyas, and Sudras. The priests, the soldiers, the traders, and the slaves are to be found in many ancient societies. But it would be as rational to go to Mann for instruction about the present condition of India as to go to the Republic of Plato for instruction about the present condition of Greece. In the census of 1881 there were recorded 855 important castes or tribes, including all which numbered one thousand or upwards, or which were found in more than one province or state. Of these groups, forty-seven contained more than one million members each; twenty-one more than two millions; and the Bráhmans, Kunbis, and Chúmárs each more than ten millions. Including unimportant tribes and castes and the recorded subdivisions of the important castes, the number of separate groups was 2,889. The boundaries of tribal and caste distribution are not coterminous with the boundaries of religions. On conversion to Islám the tribal name and the tribal customs are commonly retained. In the Bombay Presidency and Berar there are members of the same castes of whom some are Jains and some are Vaishnavu Hindus. Nor are the tribal and caste boundaries coterminous with language boundaries. Rájputs and Bráhmans, Chúmárs





and other numerous castes are found in all parts of India speaking the language of their place of birth as their mother tongue. As a general rule, however, the members of a single caste or tribe do all of them profess the same religion, and change of religion may occasion loss of caste or even promotion in caste according to circumstances.

I have so far taken the caste and tribe together, as was unavoidably done in the census, but to advance another step we must distinguish between the caste and the tribe. A tribe is a community united by the fact or fiction of common descent: it is a great family in many sections or branches. The idea of the members of a tribe is that they are brethren or kith and kin; it is this sense of kinship that rounds off the tribe from the rest of the world; and we can well understand it from the traditions of Highland clans and their present survival in Scotch cousinship. In the caste the fact or fiction of common descent still has great strength, but it operates in the several groups of which the caste is composed rather than in the caste as a whole. Descent is still a dominating principle of society, for, though rajas may sometimes have promoted people from one caste to another, in an orthodox view a man belongs to that caste in which he is born; but other principles, marks of migration, of conquest, of superiority gained by race over race, have come into play. Marriages are carefully regulated; certain kinds of food are forbidden, kinds of which the social inferiors freely partake; social intercourse with inferiors, especially in connection with food or drink, is greatly restricted or prohibited; certain occupations, the common pursuits of inferiors, are absolutely interdicted on pain of exclusion from caste. There is a still later development when birth ceases to be the dominating principle of society, and the position of birth is taken by occupation. The organisation of a trade caste may copy the organisation of a caste of birth in its ceremonial rules and modes of enforcing them. But there is a marked difference between castes to the members of which certain occupations are prohibited and castes which are based on the fact that the adult male members follow a given pursuit or trade. The trade caste shades off into the trade gild, in which the bond of union is the common occupation, and birth and descent are immaterial. All these varieties may be studied within the limits of a single province. On the Punjab frontier we have, amongst Patháns and Baluches, perfect specimens of the



pure tribe. The Jats, the staple of the Punjab peasantry, are organised in tribes and follow caste observances; their discrimination from Rájputs, though certain, is a matter of some nicety. Rájputs are a pure caste, and so are Bráhmans, and both bear marks of tribal descent. Amongst trade castes we may instance carpenters and goldsmiths. Tailors form a purely occupational group. Though there is a tailor gild perhaps in every town, there is no *darzi*, or tailor caste, in the proper acceptation of the term. Generally we have first the tribe, then the caste, showing conspicuous signs of its tribal origin, and finally the purely occupational group, in which the tie of blood has ceased to be a principle of association. At one end of the series is the tribe, at the other end the trade gild, and the intermediate term is the caste. And the essential marks of the caste proper are not really so foreign to our own experiences as we are apt to suppose. They are discriminatory social rules in the matters of food, marriage, and occupation. In our society, of which only a comparatively small part still derives its conformation from principles of inheritance, we do not ordinarily dine or intermarry with those much above or much below us in the social scale.

In international law the word 'nationality' has a clear, though narrow and technical meaning. A state enjoys nationality if it is a member of the family of nations: if it is independent, and capable of entering into relations with other independent states without the consent of any superior. In this discussion, however, I do not use the word in that sense, but in a popular sense. The term 'nation' has been said to signify, in the popular sense, a society bound together by unity or affinity of race, language, and custom. Though all or some of these points of affinity may enter into the popular idea of any particular nation, I do not think any one of them is essential to the general idea of nationality. Switzerland and Great Britain, for instance, afford instances of communities possessing common nationality, and differing in race, language, and certain laws. It is, no doubt, extremely difficult to frame any description, still more any definition, of nationality which could not at once be contradicted by facts. But for present purposes I will say that nationality seems to me to be a matter of feeling, of tradition, of association; the sentiment of nationality is one of union between those who share it and of discrimination from the rest of the world; those who hold themselves to be members



of one nation must have the tradition or hope of some common political life—that is, of habitual combination for some common political object or of allegiance to some common political superior; they must associate that tradition or hope with some particular country where they were born or from the inhabitants of which they are not very remotely descended; they must be ready to extend good offices to each other on the sole ground of hereditary connection with that country; and they must be prepared to make sacrifices for the common good of those who have, in common with them, the same associations and traditions. In early times we see most of these feelings animating the village or the tribe, which regards all outsiders as foreigners and probably all foreigners as enemies. With wider knowledge, wider interests, and the disintegration of primitive groups, this narrow hostility to the rest of the world gives way; but it is long before international amity is reached, and the sentiment of nationality itself has in it a strain of the old sense that an alien is an enemy. The sentiment of nationality is further distinguished from the community of feeling which may exist in a village or tribe by its diffusion over a society of sufficient volume to be capable of political life, and by the substitution of an hereditary tie of birth in a particular country for the tie of village or tribal descent. Nationality, I think, includes the ideas of a fatherland, of that sympathy between those who have a common fatherland which may be termed the brotherhood of fellow-countrymen, and of that devotion to the common cause of such a brotherhood which we call patriotism. The sentiment of nationality, thus understood, if combined with sincere and generous respect for the same sentiment in other nations, is a most powerful means of elevating human character. It is not an extended selfishness, but unselfishness reasonably applied. Nationality in this sense must not be confounded with the many circumstances that in various combinations give rise to it. Amongst these are community of race, language, laws, customs and institutions, government, and religion; also—an important point—community in antagonism to other races, religions, governments, or states.

Applying these remarks to India, I will speak first of the many millions who retain their hereditary ideas, not of the comparatively few thousands who have been educated in English or who have in this or other ways derived from Western sources their views of politics and some of their





views of life. In India generally—that is, in India untouched by Western education—I see only the faintest traces of the idea of a fatherland. An Indian travelling in India at a distance from his home will describe himself as a *pardesi*—a foreigner. Mountaineers love their hills, and suffer in the plains from a true nostalgia. There is deep local attachment, but it is attachment to the village, to the country side, to the glens and precipices where the hill-man and his forefathers were born and bred, not to a country. Without a country there can be no patriotism; and the brotherhood which exists in strong and admirable force is the brotherhood of the tribe or caste, not of the fatherland. There is loyalty in service voluntarily undertaken; it is a reproach to any man to be untrue to his salt; there is loyalty to a tribal chieftain, a spiritual leader, an hereditary raja. But I have not observed that particular form of virtue to which we refer when we say that a man is devoted to the good of his country. That form of virtue appears to me to be a growth only possible in a stage of society later than that to which India, untouched by Western education, has attained.

On the other hand, in the class that has been penetrated by Western ideas, no doubt the language of patriotism is freely used; nor should we allow any distaste for particular modes in which common sentiments find expression, or any collision between official traditions and new facts, to blind us to the value of feelings which are worthy of praise in proportion to their sincerity and are likely to be beneficial in proportion as they are guided aright and do not, by some powerful and unlooked-for impulse, escape the control of those who are seeking to guide them. I should not speak the truth here did I not add that, while I see elements of hope in the new movements of educated India, I think also that there is some risk in the way that discontent is sometimes fanned. Agitation is a heady beverage for a hot climate; and if the draughts of it are too strong and too frequent, there may be scenes of excess and a bitter awakening. The risk to which I refer is not a risk to the Government, but to those who may suffer if agitators are unwise, and to the cause of progress, which may be retarded by unwisdom.

My chief object, however, in making these remarks is to explain that if anyone supposes that the 220 millions of British India can or ought to be made into one nation, he entertains what is, in my humble opinion, an impracticable



ideal. I think such an ideal is shown to be illusory by general history, by the present structure of Indian society, and by the history of India itself.

If anyone who has had practical experience of the scheme of Indian government will turn over the pages where Gibbon describes the new form of civil and military administration established by Constantine in the Roman Empire, he will see at a glance that our own similar circumstances in the East have produced, not indeed an identical, but a similar polity. There were the four great governorships under the Prætorian Præfects—the governments of the East, of Illyricum, of Italy, and of the Gauls. We have five—Madras, Bombay, Bengal, the North-West, and the Punjab. Under the præfects were the vice-præfects or *vicarii*; and under them the district officers of various ranks—the *consulares*, the *correctores*, the *præsides*—just as we have our commissioners of divisions and our magistrates and collectors or deputy-commissioners of the first, second, and third classes. These Roman officials, says Gibbon, ranked in successive order, and their situation, from accidental circumstances, might be more or less agreeable or advantageous. How well we in India know the claims of seniority and the strong preference felt, say, for a Behar district over a Bengal one, for a hill station or a good cantonment with plenty of society over a mere civil station off the line of rail three or four hundred miles from the Himalayas or the Neilgherries! The position of the proconsuls of Asia, Achaia, and Africa was more important than that of the officers of districts under the vice-præfects. The proconsuls of Asia and Africa were directly under the emperor; the proconsul of Achaia may have been under the præfect of Illyricum—he certainly was not under any vice-præfect. Have we not our Chief Commissioners of the Central Provinces, Assam and Burma, directly under the Government of India? Is there not a commissioner in Sindh, all but a Chief Commissioner, under the Governor of Bombay? The præfect of the East commonly attended the imperial court; for some months of the year the Lieutenant-Governor of the Punjab, for the rest of the year the Lieutenant-Governor of Bengal, has the same head-quarters as the Government of India. With the emperor there were the ministers of the palace, discharging, through enormous secretariats, a variety of duties connected with all parts of the empire. I have not traced any separate department of foreign affairs; but interpreters were appointed under the *master of the offices*—one of



the great head-quarter officials—to receive the ambassadors of the barbarians. The *Count of the Sacred Largesses* appears to have combined some of the functions of the Financial Member of Council, the Secretary to the Government of India in the Department of Finance, and the Comptroller-General. Under the Roman treasurer-general the accounts of the empire ‘employed several hundred persons, distributed into eleven different offices, which were artfully contrived to examine and control their respective operations.’ An Anglo-Indian feels no surprise on hearing that the multitude of these agents had a natural tendency to increase. There were twenty-nine provincial receivers, and the jurisdiction of the treasurer-general extended, as does that of the Department of Finance, over the mints and public treasuries. We have our accountants-general and our deputy-accountants-general in the several provinces, and it is curious that this Roman minister regulated the foreign trade of the empire, and that our department is not merely the Department of Finance, but also the Department of Finance and Commerce. Of course the list of differences might be made equally long. The ministers of the palace were ministers of state, not members of council. The powers of the præfects, vice-præfects, and district officers were differently regulated; we have no army of spies scattered over the empire; to supplement the defects of evidence we do not permit the use of torture. But after making every allowance for numerous and important differences, we find that the resemblances are far from superficial. Gibbon enlarges on the text that Asiatic government corrupted Roman simplicity; but we know by experience that the form and practices of administration must be adjusted to the character and expectations and habits of subject societies. We need not join in Gibbon’s sneer at the severe subordination of rank and office; the elaborate regulation of precedence; the titles of ‘your Sincerity,’ ‘your Excellency,’ ‘your Eminence,’ and ‘your Highness;’ the distinctions between the *illustres*, the *spectabiles*, and the *clarissimi*; nor even at the pageantry with which the representatives of the emperor appeared. We know very well that severe subordination of rank and office is essential to civil discipline; that an exact warrant of precedence is socially an absolute necessity; that the titles of ‘his Excellency’ for a Viceroy or Governor or Commander-in-Chief, of ‘his Honour’ for a Lieutenant-Governor, of ‘the Honourable’ for members of Legislative Councils, and our





long array of orders, with their Grand Commanders, Knight Commanders, and Companions, have their political and official value; and that there are times and occasions when there may be political wisdom in display. Throughout the great provincial governorships under Constantine the military command was separated from the civil government, as it is with us; and the critics of our military system may perhaps find a whetstone or two for their weapons of attack in the legions of a strength enormously diminished, the lowering of the standard of height, the extreme difficulty of keeping up army strength by voluntary enlistment, and the ever-extending employment in the Roman armies of Scythians and Germans and Goths. An elaborate comparison might pretty easily be made between the Roman settlements of the land-tax for fifteen years and our settlements of the land-revenue for twenty or thirty years. But perhaps it is in legislation and the administration of the law that the resemblances are most striking. The court of the Præfect of the East furnished employment 'for one hundred and fifty advocates, sixty-four of whom were distinguished by peculiar privileges, and two were annually chosen with a salary of sixty pounds of gold to defend the causes of the treasury.' In India we have advocates, including barristers-at-law, and, in a less privileged position, pleaders of the first or second grade. In July 1891 the advocates of the Chief Court of the Punjab numbered fifty, and the pleaders 260. In the same province, for purposes of Government litigation and as legal advisers of Government, we have a Government advocate on a salary of 1,800 rupees a month, and a junior Government advocate on a smaller stipend. The juridical writings of authority under the empire before the consolidating recensions of Justinian must have exceeded in bulk the old Bengal, Madras, and Bombay Regulations before we began the practice of codifying Anglo-Indian law. Ulpian, who died in the time of Alexander Severus, nearly a century before Constantine, composed a work in ten books concerning the office of a proconsul. In the fourth century, it is said, many camels might have been laden with law-books. Men were encouraged to study law as a means of obtaining Government employment. The Romans suffered, as we do, from the invasion of the ranks of the honourable profession of the law by unprincipled pettifoggers of low birth who fomented disputes and brought their clients to ruin. And the Romans, like ourselves, confronted the endless variety of local and



tribal usage with sweeping activity in legislation. The edict of Caracalla, which gave the Roman citizenship to all the Roman world, was not merely a measure of finance to extend the operation of the Roman legacy duty; it was also an equalising measure—one that greatly extended the application of Roman law.

What, then, it will be asked, is the moral of all this comparison? The Muhammadan conquest of Turkey has again brought under Oriental government most of the territorial divisions that were under the Præfect of the East. Egypt now, as then, occupies an exceptional position. In the Præfecture of Illyricum the Greek nation now holds the proconsulate of Achaia. In the Præfecture of Italy the fate of the northern shore of Africa is still uncertain, but Italy herself has become a united nation in our own day. In the Præfecture of the Gauls the seven districts of Hispania are now Spain and Portugal, the five districts of Britain are England, Wales, and part of Scotland. Most of the remaining seventeen districts which formed the third division of this præfecture now constitute France. We will trust that the British Empire in India will not fail from the gradual disappearance of Britons of the hereditary stamp, or be divided amongst invading barbarians from Central Asia or China. But so far as the greatest analogy in history, the analogy between the Roman and British-Indian Empires, throws light on the future before us, I think it suggests that some time, far down in coming centuries, we may have in India not one nation but many.

I draw the same inference from the existing composition of Indian society, and the distribution of provinces which our own history in India has brought about. If we look at some of the principal circumstances which tend in combination to produce nationalities, we shall see that in India we have not community but great diversity of race, language, laws, customs, government, and religion. In all, except government and laws of our own making, this diversity seams almost every part of the Empire with innumerable dividing lines which cross and mingle with each other and utterly ignore our hard-and-fast political boundaries. Wherever Muhammadan conquest ended in Muhammadan settlement, wherever orthodox Hinduism gathers its skirts from the defiling touch of the votaries of aboriginal creeds, we have diversity alike of race and of religion. Tribes and castes, scattered over the face of the country, carry with





them their own customary laws; our courts administer in many important matters, such as succession and personal relations, the Muhammadan law, in cases where the parties are Muhammadans, and the Hindu law, in cases where the parties are Hindus. By one careful computation I have arrived at the result that there are fifty-three separate languages in India and Burma; but any such estimate is open to doubt unless made by some skilled philologist equipped with some certain test for discriminating languages from dialects. It is sufficient for me, without pinning my faith to any particular number of tongues, to point to some of the best known varieties of speech, of which several overlap frontiers or provincial boundaries. Within and without the Punjab frontier there is Pashtu in the north, Baluchi in the south. In the Central Punjab we have Punjabi; in the hills a number of hill dialects. Hindustan is full of varying dialects of Hindi. Assam has a language of its own, and is fringed with hill tribes speaking different dialects or languages. In the Bengal Lieutenant-Governorship, besides dialects of Hindi, we find Bengali and Uriya. In parts of the centre of India primitive tribes speak Kolarian languages. On the East Coast there are Telugu and Tamil; on the West Coast Malayalam and Kanarese, the last spreading over Mysore and into parts of the Nizam's dominions and of a few districts of the Madras and Bombay Presidencies. Another great language of the Bombay Presidency, but by no means confined to it, appearing also in the Nizam's dominions, Berar and part of the Central Provinces, is Marhatti. Further north in the same Presidency are Gujarati and Sindhi. Generally, after allowing for the fact that identity of language is no conclusive proof of race affinity, we may believe that the primary groups of Aryan languages in the north and west, of Kolarian languages in a few small patches in the centre, of Dravidian languages in the east and south, and of Thibeto-Burman languages in Burma and a small part of the British Himalayas, coincide with deep-seated differences of race. It is also not improbable that the separation of languages within these groups indicates, in many cases, a like diversity of origin.

But does not this great diversity of race, language, laws and religion prove too much? Does it not suggest that the inhabitants of almost any considerable area, except the few tracts still held by primitive tribes, are so divided by caste, religion, language and customs, that a national spirit





amongst them is impossible? I think we may conclude that no nation has yet been formed in India, and that the diversity is too great to allow any probability to the conjecture that one nation ever will be formed out of the whole. But that a good many nations might, in time, be formed is a guess that has some ground in experience. At the outset, in the times of Cæsar and Tacitus, Western Europe was broken up into comparatively small tribal communities. Later on, the migrations of the barbarians established different races over large areas now combined in nationalities; and these and other movements of population pushed back to western and northern outlying regions races or tribes of earlier origin. On the whole, identity of language, laws and government has been more powerful in forming nationalities than have been differences of race and religion in preventing their formation. In India, as we found it, there were two great tendencies at work. On the tendency towards feudalism I have written at length; to this justice has been done by our political system, which has preserved in a common allegiance a very large number of separate states. As to the other tendency, a tendency towards national life, I have briefly pointed out that it was confined to the Sikhs and the Marhattas. All the European nations of the West passed through feudalism to nationality, and the incipient nationalism of the Marhattas and the Sikhs was associated with a sort of never fully realised feudalism. The strength of the tendency amongst Sikhs and Marhattas was due to community of religion, language, style of government, and, in a less degree, of race; it was due also in large measure to union based in each case on antagonism to the Delhi Empire. In the course of our progress towards our position as the paramount power, we came into collision with the Marhattas; and at a later stage, when that position had long been established, the weakness of the Sikh government and the turbulence of the Sikh army brought us into collision with the Sikhs. Perhaps it is partly for this reason that we have hardly ever even speculated on the idea of founding nationalities in India. Nevertheless it seems possible, that without the slightest intention of adopting any such policy, we may be unconsciously preparing for it in the distant future. Although languages overstep political boundaries, there are, under each important local government and administration, enormous tracts where the same language prevails. In these tracts, taken severally, we have



an identity of speech, of many important laws, of government, and, amongst prominent or powerful classes, perhaps also of race, which, with the stimulus of education, railways, books and newspapers, may develop community of feeling in regard to public affairs. If we anywhere see this community of feeling appear, I think—always supposing loyal sentiments simultaneously to prevail—that we shall do wisely to encourage it. I am far from holding that we should foment or maintain the dissensions of the people that we may rule them with the greater ease. On the contrary, I look upon the dissensions which often arise as one of the greatest obstacles to good government; and I think we should always earnestly try to persuade the people to lay aside their dissensions and act together for the common good. The sort of movement I have indicated might be met in that spirit; and I firmly believe that if courage and generosity on our part are reciprocated by undiminished loyalty on the part of the population, the existence in a number of important tracts of great groups animated by public spirit and able to express their common desires, would facilitate the task of government and add to our political strength.

At present we are far indeed from any such consummation. In the societies whose affairs we have to control, we see deep divisions and bitter feuds. There are many individual instances of philanthropy and munificence; and in the brotherhood of caste there may be a germ of public spirit. But the brotherhood of caste may also mean contempt, or even loathing, for those outside the pale. Can any one point to any large body of Indian people who are habitually actuated by public spirit? In local affairs, in the work of boards and committees, the want of public spirit is a frequent theme of official regret. I think I perceive traces of public spirit in some of the voluntary associations and societies which are now multiplying all over the country; but the leaders of these associations should carefully guard against any tendency to feed and strengthen religious and class animosities by the expedients of declamation and propagandism. In a larger field we hear the cry of India for the Indians. If that cry means the subversion or removal of the paramount power, it is distinctly seditious; and its adoption in that sense should, in my humble opinion, without hesitation be punished as sedition; because the aim so implied points to the greatest misfortune that could befall





India. This meaning of the cry has been expressly repudiated by the Indian National Congress. In my belief, the true meaning of the cry is that we have given, and are giving, a Western education to a far larger number of men than we can provide with suitable employment under government; that discontent amongst the educated classes is the natural result; and that what is desired is the opening of more numerous posts to the educated men. This difficult and thorny question has, we may hope, been settled for a considerable time by the orders of the Secretary of State on the report of the Public Service Commission. For myself, I may say that I am in favour of extending the employment of the natives of India as much as is compatible with the just claims of men already in the various services, both natives and Europeans, with reasonable prospects of good administration, and with the strength and security of the paramount power. The discontent is probably too strong, has perhaps been too much fanned, to be appeased by concessions made under such limitations. We may try to prevent its further growth by encouraging diversity of occupations, and by giving our system of education a more decisive bent towards other avenues of employment than government service. The keen agitation in this particular matter is only not commonplace because of the peculiar political circumstances under which it has arisen; because it has been more or less mixed up with other kinds of political agitation; and because there is always in India a danger that agitation, by some sudden and unexpected turn, may arouse race animosities. To suppress those animosities, if it be possible to eradicate them, will be the sincere desire of all wise men, native and European, in the country. In this particular agitation I do not see any germ of a general Indian nationality. I think the wisest turn that could be given to it would be to localise its application, and to ask for the employment of Punjabis in the Punjab, Hindustanis in Hindustan, Bengalis in Bengal, Marhattas in the Marhatta country, and so on all round the map. Indians in provinces far distant from their place of birth are as much foreigners as we are; and to employ Indian foreigners as well as European foreigners is an unnecessary and, in some cases, a risky complication.

I have said that on the question of the relation of India to schemes of imperial federation our tone of mind ought to be eminently conservative. This is specially true in the





case of the native states. Since we abandoned the doctrine of lapse, we have only, I think, to maintain and apply with firmness and consistency the present principles of action. Neither uniformity nor variety is an end in itself; of the two, some variety in systems of government, by meeting and developing different kinds of character, and demonstrating the success or failure of particular changes, is more likely to foster healthy and vigorous life than a dead level of sameness on every side. We need not, however, fear that the isolation of individual states will result in startling varieties of system. What the old systems were, we know. We also know that in Madras and Bombay—provinces that have been long under British rule—there is a growing conformity in the governments of native states to the principles and modes of administration in force in British territory. The exception of Khairpur, under the Bombay Government, is instructive; for that state is in Sindh—a much later acquisition. I believe that in course of time the administration of native states will become more and more closely assimilated to that of British districts, and will cause, as it improves, less anxiety.

In the case of the provincial governments and administrations I think we should be very conservative, in the sense that we should distinctly satisfy ourselves that every important change is by way of real growth springing out of the past that has been so carefully pruned and trained by our predecessors. I wish I could feel sure that in British territory we were as secure from the deliberate application of wrong systems as we are in native states, if no material change be made in the present policy towards them.

Public opinion in England on Indian questions is often insufficiently informed; and I need not repeat what I have said elsewhere on the dangers of departmentalism and of certain methods of legislation. I was employed for three and a half years in one of the Government of India secretariats, and I have been employed in a local government secretariat for many years. I have thus had the advantage of feeling the nexus between the local and supreme governments from both ends of the chain. As one result of the experience so gathered, I will venture to say that I think there is in India a distinct danger of over centralisation. To bring up to a central office questions which can be as well or better determined by a local authority, is to waste time and strength; it is to paralyse the central office by drawing





upon it an ever-increasing burden of unnecessary work ; and it is to paralyse the local authority by wearisome delays, by misunderstandings leading to voluminous explanations, and by the discouragement of initiative and of the acceptance of responsibility. I have often thought that the time has come when it is desirable to lay down some clearer distribution of duties as between the local and supreme governments. From the local point of view the most attractive suggestion is that the principle applied in regard to the native states should be applied also in regard to the Local Governments ; and that there should be no interposition in internal affairs except in case of misgovernment. But I am well aware that to any such rule there would be forcible, I do not say insuperable, objections. The supreme financial authority has a vital interest in the fiscal administration of British provinces which is absent in the case of native states ; and each province ought, no doubt, to have the benefit of the experience collected from all. But there is, I think, an evil requiring a remedy so far as it is a temptation of a strongly-officered secretariat—and this applies to my own secretariat, in relation to the authorities under the Local Government, as much as to any other secretariat—to take the work by minute or frequent directions out of the hands of the local functionary. The true corrective here is, by an even wider application of the decentralisation policy, to prevent the references coming before the central authority at all. If a matter comes before a central authority, conscientiousness, industry, desire of distinction, even ability, combine to make the treatment of that matter as comprehensive and exhaustive as possible ; the result is that the local officer may shrink from making proposals lest they be set aside, may avoid stating objections when he feels that the responsibility is not really his, and may end by allowing the central authority to do his work for him ; when it will be done much worse than he could do it, and at slower speed. The cure is to compel the local authority to dispose of the matter ; subject, in cases of sufficient consequence, as in the passing of laws, to reversal or rejection of the result, if there be serious defect or error.

The decentralisation policy, as is well known in India, is twofold. It began with the Indian Councils Act of 1861, which provides for the formation of local legislatures. It was continued by the financial arrangements dating from the Viceroyalty of Lord Mayo. In the important subjects of finance and of legislation, when some existing obstacles are





removed, we may press on in the path of decentralisation ; forming local legislatures in the provinces that as yet possess none as soon as a sufficient number of competent people can be found for seats in nominated legislatures and there is a reasonable prospect that the Local Government or Administration, so assisted, will be able to pass judicious laws ; and increasing at each renewal of the financial contracts with the provincial governments the responsibilities of each province in the matter of finance. Of partially elective local legislatures, I do not think it is yet time to speak. When the Government of Bengal or the Government of Bombay proposes any measure involving the principle of election as regards a certain number of the members of the legislative council, it will be soon enough to give a project of that kind serious consideration. Bengal and Bombay are, I think, the provinces where Western education has the widest or most powerful hold ; and surely in measures of this kind it is reasonable to await local initiative.

In decentralisation on the above lines I see many advantages. By pursuing it we shall be the better able to introduce measures in an experimental way in particular districts or provinces. We shall be under less temptation to hurry on the same pace everywhere. We shall be more easily content with some step in advance amongst populations where it would be safe and where it is really required. We shall be less disposed to press for changes in backward parts of India where they would be dangerous or even ridiculous. Nor do these and other advantages appear to be outweighed by the usual objections to a number of local legislatures and the severance of local laws. In the departments of law which relate to succession and private conditions there is already great and unavoidable diversity, due to the presence in the same provinces of Hindus, Muhammadans, Buddhists, Parsis and many other groups, each of which has its peculiar body of jurisprudence or customary law under these heads. The inconvenience arising from the conflict of laws of contract are probably met by the existence of the Indian Contract Act. The control of the supreme government would prevent the adoption in any province of measures which would embarrass the government of any other. The same control, exercised through the assent of the Governor-General to the laws passed, would prevent any evils which might be supposed to arise from local prejudice or narrowness of view. Not



only would all the local governments be kept continuously informed of advantageous measures introduced anywhere in India, but, to judge from previous practice, it would almost always happen that the officer presiding in a provincial legislature would have far more than merely provincial experience. The Governors of Madras and Bombay usually come to India from English political life. As regards other provinces, it will suffice to say that the Lieutenant-Governor of the Punjab has served in the Government of India, in three great provinces, and in two great native states; the Lieutenant-Governor of the North-West has served in Egypt and as Financial Member of the Viceroy's Council; the Chief Commissioners of the Central Provinces and Burma have both served in Bengal and in the Government of India; the Lieutenant-Governor of Bengal has served in the North-West and in the Central Provinces, and has also been Famine Commissioner in Mysore, Secretary to the Famine Commission, Census Commissioner, a member of the Finance Committee, and Public Works Member of the Council of the Government of India. With men of such wide and varied experience to guide local legislatures, we need not fear provincialism of opinion. Even if under all these heads, or any of them, difficulties are anticipated, there would be ample compensation in the immense benefit of enlisting the best local ability and experience in local work and of forming and strengthening character and ties of sympathy by the activities and common duties of responsible legislation.

What, it may now be asked, is the outcome of all this advice and speculation? While I would leave the Indian states to their own development, do I propose that by further measures of decentralisation and by encouraging public spirit and eventually national spirit, we should seek to form nations in our Indian provinces; and that nations and states alike should be united in the bonds of peace under one supreme government charged with those powers and duties that are usually assigned to central governments in federations? I reply that the time is far from ripe for any such proposals. The limits of the provinces themselves cannot yet be regarded as fixed with finality. A good many changes in the way both of consolidation and separation have been made in our time; and more may be impending. It is easy to see that hereafter, as work of all kinds increases with the increase of education and commercial activity, the subdivision of some provinces may be recommended by administrative require-

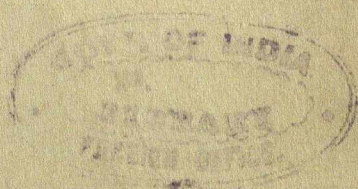




ments and differences of language and race. Moreover, though we may improve the distribution of public business and authority, formal proposals for encouraging the growth of public spirit or national spirit would be both ridiculous and impotent. Great as are the opportunities of the Indian Government, it is quite unable to mould Indian societies at its will. There are forces which may make nations out of the loose agglomerations of material whirled together in the orbits of great empires; but these forces are beyond governmental control. The most we can do is to try to ascertain the actual tendencies of our own day, and to reconcile those tendencies with just and wise aims. In that endeavour we may easily be led on to guess from past history and present circumstances what shapes may hereafter be taken by the fragments of former empires and states now linked to us by indissoluble ties and hastening with us through time we know not whither. But we must not mistake our guesses for proposals, or allow any wish that they may prove true to warp our judgment as to their possibility.

Besides the Indian provinces and states, there are other states also linked to us by ties which I hope may prove indissoluble. I may be mistaken, but I think I perceive, from what I have heard and read of Canada and Australia, that there has been in each the birth of a spirit of nationality that is compatible with continued allegiance to the British Empire, with continued association for purposes of defence with the Home Government and other colonies. In Indian provinces and states the spirit of nationality is not yet born; and should it come into life, we have not with them the same ties of race and feeling that we have with the Colonies. Still, the ideal of a number of nations and states in India, united in peace and loyalty under a common sovereign, however remote from present facts, is not, I think, unworthy of a great country which may be said to be already the mother of great nations in two quarters of the globe.

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