

# OUR INDIAN PROTECTORATE

# OUR INDIAN PROTECTORATE

AN INTRODUCTION TO THE STUDY OF
THE RELATIONS BETWEEN THE BRITISH GOVERNMENT
AND ITS INDIAN FEUDATORIES

BY

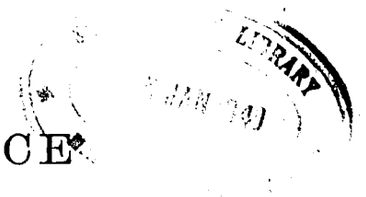
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# PREFACE

It is important for me to say that the following treatise possesses no official authority. The whole of it has been written during various periods of leave. No government, no officer of government, either asked me to write this book or suggested to me that I should write it. It is as a private individual, temporarily relieved from official duties, that I offer the opinions expressed in the text. In so doing I neither wish to commit, nor have I the slightest authority to commit, the government I serve.

The Indian Government allows its servants much freedom of discussion; but necessarily this privilege is enjoyed on the understanding that official confidence must be scrupulously respected, and that information obtained in the course of official duties or by means of an official position must not be used in such a way as to cause public inconvenience or embarrassment. Parts of this book deal with subjects of great delicacy; and throughout I have constantly had to face the anxious and difficult task of determining what portions of the information before me I might, without impropriety, include in a published work. My object has been, so far as in me lies, to further the cause of good government and to strengthen the hands of authorities whose good intentions none but the ignorant can doubt. I trust that the sincerity of this desire will have guided me aright in the choice of material.

The consideration of questions concerning an Indian feudatory state usually involves much historical detail. The treaty or other engagement, if any, with the state must

be read; and often the whole internal and external history of the particular state during a long course of years must be passed under review. In this work I have avoided all historical detail of this description. I do not attempt to recount in detail the actual relations between any one state or any one group of states and the British Government. But I have thought that an introduction to the detailed study of the actual relations in particular cases might be of use to those who, in India or England, may have to form opinions upon matters in which the Indian feudatory states are concerned.

The information necessary to the formation of just and accurate opinions upon these matters is scattered about in a number of books of history, in some special works relating to India, and in a vast quantity of official documents, of which few are accessible to the public. It has been my endeavour to bring together in a compendious way the essential portions of this information.

The first six chapters of this work were written and privately printed in 1887. I have now revised them and added a few pages to the first and second chapters.

The first chapter, which distinguishes between international law and Indian political law—defined as 'the rules and principles governing the relations which now exist between the British Government and the Indian feudatory states'—is of an introductory character. I am largely indebted here to Sir Charles Aitchison, without whose advice, encouragement, and help this work could not have been attempted. I must also acknowledge my obligations to two volumes of 'Lists of British Enactments in Force in Native States,' compiled by Mr. J. M. Macpherson, Deputy Secretary to the Government of India in the Legislative Department.

Chapters II. and III. give a brief sketch of the political history of the growth of the protectorate.

In chapters IV., V., and VI. I turn from the history of events to the history of ideas, and show from our own proceedings the origin and character of the present policy



towards native states. I see that in the chapter on the annexation of Oudh I use many of the quotations inserted by Sir William Hunter in his lately published little book on Lord Dalhousie in the 'Rulers of India' series. The coincidence is accidental, as my quotations were all selected and privately printed in 1887. After reading Sir William Hunter's book I have slightly modified one or two passages to make it more clear than I had made it before that Lord Dalhousie did not leave the doctrine of lapse quite as he found it.

I believe the existing system of relations with native states to be thoroughly sound, thoroughly beneficial, and capable of much useful development. But I do not expect that belief to be generally shared unless it can be shown that the system has other foundations besides the political history of the growth of British power and the proceedings of the British Government. The other foundations are discussed in chapters VII. to XV. inclusive.

In five chapters on Indian ideas of sovereignty and Indian institutions and feudalism I trace the intimate connection between the existing system and the past of India before British rule. If this portion of the work runs into too much detail for general readers, my excuse is that I hope a good deal of the information collected may be of use to those who are engaged in studying the history of institutions. I could not have attempted these chapters without the help derived from Mr. Freeman's 'Comparative Politics,' some essays in Sir Alfred Lyall's 'Asiatic Studies,' and the books and minutes of Sir Henry Maine. In this part of the work I owe a great deal to the official writings of Sir James Lyall, who is the brother of Sir Alfred Lyall, and was lately Lieutenant-Governor of the Punjab, and my own immediate official superior. I also owe much to the Gonda Settlement Report of Mr. Benett. Some of the remarks and illustrations have been anticipated in papers read by me before the Society of Arts and the Institutions section of the International Folklore Congress.

I ought also to mention that the information given in chapter VII. on the subject of the *Khán Khel*—a leading section in certain Pathán tribes from which the chief of the tribe is always chosen—has not before been collected, and is now published for the first time. I am indebted for it to the officers of the Peshawar division—Mr. Udny, Mr. A. F. B. Cunningham, C.I.E., Mr. W. R. H. Merk, C.S.I., Major H. P. P. Leigh, C.I.E., and Capt. E. Inglis. The statements made in the text in regard to the *Khán Khel* are taken mainly from the papers by Mr. Cunningham and Mr. Merk.

History is no sufficient justification of a policy which is not justifiable on moral grounds. There is the strongest moral justification of the existing system in the character of the governments of our predecessors in India and the persistence, at the present day, of some tendencies making for misrule. This is explained and illustrated in four chapters on native rule.

A short chapter on the limits of British interposition is then introduced to show on what principles tendencies making for misrule may be met and corrected; and a description is given of some advantages of native rule, which, notwithstanding certain imperfections, it is an object of the whole system to uphold and perpetuate.

I then return to the rules and principles of Indian political law, mentioned in the first chapter, and explain some of them in fuller detail in chapters XVIII. and XIX. on the 'Constitutional Position of Native States' and 'Some Obligations of Native Rulers.'

In connection with chapter XVIII. I have to thank Mr. C. P. Ilbert, C.S.I., formerly Law Member of the Council of the Governor-General, for much help and advice.

In chapter XX. on 'India and Imperial Federation' I indulge in some speculations as to the future, for which my apology is that they may perhaps possess a rather wider interest than the rest of the book. I have delivered a part of this chapter as an address at a meeting of the London



Chamber of Commerce and the City Branch of the Imperial Federation League.

Having now completed my book, I must confess that the work has been more arduous and more difficult than I anticipated. Much has been left unsaid. I merely offer a general sketch of a large subject which I do not profess to exhaust. Many passages which on reconsideration appeared disputable or injudicious have been erased. It has been my sincere desire to avoid controversies and to leave unwritten any words that might wound feelings or give offence. At the same time I have done my best to produce on all points a really true impression and to offer on some important questions the best advice that has occurred to me after a good deal of labour and thought.

C. L. TUPPER.

HARROW-ON-THE-HILL.

# CONTENTS


## CHAPTER I

INTERNATIONAL LAW AND THE INDIAN PROTECTORATE

PAGE

The work limited to the Indian protectorate—Characteristics of international law—The relation of the feudatory states with the British Government are regulated by Indian political law, not by international law—Relation of the law of nations to Indian political law—Sources of Indian political law—Its accepted principles—Position of a feudatory chief—The division of sovereignty and immunity from foreign law—Sir Henry Maine on the divisibility of sovereignty and the distinction between sovereignty and independence . . . . . 1

## CHAPTER II

THE EARLY GROWTH OF THE PROTECTORATE

Conversion of frontier into internalprotectorates—Growth of the Indian protectorate little affected by certain wars—Early administrators had no distinct theory of public law in India, but subscribed to the fiction of the supremacy of Delhi—Decline of the Moghal empire and oriental methods of the servants of the company—The support of pageant princes—Lord Cornwallis attempts to establish a balance of power—Condition of India in 1798—The theory of British supremacy supplants the theory of a balance of power—Reasons why the law of nations cannot be applied in India explained by General Wellesley, afterwards Duke of Wellington—The British Government refuses to assume the political position of the Delhi emperors—Use of subsidiary alliances as an instrument of Lord Wellesley's policy—Connection between Lord Wellesley's annexations and his political system—Political influence has advanced side by side with extension of dominion—Present general extent and character of the Indian protectorate . . . . . 20

## CHAPTER III

THE LATER GROWTH OF THE PROTECTORATE

Extension of the protectorate to certain minor states—Political condition of India in 1813—Political results of Lord Hastings' administration—Views of Sir Charles Metcalfe—The policy of non-intervention and its results—Gwâlior affairs and the war of 1843—Summary—Comparatively recent origin of Indian political law . . . . . 48

## CHAPTER IV

### THE ANNEXATION OF OUDH

PAGE

Reasons for discussing the subject—Oudh was annexed for misrule—The state of the country before annexation—Reflections suggested by the former condition of Oudh—Discussions upon that condition show Indian political law in the making—Opinions of Mr. Dorin, Sir J. P. Grant, General Low, Sir Barnes Peacock, and Lord Dalhousie—Unsettled state of Indian political law at the time—Dangers to which it is exposed when its history and principles are inaccessible—Lord Wellesley contemplated active interposition in the affairs of Oudh—Views of Mr. H. C. Irwin . 63

## CHAPTER V

### THE DOCTRINE OF LAPSE AND THE ADOPTION 'SANADS'

The doctrine of lapse threatened the extinction of the states of the protectorate—It was applied in good faith—Lapses in the Bombay Presidency and the Punjab—No lapses in Rájpútána—Cases of Sattára—Karauli—Tehri—Jhánsi—Nágpur—The arguments from expediency in the case of the annexation of Nágpur would not now be applicable in similar cases—Causes of the mutiny and rebellion in 1857—Loyalty of the feudatory chiefs—Their misgivings—Means taken to reassure them—The Amnesty Proclamation of 1858—The story of the adoption *sanads*—Consequences of Lord Canning's policy . . . . . 83

## CHAPTER VI

### PRESENT POLICY TOWARDS NATIVE STATES

Illustrations of the adherence of the Government to the policy inaugurated in 1858—The deposition of the Gaekwar of Baroda and the re-establishment of a native government in the state—The rendition of Mysore—The Delhi assemblage of 1877 and the assumption by her Majesty of the title of Queen-Empress—Her Majesty now stands in the place of the Delhi emperors . . . . . 114

## CHAPTER VII

### EARLY INDIAN IDEAS OF SOVEREIGNTY

In conceptions of sovereignty we are the heirs of the Moghals, and they were the heirs of the Hindu rajas—Summary of ideas of sovereignty—Tribal chiefship amongst Baluchis and Pathán—The Nawábs of Teri and Amb—The typical Hindu raja is the rightful recipient of a share of the produce of the soil—The typical Hindu raja of the Punjab Hills—The status of the rajas in the Gonda district of Oudh—The form of sovereignty in Rájpútána described by Sir Alfred Lyall stands midway between tribal chiefship and territorial chiefship—No symptoms in India of the change from the absolute monarch to the constitutional king . 128



## CHAPTER VIII

### SOVEREIGNTY IN THE INDIAN PENINSULA

PAGE

Summary of indications from the history of the Deccan and Southern India—The empire of Vijayanagar—The *poligárs*—The Bahmani kingdom of the Deccan—Its disruption—Causes of the persistence of despotism in India—Ancient tenures on the west coast—Rise and character of the principality of Coorg—Ancient tenures on the east coast—The legend of Tondeimandalam—The states of the Central Provinces—Difficulty of discriminating between British and foreign territory—Marhatta institutions—Rise and policy of Sívaji—The Marhatta ministers—The Marhatta system—Origin of Marhatta territorial despotisms . . . 153

## CHAPTER IX

### THE SOVEREIGNTY OF THE MOGHALS

The Delhi emperors and Muhammadan law—Official rank not hereditary—The provinces in the time of Akbar—Character of the administration—Meanings of the term *zamindár*—The *zamindárs* of the empire—The Bengal *zamindárs*—One theory of the origin of the office of *zamindár*—Hindu elements in the Delhi empire—*Zamindárs* were employed to exercise certain rights of the king—The actual position of the emperors—Similarity of type in the institutions of the Moghals—Brief general view of the Moghal empire compared with our own . . . . . 185

## CHAPTER X

### INDIAN INSTITUTIONS AND FEUDALISM

The principle that underlies feudalism may be universal—Phases of thought regarding feudalism in India—The growth of history—Description of feudalism by Bishop Stubbs—Roman, ecclesiastical, and legal influences absent in the nascent feudalism of India—Value of the Indian evidence—Points upon which India supplies analogies—Indian analogies to elements of feudalism in the interior structure of the manor or fief—*Vand* or *jeola* tenure of Kángra and Kulu—Other elements of feudalism in the Kángra and Kulu Hills . . . . . 200

## CHAPTER XI

### FEUDAL TENDENCIES IN INDIA

Benefices about to be compared with *jágírs* and *zamindáris*—Marhatta *jágírs*—*Jágírs* in the Deccan—Bengal *jágírs*—No *comitatus* in India—Break up of the Moghal and Karolingian empires—Lord Clive's *jágír*.—*Jágírs* and *zamindáris* compared—Their resemblance to benefices—Commendation and Roman law—Early history of commendation—No

PAGE

commendation in India, but many arrangements based on a similar principle—Settlers amongst Patháns on the North-West Frontier—*Desha cavel* fees in the Carnatic—*Rekwali* in Rájpútána—Sikh *jágírs* resembling fiefs or benefices—Manorial character of Hill principalities—Extra cesses in the Hills—*Droits seigneuriaux*—The great Bengal *zamindáris*—The Gonda *ráj* connects the Hill principality, the Bengal *zamindári*, and the French fief—*Zamindárs* and *talukdárs* in Oudh—Subinfeudations—Summary of feudal tendencies in India—The distinction between progressive and stationary societies—Isolation of the French fiefs—Feudal elements in our Indian protectorate and in the process of its formation . . . . . 213

## CHAPTER XII

### NATIVE RULE UNDER THE MARHATTAS

Reasons for describing the condition of India under native rule—Circumstances which facilitate the task—Mountstuart Elphinstone's report on the territories conquered from the Peshwa—Revenue management—Police—Means of dispensing justice—In criminal cases—In civil cases—*Panchâyats*—*Takáza*—Patronage—Presents—Ordeals—Deterioration under the last of the Peshwas—Testimony of the late Mr. W. G. Pedder . . . . . 241

## CHAPTER XIII

### NATIVE RULE IN THE PUNJAB

British conquest followed the line of least resistance—Rise of the Sikhs—The government of Ranjít Singh—Condition of the Karnál district—Of the Cis-Sutlej states—Of the North-West Frontier and the Salt Range—Of the central districts of the Punjab—Of the country governed by Dewán Sáwan Mal—Anecdotes of Avitabile—Rájpút rule in the Punjab Hills—Comparison of the governments of Ranjít Singh and the Marhattas . . . . . 255

## CHAPTER XIV

### NATIVE RULE UNDER MUHAMMADAN AND OTHER GOVERNMENTS

Condition of Oudh districts annexed in 1801—Sir John Shore's description of Muhammadan rule—Reasons why the character of a native government depends on the personal qualifications of the chief—The *wulsa* of Southern India—The Khetráns of Mat—In primitive times no history, but many typical events—Supposed advice of an Indian Machiavelli—Cruelty and superstition in Europe—Superstition of Ranjít Singh—Cruelties of Haidar Ali—Cruelties of Tippoo—*Sati*—Evidence of barbarous practices contained in the old regulations—Summary of causes of misrule in the India of our predecessors . . . . . 272



## CHAPTER XV

### NATIVE RULE UNDER THE PROTECTORATE

PAGE

Difficulty of stating the case—Instances of barbarous practices or punishments—Instances of a *kurh*—Of *samádh*—Of penalties for kine-killing—Of superstition—Of mutilation—Condition of parts of Central India in 1867—A corrupt and disorganised state—Another misgoverned state—A colony of thugs—Depredations by gangs of robbers—Many states are well administered . . . . . 291

## CHAPTER XVI

### THE LIMITS OF BRITISH INTERPOSITION

Tendencies to misrule due to inherited character—Reasons for reluctance to interfere—Duty of suppressing disorders which threaten the general peace of the country—Duty of interference when rebellion would be morally justifiable—The government cannot become the instrument of oppression—Mere absence of improvement not a case for remonstrance—Interference in particular cases—Good government the best safeguard against interference . . . . . 301

## CHAPTER XVII

### SOME ADVANTAGES OF NATIVE RULE

Popularity of native governments—Value of show and ceremony—Intelligibility of measures of government—High birth—Religious neutrality—British theories—Persons and systems—Advantage of permanence of the official staff in native states—Departmentalism—Loan of services of British officials to native states—Partiality—Our political theory—Principles of the land revenue administration—Relation of some of our legal principles to native ideas—Advantage of the exemption of native states from our legislation—Danger of taking results of our national experience to be principles universally applicable—Local option in native states—Posts and telegraphs—Public works—Investments of capital by native states and in native states . . . . . 308

## CHAPTER XVIII

### THE CONSTITUTIONAL POSITION OF NATIVE STATES

Meaning of constitutional government—Of constitutional law—The British Empire a constitutional empire—The states subordinate to the Government of India, and the Government of India to Parliament—Eastern and Western elements in Indian government—Connection between certain forms of government and certain stages of political growth—Movement of modern societies from feudalism to federalism—Important consequences of the divisibility of sovereignty—Branches of Indian constitutional law—Constitutional ties extending to India—Legislative

PAGE

supremacy of the viceroy and his council—Political combinations due to self-preservation—Stages in Indian constitutional history resembling feudalism, absolutism, and federalism—Internal structure of Indian governments—Official organisation of the protectorate—Geographical classification of native states—States under local governments—Duties of political officers—Points for the orders of the Government of India—British India and Canada—The supremacy of parliament—Double allegiance—Summary of conclusions . . . . . 332

CHAPTER XIX

SOME OBLIGATIONS OF NATIVE RULERS

Grant or recognition of titles—Ceremonies—Precedence—Salutes—Coinage—Means of facilitating the administration of civil justice—Criminal justice—Trial of European British subjects—Extradition—Court of *vakíls* in Rájpútána—Interjurisdictional cases in Western Málwa—Rules relating to the imperial post—Obligations relating to military affairs—To fiscal affairs—Cession of lands and jurisdiction for railways—Summary . . . . . 357

CHAPTER XX

INDIA AND IMPERIAL FEDERATION

Questions as to the ultimate aims of Indian Government and true direction of present tendencies—Double system of the Indian Empire—Meaning of imperial federation—Lord Salisbury's reply to the Imperial Federation League—India is already represented in the supreme councils of the empire, and bears the cost of Indian wars and services—Representative assemblies controlling the action of the supreme government not required in India—Independence of India impossible—Interest of India in imperial federation—Maintenance of the Indian Empire necessary in our own interest and in the interest of Indian populations—The Indian Kriegsverein—Can the principle of it be extended to the colonies?—The distinctive characteristic of Indian society is not nationality but caste—Meaning of nationality—No nationalities in India at present—India cannot be made into one nation—The case of the Roman Empire suggests that many nations may arise in India in course of time—The same inference drawn from the composition of Indian society and the distribution of provinces—Meaning of India for the Indians—Danger of over-centralisation and advantages of decentralisation—No formal proposals made . . . . . 377



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# OUR INDIAN PROTECTORATE

## CHAPTER I

### INTERNATIONAL LAW AND THE INDIAN PROTECTORATE

In the 'Nineteenth Century' for August 1891 there is an admirable article by Sir Alfred Lyall on 'Frontiers and Protectorates,' which enables me to define with sufficient precision the scope of the present treatise. As Sir Alfred Lyall observes, the English Crown has established many protectorates of different kinds; but any British protectorate, to whatever class it may belong, affirms the right of excluding a rival influence and the duty of defence. For present purposes I would fully accept this description. A protectorate must include both the right and the duty. If there is a mere exclusion of rival influence, a protectorate may be impending but is not yet completely formed; and there is no protection without the acceptance of the duty of defence. But this right and this duty are, I think, the least that a protectorate includes. It may, and often does, include very much more; so much more that nearly the whole of the sovereignty of the protected state, tribe, or territory may become vested in the protecting power. If the whole of the sovereignty has been absorbed, the is no longer a protectorate; the state, tribe, or territory is in this case annexed, and the country has been incorporated in the dominions of the paramount power. In the Indian empire an illustration is afforded of this process by the annexation of Oudh.

From this treatise I exclude the consideration of all the protectorates except one. There are many African protectorates, British and others. There are Asiatic protectorates of the English Crown outside the limits of India and its frontiers, such as the protectorate about Aden and over

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Socotra. There are the Indian frontier beyond the range of our administrative ju ing, as Sir Alfred Lyall says, from the O west to the Cambodia on the south-ea Russian sphere of influence on the one s touching the French sphere of influence on the ... These protectorates include Afghanistan and Baluchistan and a fringe of states on the confines of Upper Burma. On none of these protectorates do I offer any remark. The time has not come to attempt any general view of the frontier protectorates; nor would it be possible to discuss them even slightly without alluding to questions of external foreign policy on which it would be altogether inappropriate for me to say a word.

I confine myself to our Indian protectorate as distinguished from the Indian frontier protectorates. By our Indian protectorate I mean the protectorate, now long established and fairly well defined, over the very numerous internal states of India. These states may be generally described as autonomous states, enjoying various degrees of sovereignty, levying their own taxes, administering their own laws, and possessing territory which is, for purposes of internal administration, foreign territory, and has not been annexed to the dominions of the British Crown. It is because the principles of this protectorate appear to be fairly well defined that I have thought I might usefully attempt to state and explain them.

The first point which requires discussion is the relation of international law to the body of rules and principles which form the substitute for it in the Indian protectorate.

International law consists of the rules which govern the mutual intercourse of independent political communities. Whether these communities be called states or nations, they cannot be the subjects of international law unless they possess certain attributes. They must be assumed to be equal amongst themselves; they must have equal rights of legation and of making peace and war; and they must, each and all of them, be exempt from the effective and habitual control of any political superior.

The Roman emperors pretended to universal dominion over the civilised world; and the pretension, outlasting the empire in which it originated, was implied, perhaps, in the 'headship of the world' assumed by Charlemagne when he was crowned emperor at Rome in the first year of the ninth



century, and more certainly survived throughout Catholic Europe in the political and ecclesiastical claims of the papacy. The Roman empire, as a political institution, finally faded from the political scene only in the early years of the present century. Before the Emperor Francis II. had resigned the imperial crown in 1806, the liberties of the whole of Europe had been threatened, in the falsely adjured name of freedom, by the attempted supremacy of the first Napoleon. European international law, so far as it is adequately supported by the strength of the great powers, is the bulwark of the West against political dictation by one power over others or the rest. It is the guarantee of the political rights of bodies politic; it offers to nations those opportunities of self-development and commercial intercourse which, in municipal affairs, are afforded to individuals by wise civil laws and institutions; and, as regulating the mutual relations of communities, it forms the modern substitute for the old-world theory of universal dominion, to which, indeed, it is the direct antithesis. The theoretical equality of nations, taking the place of theoretical subjection to some common superior, is an essential part of international law; and the development of that law belongs to the same period of general history as the growth of constitutional government. The system is later by nearly half a century than the first charter granted to the East India Company; and it does not precede by much more than a century the actual beginnings of British dominion in the East Indies. It may be said to date from the Peace of Westphalia, which closed the Thirty Years' War in 1648, the year before King Charles I. was executed.

Edmund Burke, in his speech on the impeachment of Warren Hastings, claimed that the law of nations should be regarded as the law of India as well as of Europe, 'because it is the law of reason and the law of nature, drawn from the pure sources of morality, of public good, and of natural equity, and recognised and digested into order by the labours of learned men.'

There was, no doubt, a time in the history of British India, a time consid bly later than the beginning of that history, when the principles of international law were applied in dealings with other Indian powers, then, in point of fact, the rivals of the East India Company in the general scramble for dominion which ensued upon the destruction of the Moghal empire. Lord Cornwallis endeavoured without

success to establish a balance of power in the Deccan. Lord Wellesley elaborately justified his intention of making war on Tippoo Sultan of Mysore by arguments which might have been used by a European chancellor resenting warlike preparations, deliberate threats, and overt hostile alliances by a neighbouring European power. International law, probably with some modifications to adapt it to the peculiar conditions of Asia, is still the rule of conduct in the relations of the British Government with independent Asiatic countries beyond the continent of India, such as Siam, Kashgar, and Persia. But within the frontiers of India the law of nations does not determine the respective rights and duties either of the British Government and the continental native states, or of those states amongst themselves. These native states of the continent of India are the feudatory states, of which the British Government is the suzerain. How far the language of feudalism is appropriate to the case will appear in a later chapter; the terms 'feudatory' and 'suzerain' are sanctioned, at all events, by Indian usage, and have the great merit of convenience, especially if their use be carefully disengaged from any suggestion of unreal analogies. In more modern phraseology, Dr. Travers Twiss has sketched the position with approximate accuracy ('The Law of Nations,' p. 27). 'The native states of India,' he says, 'are instances of protected dependent states, maintaining the most varied relations with the British Government under compacts with the East India Company. All these states acknowledge the supremacy of the British Government, and some of them admit its right to interfere so far in their internal affairs that the East India Company has become virtually sovereign over them. None of these states, however, hold any political intercourse with one another, or with foreign powers.' The relations are, no doubt, extremely varied; but they are governed even more by usage than by compact, and the power of intervention in internal affairs, very variously exercised by the British Government, does not rest upon any virtual sovereignty in particular cases, but upon the fact that the sovereignty is, it must be granted in very different proportions, shared in every case without any exception whatsoever.

International jurisprudence clearly distinguishes the internal relations of states subsisting between governments and their subjects from the external relations of states with each other in the great community of the world. Municipal law deals with the former, which can be modified in any



particular state without the consent of any other; the latter are dealt with by international law, which in great measure derives its validity from the consent of nations embodied in diplomatic documents or implied in practice and custom. Where there are no external relations there can be no international law, and the feudatory states have no relations of this description, except with the British Government. They have no rights of legation to any other government; they are unable to make peace or war; their political subordination to the British Government is unquestioned. They cannot therefore be subjects of international law; and, so far as that law regards independent states as able and justified in the last resort to appeal to war for the assertion of rights which are other than those of mere comity, it is inapplicable to a political system which regards the levy of war as a criminal offence, punishable even by judicial tribunals. Independent political communities cannot be subjected to punishment in the strict sense of the term; they cannot be legally liable for an offence to a penalty imposed by a political superior. But feudatory states, or their rulers, can be, and are, punished when occasion requires by fine, by the deprivation of salutes and other honours, by sequestration for a time, by the diminution of judicial authority, and, in extreme cases, by the deposition, or even execution, of the ruler and the annexation and incorporation of the state in the territories directly administered by British officers. When Muhammad Bahádur Shah, the titular King of Delhi, surrendered on a promise that his life would be spared, he was tried, in January 1858, as a rebel and a traitor. The third count in the indictment against him was, 'that he, being a subject of the British Government in India and not regarding the duty of his allegiance, did, at Delhi, on May 11, 1857, or thereabouts, as a false traitor against the state, proclaim and declare himself the reigning king and sovereign of India, and did then and there traitorously seize and take unlawful possession of the city of Delhi; and did, moreover, at various times between May 10 and October 1, 1857, as such false traitor aforesaid, treasonably conspire, consult, and agree with Mirza Moghal, his own son, and with Muhammad Bakht Khan, *subadár* of the Regiment of Artillery, and divers other false traitors unknown, to raise, levy, and make insurrection, rebellion, and war against the state; and further, to fulfil and perfect his treasonable design of overthrowing and destroying the British Government in India,

did assemble armed forces at Delhi, and send them forth to fight and wage war against the said British Government.' That the offence with which the King of Delhi was charged was described as waging war was due, of course, to the scale upon which it was committed; but it was none the less a breach of allegiance. The Nawábs of Jhajjar, Ballabgarh. and Farakhnagar were condemned and executed for complicity in the rebellion, and their states were confiscated. The Nawáb of Farakhabad was tried on a like charge, and sentenced to death and forfeiture of property, and only escaped execution because of a doubt whether he had not surrendered on a promise that his life would be spared. The Indian Penal Code provides for the punishment of the offence of waging war against the Queen as for any other violation of law which can come under the cognizance of the ordinary tribunals; and, moreover, testifies to the duty of protection on the part of the suzerain by assigning penalties for waging war against any Asiatic power in alliance or at peace with the Queen, committing depredations on the territories of any power so at peace, and receiving property taken in wars or depredations of this character.

The fact is, that for the adjustment of the relations of the continental states of India a new system has grown up, very different from any which was possible in the days of Edmund Burke, but, it is believed, quite as much in accord with the principles of reason and morality as the Western system, which determines the relations of European independent states and other like states of the civilised world. To the rules and principles which constitute the new system I shall, throughout this treatise, give the name of Indian political law. That expression, though occasionally used in official documents, has not yet acquired any general currency. It is therefore open to all the objections of novelty. I am aware that the expression may not be regarded as a particularly happy one; for the word 'political' is used in the technical sense in which it is commonly used in India, but not elsewhere. In India we have long meant by political business, business connected with the native states; and by political officers, officers charged with that business. If there were diplomatic relations between independent states in India and the British Government, the political officers would be diplomatists, and their business would be diplomacy. There are no independent states within the protectorate; so the relations between the states and the paramount power are not



diplomatic but political. I adhere to the expression Indian political law, mainly because it appears to me less objectionable than any other with which I am acquainted for the description of the same thing. Such a phrase as Indian international law is misleading. Indian states are not nations; and any compendious name for the Indian substitute for international law should mark the fact that the relations between the British Government and its Indian feudatories are governed by another law, and not by international law as generally understood. The term 'interstatal law' is more cumbrous and, perhaps, even more objectionable on substantive grounds. It would, I suppose, literally mean the law applicable to the relations of the Indian states one with another; but it is of the essence of the whole system that they have no such relations. As already said, they have no foreign relations except with the paramount power; and if the law regulating the only set of foreign relations which they have is described as interstatal law, that seems to put the paramount power on a level with the states and to count it as one state amongst the number, which is quite contrary to the fact. Possibly the expression 'interstatal law,' if used at all, might be used to denote certain rules for extradition, and for the disposal of cases in which more than one state or the subjects of more than one state are concerned. But the states themselves cannot frame such rules by diplomatic discussion and agreement. They must proceed through the intervention of the paramount power; and any such rules must be founded on agreements separately made with the British Government by each state concerned, or must be authoritatively prescribed by the British Government itself. Accordingly, by interstatal law I should mean only a part, and a small part, of Indian political law. For all these reasons I use the expression Indian political law to denote the rules and principles governing the relations which now exist between the British Government and the Indian feudatory states.

It does not follow from anything I have said, that within the sphere of Indian political law international law has absolutely no application. In internal relations the feudatory states enjoy in different degrees a large measure of autonomy, of which the most characteristic mark is immunity, not in all cases an absolute immunity, but in the great majority of cases a substantially complete immunity, from foreign law. The states exercise distinct jurisdictions; they are internally governed by different

authorities, each possessing its own municipal law, and they are permanently united in the bonds of peace. Differences are therefore settled by peaceful means, and war and embargo and reprisals, the legal means of redress akin to war, are not, as in international law, the ultimate sanction of just observances. Thus we have, on the one hand, to sweep away as irrelevant the large mass of international law which is concerned with the rights and duties of belligerents and neutrals, and similar rights and duties arising out of actual or prospective war; while, on the other hand, there remains a body of usage and argument, largely concerned with matters of comity, derived from the peaceful intercourse of nations, and adjusted to the decision of those questions which naturally arise from the severance of laws, jurisdictions, and internal politics. Some part of this residuum falls away, not from any effect of principle, but as a mere consequence of political geography: with a few exceptions on the western and southern coasts, the feudatory states have no seaboard; and none of them are, properly speaking, maritime states. Hence maritime questions have but a small place in Indian political law. But, as between the suzerain and the feudatories, there are in India, as in Europe, legations, negotiations, treaties, and other agreements. The position of Residents and political agents, though it does not exactly resemble, is analogous to that of ambassadors and other public officers representing states; boundary disputes have occasionally to be determined; there is ex-territorial jurisdiction, and there are usual demands on both sides for the extradition of persons accused of offences. In these and similar matters the determining rule must be sought primarily in Indian law or usage or agreement; but if that law is silent or does not apply, and if precedents fail and compacts do not meet the case, or if it is desired to support upon broader grounds a decision which might be established from these materials, it is a perfectly legitimate process of Indian policy to turn to international law for the purpose of ascertaining how far rules elicited and formulated by Western experience may be usefully applied to solve an Indian difficulty. If in any question between itself and a native government the British Government appeals to international law, the other party has no ground of complaint, because the nature of the appeal at once places it for the purposes of the particular case in a higher and better position than it is politically entitled to claim. No native state can quote the



principles of international law against the British Government, because to do so would be to assert the position of equality, which all those principles presuppose. But the British Government may, if it pleases to do so in a particular case, argue out a difference of opinion with a native state on a footing of assumed equality; and whatever else the British Government may be entitled to claim from its feudatories, they can never pretend to owe it less than would, on the principles of international law, be conceded by one independent European state to another. Subject to these limitations, international law stands to Indian political law very much in the relation of the Roman law to the law of nations. It does not of its own force bind either party; an immense deal of it has necessarily no application to the case: it has originated under totally different circumstances, and been developed with a view to totally different ends; but in some questions it may often be found an important and useful guide, because the matter of it, over a somewhat narrow field, either actually coincides or without far-fetched analogy may be made to coincide with the matter of Indian political law, and because its rules, though belonging to a different civilisation, are often supported by reasonings applicable to all civilised societies and by the experience and assent of the Western civilised world.

I shall by-and-by endeavour to show that the Indian political system is intimately connected with the past, not merely of British India or of the British Government in India, but of the Indian continent in times preceding British rule. I am here considering Indian political law merely as so much positive law—as the law which, as a matter of fact, now obtains, and which has to support it the sanctions which can be exercised by a supreme political authority. It is not open to the objection sometimes raised against international law, that it is in fact no law, because nations have no common superior capable of enforcing the supposed precepts. The superior is there, and the precepts can be enforced without difficulty. But if in this respect Indian political law has a more definite shape than international law, it is much more indefinite in the matter of expression.

Some of the sources of political law are, indeed, open to any one who brings industry and perseverance to the prosecution of research. A great deal of matter is to be found in the published despatches of the Indian Government, in various Parliamentary blue-books, and in the well-known

histories of India. The great work of reference is the collection of treaties, engagements, and *sanads* by Sir Charles Aitchison. Amongst other works bearing on the subject may be mentioned Malcolm's 'Central India' and 'Political History;' Sutherland's 'Sketches of the Relations subsisting between the British Government of India and the different Native States' (Calcutta, 1833); and Prinsep's 'History of the Political and Military Transactions in India during the Administration of the Marquess of Hastings' (London, 1825). Political law has occasionally taken the form of statute law, as in the case of some of the old Regulations, of certain provisions in the Penal Code and the Codes of Civil and Criminal Procedure, and of the Indian Extradition Act, 1879; and I must not omit to mention that questions involving issues of political law have sometimes, though rarely, been decided by the Indian High Courts and the Judicial Committee of the Privy Council. But the source of this law, which has supreme importance, is without doubt usage—the actual practice of the Indian Government itself in its dealings with its feudatories. This usage is ascertainable partly from some matters of history and notoriety, but mainly from the records of the Government and a variety of minutes and notes and compilations of a confidential character prepared by competent authorities in the course of their official duties. The records and documents of this description are not, of course, open to the public; but it is well-known in Indian official circles, and may, without objection, be mentioned here, that the rapid and systematic development of Indian political law during the last thirty years is largely due to the labours in the Indian Foreign Office of Sir Charles Aitchison himself, Sir Mortimer Durand, the present Foreign Secretary, and Colonel Sir West Ridgeway, sometime at the head of the Afghan Boundary Commission; and in the Indian Legislative Department, to the exertions of Sir Dennis Fitzpatrick, now Lieutenant-Governor of the Punjab, and of successive Law Members of Council, Sir Henry Maine, Sir J. Fitzjames Stephen, Lord Hobhouse, Mr. Whitley Stokes, and Mr. C. P. Ilbert.

In speaking of the systematic character of Indian political law, I mean that there are certain broad principles, now acknowledged on all sides, from which deductions may be safely drawn in particular cases; and that in a great number of leading cases deductions have been drawn from these principles, or the principles themselves have been



directly applied, or decisions have been arrived at which are in harmony with the principles and add to the available list of intelligible and useful precedents. The objects, for example, of the political system are distinctly perceived. Thus, while the great end of international law is the preservation in undiminished vigour and independence of the political communities subject to it and by reason of whose assent and course of action it exists, the great ends of Indian political law are the maintenance of the supremacy of the paramount power, whose guardianship is the security for the peace of the whole Indian continent, the preservation of the autonomy of the feudatory states, and the assurance to the diversified populations of those states that they shall enjoy freedom from gross misrule. And the acknowledged principles directed to the attainment of these ends are fairly numerous. Thus the feudatory states have no power of confederacy; their territories can only be increased through the British Government, which has the right to regulate their armaments; the invasion of one state by the forces of another would be a breach of allegiance; the states are bound to act in subordinate co-operation with the British Government and to acknowledge its supremacy. On the other hand, the British Government is bound to protect and defend them from all external enemies; and it follows (to borrow the language of Sir Charles Aitchison)—'first, that the British Government not only may do, but is bound to do, everything really necessary for the common defence and the defence of native states; second, that the native states are bound to permit everything to be done that the British Government determines to be necessary for the efficient discharge of that duty; third, that they are bound to abstain from every course of action that may be declared dangerous to the common safety or the safety of other states; fourth, to co-operate with the British Government to their utmost means.' In the correspondence relating to Manipur which has been laid before Parliament, the Government of India has declared that it is their right and duty to uphold native chiefs recognised by them, except in cases of gross misrule, and to punish unlawful revolt against their authority. Political officers also are instructed generally to use their influence to maintain the existing order of things in native states, and civil war in a native state would in no case be permitted to continue. The dismemberment of native states by will, partition, or inheritance is not

allowed; and it is the desire of the British Government to perpetuate native governments in accordance with their laws and customs relating to the succession to chiefships. The sovereignty of the chiefs being limited in various degrees, what are the actual limitations in any particular case is a question of fact; but no chief has a right to misgovern his territory. Minute and frequent interference is prohibited; for it would obviously destroy the responsibility of the chief and the autonomy of his government. As a rule, isolated cases of alleged injustice or contumacy are disregarded; but barbarous practices are not tolerated, and a course of oppression would shortly meet with some appropriate remedy.

It will perhaps make the position clearer if I show how these principles would affect an individual ruler. For obvious reasons, I will take no actual case, but rather attempt to sketch a type to which the majority of cases approximate; and I will suppose that the chief is an important one, not of the numerous class in whose territories a great part of the criminal jurisdiction is exercised by officers of the British Government. Such a chief would have the power of life and death over his subjects; and though there is no such thing in native states as legislation, as we understand it, he could promulgate laws or ordinances at his pleasure, and would in all probability be found to have adopted the most important Anglo-Indian codes with some slight modifications; the whole patronage and administration of the state would be regulated by his wishes; and, generally, on his internal sovereignty there would be few limitations other than those general limitations directed against misgovernment which apply to every state in India. In addition to the universal duties of allegiance and subordination, he might be bound to keep troops ready to serve with the British Army when required. He might or might not have to pay tribute. His state would have to pay a fine on any succession which was not in the direct line. The privilege of adopting a successor on failure of heirs would be recognised by imperial grant or *sanad*. The raja, as I may call the supposed chief, would not have the right of building new fortresses or strongholds, or repairing the defences of existing fortresses or strongholds, except with the previous permission of the British Government. He would give, free of all charge, lands required for main roads of communication, railways, telegraphs, and British cantonments; and in these cantonments and on railways constituting parts of a through line of communication he would leave all jurisdiction to be exercised by British authorities. In employing a military force for the maintenance of internal order and his personal dignity, or for any other purposes, he would not exceed the strength which might be fixed from time to time by the Governor-General in Council. He would abstain from entertaining in his service (except upon permission) any person other than a native of India. He would not interfere with the affairs of any other state or power, and would have no communication with any other state or power, except through the medium of the British Government. He would, on demand duly made, cause to be arrested and surrendered to the proper officers of the British Government any person within his territories accused of having committed an offence in British India. Plenary jurisdiction over European British subjects in his territories would be vested in the Governor-General in Council; and in respect of these persons the raja would exercise only such jurisdiction as might be delegated to him by that authority.



The connection of most of these rights and obligations with the general principles already mentioned is, in most instances, sufficiently obvious: in some cases I shall hereafter offer explanations of that connection. Questions of military service, tribute, and adoption would usually be settled by treaty or other written engagement; but every other item of duty in the list just given could, I think, be enforced as a rule of political law, or, to put the same thing another way, as a part of general political usage, whether the obligation had been accepted or declared in any written instrument or not.

Perhaps the most striking feature which the Indian protectorate presents to the student of politics is the remarkable illustration which it affords of the divisibility of sovereignty. It has been said that the indivisibility of sovereignty belongs to Austin's system; but Austin himself was constrained by facts which would not easily square with his definitions to admit that sovereignty might be divided. 'A political society,' he says (vol. i. p. 187), 'which is not independent is a member or constituent parcel of a political society which is. Or (changing the expression) the powers or rights of subordinate political superiors are merely emanations of sovereignty. They are merely particles of sovereignty committed by sovereigns to subjects.' And further on (*ibid.*

p. 211), when he came to discuss semi-sovereign states, he contended that every government 'deemed imperfectly supreme' is either entirely subject to another government, or entirely independent, or jointly sovereign with the other government, and therefore a 'constituent member of a government supreme and independent.' It needs no discussion to show that this strained language is quite inapplicable to the Indian states of the protectorate. 'Particles of sovereignty' are not committed by the paramount power to its feudatories; on the contrary, one of the chief marks of Indian sovereignty is the exercise of certain powers of government without the delegation of any authority to exercise them under any British enactment. And it would be almost ludicrous to argue that any ruling chief is a constituent member of the supreme government of the British empire. Nor, if we take the description of a sovereign government quoted, with some approval, by Sir Henry Maine from the late Mr. Montague Bernard, do we find a definition which fits the Indian facts. 'By a sovereign government,' said Mr. Bernard, 'we mean a government, however constituted, which exercises the power of making and enforcing law within a community and is not itself subject to any superior government.' All the Indian states are subject to a superior government; and of their powers of internal sovereignty, that of taking revenue is certainly more conspicuous than that of making laws. The immunity which they enjoy from foreign or British laws is, as I have said, not quite absolute; and that is a point requiring some explanation.

In the first place, by a succession of Acts of Parliament, the Legislative Council of the Governor-General has been empowered to make laws for servants of the British Government and European British subjects in native states, and for native Indian subjects of her Majesty wherever they may be. Articles of War may also be made for her Majesty's Indian Army, wheresoever serving; and laws may be made for all persons employed or serving in or belonging to her Majesty's Indian Marine Service whose vessels are within the limits of Indian waters as defined by statute. Apart from the requirements of the army and navy which have been met, these powers have been exercised mainly under the heads of criminal law, Christian marriage and the divorce of Christians, succession to private property, railways, the post office, telegraphs, and income tax. By far the most



important provisions are those of the criminal law, which will be discussed in another chapter. The immunity from foreign law is not, of course, infringed by these enactments. Every independent state can make laws binding on its own subjects wherever they may be. But the jurisdiction exercised under these enactments has some resemblance to the British consular jurisdiction in the East generally; though in India, so far as the jurisdiction is exercised by British officials, the sovereignty is really shared between the British and the native governments.

In the second place, British laws made by the Governor-General in Council in his executive capacity—not by the Indian Legislative Council—may be in force in parts of native states. This may occur when the jurisdiction has been ceded by the native government, as in the case of lands occupied by railways on through lines of communication. Another class of cases in which this state of things exists might be described by saying that we have adopted in India the doctrine of exterritoriality. We hold that, within the limits of British political residencies and of British cantonments situated in native states, the laws of British India may be applied by the act of the Governor-General in Council without any cession of jurisdiction by the native government. They are so applied habitually in the case of British cantonments; and we may, if we please, justify an arrangement of obvious necessity by borrowing from international law the doctrine that there is a continuation or prolongation of the territory to which the military body belongs. Such an argument might silence but would hardly satisfy a native durbár; and it seems safest and best to advance the actual ground as the ostensible one, and to claim the right of administering our own laws with respect to our own armies in our own way, as a part of the prerogative of the paramount power charged with the military organisation and defence of the empire.

Thirdly, British laws may be brought into force in native state territory by the chief himself, or by an officer of the British Government acting on behalf of the chief in consequence of his minority or other disability. Some of the Punjab states, for instance, have adopted the Indian Penal Code and the Codes of Criminal and Civil Procedure, doubtless with some modification. The states of Puddukottai, Sandur, Cochin, and Travancore, under the government of Madras, either follow certain British enactments as laws of the state or have

made regulations after the fashion of British laws and for the most part based upon them. In all this, of course, there is no exception to the usual rule of immunity from foreign law because the law, though it happens to coincide with foreign law, is in fact the home-made copy edited by the chief of the state or some officer acting in his behalf.

There are thus two conspicuous exceptions to the usual rule: first, when the legislature passes certain laws of personal application, and these laws are administered by British officials within the limits of the native state; and, secondly, when the Governor-General in Council in his executive capacity makes laws of territorial application. In the second case, it has happened occasionally that the Governor-General in Council has had to supply a complete body of law for a great extent of native territory for very prolonged periods; and where this is the case it seems a very unnecessary refinement to put forward a theory of delegated power or jurisdiction; more especially as in at least one very conspicuous instance the British Government was so far from acting with the consent of the raja that it had set him aside for misgoverning his state. For half a century British laws were applied in Mysore by the authority of the Executive Government; and the laws so introduced were maintained in force as one of the conditions of the restoration of the state to native rule. In the assigned districts of Berar, which are held by the British Government in trust for the payment of the troops of the Hyderabad Contingent and certain other charges, the surplus revenues being paid over to the Nizam, British laws have been and still continue to be brought into force as orders of the Governor-General in Council. In this case, and sometimes also in the case of laws introduced in British cantonments in native states, language is used implying that a law is extended to the foreign territory; but this language, though sufficiently expressive for popular use, is technically wrong. The local extent of the British law remains unaltered; it could be altered only by legislation. The Governor-General in Council in his executive capacity makes for foreign territory under British administration a law which may be an exact copy of a British law, but is more commonly a copy with certain unimportant modifications designed to suit it to the locality.

It will be understood that I do not attempt to exhaust, but merely to illustrate the circumstances under which British laws may come to be in force in native states. As



regards other limitations on internal sovereignty, the variations are extremely numerous, and range from almost complete autonomy to the merely nominal preservation of the last remnants of sovereignty. Not to discuss the position of such states as Hyderabad, Sindhia's and Holkar's dominions, Baroda, and Kashmír, the Phúlkián rulers in the Puñjab—the chiefs, that is, of Patiála, Jhínd, and Nábha—have powers of life and death in their territories, and the British Government has undertaken by written agreement to entertain no complaints from their subjects. In such an empire as India, where the paramount power is practically responsible for misrule supported by its authority, autonomy could no further go; indeed, the concession to the Phúlkián states must be understood to be limited by the general rule, established by practice throughout the empire, that gross misgovernment will not be allowed. At the other end of the scale we have petty chiefs, if such they can be called, in Káthiawár, who are not permitted to exercise any civil jurisdiction, and whose powers in criminal cases are limited to passing sentences of fifteen days' rigorous imprisonment and twenty-five rupees fine. Between these extremes we have numerous gradations. The commonest case is that of a chief who may pass every sort of sentence, such as might be passed in British territory, except a capital one, but whose capital sentences require the confirmation of some British officer, usually a Lieutenant-Governor or Chief Commissioner, but sometimes a commissioner of division. In some very petty states the chief has powers no greater than those of our district officers or of magistrates subordinate to such officers.

Wherever the criminal jurisdiction of any state is not completely vested in the chief and his officers, so much of it as does not belong to him and them is termed the residuary jurisdiction, and is vested in the British Government. Such jurisdiction is exercised by servants of the British Government in general conformity with British laws; and to the extent of the application of these laws in this manner the immunity of the state from foreign criminal law is necessarily impaired. This partition of criminal jurisdiction stands by no means alone as an illustration of the division of sovereignty, but it is the most conspicuous and clearest illustration of that division; and it is with an eye to criminal jurisdiction that we can most readily perceive how true it is that in any given case the actual distribution of the attributes

of sovereignty between the paramount power and its feudatories is a question of fact.

The remarks made throughout this chapter have implied the doctrine of the divisibility of sovereignty and the distinction, which follows upon that doctrine, between sovereignty and independence. In later pages I shall have more to say on the divisibility of sovereignty; in this introductory chapter I may quote an undoubted authority alike for the doctrine and for the distinction which is its corollary. In a minute on the Káthiawár states, dated March 22, 1864, Sir Henry Maine writes: 'Sovereignty is a term which in international law indicates a well-ascertained assemblage of separate powers and privileges. The rights which form part of the aggregate are specifically named by the publicists, who distinguish them as the right to make war and peace, the right to administer civil and criminal justice, the right to legislate, and so forth. A sovereign who possesses the whole of this aggregate of rights is called an *independent* sovereign, but there is not, nor has there ever been, anything in international law to prevent some of those rights being lodged with one possessor and some with another. Sovereignty has always been regarded as divisible. . . . It may perhaps be worth observing that, according to the more precise language of modern publicists, "sovereignty" is divisible, but "independence" is not. Although the expression "partial independence" may be popularly used, it is technically incorrect. Accordingly, there may be found in India every shade and variety of sovereignty, but there is only one independent sovereign, the British Government. My reason for offering a remark which may perhaps appear pedantic is that the Indian Government seems to me to have occasionally exposed itself to misconstruction by admitting or denying the independence of particular states, when in fact it meant to speak of their sovereignty.'

It was a privilege of the great genius of Sir Henry Maine to light up vast spaces of remote and obscure subjects by the electric radiance of luminous ideas. Again and again, as though by a turn of the hand, he brought together facts or conceptions seemingly of opposite poles; and from the unexpected contact has often streamed a bright, far-reaching and lasting illumination, guiding the humbler researches of his contemporaries or followers. The words I have quoted from his Káthiawár minute connect some principles of European international law with the paramount



position of the Indian Government. The course of a modern nation amid archaic societies and states of a type no longer seen in Western Europe may often be dark or dubious. But the theory of the divisibility of sovereignty, not indeed invented but applied by Sir Henry Maine, stands out, as it were, on an eminence crowning the whole expanse before us, and, like a glowing core of light, immensely facilitates a straight and safe voyage over the wide and confused sea of Indian politics.

## CHAPTER II

### THE EARLY GROWTH OF THE PROTECTORATE

In the article which I quoted at the beginning of the last chapter Sir Alfred Lyall points to one of the tendencies which have combined to form the Indian protectorate. In India we have habitually interposed a zone of protected country between our own virtual or actual possessions and the territories of possible enemies. Eventually we have often overleapt this zone, and the frontier protectorate has been converted into an internal protectorate, the protected states coming to be surrounded by British territory. Sir Alfred Lyall instances Oudh, which came to be surrounded by British districts in 1801 and continued to be a protected state till its annexation in 1856, the Rájpút states in Central India, and the feudatory states on the Sutlej. These instances are sound and may be slightly amplified, and others may be given. In 1765 the dominions of the defeated and prostrate Wazir of Oudh were, with certain exceptions, restored to him because it was considered expedient that they should be preserved as a barrier against the Marhattas. When the French force of the Nizam of the Deccan, organised by the then lately deceased M. Raymond, was disbanded by the armed diplomacy of Lord Wellesley in 1798, the dominions of the Nizam became a protected state interposed between the possessions of the Marhatta powers and territories of which the East India Company was in one part the virtual and in another part the actual sovereign. By a long series of events—by cession of territory in payment for a subsidiary force, by conquest from the Marhattas, by the lapse of Nágpur—the dominions of the Nizam have been encircled by British districts. When the Peshwa ceded territory in Bundelkhand in 1803 the British Government retained a part in its own possession; and the chiefs who held the rest were maintained in their territorial rights so that their country might be a kind of barricade against the inroads



then meditated by Holkar. In the same year Lord Wellesley, when giving instructions to Lord Lake in anticipation of the outbreak of the Marhatta war, informed him that it was not his intention to extend the actual possessions of the Company beyond the line of the Jumna, including Agra and Delhi, with a continued chain of forts to the west and south of the Jumna from the mountains of Kumaun to Bundelkhand, sufficient to secure to the British power the free navigation of the Jumna and the possession of both banks of that river. Within this line it was his intention to establish the system of the Company's government in all its branches, whilst he meant to regulate connections formed beyond that line on the principle of defensive alliance or tributary dependence in such manner as to form between the actual possessions of the Marhattas and the Company a barrier of petty states exercising their internal government in alliance with the Company and under the protection of its power. A little later on, in 1805 and 1806, when Lord Cornwallis in his second brief tenure of office and his successor, Sir George Barlow, were reversing the policy of Lord Wellesley, Lord Lake at their bidding formed a belt of petty chieftaincies on the further side of the Jumna, not indeed as protected states, for the object was to abstain from interference west of the Jumna, but still as 'buffer-states' between ourselves and the possessions of Sindhia in Hindustan. In 1809 the formation of the Cis-Sutlej protectorate stemmed the aggressive incursions of the Sikh Maharaja, Ranjít Singh. The object of the treaties made in 1817 and 1818 with the Rájpút chiefs of Rájpútána was the establishment of a barrier against the predatory system of the Pindáris and against the extension of the power of Sindhia and Holkar beyond the limits which the Government designed to impose. The enormous sweep of British conquest which took in successively Sindh, the Jullundur Doáb, and the rest of the Punjab in 1843, 1846, and 1849, closed in on the west and north around Central India and Rájpútána taken together and the Cis-Sutlej chiefships the big ring of British dominion which had already arisen or was then arising on all other sides. Actual conquest thus alternated with the extension of preponderating influence in making the protectorate what it is.

But the conversion of frontier protectorates into internal protectorates was only one of a long series of complicated historical causes which have jointly brought about the existing position. To explain these causes in full detail

would be to repeat a great part of the political history of India for the last hundred and thirty years, and some part of the history of India which preceded the rise of the British power. It would be necessary to show how and why it was that the East India Company became a political power in the course of the wars with the French in the Carnatic, and a great territorial power as a consequence of the virtual conquest of Bengal; and how and why it was that the British Government, already a great territorial power—for the supreme political authority of the Company had then passed to the Board of Control—became the paramount power by the wars and negotiations of Lord Wellesley, by the policy interrupted by his immediate successors, but carried to completion by Lord Hastings. I say a great part of the political history of more than a century, because there are some wars and conquests in which the Indian Government has been engaged which have no bearing on its position as a paramount power in respect to its feudatories. For the purpose of explaining the origin and development of the Indian protectorate, we might, in great measure, leave out of account the wars with Nepal and Burma and Afghanistan. Important as these wars were in extending the empire, the events which gave rise to them belong to a different order; they were connected with the external politics of British India, and with the right of every independent political authority to preserve its territories inviolate from foreign interference or aggression; they formed little part of the succession of occurrences which have given shape and consistency to the internal organisation of the empire in regard to the relations of the governing body with the Indian maharajas, rajas, and nawábs. Perhaps the only result of these wars which it would be necessary to notice would be the inclusion within the protectorate of a number of Hill states delivered by ourselves from the overlordship of Nepal.

But I entertain no such ambitious aim as the production of a new political history of India written with the object of explaining the growth of the protectorate. I shall merely venture to offer some observations which, I hope, may be found suggestive and not unsound, so far as they go; and I may be able to indicate without any undue trespass on time or attention that the first cardinal principle of the whole system—the maintenance of the supremacy of the paramount power—originates in the policy of Lord Wellesley and Lord Hastings; that the second cardinal principle, the preservation of the autonomy of the feudatory states, was clearly expressed in the proceedings which followed the mutiny during the viceroyalty of Lord Canning, and has since been very emphatically affirmed by acts and proclamations of the Government; and that the third cardinal principle, the denial of any 'right divine to govern wrong,' has been established by the course taken by the Government on many occasions, and notably in the annexation of Oudh and the trial and deposition of the Gaekwar of Baroda.



Just as it is the object of European international law to preserve the peace of Europe, so the peace of the Indian continent is now actually maintained by the effectual enforcement of the theory of the supremacy of the paramount power. But if we look back to the second half of the last century, when the dissolution of the Moghal empire left political authority to be the booty of predatory violence, there was, in fact, no law of territorial possession though there were many territorial powers. The theoretically acknowledged suzerainty of the Delhi emperors was habitually set at defiance by usurpation and rebellion, and the limits of states and of the internal authority of rulers was no more than could for the time being be defended or asserted at the sword's point. It would be a mistake to suppose that the soldiers and administrators, who laid in those days the foundations of the British Indian empire by exploits in the field and treaties with native potentates, entertained any distinctly conceived theory of public law as regulating the relations of the states with which they were brought in contact. So far as they in practice acted upon any theory at all, they subscribed, in common with the considerable country powers, of which, indeed, the East India Company soon formed one, to the fiction of the supremacy of the House of Delhi—a fiction which had survived the decline of the imperial power, when the always intermittent control of the kings of Delhi over their provincial viceroys had ceased to be a political principle capable of actual enforcement. Asaf Jah, the Nizam of the Deccan, was certainly independent of the Delhi court when he died in 1748; and the Nawáb of the Carnatic was, according to the idea of native governments, the deputy of the Nizam. But, as is shown by the history alike of the Madras and of the Bengal presidencies, it was still thought necessary to conduct affairs of state in the shadow, so to speak, of the throne of Delhi. Thus when, by the overthrow of the French, Muhammad Ali was esta-

blished, in 1763, as the Nawáb of the Carnatic, he conferred on the English, in consideration of their services and the debts which he had contracted to them, districts yielding an annual revenue of some four-and-a-half lakhs of pagodas. The Delhi emperor was really quite impotent to sanction or regulate the gift; but the Company obtained from the court of Delhi a *firmán* in confirmation of it. So also the grant of Masulipatam and other districts known as the Northern Sirkárs, made by the Nizam of the Deccan himself in 1759, was confirmed by the Emperor of Delhi in 1765, just at the time when the Company became Dewán, or chief revenue officer, of Bengal, Behar, and Orissa. And, indeed, it is in the history of those parts of India that the longevity of the political fiction of the supremacy of the House of Delhi is most conspicuously seen. Suráj-ud-Daula, the nawáb responsible for the tragedy of the 'Black Hole,' though his inherited authority had originated in usurpation, was, so far as he could pretend to the legitimate title of a ruler, the *subadár*, or governor, of an imperial province. The English fought with him, made treaties with him, joined a confederacy formed among his chief officers to depose him, defeated him at the battle of Plassey, and set up Mir Jáfir Ali in his stead. They next deposed Mir Jáfir Ali in favour of his son-in-law, Mir Kásim Ali, and then deposed Mir Kásim Ali and set up Mir Jáfir Ali again. Another great official of the empire practically exercising independent power—Nawáb Shuja-ud-Daula, the Wazír of Oudh—under the pretence of espousing the cause of Mir Kásim Ali, invaded Behar. His army was completely routed at the battle of Buxar, and he subsequently threw himself on the generosity of the English. As I have said, the whole of his dominions were restored to him except Allahabad and Korah, which were given to the Delhi emperor. The Delhi court had for years exercised no substantial authority in Bengal, Behar, and Orissa, and the English were in fact in the position of successful usurpers. They had ousted by force of arms a governor who, if he originally had a slightly better title than their own, had forfeited all claim to their consideration by attacking their settlement and permitting disgraceful cruelties to be practised on their people. And they did precisely what other usurpers in the same part of the empire had done before them. They applied to the Delhi emperor for patents. Clive thought it worth while to obtain from the emperor, who was entirely in his power, a *firmán* or royal grant appointing the Company



*dewán* or revenue minister of the provinces where it was already supreme.

The tediousness of Indian history is proverbial; and there is perhaps no period which, at first sight, appears less instructive than that of the decline and fall of the Moghal empire. It seems a phantasmagoria of rapine and treachery, a confusing dream of intrigue and bloodshed, where reckless aspirants for ephemeral power are continually engaged in internecine contests, unredeemed by any ennobling principle, and usually to all appearance motiveless, except so far as motives are supplied by lust of plunder and mere aggrandisement. But, amidst all the confusion, a few principles of action stand out in clear relief, and give some semblance of human dignity to struggles otherwise hardly removed from those which, in a lower order of beings, bring about the survival of the fittest. We can see how, in the absence of any strong controlling authority, the states of India were not only torn by mutual dissensions, but exposed to the desolating ravages of invasion from without; how there were, to some extent, wars of creeds, the Muhammadans against the Hindus or the Sikhs, and wars of races, the North against the South; above all, how there was a contest between civilisation brought from the West and institutions of an early type which, for reasons to be given at length later on, I may call præ-feudal. In this period of anarchy Northern India fell a prey to the standing danger of barbaric irruption; and the incursions of Nádir Shah and Ahmad Shah Abdáli recall the means by which the more martial part of the population has been recruited in former ages, and the days when an Alaric or an Attila poured into the India of Europe their hosts of Goths or Huns. The Moghal empire was inherently weak. Even at its best, it had to struggle with the difficulties of foreign rule by men who were not merely of a different creed from the mass of those they governed, but were sometimes intolerant of the religion of their subjects; it had to contend with the consequences of a bad law of succession, leading to revolutions and civil wars on the death of almost every emperor; and it was impossible to hold distant governors in check, when office generally tended to become hereditary, when public morality practically did not exist, and when there were no metalled roads, no railways, and no telegraphs. In addition to all this, the emperors had to reckon with two opposing creeds, each resembling the other in the fact that

something like national enthusiasm was combined with a similitude of military organisation. In Northern India the Sikhs and in Southern India the Marhattas represented the revival of indigenous faiths antagonistic to the spread of the state religion; and though neither the Sikhs nor the Marhattas ever attained to the position of nations in the European sense of the term, they more nearly approached to the status of nationality than any other political communities of which modern Indian history takes count. As one province after another fell away by overt rebellion or persistent disobedience, and as the already tottering empire was shattered to fragments by the repeated blows of Afgháns and Persians on the one side and the Marhattas on the other, on the coasts of India adventurous powers of the West, having gained their footing by the unaccustomed passage of the sea, had begun, as between themselves, the world-wide contest which in every quarter of the globe has ended with the expansion of England. The French and English, in espousing the causes of princes and pretenders, fought alike for self-preservation and supremacy. Civilisation was in the end to triumph over anarchy; and one of the means of its success was to be military discipline, before which the rougher methods of native warfare were destined to give way.

It has often been pointed out that Dupleix was the first to perceive the certain consequences of the break-up of the Moghal empire, and the conditions upon which territorial power was to be acquired. As soon as the strength of military discipline was felt in the incessant hostilities of the Deccan and Hindustan, it became certain that one or other of the contending European powers would win, in the general scuffle for political authority, at least some local preponderance, and possibly or probably some extensive dominion. The English, indeed, set the example of interference in the affairs of native states, but were drawn somewhat against their will into the hostilities which arose out of the intrigues of Dupleix for supremacy in the Deccan. But as a rule they were ready to fight the French in any part of the world; and in the absence of steamships and telegraphs, a true perception of the essential conditions of the struggle underlay Clive's unhesitating message from the card-table to Colonel Forde, whom he instructed to fight the Dutch immediately, though at the time in Europe Holland was at peace with the British Crown. In the life-and-death contest



which was then taking place no risk could be run of the effective competition of any other Western power upon which the country princes might rely in designs of coercing the British. It may be freely admitted that there were incidents in the early wars and negotiations of the Company which would not bear the test of international morality; but I do not propose to enter here upon discussions of which readers of Indian history are a little tired. No one at this date will defend the trick practised upon Omichund; yet if his treachery was punished by deceit, supported by the falsification of papers, still the expedient of silencing a treacherous associate by a forged deed was one which the native courts of the day would have regarded rather as adroit than culpable. If, for the sake of argument, we assume that Warren Hastings, though acquitted by the House of Lords, was guilty of the offences placed at the head and front of his alleged offending; that he was not justified in employing the troops of his Government against the Rohilla chiefs, though they may have been dangerous to the British and to their protected dependent-chieftain, the Nawáb of Oudh; that he made unwarrantable demands on Chet Singh, the Raja of Benares; and that when he agreed to the Oudh contributions being raised from the Begums he connived at or joined in an act of spoliation—we have not, under any of these counts, a single act which would have troubled the conscience or shocked the sense of right of any Marhatta chief or imperial governor. It would serve no useful purpose to dwell upon what may be blots in the early pages of that long record of Indian achievements of which, as a whole, the English nation is justly proud. I refer to these matters merely because I have to remark that just as, in the first instance, so far as we accepted any theory at all, we accepted the current Indian theory of the relations of states, so our first methods of policy were Oriental in aim and, to some extent, Oriental in execution. In Western and Central India the Peshwas usurped the authority of the House of Sivaji, and were themselves supplanted by Sindhia, a general and chieftain of the Marhatta Confederacy. In Northern India Sindhia himself, while affecting to be the prime minister of the empire, was in reality the master of the House of Tamerlane. In Southern India a successful Muhammadan general held in durance the Hindu Raja of Mysore. At the time there was nothing singular in the appearance on the scene of a new set of mayors of the

palace. The territorial founders of the British Indian empire posed as the supporters of some puppet prince, a Nawáb of Arcot or a Nawáb of Murshidabad—a pretender set up by themselves, and by themselves deprived of all but the pageantry of independence. They behaved like the other vassals of the empire, of whom they made themselves one. Professing, when it suited them to do so, to act under the nominal authority of the Great Moghal, they were not really guided by any theory of international law or by any theory of Indian political law. They were guided by the exigencies of the time and the stern necessities of self-preservation. Like other Indian potentates of the day, they alternately ignored the imperial authority or sought the excuse or condonation of imperial recognition. Like their rivals, they placed their military force at the disposal of those who were able to pay for it. The usual resource of a nawáb or raja who found himself in political difficulties was to call in the Marhattas; and when the French and English also became military powers, the country princes called in the English and French, just as they had called in the Marhattas before. The French and English responded to the call, and, like the Marhattas, added to the general confusion by continually fighting each other.

The readiness of the native states to accept military assistance from any competent quarter led to the second of the steps by which was gained the English supremacy. If the first general measure of policy which put power into British hands was the support of nominal nawábs, whose professed adherents gradually came to exercise all real authority, the second measure was the gift of subsidiary forces to native states; but here, I think, we may fairly draw a broad line of distinction between the acts of the East India Company through its officers and servants and the acts of the British Parliament and Crown. Pitt's Act of 1784, by creating the Board of Control, directly connected the Supreme Government of India with the British Government of the day. The trial of Warren Hastings began on February 13, 1788, and judgment was pronounced seven years afterwards, on April 23, 1795. It was a judgment of acquittal; but, broadly, the debates of that time showed that the British nation would not permit the politics of its Eastern empire to be regulated by Oriental ideas of political morality. The Acts of 1784 and 1793 recited that the pursuit of schemes of conquest and extension of dominion in



India is repugnant to the wish, honour, and policy of the nation, and practically bound the Government in India not to undertake wars except for purposes of defence, and not to make any but defensive alliances except with the sanction of the home authorities. Acts of Parliament were, indeed, impotent to stem the tide of dominion and supremacy, already expanding in directions determined by laws as sure in their operation as those of the physical universe. But the statute-book bears witness to the better information and awakened conscience of the English people; and from this time onwards it became impossible for the conduct of our affairs with native states to be regulated otherwise than upon some definite plan, which should be manifestly consistent with equity and humanity.

The first plan was the work of Lord Cornwallis, the first English peer who was Governor-General, and it was doomed to almost immediate collapse. Probably he never fully realised the extent of the difference between the East and the West—a remark which now imputes no disparagement, because it is since his day that the deep chasms lying between the old world and the new, between ancient and modern societies, have been illuminated by comparative politics and comparative jurisprudence. At all events, he imported into the discussions about the permanent settlement the Western ideas of the day on the subject of landed property; and as he succeeded in putting these ideas into practice in Bengal, so, in the Deccan, he adopted, with reference to the considerable native states, the Western theory of a balance of power. I am aware that Sir John Malcolm ('Political History,' vol. i. p. 85, *note*) asserts that Lord Cornwallis knew too well the elements of which the native governments were formed ever to ground his measures upon an imaginary balance of power, and that there is reason to believe that the suggestion of the possibility of a balance of power came from the Court of Directors. But it can be established by many proofs that even if Lord Cornwallis never described his policy as one of a balance of power, it was, in point of fact, of that description. It will suffice to quote a memorandum, written probably in November 1804 by Major-General Wellesley, afterwards the Duke of Wellington. Speaking of the Peace of Seringapatam concluded in 1792, he says that it resulted from the war in which the three great powers—the English, the Peshwa, and the Nizam—had joined, in consequence of each having

received injuries from Tippoo Sultan. 'The object,' he adds, 'of the British Government was, if possible, to preserve the power of each in the situation in which it was left by the pacification.' That is the same thing as the establishment of a balance of power. It is only just to Lord Cornwallis to mention that he foresaw the difficulties and dangers to which the alliance would be exposed from the claims of the Marhattas for *chauth* over the Nizam's territory; and endeavoured without success to induce them to submit these claims to the arbitration of the British. In a very few years the Marhattas attacked the Nizam for the purpose of enforcing their claims; the British Government of the day did not interfere, and under the treaty with the Marhattas, known as the Treaty of Kurdla, 1795, the Nizam was obliged to cede half his territories, pay a great sum of money, and give up his prime minister and appoint another recommended by his enemies. By dissensions amongst the Marhattas all the power of the Peshwa fell into the hands of Daulat Rao Sindhia, who was in possession of the person of the King of Delhi and, by virtue of his position as deputy of the first minister of the empire, of the king's authority as well. There was 'thus established in the hand of one Marhatta all the territory and all the power on the west side of India, extending from Hardwar to the Toombudra, along the frontiers of the Company, the Nabob Vizier, the Nizam, Tippoo Sultan, &c.' The principal instrument and support of the power of Sindhia was a force officered and commanded by Frenchmen. A similar corps, officered in a similar manner, was the only support of the state of the Nizam. Tippoo in the south had inherited a large army and a bitter hatred of the English name. He had already made overtures to the French with the avowed object of the extirpation of the English. Napoleon was believed to be entertaining designs on India; and on the northern frontier the probability of an early invasion by Zamán Shah was reckoned amongst the factors of the situation.

Such was the condition of affairs when Lord Wellesley assumed the governor-generalship in 1798. The proposed balance of power had no existence, and French influence was strong and menacing. The Peshwa and the Nizam were completely overshadowed by Sindhia; and the state of Mysore was at least as formidable as it was before the victories of Lord Cornwallis. Events seemed to portend the realisation, after a new fashion, of the dreams almost realised



by Dupleix; it was again a question whether the supremacy throughout the whole continent would fall to the English or the French.

Dupleix was at one time the governor of the country between the Kistna and Cape Comorin; but the danger now was of a different kind. Lord Castlereagh thought there might have been a formidable combination of the native powers against us, of Sindhia, Tippoo, and the Nizam, supported by France. Looking to the diverse origin and bitter antagonism of these Hindu and Muhammadan powers, there was perhaps a greater probability that Sindhia would acquire pre-eminence in India by aid of his French officers and drilled troops, and that the instrument of his success would eventually become the means of his political extinction, his own real power and the nominal authority of the Delhi emperor alike falling into French hands. Be that as it may, there can be no doubt that the menaces of French influence were very serious. Not only was Tippoo engaged in seeking an offensive alliance with France, but there was also the chance of the establishment of French states in the Deccan and Hindustan. The corps of M. Raymond under the Nizam amounted to 14,000 men; attached to it was a park of forty pieces of ordnance; and a foundation had been laid of a corps of cavalry to act with the infantry. There was also a beginning of territorial power in M. Raymond's revenue-free grant, or *jágír*; though the grant was resumed on his death, which occurred in the first half of 1798. In 1803 General Perron held the possessions of Sindhia situated between the Jumna, the Ganges, and the mountains of Kumaun with a force commanded by European officers and amounting to 8,000 infantry and an equal number of cavalry. It was recorded by Lord Wellesley that Perron had formed this territory into an independent state, of which Sindhia's regular infantry, the force above described, might be termed the national army; but these expressions are not very exact, for Perron was still in the service of Sindhia, and was included in our hostilities against his master.

Formidable as then appeared the chance of French supremacy in India, it soon vanished so completely as to be now almost forgotten. It should be some consolation to those who, in existing political conditions, are apt to confess panic at slight symptoms of interference by Western powers in Indian affairs, that the varied dangers by which the Indian Government was beset in 1798 had been practically over-

come when Lord Wellesley left India in 1805. They were not overcome, it is true, without the exercise of great political skill and much expenditure of blood and treasure; but by sagacity in the council chamber and strategy and courage in the field they were, in a brief space of time, notwithstanding some misfortunes, successfully dissipated. By negotiation supported by a sufficient military force, Raymond's corps was disbanded, its place being taken by battalions of the English. In September 1803, Perron was permitted on his own application to retire within the Company's territories; and a few days afterwards his army, under Louis Bourquin, was completely crushed by Lord Lake at the battle of Delhi. The attention of Zamán Shah was diverted from any attack upon the north of India by distractions in his unwieldy kingdom and dangers on his western frontier, largely due to British negotiations at the Court of Persia. Four years before the battle of Delhi, Tippoo had been conquered and killed and his dominions partitioned. With the battle of the Nile, the victories of Abercrombie and Hutchinson and the collapse of the French expedition to Egypt ended all risk of a French invasion of India.

I have been particular in referring to the possibilities of the establishment of a French dominion in India, because the despatches at the end of the last century and the beginning of the present century show that this alternative was continually present to the minds of the statesmen of that time. 'It has not been a matter of choice,' wrote Lord Castlereagh in March 1804, 'but of necessity, that our existence in India should pass from that of traders to sovereigns. If we had not, the French would long since have taken the lead in India to our exclusion.'

We may consider this to have been substantially true, even though we allow that the Indian statesmen of that time, perceiving how hard it was to understand in England the real requirements of the situation in India, may have somewhat exaggerated arguments based on the proceedings of the French, because arguments of that kind would probably persuade or influence the home authorities. And we may, I think, add to what Lord Castlereagh recorded, that it was not a matter of choice but of necessity that the British were compelled to stand forth as the paramount power. Manifestly one of the elements in that necessity was the imperative claim of self-preservation, pointing to the destruction of French influence in the three principal native states.



We cannot perhaps fix the date of the resolve of the British Government to be supreme in India with absolute precision. The Duke of Wellington, writing in 1806, said the British Government had become paramount in India by the conquest of Mysore. Sir Charles Aitchison ('Treaties,' &c., vol. v. p. 7) considers that the campaigns against the Marhatta chiefs in 1803 and Holkar in 1805, which completely broke up the Marhatta Confederacy, established once for all the supremacy of the British power. Sir George Barlow, afterwards for a short time Governor-General, when discussing the policy of the Treaty of Bassein, wrote on July 12, 1803: 'With respect to the French, supposing the present questions in Europe not to lead to an immediate rupture, we are now certain that the whole course of their policy has for its object the subversion of the British empire in India, and that at no distant period of time they will put their plans in execution. It is absolutely necessary for the defeat of these designs that no native state should be left to exist in India which is not upheld by the British power, or the political conduct of which is not under its absolute control.' It is curious, I may remark in passing, that this compendious description of Lord Wellesley's aim should have been recorded by an officer who abandoned it.

The fact probably is, that the theory was accepted and acted upon in India at the time of the Treaty of Bassein, and took practical effect in a manner that was generally unmistakable as a consequence of the successful wars with the Marhatta chieftains which that treaty brought about. It will be worth while to explain this remark somewhat fully, because the circumstances show how supremacy was forced upon the British Government by the irresistible pressure of events.

In 1797 Tippoo sent envoys to the Mauritius to obtain assistance in his project of expelling the English from India. This incident, with some others, was made the occasion of a declaration of war; and Lord Wellesley, before the war began, in a paper of August 12, 1798, elaborately justified his intentions by arguments drawn from international law, and contended that we were entitled by 'the law of nations' to reduce the power of Tippoo as an effectual security against his designs. Lord Wellesley went on to use language which implied that it was still an object of the Indian Government to re-establish the balance of power in India as it existed at the Peace of Seringapatam. As we have seen, it was part of

the policy of that treaty to preserve to Tippoo, no less than to the Marhattas and the Nizam, some degree of power, so that the interposition of the force of the British Government might always turn the scale; and, generally, it was the intention of the alliance between the British Government, the Peshwa, and the Nizam to provide against the enmity of the Mysore Sultan. But the event of the war was the annihilation of the Mysore state. There could no longer be any question of restoring the balance of power; a principal motive for the whole system had ceased to exist; and one of the powers included in the arrangements had disappeared, for the new Mysore state, formed by Lord Wellesley, was altogether dependent on the British Government, and had not to be taken into account in the politics of the Deccan. In this new and perhaps unlooked-for conjuncture of affairs, what was to be done? what was to be the new principle of policy suited to the altered circumstances of the case? It seemed certain that the predatory turbulence of the Marhatta chiefs would shortly bring them into conflict with the Company. If we abandoned our ally the Nizam to their mercies, they would certainly conquer his country, make their frontier in the Deccan coterminous with ours, and sooner or later violate our territories. If we undertook to defend the Nizam against all comers, the Marhattas included, the Marhattas would unquestionably press their vexatious claims against him, and we should become embroiled with them all the same. The so-called Marhatta empire was at different times a government of which the Peshwa was the actual head and Sindhia and other chiefs the powerful officers, and the union of a number of chiefs possessing territory and political power and acknowledging the Peshwa as a merely nominal suzerain. It consisted of a predatory and warlike confederacy, of which the members, loosely held together by certain political ties, were frequently at war with each other. The Marhattas claimed the *chauth* of all India; nominally a fourth part of the land-revenue, practically as much as could be exacted by violence and terrorism. This was, in fact, the blackmail, on the payment of which they insisted, for the exemption of towns and fields from ravage and devastation. In political contact with such a power making such a claim, how was it possible to apply the law of nations? They, at all events, would not be bound by it; and in the absence of any common superior, how was it to be enforced against them without their assent? Their



demands virtually amounted to a claim to the political supremacy of the whole continent. The question between the Company and the Marhattas could not possibly be settled without a war; and the immediate object of the Treaty of Bassein was, to give us, on the outbreak of the inevitable hostilities, resources and a strategical position which would otherwise have been at the disposal of our certain enemies.

Thus to some degree French ambition, but to a greater degree Marhatta claims and Marhatta strength, and the general incapacity of Oriental governments to regulate their mutual relations by any well-ordered system, go to explain why the theory of British supremacy supplanted the theory of an Indian balance of power. The keen vision of Lord Wellesley surveyed the situation in every part, and the courage and comprehensive foresight of his policy command the respectful admiration of those who follow his explanations of it. Without hesitation upon the conclusion of the last Mysore war he offered to allow the Peshwa to participate in the acquisitions made by the destruction of the power of Tippoo, on condition of admitting the arbitration of the British Government in disputes with the Nizam and receiving a subsidiary force. The offer was declined; but in 1802 the united forces of the Peshwa and Sindhia were defeated at Poona by Holkar, who is generally described in the despatches as a freebooter, but was at the head of a large body of predatory troops and had already laid the foundations of territorial power. In October 1802 the Peshwa fled and took refuge at Bassein under the protection of the Company, and the treaty was signed on the last day of the year. It established between the British Government and the Peshwa one of those subsidiary alliances which were a main instrument in Lord Wellesley's hands for the establishment of the British protectorate, and it placed the nominal head of the Marhatta empire in undoubted political dependence on the British power. The natural result was a hostile league of the Marhatta chieftains, and a war precipitated, but not caused, by the particular stroke of policy which changed the nominal head of the Marhatta Confederacy into a real dependent of the Company. Opposition was crushed in the field of battle by Lord Lake at Delhi and Laswâri, in Hindustan, and by General Wellesley (afterwards the Duke of Wellington) at Assaye and Argaom, in the Northern Deccan. In reporting (July 13, 1804) the general pacification which followed these

victories, Lord Wellesley observed that the British power in India had finally been placed in a 'commanding position with regard to other states,' affording 'the only possible security for the permanent tranquillity and prosperity' of the British possessions.

These words well sum up the position attained and the leading motives, other than those of self-preservation, which had led to its attainment. By no one have the reasons why it was impossible to apply the law of nations in India been more clearly explained than by Lord Wellesley's still more distinguished brother, the great Duke. It is unfortunate that General Wellesley's reply to Lord Castlereagh's strictures on the Treaty of Bassein is not dated, but it was probably written in November 1804. I may be permitted to quote from that paper at some length.

'European governments,' General Wellesley says, 'were, till very lately, guided by certain rules and systems of policy, so accurately defined and generally known, that it was scarcely possible to suppose a political event in which the interests and conduct of each state would not be as well known to the *corps diplomatique* in general as to the statesmen of each particular state. The Asiatic governments do not acknowledge, and hardly know, such rules and systems. Their governments are arbitrary; the objects of their policy are always shifting; they have no regular established system, the effect of which is to protect the weak against the strong; on the contrary, the object of each of them separately, and of all of them collectively, is to destroy the weak; and if by chance they should by a sense of common danger be induced for a season to combine their efforts for their mutual defence, the combination lasts only as long as it is attended by success, the first reverse dissolves it; and, at all events, it is dissolved long before the danger ceases, the apprehension of which originally caused it. . . . These observations apply to the government of the Marhattas more than to any other of the Asiastic governments. Their schemes and systems of policy are the wildest of any; they undertake expeditions not only without viewing their remote consequences upon other states and upon their own, but without considering more than the chance of success of the immediate expedition in contemplation. . . . The picture above drawn of the state of politics among Asiastic powers proves that no permanent system can be adopted which will preserve the weak against the strong, and will keep all for any length of time in their relative situations, and the whole in peace; excepting there should be one power, which, either by the superiority of its strength, its military system, or its resources, shall preponderate and be able to protect all.' The British Government was the preponderating power, and the Treaty of Bassein is evidence that it knew the fact and was prepared to act up to its responsibilities.



The virtual condemnation pronounced by Parliament upon the somewhat Oriental theory of politics illustrated by the early action of the Company forced the governors of India, who now represented the British nation, to adopt some generally consistent and sufficiently satisfactory theory of their political position in the land. The theory of the Marhattas was as incompatible with the principles of international law as was the theory of the First Napoleon. Europe united in arms to resist the attempts of the French republic and empire to impose the supremacy of France upon the other Western states. At the very time when England took the lead in that contest, she was herself playing a Napoleonic part in another continent. The inconsistency in appearance was none in fact: when Wellesley and his still more famous brother and Lake were fighting Tippoo or the Marhattas and spreading over the territories which were not actually annexed a network of protective alliances, they were destroying French influence and sweeping out of the land the possibilities of French supremacy. Moreover, there was not in India a single one of the political conditions which in Europe for many years made the principle of a balance of power an effective guarantee for international tranquillity. In India there was, and is, no national life; at most there have been the beginnings of two nationalities. In India there was, since the downfall of the Moghal empire, not one considerable government of any stability, the government of the Company itself alone excepted; there was no possibility of any lasting quasi-international combination for pacific purposes framed on a common assent; and the governments of the several native states had not enough either of administrative and political strength or of public morality to act persistently and for any length of time up to what might be called international obligations. Europe was saved by its civilisation from the domination of one power of the West; a more advanced civilisation was the efficient cause which made one Western power supreme throughout India.

It is noticeable that at the moment when the question of

supremacy had just been decided in the field the British Government resolved to forego any advantage there might be in claiming to succeed by right of conquest to the suzerainty of the Great Moghal. There had been no like forbearance on the part of the Marhattas and their generals, who sought to use the prestige of the House of Delhi in furtherance of their own aims. Mahdaji Sindhia obtained for the Peshwa from the King of Delhi the grant of the office of *vakil-ul-mutlak*, or executive prime minister of the Moghal empire, and was himself appointed to execute the functions of that office under the title of deputy. Daulat Rao Sindhia succeeded to the office of deputy *vakil-ul-mutlak*, and to the consequent control which his predecessor exercised over the house and family of the King. By a successful intrigue Perron obtained the office of commandant of the fortress of Delhi, which was the residence of the royal family, and thus secured the possession of the person and of the nominal authority of the Emperor. These examples apart, there were temptations of substantial advantage in the possible use of the traditions of the empire which it required moderation to resist. Notwithstanding the King's total deprivation of real dominion, almost every state and class in India still acknowledged his nominal supremacy. The current coin of every established power was struck in the name of Shah Alam. Princes and persons of the highest rank and family still bore titles and displayed the insignia of rank which they or their ancestors derived from the throne of Delhi, and the King was still considered to be the legitimate fountain of similar honours.

The arrangements, however, actually made after the battle of Delhi, and the explanations given of those arrangements, were alike inconsistent with any intention on the part of the Company to stand forth as emperor, as they had formerly stood forth as dewán. The Emperor sought the protection of the British Government; and it was arranged that certain territories near Delhi should be assigned as part of the provision for the maintenance of the royal family; that these lands should remain under the charge of the Resident at Delhi; that the revenue should be collected and justice administered in the name of Shah Alam under regulations fixed by the British Government; that the King should appoint a dewán and other officers; and that two courts should be established for the administration of the Muhammadan law to the inhabitants of the city of Delhi and of the assigned



territory, death sentences, however, being subject to confirmation by the King.

In describing these arrangements on June 2, 1805, Lord Wellesley wrote: 'It has never been in the contemplation of this Government to derive from the charge of protecting and supporting his Majesty the privilege of employing the royal prerogative as an instrument of establishing any control or ascendency over the states and chieftains of India, or of asserting on the part of his Majesty any of the claims which, in his capacity of Emperor of Hindustan, his Majesty may be considered to possess upon the provinces originally composing the Moghal empire.' The benefits claimed were the preclusion of hostile projects, which might be founded on the restoration of the authority of the Emperor under the direction of agents of France; and the confidence and good feeling amongst states and people which the British Government could secure by becoming the lenient protector of the representative of the House of Timur. The Delhi emperor was not to be a Nawáb of Arcot or a Nawáb of Murshidabad for the purpose of consolidating British dominion throughout the continent; for, indeed, the days when it was necessary to proceed under the countenance of some native power had passed away. As I have said, the main instrument of policy now was the formation of subsidiary alliances.

It must not, of course, be supposed that there were no subsidiary alliances before the time of Lord Wellesley; but he greatly improved and extended the system and was at special pains to avoid the evils which had arisen, particularly in Oudh and the Carnatic, from the previously defective nature of the British alliances with tributary governments or states. The subsidiary alliances were generally formed upon one model, and have been very well described by Mr. H. T. Prinsep, whom I shall follow here and presently when I come to speak of the final pacification of the interior of India under Lord Hastings. The British Government supplied a specific force for the protection of the state and the maintenance of the ruler's legitimate authority. 'This force,' says Mr. Prinsep ('History,' vol. i. p. 5), 'was not ordinarily to be employed in the duties of civil administration, nor in the collection of the revenues; and the British Government generally agreed not to interfere in such matters. A subsidy, equivalent to the payment of the force, was furnished by the protected state either in periodical money payments or by territorial cession, more frequently the

latter. A certain native contingent, as it was called, was also to be maintained in readiness to act with the British troops and for the efficiency of this the protected state was answerable. But the most material provision of the treaties was, that the states accepting them engaged to discontinue all political negotiation with the other powers of India, except in concert with the British Government, and to submit all claims and disputes with others to its arbitration and adjustment. This article, though an indispensable correlative of the stipulation for protection, gave to the British a controlling power in all matters of external relation; while the obligation to maintain the protected prince's just authority implied the right of interfering, with advice at least, in matters of internal policy likely to bring it in question. Hence all the subsidising states were more or less in dependence, a reference to the British Government being always necessary either to prevent or punish the aggression of neighbours, to quell insurrections or enforce the submission of powerful vassals and guarantee their just treatment, or, finally, to regulate the succession on a sovereign's demise.'

This, it will be observed, is a description of the state of things in 1813, eight years after Lord Wellesley had left India. The deliberate aim of his policy of subsidiary alliances will best be stated in words used with his authority. In a despatch to the resident at Hyderabad, dated February 4, 1804, it is said: 'The fundamental principle of his Excellency the Governor-General's policy in establishing subsidiary alliances with the principal states of India is to place those states in such a degree of dependence on the British power as may deprive them of the means of prosecuting any measures, or of forming any confederacy hazardous to the security of the British empire, and may enable us to preserve the tranquillity of India by exercising a general control over those states calculated to prevent the operation of that restless spirit of ambition and violence which is the characteristic of every Asiatic government, and which from the earliest period of Eastern history has rendered the peninsula of India the scene of perpetual warfare, turbulence, and disorder. The irremediable principles of Asiatic policy, and the varieties and oppositions of character, habits, and religions, which distinguish the inhabitants of this quarter of the globe, are adverse to the establishment of such a balance of power among the several states of India as would



effectually restrain the views of aggrandisement and ambition and promote general tranquillity. This object can alone be accomplished by the operation of a general control over the principal states of India established in the hands of a superior power, and exercised with equity and moderation through the medium of alliances contracted with those states on the basis of the security and protection of their respective rights.'

Briefly, while states were still in that primitive condition in which predatory violence is the sole substitute for political principle, the only possibility of keeping the peace between them lay in the supremacy of one civilised authority: the effective establishment of a balance of power belongs to a much later stage of political progress; and one instrument for acquiring the necessary supremacy in India was the use of the subsidiary alliances above described. In some such terms, after nearly ninety years as fertile, perhaps, in political theories as any other equal period in the history of literature, we may explain to ourselves the leading idea which animated Lord Wellesley as the founder of the Indian political system; and the explanation suggests itself that perhaps the old-world theory was right after all, and that the universal or at least general dominion of one state is the right principle upon which to base the relations between a number of states where one of them far excels the rest in its degree of civilisation.

The policy of Lord Wellesley, the very next year after it had been thus emphatically described, was as emphatically repudiated by his successor. In August 1805 Lord Cornwallis wrote of a 'belief which, however unjust, appears to be too generally entertained of a systematic design on the part of the British Government to establish its control and authority over every state in India. It is,' he said, 'the primary object of his lordship's' (*i.e.* his own) 'policy to remove this unfavourable and dangerous impression by abstaining in the utmost degree practicable consistently with the general security of the Company's dominions from all interference in the internal concerns of other states. His lordship considers even the preservation of our actual alliances to be an object of inferior importance to that of regaining the confidence and removing the jealousy and suspicions of surrounding states.' Lord Cornwallis returned to India only to die; but the principle of non-intervention, approved at the time by the British Government, was accepted

and acted upon by his successors, Sir George Barlow and (in a much less degree) Lord Minto, with the result that the anarchy of the interior of the continent—an anarchy which the vigorous prosecution of Lord Wellesley's measures would have speedily dispelled—was prolonged for another twelve years, and even aggravated.

But before English opinion had become terrified at Lord Wellesley's audacity, his far-sighted policy had borne lasting fruit. He remained long enough in India to give to his grand ideas the physical basis of an inexpugnable strategic position. A glance at the map of India will show that the vast territories of Native India, that is, of the feudatory states, lie, like enormous islands, surrounded by a sea of British dominion. The coasts, the great rivers, the dividing lines between the realms of powerful princes, every strategic point of any imperial consequence, all these are red. In physical fact as in political theory, the British Government is supreme. Nor is this commanding position due to happy accident or blind chance. To secure the coasts and the rivers was a part, and a consistent part, of Lord Wellesley's general design. External and internal means of communication were alike to be in British hands. In the conquest of Mysore, in 1799, one of Lord Wellesley's objects was to cut off that state from communication by sea with French allies. In the partition and settlement which followed the conquest, he reserved to the British Government the province of Kanara, the district of Coimbatur, and all the territories lying below the Ghauts between the former possessions of the Company in the Carnatic and in Malabar respectively. To these he added the forts and posts on the table-land forming the heads of all the passes above the Ghauts. He annexed Tanjore and so much of the Carnatic as was not already under British administration, thus completing the acquisition of the whole line of the Madras coast. He separated the Mysore state, reconstituted under an entirely dependent Hindu raja, from the dominions of the Nizam by a broad belt of territory ceded by the latter in payment for the cost of the subsidiary force. Later on, the victories over the Marhattas and other circumstances were made the occasions for similar measures in consolidation of British dominion. The Doáb of the Jumna and the Ganges was annexed, partly by conquest from the Marhattas in 1803 and partly in 1801, on the same principle as that which was applied in the case of Bellary and Cuddapah, that is, by cession from Oudh to



provide a subsidy for the forces supplied by the British power. On the eastern coast he annexed Cuttack, including the seaport of Balasore, and thus established 'between the province of Midnapore and the Northern Sirkárs a continuation of the British dominion and authority,' thereby completing the line of connection between the territories under the Governments of Bengal and Fort St. George respectively. The possession of Cuttack, he pointed out, would have enabled the Raja of Berar to interrupt the communication between our northern and southern possessions, to facilitate the invasion of Bengal and the Northern Sirkárs, and to obtain the aid of the French and other European officers and troops who might have been landed in that province. On the west coast we acquired at the same period the port and territory of Broach and the seaports belonging to Sindhia, which, Lord Wellesley said, afforded to that Marhatta chieftain and to the French officers in his service the means of intercourse with the Government of France, and to the French an easy access to the Marhatta states in a quarter where our military power was less formidable and our political influence less firmly established than in other parts of India. It was reserved for another Governor-General, for Lord Dalhousie, the equal of Lord Wellesley in commanding ability and strength of will, to link the north with the south of the Bombay Presidency by the lapse of Sattára, to complete the separation of the Deccan from Central India by the lapses of Jhánsi and Nágpur, and to incorporate the Indus Valley and extend the empire to the mountain base of the Himalayas and the Sulaimans by the annexation of the Punjab in retribution for unprovoked rebellion and in the just maintenance of imperial security, and of Oudh, as a penalty for misrule. It is not by mere chance that the big ring of British dominion has closed round the protected states. Various political circumstances have thrown these vast acquisitions on our hands; and as they came they have been so shaped by great Indian Governors, that we have territorial guarantees for the effective enforcement of our political system.

As political influence has advanced side by side with actual acquisition of territory, and acquisition of territory has strengthened political influence, it may be worth while to finish here this very rough and general sketch of the growth, not of the protectorate, but of Indian dominion. Indeed, the growth of each is intimately connected with the growth of the other. Glancing at the great Indian provinces,

it is not difficult to bear in mind the great names with which their incorporation with British territory is associated. Bengal, Behar, and the northern part of Orissa we owe to Clive; Warren Hastings added the province of Benares to the territories of the Company. Almost all the rest of the North-West Provinces and the Presidency of Madras, as a province of the empire, were, as already shown, acquired by Lord Wellesley. He also annexed a great part of Bundelkhand. Lord Hastings wrested Kumaun and Garhwal from the Gurkhas, thus rounding off the North-West Provinces and extending them to their existing area. He further made the Bombay Presidency out of the dominions of the Peshwa and parts of the Gaekwar's dominions and of the present districts of Surat, Broach, Kaira, and Ahmadabad, which had been ceded by the Peshwa to Lord Wellesley under the Treaty of Bassein in 1802. To Lord Hastings also is due the foundation of the Central Provinces by the appropriation of the Saugor and Nerbudda territories, the river valleys in the very midst of India from which the Pindári bands set forth on their yearly expeditions of devastation. Forced into the first Burmese war by what Sir Charles Metcalfe called 'the clearest case of self-defence and violated territory,' Lord Amherst conquered Aracan, Tenasserim, and Assam. Sir Charles Napier took Sindh in 1843 during the period of Lord Ellenborough's administration. In 1846, after the first Sikh war, Lord Hardinge annexed the Jullundur Doáb of the Punjab. Then followed, under Lord Dalhousie, an extension of the empire comparable only to that effected by Lord Wellesley fifty years before. By both of these great men vast territories were acquired, alike in peace and in war; but the main instrument which Lord Wellesley used for the acquisition of territory without bloodshed was the subsidiary alliance, while that employed by Lord Dalhousie was the doctrine of lapse. In one noticeable instance however—that of Berar—Lord Dalhousie adopted the method of his great predecessor. The Hyderabad districts were assigned for the support of the Hyderabad Contingent, and placed under British administration in 1853. By conquest Lord Dalhousie extended British rule over the north and west of the Punjab in 1849, and over Pegu in 1852. The outlying provinces of the Punjab and Burma were thus brought to the shape or to the position in which they stood in reference to the rest of the empire till quite the other day. By lapse he acquired, amongst other states, Jhánsi, Sattára, and Nágpur: the latter state and the Saugor and Nerbudda and some other territories now form the Central Provinces. Oudh was annexed in 1856; and for more than twenty years after the mutiny there was no extension of British Indian dominion of any great consequence. There were similar pauses of about twelve years after Lord Wellesley, and of about seventeen years after the first conquests from Burma. As I have pointed out, in the early days one of the chief causes which thrust territorial power upon the Company was the certainty that if they abstained from grasping political authority, it would assuredly have been seized by some rival European nation. It is interesting to note that our two most recent acquisitions are substantially due to similar possibilities. Sibi and Pishín are British districts, and the Agent of the Governor-General at Quettah is also Chief Commissioner for British Baluchistan. Upper Burma was annexed in 1886. The empire has thus been increased on both western and eastern frontiers; and it will not, I think, be denied that the expansion on the west was the consequence of repelling Russian influence, while the expansion on the east was even more directly due to the interference in the affairs of Burma, if not of the French nation, at all events of French adventurers.



Roughly and broadly, then, it may be said that Clive made Bengal; Lord Wellesley, Madras and the North-West Provinces; Lord Hastings and Sir Charles Napier, the Bombay Presidency; and Lord Dalhousie, all the provinces formerly described as the non-regulation provinces, except Assam and Burma—that is to say, the Central Provinces, the Punjab, Oudh, and, in a sense, Berar. With Assam we may connect the name of Lord Amherst, who acquired it from the Burmese in 1825. Burma was annexed in three instalments—part by Lord Amherst in 1826 as a consequence of the same war that gave us Assam, part by Lord Dalhousie in 1852, and part by Lord Dufferin. For the purposes of this very rapid and general view I have omitted all acquisitions which are not of the first consequence; amongst many others, Cachár in 1830 and 1853, Coorg in 1834, Jaintia in 1835, numerous lapses throughout the century in the Cis-Sutlej states and the Bombay Presidency, the Cis-Sutlej chiefships sequestrated after the first Sikh war in 1849, the Duárs conquered from Bhután in 1865, and many small confiscations at various dates for misconduct or rebellion.

The point in all this deserving most attention is, that any

one supposing the British empire in India to consist merely of the territories thus annexed would have an exceedingly imperfect idea of the political situation. The British empire in India consists of the British dominions and the Indian protectorate; and without the dominions the protectorate could not exist. What, then, is the general extent and character of the Indian protectorate at the present day? According to an official return prepared in 1886 by the Secretariat of the Government of India, there are 629 feudatory states, of which 108 have an area of upwards of 500 square miles. By the latest figures the total area of India is computed at 1,583,276 square miles; and the feudatory territory at 638,672 square miles; and the population under native rule is about sixty-five and a half millions out of a total population of two hundred and eighty-six millions and a half. It will be seen from the map that, if we put aside the Central Provinces—an intrusive block of British territory in the very midst of Native India—almost the whole of the interior of the continent from the Sutlej to the Kistna consists of native states; and to these we may add a great part of the apex of the southern triangle—namely, Mysore, Travancore and Cochin, and the small state of Pudukottai. To the north and south we have two great states created by the British Government—Kashmír and Mysore. Just above Mysore, proceeding northwards, lies the Nizam's territory, the sole important fragment still remaining of the empire of the Moghals, all the other provinces of that empire that were left at the close of the first half of the eighteenth century in anything like integrity having been incorporated in the structure of British dominion. The Rájpúts, the chiefs of the middle country and the Hills, never thoroughly subjugated by the Moghal emperors, are divided laterally and vertically from each other. The western group is severed from the eastern group by the intervening wedge of Marhatta conquest, the states of Sindhia and Holkar; and from the northern Hill group, partly by British territory and partly by the possessions of the Cis-Sutlej Sikhs, whose rise presents an analogy in many respects remarkable to the rise of the Marhattas.

Thus on the face of India as it exists to-day live and move the surviving specimens, as it were, of dynasties and polities once predominant, or nearly attaining to predominance. There are the old Hindu principalities in the Punjab Hills and Rájpútána and Central India, and far south in



Cochin and Travancore; there is in the Deccan, under the rule of the Nizam, at least one considerable remnant saved from the wreck of the Moghal empire when it was destroyed, partly by common plunderers, partly by those whose first duty was to maintain its integrity; there are the states raised by the successful spoliation of that empire as it fell or of the no-man's land that ever edged its uncertain borders, the Sikh states saved by British protection from absorption by the Sivaji of the north, Ranjít Singh, and the Marhatta states, the Bhonsla and the Peshwa having disappeared, and the Gaekwar, Holkar, and Sindhia being the three survivors; last of all, there is a new species, the states created by the British Government, of which Kashmír and Mysore are examples, as also Loháru, Dojána, and Pataudi, petty states near Delhi, dating from the time when Lord Lake was charged to interpose a belt of neutral territory between the frontiers of the Company and the Marhatta power. In this way political geography, like geology everywhere, bears in India continued witness to the past; the primitive formations crop up in large masses in the Rájpút states of Rájpútána and Central India and the Punjab Hills, and far south in Travancore; side by side with them in the centre of India are still traceable territories devastated by that volcanic eruption of irrepressible pillage which burst upon the Moghal empire in its days of decadence; while almost all the rest of the country levelled to our hand by Muhammadan dominion has been overspread by the recent deposit of the tide of British statesmanship and conquest, carried forward sometimes by imperceptible progress, sometimes by gigantic storm-waves, which leave, as ridges to commemorate the eras of considerable advance, the boundaries of the British-made states, of the Chief Commissionerships, and the provincial governments.

# CHAPTER III

## THE LATER GROWTH OF THE PROTECTORATE

It is fortunate that for the most part the narrative of the formation of the protectorate has been admirably told by Lord Wellesley in his despatches, and by Mr. H. T. Prinsep, the secretary of Lord Hastings, in the book from which I have already quoted a passage. To complete a brief general account of the growth of the protectorate, I must now touch upon some of our relations with the minor states generally, and upon the circumstances of the time of Lord Minto and Lord Hastings. The latter was not only at one with Lord Wellesley in perceiving that unquestioned British supremacy was the only possible guarantee for the peace of the Indian continent, but he also extended the system of well-defined relations with protected states which Lord Wellesley had begun, and which circumstances compelled Lord Minto to continue. I shall also have to refer again to some of the less important annexations, which in the last chapter I merely mentioned and passed by. It is a drawback, but an inevitable one, that the narrative becomes tamer as it advances. What has now to be said is like the third act of a play, when we have already guessed the plot and are wishing the characters would end their tedious elaboration of it, and pair off and make their bow. The first and second acts, when we had upon the stage such striking figures as Lord Clive and Lord Wellesley, and when the Duke of Wellington himself was part of the cast, were much more interesting.

Some of the smaller states had been brought within the protectorate before Lord Wellesley left India. I have already mentioned his policy of establishing a barrier of petty dependent states between our then frontier of the Jumna and the countries over which the Marhattas were left for a time to carry their depredations. The protectorate of the Orissa Tributary Mehals fell to us with the conquest of Cuttack. In 1803 a few of the Káthiawár chiefs applied



for British protection, and offered, on certain conditions, to cede their estates to the British Government. The offer was not accepted; but in 1807 the joint forces of the Gaekwar and the British Government advanced for the purpose of effecting a settlement of the country. The supreme authority in Káthiawár was not, however, vested in the British Government alone till the Peshwa, in 1817, had ceded to it all his rights in that peninsula, and the Gaekwar in 1820 had engaged to send no troops to the province and to make no demands on it except through the British Government. In 1808 Mr. Metcalfe, the British envoy at the court of Ranjít Singh, was endeavouring to negotiate with the Maharaja a treaty of alliance against France. The Maharaja replied by claiming the right of sovereignty over the whole Sikh country; and the rejoinder of the British Government to this ambitious demand was, to take the Cis-Sutlej chiefs under its gladly welcomed protection. Some additional chiefs of Bundelkhand were also admitted to protective alliances about this period; and these measures and, to a less extent, the intervention in Káthiawár constitute exceptions to the then prevailing policy of political abstention. With these slight modifications, and a few more which need not be mentioned, the relations of the British with the native powers of India were, when Lord Hastings assumed the office of Governor-General in October 1813, 'precisely in the condition in which they were placed at the close of the Marhatta war in 1805–6.'

Mr. Prinsep, the maker of that remark, divides the states of India at this time into four classes: 'First, those with whom the British nation had formed subsidiary alliances. Secondly, those enjoying its protection without any subsidiary contract, and consisting for the most part of small principalities, scarcely meriting the name of substantive powers. Thirdly, acknowledged princes with whom the British Government was at peace, and connected by the mutual obligation of treaties, but with whom it had no closer intercourse or recognised means of influence, except in so far as the residence of a British representative at the court was sometimes a matter of stipulation. Fourthly, independent chieftains and associations never yet acknowledged as substantive states, and to which the British nation was bound by no engagements whatsoever.'

The states of the first class connected with the British by subsidiary alliances were those of the Nizam of the Deccan,

the Peshwa, the Gaekwar, Mysore, and Travancore. In strictness, Oudh might be added to this list, but the cessions exacted by Lord Wellesley had been so considerable that Oudh was 'in too great dependence on the British Government to be regarded as one of the political states of India.'

The protective engagements had a controlling character, 'nor did they differ materially from the subsidiary treaties, except inasmuch as there was seldom any consideration exacted for the protection to be afforded, and never any obligation on the British Government to maintain a specific force for the purpose. The principal members of this class were the Rajas of Bhurtpur, of Dholpur Bárí, of Alwar or Macherí, and various other chiefs round Delhi and Agra, with whom arrangements had been made in the close of the Marhatta War in 1805-6. The Rajas of Oorcha and Tehrí, of Dattia, of Punna, and others of the Bundela race, together with the Marhatta chiefs of Jalaun and Jhánsi, and one or two more taken under protection on the conquest of Bundelkhand or subsequently; also the Raja of Rewa in Baghelkhand, and the Sikh chieftains between the Jumna and the Sutlej, to whom allusion has before been made as added to the list in the time of Lord Minto. The Musalmán Nawábs of Rámpur and Kalpi in Hindustan, of Karnúl and Ellichpur in the Deccan, and numberless others, whom it would be tedious to recapitulate, belong also to this class. The two Rájpút states of Jaipur and Jodhpur had been included in this system by Lord Wellesley; but in the settlement of 1805-6 they were left without the pale of our relations, from an apprehension that these were already too extensive. The Raja of Jaipur was considered by his conduct in the war with Holkar to have forfeited all claims to our further protection; while the Raja of Jodhpur had refused to ratify the treaty concluded with Lord Lake by his representative; so that no impediment arose out of any existing engagements with either state to counteract the desire then felt by the British Government to withdraw from the connection.' The passage I have already cited from a despatch of Lord Cornwallis, in which he disclaimed the policy of his predecessor, supplies an instructive commentary on these remarks.

'The states and powers of the third class, that is to say, those not directly under our influence and with whom our connection was that of mutual amity alone, were the Sikh chieftain Ranjít Singh, the Gurkha nation, which ruled



Nepal, and the three Marhatta governments of Central India, namely, the Sindhia, Bhonsla, and Holkar families.'

The fourth class consisted of the predatory bands of the Patháns and Pindáris. The principle of the Marhatta government was plunder; and the effect of the peace of 1805 was to circumscribe the area of their depredations. Within the limits assigned to their power we did not interfere with their *mulk-giri*, or country-taking expeditions, their recognised and habitual procedure for collecting what they claimed as revenue at the sword's point by means of an army in the field. Within the theatre of war so narrowed disorder increased; and fresh bodies of armed plunderers appeared, subsisting on what we might now perhaps call dacoity committed on a colossal scale. The Pindáris adopted the old Marhatta or Parthian method of warfare; and their object was general rapine carried out by roving expeditions directed against British and native territory. The Patháns had horse, infantry, and artillery organised more or less in the European style; and they moved about, chiefly in Rájpútána, for the purpose of preying on governments and powerful chiefs. In 1814 Amir Khan, the best known of the Pathán commanders, was at the head of a force of at least 30,000 horse and foot, furnished with an artillery well manned and served. It is not easy to compute the numbers of the Pindáris, partly because the same bands or individuals would at one time be associated under the leading adventurers of the class, and at another employed in the loose cavalry establishments of Holkar or Sindhia. But on a general combination of Pindári bands in 1811 there was an assemblage of not less than 25,000 cavalry, with several battalions of newly raised foot.

I have extracted these particulars at some length for the purpose of stating in a compendious way the net political results of Lord Hastings' administration. When he left India, the aim of Lord Wellesley had been attained. The British protectorate extended over the Simla Hill states, the Cis-Sutlej states, the whole of Rájpútána and Central India, the states of the Bombay Presidency, and the other powers of peninsular India which had been brought within the system in former times. As predatory associations, the powers of the fourth class had disappeared. The Pindáris were destroyed or so shattered as never to unite again. Amir Khan became a petty territorial nawáb, the tracts granted to him by Holkar being guaranteed to him in perpetuity under British protection. His guns were nearly all

surrendered, and his army disbanded, except the pick of his battalions, which were taken into British pay. Of the states and powers of the third class, Ranjít Singh had avoided all rupture with the British, and was consolidating his power beyond the Sutlej, practically recognising that river as the dividing line between his dominions and the tracts and states under British supremacy. The time when the unprovoked aggression of the Sikhs was to lead to the conquest of their country across the Sutlej was not to come till his death had removed the only native ruler who was capable of keeping the formidable Sikh army in check. The Gurkha race had been defeated in arduous campaigns, and had yielded territory in Kumaun and Garhwal, with the suzerainty over the chiefs of the Simla Hills. Sindhia, Holkar, and the Raja of Nágpur had become feudatories of the empire. On the treachery and defection of Appa Sahib the Nágpur territories of the Bhonslas became ours by conquest; some districts were annexed, and the rest were conferred upon a youth connected with the ruling family through the female line; and the state of Nágpur, thus re-granted by the British Government, was administered by British officers under Sir Richard Jenkins during some ten years, for the greater part of which time the new raja was a minor. The Peshwa, Báji Rao, was an exile at Bithúr, a few miles from Cawnpore, drawing the enormous pension of 100,000*l.* a year for life. He lived till January 28, 1851, and his adopted son, Dandhu Pant, was the Nána Sahib who authorised the atrocities of Cawnpore. The territories of the Peshwa, with the exception of Sattára, conferred by the British Government on a representative of the House of Sívaji, were annexed. The other states of the first class stood in much the same position as before. At the commencement of the Pindári War in 1817 a close alliance was formed with Bhopál, which agreed to furnish a contingent of horse and foot. A great addition was made to the number of the simply protected states, the addition, indeed, practically including all the remaining states except Khairpur, Kashmír, the Trans-Sutlej states, Baháwalpur, and some frontier states elsewhere. It remains to note that the settlement of our relations with the different groups of states was effected in the case of Central India through the agency of Sir John Malcolm; in the case of Western India, through the agency of Mr. Mountstuart Elphinstone, the historian of India and Governor of Bombay; and in the case of Rájpútána, through Sir Charles Metcalfe. Sir David Ochterlony was the British agent who made the arrangements with the Cis-Sutlej chiefs; and in him also, after native Garhwal was restored to its raja, was ultimately vested the superintendence of the affairs of the hill chiefs who had been under Gurkha supremacy. The British system of relations was introduced in this quarter in the first instance by Mr. Fraser, the political agent with General Martindell's force in the Nepal War.



In this way the political system was built up in Southern India and the plains of the Jumna and Ganges by Lord Wellesley, and on the Bombay side and throughout the interior of the continent north of the Deccan by Lord Hastings. On January 1, 1823, the Marquis of Hastings left India; and there is not much that need detain us in the history of the next twenty years. The government was busied with Asiatic rather than Indian wars, with the conquest of three out of five provinces of Burma, and with disastrous attempts to set up in Afghanistan, as a counterpoise to Russian influence, a dynasty favourable to the British Crown. An interval, however, of comparative repose and internal progress was interposed between the conquest of Assam, Arracan, and Pegu, and the conquests of Sindh and the Punjab. Lord William Bentinck was a later Lord Cornwallis. The judicial system was remodelled; the foundation of the revenue system of Northern India was laid; education was encouraged; *sati*, or the self-immolation of women, and *thagi*, or wholesale murder by strangulation for purposes of plunder under the sanction of a perverted religion, were suppressed; and about the same period energetic measures were directed against human sacrifice in certain savage parts of the country, and against female infanticide in more civilised localities, where the dictates of humanity were overpowered by Rájpút notions of honour. It is perhaps interesting, but it is a mere accidental coincidence, that the pacification of India by the proceedings of 1818 followed closely upon the pacification of Europe at the Congress of Vienna in 1815; and I mention the fact here only because it is sometimes useful to keep sight of the main currents of European and English politics when we are considering the development of Indian affairs.

Indian political law made at this time exceedingly little progress. The inevitable consequences of our position and the real nature of our responsibilities to the populations of native India were realised by few, and actually disclaimed by

the most powerful authorities. Yet just as parliamentary and official prohibitions have been impotent to stem the extension of British dominions, so no abnegation of the political functions, which we have in part inherited from various predecessors and in part assumed, has, in the end, availed to prevent their deliberate acceptance, their definition, and, in their definition, their substantial change. One statesman who discerned clearly the necessary tendency of contemporary events was Sir Charles Metcalfe. In 1806 he wrote a scathing denunciation of 'the fundamental principle' of Sir George Barlow's administration; the principle that we should withdraw from all connection and alliance with the states situated west of the Jumna, and get rid of our possessions so placed, except a strip of a few miles in breadth along the western river bank. 'I have occasionally,' he said, 'heard something of a commercial policy belonging to the company separate from its interest as a sovereign state. Without entering here into the question how far the company may have benefited by becoming a potentate, and granting, without discussion, the full justice of all the lamentations which are uttered on this subject by many worthy directors and proprietors, I must be allowed to say that it cannot be helped—the evil is done. Sovereigns you are, and as such must act, if you do not mean to destroy the power of acting at all, to demolish your whole corporation, your trade, and your existence. Execrate the memories of Clive and Watson, and those who first brought you from the state of merchants. Burn them in effigy, hang their statues, and blast with infamy those malefactors. Your progress since has been inevitable and necessary to your existence. "To stop is dangerous, to recede is ruin," said Lord Clive at an early stage of our power. We have arrived now at that pitch that we may stop without danger, but we cannot recede without serious consequences. . . . I repeat you are, in spite of yourselves, sovereigns, and must be guided by those rules which the wisdom of the world has applied to the government of empires. . . . For my part I wish to have your influence increased. It is generally sought for, and I am certain in its operation it gives the most real and essential benefit to all chiefs and states, and to the subjects of all chiefs and states over which it is exercised. There is a loud cry that we are in danger from extended dominion. For my part I can contemplate universal dominion in India without much fear.' Events in the Marhatta empire and in



the gathering places of the Patháns and Pindáris and the provinces which they ravaged soon proved that we could not stop without danger, even in 1806.

Nearly twenty years later, at a time when the Court of Directors maintained that 'the settlement of 1818 had in no degree extended our right of interference in the internal concerns of other states, except as it had been provided by treaty,' Sir Charles Metcalfe had occasion to advise the government as to the course which should be pursued with reference to passing events in Bhurtpur. Confidence had been shaken by want of success in the Burmese War; and there may have been in many quarters a disposition to try conclusions with the British Government. A child, named Balwant Singh, whose right to succeed had been recognised by the Governor-General in Council, had come to the throne of Bhurtpur; and his guardian had been killed, and his person and government seized by Durjan Sál, a relation and a pretender. Sir David Ochterlony had promptly ordered a force into the field to coerce the usurper. His proceedings had been disapproved, to the great increase of the strength and contumacy of Durjan Sál. The question was, what should now be done? 'We have by degrees,' said Sir Charles Metcalfe—I quote here from Marshman, vol. ii. p. 408—'become the paramount state in India. In 1817 it became the established principle of our policy to maintain tranquillity among the states of India; . . . and we cannot be indifferent spectators of anarchy therein without ultimately giving up India again to the pillage and confusion from which we then rescued her. . . . We are bound, not by any positive engagement to the Bhurtpur state, but by our duty as supreme guardians of tranquillity, law, and right, to maintain the legal succession of Balwant Singh. . . . Our supremacy has been violated, or slighted, under the impression that we were prevented by entanglement elsewhere from sufficiently resenting the indignity. . . . A display and vigorous exercise of our power, if rendered necessary, would be likely to bring back men's minds in that quarter to a proper tone; and the capture of Bhurtpur, if effected in a glorious manner, would do us more honour throughout India, by the removal of the hitherto unfaded impressions caused by our former failure, than can be conceived.' This advice was accepted and acted on. Lord Lake had been baffled before Bhurtpur in 1805. It was quickly taken in 1826 by Lord Combermere.

The interpretation placed by the Court of Directors on the political results of the settlement of 1818 is one of an immense number of instances of British moderation in dealings with native states. But neither moderation nor the theory of non-intervention in internal affairs availed to prevent the absorption of some states, and the direct assumption of the administration of one of the most important states in India. In 1793 a treaty had been made with the then Raja of Assam; but the country lapsed into anarchy, and fell under the dominion of the Burmese. Its conquest in 1825 was confirmed by the treaty of Yandabu in 1826; and with the cession followed the supremacy over certain states and tribes in that quarter. Of these states the whole of Jaintia and a great part of Kachár were annexed during the administration of Lord William Bentinck, 'chiefly,' as Mr. Wilson says ('History,' vol. ix. p. 324), 'through the folly and criminality of their native rulers.' The Raja of Jaintia, in 1832, failed to comply with a demand for the apprehension of persons concerned in the kidnapping of four British subjects for the purpose of offering them as victims to the goddess Káli. His territory in the plains was therefore confiscated; and upon this he voluntarily relinquished his subjects in the hills in return for a pension. In 1830 Govind Chandra, Raja of Kachár, who had been restored after the Burmese War, was assassinated. He had made himself obnoxious to his people by the employment of strangers and by extortion, and the people had repeatedly solicited annexation; and as there was no descendant, lineal or adoptive, the state was annexed, with the exception of a hill tract in the hands of a rebellious subject. This tract was also annexed in 1853. In 1826 Lower Assam had been forthwith placed under British management; but the upper part of the valley was made into a separate principality under Raja Purandhar Singh, with whom a treaty was made in 1833. The Raja's government was mild but weak. He fell deeply into arrears in the payment of his tribute, and declared his inability to meet the engagements by which he had bound himself. The management of the country was therefore resumed by government in 1838. During the same period events of much the same character were bearing witness to the impracticable nature of the doctrine, that we should abstain from interference in the affairs of native states; though at the very same time that doctrine was, in other quarters applied with political results of great evil.



The Raja whom we had set up in Mysore misgoverned his country, in spite of warnings, for years. In 1830 half of it was in revolt. It was necessary to send a British force to quell the insurrection; and the administration was, in 1831, entrusted to British officers, and remained in British hands for fifty years. The Raja of Coorg murdered many of his kinsmen, committed various other barbarities, and set the British Government at defiance. His state was therefore annexed in 1834. In 1838 the Nawáb of Karnúl (a Pathán chiefship founded by Aurangzíb, which passed as a feudatory to us in 1800 when the Nizam ceded Bellary and Cuddapah in payment for the subsidiary force), was found to be engaged in treasonable military preparations on an extensive scale. His town and fort were taken in arms, himself imprisoned, and his state became a British district.

These annexations, though small, are not without importance; for they were made at a time when the circumstances under which intervention in feudatory affairs is requisite had by no means been defined. It was thought that the native princes became indolent by trusting to strangers for security, and cruel and avaricious from the assurance that they had nothing to dread from the hatred of their subjects as long as their protection was guaranteed by an irresistible power (Marshman, iii. p. 15). Non-interference, it was supposed, would make the princes efficient instruments of government. It is easy now to see that we must interfere to prevent evils threatening the existence of the state itself or the general tranquillity of the country; and that, as the native rulers are virtually maintained by British power, the correction of gross misrule is an imperial responsibility. But this platitude, as it now seems, could only become a political maxim in virtue of a long experience fraught with many miseries to the subjects of native states. The annexations I have mentioned, occurring when they did, suggest that non-intervention would, in the end, produce exactly that consequence which most of all it was intended to obviate. Leave all the native states alone to follow their own devices without guidance and without warning, and many would speedily blot themselves out by the sheer force of misgovernment, to the ultimate disturbance, as we may now believe, of the political equilibrium of the empire.

Amongst instances of our reluctance to interpose, which might be quoted from the records of those days, I will refer only to the history of the state of Gwálior between 1827 and

1843. In March 1827 died Daulat Rao Sindhia, with whom had been effected the settlement of 1805. His state had passed during his lifetime from independence to vassalage. He left no son, natural or adopted; but a successor, a boy of eleven years of age, was adopted by Baiza Bai, Daulat Rao's widow, in accordance with Marhatta custom. Baiza Bai endeavoured without success to obtain a formal recognition of her right to be regent for life, and held the youthful Maharaja in such irksome restraint that he fled from the palace and took refuge with the Resident. The Baiza Bai was unpopular; the army espoused the cause of the young Maharaja, and the ambitious lady was compelled to retire from Gwálior territory. The Maharaja was, indeed, acknowledged by the British Government. But, says Sir Charles Aitchison ('Treaties,' iii. p. 255), 'to such a length was the principle of absolute neutrality carried at this time' (1833) 'that government declared it was matter of indifference whether the Maharaja or the Bai was at the head of the Gwálior state, and that the only object of government was to preserve the general tranquillity and its own reputation, recognising such ruler as might be placed by the popular voice at the head of the administration.' Baiza Bai from without the Gwálior territories continued her intrigues. She was not supported by any strong party; but the rule of the Maharaja was very weak. 'The court was one constant scene of feuds and struggles for power among the nobles; the army was in a chronic state of mutiny. The weakness of the internal government prepared the way for the hostilities with the British Government which broke out shortly after the Maharaja's death, and resulted in an entire change of the British policy towards the Gwálior state.' The Maharaja died in February 1843. Again the widow, Tára Ráni, adopted; and the adoption was recognised by the British Government. The boy was eight years of age; and the maternal uncle of the Maharaja just deceased was chosen by the chiefs as regent. He was opposed and expelled by one Dáda Khásjiwala, a mere usurper; and the latter acted with hostility towards the British Government, which demanded his surrender, 'security for the tranquillity of the frontier, and the reduction of the mutinous army, which possessed the real power in Gwálior and overawed the government of the state.' The Dáda was surrendered on the advance of a British force. But the army resisted, and was totally defeated in the battles of Maharájpur and Punniar, fought on the same day in December 1843. Territory yielding eighteen



lakhs a year was ceded for the maintenance of a contingent force; the army was largely reduced; and it was arranged that the government during the minority should be conducted according to the advice of the British Resident. The Baiza Bai was eventually allowed to return to Gwálior, where she died in 1862.

This narrative is instructive, partly because it is a good illustration of the necessity of imposing a limit on the military forces of native princes, and partly because it exhibits one set of natural consequences which flow from the refusal of the paramount power to interfere. The struggle with the Sikhs was known to be impending, and it was impossible to leave the mutinous forces of Gwálior on our line of communications or in our rear. Interference of the most drastic kind was forced upon us by the pressing necessities of self-preservation. We had allowed disorders to grow up of a type only too familiar to the readers of Indian history. The result was two pitched battles and a fresh annexation of territory. It is in this way, amongst others, that native states would gradually accomplish their own ruin, if there were no timely resolve on the part of the British Government to preserve them by friendly but strong interposition.

The year 1843 was that of the annexation of Sindh. Upon this event it is not necessary for me to make any comment. It belongs quite as much to the history of the British in Asia as to Indian history, and the only connection it has with the growth of the protectorate is that the annexation did not extend to the still-existing Sindh state of Khairpur. In six years more the whole of the Punjab had been annexed. With the annexation of the Jullundur Doáb our protectorate extended to a number of hill states to the north and west of those of which the British Government became the suzerain after the Nepal War. I also have to note that the creation of the state of Kashmír dates from the close of the first Sikh War in 1846; and that the failure of the government then established in the Punjab to hold the country in check by means of a Resident and a native administration was not without some, though a slight, influence upon the decision to annex the province of Oudh. Upon that annexation I shall have to remark at some length in the next chapter.

It is time now to sum up what we have so far gathered as to the relation between international law and Indian political law and the growth of the British protectorate. The

early administrators of the company no more acted upon the principles of international law than did the country powers for or against whom they fought in the contest for dominion which everywhere prevailed in the continent of India when the Moghal empire ceased to be strong. The first British peer who was Governor-General, Lord Cornwallis, attempted to apply the law of nations in India; and even Lord Wellesley himself appealed to it when the name served a political purpose of the hour. But it was soon perceived that in British supremacy lay the only hope of general tranquillity, or even perhaps of preserving the acquisitions already made. The first methods used were the support of pageant princes, the formation of subsidiary alliances, and actual conquests in arms. The policy of Lord Wellesley was reversed by his successors, but the inevitable course of events was only slightly retarded. Stringent doctrines of abstention did not prevent the extension of the protectorate; and it was obviously unnecessary to call in the maxims of international law to justify the suppression of the Pindáris.

Speaking generally, we may say that the protectorate has been formed without reference to international law, and depends upon a different order of ideas. Sometimes native powers were compelled to accept military aid or protection as part of a general design for the pacification of the whole country; sometimes that aid and that protection were eagerly sought by them when threatened with extinction by the Sikhs or Marhattas; and sometimes the British Government inherited by right of conquest the supremacy exercised by its predecessors. The paramount power of that government is not derived from the law of nations or from the Moghals, or, indeed, from any of the potentates who maintained a fluctuating and often nominal suzerainty over different parts of the country in former times; it rests on conquest, agreement, and usage, and the necessity, in the general interest, of keeping the peace. But it may safely be said that whatever suzerainty, real or nominal, belonged to the *Khálsa* in the Punjab, to the Gurkhas in the Hill states, to the Peshwa in so much of India as was overrun by the Marhattas, or to Delhi emperors has now become vested in the British Government in such a way that we can at least claim all those acts of allegiance which were due to our predecessors, and the performance of which we have not expressly waived; though how much more we could claim in any given case would be a question of fact to be answered by an examination of the



relations existing in that particular case between the government and its feudatory. Following the practice of Europe, we have, in an immense number of cases, though not by any means in all, recorded the results of the proceedings, military or diplomatic, which established our supremacy in documents known as treaties or agreements; in many other cases, adopting the usage of India, we have acknowledged rights on the part of feudatories by *sanads* or imperial grants; while in many cases the relations between suzerain and feudatory are not described in any formal instrument at all, but must be gathered from history, from official correspondence, and from those general principles of Indian political law which effectively maintain the British protectorate.

It is important to observe that the principles in question cannot be considered to have become fixed till within quite recent years. The fundamental principle of all, the universal supremacy in India of the British Government, was indeed laid down by Lord Wellesley; but, as I have shown, it was immediately repudiated by his successor, and for the greater part of this century—for years after it had been made operative by the wars and pacification of Lord Hastings—its consequences were left to be matters of conjecture or contradictory action, and were never so pursued as to form a body of doctrine that might be regarded as a part of the constitutional law of the whole British empire in India and elsewhere. Occupied with wars and conquests, the early administrators had little leisure for the elaboration of systematic rules, which might have hampered them in the urgent necessities of self-defence and the suppression of political disorder; and if, without the experiences of 1857 to guide them, they had attempted to work out their principles to results, the probability is that we should have been met now by the obstacle of authoritative expositions of policy unfavourable, in their ultimate tendency, to the autonomy of native states. We have, indeed, in the case of the doctrine of lapse, been compelled to encounter such an obstacle; but, as will appear below, we have successfully surmounted it.

As it is, the accepted principles are not the deductions of text writers from any general propositions, established or assumed, but generalisations from the course actually adopted by the government on typical and important occasions. They are, for the most part, to be gathered from specific cases, like the rules of judge-made law on topics untouched by

legislation. And the fact that Indian political law has, in the main, been formed in this way raises a strong presumption that it will be found suitable for its purposes. Having been so formed, it obviously could not exist in any considerable volume until a good many states had become feudatories, and a sufficient number of cases had arisen in practice to admit of safe rules for future guidance being drawn from their results.

If we distinguish between the Indian political system and Indian political law, we may say that the former was almost wholly constructed in the first twenty years of the present century; while the latter, though based upon occurrences of year after year from the middle of the last century to the present day, only really took shape during the twenty years next after the mutiny. The provinces, so to speak, of Native India were nearly all of them added to the British protectorate by Lord Wellesley and Lord Hastings. A good deal more was, however, effected by Lord Minto than we are sometimes apt to remember. Before the conquest of Mysore we had dealt with native potentates in one of two ways: we had either negotiated with them, or made wars or treaties on an equal footing, for they were then rival independent powers; or we had subjugated them, leaving them the mere pageantry of royal state, while we took or supplied all the substance of political or military authority. In our relations with the Mysore state itself, the Nizam, and the Marhattas, we copied, to some extent, the procedure of international law; and in our relations with the Nawáb of Arcot and the Nawáb of Murshidabad, rather that of the Peshwas and the mayors of the palace. Our dealings had been with the great and practically independent officers of the dying empire; and with the great Indian powers originating in the violence to which its moribund condition afforded the opportunity. With few exceptions, the alternatives before the smaller states were subjugation by or continued subjection to the Sikhs or the Marhattas or the French wielding their power; or, on the other hand, acceptance of British protection, with that degree of political dependence which that protection necessarily implies. Many of them willingly or eagerly elected for British protection; and it is satisfactory to reflect that in great part the protectorate of native India is due to the deliberate political assent of the states concerned. Again and again the character in which the British Government has appeared has been that of a deliverer and a preserver.



# CHAPTER IV

## THE ANNEXATION OF OUDH

THIS chapter traverses well-worn ground, but there are good reasons for repeating here the oft-told tale of the last great measure of Lord Dalhousie's administration. The story illustrates the worst features of native rule under the protectorate, and thus enables me to shorten a later part of this work; and it also serves to fix a date for the origin of Indian political law as now understood. It is clear from the discussions which I am about to summarise that before the mutiny there was no coherent system of settled principles and rules such as we now apply in our relations with the feudatory states; and that thirty-seven years ago ideas on that subject were in a nebulous haze, and had not as yet been concentrated by events into definite shapes with a permanent inter-connection. In the process of concentration much matter has been whirled away into the outer limbo of forgotten politics; but we may hold that one important part of the lasting residuum was derived from Oudh experiences amongst others. Tardily, indeed, but at last, the conscience of the British Government awoke to its duty to the people of Oudh. The annexation illustrates the principle, that if there is misrule on the part of a government which we uphold, we ourselves are ultimately responsible for it.

Oudh was not annexed on account of any treasonable acts on the part of its rulers. On the contrary, they never wavered in their friendship to the British Government. In war they were active and useful allies, at least in the matter of supplies of grain, cattle, and money; for their army, with the exception of some corps commanded by British officers, was always a rabble, and sometimes more dangerous to its friends than to its foes. In peace the officers of the Oudh Government attended with sufficient alacrity to those matters which depended exclusively on the requirements of

the paramount power. They gave up criminals who absconded from British territory. They supplied our troops on the march through Oudh. They protected our posts. They co-operated actively with us in the capture of *Thags*, and in the settlement of petty frontier disputes about lands. An Oudh Frontier Police was established, which was of great benefit to the neighbouring British districts. During the Nepal war the King of Oudh lent us, free of cost, nearly three hundred elephants. During the Nepal and Burma wars, he lent us three million pounds sterling, at times when we were extremely in want of money and could not procure it elsewhere. In 1842 the grandfather and father of the eventually deposed king between them lent us nearly half a million sterling, which was of great use in enabling Lord Ellenborough to equip and push on the army of General Pollock to retrieve our disasters in Afghanistan. The Court of Directors stated that a more shocking picture of a country given up to lawless violence, and to the extremes of rapacity and cruelty, never had been placed before it, than that which appeared in the reports of Colonel Sleeman, the last of the Oudh residents but one. Yet Colonel Sleeman, who could speak with authority on such a point, believed that no native sovereigns in India had been better disposed towards the British Government than the rulers of Oudh; or had, in time of difficulty, rendered aid, to the extent of their ability, with more cordiality or cheerfulness. Lord Dalhousie declared that the Government of India would feel itself guilty in the sight of God and man if it any longer sustained by its countenance and power a system fraught with suffering to millions. But he recorded that the rulers of Oudh had all along acknowledged our power, had submitted without a murmur to our supremacy, and had aided us, as best they could, in the hour of our utmost need.

Oudh was annexed solely for the purpose of ending misgovernment in all interior affairs; misgovernment which had lasted in spite of censure, remonstrance, warnings, and threats, for a period of forty years. I say forty years, because I wish to exclude the period from 1798 to 1814, when Saadat Ali was Nawáb, and I may add that under Muhammad Ali Shah (1837 to 1842) there may have been some improvement. But from the earlier time, when Shuja-ud-Daula laid his turban at Lord Clive's feet and owed the restoration of his territory and the promise of support to the pleasure of the British Government, it may be said in



general terms that corruption in all departments rarely, if ever, ceased, and there had been little, if any, remission of the extortion, tyranny, and cruelty of local chieftains and local officials. Oudh, when our connection with it began, was in a condition not unusual in Indian provinces at the time of the disruption of the Moghal Empire. That condition was never thoroughly reformed. Indeed, there is only too much reason to believe that, under the British protectorate, it deteriorated. Warning after warning was given without avail; respite after respite demonstrated the vanity of every hope that at last there might be some effort towards improvement. In 1779 Warren Hastings told the Wazír that the disorders of his state and the dissipation of his revenues were principally due to his detestable choice of ministers. In 1793 Lord Cornwallis, addressing the Wazír, said: 'The revenues are collected, without system, by force of arms: the *ámils*' (the local revenue officials) 'are left to plunder uncontrolled; the *ryots* have no security from oppression, nor redress for injustice exercised upon them.' In the following year Sir John Shore wrote in much the same strain. In 1801 Lord Wellesley had formed the conclusion that no effectual remedy could be provided against the ruin of the province of Oudh until the exclusive management of the civil and military government of that country should be transferred to the Company, suitable provision being made for the maintenance of the Wazír and his family. 'No other remedy,' he observed, 'can effect any considerable improvement in the resources of the state, or can ultimately secure its external safety and internal peace.' Writing to the Wazír a little later in the same year, he said: 'I have repeatedly represented to your Excellency the effects of the ruinous expedient of anticipating the collections, the destructive practice of realising them by force of arms, the annual diminution of the *jumma* (revenue) of the country, the precarious tenure by which the *ámils* and farmers hold their possessions, the misery of the lower classes of the people, absolutely excluded from the protection of the Government, and the utter insecurity of life and property throughout the province of Oudh.' Lord Wellesley annexed more than half the country and endeavoured, without success, to provide for the better government of the residue. But the misgovernment of the districts left to the Wazír was not permanently abated. A scheme was devised upon the principle of assimilating the administration of Oudh to that

of a British province, and dividing the territory into districts with revenue and judicial officers acting under separate controlling officers at the capital. About the year 1810 this scheme was submitted to the Nawáb, with a letter from Lord Minto strongly urging its adoption. The Nawáb refused to accept the scheme; and it was entirely dropped by Lord Hastings in 1814, as a measure of conciliation and of preparation for the approaching Gurkha war. It is said that after Lord Hastings' departure the British Government again determined to interfere authoritatively for the correction of confusion and misgovernment. However this may be, during the years from 1815 to 1822 the British troops were constantly employed against refractory *zamindárs*; and in the beginning of 1820 these troops occupied and dismantled more than seventy of the Oudh forts. The Government of Oudh was unable, without assistance, to suppress even the gangs of armed robbers who haunted the jungles and made frequent and desperate inroads into British territory. In 1826 Lord Amherst had an interview with the King in the hope of inducing him to amend the administration of his country. In 1831 Lord William Bentinck informed the King that matters had come to that pass that, in the event of improvement and reformation not being effected by his Majesty's officers, the settlement of the country would need to be made by British officers: and this intimation was accompanied by a significant allusion to the stories of Bengal and Benares, Arcot and Tanjore. The same Governor-General recommended to the Home Government that the British Government should undertake the management of the country in the name of the King for such period as might be found necessary for restoring order and for establishing an efficient system of administration. The Court of Directors authorised the Government of India to carry this measure into effect, if they still considered it necessary to do so. In the despatch of July 16, 1834, which conveyed this permission, the Court observed: 'The administration of Oudh, instead of being conducive to the prosperity or calculated to secure the lives and property of the inhabitants, has become progressively more and more oppressive until the country presents a scene of anarchy and tyranny unparalleled in any other of the more considerable native states; and, instead of always advising with the officers of the British Government and acting in conformity to their advice, the Prince has,



during all this long period, disregarded the most earnest remonstrances and the most solemn admonitions, perpetually addressed to him, both by the British representative at his Court and directly by your Government.' 'Unfortunately,' writes Sir J. P. Grant in a valuable minute to which I shall refer again presently, 'the measure thus authorised was not carried into effect at the time in the unfounded hope of amelioration.' We may at least conjecture that if it had been, the result might have equalled that attained in the not dissimilar case of Mysore. But 'the Afghan and other wars,' continues Sir J. P. Grant, 'suspended the consideration of the Oudh question for several years; . . . at last, in 1847, the Governor-General, Lord Hardinge, at a solemn interview, gave the present ruler of Oudh a term of two years, within which period, if his administration were not reformed, he was assured that the measures which had been so long threatened would be carried into execution.' Nothing was done. The Punjab and Pegu wars and the reluctance of the Government to resort to the necessary extremities caused a delay of some years. At length General Outram was sent to Oudh as Resident, with instructions to report whether the improvement peremptorily demanded by Lord Hardinge seven years before had been in any degree effected. The report of General Outram showed no improvement whatsoever. In the language of Lord Dalhousie, the misgovernment of Oudh was even more gross and palpable than at the first: the condition of the King's territory and people was even more miserable than before. Upon this report and the consultations which followed it, her Majesty's Government resolved upon the annexation of the country.

It is idle now to inquire whether Oudh might not still have been one of the feudatory states of India, if the whole of Lord Wellesley's policy had been carried out, and not merely a part of it; if the scheme of Lord Minto had been firmly insisted upon at the time; or if Lord William Bentinck's proposal for a temporary sequestration had been acted upon by his successor. I shall have to dwell a little longer upon the actual nature of the evils which existed in Oudh, because the record against that state of wrong and disregarded human suffering is the most forcible illustration I can adduce of the anarchy and oppression which may ensue when the British Government protects a native potentate against attack from without and internal disorder, removes

the natural check upon Eastern rulers of general revolt, and unhappily relies, as the sole security for good government, upon advice, expostulation, and censure. Measures, not mere words, are required if we would save native states from the loss of their autonomy. This is a commonplace now, but the whole history of Oudh proves that it has been long indeed in becoming an accepted principle.

What, then, was the general condition of Oudh in the period which immediately preceded annexation? In 1839, Dr. Butter, an officer who had excellent opportunities of becoming acquainted with the facts, wrote: 'The administrative state of the country may be summed up in a few words: a sovereign regardless of his kingdom, except so far as it supplies him with the means of personal indulgence; a minister incapable, or unwilling, to stay the ruin of the country; local governors, or more properly speaking, farmers of the revenue, invested with virtually despotic powers, left, almost unchecked, to gratify their rapacity and private enmities; a local army, ill-paid, and, therefore, licentious, undisciplined, and habituated to defeat; an almost absolute denial of justice in all matters, civil or criminal; and an overwhelming British force distributed through the provinces to maintain the faith of an ill-judged treaty and to preserve peace.' In 1849, while the minister was framing a plausible balance-sheet, more than one-third of the revenue remained uncollected at the end of the year; all the public establishments and stipendiaries were deeply in arrears; the treasury was empty; scores of landholders, with large armed forces, were in open rebellion. There were 246 forts or strongholds, mounted with 476 pieces of cannon, all held by landholders of the first class, chiefly Rájpúts. Large quantities of the most fertile lands in Oudh were converted by the landholders into jungles around their strongholds, some of them extending over spaces from ten to twenty miles long by from four to eight miles wide. Into these mazes of desolation and iniquity no man dared enter without the permission of the robber chief. The strongholds were dens of plunderers, infesting the whole country, defying the Government, imposing intolerable taxes upon traders and travellers, and making life and property everywhere insecure. The revenue was collected by force; and landholders who failed in their resistance to the wretched soldiers of the Nawáb, took to plunder, burnt as many villages and murdered or robbed as many travellers as they could, to



obtain subsistence for their armed followers and to avenge themselves on the Government and its supporters.

Oudh has an area of 24,000 square miles, and was then supposed to have a population of about five millions. During the seven years ending 1854, according to the statistics of reported crime, there was an annual average of more than 147 gang robberies and 212 cases of kidnapping. According to the like statistics during the same period, there was an annual average of 1,573 persons killed and wounded, and of 78 villages burnt and plundered. The actual suffering was much greater, for innumerable crimes were never reported at all. General Outram estimates the corrected average of killed and wounded at above 2,000 a year. Outside of Lucknow there were no courts of justice of any kind. There were six hundred and sixty news-writers distributed over the face of the country, drawing, on an average, less than ten shillings a month apiece. It was their duty to make a true report of all occurrences to the Durbár or head-quarters of Government, through the Darogah, or head of the department. They sold their reports to the officers, civil and military, who abused their authority, and shared the proceeds of this iniquitous traffic with the Darogah, who, in turn, shared his plunder with the minister and other influential persons at court. Colonel Sleeman reports a case in which the wives and children of the landowners and cultivators of whole towns and villages were driven off in hundreds like flocks of sheep to be sold into slavery. A great many perished of cold and hunger. The emissaries of the news-writers were present, and received so much a head on all who perished or were sold. Frightful tortures were common. There were numerous cases of men being burnt on the body with hot ramrods; the mode of punishment for recusancy was to place the wrist between split bamboos, which were daily tightened. If the victim failed to pay the demand, he was left in this situation till his hand dropped off. Three men lost their hands in this manner in the year 1854 in the villages of Pípapur and Kaliánpur. In 1847 the following were amongst the crimes committed by high Government officials or their subordinates: five hundred women and children were sold by auction; in a gang-robbery four men were killed and a fifth was buried up to the neck in the ground and his ears filled with powder, which was fired and killed him; a revenue-collector with a thousand sepoys attacked a bazaar, plundered five villages, and

carried off thirty-two captives; a weaver who delayed to prepare some thread was tied to the leg of an elephant and thus dragged, his body being lacerated, to the camp of the local official; a farmer of a village, on the plea of arrears of revenue, was burnt in the body with hot ramrods. I need not go on with the list. In all these cases the matter was represented by the Resident to the King, but no answer could be obtained. In Lucknow, where there were tribunals, justice was openly bought and sold. The King's eunuchs, the King's fiddlers, the King's poets, and the King's creatures plundered the people as much in the capital as the revenue officers plundered them in the distant districts. These minions had their separate courts of so-called justice, and on the pretence of adjudicating claims under the authority of the King, imprisoned and ruined whomsoever they pleased. Officials bought their places and recouped themselves by rapacity. The revenue officials gave large fees to the court officials, but were not safe in their positions for a year, so much depended on Durbár influence and Durbár intrigue. The King left all power ostensibly to the minister; but the minister was hampered on every side by the interference of the despicable crew of strumpets and parasites who hung about the King. The position of the minister, if unenviable, was profitable. His salary was more than ten thousand pounds a year, and his perquisites were reckoned at more than seven times that sum. Bad as the civil administration was, the army was perhaps even a worse plague to the miserable subjects of the King than the systematic corruption of all authority and the systematic prostitution of all justice. The rebels and robbers sometimes spared the villagers; but the King's troops, who dared not face the high-handed marauders, showed the common people no mercy. Three-fourths of the officers commanding regiments were singers or eunuchs, or their creatures, or the creatures of court favourites—men or boys who never saw their regiments and never left the court. Numbers of the army existed only on paper, their pay being the perquisite of the commanding officers and their crew. The officials embezzled the money supplied for powder, for the repair of gun carriages, for the purchase of bullocks. The bullocks actually purchased were starved, and the price of the grain supposed to be supplied to them misappropriated. Other bullocks used for artillery purposes were taken from the villagers by force. The pay-masters received their offices on contract. With the connivance of the Government and its officers, the troops—of whom it was said that none had a whole coat to his back and few muskets which could be discharged—were for ever engaged in pillaging the farmers and cultivators. Outlay for grass, wood, and fodder was disallowed; every corps on reaching its ground therefore sent out a foraging party. The doors and roofs were torn from the houses to be used for fuel. The covering of houses, doors, and windows, and stores of grass and straw were to be seen moving towards the camp from every village within two or three miles. The Chumárs and like inferior castes, it was said, were the prey of all, caught at every hour of day or night, used as beasts of burden, beaten and abused, never paid, and often robbed even of their scanty clothing.



All this time the King had utterly disregarded the responsibilities of his high station. At first, he sometimes held a durbár or levée; but in 1849, and afterwards, he passed most of his time in the female apartments; and the only persons, except the females, who saw and spoke to him, were the eunuchs, the fiddlers, and the songsters, who meddled in every affair and influenced every decision. His aversion to business became incurable. All he required from his minister was not to importune him on affairs or allow others to do so. He virtually appointed his favourite fiddler to be the supreme head of the civil courts in Lucknow. Blinded by his minions to the iniquities committed in his name, he made himself deaf to the miseries of his people. He never read or heard read a report or a complaint or public document of any kind, except perhaps the letters of remonstrance of the Resident or the Governor-General. When he went out to take the air in his carriage, no one was permitted to approach him with a petition, though the streets were crowded with people clamouring for a redress of the wrongs they suffered in the town or the provinces. He did not even attend to the abject wants of his own family. In 1854 the King's own uncle had not received his stipend for three years, and upwards of seventy thousand rupees were still due to him. One of the first petitions General Outram received was from 216 ladies of the royal house, representing that their stipends were overdue for periods averaging from three to four years. These unfortunate persons were literally starving. While the royal family was in want, while justice was being sold at his door, while corruption was rampant in public posts, and public officers were defrauding the Government, bribing their

superiors or the minions of the King, and robbing the people whom it was their duty to protect, while the royal army was pillaging the country, and the chief landholders were levying war on the troops and the villagers and each other, the King was receiving the obeisances of his doctors and courtiers, distributing shawls and handkerchiefs to his fiddlers and females, letting off fireworks, gazing at flights of pigeons, and enjoying the performances of dancing-girls. It may be that the last King of Oudh was the worst, or one of the worst, of a long line of imbecile or dissolute rulers. It may be that we see Oudh at its worst during the dark period which preceded its deliverance. But culpable apathy in the ruler was no more a novelty in Oudh than gross misrule in the state. 'The sovereigns of Oudh,' wrote Lord Dalhousie, 'have been enabled for more than half a century to persist in their course of oppression and misrule. Their eyes have never seen the misery of their subjects; their ears have never been open to their cry. Secure of the safety of his person, secure of the stability of his throne, each successive ruler has passed his lifetime within the walls of his palace, or in the gardens round his capital, careful for nothing but the gratification of his individual passion—avarice, as in one; intemperance, as in another; or, as in the present King, effeminate sensuality, indulged among singers, musicians, and eunuchs, the sole companions of his confidence, and the sole agents of his power.'

Early in 1856 troops were moved up to Lucknow from Cawnpore, and at the latter place was assembled a body of civil officers to take charge of the divisions and districts of the province. On February 7, 1856, General Outram took over the administration. Before this the King was offered a draft treaty, of which the first article vested in the East India Company for ever the civil and military administration of the territories of Oudh. Notwithstanding much pressure, the King persisted in refusing to sign; and the annexation was effected without his assent, and in spite of his protests. In 1859 he accepted a pension of twelve lakhs (or, roughly, 120,000*l.*) a year; and he was allowed to retain the title of King of Oudh, which, on his death, ceased absolutely. In 1862 an act was passed to exempt him from the jurisdiction of the criminal courts except in capital cases, and to provide for his trial and examination if necessary.

Wájid Ali Shah, the ex-King of Oudh, lived till lately in the suburbs of Calcutta in a residence purchased for him by



the British Government. He died on September 21, 1887. The province of Oudh became part of British India. It was administered for some time by a Chief Commissioner and commission on the non-regulation system of the Punjab. In January 1877 it was partially amalgamated with the North-Western Provinces, by the union of the offices of Chief Commissioner and Lieutenant-Governor. But there are differences still between the Oudh and North-Western administrations which, under one and the same Local Government, rapidly tend to disappear.

The whole story suggests the reflection that, if the maintenance of native potentates under the British protectorate necessarily produces a condition of public affairs characterised by the turpitude, oppression, insecurity, violence, and cruelty which the above picture of Oudh displays, time given to the elaboration of Indian political law is time worse than wasted. Assuredly, the British nation would never wittingly assent to the direct or indirect employment of British troops to uphold so monstrous an engine for the infliction of human misery as, under that supposition, the Indian political system must be. If we conscientiously believe that there is no mean between the direct administration of a state as British territory by officers of the British Government and the relinquishment of the state to the native prince and his ministers, secured by the military strength of the empire against foreign and domestic dangers, and under no check save that of advice or censure, which they are at liberty to disregard, we had better abandon all attempt to consolidate the existing system of relations with feudatories, and seize every opportunity which presents itself and is consistent with good faith to convert the remaining foreign territories into British districts by systematic annexation. Any political risk which this might involve would be preferable to the insupportable moral responsibility of deliberately maintaining the misgovernment of millions. From other parts of this book it will, I hope, clearly appear that we are not really in the dilemma of upholding misrule or endangering the empire. We have realised much better than in times past the nature of our duty towards the inhabitants of native states. At the present day the Government has the means of fulfilling that duty, and uses them, in case of necessity, without hesitation.

The chief interest of the annexation of Oudh to the students of Indian political law lies in the discussions of the

Indian Government which set forth the justification of the measure. In the minutes recorded at that time we can see Indian political law in the making; and the contrast between the ideas prevalent then and now will show something of the progress made in the interval. There was no substantial difference of opinion as to what should be done. All were agreed that the British Government must permanently undertake the whole government of the province. As to the basis of the right to do this, and, in consequence, as to the manner in which it should be done, there was considerable divergence of view.

Mr. J. Dorin preferred to 'assert the right of the Government of India, as the paramount power, to adopt its own system of government in respect to any portion of the Indian Empire that is hopelessly ground to the dust by the oppression of its native rulers.' He therefore advised that the King should be required to abdicate his sovereign power, and to consent to the incorporation of Oudh with the territories of the British crown, ample personal provision being made for himself and his family.

The minute of Sir J. P. Grant assumed the existence of a theory of the Indian constitution apart altogether from the obligations of treaties and the precepts of international law. His argument was that, whatever were the rights and obligations of Lord Wellesley in 1800 towards the ruler and people of Oudh, such would be the rights and obligations of the British Government in 1855, when the treaty of 1801 was justly abrogated. No King of Oudh, no ancestor of any King of Oudh, was ever an independent sovereign. The Nawábs of Oudh never threw off their legal subordination to the Moghal Emperor. The position of the Nawábs of the Moghal Empire was no more than the position of an hereditary viceroy; 'and by *the theory of the Indian constitution*, they and their family had no claim to hold it longer than they continued to govern their provinces tolerably well. By the practice of the Indian constitution they never did hold it longer, for when they misgoverned, if the Emperor was too weak to dethrone them, some ambitious ameer did the Emperor's duty.' Shuja-ud-Daula, the *subadár* of Oudh, unjustly attacked the British Government of Bengal. He was conquered and restored to power in 1765 under certain stipulations. These stipulations gave him no independence. In virtue of them every Nawáb of Oudh has been, in fact, what Mr. Hastings formally designated the son and successor



of Shuja-ud-Daula, a vassal of the Company. The Nawábs or *subadárs* of Oudh have been supported solely by the arms of the British Government; they knew and admitted that their existence depended on that of the British Empire. Oudh was recognised by them and by everybody else as a part of that empire. It was bound to contribute to its defence. The Oudh army was a useless rabble, the country was grossly misgoverned. Lord Wellesley, not in pursuance of any treaty, nor under any of those circumstances in which a sovereign state may be legitimately asked to disarm, but as a measure of military reform indispensable for the good of Oudh and its people, compelled the Nawáb to disband his army. He further endeavoured to induce the Nawáb or *subadár* to give up to the British Government absolutely the whole civil and military administration of his *subadári*. The Nawáb refused, and he was then compelled to cede about half his territory. This compulsion was not exercised either under any treaty or in virtue of any natural right, as between separate nations, entitling one to sequestrate territory of another in payment of a debt, for the subsidy to be secured on the ceded districts was not in arrears. It was exercised by military preparation, by instructions to the Resident that in the case of the refusal of the Nawáb to grant what was required of him 'the British troops were to march for the purpose of establishing the authority of the British Government within those districts,' of which the cession had been demanded, and by the Resident actually issuing to the Oudh officials orders to remit no more revenue to the Oudh Government. The Nawáb further engaged, under the treaty of 1801, thus forced upon him, to establish in his reserved dominions such a system of administration, to be carried into effect by his own officers, as should be conducive to the prosperity of his subjects and be calculated to secure the lives and property of the inhabitants. In all this Lord Wellesley was fully justified by the relative positions of the British Government and the ruler of Oudh. Lord Wellesley's position was that of the head of an empire. The legal position of the *subadár* under the Emperor of Delhi, and his actual position under the Governor-General in Council, was that of a subject prince administering in a subordinate capacity one of the component parts of that empire. The principle of Lord Wellesley's action was that the relative positions of the parties thus explained gave the British Government the right, and imposed upon it the obligation,

Lord Dalhousie pointed out the objection that the treaty required the administration to be conducted through the officers of the King. His lordship advised that the treaty 'should be declared null and void, that our troops should be withdrawn, and that our protection of the Government should cease, and that all our relations with it should be broken off.' A new treaty should then be offered to the King, of which the most essential article should be that, while retaining the sovereignty of his kingdom, he should vest the whole civil and military administration of it in the East India Company. Lord Dalhousie believed that in less than a month, 'either the King's subjects would have marched over the King's troops and pillaged Lucknow; or the King, to save himself, would have been glad to agree to whatever engagements might be offered to him by the British Government.' His lordship's colleagues, however, and the Court of Directors considered that in the interval of delay during which the Resident and British troops would be withdrawn the most terrible evils would, at least temporarily, be brought on the people of Oudh, whose benefit was the sole motive, as well as the sole justification, of the proposed measure. Lord Dalhousie, having regard to a recent outbreak of fanatical violence in Oudh, yielded; and the measure actually effected was substantially that suggested by General Low. Without withdrawing the troops or Resident, a new treaty was offered, and, on its rejection, the administration was authoritatively assumed.

The point for particular attention, however, is the reason assigned by Lord Dalhousie for the course he originally advocated. He believed it to be most in accordance with established usage, most *in conformity to international law*, and, therefore, least liable to criticism or cavil, and least open to the attack of those who might be expected to condemn and oppose the action of the Government of India. The view propounded by Sir J. P. Grant, 'namely,' as Lord Dalhousie incorrectly described it, 'that the King of Oudh was no independent sovereign, but only a *subadár*, whom the British Government as paramount power, in succession to the King of Delhi, was entitled to remove at its pleasure,' his lordship emphatically repudiated. 'The theory itself,' he said, 'is, in my humble judgment, destroyed at once by the simple fact of the acknowledged existence of treaties concluded between the British Government and the rulers of



Oudh, for treaties can be formed only between independent powers. The apparent arguments in support of the theory drawn from the proceedings of Lord Wellesley could, I affirm, be readily refuted from his lordship's own despatches. So entirely did I dissent from the view which had been taken by my honourable colleague, and so erroneous did it seem to me that, if, unfortunately, it had found favour with the Honourable Court, I must have declined to take part in the establishment, or enforcement, of any policy which might have been founded upon it.' Sir J. P. Grant promptly replied that he had never intended that the British Government was entitled to remove the rulers of Oudh *at its pleasure*. So long as they performed their treaty obligations, the treaty made with them could not be annulled. The succession to the Delhi Emperor was not really material. As a matter of fact, in 1800 it had not occurred.

The Court of Directors had not these subsequent explanations before them. They judiciously refrained from expressing any opinion on the principles laid down by the several members of council, and prohibited the complete severance of our connection with the Oudh Government unless it was certain that the King would forthwith accept the proposed new treaty. If this was uncertain, they took the responsibility of authorising and enjoining the only other course by which our duties to the people of Oudh could be fulfilled—that of assuming authoritatively the powers necessary for the permanent establishment of good government throughout the country.

This somewhat elaborate abstract of a famous debate shows that, though the principles of Indian political law and its relation to international law were unsettled, the supreme Government acknowledged its duties to the people of Oudh and resolved to act up to them by the exercise of authority. As to the foundation of the authority thus to be exercised, there can be no doubt that in one point Lord Dalhousie was in error. There are many treaties with Indian Rulers who are not independent. Of all the theories put forward, I believe that any one who has passed an official life in India, and has had occasion to study Indian history and to deal with native states, will at once assert that the theory of Sir J. P. Grant, though not at all beyond criticism, is nearer the facts than any other. Sir J. P. Grant perhaps did not assign sufficient weight to the

*de facto*, though limited, sovereignty of the Nawábs of Oudh, a sovereignty which had actually existed for half a century at least, if not more. As I have already pointed out, when the Emperor of Delhi fell into our hands we were so far from taking on ourselves his theoretical suzerainty that Lord Wellesley himself expressly disclaimed any intention to make that political use of the occurrence. Indeed, homage continued to be offered on the part of the British Government to the Great Moghal till the cold season of 1842-3, when it was prohibited by Lord Ellenborough. An amusing account of the last occasion on which British officers made their obeisance and offered tribute in the shape of bags of gold coins to the Delhi Emperor will be found in Kaye's 'Sepoy War.' The surprise and indignation of Lord Ellenborough at an act which made the Governor-General appear as the vassal of the imperial house of Delhi was naturally extreme. Since that time, no doubt, her Majesty the Queen-Empress has succeeded to the throne of Delhi, vacated by the treachery and rebellion of the last occupant. Whatever additional claim on the loyalty of feudatories may result from this accession, it is not the basis of the suzerainty exercised in India for years, while homage was still being paid to the Delhi Emperor.

Another lesson to be drawn from the story of Oudh is that Indian political law is, or may be, exposed to a double danger. It may be ignored by lawyers, who may turn to text-books of international law because they are not acquainted with any other law applicable to the relations between the British Government and the feudatory states. It may be ignored by statesmen, because they may believe that if their action should become the subject of party conflict in the parliamentary arena or before constituencies, political opponents at least will be prone to draw their weapons of attack from an exclusively Western armoury. Obviously the best resource against these dangers is, if possible, so to state the general principles and history of Indian political law that they shall become easily accessible for perusal to those who may have occasion to consider the questions to which they apply.

Before leaving the case of Oudh I have to add a remark upon Lord Wellesley's policy. It is probable that he looked forward to a much more active interposition by the Government of India in the internal affairs of Oudh than was ever actually practised before annexation. The sixth article of



the treaty of 1801 obliged the Nawáb always to advise with, and act in conformity to the counsels of, the officers of the East India Company. There is no doubt that Lord Wellesley intended the advice to be systematic, comprehensive, and authoritative. 'It is my intention,' he said in a minute of August 16, 1802, written nearly a year after the signature of the treaty, 'as soon as the state of public affairs may admit, to prepare a detailed plan for the administration of the Wazír's dominions, founded on that which shall be established within the ceded provinces.' 'The whole minute,' says Sir J. P. Grant, 'shows that, whatever Lord Wellesley would have done under his own treaty, had he remained in power to see how Oudh affairs have gone on since he left the country, he would not have left them in the state they have been in for the last fifty years.' We have seen that a regular scheme for the government of Oudh was formally proposed to the Nawáb by Lord Minto. It was dropped by Lord Hastings for other reasons besides those I have mentioned. The conduct of the then Resident appears to have been injudicious. Any one who cares to pursue this uninviting topic will find ample details in Mr. Prinsep's History (vol. i. pp. 217–21). If, however, in 1802 Lord Wellesley thought it practicable to make a Native Ruler govern well through his own officers, this is some support to the belief that, in 1892, the Government of India need experience no substantial difficulty when it has occasion to require chiefs to act up to their obligations of good government.

I may mention that this chapter was written in 1887, without any reference being made at that time to chapters IV. and V. of Mr. H. C. Irwin's very able and interesting book 'The Garden of India.' In these chapters Mr. Irwin gives a very full account of the administration of Oudh under the Nawábs and of the annexation. After reading what Mr. Irwin has said, I have slightly revised two passages to avoid any injustice to two of the Nawábs. It is unnecessary to enter upon any matter on which I might venture to differ with Mr. Irwin; but I wish to make one extract from his work. 'It is difficult,' he says (p. 175), 'to rise from a study of the blue book of 1856 without feeling that the motives which led to the adoption of that measure' (i.e. the annexation of Oudh) 'were not mere vulgar lust of conquest or mere greed of pecuniary gain. There can be no doubt that Lord Dalhousie and the members of his Council, and General

Outram, were, one and all, firmly convinced that by assuming the administration of Oudh they were acting in the interests of humanity, and conferring a great blessing on several millions of people. And they were certainly right in their belief that the misrule and oppression prevailing in the province were intense.' In these opinions I entirely agree.



## CHAPTER V

### THE DOCTRINE OF LAPSE AND THE ADOPTION 'SANADS'

THE doctrine of lapse, so largely applied but not invented by Lord Dalhousie, was the bane of the states of the Indian protectorate. It actually extinguished some states; notwithstanding the distinctions formally but imperfectly made between states of different classes, it threatened or might, on strong grounds, be held to have threatened the gradual extinction of all. The antidote was the distribution by Lord Canning of the *sanads* or written grants declaring the desire of the Crown that the governments of Ruling Chiefs should be perpetuated, and assuring them that adoptions regularly made by themselves or future Chiefs would be confirmed by the British Government. The present system of relations between the British Government and its Indian feudatories to a great extent depends on the maintenance of the altered policy which these *sanads* expressed. It is therefore necessary to examine in some detail both the bane and the antidote.

I heartily rejoice to think that the doctrine of lapse has been abandoned; but here again, as in the case of the annexation of Oudh, I believe it to be a very grave error to attribute to the great or distinguished men who made use of that doctrine either mere ambition or mere greed of territory or revenue. Unquestionably those men were actuated by the highest political motives. Their first desire was the desire of all those, native or European, who have the interests of the British Empire at heart. They wished to see the Empire strong and the millions who inhabit India prosperous and well governed. And they believed—though at this date under changed circumstances we may well differ from them on this essential point—that these ends would be best attained by the substitution, whenever it might be consistent with justice and good faith, of direct British administration for native rule. I shall adduce in illustra-

tion of these remarks the cases of Sattára, Karauli, Tehri, Jhánsi, and Nágpur.

When Lord Dalhousie landed in India in 1848 there was no novelty in the lapse of foreign territory to the paramount power; and in the Bombay Presidency, where we had succeeded to the comparatively recent dominion of the Marhattas, it had been the practice, on the failure of heirs to chiefships, to grant or refuse permission to adopt according to circumstances. In a series of despatches dating from 1834 to 1846, the Court of Directors had laid down that the permission of adoption, when optional, should be the exception, not the rule, and should never be granted but as a special mark of favour and approbation. When refusal to permit adoption would be, with reference to the tenure of the state and the custom of previous governments, an act of harshness or an injury, permission, they said, should be given, but not otherwise, except as a reward. On these principles, on failure of natural heirs, permission to adopt had been refused in the cases of the petty states of Colaba and Mandavi and of certain *jágírs* in the Deccan and Southern Marhatta country, which had accordingly lapsed; while the chief of Sangli had been allowed in his lifetime to adopt a son, and an adopted son had been allowed to succeed to the Jamkhandi *jágír*. Among the Sikhs, Cis-Sutlej and Trans-Sutlej, 'adoption, though carrying with it all the right of succession to private property enjoyed by the son of the body, had never been acknowledged as conferring any right of succession to a chiefship. In the Punjab proper, the Maharaja of Lahore, and south of the Sutlej, the British Government claimed, as paramount, the right of inheriting all estates to which there were no near male heirs, among whom the adopted son had no place; and the families of Umballa, Ferozepur, Biláspur, Rupar, and many others had vainly endeavoured to secure for adopted children a share at least in the estate' ('Punjab Rajas,' p. 226). In 1837, in the case of the Phulkián states, namely, Patiála, Jhínd, and Nábha, females had been excluded from the succession; and the British Government, 'although allowing the right of collaterals, had only admitted their right to such property as had been held by the common ancestor from whom they derived their claim.' Ranjít Singh 'asserted the rights of a sovereign more jealously than ever the British Government had done, and neither allowed the claims of adopted sons nor of the nearest



collaterals' (*ibid.* pp. 225–27). On these principles a great part of the Jhínd state, now included in the British districts of Ludhiána and Umballa, lapsed in 1835 and 1837; and a great part of the Kaithal state in 1843. Nor were these solitary instances. 'The number of lapses,' says Sir Lepel Griffin, 'that had fallen to the Government from the time of its first connection with the country north of Delhi was very great; and chiefship after chiefship had been absorbed in the British territories' (*ibid.* p. 226).

In Rájpútána, on the other hand, lapses had not occurred. The Rájpút princes, though feudatories of the Moghal Empire, and harried by the claims and incursions of the Marhattas, had preserved attributes of sovereignty greater than those possessed by the petty states of Western India and perhaps greater than any that had ever been acquired by those Cis-Sutlej Sikhs, who were *málguzárs*, or revenue-paying tributaries of the Delhi Emperors. Moreover, the constitution of Rájpút principalities in Rájpútána supplied principles directly conducive to the perpetuation of Rájpút dynasties. In this part of the country the general rule was, and still is, an election or adoption, most commonly an election, by the chiefs and councillors of the state after the decease of the chief, requiring an adoption by his widow to complete the arrangement, an essential point being that the ceremonies and rejoicings should be performed in public. 'The confirmation of the suzerain,' wrote Sir Henry Lawrence, then Agent to the Governor-General for the states of Rájpútána, after a very elaborate inquiry in 1853, 'is necessary in all cases: he is the arbitrator in all contested adoptions; he can set aside one or other for informality, irregularity, or for misconduct; but it does not appear by the rules or practices of any of the sovereignties, or by our own practice with the *Istamrárdars* of Ajmír, that the paramount power can refuse confirmation to one or other claimant, and confiscate the estate, however small. . . . A Rájpútána chiefship, great or small, can never escheat to the suzerain except by rebellion.'

Such being the diversity of custom, political constitution, and practice in different parts of India, the first case to come before Lord Dalhousie in which the general question of permitting adoptions was raised, was that of the Sattára *ráj* or principality in Western India. He had, indeed, a few months before decided to permit the lapse of one native state to another, of Ahmadnagar to Edar, both on the Bombay

side; but that decision is only referred to here because it proceeded on a well-known paper by Mr. Willoughby, described by Lord Dalhousie as a text-book of adoption. The Sattára *ráj* was a creation of the British Government. When the Peshwa was conquered and his territories were annexed in 1818, we found the representative of the house of Sívaji in a prison and we set him on a throne. The rajas of Sattára had at that time ceased to be rulers; they were powerless, pageant monarchs maintained in confinement by the Peshwa for political objects We gave them the principality partly because it was thought the measure would be popular with the Marhattas, partly because the state would provide an asylum for those who might be unwilling to serve us, and partly, perhaps, because the danger of formidable confederacies amongst the Marhatta chiefs had not entirely passed away, and it may have been considered expedient, as a counterpoise to their power, to maintain a nominal sovereignty in the House of Sívaji. The first raja under the British protectorate was found guilty of engaging in treasonable intrigues and was deposed in 1839. He was exiled, and died at Benares in 1847. The second raja died on April 5, 1848, leaving no issue, but having, just before his death, hastily adopted a distant relative. The adoption was set aside, and the state annexed. But this annexation did not proceed upon any ground of misgovernment or of failure on the part of the late raja to discharge his duty to the paramount power. 'Unquestionably,' wrote Sir George Clerk, then Governor of Bombay, 'a native government conducted as that of Sattára has for some time been is a source of strength to the British Government.' Mr. Reid, a member of the Bombay Council, referred to the probability of a 'conviction that under the mild and excellent government of the late raja his country flourished in a degree with which our neighbouring districts cannot well sustain a comparison.' On the question of right the decision proceeded on the proposition that the consent of the suzerain is indispensable to the validity of an adoption involving succession to a principality; and that the right to grant this consent implies the right to withhold it. The first proposition was regarded as established by evidence, applicable at all events to the Bombay Presidency and the states of Gwálior, Indore, Bhopál, Nágpur, Mehidpur, and others in Bundelkhand and Rájpútána. The second proposition was taken as an inference from the



first, though it is directly opposed to the conclusion subsequently arrived at by Sir Henry Lawrence in regard to the states of Rájpútána. It was, however, said by Lord Dalhousie that the power to confer or refuse sanction to the adoption was possessed by the British Government 'by virtue of its authority as the sovereign state of Sattára, a position which it holds equally as the successor of the emperors of Delhi, as the successor by conquest of the Peshwas, the virtual sovereigns of the rajas of Sattára, and, lastly and especially, as the creators of the *ráj* of Sattára under the treaty of 1819.' On the question of expediency I quote at length the further words of Lord Dalhousie: 'I take,' he said, 'this fitting occasion of recording my strong and deliberate opinion that, in the exercise of a wise and sound policy, the British Government is bound not to put aside or to neglect such rightful opportunities of acquiring territory or revenue as may from time to time present themselves, whether they arise from the lapse of subordinate states, by the failure of all heirs of every description whatsoever, or from the failure of heirs natural, where the succession can be sustained only by the sanction of the Government being given to the ceremony of adoption according to Hindu law. The Government is bound in duty, as well as in policy, to act on every such occasion with the purest integrity and in the most scrupulous observance of good faith; where even a shadow of doubt can be shown, the claim should at once be abandoned. But where the right to territory by lapse is clear, the Government is bound to take that which is justly and legally its due, and to extend to that territory the benefit of our sovereignty, present and prospective. In like manner, while I would not seek to lay down any inflexible rule with respect to adoption, I hold that on all occasions where heirs natural shall fail, the territory should be made to lapse and adoption should not be permitted, excepting in those cases in which some strong political reason may render it expedient to depart from this general rule. There may be conflict of opinion as to the advantage or propriety of extending our already vast possessions beyond their present limits. No man can more sincerely deprecate than I do any extension of the frontiers of our territory which can be avoided, or which may not become indispensably necessary from conditions of our own safety and of the maintenance of the tranquillity of our provinces; but I cannot conceive it possible for any one to dispute the policy of taking advantage of every just

opportunity which presents itself for consolidating the territories that already belong to us by taking possession of states which may lapse in the midst of them, for thus getting rid of those petty intervening principalities, which may be made a means of annoyance, but which can never, I venture to think, be a source of strength, for adding to the resources of the public treasury, and for extending the uniform application of our system of government to those whose best interests we sincerely believe will be promoted thereby. Such is the general principle that, in my humble opinion, ought to guide the conduct of the British Government in its disposal of independent states (*sic*) when there has been total failure of all heirs whatsoever, or where permission is asked to continue, by adoption, a succession which fails in the natural line.'

I shall show presently that, in substance, the policy which Lord Dalhousie could not conceive it possible for any one to dispute has been completely rejected, both in word and deed, since the Government of India was assumed by the Queen-Empress. The words of Lord Dalhousie deserve attention because the prevailing ideas as to expediency can never be without effect on the system of relations with native states and the confidence and loyalty of feudatories. On questions of adoption in connection with principalities, and of the customary law of inheritance to chiefships, a mass of learning has accumulated. Here and there, as with reference to the states of Rájpútána, a few well-established principles are to be discerned. But for the most part the amorphous aggregate of conflicting texts and precedents may be bent either for or against the continued existence of states at the will of any able dissertator; and if the maintenance of states were left to depend upon the interpretation of so-called customs, originating when the measure of right was the length of the sword of the suzerain, or formed by British precedents occurring before it was generally apprehended that, in primitive law, the tie of adoption is equally binding with the tie of blood, there would be keenly-felt peril most subversive of loyalty in every discussion of a succession, and the dearest interests of our faithful feudatories would be the continual sport of chance. Uncertainty and agitation vanish with the knowledge that the British Government sincerely desires to preserve the native states in their integrity; and that desire springs partly, no doubt, from a sense of justice, but in the main from radically



altered views on the question of expediency. Briefly, we now believe that it is the interest of the British Government to maintain the principalities, and that if we were to get rid of them we should be injuring ourselves.

Sattára, then, was annexed in consequence of the conviction mentioned in the papers that, for the permanent good of the people and the advancement of intelligence, British administration is 'incomparably better than the government of any native state.' The excellence of the late raja's administration arose from his personal qualities, it was said, not from the nature of the institutions of the state. 'In my conscience I believe,' wrote Lord Dalhousie, 'we should ensure to the population of the state a perpetuity of that just and mild government which they have lately enjoyed, but which they will hold by a poor and uncertain tenure indeed, if we resolve now to continue the *rāj*.' It was also observed that the district was fertile and the revenue productive; and that it consisted of a strong and hilly country inhabited by a bold and hardy population, and interposed between the Deccan and Southern Marhatta districts of the Bombay Presidency and between its two principal military stations, Poona and Belgaum. All these considerations were in a certain sense secondary considerations. A perusal of the record cannot fail to bring home to any impartial mind the conviction that if Lord Falkland, who had succeeded Sir George Clerk as Governor of Bombay, and Lord Dalhousie and their advisers had doubted for a moment that annexation was the best course to adopt in the interests of the people, motives of political and fiscal advantage, standing by themselves, would never have induced them to agree to it.

In the Karauli case there was no lapse. Karauli is a state about the size of an average British district in the Punjab, or rather smaller; it is situated about fifty miles to the south-west of Agra, and is an old Rájpút principality which was taken under protection, and acknowledged the supremacy of the British Government when the Peshwa, in 1817, ceded the tribute formerly payable to him. It was in the Karauli case that Sir Henry Lawrence made the report upon Rájpút successions from which I have already quoted. Lord Dalhousie, before that report had been received, recorded that the circumstances of Karauli appeared 'to resemble those of Sattára in all essential particulars.' As Sir Alfred Lyall has justly pointed out ('Asiatic Studies,'

country should be seized by the Company; the belief being thus implied that annexation might be justified as a penalty. Colonel Low in one of his minutes on the proposal to annex Nágpur—a proposal to which he was strongly opposed—expressed the opinion that probably, in course of time, the whole of India would become a British province; 'but,' he said, 'many eminent statesmen have been of opinion that we ought most carefully to avoid *unnecessarily* accelerating the arrival of that great change; and it is within my own knowledge that the following five great men were of that number, viz. the Marquis of Hastings, Sir Thomas Munro, Sir John Malcolm, the Hon. Mountstuart Elphinstone, and Lord Metcalfe.' It will be noted that four out of these five eminent men had no small share in laying the foundation of the British protectorate. Colonel Low went on to give reasons for his view in a passage which contains one of the prophecies of the mutiny. He dwelt on the impolicy of annexations, except for breach of engagements, at least until there should be 'numbers of men in every large district so prosperous and wealthy and so thoroughly satisfied with their condition' as to be 'sincerely attached to our Government and both able and willing *for their own interests* to afford important aid to us, by the exertion of their influence, in the event of our Indian possession being invaded by powerful foreign foes, or endangered by any internal insurrection, or want of fidelity in our native army.'

It is not very rare, even at the present day, to trace in the comments of contemporary observers a somewhat similar vein of speculation in regard to the future of Indian states. For instance, the writer of 'The Armies of Native States of India' (reprinted from the 'Times,' 1884), after telling the story of the chief (presumably a Cis-Sutlej chief) who said that the grip of Ranjít Singh was death by cholera, and the shadow of the British death by slow consumption, adds (p. viii) 'the prediction, though not realised at the time, may prove true.' Such remarks are disturbing to our loyal adherents, and misleading to all. They entirely overlook the existence of the system which it is an object of this work to explain. The answer to all such misgivings is that Indian political law is conservative of Indian native states, just as international law is conservative of the states of Europe; and if the principles of Indian political law are properly understood and maintained, the prediction will certainly prove erroneous.



This would not be the case if the doctrine of lapse had not been ejected from the strong position in which it was at one time established. The doctrine has been defined as 'the claim of the British Government to treat as an escheat any state in which the ruling family becomes extinct.' That is perhaps the broadest definition of the doctrine that could be given. It was considerably narrowed by the great statesman who made the most vigorous use of it. If Lord Dalhousie's term of office and life had been prolonged for thirty years, and the mutiny had never happened, it seems a fair inference, from his ready acquiescence in the decision of the Court of Directors in the case of Karauli and his action in regard to Oorcha or Tehri, that he would not have claimed as escheats heirless states of long standing in Rájpútána and Bundelkhand. In his minute regarding Nágpur he quotes and affirms nearly the whole of the passage I have cited from his minute regarding Sattára, and continues: 'I have perceived that in the course of public criticism a far wider interpretation has been given to these words of mine than they were intended, or can be rightly made to bear. I by no means intended to state, nor did I state, an opinion that the settled policy of the British Government should be to disallow every succession resting upon adoption made by a native prince according to the forms of Hindu law. The opinion which I gave was restricted wholly to subordinate states—to those dependent principalities which, either as the virtual creation of the British Government, or from their former position, stood in such relation to that government as gave to it the recognised right of a paramount power in all questions of the adoption of an heir to the sovereignty of the state. In the case of every such state I held that sound policy at this day required that the British Government should take advantage of any lapse that might occur, whether it arose from failure of all heirs whatsoever or from failure of heirs natural, so that succession could only pass by permission being given for the adoption of an heir. But even in the case of such lapse I declared that no advantage should be taken of it, unless it could be done in accordance with the "most scrupulous observance of good faith." I repeat, therefore, that in the minute quoted above' (the Sattára minute) 'I gave no sweeping opinion adverse to the right of a native prince to adopt a successor according to the authority of Hindu law. The opinion which I gave referred

exclusively to "subordinate states"—to "a dependent principality like that of Sattára" and others that have been named.' There is an ominous gap in this explanation, because no definition is given of subordinate and dependent principalities; but possibly the meaning is elucidated by the despatch of the Court of Directors in the Karauli case, where it is said (incorrectly) of the Karauli state that it stands to us only in the position of a protected ally. At all events, it is a fair inference from this passage that in his matured opinion Lord Dalhousie held that there were, or might be, some states where the ruler had the right of continuing the succession by adoption; and the doctrine of lapse, as Lord Dalhousie finally shaped it, probably amounts to this, that in certain by no means clearly defined cases it is optional with the Supreme Government to refuse to permit an adoption to be made, or to refuse to acknowledge an adoption actually made, when the object of the adoption is to continue a native dynasty; and further, that when this option can be exercised the decision should, except for special reasons, cause the lapse of the state. This is quite consistent with the terms of the despatch of the Court of Directors in the Sattára case, in which they expressed themselves fully satisfied that, by the general law and custom of India, a dependent principality like that of Sattára cannot pass to an adopted heir without the consent of the paramount power; that they were under no pledge, direct or constructive, to give such consent; and that the general interests committed to their charge were best consulted by withholding it. There is some importance in realising the connection between the law of adoption as applied to chiefships and the doctrine of lapse, because we can thus see that Lord Canning subsequently applied in exactly the right place the prop which was required to restore the shaken confidence of native rulers.

As Oudh affords the most signal instance of annexation effected as the consequence and punishment of misrule, so the case of Nágpur presents the most conspicuous illustration of a lapse decreed on grounds of general expediency. Jhánsi and Sattára were of comparatively small extent. The state of Nágpur comprised an area of 80,000 square miles and had an estimated population of four millions. The chief of Jhánsi had been a Marhatta *subadár*; the chief of Sattára had been elevated from a prison; but the rajas of Berar, whose territory at one time stretched from the



Nerbudda to the Godavery and from the Adjunta Hills to the Bay of Bengal, had been leading members of the great Marhatta confederacy. Nágpur was the considerable remnant of their once more extensive dominions. Still, as in the case of Sattára, the state had fallen to the British Government by conquest; Appa Sahib, the ruler at the time of the famous battle of Sitabaldi Hills in November, 1817, was faithless to his alliance and requited the terms conceded to him by renewed treachery; and when, on his second defection in 1818, the state was conferred on a Marhatta youth descended from one of the Raghoji Bhonslas through a female, this was an act of favour, dictated by policy, not the recognition of any pre-existing right. The cases, indeed, superficially appeared to differ in the circumstance that, whereas the Raja of Sattára when at the point of death actually made an adoption, the Raja of Nágpur died on December 11, 1853, without any heir and without having made or proposed an adoption. But there would have been no difficulty in arranging that an adoption should take place if the Government of the day had been minded to continue the Bhonsla dynasty. In point of fact the determination was that under no circumstances should an adoption be recognised as carrying with it a title to the succession. 'I should have felt it my duty,' said Lord Dalhousie, 'to advise that an adoption at Nágpur (if it had been made) should be disallowed.' As there was an honest conviction that it was entirely at the option of the Government, so far as justice and right were concerned, either to allow or disallow an adoption, the decision was in reality guided by policy alone.

In Nágpur there had been no such gross misgovernment as existed in Oudh. But there had been serious exactions after the Marhatta war in 1802. Appa Sahib had plundered and oppressed the country, and much land had fallen out of cultivation in his time. During more than ten years, when the raja whom we set up was a minor, the administration was conducted with marked success by British officers under Sir Richard Jenkins. In 1830 the raja was placed in power, and the condition of the country under British officers was gradually reversed. In 1837 the people, it was said, wished for British rule, were dissatisfied with the raja's management, and contrasted it with the past. In 1853 it was reported that justice was as taxable as any commodity in the bazaar; that functionaries

were selected by no rule but caprice, the favour of the seraglio, or purchase; and that there was a hatred of a fixed constitution or of settled principles which would impose a check upon arbitrary power. The public voice, it was stated, was greatly in favour of escaping the chance of a rule like that of the late chief in his later years. Lord Dalhousie argued—not quite fairly, for the second Sattára raja succeeded, if the first was disloyal—that we had thrice tried the experiment of setting up princes over territories gained in war, and always with disastrous results. We were compelled to assume the administration of Mysore. We were compelled to dethrone and exile the first Raja of Sattára. The Raja of Nágpur, trained under our auspices and aided by the excellent system of administration due to Sir R. Jenkins, nevertheless 'lived and died a seller of justice, a miser, a drunkard, and a debauchee.'

A large space in Lord Dalhousie's minute is devoted to the desirability of annexing Nágpur in the interests of England, because the great field of supply of the best and cheapest cotton lies in the valley of Berar and in Nágpur and adjoining provinces. In the previous year, 1853, we had acquired not the sovereignty, indeed, but the possession and administration of the valley of Berar. Now there was another opportunity of relieving another enormous territory from the disadvantages of arbitrary imposts, of transit duties strangling trade, and of the possibility of over-assessment of the land revenue, taking from the cultivator the whole value of his crops. To revive the *ráj* of Nágpur under a Marhatta sovereign would perpetuate the obstacles to a full, cheap, and excellent supply of cotton wool for the English market. Probably his lordship had here in view rather arguments which were likely to prevail with English critics of his policy than arguments which in fact bore upon the decision of an Indian question of the first consequence. Lord Dalhousie was not the man to be led by a sinister and selfish argument. His arguments were his slaves and not his masters; and in the exigencies of prospective self-defence he may have condescended to use some which his own judgment in reality despised. The better supply of cotton for English manufacturers was assuredly not the leading motive of the annexation of Nágpur. 'I place,' said Lord Dalhousie, 'the interests of the people of Nágpur foremost among the considerations which induce me to advise that the state should now pass under British government; for I conscientiously declare that, unless I believed the prosperity and happiness of its inhabitants would be promoted by their being placed permanently under British rule, no other advantage which could arise out of the measure would move me to propose it.' After reading the whole manuscript record relating to the annexation of Nágpur, I feel certain that this emphatic declaration was nothing but the simple truth.



The strongest part of Lord Dalhousie's case for the annexation of Nágpur was that which depended on the general interests of India. The absorption of the Nágpur state in the British dominions would, he pointed out, extinguish a government having separate feelings and interests, absorb a military power which, though no longer formidable, might be the cause of embarrassment or anxiety, render coterminous several British provinces, uniting Orissa with Khandeish and part of the Berar frontier with the Saugor and Nerbudda districts, and bring the direct line of communication between Bombay and Calcutta almost throughout its whole length within British territory. In any case in which right was clear and good faith maintained, these were cogent considerations, if the peace of the Indian Empire depends upon the British protectorate, and if the strength of that protectorate depends upon the consolidation of the British power.

The point in all this which is of practical interest at the present day is, that if we suppose some new conjuncture of affairs to arise, placing some other state in the position of Nágpur in 1854, there is not a single one of these arguments from expediency which would now hold good as a ground for annexation. Even the question of right, if it should be raised, which is highly improbable, would be debated in a different way and an entirely different spirit. Much has been learnt since that time of the nature of the primitive institutions and early society. Lord Dalhousie argued from the reports of political officers on Marhatta and Indian customs affecting succession, as though the conclusions had the certainty and effect of an enactment in the statute-book. We recognise much more clearly now how flexible a thing is the custom of early societies, and how readily, when it is applied from within and not from without, by the persons who make it, to the regulation of their own affairs of state, it is bent by an almost unconscious general assent to the exigencies of each political occasion. If the great object,

the perpetuation of the dynasty, is secured, surely, it might be thought, only dim-sighted pedants, not keen courageous men, would haggle over the legal formalities; and where custom is vague and has often been broken by fraud or violence, what lusty, fighting baronage, what high-born military caste would see any grievous sin in a new precedent? Lord Dalhousie did not believe in the temporary sequestration of states as a remedy for misgovernment. In the Oudh discussions he adduced, as an argument for the permanent establishment of British administration, the illustration of Nágpur and its deterioration after 1830, and the illustration of Hyderabad administered (in accordance with arrangements made by Sir Charles Metcalfe) by British officers between 1821 and 1829, but where the Nizam, on the cessation of this interposition, had set aside the system of Sir Charles Metcalfe and caused the condition of the country to revert to its former state of disorder and misrule. Lord Dalhousie quoted also the words of Lord Wellesley: 'Instability in the constitution of a government is the source of languor and weakness in all its operations. The subjects of a temporary government are perpetually agitated by the expectation of change, and the government itself cannot establish any systematic or comprehensive plan of administration. In such a state mutual doubt and uncertainty destroy that confidence which forms the most solid foundation of the reciprocal duties of allegiance and protection between the people and the governing power.' And it is clear generally from these two great state papers relating to Oudh and Nágpur that Lord Dalhousie did not believe in the strength of political influence as a security for the just and civilised government of the people of native states.

But in his public works policy he himself began to supply that strength with the most powerful instruments of its efficiency. Railways and telegraphs have been transforming the conditions of government in Native India no less than in British India. All the important groups of native states are now traversed by railways, and all the most important political officers have, at their head-quarters, a telegraph office within easy reach. Darkness can no longer dwell on the face of the land; and if dark or violent deeds call for prevention or requital, without any delay or embarrassment force can be summoned and concentrated where it is required. The mere knowledge that this is so arms advice with an authority which it could hardly possess



when a letter or traveller took fourteen days to journey from Calcutta to Delhi. Moreover, the experience of Mysore seems to show that temporary sequestration, even in extreme cases, may succeed if it is continued long enough to train up a generation of administrators capable of the intelligent and honest service of the state. Considerations based on the needs of English trade would now be deemed puerile; there is no reason why trade should not be freely developed in the dominions of a native prince. Land will be given for railways to the British Government on its application; the removal of arbitrary imposts interfering with important trade can be secured by political influence; and lastly, the governments of native states, when they rightly apprehend the position, have no interests separate from ours, except in much the same way as a Local Government may often, for local reasons, differ with the Supreme Government on minor questions of policy. The native states are part and parcel of the Empire; though some of them may be, with a different form of government, as autonomous as Canada or Queensland. Their armies, if properly organised, should be not a source of embarrassment or weakness, but a source of strength. Territorially the empire is completely consolidated. For the purpose of consolidating our possessions within the frontiers of India there is no occasion to add an acre of land to British dominion by any other means than voluntary agreement. We can plant our cantonments where we please, and run our strategic lines of railway communication over any part of the country. If a cantonment or a railway happens to fall in a native state, we acquire the jurisdiction without the sovereignty. The fate of the doctrine of lapse is the fate of exploded philosophical creeds and exploded superstitions. Nobody would take the trouble to refute it now, for, whether it be sound or unsound, it has become totally unnecessary.

The year after Lord Dalhousie left India one big wing of the imperial structure to which he had made so many additions was shattered for the time by a sort of dynamite explosion. There had been warnings, as, after the crash, men saw; but few, if any, political outbursts have been as sudden or as unexpected as the violently destructive shocks of 1857. Probably no adequate explanation has yet been given, perhaps none is yet possible, of the events of that time—events which had a double character, the mutiny of a mercenary army and, in consequence of the break in

political authority due to that mutiny, the reversion in some districts and provinces of the chiefs and tribes and village communities of an archaic society to their normal condition of private warfare against each other and against the representatives of the state. Neither military revolt, nor the armed outlawry of discontented men, nor violent and contumacious resistance to constituted authority, nor the prosecution with bloodshed of hereditary feuds or of expeditions in quest of plunder, were novelties in India; but the peculiarity of 1857 was the combination of all these symptoms of anarchy on an unprecedented scale. Perhaps the simple explanation is correct, that all the disturbances had their ultimate origin in the disaffection of the army. This disaffection may have been partly due to the men becoming ill disciplined and idle and spoilt, and losing their respect for their officers, under circumstances which induced the best men to leave military for civil employment. Possibly we should add to this that the soldiers may have been corrupted in many cases by the money of political pensioners who had lost high station by political changes and were ready to play for desperate stakes. But this is a conjecture of which I have found no proof. As to the immediate cause of the outbreak I entertain no doubt. The men, by whomsoever tutored, certainly believed that the order to use the greased cartridges was deliberately issued by the British Government for the purpose of breaking their caste. The vitality of historic traditions and ideas is shown by the facts that the sepoys attempted to seize the supreme power in the empire by setting up the King of Delhi as a puppet emperor, and at Cawnpore the adopted son of Báji Rao as a Peshwa; and they undoubtedly intended to give effect to their designs by the ignorant and ruthless policy of exterminating the Europeans in the country. Again, it does not seem to me to be established that the annexations of Lord Dalhousie had any considerable effect in producing the mutiny of the army and the insurrection in certain quarters of the civil population. It is true that the Ráni of Jhánsi was a conspicuous rebel; it is true that the Oudh sepoys in the Company's army were reckoned by very many thousands, and that there were disorders amongst the chiefs and people of Oudh, and not merely amongst the soldiery in the province. But the Ráni of Jhánsi took the occasion of the mutiny, like many other discontented persons, to avenge her supposed wrongs in arms; it cannot be said that her proceedings



were a cause, they were merely a consequence of the mutiny. No one acquainted with the condition of Oudh in 1855 can be the least surprised that, by 1857, the elements of anarchy, then so rife, had not been eliminated. The connection with the sepoys may have induced many villagers to join the wrong side, but it does not explain why the sepoys should have revolted. The establishment of British dominion in Oudh could not harm them, though it might ruin many persons whose influence had formerly been as great as their corruption. Berar, Nágpur, and Sattára were not theatres of disorder; the Punjab, though there were two unimportant local insurrections, was the prop of our power. With some very few exceptions, most of which, if we leave out of view the King of Delhi, were trifling, the feudatory chiefs were staunch. The contingents of the Central India states, with the exception of a few small bodies of men, and all the contingents of Rájpútána, except the Merwarra Battalion and the Meywar Bhíl Corps, recruited for the most part from the indigenous tribes of the Mers and Bhils, joined in the mutiny. Their organisation connected them with the mutineers. But the chiefs of states, the rajas and maharajas and nawábs, with their irregular troops and feudal levies, gave us hearty and invaluable support, especially in the Punjab and Rájpútána. If the annexation policy of Lord Dalhousie had really had the effects which have sometimes been attributed to it, these feudatory chiefs would hardly have proved so conspicuously loyal. Nevertheless, there is reason to believe that feelings of anxiety and distrust were abroad, though they existed in India before the commencement of Lord Dalhousie's administration. 'While the renowned English Company,' said Sir Richard Temple, in an old report, 'was one of many competitors in the field of conquest—while it was struggling with others for existence—it had its followers and adherents, who fought under it and clung to it faithfully. When it succeeded in one quarter after another, its adherents rejoiced that they had sided with it; all men courted it and sought its friendships. But when that success spread and gradually enveloped the whole peninsula, then all men began to fear and wonder whom the conqueror would devour next.' As a broad general account of a tolerably widespread feeling at some uncertain date, these statements may perhaps be accepted.

At all events, it was a natural and necessary feeling that,

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after the suppression of disorder, the loyal services of feudatory chiefs should be acknowledged and measures taken to restore their confidence. The first measure then adopted, the publishing of the Amnesty Proclamation of November 1, 1858, has really determined the development of Indian political law ever since. The principles now accepted, if not directly derived from the announcements made at that time, must always be consistent with them; and the most important political cases and occurrences of internal India for more than thirty years bear witness to the sincerity of our desire to fall short in no particular in performing our share of what may be termed the covenant between the Crown and the people and chiefs of India.

The Amnesty Proclamation was promulgated throughout India with formalities and rejoicings; it was publicly read by officers of Government and in native durbárs at all principal places; and copies of it were supplied to village accountants for purposes of accessible record. It is frequently referred to by natives of various classes and ranks in appeals, petitions, and addresses, and is, no doubt, regarded by educated Indians as a charter of popular rights and of the rights of dependent principalities.

The proclamation announces that the Queen has taken upon herself the government of the territories formerly administered in trust for her Majesty by the East India Company; appoints Lord Canning the first Viceroy; confirms in their several offices, civil and military, all persons employed in the service of the East India Company; and continues: 'We hereby announce to the native princes of India that all treaties and engagements made with them by or under the authority of the Honourable East India Company are by us accepted, and will be scrupulously maintained: and we look for the like observance on their part. We desire no extension of our present territorial possessions; and, while we will permit no aggression upon our dominions or our rights to be attempted with impunity, we shall sanction no encroachment on those of others. We shall respect the rights, dignity, and honour of native princes as our own; and we desire that they, as well as our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good government.' The remaining paragraphs deal with the conditions of the amnesty for mutiny and rebellion; the duty of impartiality in matters of religion; and the admission



of subjects of whatever race or creed to offices for which they may be qualified by education, ability, and integrity. The document was communicated to the chiefs of India; and the language of heartfelt satisfaction in which they acknowledged it shows that they clearly and gladly recognised its great and permanent significance.

The passage I have quoted at length contains vital provisions of Indian political law; and I shall select, from amongst many, a few conspicuous instances of the faithful application of these provisions in the affairs of feudatory India. The first of these is the distribution in the viceroyalty of Lord Canning of the adoption *sanads*, which gave to native rulers a practical assurance of the sincerity of the assertion that the Queen desires no extension of her territorial possessions.

The story of the adoption *sanads* has been told by Sir Lepel Griffin in the 'Punjab Rajas' and amplified by Sir Charles Aitchison in the 'Calcutta Review,' No. cvi. of 1871. The narrative, however, may appropriately be repeated here with some condensations.

The Punjab chiefs did admirable service in the mutiny, and conspicuous amongst them were the Phúlkián chiefs. The Patiála chief was the acknowledged head of the Sikhs, and his unhesitating adherence to the British cause was of great political importance. Immediately upon the receipt of news of the occurrences at Delhi and Meerut he marched at the head of his troops to the neighbourhood of Umballa and thence to Thanesar, which district he took under his protection. Karnál and Umballa and the grand trunk road from Karnál to Phillor were guarded by his forces. He led or despatched troops to Sirsa, Rohtak, Hissár, Indore and Gwálior, and many other places, and even as far as Oudh. He had upwards of five thousand men in the field, of whom five hundred served in the siege and assault of Delhi. He assisted in restoring order in the state of Dholpur. He furnished supplies and carriage, kept the roads clear, and aided fugitives. Raja Sarup Singh of Jhínd was the only Punjab chief who was present before Delhi; the Maharaja of Patiála and the Raja of Kapúrthalla wished to be allowed to go there but could not be spared. The services of the allied houses of Jhínd and Nábha were of the same invaluable nature, but need not be detailed.

In 1858, the three chiefs who had deserved so well of the British Government joined in presenting a paper of

requests. Of these requests, one was for the right of adopting a successor to the chiefship in default of male issue, or, in the case of death without male issue or making an adoption, for the selection of a successor from among the descendants of the common ancestor by the surviving chiefs. The request was at first refused by the Government of India, on the ground that the concessions sought would be important innovations on the custom which had always prevailed among the chiefs of the Cis-Sutlej territories. This was true; lapses, as I have already said, had been frequent; the dissipated lives of the chiefs made childlessness common; and there was a perpetual dread of the partial and ultimately the entire loss of dominion by the process which they had long seen before their eyes. The Home Government, however, took a more favourable view; but, before its despatch of December 1, 1859, could be received, Lord Canning's policy had undergone a change, and the experience of his famous tour through the Upper Provinces had shown him how near this question of adoption lay to the hearts of the feudatory chieftains. The concession was made to the Maharajas of Rewah and Chirkári in November, 1859, to Maharaja Sindhia in the next month, and to the Phulkián chiefs in January, 1860. It took some time to work out the new policy, and the adoption *sanads* were dated March 11, 1862, the day Lord Canning left India.

The nature of the policy will best be stated in the language of the celebrated despatch of April 30, 1860, from which I shall quote at length, as it is little accessible, and merits the careful study of every student of Indian political law.

Lord Canning during the course of his march through Upper India was forcibly struck by the want of some clear and well-understood rule of practice in our dealings with princes and chiefs on the subject of adoption as affecting states and principalities. How encumbered with doubts that subject was will already have appeared to some extent from the particulars I have given in regard to Sattára and Jhánsi and Nágpur. 'It is not,' Lord Canning observed, 'that the measures taken under the orders of the late Court of Directors in dealing with doubtful or lapsed successions have not in many instances been liberal and even generous, and there certainly is not at the present moment any disposition on the part of the native states to doubt the general goodwill towards them of the paramount power.



But there appears to be a haze of doubt and mistrust in the mind of each chief as to the policy which the Government will apply to his own state in the event of his leaving no natural heir to his throne, and each seems to feel, not without reason, that in such case the ultimate fate of his family is uncertain.' To this feeling he attributed the extraordinary satisfaction with which his recent assurances had been received by the chiefs to whom they were conveyed.

The policy respecting adoption had been incoherent, the discussions voluminous; since 1849 the official correspondence on not less than sixteen or seventeen cases of doubtful succession and of adoption had been printed by order of Parliament. Parliamentary blue books were read in native states; and our inability to agree upon fundamental points was thus palpable to those most deeply interested. We were disagreed about our duty, our policy, our rights, and about the law and past practice by which we professed to be guided. Some, as Lord Dalhousie, thought we were bound not to neglect rightful opportunities of acquiring territory and 'getting rid of petty intervening principalities.' Others held that the absorption of such states would be a source of weakness to ourselves. Lord Auckland's declaration in the case of the Colaba succession, that we ought to 'persevere in the one clear and direct course of abandoning no just and honourable accession of territory or revenue, while all existing claims of right are at the same time scrupulously respected,' failed to determine what acquisitions were just or what claims of right existed. We appealed to the Hindu law; but a high authority asserted that, comprehensive as it was regarding rights to private property, it did not provide for chiefships. We looked to the practice of former rulers and erroneously supposed that it supported a pretension to withhold assent to adoption, even in the case of so-called independent states, though no single instance had been found in which adoption by a sovereign prince had been invalidated by a refusal of assent on the part of the paramount power; and the probability was that the generally prevailing practice had been truly described in the statements of Sir Henry Lawrence, which he limited to Rájpútána. We established distinctions between 'dependent' and 'independent' states—'dependent' states being those like Sattára or Jhánsi, created or established by the Moghals or the Peshwa or ourselves, and sometimes invested

with less than sovereign authority; and 'independent' states, those like the Rájpútána states and some in Bundelkhand, which had survived under successive paramount dynasties and suffered little interference from any. But having established the distinction, we laid down no certain rules for our guidance in dealing with states in either category. We raised points of nicety depending on differences of origin, race, and tradition upon which it was perhaps impossible to arrive at sure conclusions: such as whether, in a Rájpút state, the widow might adopt without having received her husband's permission; whether in a Bundela state the chief might adopt a stranger to the exclusion of collaterals; whether in Hindu states generally the senior widow of a chief is allowed to adopt unreservedly, or is limited to a choice within certain degrees of affinity. We did not even determine with certainty what was the meaning of the language of our own treaties; for it was doubtful, at all events in states other than those which were both dependent and in the same position as Sattára, and perhaps even in those also, whether the words 'heirs and successors' and similar expressions frequent in these documents were to be interpreted to include heirs by adoption or not. No wonder the minds of princes and people were disquieted by all this inconsistency and uncertainty and conflict of opinion amongst those whose authority was practically absolute in dealing with their dearest interests and rights.

Such is the general tenor of Lord Canning's argument. 'And now,' he continued, 'I would beg her Majesty's Government to consider whether the time has not come when we may, with advantage to all, adopt and announce some rule in regard to succession in native states more distinct than that which we have been seeking to derive from the sources above mentioned; not by setting aside the Hindu law, wherever that avails, and not by diminishing in the least degree the consideration which the feudatory states have experienced at the hands of former ruling dynasties, but, on the contrary, by increasing this consideration and at the same time making our future practice plain and certain.

'A time so opportune for the step can never occur again. The last vestiges of the royal house of Delhi, from which, for our own convenience, we had long been content to accept a vicarious authority, have been swept away. The last pretender to the representation of the Peshwa has disappeared.



The Crown of England stands forth the unquestioned ruler and paramount power in all India, and is, for the first time, brought face to face with its feudatories. There is a reality in the suzerainty of the sovereign of England which has never existed before, and which is not only felt but eagerly acknowledged by the chiefs. A great convulsion has been followed by such a manifestation of our strength as India had never seen; and if this in its turn be followed by an act of general and substantial grace to the native chiefs, over and above the special rewards which have already been given to those whose services deserve them, the measure will be seasonable and appreciated.'

The precise method by which Lord Canning proposed to recognise the right of adoption will sufficiently appear from the reply of her Majesty's Government, which I shall transcribe below. As regards the effect of the measure, Lord Canning said: 'It would show at once and for ever that we are not lying in wait for opportunities of absorbing territory, and that we do deliberately desire to keep alive a feudal aristocracy where one still exists.' It 'will not debar the Government of India from stepping in to set right such serious abuses in a native government as may threaten any part of the country with anarchy or disturbance, nor from assuming temporary charge of a native state when there shall be sufficient reason to do so. Neither will the assurance, worded as proposed, diminish our right to visit a state with the heaviest penalties, even to confiscation, in the event of disloyalty or flagrant breach of engagement.'

Finally, Lord Canning met the objection that the measure would cut off future opportunities of accession of territory in these memorable words: 'I regard this not as an objection but as a recommendation. . . . Notwithstanding the greater purity and enlightenment of our administration, its higher tone and its surer promise of future benefit to the people, as compared with any native government, I still think that we have before us a higher and more pressing duty than that of extending our direct rule; and that our first care should be to strengthen that rule within its present limits, and to secure for our general supremacy the contented acquiescence and respect of all who are subjected to it; the supremacy will never be heartily accepted and respected so long as we leave ourselves open to the doubts which are now felt, and which our uncertain policy has justified, as to our ultimate intentions towards native states. We shall not

become stronger so long as we continue adding to our territory without adding to our European force; and the additions to that force which we already require are probably as large as England can conveniently furnish, and they will certainly cost as much as India can conveniently pay. As to civil government, our English officers are too few for the work they have in their hands, and our financial means are not yet equal to the demands upon us. Accession of territory will not make it easier to discharge our already existing duties in the administration of justice, the prosecution of public works, and in many other ways.

'The safety of our rule is increased, not diminished, by the maintenance of native chiefs well affected to us. Setting aside the well-known services rendered by Sindhia and subsequently by the Maharajas of Rewah, Chirkári and others, over the wide tract of Central India, where our authority is most broken in upon by native states, I venture to say that there is no man who remembers the condition of Upper India in 1857 and 1858 who is not thankful that, in the centre of the large and compact British province of Rohilkhand there remained the solitary little state of Rámpur still administered by its own Muhammadan prince; and that on the borders of the Punjab and of the districts above Delhi, the Chief of Patiála and his kinsmen still retained their hereditary authority unimpaired.

'In the time of which I speak these patches of native government served as breakwaters to the storm which would otherwise have swept over us in one great wave. And in quiet times they have their uses. Restless men who will accept no profession but arms, crafty intriguers bred up in native courts, and others who would chafe at our stricter and more formal rule, live there contentedly; and should the day come when India shall be threatened by an external enemy, or when the interests of England elsewhere may require that her Eastern Empire shall incur more than ordinary risk, one of our best mainstays will be found in these native states. But, to make them so, we must treat their chiefs and leading families with consideration and generosity, teaching them that, in spite of all suspicions to the contrary, their independence is safe, that we are not waiting for plausible opportunities to convert their country into British territory, and convincing them that they have nothing to gain by helping to displace us in favour of any new rulers from within or from without.



'It was long ago said by Sir John Malcolm that if we made all India into zillahs' (or British districts), 'it was not in the nature of things that our empire should last fifty years; but that if we could keep up a number of native states, without political power, but as royal instruments, we should exist in India as long as our naval superiority in Europe was maintained.

'Of the substantial truth of this opinion I have no doubt; and recent events have made it more deserving of our attention than ever.'

The next month Lord Canning wrote a second despatch, adducing in support of the despatch of April further considerations drawn from the circumstances of the Punjab Hill chiefs. But this did not add materially to the argument. The Secretary of State (Sir Charles Wood, afterwards Lord Halifax) replied in these terms:

'In several recent communications your Excellency has informed me that, during your viceregal progress through Central and Upper India, you availed yourself of every opportunity that presented itself to you, for a formal declaration in Durbár that the British Government desired to perpetuate in undiminished power and prosperity the houses of those native princes and chiefs who, throughout the recent period of trouble and disaster, had been true to their allegiance to the paramount state. To the Maharajas Sindhia and Holkar, to the Maharaja of Rewah, the Maharaja of Kashmir, to the great chiefs of the Cis-Sutlej states, and to others of less note, you publicly conveyed the gratifying assurance that, in the event of failure of direct heirs the British Government would recognise, as chiefs of their several houses, the heirs adopted by them in accordance with the law and with the usages of their respective families.

'These measures have already received the approbation of her Majesty's Government. But gratifying as they were to the princes and chiefs who were thus assured of the continuance of their houses, it was not improbable that they would be regarded by the native community at large as special acts of grace in consideration of good service rendered to the paramount state, and that some feelings of doubt and disquietude might be excited in the minds of those to whom the same assurances had not been conveyed. Your Excellency, therefore, lost no time in placing upon record and laying before her Majesty's Government the sentiments which you entertain with respect to the propriety of a more general

measure of recognition, calculated to give renewed confidence to all the princes and chiefs of India whose minds had been unsettled by some recent decisions of the British Government.

'These sentiments I have now before me in your Excellency's letters No. 43 A of the 30th April and No. 46 of the 10th of May, and I have the gratification to inform you that I am commanded to communicate to you her Majesty's approval of the principles which they enforce and the recommendations which they contain.

'Observing that such an opportunity as the present can never occur again for the final settlement of a question which has long excited continued conflicts of opinion and some inconsistencies of practice disturbing to the native mind, your Excellency now proposes to give to every chief above the rank of *jágírdár* who now governs his own territory, no matter how small it may be, or where it may be situated, or whence his authority over it may in the first instance have been derived, assurance that the paramount power desires to see his government perpetuated, and that, on failure of natural heirs, his adoption of a successor according to Hindu law (if he is a Hindu) and to the customs of his race, will be recognised, and that nothing shall disturb the engagement thus made to him so long as his house is loyal to the Crown and faithful to the conditions of the treaties which record its obligation to the British Government.

'To the Muhammadan chiefs the assurance to be given would, according to your recommendation, be that the paramount power desires their governments to be perpetuated, and that any succession to them which may be legitimate according to the Muhammadan law will be upheld.

'Presuming that in this latter case the recommendations of your Excellency relate only to instances in which there is a failure of direct heirs, and do not contemplate any departure from the policy of recognising the claims of primogeniture, her Majesty's Government approve the views thus expressed. They concur also in opinion with your Excellency, that no general notification of the intentions of your Government should be issued, but that in each case the assurance should be conveyed to the individual chiefs in whose favour you purpose to guarantee the privilege in question. You will carefully register the names of these chiefs, and forward me a roll of them as soon as it can be prepared.



'With respect to the case of the *jágírdárs*, and others of a similar character, of whose position your Excellency writes in the 27th paragraph of your letter, I am disposed to think that, except in very special cases, no assurance should be given. The distinction between territorial rights of ancient date and independent tenure, and lands held by favour of the Government of the day as rewards for good service, and generally granted only for a limited number of generations, is sound and intelligible. You will reserve to the paramount state the right of dealing with such cases as they arise, and that your recommendations will be framed in a liberal spirit is the wish, as it is the conviction, of her Majesty's Government.

'In the sentiments expressed in the concluding paragraphs of your Excellency's letter of the 30th of April I entirely concur. It is not by the extension of our empire that its permanence is to be secured, but by the character of British rule in the territories already committed to our care, and by practically demonstrating that we are as willing to respect the rights of others as we are capable of maintaining our own.'

The *sanads* were distributed accordingly. The usual form in the case of a Hindu chief runs thus:

'Her Majesty being desirous that the governments of the several princes and chiefs of India who now govern their own territories should be perpetuated, and that the representation and dignity of their houses should be continued, in fulfilment of this desire this *sanad* is given to you to convey to you the assurance that, on failure of natural heirs, the British Government will recognise and confirm any adoption of a successor made by yourself or by any future chief of your state that may be in accordance with Hindu law and the customs of your race.

'Be assured that nothing shall disturb the engagement thus made to you so long as your house is loyal to the Crown and faithful to the conditions of the treaties, grants, or engagements which record its obligations to the British Government.'

The form for a Muhammadan chief is substantially the same; except that the assurance conveyed is that, on failure of natural heirs, any succession to the government of the state which may be legitimate according to the Muhammadan law will be upheld.

There is one point in connection with these assurances

that I hope will never be forgotten. Looking to the whole circumstances detailed in the despatches, I think we may say broadly that the feudatory chiefs of India earned concessions meeting their heart's desire by the loyal support which they gave us in our time of greatest need.

For the chiefs themselves the value of the *sanads* probably consists much more in the policy which gave rise to them, evinced by the declaration of her Majesty's desire that the governments of the several chiefs shall be perpetuated, than in the assurance that the British Government will recognise adoptions regularly made in proper form by chiefs themselves. It is likely that chiefs, always reluctant to adopt, have, since the distribution of the *sanads*, made fewer adoptions than ever. The *sanads* do not express any pledge to recognise adoptions irregularly made or made by the widow of a deceased chief, with or without his permission; and this, it is said by Sir Charles Aitchison in his article in the 'Calcutta Review,' was intended 'to induce childless chiefs to make timely and formal adoptions, whereby to prevent disputes as to the succession and frustrate zenána influence and death-bed pressure in the selection of incompetent or improper heirs.' If so, that particular intention may have failed, and may be said to have implied too sanguine a view of human nature. Men not at the point of death, at almost any age or in almost any state of health, with young wives or the possibility of marrying young wives, are naturally unwilling to confess that prospects of an heir are hopeless; princes do not care to give to actual or possible opponents a rallying point for their intrigues or their contumacy. Adoptions may be rarer, because it is now practically certain, come what may, that the native government, in some shape, will be continued; there is therefore less reason than before to perform an act which is always disagreeable and sometimes both disagreeable and impolitic. When adoptions occur, they are, in almost every case, either irregular or open to the imputation of irregularity, as doubtfully in accord with some doubtful custom, or made by the widow of the chief, the latter having omitted to adopt a successor; and they are often merely the consequence of the selection of the successor by the widow and leading men or the Government, not the cause of the recognition of the right of some individual.

But one important consequence of the policy which suggested the *sanads* has been that the practice of the Indian



Government in regard to successions to chiefships, formerly varying with discrepant conceptions of right and expediency, has become uniform and well defined. Where there is a natural heir whose title to succeed is indisputable according to law and usage, he succeeds as a matter of course, unless he be obviously and totally unfit; though in this, as in every other case, a succession is thoroughly understood to require formal confirmation and recognition by the paramount power. Where the succession is disputed, the Supreme Government steps in and decides authoritatively in accordance with policy and the usages of the race and family. Where a regular adoption has been made in accordance with the terms of the adoption *sanad*, the succession of the heir by adoption is confirmed and recognised exactly as if he were an heir by blood. Where all heirs, natural or adopted, fail, and the Supreme Government recognises such successor to the rulership of a native state as, on general consideration, may seem best, whatever conditions appear fitting and desirable may be attached to the succession.

It is to be hoped that another consequence alike of the distribution of the adoption *sanads* and of that greater certainty in dealing with successions to chiefships which is a fruit of the whole policy, is a more assured conviction in the minds of ruling chiefs that we have no desire to annex their territories. With few exceptions they were loyal before they knew this in the way they know it now. But we may trust that the loyalty of most of them has acquired a new depth and sincerity. They may now see more clearly than they did before that their interests and those of the empire are identical. I will mention one circumstance amongst many which goes to support this view. The last Afghán war and the posture of affairs in the spring of 1885, when, on the occurrence of the Panjdeh incident, war with Russia seemed imminent, elicited offers of personal service, men, money, and supplies from all parts of India, of which it was impossible to mistake the genuine cordiality.

# CHAPTER VI

## PRESENT POLICY TOWARDS NATIVE STATES

THE Government has shown in many other ways, besides the distribution of the adoption *sanads*, its steady adherence to the policy happily inaugurated in 1858. From a multitude of illustrations I shall take three, all important, all matters of history, and the more convincing in regard to the real intentions of Government because the whole circumstances are generally known. Each of these illustrations carries with it a somewhat different political lesson. I refer to the deposition of the Gaekwar of Baroda, the restoration of Mysore to native rule, and the Delhi Assemblage of 1877.

Confidence is a plant of slow growth, and it must be admitted that in 1875 the native princes looked very anxiously to our proceedings in Baroda. They were content with the deposition of Mulhar Rao Gaekwar mainly because the native administration was restored and no suspicion could be entertained that we had derived any benefit from our interposition, except so far as the correction of misgovernment in any native state is always a benefit to the empire generally. I shall briefly recapitulate the main facts of the famous Baroda case and indicate the chief political principles which it illustrates or affirms.

Mulhar Rao Gaekwar had succeeded his brother Khande Rao in 1870. His country was misgoverned, and the first Baroda Commission appointed to investigate the general condition of the state reported in February 1874. The nature of the misgovernment which had taken place may be gathered from the fact that the Gaekwar was authoritatively advised to adopt measures relative to the future treatment of the relations and dependents of his late brother; to the realisation of revenue; the prevention and punishment of torture; the regulation of penalties in criminal cases; the spoliation of bankers and trading firms; the corporal punishment and personal ill-treatment of women and their



abduction for forced service in the palace. The Gaekwar was given till December 3, 1875, to effect the necessary reforms. The instructions constituting the commission asserted that he was responsible for the good government of his country, and that in isolated cases the Government would look to him to take the necessary measures to redress grievances or remove evils that might be brought to his notice. But when evils of the kind believed to exist pervaded all departments of the administration, it became the duty of the British Government to institute an inquiry and, if necessary, use the power it possessed under treaty of offering advice to the Gaekwar and requiring him to conduct the affairs of Baroda in accordance with its advice. The British Government could not undertake to protect him from the consequences of general misgovernment. In reply to an objection on his part, that the appointment of the commission was not warranted by the existing relations between the Baroda state and the British Government, Lord Northbrook argued that intervention in Baroda affairs was in accordance both with the terms of Baroda treaties and with constant usage; and that the particular intervention in question, though amply justified by the language of treaties, rested on other foundations. The British Government was the paramount power and the Baroda state, as admitted by the Gaekwar himself, was dependent on its protection. A subsidiary force of British troops was maintained for the defence of the state, the protection of the person of its ruler, and the enforcement of his legitimate authority. 'My friend,' Lord Northbrook went on to say, 'I cannot consent to employ British troops to protect any one in a course of wrong-doing. Misrule on the part of a government which is upheld by the British power is misrule for which the British Government becomes in a measure involved. It becomes, therefore, not only the right but the positive duty of the British Government to see that the administration of a state in such a condition is reformed and that gross abuses are removed.' The Gaekwar was distinctly informed that, if he failed to reform his administration within the eighteen months allowed for the purpose, he would be removed from power.

He was thus given a fair chance of amendment. He made no effort to amend, and some time before the expiry of the period of probation it was necessary to intervene again. An attempt was made to poison Colonel Phayre, the

Resident; and the Gaekwar himself was suspected on ve strong grounds of complicity in the crime. Sir Lewis Pe was deputed to Baroda, and instructed in January 1875 to arrest the Gaekwar. The arrest was effected just outside the residency, and the Government of India, as an act of state, not in pursuance of any law or in the exercise of any right acquired by treaty, temporarily assumed the administration of Baroda. It was declared in the proclamation then issued that evidence had been adduced that the Gaekwar had instigated the attempt to poison Colonel Phayre; that to instigate such an attempt would be a high crime against the Queen, a breach of the condition of loyalty to the Crown under which the Gaekwar was recognised as ruler of Baroda, and an act of hostility against the British Government; that it was necessary to inquire into the truth of the charge; that the Gaekwar was suspended from power; and that, in accordance with the desire of the Queen that the government of the princes and chiefs of India should be perpetuated, a native administration would be established in such manner as might be determined upon after the conclusion of the inquiry.

The charges referred also to bribing and holding secret communications with the servants of the residency, but of course the main charge was that of instigating the attempt to poison the Resident. The second Baroda Commission appointed to try these charges was not constituted as a judicial tribunal. Its function was to report to the Government of India, with whom the decision was ultimately to rest. But the proceedings were, in fact, conducted publicly as in a court of law, and counsel were permitted to appear. The three European members of this commission, Sir Richard Couch, Chief Justice of Bengal, Sir Richard Meade, president of the first commission, and Mr. P. S. Melvill, unanimously found Mulhar Rao guilty on all the charges; Maharaja Sindhia and Sir Dinkar Rao found the graver imputation not proved, while the Maharaja of Jaipur found the Gaekwar not guilty. Maharaja Holkar had expressed complete concurrence in the course taken by the Government of India, but had excused himself from serving on the commission.

Mulhar Rao was thus left under the gravest suspicion of having committed the heinous crime imputed to him. He was deposed by proclamation, but the decision was not based on the report of the commission, nor did the Government assume that the truth of the imputations against him had been proved. His deposition was made to rest on his notorious misconduct, his gross misgovernment of the state, and on his evident incapacity to effect the necessary reforms, as also upon the opinion of the Government of India that it would be detrimental to the interests of the people of Baroda, and inconsistent with the maintenance of the relations which ought to subsist between the British Government and the Baroda state, to restore him to power. The widow of the late Khande Rao was then permitted to adopt a boy of the Gaekwar house, selected by the British Government; and this boy was installed as Gaekwar, suitable provision being made for the administration of the state during his minority. In the discussions connected with the selection of the person upon whom the sovereignty of the state was to be conferred by the Government of India, it was laid down that the considerations to be borne in mind were the relationship of the several claimants to Khande Rao Gaekwar; personal fitness for rule, if an adult were chosen; general intelligence and capability for education if a minor were preferred; and lastly, acceptability of the person selected to the leading nobles and people. It was held that under no circumstances would the Government of India have been justified in selecting for the succession a person who, whatever might be his other claims, was lacking in the primary requisite of personal fitness for rule. As soon as the succession was arranged, it was recognised by the Maharaja Holkar by the transmission of a dress of honour to the new chief.



The advice spontaneously offered by that Maharaja at a comparatively early stage of the affair, about the time when the report of the first commission was under consideration, that is, in the early months of 1874, is worth quoting, because it shows the ideas entertained by native princes as to the general authority and responsibility of the paramount power. 'Presuming,' he said to General Daly, the Governor-General's Agent for Central India, 'that things are worse at Baroda than in other native states, and that the Gaekwar by his acts shows himself unfit to rule, I would depose him and appoint in his place the most worthy of the three members of the family who were in Khande Rao's eye for adoption. I take for granted there is no thought of annexation; that there will be no interference with treaty rights; that the Queen's Proclamation will be upheld. This being

so, it is the duty of the paramount power to save the state The person for the time being is little: the state with its rights is the point for consideration. Half measures in such a case will work no good: I mean an attempt to work the state by a British officer will be construed into another covering for annexation. I would rather have a clean removal and a clean succession.' He added that the successor should not be suddenly left to his own devices; but be for some time guided and strengthened by patient and judicious counsel.

The halting verdict of the second commission probably saved the ex-Gaekwar from the penalty which would have followed upon conviction of the crime alleged, if proved against a private person. It is not likely that on the point of procedure the Baroda precedent will be followed on any future occasion. The manifest inconveniences of a quasi-judicial trial in a political case of this nature are too obvious to need description. The true value of the case, from the point of view of Indian political law, lies in the number and importance of political principles which it establishes, and in the fact that most or all of these principles received the express or implied concurrence of several leading chiefs, who either took part in the proceedings or signified that they recognised their propriety. In the case of a state of the first consequence, and apart altogether from treaty rights, the Government of India declined to support misrule by its forces, suspended and ultimately deposed the erring ruler, and selected as the successor a person chosen with a view to the probability of his ruling well. While the extensive authority of the paramount power and its determination not to permit misgovernment, for which it was indirectly responsible, were thus exhibited, the rulers and chiefs were assured by the signal fact of the restoration of a native administration that the desire to avoid further acquisition of territory was perfectly sincere.

The story of Mysore conveys a similar moral; and its commencement carries us back to the early days of the century, already sufficiently characterised, when Lord Wellesley, in the strength of conquest, but nevertheless under pressure of necessity, was laying out the plan of the yet unacknowledged protectorate. On the conquest of Mysore it was necessary to obtain a reasonable indemnification for the expenses of the war and an adequate security against



the return of the dangers which had provoked hostilities. A large portion of the conquered territory was therefore divided between the Company and the Nizam. To have so divided the whole would have afforded the Marhattas grounds of jealousy, unduly aggrandised the power of the Nizam, and involved the establishment of an inconvenient frontier. There could be no hope that the dynasty of Tippoo would ever entertain anything but enmity to the British cause. It was thus determined to rescue the family of the old Hindu rajas of Mysore from the obscurity and durance in which they had been placed by the usurpation of Haidar Ali, and to set a child of that house upon the throne of a state entirely created by British authority. It was expressly recorded by Lord Wellesley at the time that no positive right or title to the throne existed in any party. In correcting the draft of the treaty of 1799 prepared by Colonel Kirkpatrick, Lord Wellesley, as is well known, struck out all reference to the heirs and successors of the Maharaja, and in his despatch of August 3 of that year his lordship thus described the intentions of the treaty: 'In framing this engagement,' he said, 'it was my determination to establish the most unqualified community of interests between the Government of Mysore and the Company, and to render the Raja's northern frontier in effect a powerful line of our defence. With this view I have engaged to undertake the protection of this country, in consideration of an annual subsidy of seven lakhs of star pagodas; but recollecting the inconvenience and embarrassments which have arisen to all parties concerned under the double governments and conflicting authorities unfortunately established in Oudh, the Carnatic, and Tanjore, I resolved to reserve to the Company the most extensive and indisputable powers of interposition in the internal affairs of Mysore, as well as an unlimited right of assuming the direct management of the country (whenever such a step might appear necessary for the security of the funds destined for the subsidy), and of requiring extraordinary aid beyond the amount of the fixed subsidy, either in time of war or of preparations for hostility. Under this arrangement I trust I shall be enabled to command the whole resources of the Raja's territory, to improve its cultivation, to extend its commerce, and to secure the welfare of its inhabitants. It appeared to me a more candid and liberal, as well as a more wise policy, to apprize the Raja distinctly, at the moment of his accession, of the exact nature of his

dependence on the Company, than to leave any matter for future doubt or discussion.'

The Raja or Maharaja was a child of tender years, and the administration of the state was conducted till 1812 by the Bráhman Purniah. The Maharaja ruled till 1831; he dissipated the treasure which Purniah had amassed, and he grossly misgoverned his territories. To paraphrase slightly the language of Sir Mark Cubbon, the government became venal, all establishments fell into arrears, local officials were uncontrolled, the highest offices were put up to sale, valuable lands were alienated and new taxes and monopolies were invented; there was no security for property; nothing fit to be called the administration of justice; the people, harassed by swarms of petty officers and monopolists, could obtain no redress. At length in 1829 an extensive insurrection broke out, and British troops had to be employed to suppress it.

These events led to the assumption of the administration by the British Government on October 19, 1831; and, as I have said, it remained in British hands for fifty years. At first the province was governed on the native system by a British commissioner, Sir Mark Cubbon, and four European superintendents for the several divisions. But in later years the administrative structure of Mysore was assimilated to that usual in non-regulation provinces; the full complement of British officials was introduced; and here, as elsewhere, patriarchal methods of rule fell into desuetude. The Maharaja whom Lord Wellesley had placed upon the throne lived till March 27, 1868; he applied again and again for the restoration of his state, but without success; for the obligations of the British Government to the people of Mysore were held to be no less sacred than its self-imposed obligations to the Maharaja. He asked that his right to adopt might be recognised; but the Government of India refused him their authority to adopt a successor to the state. He did not cease to press the question, and in 1865 actually adopted a boy of less than three years of age. At last, in 1867, the Home Government determined to maintain his family on the throne in the person of his adopted son, upon terms corresponding with those made in 1799, so far as the altered circumstances of the time would allow. Lord Cranborne explained in the House of Commons that this decision was influenced by the belief that the existence of well-governed native states is a benefit to the stability of British rule, for the reason, amongst others, that it affords



opportunities for statesmanlike capacity of natives of India; and Sir Stafford Northcote said in his explanatory minute that he believed it to be both our duty, and, in a large sense, our interest, to maintain the existence of separate native states, and to exercise our influence to secure them good government at the hands of native rulers. He further pointed out that to give effect to this policy we had in the past found it necessary, and might find it necessary again, to assume the administration of misgoverned states; and that in accepting and acting upon this view of our position it was important to prove ourselves to be influenced by no desire of territorial aggrandisement, but by a genuine wish to promote the welfare of the country.

It fell to the government of Lord Lytton in 1881 to carry out the decision of 1867. In general there is this objection, amongst others, to renditions of British Indian territory to native rulers, that whereas British rule is now, at any rate, a rule of law and system, native rule, in so far as it has not been modified by British influence, is in theory conducted at the mere volition of the prince, while the practical checks which limit usual Indian despotisms are very different from the codes and acts, the official discipline, and the constitutional practices which secure personal rights in British districts. Thus, if by a decision from Simla or Calcutta a British Indian subject is changed into the subject of a native state, he is practically thrust all of a sudden into a new legal atmosphere; and the chances of his suffering in some way in his rights and liabilities and expectations are proportioned to the difference between the general system of the particular native state and the British system of which he is no longer a partaker. Mysore territory, it need not be said, was and is foreign territory; but the people had been living under British laws and British methods of administration for a long course of years. It was therefore just as desirable to guard rights and expectations here as it would have been if the province had been annexed in 1831 instead of being sequestrated.

Precisely this necessity for satisfying hopes and ideas which had become usual under British administration gave a specially novel and interesting character to the Mysore experiment. It was decided that the re-establishment of native rule should not interfere with the maintenance of the British system; that the Maharaja, in fact, should not exercise a despotism checked by imperfect civil and military organisa-

tion, imperfect instruments of power and primitive ideas of what ought to be expected from the despot, but should conduct the administration on those fixed principles which had guided the British Chief Commissioner who had preceded him. This was an inevitable peculiarity demanded by the plainest dictates of justice and good sense; in other respects there was nothing unusual in the position assigned to the Mysore state. The special powers of interposition reserved by Lord Wellesley have been duly maintained; but the state stands generally on the same footing as other important native states under the British protectorate.

All that is new or old in the system of relations established with Mysore is summed up in the Instrument of Transfer, a document of the first political importance, which deserves the careful study of all interested in the present subject. The first seventeen clauses of the instrument comprise the principal conditions, territorial, financial, and military, affecting the state; and none of these conditions are dissimilar in principle from those upon which are founded the subordinate relations of all other native states with the British Government. Other clauses provide that all laws and rules having the force of law in force in the Mysore territories, when the Maharaja was placed in possession of them, shall be maintained and efficiently administered, the Maharaja having no power to repeal or modify them except with the previous consent of the Governor-General in Council; that except with that consent no material change shall be made in the established system of administration; that title-deeds granted and settlements of land revenue made shall be duly upheld; that the Maharaja shall conform to such advice as the Governor-General in Council shall offer him with a view to objects connected with the advancement of his Highness's interests, the happiness of his subjects, and his relations to the British Government; and that in the event of the breach or non-observance of the conditions set forth in the instrument, the Governor-General in Council may resume possession of the Mysore territories, and assume the direct administration of them, or make such other arrangements as he may think necessary for the good government of the people of Mysore, or for the security of British rights and interests within the province.

As regards the manner in which the measure was received by the people of the state, I believe the Bráhmans and most of the leading men were in favour of the rendition.



The mass of the people were probably at first uneasy as to its possible effects. There would have been no difficulty in organising an agitation against it, just as there was no difficulty in organising the rejoicings which took place when the Maharaja assumed charge. As a fact, there was no such agitation. The leading men would not countenance it. Since the rendition, the people have been fairly satisfied. They have begun to think that there is not much difference after all; and no doubt the recognition of the Maharaja as successor to the throne, and his establishment in the palace with the usual Oriental retinue and display, were measures popular with every one. Generally the administration is conducted by native officials. The British officials were for the most part pensioned or provided with employment elsewhere; but there are still some European officers in high positions in the state. I understand that the machinery works smoothly at present, though inclined to be a little slack.

In order of time the Delhi Assemblage preceded the Mysore rendition of 1881 by several years. But I have given the event of January 1, 1877, the last place in this chapter, because it sums up the result of that whole process of organising and developing our Indian protectorate which it has been my attempt to describe. In no way are we here concerned with the parliamentary and other public discussions of the time as to the expediency of the assumption of the title 'Empress of India' by her Majesty the Queen. We have merely to look to the political significance of the assemblage itself, of the assumption of title there announced, and of the declarations made on the occasion.

The Assemblage and the adoption of the imperial title were very natural consequences of the transfer of the government of India from the Company to the Crown and of the Proclamation of 1858, which informed the princes and peoples of India that the transfer had been effected. The Act of Parliament which empowered her Majesty to add to her title (39 Vic. cap. 10) recites that whereas it had been enacted that the government of India, formerly vested in the East India Company in trust for her Majesty, should become vested in her Majesty, by whom and in whose name India should henceforth be governed, it was expedient that there should be a recognition of the transfer of government so made by means of an addition to the royal style and

title. In the despatches of the day it was said that the native princes are directly concerned in the renown of the empire, the safety of its frontiers, the development of its commerce, the friendliness and dignity of its intercourse with foreign states, and the maintenance of its peace; that if any one of these imperial interests were attacked or menaced, it would be the duty of those chiefs to assist us in defending it; and that the occasion might properly be associated in their minds with the acquisition on their part of a new and more lively interest in the affairs of the empire. The intention was that the proclamation of the imperial title should add to the strength of the foundations of the British rule. In presenting to the chiefs who attended the Assemblage banners which it was supposed they would appreciate, because of the importance attached by native potentates to similar marks of distinction conferred on them by the Moghal emperors, the Viceroy reminded each of them of the close union between the throne of England and the house of the chief, and of the earnest desire of the paramount power to see the dynasty of the chief strong, prosperous, and permanent. The speech made by the Viceroy at the time of the proclamation described the new title as one meant to be to all the princes and peoples of India a permanent symbol of the union of the Crown with their interests and of its claim upon their allegiance. The opening words of the speech were an allusion to the proclamation of 1858; which, it was said, had conveyed to those peoples and princes assurances of her Majesty's goodwill, cherished by them as their most precious political possession. The promises then made needed no confirmation; but the Assemblage itself was conspicuous evidence of their fulfilment. 'Princes,' said the Viceroy, 'and chiefs of this empire, which finds in your loyalty a pledge of strength, in your prosperity a source of splendour, her Majesty thanks you for your readiness, on which she reckons, if its interests be attacked or menaced, to assist her Government in the defence of them. . . . Her Majesty regards her interests as identified with yours; and it is with the wish to confirm the confidence and perpetuate the intimacy of the relations now so happily uniting the British Crown and its feudatories and allies, that her Majesty has been graciously pleased to assume the imperial title we proclaim to-day.' 'The Government of her Majesty,' the Viceroy continued, 'in every quarter of the globe over which its dominion is established, trusts less to



the strength of armies than to the willing allegiance of a contented and united people, who rally round the throne because they recognise therein the stable condition of their permanent welfare. It is on the gradual and enlightened participation of her Indian subjects in the undisturbed exercise of this mild and just authority, and not upon the conquest of weaker states or the annexation of neighbouring territories, that her Majesty relies for the development of her Indian empire.'

These words breathe the very spirit which animated Lord Canning when he effected a pacification no less momentous than that effected by Lord Hastings forty years before. With pageantry and formalities not unsuited to a state of society in which ceremonies and display retain a powerful hold on the popular imagination, it was announced, not merely at Delhi, but at native courts and in British districts throughout the length and breadth of the land, that the Queen had openly accepted the position which she and her predecessors had virtually held since the victories of Lord Lake placed the King of Delhi in actual dependence on the Company, and which she had both virtually and technically held since the date of the Amnesty Proclamation. There was nothing really new in this formal publication of a long-accepted fact; but the opportunity was properly taken to assert the strength, the tranquillity, the unity, and the permanence of the empire, and was rightly used to remind the feudatory chiefs of their duty to support its interests.

By those whose capabilities and position enabled them to form a judgment on the event, the proclamation of January 1, 1877, was in most cases welcomed entirely in the spirit in which it was intended to be received. According to Eastern ideas, to attend a formal gathering convened at the behest of a ruler is a customary mode of signifying homage. Sixty-three ruling chiefs were present at the Assemblage, including the Nizam of Hyderabad, the Maharaja of Mysore, the Gaekwar of Baroda, the Maharajas of Gwálior and Indore, and the other principal chiefs of Central India, Rájpútána and the Punjab, together with chiefs from Bombay, the North-Western and Central Provinces, Bengal, and Sindh. It was reported that the aggregate populations under the direct rule of the chiefs present at Delhi approached forty millions, while their united territories exceeded the combined areas of England, Italy, and France. Chiefs who did not come testified their

loyal acquiescence in the propriety of the proceedings by letters of congratulation and the celebration of rejoicings in their several states. It may be said generally that in British districts the bearing of the leading men who attended the local assemblies was loyal and cordial; while many of the addresses, particularly those presented by people in Upper India, evinced a clear idea of that actual situation of affairs which the ceremonies and announcements of the hour were meant to symbolise. The inhabitants of Poona and of other places in the Deccan wrote that 'the native princes, great and small, are protected by the strength of the paramount power from internal dissension, and their continuance as the feudatory members of the empire has been assured to them beyond all risk of change;' and the memorialists referred to the new title as legalising *de jure* what had long been true in fact, namely, that the British power is paramount over all other powers in India, which are protected by its sovereign rule. The inhabitants of Calcutta and of other parts of Bengal described the assumption of title as formally defining 'the exact position of India in the body politic of the British Empire;' and as at once incorporating 'her, with her princes, chiefs, and people, as an integral member of that empire.' Some addresses from the North-Western Provinces and the Punjab still more significantly dwelt on the constant anarchy and barbarous bloodshed of the times which succeeded the downfall of the Moghal Empire and on the benefits received from the British nation in security against invasion from without and the suppression of intestine warfare.

With these general recognitions of the unquestioned strength and right of the British protectorate we may close our review of recent developments of Indian political principle. The lesson of the annexation of Oudh is a lasting one, because political abstention which leads to anarchy is in itself a mistake, and involves an intolerable wrong to populations for whose welfare the British nation is ultimately responsible. But the policy of annexation, except as the supreme punishment for political crimes, the policy evinced in the discussions on Sattára, Karauli, Tehri, and Jhánsi, and in the refusal to recognise a native succession in Nágpur, has been eliminated from amongst political ideas accepted by any responsible authorities in India. This is shown by the proclamation of 1858, by the distribution of the adoption *sanads*, by conspicuous proceedings at Baroda,



in Mysore, and at Delhi. It is no part of the plan of this work to enter upon any discussion of current political events in India; but the late restoration of powers to the Maharaja of Kashmír and the re-establishment of a native administration in Manipur after the recent lamentable occurrences, suffice to prove that the counsels of the Indian Government are still inspired by the same principles.

One of the addresses of January, 1877—it was presented at Maldah, the head-quarters of a district in Bengal—quaintly but concisely expresses a popular view of the real position: 'This golden India,' so the address runs, 'has been ruled by three nations. In the first period the Hindu kings of the solar and lunar race (as they were called) reigned over from the beginning up to 1206 A.D. In the second, Moghals and Patháns reigned over the country from 1206 to 1802; and thence up to the present the English nation governs it.' The dates might be the subject of learned discussion, but the observation is substantially true.

In the next month Mr. A. P. MacDonnell, now Chief Commissioner of the Central Provinces, reported of the people of Durbhanga, in Bengal, where he was then collector: 'Among the mass the news has permeated everywhere. But wherever the news has created a clear conception in the *ryot's* mind (and that is not always or everywhere), the conception he has formed is that not her Majesty the Queen, but his Royal Highness the Prince of Wales it is who is the *Pádshah*.' The Durbhanga *ryot* was not quite correct in his facts; but he was right in his general idea, for the title of *Pádshah* was that assumed by the Delhi emperors.

I shall now leave for a while the later political conceptions which are our practical guides, and turn to those early notions of kingship in India and those theories of government acted upon by the Moghals which characterised the first and second of the periods defined by the people of Maldah. I hope to show that in native India the primitive Hindu raja still survives, and that the texture of the British protectorate, which now envelops the land, has been woven from materials left to us by our predecessors on a pattern consonant with the history of India and with much that is lasting in Indian ideas of kingly power and imperial supremacy.

# CHAPTER VII

## EARLY INDIAN IDEAS OF SOVEREIGNTY

It would be a grave misconception of the character of our Indian empire to imagine that its institutions are the mere inventions of foreigners arbitrarily imposed upon conquered populations and subject states. I shall fully admit in a subsequent chapter that some of our necessary principles of action are not in harmony with Indian ways; but, on the whole, I believe that our empire has been largely though not exclusively developed by forces and from elements which are alike indigenous. It seems to me to have arisen, like other Oriental empires, out of the pre-existing circumstances of the societies upon which it has been formed, to draw from the territories over which it extends most of the materials of its composition, and to derive from its Oriental surroundings some of its most important principles of life and growth. If this view is correct, if in truth our Indian dominion and political preponderance are so rooted and sustained, two consequences may follow. The intimate connection between the empire as it is and the former institutions of the country, which have been absorbed and improved by its establishment, should presage its stability; and the impulse which many of us may feel to condemn foreign domination as almost necessarily unjust may be altered into a belief that foreign supremacy, when largely due to and moulded by the characteristics of the subject societies, may sometimes be not only inevitable but salutary.

Administrative and political arrangements are, indeed, much more the result of little-observed social forces than of deliberate design, and often survive the paroxysms of change which, on a superficial view, appear fatal to them. De Tocqueville has shown very well that administrative centralisation in France was not brought into existence by the Revolution, but preceded and partly caused it. The scheme of the British Indian empire, taken as a whole, comprises



the direct administration of certain provinces by officials appointed by a central power, and the suzerainty of the same power over a large number of states enjoying considerable, though varying, degrees of internal sovereignty. The chief ideas which enter into that scheme were not generated by the British conquest of the provinces directly administered, but preceded it, and may, indeed, be reckoned amongst the causes which made British supremacy inevitable. Moreover, the Delhi empire itself, at its height, might be described almost in the very words just used to describe the British Indian empire; and it actually perpetuated some Hindu institutions when it seemed, and probably intended, to destroy them. I hope at least to show that in conceptions of sovereignty we are the heirs of the Moghals, and that they were the heirs of the Hindu rajas, whom they rooted out of the Punjab and Hindustan.

I know that Mr. Benett, whose admirable report on the Gonda district of Oudh I shall quote in several places, says, in another paper, that the mistake which vitiates almost all our political theories in India is that we are the successors of the Musalmán emperors. But were we only that, he adds, we should not be where we are. The commissioner, he observes, has supplanted not so much the *názim*—the local official of the Delhi emperors—as the raja. Certainly we are not by any means the successors only of the Moghals; they won their inheritance by the sword from the Hindu rajas and we have succeeded both Musalmáns and Hindus.

Speaking of the complete political dissolution of India in the eighteenth century, Sir Alfred Lyall ('Asiatic Studies,' p. 190) observes: 'The Moghal empire had made a clean sweep of indigenous political institutions within its sway; and in their turn the Marhattas, aided in the work of destruction by the Afgháns, Sikhs, Játs, by rebels and commanders of free companies generally, made a clean sweep of the Moghal empire.' As usual, Sir Alfred Lyall does not allow the vigour of his style to impair historical accuracy. The political institutions to which he refers are the old Hindu states in those parts of the Delhi empire which the Moghals succeeded in bringing under their direct administration. Sir Alfred Lyall does not mean that in the Delhi empire as a whole, including the subjugated or partially subjugated states, we cannot trace many degrees of interference and non-interference, from the raja being left in possession of his principality, subject only to demand for tribute or

service and submission, to the ejection of all hereditary middlemen and the collection of the dues of the state from the village proprietors by Government officials. Nor does Sir Alfred Lyall mean that the Moghals entirely succeeded in bringing under their direct sway many remote or outlying parts of the country, such as the Punjab frontier, the Punjab hills, parts of Central and Southern India, and generally, with the exception of the Nizam's dominions, nearly the whole of the country shown in the maps as belonging to native states, where indigenous political institutions, the states themselves included, have lasted on to our day. The case of Oudh, to which the remark I have quoted from Mr. Benett especially applies, is in point. There were parts of Oudh where the Muhammadans by no means completely succeeded in grinding down to the dust all the indigenous Hindu principalities; as we found when, after annexation, we had to turn Rájpút feudal chieftains, amongst others, into Oudh talukdárs. Still less does Sir Alfred Lyall mean that Muhammadan conquest altered the old constitution of Hindu society, which lasted on through the many centuries of the Delhi empire, and has lasted on through the single century of our own. And the old constitution of Hindu society influenced Muhammadan ideas of government and the Muhammadan style of government in many ways. The best of the Muhammadan emperors or kings rallied around them tributary Hindu rajas, and employed Hindu ministers or officials to arrange their revenue affairs on Hindu principles of administration; and some of the emperors were, indeed, themselves partly Hindus by blood, for their fathers married daughters of the great chiefs of Rájpútána.

In the India of our predecessors, sovereignty was territorial or tending to become so; it was based on the land and on the idea of a double ownership in prince and peasant; and it not infrequently included some notion of suzerainty, often very vague, so that sometimes in the division of sovereignty which this notion implied the fragment left with the suzerain was almost invisible. All these ideas are still current in the India of to-day; but we have, so to speak, called them in and re-issued them. The ideas of the old stamp wanted edge; they were perhaps incapable of sharp definition; they were of different mintage in different parts of the country. The old bullion is still in use; but we have amalgamated with it a little Western material, and have given the new coinage a clear-cut rim and a fresh and



uniform image and superscription. The tendency to territorial sovereignty has been led somewhat suddenly to its result, and all our states are territorial sovereignties. With the basis of Indian sovereignty, the customary division of the produce of the soil, we have not interfered; but our own example and influence tend to beget in many places clearer definition and separation of public and private rights. The suzerainty of the paramount power has become well defined and is a substantial reality. I may add that in India, before and during our time, as in many other lands and ages, the sovereign was and is the fountain of honour.

In illustrating these remarks I must necessarily resort to localities outside the rim of that monotonous platform where Muhammadan supremacy beat down the old Hindu principalities. I shall adduce evidence from the Punjab frontier, the Punjab Hills, and a strip of Oudh territory on the borders of Nepal; I shall then compare some of this evidence with that contained in Sir Alfred Lyall's paper on Rájpútána, and in the next chapter I shall extend the inquiry to the Indian peninsula. To follow the unfamiliar details thus brought together may, I fear, tax the patience of any who are not specialists; but it seems right to explain pretty fully the grounds of the opinions just given, even at the risk of being tedious.

In the history of institutions there is, of course, a phase of sovereignty which is earlier than territorial sovereignty. As we know from Sir Henry Maine, sovereignty was not always associated with a definite portion of the earth's surface. He points out that the older ideas are reflected in the titles of the earliest monarchs in Western Europe, which were 'Rex Anglorum, Rex Francorum, Rex Scotorum'—King of the English, King of the Franks, King of the Scots. On the Punjab frontier, particularly in the southern portion of it, we find excellent specimens, if not of early kingship, at least of the sort of personal leadership in semi-political groups out of which we may suppose early kingship might arise. Tribal chieftainship, which, I take it, precedes territorial despotism, is extremely well marked amongst Baluchis, and is occasionally traceable, though in a rudimentary form, amongst Pathans. In historic times, and perhaps in remote ages of which history has no record, the tide of conquest or immigration has swept again and again from Central Asia or Afghánistan over the fertile and thickly populated plains of India; and, although in the countries of these Muhammadan

tribal societies we cannot of course trace any early ideas of kingship which are specifically Hindu, it is, I think, in the hills and comparatively inaccessible tracts left aside by successive streams of invasion, or passed or touched without being overwhelmed by its rising or subsequently receding flood, that we are most likely to find trustworthy and enduring testimony as to the character of society and politics in the remote past of India or amongst the tribes and castes of which Indian populations are composed. This is another reason, in addition to that afforded by the unsparing demolitions of Muhammadan supremacy, for ransacking out of the way parts of the country in the search for kingship or sovereignty in its early forms.

Where the Himalayan system of mountains sweeps round the north-west corner of India it breaks up into rugged masses of successive chains of hills, the first of them, with only one wide break, fronting our dominions from Pesháwar to Karáchi, and the others, with the intervening plains and valleys, constituting Afghánistan and Beluchistan. From Sukkur to Sibi there is a wide open plain, much of it a desert of the Indian type, and much of it, when peace is secured, available for cultivation. To the north of this region, between the territories which are held in the grip of the Amir of Afghánistan and the British districts, the hills and valleys are inhabited by a multitude of Pathán tribes, which, though Kábul may sometimes claim from some of them a very shadowy allegiance, and most of them have direct relations with ourselves, are really independent and free from all interference in their internal concerns. The Pathán country also extends far east of the Sulaiman Range, and includes our districts of Pesháwar and Kohát, the Bannu Valley, and a part of the Dera Ismail Khan district. Below Dera Ismail Khan lies the Baluch country, which stretches away to Khelát. Many of the Baluch tribes acknowledge the supremacy of the Khán of Khelát; but he is dependent on the British Government, and the Baluchis generally are controlled either by the authorities of the Dera Gházi Khán district and their superiors in the Punjab or by the Governor-General's Agent for Baluchistan and his subordinates.

The contrast between the democratic constitution of the northern or Pathán tribes and the remarkable supremacy in Baluch tribes of their hereditary *tumandárs* or chieftains, has been the subject of comment in many official documents. A Baluch is more unlike a Pathán than a Frenchman is unlike an Englishman; but, notwithstanding great and striking differences, it may be said that all or most of these tribes, Baluch and Pathán alike, possess certain features in common. In all, the tribal organisation of clans and sections united by the fact or fiction of common descent is well preserved; all have a tribal territory, where the tribesmen claim the chief rights in the soil; in all, revenge for injuries is a sacred duty, and the vendetta is maintained from generation to generation. There is the fiercest jealousy of female honour; but elopements are one of the most frequent causes of lasting blood feuds. Where the controlling hand of the British Government has not interposed to allay tribal disputes, warfare between tribe and tribe is common or incessant. Many tribes may be said to be predatory—that is, to look to the plunder of strangers as a principal means of subsistence. Internal tribal affairs are dealt with by tribal councils, and feuds are sometimes composed by the exchange of betrothals or by money compensation for loss of lives or cattle. All these are well-known marks of primitive societies in the tribal stage.



The predatory instincts of the Baluch tribes have been repressed in the pacification of Baluchistan and the Dera Gházi Khán border, which has been effected during the past twenty years, chiefly by the abilities and force of will of the late Sir Robert Sandeman. Over the clans and sections of clans of these tribes are headmen, whose office is hereditary like that of the *tumandár* or chief in the tribe at large; and he consults with these headmen in matters of importance. By means of the subordination of the headmen, obedience and responsibility run through the whole tribe. In the old days the chief was entitled to one-fifth of the tribal plunder. When the Baluchis came down from the hills and settled on the plains, they parcelled out, according to their tribal sections, the lands which they acquired; and it is said that the *tumandár* retained a considerable private estate for himself and his family; and it is probable that where he was a strong man he had the right to provide for the cultivation of waste lands and of lands deserted by their occupants.

An almost identical constitution has been attributed to Pathán tribes; and the tribal chief, where there is one, is, as with the Baluchis, the leader in war. But the stubbornly independent character of clans, sections, and individuals, leaves the Pathán chief, if any there be, little real authority. The habit of implicit obedience which distinguishes the

Baluchis is altogether wanting; and the Patháns generally do each what is meet in his own eyes. In some few Pathán tribes there is a system very like civilised party government: the leading men of one faction direct affairs for a time, and are then turned out, generally without fighting, to make room for the leading men of the other faction. For centuries no strangers have been safe in the Pathán hills; and even the men of one clan cannot ordinarily pass safely through the lands of their neighbours. In the Baluch country the strength of the chief results in something like government within the tribe. If you can command the *tumandár*, you can control the tribe. But with Patháns the case differs. Family feuds and clan jealousies are continually rife, except when they are momentarily forgotten, if all sections unite for the time to repel a common enemy. There is good reason to believe that in the normal constitution of a Pathán tribe there is no tribal chieftainship, the common affairs and such rough substitute for government as may be supposed to exist being conducted by *jirgas* or councils of the elders of the numerous clans and sections which, in combination, form the whole tribe. I have, however, obtained from the Pesháwar division information which clearly shows that in some few tribes there is a rudimentary or atrophied chiefship and a *khán khel*—one particular section or extended family in which the chiefship is supposed to reside, and from which the chief, if any, would be taken. In the Hasanzai clan of the Yusafzai tribe there is a *khán khel* in which is vested the nominal chiefship of three clans prominent in the recent history of Black Mountain expeditions—the Hasanzai, Akazai, and Madakhel. The Khán or chief is elected by these three clans. He has some but not much authority; and the Khanship, the election notwithstanding, probably descends by primogeniture, except when a brother succeeds in preference to a minor son. In the Madakhel clan there is a *khán khel* section to which some of the leading elders belong, but this clan has no special hereditary chiefship with rights attached to it. I have counted thirteen other tribes or clans possessing a *khán khel*; and the fact that a *khán khel* is found in tribes like the Duránis or Ghilzais, which have furnished dynasties, or in tribes like the Mohmands and Khataks, which have come in contact with the Moghal and Persian empires, and have had chiefs appointed or recognised by some distant suzerain, suggests that the true Pathán institution is the *maliki*, the headship of elders of sections, who meet, on tribal



affairs, in democratic tribal councils. The Khanship of the Mohmands beyond British territory, which is recognised by the Amir of Afghánistan and by ourselves, is something more than a rudimentary chiefship. For an instance of an apparently atrophied chiefship I may quote the Orakzais. The present representative of the *khán khel* of this tribe lives in the Peshawar district and enjoys a grant of land revenue made by the British Government. But the influence of the leading family in the tribe generally is faint.

It is curious to note some of the results of the contact of our formal and legal system with these fluid, primitive, tribal institutions. The late Nawáb Sir Khwája Muhammad Khan of Teri, in the Kohát district, was the chief of the Western Khataks. The Teri country is a British *tahsíl*, or sub-division; and we gave the chief a lease of it on a small quit-rent and made him a magistrate and sub-collector under British laws. The Tanáolis of the Hazára border, south of the scene of the late Black Mountain expeditions, are not Patháns; but they are a frontier tribe of a Pathán type, separated only by the Indus from the Pathán country. The possessions of their chief even reach across the Indus. That chief, the Nawáb of Amb, holds a curiously complicated status, illustrative of the subtle variations of Indian sovereignty. Across the Indus, in his tiny territory of Amb, he is subject to the British Government only in the same way that any raja or nawáb of the Indian system is subject to the paramount power. On the near or east side of the Indus he governs, in purely patriarchal style, his domain of Feudal Tanáwal, which is nevertheless British territory and theoretically, though not practically, subject to all the laws which are in force in the Hazára district. South of this tract lies the Nawáb's *jágír*: certain villages, that is, of which he holds the land revenue assigned to him by the British Government, but in respect of which he is in exactly the same position as the numerous other *jágírdárs* or assignees of land revenue in other parts of the Punjab. He thus holds the triple status of a feudatory chief, a governor of part of a British non-regulation district, and a grantee of certain British revenues. In such ways have we sometimes availed ourselves of the services of these frontier chieftains, and, with due allowance for the special requirements of a very primitive part of the empire, permitted the exercise of powers on their part in some cases absolutely identical with those of our ordinary paid officials.

It is now necessary to refer to some elementary matters which would require no explanation to officers of Indian experience, but which, nevertheless, deserve to be mentioned here, because, without a clear comprehension of them, what follows could not be understood. In the formation of states and empires predatory violence may pass by degrees into legitimate taxation and the levy of tribute. The existence of legitimate taxation—that is, of an acknowledged right on the part of some recognised authority to receive a portion of the income of the community—is, I take it, one of the marks which distinguishes societies possessing settled government from merely predatory societies. Without taxes the king can neither arrange for the civil administration nor pay the military force which preserves the state from external attack and internal commotion. When the right to take the tax has not been admitted, the chief who claims it, except as regards his own clan, is merely in the position of a successful plunderer. Now, I think the most fundamental idea connected with the position of the typical Hindu raja is that he is the rightful recipient of a share of the produce of the soil, which in an agricultural country is of course the great source of income. Just as the barter of commodities precedes purchase and sale by means of a currency, so payment of the king's dues in kind precedes their payment by a money commutation, either estimated with regard to the outturn of the harvest or fixed for a term of years. The king is not the only sharer; the husbandman must have his subsistence, and in proportion as he is able to retain more or less surplus over his bare subsistence he has a more or less valuable proprietary right. There are other classes, also, who have claims upon the crop. Perhaps one of the safest things that can be said about Indian affairs is that all generalisations upon them, if stated without limitations and exceptions having reference to local peculiarities, must be wrong. But if there is any safe generalisation possible, I think it is that the theory of a permanent right of occupation on the part of the cultivator conditioned on payment of the king's share of the produce is, or has been, practically universal throughout the land. Even here, however, it is necessary to add that there were parts of the country where this original theory had been so obliterated by the weakness of the cultivator and the rapacity and violence of his masters, that we found ourselves unable to act upon it when we took over the business of a ruling power.



Now, if we look at Indian societies from the point of view of the rulers rather than of the subjects, we find that under a great variety of denominations there are in the main two sorts of grants which are made by the king—a word I use here to cover the cases of *pádsháhs*, nawábs, maharajas, rajas, *ránis*, and the like—all who have exercised sovereignty. In the first place, the king grants waste or deserted lands for purposes of cultivation, on the condition of the payment of his share of the produce, often with a remission or reduction in the case of lands actually waste, not merely deserted by recent occupants. In this case the grantee acquires that conditional right of occupancy which I have just described. Secondly, the king grants the right to take the whole or a part of his own share of the produce of lands already occupied—that is, the *hákimi hissa*, the *hissa* or share belonging to the *hákim* or ruler. In this case the grantee may be regarded as merely taking the place of the king; and under native governments and often under our own the grantee collects the tax through his own agents. By usurpation, or even by direct additional grant, the grantee may also take various extra cesses, which may or may not be of his own imposing; he may also take firewood and other things in kind, service without payment, and so forth. Sometimes these grants were assignments for the support of troops; as, for instance, when a king in want of cash practically told his commanders that they must find subsistence for themselves and their troops by saving him the trouble of collecting his dues in certain localities, an arrangement which, having originated in impecuniosity and plunder, might be regularised by custom after a time. Sometimes grants of this kind were assignments for the support of religious or charitable institutions, for temples or shrines or travellers' rest-houses. In this case they were commonly perpetual. Again, the grants might be rewards for service, provision for junior members of the ruling family, the means of subsistence for rajas who had been conquered and deposed, or salaries connected with high Muhammadan titles or offices in the empire. In these cases the grants might be perpetual or purely personal; but resumptions were frequent and often arbitrary, and if succession was allowed, a heavy fine or bribe was often taken. The king's share was usually represented by a money payment; and a very frequent name for the grant of it is a *jágír*—(I have already mentioned the Nawáb of Amb as a *jágírdár*, or holder of a *jágír*)—a word

which is said to be derived from the Persian *já*, a place, and *giriftan*, to take, the *jágírdár* taking the place of the ruler.

Keeping to the plan of going to out-of-the-way parts of the country for the best evidence as to original arrangements, I insert here, as another elementary preliminary, a description taken from the frontier district of Dera Gházi Khán of the division of the produce, say, of some twenty or thirty acres. First of all, a varying share of the grain, usually one-fourth, is set aside as *mahsúl*, that is, as the *hákimi hissa* or government share of the produce. Whoever takes this is responsible for the payment of the revenue, unless he is himself the ruler or it has been remitted in his favour. Of the remainder, a small portion, usually a sixteenth or a seventeenth, is a proprietary due; for proprietary rights were in this district of old standing. The proprietor may or may not be the actual cultivator. Various small shares are then set apart for the *tumandár*, or tribal chief (who also takes the *mahsúl*), for the remuneration of village servants, the weighman, potter, carpenter, blacksmith, winnower, shoemaker, and watchman; or for charity, as for some local shrine or holy beggar or village priest. What then remains goes to the cultivator, who, in the particular case I have before me, got about seven-twelfths of the whole.

If we bear in mind this sort of division of the produce, and remember that the *mahsúl* or *hákimi hissa*, the king's share, may be variously assigned, in kind or cash, may be divided, part going to one person and part to another, may be farmed out for a stated sum or for a percentage on the collections, or may even be sold by auction to the highest bidder; and if we further recollect that the proprietary rights of the cultivating classes are strong or weak according as more or less is left to them after the king's share is taken, we shall have the clue which will enable us to understand many of the most important complications of sovereignty in India. With this explanation I pass on to the typical Hindu *ráj* or principality of the Punjab Hills.

The principalities of these hills are of very great antiquity; they were little affected by Moghal dominion and not so much affected by Sikh dominion as to obscure their original character; and they have been fully, and, if I may be allowed to say so, most admirably described, in the Kángra Settlement Report of Sir James Lyall, lately Lieutenant-Governor of the Punjab.



Below the south-eastern provinces of Kashmír, and a good many miles above the line of rail from Saháranpur to Amritsur, is a mountainous region comprising parts of the Western and Central Himalayan ranges and the comparatively low Sewáliks abutting on the plains. Some of the remoter mountains rise to 15,000, or 18,000, or even 20,000 feet above sea level, and much of the country consists of forests and grazing grounds or impracticable precipice and crag. But in valleys and on hill-sides at the lower elevations there is much cultivated land; and terraced fields surrounding picturesque and scattered homesteads are often the foreground to vast woods of pine and cedar crowned in the far distance by perpetual snows. This country, traversed by the Sutlej, is the source or gathering ground of many rivers; from it the Chenáb, the Rávi, and the Biás, make their way westwards to the Punjab plains; and at or not far from its south-east corner the Jumna and the Ganges debouch on the flat country of Northern Hindustan. It includes Kángra Proper, Kulu, Lahoul, and Spiti, the Simla district, and the Simla Hill states. But with Lahoul and Spiti we are not here concerned, as they are Thibetan, not Indian districts.

This land of mountains has immemorially been divided into numerous petty states. The tradition, for instance, is that between the Sutlej and the Chenáb there were twenty-two principalities, eleven on either side of the Rávi. Of the eleven principalities south of the Rávi—viz. Chamba, Mandi, Suket, Kangra, Síba, Goler, Jaswán, Núrpúr, Kulu, Datárpur and Bangáhal—only the first three are still feudatory states of the empire. In some, but not all, of the other cases the representative of the ancient family holds a part, generally a very small part, of the old principality in *jágír*, and is usually an honorary magistrate. None of these political *jágírdárs*, as they are called, retain any vestige of sovereignty. The set of eleven rajáships to the south of the Rávi is described as the Jullundur Circle; and at the head of it was the Katoch Raja of Kángra. The circle on the other side of the river is called the Dogra Circle, and the headship was vested in the chief for the time being of Jammu, which is now incorporated in Kashmír.

The Katoch Raja of Kángra was the head of a very ancient and famous Rájpút dynasty, which before the Muhammadan invasions of India held in sovereignty all Kángra and the Jullundur Doáb, and which may be compared with the most illustrious families of Rájpútána. The

Datwál Rájpúts of Datárpur, the Golerias of Goler, the Jaswáls of Jaswán, and the Síviyas of Síba were offshoots of the same stock. In ancient Hindu times the chiefs of the smaller Rájpút states of these hills seem to have held the same position under the Katoch kings that the more important *thákurs* or barons hold under the rajas of Rájpútána; but in Muhammadan times they became independent of the Katoch raja and were recognised by the emperors as rajas and *zamindárs* of their states. The emperors do not appear to have subjugated these Hill rajas till the time of Akbar the Great (1556 A.D.). When strong they took tribute from them and sometimes annexed part of their states as imperial domains, but out of respect for the strong root they had in the country never entirely ousted them. The custom of primogeniture prevailed in all these families. The eldest son became chief and lord of the whole territory; the younger branches got only small maintenance grants of land or money and merged in the clan. Sometime about 1788 A.D. the great Katoch chief, Sansár Chand, successfully endeavoured to revive the ancient sovereignty of his family over all the Rájpút states between the Sutlej and the Rávi, no doubt intending to continue the chiefs in part possession under himself as *jágírdárs* or feudatories. The Raja of Biláspur called in the Gurkhas against him, and Raja Sansár Chand, when in desperate circumstances, sought the fatal aid of Maharaja Ranjít Singh. It was afforded; but this was the prelude to the complete conquest of the lower hills carried out by the Sikhs between 1813 and 1828.

On the conclusion of the first Sikh war, when the Jullundur Doáb was ceded to the British Government, the question of the treatment of the Hill rajas who had been dispossessed by the Sikhs came under consideration. In many cases rajas deprived of their territories by the Sikhs had accepted from them *jágírs* for their support. When we succeeded the Sikhs in this part of the country after the first Sikh war we did not treat the Hill rajas with liberality. The principle we observed was to restore nothing that the Sikhs had taken. Small principalities were in great disfavour in those days, because many of the Cis-Sutlej states had been previously mismanaged, and had either aided or sympathised with our enemies in the war just brought to a close. Discontent led to rebellion in some cases during the second Sikh war, followed in necessary course by confiscations. These Hill rajas have thus been unfortunate in comparison with their brother Rájpút chiefs holding the twenty petty states of the hills surrounding Simla. The Simla states are for the most part very small; thirteen of them have less than 100 square miles of territory; and of these four have less than ten square miles. Here we succeeded the Gurkhas in 1815; and, as we have annexed or acquired very few tracts in this part of the Hills, the status of the rajas has not been investigated in the same detail as in Kulu and Kángra. But there is good reason to believe that in the Simla Hills the tenures of land, as between the rajas and the people, closely resemble those which have been fully described for the adjoining territory.



I will now transcribe a most valuable passage from Sir James Lyall's Kángra report.

'Under the rajas,' he writes, 'the theory of property in land was that each raja was the landlord of the whole of his *ráj* or principality, not merely in the degree in which everywhere in India the state is, in one sense, the landlord, but in a clearer and stronger degree. The Moghal emperors, in communications addressed to the Hill rajas, gave them the title of *zamindár—i.e.* landholder. Documents are preserved in some of the rajas' families in which this address is used. The raja was not, like a feudal king, lord paramount over inferior lords of manors, but rather, as it were, manorial lord of his whole country. Each principality was a single estate, divided for management into a certain number of circuits. These circuits were not themselves estates like the *mauzas* (villages) of the plains; they were mere groupings of holdings under one collector of rents. The waste lands, great or small, were the raja's waste; the arable lands were made up of the separate holdings of his tenants. The rent due from the holder of each field was payable direct to the raja, unless he remitted it, as an act of favour to the holder, or assigned it in *jágír* to a third party, in lieu of pay, or as a subsistence allowance. So also the grazing fees due from the owner of each herd or flock were payable to the raja, and these were rarely or never assigned to any *jágírdár*. The agents who collected these dues and rents, from the *wazír* down to the village headman, were the raja's servants, appointed and paid directly by himself. Every several interest in land, whether the right to cultivate certain fields, to graze exclusively certain plots of waste, work a water-mill, set a net to catch game or hawks on a mountain, or put a fish-weir

in a stream, was held direct of the raja as a separate holding or tenancy. The incumbent, or tenant at the most, called his interest a *wárisí* or inheritance, not a *málikí* or lordship.

'The artisan and other non-agriculturists resident in villages held their *láhrí bási*, or garden plots, of the raja, not of their village employers and customers, and paid their cesses, and were bound to service to him only. They were not the only class bound to service; the regular landholders were all liable to be pressed into service of some kind, military or menial. The rajas kept a tight hold upon the wastes; certain portions of forest were kept as *rakh*, or shooting preserves, and trees, whether in forest or open waste, could not be felled except with the raja's permission. No new field could be formed out of the waste without a *pattah*, or grant from the raja. No *wazír* or other revenue agent, and no *jágírdár*, could give permission to reclaim waste. Such a power was jealously withheld, as it might have led to the growth of intermediate lordships. I have heard it said that, from a feeling of this kind, *wazírs* or *kárdárs* were never chosen from the royal clan, and *jágírs* were generally given in scattered pieces. Certain rights of common in the waste round and about their houses were enjoyed, not only by the regular landholders, but by all the rural inhabitants; but these rights were subject to the raja's right to reclaim, to which there was no definite limit. All rights were supposed to come from the raja; several rights, such as holdings of land, &c., from his grant, and rights of common from his sufferance.'

Although the raja was not a lord paramount over inferior lords within his own country, he might, as will have been seen from what I have said as to the history of the country, be a lord paramount over other rajas holding states similar to his own. In another part of his report Sir James Lyall writes that the hilly portion of the Katoch kingdom was 'portioned out among subordinate chiefs or princes, of whom some of the strongest became independent when the Katoch kings lost their prestige and were driven into the hills by the Muhammadans. Probably the eleven principalities of the Jullundur Circle first took definite form about this time.' There is a tradition that the time of the rajas in Kulu was preceded by a *thákurdáin* or period of government by *thákúrs*, petty chiefs here of a few villages. But Sir James Lyall thinks that without a lord paramount, and with no bond of confederacy, such diminutive states could never have existed side by side



in lawless days for any length of time; and he surmises that, with intervals of perfect independence in periods of confusion, they must have been more or less subject and tributary to some stronger power, probably that of the Suket raja. I mention these practical qualifications of the assertion that the raja was not a lord paramount, lest it should be thought that the evidence from the Punjab Hills is against the belief in a tendency of Indian rajas to range themselves, whether by compulsion or otherwise, under the hegemony of some paramount power; whereas the real effect of the evidence is either to confirm such a belief or to suggest it.

Though I know nothing that throws more light on one form of the primitive Hindu *ráj* or principality than the description I have quoted from Sir James Lyall, it must be remembered that the account he gives is strictly limited to the hill country and is not intended to apply to the plains. No doubt the Hill raja was much more of a landlord than any Indian government ever was in the Punjab outside the hills. Various reasons are suggested by Sir James Lyall to explain the difference. The formation of petty principalities, the sole lordship of the chief, the custom of primogeniture in his family, and the contempt of the plough and the business of farming which here exists amongst Rájpúts and Bráhmans, may be partly due to the invasion of the hills by these races as conquerors, and the military order which the invaders would have to maintain to keep down a subject race. Probably also the physical difference between a mountainous and an open country has contributed to the difference of tenures. The proprietors of old villages in the plains of the Punjab would truthfully or merely boastfully assert that their ancestors found the land waste or acquired it by purchase or conquest; they would rarely attribute their first title to the grant of any superior authority. But the hill peasant's strongest idea of hereditary right is that of a right derived from the written grant of the raja. Free tribes occupying an empty land or driving out the indigenous inhabitants would readily settle, in a flat defenceless country, in large villages of considerable strength. But in the hills the houses had to be scattered to be near the cultivated fields, and 'no single hamlet was strong enough to stand by itself, so all had to put themselves for protection under some territorial chief and to unite under his leadership to defend themselves against outsiders.' On the other hand, it is noteworthy that the existence in great tracts of country of strong village

communities facilitated mutations of political power. Perhaps one reason why these Hill Rájpút principalities managed to last so long was that the absence of the village commune gave great strength to the raja's hold upon the soil. The villages of the northern plains were capable of managing their own internal affairs and resented interference in them. They had to pay the king's share of the crop when the king for the time being was strong enough to exact payment. Hence, so long as they could avoid giving up more than the customary share, it mattered little to them whether they paid to one ruler or another. Conquest and annexation meant in the old days little more than a demand for revenue from a greater number of villages, and the ejection of some predecessor who made a like demand before. But the readiness with which political conquest might incorporate these tiny republics in ever-varying circles of political jurisdiction did not prevent the growth of sentiments of loyalty and devotion to successful chiefs who won the position of rajas, especially when there was between them and the people they headed or subjugated any tribal or religious tie.

The Hill raja was not only, in a special and restricted sense, the landlord of his territory; he was also the fountain of honour. Instances have been quoted in which a raja promoted men of castes (not much, indeed, below Rájpúts) to be Rájpúts, the consideration being service done or money paid. Bráhmans were divided into classes of different degrees of purity; and the classification was effected by the rajas, and held binding on the brotherhood. So late as 1872 the power of admitting back into caste persons placed under ban for defilement was a source of income to those ancient rajas, who, under our rule, lost territorial status and became assignees of British revenues with magisterial powers. What is a Rájpút, is a complicated question that I will not pause to discuss; but undoubtedly in the hills persons of other than Rájpút descent have become recognised as Rájpúts in the course of a generation or two. Anyway, the descendants of the twenty-two royal houses of the Jullundur and Dogra Circles, though one or two of these houses are known to be of Bráhman origin, are emphatically and essentially Rájpút. They are distinguished by the title of *Mian*, and are entitled to the peculiar salutation of *Jai dia*—(the expression means 'Vive le Roi!' or 'Hail the King!')—offered to no other caste. The raja, however, could extend this honour to high-born Rájpúts not strictly belonging to a royal clan.



During the Muhammadan ascendency these rajas built forts, made war upon each other, and wielded the functions of petty sovereigns. On succession fees were paid to the Delhi emperors, and dresses of honour sent from Agra or Delhi. The rajas were sometimes employed by the emperors or others in important trusts. In 1646 the Raja of Núrpúr was sent at the head of 14,000 of his Rájpúts against the Uzbeks of Balkh and Badakshan. Another raja was twice deputed by Aurungzíb to the charge of Bamian and Ghorband, on the western frontier of the empire, eight days' journey beyond Kábul. So also in 1758 the Kángra raja was appointed by Ahmad Shah Duráni to be governor of the Jullundur Doáb and the Hill country between the Sutlej and Rávi. In our own times rajas have been called to the Legislative Council of the Governor-General. The late Maharaja Sindhia had an honorary commission as general in the British army; rajas have commanded their own troops as our auxiliaries; and under the recent war service arrangements they may, in time of need, command their own troops as our auxiliaries again. It is true that we do not allow the building of forts or warfare between states, but the general position of the Hill rajas under the Delhi empire, so far as it goes, suggests that the framework of our present Indian political system was, as I have said, an inheritance from the Moghals.

The theory or tradition that the headship of the Jullundur and Dogra Circles was vested in paramount rajas shows, too, that in this part of India ideas of suzerainty preceded Muhammadan conquest. I am about to describe from the Settlement Report of Mr. Benett the status of the rajas in the Gonda district of Oudh; and it is noticeable that the same feature—the tendency of the smaller rajas to unite under the hegemony of the most powerful state—is discernible also in that quarter. The rajas, says Mr. Benett, on doing this, 'did not in any way sacrifice their independence within their own territories, though they rendered themselves liable to the payment of tribute, and to a call to service against a common foe. When the Chinese pilgrim saw eighteen subject rajas draw the barge of the King of Kanauj, we may be sure that for political purposes the lord paramount dealt with each of the subject states as a separate unit through its raja, without himself interfering in its internal government. The tendency is a very old one, and is reflected in the title of Rájadhiráj, and in the institution

of Tilakdári rajas, whose investiture was sought by all the chiefs within the confederation.'

The Gonda district lies on the edge of the main sweep of the Delhi empire in Northern India. It is situated to the north of Oudh and on the border of Nepal. What Oudh is to the rest of India, that Gonda is to the rest of Oudh—pre-eminently a Hindu country. This district was formerly parcelled out into small territorial divisions, each forming a political unit in itself, each, in fact, being a *ráj* or principality of much the same type as those of the Punjab Hills. A certain portion of the produce was reserved everywhere as the right of the state or raja, whose rights further extended to a number of miscellaneous manorial dues and ordinary taxes. The Gonda *ráj*, like the *ráj* of the Punjab Hills, rested on a territorial basis; and the raja was always theoretically or actually a Chhattri or Rájpút, except in one instance, that of Utraula, where a Muhammadan freebooter founded a dynasty and took the title of raja. Here we have as a known fact, what is a conjecture in the Punjab Hills, the immigration of a set of conquering Rájpúts into a country then mainly inhabited by people who may be described as autocthones—sons of the soil—some of those humble castes or tribes which in the absence of any trace of an earlier population we are in the habit of calling aboriginals. This Rájpút immigration appears to have occurred about the beginning of the fourteenth century, so that the dynasties cannot compare, in point of antiquity, with those of the Punjab Hill states. In type, however, they are hardly less archaic. As in the hills, so here, the population is scattered in hamlets, not congregated in strong, almost fortified, village homesteads. In other parts of the province of Oudh the people were driven to seek safety by holding together in that way; but the wars of the few great rajas who held Gonda were not very frequent or destructive, and the raja was usually strong enough to keep in check the turbulent spirits who took to gang robbery as a profession. Thus the people were able to make their homes near their fields, where they could better defend their crops from the ravages of wild animals; and this practice was strengthened by the habit of taking up small assignments of forest by single families.

Every *ráj* was confined to a definite tract of country enclosed by recognised boundaries; the raja could, and did, in time of need call out his people as a militia; civil disputes



were mostly settled by *panchâyats*, or caste councils, whose orders were enforced by caste penalties; but in many cases the raja was the judge, as in contests between neighbouring villages about boundaries or grazing rights. The rajas of Gonda and Utraula, Mr. Benett tells us, when dispossessed of the direct collection of the revenue in nearly every one of their villages, used still to spend hours daily in court as judges in the peasants' disputes. Waste lands were absolutely at the disposal of the raja; and he was the sole owner of forest produce, subject to certain rights in grazing and fuel which were reserved to the cultivators. He could assign his rights, and the assignees were known as *birtias*, the cession itself being termed a *birt*. There were also grants of a part of the raja's rights to Bráhmans or ascetics, grants of his rights in wood, water, and roads, and of a fourth of his share in the grain-heap on division of crops; and grants, limited for a stated period, for the purpose of bringing waste land under cultivation. The *ráj* was indivisible, and the rule of primogeniture necessarily obtained, though exceptions may sometimes have been made on the ground of the fitness or unfitness of particular candidates, the chieftainship being kept in one family. The basis of the whole society was the grain-heap, in which the several members had their customary and definite interest. I need not detail the division of shares. It will suffice to say that the raja's share was known as the *hissa sirkári*—the government share; the deductions from the whole as *bhatta*; and the husbandman's share as *hissa rayati*, the share of the *ryot* or cultivator. Provision was made for shares for the ploughmen employed by Bráhmans and Rájpúts, whose caste forbade them to drive the plough; for the cutters and threshers, for the village servants and village priest, and for a headman, appointed by the raja, whose services were often dispensed with where there was a *birtia* to intercept a part of the raja's share of the crop.

Anyone who will now turn to the admirable account of the Rájpút states of Rájpútána given by Sir Alfred Lyall in his 'Asiatic Studies' (pp. 181–227) will, I think, at once perceive that, in the history of early institutions, the peculiar form of sovereignty there described stands midway between tribal chiefship and territorial chiefship. It is later in type than the tribal chiefship of the Punjab frontier; it is earlier in type than the territorial chiefship of Gonda and the Punjab Hills. Indeed, an attentive examination of Sir Alfred

Lyall's clear and telling analysis will show us the transition from the earlier to the later form in actual process.

'A Rájpút state,' Sir A. Lyall tells us, 'where its peculiar structure has been least modified'—that is, in Western Rájpútána—'means the territory over which a particular clan, or division of a clan, claims dominion for its chief and political predominance for itself by right of occupation and conquest. A Rájpút chief is the hereditary head of a clan whose members have for centuries been lords of the soil, or of the greater part of it, within the state's limits.' There is a connection here with the soil; but the raja is a tribal chief, and is supposed to be the eldest male of the oldest line, the nearest legitimate descendant in the direct male line from the founder of the state. There is a wide and obvious difference between this idea and the idea of a raja in the Punjab Hill states and Gonda, where he is a lord of the manor, including the wastes, and society is held together, not by the cement of blood or kinship as in præfeudal Rájpútána, but by customary rights to share in the produce of the land. In the western states of Rájpútána 'the whole territory is understood (for there are exceptions to every rule in Asia) to be divided off and inherited among the branch families of the dominant clan and their offshoots. The chief himself possesses the largest portion, though not always a larger portion than the aggregate holdings of other families, and apportions very large grants to his nearest agnatic kinsfolk, providing of course for his wives and his predecessors' widows, and sometimes for their relatives.' The hereditary heads of the branch septs hold large tracts, and in the west exercise almost complete jurisdiction within their own domain, though not over all the domains of their family. But in some of the eastern states they are little more than grantees of land or of rents assigned to them, paying some sort of fee to their suzerain, having a right to maintenance, as the chief's kinsmen, but without political power. 'In the Eastern Rájpút states, which were most exposed to the disintegrating ravages of the Moghal and Marhatta, the tribal organisation has been much effaced politically, and the chief has centralised his power and acquired almost complete jurisdiction over the whole of his territory.' 'It is manifest that these eastern states have long been rapidly sliding into the normal type of ordinary Oriental government, irresponsible personal despotism.' In other words, if we contrast Eastern and Western Rájpútána, we see that there is a transition in progress in the east, and it takes the form of a change from a tribal chieftain to a territorial despot.



In the Jullundur Circle of the Punjab Hills the same goal was reached by a different route. Instead of the king ousting the jurisdiction of his barons, the barons established jurisdictions independent of the king. The Datwáls, the Golerias, the Jaswáls, the Síviyas, offshoots of the original royal stock, succeeded in setting up separate principalities for themselves. Perhaps this was partly due to the nature of the hill country, the lofty slopes, extensive forests, impracticable rivers, and secluded glens of a bewildering mass of mountains facilitating the severance of political jurisdictions, and loosening the ties of fraternity in the immigrant conquering tribe. In Gonda, and in some cases in the Punjab Hills, I think the severance of jurisdiction was caused by the independent immigration and conquests of tribes of different stocks. At any rate, I do not think it will be seriously questioned that 'a group of tribal suzerainties rapidly passing into the feudal stage,' such as we see in Rájpútána, is, on any working hypothesis as to the probable course of political development, an earlier formation than the manorial principalities of Gonda and the Kángra Hills.

It remains to show that the Rájpút organisation described by Sir Alfred Lyall is a later political growth than the organisation of the tribes of the Punjab frontier. The *thákurs* or barons of Rájpútána, rendering military service to the chief and such general obedience as he can enforce, but regarding themselves as his brethren, holding by as good a right as he, and ready if their privileges are too far infringed to take the quasi-constitutional course of rebellion or outlawry, form, in cases of dubious succession, a sort of irregular diet for the election of the chief. Perhaps it is not altogether fanciful to see in these occasional convocations of heads of sections a survival of tribal councils like those which habitually advise the Baluch chieftains and practically conduct whatever may be the rather remote approximation to government in Pathán tribes. At all events, when the Karauli heads of branch families met and elected a man of full age descended from an ancestor of the late chief, they did just such a thing as might be done by the *jirgas* or tribal councils of the Hasanzai, Akazai, and Madakhel. And both the Pathán councils and the Rájpútána college of electors would be restricted in their choice very much in the same manner. Though no rule is absolute in primitive society, it

is understood in Rájpútána that the chief must belong to certain families of the founder's kin. The Hasanzai and others would have to choose from the leading section, the *khán khel*. But whereas the *khán khel* amongst Patháns is a rare institution, the rule in Rájpútána that the successor must be chosen from among the branches of the founder's original stock seems well and widely established. I cannot but think that well-established chieftainship is later in growth than rude tribal democracy, and it is manifest that one of the marks of increasing civilisation is the approximation to a settled rule of succession to political power.

Again, it is broadly true that a Pathán tribal country is inhabited by Patháns, though Hindu traders and various menial classes are to be found, and cultivators who are not Patháns seek Pathán protection. But the Rájpúts of a Rájpút state such as is described by Sir A. Lyall are an aristocracy of birth and conquest. It will probably be admitted that a simple swarm of human beings, actually or believing themselves to be related by common descent, is a less complex, and therefore also probably an earlier, organism than a society where historical causes, invasion, conquest, and the maintenance of the dominion of the conquering race, have produced discrimination between a noble class and others. And the Patháns are, moreover, entirely without that elaborate *jus connubii* which distinguishes Rájpúts, and is obviously useful to a dominant race preserving its political power even more by its prestige than by the sword, because it maintains that purity of blood which is the title of the dominant race to social reverence. Patháns intermarry very closely, avoiding only the prohibited degrees of Islám. Rájpúts must marry Rájpúts, but their brides must not be taken from the same clan. I do not think that it would be correct to say that Patháns are either endogamous or exogamous. They have not reached the stage where rules of exogamy or endogamy have importance. Rájpúts have reached the stage where these rules are not only most elaborate, but are insisted upon as a vital point of honour. Nor is it difficult to see that these complicated marriage customs must be a fairly late development—if, at least, we suppose that tribes are in the first instance indifferent where their wives come from, but usually take them within the clan till pressure in the wife-market compels them to steal them from outside; that as they advance a little the healthy rule grows up prohibiting the marriage of very near relations; and that, as families within which this rule is observed spread out into septs and clans, the original prohibition in an extended form is handed down from generation to generation. The reasons for it, if ever consciously perceived, would be forgotten; but the customs founded on it might have great and lasting effect if they happened to be of use to a dominant tribe ruling over subjects of a different origin.



Sir Alfred Lyall insists, with much justice and truth, on the profound error of the popular notion that an Indian state under a distinct political designation denotes a territory occupied by a people of one nation under a king or ruler of their own nationality, as in nearly all European countries at the present day. I mention this because it seems worth while to point out that, in suggesting the probability of progress from tribal chiefship to territorial chiefship or sovereignty, I by no means overlook the obvious fact that territorial sovereignty is one thing and territorial sovereignty, which is also national sovereignty, quite another. By territorial sovereignty I mean sovereignty which is associated with a definite portion of the earth's surface, and I mean nothing more. In the general conclusion which Sir Alfred Lyall's argument from the absence of nationalities is meant to substantiate I entirely agree. It is that the British Government has been pre-eminently the preserver of the old native states, which but for it were in imminent danger of destruction. I may add that this is also broadly true—notwithstanding Lord Dalhousie's annexations—of a good many of the modern states. We rescued the old Simla Hill states from the Gurkhas; some few only of the old Punjab Hill states from the Sikhs; and the old Rájpút states of Rájpútána from the Marhattas and Pindáris. We rescued the principal Sikh states—all of recent origin—from Ranjít Singh; and though it would not be true to say that we rescued any of the newly formed Marhatta states, seeing that we fought with the Marhattas for the supremacy of India, yet, had it not been for us, the Marhatta states would probably have fallen under the dominion of the French, or have been torn in pieces by Pindáris or their own soldiery.

If the Rájpútána *thákurs* had broken away from their chiefs and set up separate principalities, we might have had in Rajasthán a repetition of the Kángra hegemony of the Katoch raja and the Jullundur Circle. It is clear that the germ was there, which might have ripened into the relationship of suzerain and feudatory if the political connection

had outlasted the tie of common descent. Considering these cases, we may see that if the political system which we have established in India generally does not precisely agree with principles that have been operative in these purely Hindu societies, it at all events proceeds on a principle so nearly analogous to them that it cannot fail to be easily understood. As for our inheritance in this quarter from the Moghals, I quote Sir Alfred Lyall again. 'Whereas,' he writes, 'up to the reign of Akbar the Rájpút clans had maintained a warlike independence, from the beginning of the seventeenth century we may regard their chiefs as having become feudatories of the empire, which was their natural and honourable relation to the paramount power whose territory encircled them, and with whose military power they had no pretence to compete.' This is said of the Delhi empire, and it appears to me to accurately describe the position of these chiefs in relation to the British empire at the present day.

If the evidence collected in this chapter suggests the gradual transformation of the tribal chieftain into the territorial despot, European history suggests a third phase in the progress of sovereignty—the change from the absolute monarch to the constitutional king. Of that phase I see no symptom in India. We may, indeed, persuade ourselves that in the public durbárs or levées of chiefs there is an undeveloped germ of a king's council, and perhaps in the very earliest and the very latest political growths there are some traces of an assembly. There are traditions of old tribal assemblies on the Malabar coast and in the Carnatic. There are the tribal councils of Baluches and Patháns. And in Mysore, a state of our creation fitted out with the latest improvements, there is a curious annual assembly of nominated members summoned to discuss, but not to vote upon, the state programme of the year, and probably possessing no more real power than those democratic assemblies of rural parishes in France which De Tocqueville characterises as empty semblances of freedom. Putting aside such peculiar and transitional forms as those of the Rájpút states, so skilfully described by Sir Alfred Lyall, it may be said that most Indian states are in the middle phase. Many Rájpút states outside Rájpútána, and I think all states of Sikh, Muhammadan, or Marhatta origin, may be rightly termed territorial, but not national, chiefships or despotisms.



# CHAPTER VIII

## SOVEREIGNTY IN THE INDIAN PENINSULA

THAT our present conception of an empire comprising districts under direct administration and dependent states held by subordinate or tributary chieftains is really indigenous, appears to me to be confirmed by the history of the Deccan and Southern India. That history also exemplifies the preservation of important parts of the old rural economy of the country, notwithstanding frequent changes of masters; the continued employment of Hindus by Muhammadan kings; the formation of sovereignties in India by the rebellion or usurpation of officials; and the tendency of states to split up into numerous petty principalities when a central power is broken or removed. This tendency may be the precursor of suzerainties, because in troublous times petty chiefs may find it hard to stand alone, and may seek protection by submission.

Of suzerainty itself we may detect traces, sometimes pretty clearly defined, in the old Vijayanagar empire, in the conquests of some of the chiefs of the Central Provinces, and in the relations of the Gond rajas, the Nizam, and the Marhattas to the Delhi emperors. By examining the old tenures of the east and west coast of the Madras Presidency we may see that the idea of the raja as a lord of the land, the owner of the waste and the recipient of a fixed share of the produce of the cultivated land in money or kind, is by no means limited to the Punjab Hills and the Gonda district. And a glance at the organisation of the Marhatta empire and the rise of the great Marhatta states will illustrate again the intimate connection in India between sovereignty and a share of the rental of land, and the manner in which plundering commanders making predatory claims may tend to become territorial chieftains.

About the time when our Edward I. was consolidating the kingdom of England, Ala-ud-Din, who afterwards suc-

ceeded by many atrocities to the kingdom or empire of Delhi, led to the sack of Daulatabad (identified by Wilks with the Tagara of Ptolemy) the first Musalmán force that ever crossed the mountains south of the Tapti. This was in 1294 A.D.; and other gigantic raids followed, Malik Káfur, a general of Ala-ud-Din, persuading Raja Rámdeo of Daulatabad to accompany him to Delhi in 1306, and subverting the Ballál dynasty at Dwára Samudra, some 100 miles north west of Seringapatam, *in 1310–1311—i.e.* a year or two previous to the date of the battle of Bannockburn. The Ballál rajas were, or pretended to be, Rájpúts; and the Ballál territories at their greatest extent included the whole country where Kanarese is spoken (that is, Mysore and some surrounding districts), as well as the Tamil country and parts of Malabar and Telingána. Telingána is the old name for the northern and eastern districts of the Madras Presidency where the spoken language is Telugu. From 1325 to 1351 A.D. the throne of Delhi was occupied by Muhammad Tughlak, described by Elphinstone as 'one of the most accomplished princes and most furious tyrants that ever adorned or disgraced human nature;' and in the early part of his reign the Muhammadan empire east of the Indus was at its greatest extent. His tyranny, perhaps also his madness—for some of his cruelties and follies alike suggest that he was not quite sane—drove almost every part of his empire into rebellion; and the history of his reign is a history of attempts, both successful and unsuccessful, to put down rebellions. Amongst the successful rebels was one Hasan Gángu, by descent an Afghan of low rank and a native of Delhi. He had been the tenant or slave of a Bráhman astrologer named Gángu, from whom was derived his second name and the name of the dynasty which he founded, that of the Bahmani kings of the Deccan.

After two unsuccessful expeditions, the Delhi Patháns in 1323 had at last captured Warangal, the capital of the rajas of Telingána; and two fugitive officers of the treasury of the dethroned king established a new government on the ruins of the Ballál power in the Kanarese country. The capital of the power so founded, Vijayanagar, gave its name to the most famous empire of the south. The confusions of the time of Muhammad Tughlak led to a combination of the newly-formed power of Vijayanagar with some branches of the royal house of Telingána, who seized the opportunity to recover Warangal and to revolt against their Muhammadan



masters. Indeed, the Raja of Warangal sent a body of 15,000 horse to assist the Muhammadan Hasan Gángu in his efforts to shake himself free from the yoke of his co-religionists.

This union of Hindus and Muhammadans of the south against the Delhi empire only endured till its object—independence of the imperial authority—had been secured. The natural antagonism of the opposing creeds and the predatory militarism of Oriental despots led forthwith to incessant wars fought on both sides with varying success. In 1421 A.D. Warangal fell again before the Muhammadans, the conqueror this time being one of the Bahmani kings. Vijayanagar lasted for more than another century, and may be said to have extended either direct dominion or paramount authority over the whole of India south of the Tumbadra and Kistna rivers. It has been stated that at the end of the fifteenth century its direct dominion reached to the southern border of the Mysore plateau; and what remained of the Pándyan kingdom, roughly corresponding to the Madura and Tinnevelly districts and the Chola kingdom, which may once have had limits coinciding with those of the Tamil language, acknowledged its supremacy and paid tribute.

It is not easy to obtain any clear idea of the interior system of the Vijayanagar empire, but there is no doubt that it included the direct administration of some territories and the suzerainty over more or less dependent chiefs or tributaries. As is frequently the case with Oriental monarchies, its strength and power of cohesion appears to have become relaxed just about the time of its greatest nominal extent. 'A provincial viceroy,' says Wilks, 'at Seringapatam rather compromised for periodical presents than exacted a fixed revenue from the *wadeyars*, or governors of thirty-three townships, who now seem to have begun to assume the name of *poligárs*, a title which properly belonged to the chiefs of Telinga colonies planted in the neighbouring provinces, for the purpose of overaweing the aborigines; to which official designation they added, when they dared, the title of raja.' Rather later than the middle of the sixteenth century four of the Musalmán kingdoms which had been formed to the north of the Kistna on the break-up of the Bahmani kingdom of Hasan Gángu, coalesced against the Vijayanagar power and completely overthrew it at the battle of Talicota, fought on the plains between the Kistna and the Tumbadra. The

structure, which had already been tottering to its fall, was thus shattered in 1565 into innumerable fragments. Petty principalities asserted independence on every side; and we may date from this period the rise of the southern *poligárs* who appear so frequently in the pages of Madras history. Doubtless the existence of many minute jurisdictions was no novelty, but fresh leases of independence were assumed about this time. Some of these *poligárs*, as in the case of the Beydars in the north of Mysore, were heads of clans. The Pándyan kings of Madura, who were themselves tributary to Vijayanagar, had under them many petty chiefs. The son of a usurping governor of Madura was recognised by the Vijayanagar raja as king of that part of the country; and, extending his authority over the Tinnevelly district, he distributed the depopulated portions of it amongst his northern followers of the Tottiya caste, who became the progenitors of many of the *poligárs*. Hard fighting was the condition of the lives of all of these petty potentates. They fought with the Deccan Musalmáns, with the Marhattas, with the Sultans of Mysore, with the officers of the Delhi empire, or rather of the independent kingdom founded by one of those officers, the great Nizam, and, lastly, with the British Government. In the southern Tamil country we found thirty-three *poligárs*; and in 1803 only thirteen of them were still in possession; the lands of fourteen were under the charge of a European collector; those of six had been forfeited, given away, or sold. In the districts ceded by the Nizam in 1800 there were eighty *poligárs*. Seven years later only half of them were still managing their own estates; the rest had been pensioned, or expelled, or thrown into confinement, or otherwise deprived of authority. Such was the varying fate of men whose ancestors had been descendants of Hindu royal houses, or the usurping officers of Hindu governments or heads of clans owing a dubious allegiance to Hindu powers that had resisted Musalmán aggression.

I have quoted Wilks's definition of *poligárs* in the Kanarese country, and I will now cite that of Grant Duff in Maharáshtra, or the country where Marhatti is spoken. *Poligár*, he says, in the 'Marhatta country means one who has become independent, who refuses to pay revenue, and levies contributions from all those from whom he can enforce them.' The Deccan appears to have been no exception to the general rule in India that the country before Muhammadan conquest was divided into many small states. When Hasan Gángu in 1347 founded the Bahmani dynasty, which lasted for about 150 years, it is probable that most of the *poligárs* whose territories lay in accessible parts were induced either to join him or to submit to his government. The Bahmani kingdom, however, affords another illustration of internal weakness coinciding with increase of territory. When Hasan Gángu died his kingdom comprised nearly the whole of the Maharáshtra, a small part of Telingána, together with the Raichur Doáb or space between the Kistna and Tumbadra rivers. His successor divided the kingdom into four *tarafs* or governments, to each of which was appointed a governor or *tarafdár*. In the course of 130 years the territory was greatly increased by conquests from the neighbouring rajas of Vijayanagar and Telingána, the Concan *poligárs*, the Raja of Orissa, and others; but the four *tarafs* were still maintained. In 1478 Khwájah Jehan Gáwan, a minister of one of the kings, split each *taraf* in two, making eight governments in place of four; but he was shortly sacrificed to the malice of his enemies, and the principal governors from the time of his death paid no respect to the authority of the Bahmani king and gradually assumed independence. In this way five independent states arose from the dismembered monarchy; and, as we have seen, four of them combined for the overthrow of Vijayanagar. Of these five kingdoms, Berar was annexed to Ahmadnagar, and the greater part of Bidar was absorbed in Bíjapur. Thus eventually there were three great states which practically divided the Deccan between them—Bíjapur, north of Mysore, and Ahmadnagar, north of Bíjapur, held the west; and the whole of the east was gradually brought under the dominion of Golconda.

Sultan Kuli Kutb Shah, the founder of the Kutb Sháhi or Golconda dynasty, was a Túrkmán of Hamadan, in Persia. He came to India as a soldier of fortune, and was employed, when the Bahmani monarchy broke up, by the king or his minister as governor of Telingána. His conquests were chiefly from the remaining dominions of the Warangal family and from other chiefs of Telingána and the Raja of Orissa; a part of the territory about Rajamandri, which was originally conquered from Orissa, continued to be governed by the Orissa rajas as a dependency of Golconda.

Thus these Muhammadan kings of the Deccan were usurping governors who partitioned a kingdom acquired by

rebellion against the Delhi empire. Under their rule the country was divided into *sirkárs* or districts, which were subdivided into tracts designated by various synonyms, of which the best known is *pargana*. The revenues seem generally to have been farmed, sometimes by single villages; when they were not farmed, Hindu agents were usually employed. The great revenue settlement made by the celebrated Malik Ambar, a regent of the Ahmadnagar state, in the first quarter of the seventeenth century, abolished farming in some parts and committed the management to Brahman agents under Muhammadan supervision. In Bijapur the body of the officers of revenue and finance were generally Hindu, and the fourth king directed the public accounts to be kept in the Marhatta language instead of in Persian. The Marhattas were freely employed. They garrisoned hill forts and served as cavalry, sometimes in the immediate pay of the Government, sometimes under a *jágírdár* or district official. The Delhi emperors used to confer on their new nobility—*Amirán Jadída*, the *omrah* of M. Bernier's travels—rank of which the various degrees were expressed as the command of so many horse. The supply of the horse was under the Delhi emperors always more or less a fiction; but this sort of rank, termed *mansab*, was conferred on Marhattas by the Deccani kings; they were really expected to find troops, and assignments of revenue were made to them for the purpose of maintaining the troops. To the great gratification of the Marhatta chiefs, the Deccani kings also conferred old Hindu titles upon them, such as raja and ráo. Thus these mushroom monarchs, sons of roving blades and successful officials, became fountains of honour like the ancient rajas of the land, whose royal pedigrees reach through immemorial times to mythical heroes.

The farmed revenues in these Deccan kingdoms were collected by *ámils* or government agents, who also regulated the police and decided money suits. Suits relating to hereditary office or landed property were determined by *panchávats* or juries, sometimes consisting of fifteen persons. The Bijapur state had officers over the *ámils*, who were termed *mokassadárs*; and sometimes the *mokassadárs* were under the authority of a *subah*. The office of *mokassadár* was not hereditary, though there is an instance in which it remained in the same family from father to son for three generations.

Speaking of the Vijayanagar empire and the Deccan at the time of the battle of Talicota, Wilks remarks that no



change in the form or principle of government was the consequence either of foreign conquest or successful rebellion; and he then proceeds to inquire into the causes of the immemorial despotism of the East, rejecting the exclusive influence of climate. He contends that 'the broad and prominent distinction between the characters of Eastern and Western polity, between despotism and regular government, seems to consist in the union or separation of the divine and human code;' the union of these codes stereotyping society by making change and therefore progress impious. He admits that the separation of these codes is not of itself sufficient to give rise to civil liberty. Patton, in his interesting treatise on 'Asiatic Monarchies,' deals at length with the same problem. His theory is that in Asia, the property in the land being vested in the prince and the land rent forming his principal revenue, great landed proprietors could not come into existence so as to abridge the power of the crown. Perhaps there is little risk in the supposition that the persistency of despotism in India, like the growth of civil liberty in Europe, is a fact to be accounted for by the concurrent operation of a good many causes of considerable complexity. The reasons why some states have been progressive and others are stationary are a very fascinating subject of inquiry; but it clearly will not suffice to assign the union of divine and human laws as a principal reason for the difference, because it is now pretty generally admitted that this union is of itself characteristic of a certain stage of social growth. If we assume that all or most advanced societies have somehow passed through that stage, we are precluded from accepting the mere existence of that stage as the reason why others remained in it. No doubt if sacred books, like the Institutes of Manu and the Koran, came to be compiled and to get currency as scriptures at a time when the monarchical form of government was the only form known, the support given to despotism by its acknowledgment in such works might improve its chances of durability. To this extent, perhaps, we may subscribe to Colonel Wilks's view. Patton, though fully aware of what he terms a possessory right on the part of the cultivator, seems led by his general theory to exaggerate the share of proprietary rights actually enjoyed by rulers in India; and he does not meet the obvious argument that rebellious governors, powerful assignees of government revenues, successful freebooters at the head of veritable armies of plunderers, hill bandits with strong forts, tribal chieftains, and the innumerable ruffians and

adventurers of an extraordinarily diverse assortment of creeds and races, who at one time or another have won in India, by violence or usurpation or both, territorial power, might, if they had ever combined, have formed as powerful a check on the power of the rajas as ever the barons at Runnymede were on the power of King John. The rarity of combinations amongst people of conflicting creeds and great diversity of origin is perhaps one of the reasons for the stability of despotism in India, considered, of course, as an institution, not as the possession of any particular individual or dynasty. Where combination has existed or may exist, its strength is apparent, as in the case of the Rájpútána *thákurs* and of the alliances which established the Bahmani kingdom in the Deccan or overthrew the Vijayanagar empire. It is curious that India, the home of despotism, is the home also of such democratic institutions as the *panchâyat* and the fully organised village community retaining at least some common lands and administering a common village fund. And, though still more curious, it may perhaps be true that the existence of these institutions has had much to do not only with the frequency with which masters have been changed, but also with the disposition to leave the masters alone, so long as they refrain from unendurable exactions, prevent other chiefs from ravaging the village lands, and allow plain men to settle their own civil cases amongst themselves by their own committees.

There are several ways, however, in which the commonest sort of tenures of land may have contributed to the maintenance of despotism. Where the soil has been occupied by clans and septs and heads of families of cultivating tribes settling down in village communities, succession to hereditary rights of possession is usually regulated by the principle of equal partition amongst sons or, failing sons, according to ancestral shares claimed by different branches of the family or families which founded the village. It is obvious that such a system tends to prevent, just as primogeniture tends to favour, the accumulation of landed property in the hands of individuals; and the theory that new grants of the soil itself for cultivating possession or grants of the dues and powers of the king over occupied or unoccupied land, must alike emanate from the sovereign, would form an additional safeguard against the danger to the authority of the monarch which might spring from the acquisition of extensive estates by individuals who would not be restrained by official or family influence from attempts at rebellion and



independence. As often as the monarch was weak, these influences, where they existed, were commonly insufficient to prevent rebellion; all the more, therefore, might a law of primogeniture have raised obstacles to the power of the king. The chief item of the king's income being, moreover, his share of the crop (commuted or not for a money payment), it was necessary to parcel the country out into circles under revenue agents or collectors; and what in modern phrase we might term the quasi-bureaucratic hierarchy so formed would contribute alike to the durability and efficiency of despotism, partly by the distribution over the land of officials interested in maintaining the existing order as the source of their emolument so long, but only so long, as the king was able to support them, and partly by the strength in information and action which the central government would derive from the presence of its more or less obedient agents and reporters in every quarter. Finally, the claims of the king upon the land, and the readiness with which the harder sort squeezed the functionaries who had been allowed or enjoined to substitute their demands or oppressions for those of the government, made the king the richest man in his dominions; and hoards of grain or, better still, ready cash have always been a most powerful prop to an Indian throne, for in troublous times when an ambitious son is tired of waiting for the succession, or some petty subordinate chieftain or powerful *jágírdár* is discontented on account of some encroachment on his rights or question of punctilio, or some neighbouring raja is in arms to enforce a dormant boundary claim or broken betrothal, victory has a knack of declaring in favour of the largest battalions; and, as a man cannot keep troops together for long without either paying them or securing their subsistence by plunder, the actual means of paying them is the best lure to his standard that he can hold out. Thus a good hoard is the best insurance against the multiform risks of royalty; and the position of the king as claimant of a share of every crop supplies him with the means of making this prudent investment.

In considering those ideas of sovereignty which are based upon the land we may look downwards from the chief to the cultivator, or upwards from the cultivator to the chief; the nexus is the same from whichever point of view we regard it; and, whether we analyse the status of the prince or of the peasant, we find that a great part of the matter under analysis is the tenure of land. In this way I am led

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to some remarks on the ancient tenures of the west and east coast of the Madras Presidency. At first sight the tenures of the west coast of Southern India, where there is perhaps the strongest form of private property in land that has yet been discovered in our Indian dominions, seem to present a marked contrast to the tenures of the Punjab Hills, where the raja is in a peculiar sense the proprietor or over-lord of the lands of his state. But on further inspection it is not difficult to recognise the usual principles in operation. Both the west coast and the Tamil country are good fields for inquiry, because they are remote from the thoroughly subjugated provinces of the Delhi empire, and were little affected by the sweeping tide of Muhammadan supremacy. Nor did the conquests of the Muhammadan sultans of Mysore obliterate those features of society which it is necessary for us to note.

The particularly strong form of private property in land which is found on the west coast, and in some adjoining tracts, is known as *janm*, or more usually *jenm*, a word which means birthright. The facts to which I have to refer are taken from a paper by Sir James Lyall, written when he was Resident in Mysore and Chief Commissioner of Coorg, and had therefore excellent opportunities of applying to the tenures of Coorg and the surrounding countries the insight and skill with which many years before he had analysed the tenures of Kángra.

'The theory,' he says, 'of land tenure which prevails in Malabar, including Wynaad, is that in the beginning all land, whether cultivated, waste, or forest, belonged in full private property or *jenmi* right to some individual or family. All present holders are either *jenmi* landlords or hold of a *jenmi*; the British Government owns only lands or rights in lands which have escheated to it from some *jenmi*, and is *jenmi* landlord as regards them. The land revenue now taken by the British Government in continuation of that which was imposed by the Mysore sultans Haidar and Tippoo when they conquered Malabar, and which appears to have been taken by the Perumal emperor or viceroy in very ancient times, is by this theory a simple imperial land tax, not in any sense a rent. When the Imperial Government disappeared, as it did for long periods in ancient times, the tax disappeared and was merged in the *jenmi's* rent, and there was no land revenue.'

It will at once be asked, how can this description be reconciled with the theory that raja and *ryot*, prince and peasant, are joint proprietors of the soil? Here we have to all appearance the direct antithesis to such joint property, all the land belonging in full private right to families or individuals. The answer, I think, is, that the *jenmis*, in the first instance, shared the sovereignty amongst them; they were in the place of the raja; the sovereignty was in a sort of joint tribal commission, and thus a tax imposed upon them was more of a tribute than a land revenue.



Kanara and Malabar were anciently one country with similar tenures and organisation of society; and Sir James Lyall believes that this country must have included more or less distinctly the Wynaad, Coorg, and the Mulnad of Mysore, which compose the strip of country along the top of the Ghauts above Malabar and Kanara. In all this country the unit of property was the holding of rice fields to which was attached waste or forest land for the supply of wood, grass, and vegetable manure. This auxiliary land was known as *bane*, and was not taken into account in the levy of rent or revenue. There was no communal ownership of waste in villages. Waste, if not attached as auxiliary land to some holding, was the property of some superior lord or raja.

In Malabar it appears that many centuries ago 'two sections of the population confronted each other as equal powers—one the warrior clans of Nairs, who formed the military caste of the country and wielded the power of the sword, the other a clan or clans of sacerdotal Bráhmans, whose superiority in intellect and learning enabled them to impose their priestly authority upon all other classes, including the Nairs. They entered into very close social and ceremonial relations with the Nairs (which still exist), and agreed to divide the land and its lordship with them. Accordingly the land was divided, certain subdivisions going to the Bráhmans as their property, and others to the Nairs. The Bráhmans, as was natural from their instincts and ideas, held their shares in democratic style, all members of the clan having equal rights in the lordship or property of the soil.

'The Nairs, on the contrary, had, as was equally natural, the instincts and ideas of feudal subordination to chiefs, to which they owed their military success, and which are to be seen in the Rájpút clans and other military races of India. In their case, therefore, it was the chiefs of the separate clans or confederations of Nairs who were recognised as the lords of the soil, the other Nairs being content to receive

allotments to be held of them on feudal or military service tenure. In this way the lordship of the soil, or what is now known as the ancient *jenmi* right, came to be held by the chieftain families of the Nairs and by the sacerdotal Bráhman families. It was something more than a mere property in the soil, being as it were a share in the kingdom of the country, and in the lordship over inferior races; certain rank and powers were, therefore, also connected with it. The Nair chieftains, if their territories were large, seem to have sometimes granted away their rights and powers over certain tracts to subordinate chiefs or captains of the Nair militia, to be held by the latter in military subordination. The main body of the Nairs were content to get household or family allotments in lease from the chiefs or captains to whom they chose to attach themselves; they gave the chief a fee or *nazrána* called "*kanom*" or "*kanike*" in token of allegiance on receiving the allotment, but paid no rent and were only bound to military service. They did not till the ground themselves, but cultivated through slaves or serfs.'

The bulk of the occupied land held by the Nair chieftains was granted away on this *kanom*, or, as it was called, *kanakka* tenure; the rest was the private demesne of the chief, which he cultivated through low-caste serfs or slaves, or leased to ordinary rent-paying tenants of the non-military classes. When an imperial authority was superimposed either (as tradition says) on the application of the *jenmi* lords or in some other way, a share of the rent or produce was assigned as its due, and was paid by all lands, including those under *kanakka* tenure. When the imperial authority disappeared this tax, or a part, was probably taken from lands under *kanakka* tenure by the *jenmi* lords as rent whenever they felt strong enough to demand it. The power of the imperial authority, when there was one, seems to have been very limited; and the assent of certain territorial assemblies (mentioned in old deeds as the council of the six hundred) seems to have been required to acts affecting the land. Sir James Lyall supposes that these assemblies were composed of the *jenmi* lords and the feudal militia of the circles.

It is easy to see that such a society as Sir James Lyall describes might readily break up into petty principalities; and that where these principalities were not formed or fell to pieces, all sovereignty might be lost, and the *jenmi* holdings might become mere private property. Both of these results



are actually traceable. A class of *jenmis* of small holdings gradually grew into existence, men to whom the original *jenmi* lords conveyed by sale or gift certain plots in full property free of all rent or service. The number of *jenmis* at the present day is large, and includes many classes of people. On the other hand, the Wynaad, a tract 1,239 square miles in area, lying above the Ghauts south of Coorg and Mysore, and west of the Neilgherries, seems at one time to have belonged in *jenmi* tenure to the family of the Paik rajas. The estate of this family was confiscated for rebellion, and the Government is consequently the *jenmi* proprietor of all land in the Wynaad, of which the *jenmi* right had not been previously alienated by the Paik family. When the Portuguese appeared on the Malabar coast at the end of the fifteenth century they found the country held by numerous petty chiefs, of which the best known was the Zamorin of Calicut; and this had probably long been the case—from the early part of the ninth century, or earlier. Coorg, however, presents the best illustration of the sort of movement which may have gradually changed much of the land of the *jenmi* tenure into a collection of small rajaships.

One of the kingdoms which arose on the dissolution of the empire of Vijayanagar after the battle of Talicota in 1565 was that of Bednur. The raja was a *poligár* or military feudatory of Vijayanagar, and he extended his rule over Kanara, which had previously been under the sway of the rajas of Vijayanagar. About this period Coorg, where the original state of property was like that of the Wynaad, appears for a long time to have been divided into petty independent chiefdoms known as *kombus*. A Bednur prince came to Coorg and settled in a tract called the *Haléri Nád*. Assuming at first the pious garb of a priest, he subsequently converted religious offerings into a regular tax, assembled a force and asserted himself as a ruler. The *Náyaks*, as the rulers of the *kombus* were called, at first submitted, but were afterwards put to death or expelled. From this Bednur prince were descended the Coorg rajas, from whom we annexed the country in 1834. The *Náyaks* were the *jenmis* of their little chiefdoms and formed the military class; the ancestors of the present martial Coorgs held their family lands under the *Náyaks* as the bulk of the Nairs did under the Nair chiefs in Malabar. In this way by supplanting and exterminating the *Náyaks* who were *jenmis* before them, the Bednur rajas of Coorg became *jenmis* of

the whole country; and they proved most despotic rulers. There is perhaps in India no worse record of bloodthirsty executions than there is against the now extinct rajas of Coorg; and it seems that practically divine honours were paid to them by a people they held in thraldom by actual terror of death. Coorg some time before annexation got the name of a prison, from which no man was suffered to escape lest he should report to an angry and avenging government the misdeeds and murders of its tyrant kings.

As soon as a *ráj* or Hindu principality was thus established in Coorg by the destruction of a class which might have lived on as intermediaries between the rajas and the people, some of the usual features of such principalities clearly appear. I do not mean that those features were necessarily new; for the Coorg rajas took the places of the *Náyaks* whom they destroyed. I mean that if the *Náyaks* had survived in subordination to the raja, the powers of the raja would have differed from what they were; that we know at least what those powers were in regard to the land; and that they resemble in some important particulars the powers of the Punjab Hill rajas. Thus the full or normal cash assessment was supposed to be equal to a share, one-tenth or one-sixth, of the crop; the raja gave the principal class of cultivators written grants entitling them to hold their rice fields with attached waste for ever on payment of the revenue assessed; and all unoccupied land in Coorg was considered as the property of the sovereign. The greatest peculiarity of the tenures was that the true Coorgs of families deemed fit to render military service might hold at half-rates; they probably paid nothing in former times in consideration of their liability to such service; and they might on this tenure take up as many holdings of rice fields as they could themselves cultivate, though they were not allowed to sublet. Even this peculiarity has some parallel in the Punjab Hills in the remission of revenue granted to men who were similarly liable to be called into the field by the raja.

The whole of this description of the former state of the Malabar country and Coorg appears to me to confirm the opinions that tribal chiefship preceded territorial despotism, and that when chiefship had become territorial before our time the basis of it was the land. We may also perceive here, as in many other places, vague marks of imperfect suzerainty, some distant imperial authority laying an intermittent claim to a tax upon the land. In the ancient organisation of the society, we see a tribal ownership of the soil, a tribal division of sovereignty. In a state growing up out of and upon that organisation, we see a territorial despotism of the usual description.



On the opposite side of the peninsula lies a country, now partly comprised in the districts of North and South Arcot and Chingleput, which was formerly known as Tondeimandalam. The tradition is that this country (said to have been some 18,300 square miles in area) was originally inhabited by the Karambas, a pastoral and half savage tribe, whose chiefs resided in forts having districts of greater or less extent under their authority. There were twenty-four of these districts, known as *cottams*, a word which appears to mean a fort or stronghold; and the greater part of the land was a thick forest. One of the Chola rajas, whose empire at one time extended at least over the whole Carnatic and perhaps also over Kanara on the west coast, is said to have formed the design of dispossessing the Karambas and settling upon the land the superfluous population of other parts of his dominions. Accordingly a son of the raja is supposed to have come into the land with a host of Velláler tribesmen, an industrious cultivating Sudra set, and to have subdued, expelled, or exterminated the former shepherd occupants. The lands were parcelled out to these Vellálers; they settled down in village communities; and tanks and watercourses, on which cultivation is very greatly dependent in that quarter, were constructed.

All this, of course, is mere tradition, but there is no doubt about the nature of the tenures for which this tale is supposed to account. They were very thoroughly investigated at the end of the last century and the beginning of the present century, before the old condition of things had been obscured by the general introduction of the *ryotwári* settlement. Generally in the Tamil country (of which lower Tondeimandalam below the Ghauts is merely a part) the lands were held in certain shares, perhaps corresponding with the number of families that first undertook the cultivation. The number of shares, according to the supposed original distribution, was never forgotten. The old shares were merely subdivided as families grew; and sometimes, if families died out or parted with their property, more shares than one might come to be held by one person. The proprietors entitled to these shares were known as *mirásidárs*, from the

word *mirás*, which means inheritance; and their hereditary right of possession conditioned on payment of the government share of the crop, or its equivalent in money when demandable, was known as *mirási* right. Frequently in Tanjore, and occasionally in other districts, the whole *mirási* right of a village became vested in a single individual. But usually a number of *mirásidárs* held the village jointly or in severalty. These *mirásidárs* may be described as peasant proprietors, sometimes cultivating the lands themselves, but more often conducting the cultivation by means of serfs or hired labourers, and arranging for the tillage of parts of the arable waste by tenants, the resident tenants having a permanent, and outsiders of other villages a temporary, right of cultivation. The properties were generally small, but varied greatly in size from five to ten acres to one or two thousand acres. Where the *mirásidárs* held jointly, the tenure was the most perfect form of communal ownership that I have traced in the course of some Indian researches. All the cultivated lands belonged to the whole body of *mirásidárs*, each, in proportion to the share or part of a share he held, being entitled to participate in the common property. The number of shares belonging to each *mirásidár* being known, the lands were either cultivated in common and the net produce, after payment of the government share and other charges upon it, divided according to the shares of the proprietors; or the land itself was thus divided, either annually, or every five or six or ten years, the fields to be held by each for that period being ascertained by lot. This exchange of lands is an almost decisive mark of a truly communal tenure, and suggests alike the derivation of the communal village from the tribe and the comparatively recent tribal organisation of the society where it is perceptible. It is referred to in the old reports as a thing perfectly well known, and I have marked many passages where it is mentioned. In many villages, especially in Tanjore, Tinnevelly, Madura, Dindigal, and the other Tamil provinces to the south of the Coleroon, the *mirásidárs*, instead of dividing the cultivated lands of the village periodically, according to the share or parts of a share held by each, appear on some occasion when they had divided them in that manner to have declared the division permanent, and thus to have converted the ancient collective tenure of the cultivated lands into one in severalty.

The communal tenure was especially frequent in Tondeimandalam; and in that country the *mirásidárs* had two



special privileges: they held part of the cultivated lands free from any government demand, and they received certain dues in kind from the produce of all the cultivated lands in the village paying tax to government. In the villages where the cultivated lands generally were held in severalty, rights of common, and the like, including fisheries, possibly mines and quarries, certainly pasturage and firewood, the produce of these exempted lands and the dues in kind were still enjoyed by the *mirásidárs* jointly in accordance with their ancestral shares.

The Madras Board of Revenue in 1818, after giving the account of the Tamil tenures which I have just abstracted, goes on to explain that the Muhammadan occupation of the Carnatic had degraded the *mirásidárs* almost into the position of permanent tenants; and that 'the Musulmán Government, by absorbing the whole landlord's rent, became not only the sovereigns but the landlords of the country, enforcing in practice their favourite maxim, that the state is the exclusive proprietor of the soil.' The Board, however, admits that those privileges which were still held in common in villages where severalty had been established in the cultivated lands continued to be enjoyed, and sometimes to be sold, by the *mirásidárs*.

In Tondeimandalam, as on the west coast, there is a tradition of popular assemblies. It is said that the agricultural colonists subdivided the *cottams* of the shepherd chiefs into *nádus* or districts, five or less to each *cottam*, and the office of *náttán* or head of the *nádu* was conferred on the principal Velláler. The *náttáns* of a *cottam* with the chief proprietors of their respective *nádus* formed an assembly called the *mahánádu*, of which, in 1814, the tradition only remained. The principal object of the assembly seems to have been the consideration of agricultural improvements and the extension of irrigation. Whether it possessed any administrative powers it is impossible to say.

Sir Thomas Munro, who was probably the greatest authority we have ever had on land revenue matters in the Southern Presidency, seems to have been rather impatient of legends such as that of the colonisation of Tondeimandalam. He regarded knowledge of the ancient state of landed property in India as useful only in so far as it might throw light on its present state and aid us in finding a way for improving it. He was, on grounds chiefly of economic expediency, to a large extent the author and by a long way

the most powerful and successful advocate of the *ryotwári* system, which is a system of severalty in small holdings and of direct dealings between the government and the cultivator. He ridiculed the idea of a prince having planted a colony of three hundred thousand agriculturists in uncleared jungles where no such population could exist without tanks and watercourses for the cultivation of the land. He also repudiated, as based on unfounded assumption, the theory that private landed property was the ancient Hindu system until destroyed by Muhammadan invasion, pointing out that the assessment was as high in the territories of Hindu as of Muhammadan chiefs, and that this could not have been due to the progress of Muhammadan arms, because over many of the petty states the Muhammadans never established more than a nominal dominion. He suggested that the *mirási* tenure was probably a gradual growth in a country long peopled and cultivated, and originated in local circumstances, perhaps more in the great number of tanks and watercourses constructed at the public expense than in any other. The government could be reimbursed for the expenditure upon these works only by the regular cultivation of the lands; and the privileges of a moderate rent and a hereditary right in the soil were obvious means of effecting this object. The interchange of lands might be due to the principle that the *mirásidárs* should be enabled to pay their rent or revenue regularly by taking turns in the tillage of the fully watered lands.

It is worth considering whether the joint proprietorship of the raja and the cultivator may not have sometimes originated in the construction of irrigation works from state funds or by labour impressed by state authority; but the claim of the raja to a share in the crop is found in innumerable localities where there are no irrigation works, or where these works are wells or channels sunk or cut by private persons. The most developed form of the Tondeimandalam legend, if we make allowance for the natural tendency to ascribe to some ancient king or leader as a single act a course of policy which may have guided successive rulers, deprives Sir Thomas Munro's caustic objections of some of their sting. We are not to suppose that all the Vellálers came into the jungle country in a body. One tribe of them, according to the fullest and clearest version of the story, was already scattered over the country when the son or brother of the Chola raja appeared on the scene. Another tribe that accompanied the prince for the



most part went away again, disgusted by their difficulties. A third tribe, the Tuluva Vellálers from Kanara, who constituted by far the majority of the settlers, were induced to remain by the grant of the privileges peculiar to the Tondeimandalam *mirásidárs*—the right to hold certain lands free of payment, and the share in the crop of all taxable lands. Admitting that the tale is a legend, absolutely unhistorical, it is still useful for our purpose, as showing what, in the popular idea, is the relation of the raja to the mass of his subjects. To induce the cultivation of waste lands by liberal concessions is just what is to be expected of a wise raja, and the nature of the concessions is approximately, though not exactly, similar to some we have ourselves made in attracting cultivators to waste lands rendered culturable by government irrigation works in the Southern Punjab. From what we know of the constitution of villages and the distribution of the great landholding tribes in the Punjab generally, there seems to be nothing incredible in the tradition that Tondeimandalam may have been brought under cultivation in some such way as the legend relates—that is, by tribal settlements on the inducement of special privileges—if only we allow that the work must have been one of many generations. The subjugation or expulsion of the former occupants was probably also a very gradual process. The tradition of the old local assemblies appears to favour the view that the country was, in point of fact, peopled by tribal immigration.

In the Punjab Hills and in Rájpútána conquering Rájpúts have imposed their sway upon a cultivating population too numerous and too valuable to be disturbed. In Tondeimandalam, on the theory of the legend, we have the converse case—the incursion not of an aristocracy, but of a proletariat. Yet here—and notwithstanding the Muhammadan conquests which swept again and again over the Carnatic, some centuries of Muhammadan supremacy, and evidence of Muhammadan oppression, which is not disproved by other evidence showing that Hindus were oppressors too—we trace in the rural organisation of society before we altered it the usual characteristics of the Hindu *ráj*. It will have been noticed that as yet, beyond the mention of certain rights of common, I have said nothing as to the rights of the *mirásidárs* in waste lands. Whatever the *mirásidárs* might do with certain lands entered in the village registers as culturable waste, it seems certain that they could not claim to

break up the immemorial waste except with the consent of the ruler. Sir Thomas Munro asserts the government claim to the waste in a most uncompromising fashion. He says that the government, from ancient times, had everywhere—even in Arcot, as well as in other provinces—granted waste land free of every rent or claim, and appeared in all such grants to have considered the waste as being exclusively its own property. In all villages, he contended, whether held by *mirásidárs* or not, the inhabitants reserved to themselves the exclusive use of the waste. But this right was good only against strangers, not against the government, which possessed, in his opinion, by the usage of the country, the absolute right of disposing of the waste as it pleased. The raja's or Muhammadan ruler's lordship of the waste is thus, in this part of the country, well attested. The raja's share of the produce had its distinctive name, *melváram*, which may be translated 'head-rent,' *mel* being a particle used in composition signifying priority or superiority, and *váram* meaning a share of the crop. Lastly, whatever we may hold as to the amount of truth, if any, in the Tondeimandalam legend, there is no doubt that, in the popular idea, and, indeed, in actual practice, the sovereign was regarded as the authority from which the *mirási* right was derived.

The Central Provinces, to which we may now pass, form, as the name implies, a sort of middle country. They occupy the north of the Deccan and a small part of the tableland of Málwa, and are bounded on the west and north by the states of the Central India Agency, on the north-east by Lower Bengal, on the east by Orissa and a part of the Madras Presidency, on the south by the territories of the Nizam of Hyderabad and by Berar, while on the south-west they just touch Khandeish, acquired from the Peshwa. Generally, the Central Provinces comprise an important fragment of the Marhatta empire, and are interposed between old provinces of the Delhi empire and parts of India which were under Marhatta sway. As a separate administration, these provinces are only thirty years old. They were formed in November 1861, chiefly from the lapsed state of Nágpur, the Saugor and Nerbudda territories, and Sambalpur, previously part of the south-west frontier of the Lower Provinces, under the Lieutenant-Governor of Bengal. Before the Marhatta conquest the north and west of these provinces were under the rule of the Gond rajas of Mandla, Deoghar, and Chánda. These rajas were not of Aryan origin, but may be considered



to have been Hindus, though one of them—the Raja of Deoghar—is said to have embraced the Muhammadan faith in the time of Aurangzíb. There is reason to believe that all yielded a certain allegiance to the Delhi empire. A great part of the north-eastern division of Chhattísghar formed the principality of the Haihaibansi Rájpút rajas of Ratanpur. To the east again and south-east lie the Sambalpur Gurjat chiefships and the native states of Bastar, Khaker, and Kharond. Bastar claims to be an offshoot of the old Telingána stock of the Eastern Deccan. The family is supposed to have been driven from Warangal by Muhammadan encroachments about the beginning of the fourteenth century. The Khaker chiefs appear to have been Gonds. They at first held under the Marhattas on the sole condition of furnishing five hundred men for service when called upon—a liability in later days commuted for a money tribute. Very little is known of the origin of the Kharond or Kalahandi chiefs, but it may be safely said that they claim Rájpút descent. The principal Gurjat chiefships were Patna and Sambalpur. The Patna state, of course, is not to be confounded with the town of that name in the British province of Behar. The Patna raja is a Chauhan Rájpút; and the tradition is that his forefathers emigrated more than thirty generations ago from the Gangetic Doáb, and, through the influence of the ruler of Orissa, established themselves as chiefs over eight small holdings or chiefships, known as *ghars* or houses, to the south of the Mahanadi. The first raja of Sambalpur is said to have been the brother of the twelfth raja of Patna. Both chiefs were heads of a group of chiefships, and at one time the supremacy appears to have been shared between them. In 1755 all fell under the dominion of the Marhattas as tributaries. The Sambalpur and Patna groups comprised eighteen chiefships, and were known as the *Athára Ghar*, or eighteen houses, just as the adjacent country to the west was called and is still known as, the *Chhattís Ghar*, or thirty-six houses. The state of Sambalpur lapsed to the British Government in 1849.

When officiating as Chief Commissioner in 1863, Sir Richard Temple found the question of the tenure and status of the various dependent chiefs within the limits of the Central Provinces in very considerable confusion. The chiefs were known by a variety of names—*zamindárs*, *jágírdárs*, *thákurs*, Gurjat chiefs, and rajas. Their holdings or terri-

tories were sometimes called states, sometimes estates, and their payments to government were promiscuously denominated rent, revenue, quit-rent, and tribute. In some cases this diversity of nomenclature really pointed to diversity of status, but in others it did not, and no classification had been effected.

The Patna and Sambalpur rajas had fought their own way to a local supremacy; but the Gond and Chhattísghar rajas had been in the habit of either granting away waste or other lands to be held under them or recognising more or less the territorial position of nominal subjects whom they could not entirely subdue. One part of the country, for instance, at the time when it was incorporated in the Marhatta kingdom of Nágpur, was parcelled out among a number of petty Gond *zamindárs* of wild and irregular habits, constantly engaged in hostilities with each other, or in rebellion against their nominal chiefs, whether of Mandla, Deoghar, or Chánda. The Marhattas expelled many of these Gonds from the plains to make way for a more settled administration. The grants of the Chhattísghar rajas were very generally to Gonds of royal stock or to Rájpúts in reward for military service or on condition of military service to be performed. The Marhattas changed the requirement of service into a tribute. They also themselves made numerous grants to Gonds and Rájpúts, both confirming old grants and creating new ones, often of waste lands. These Marhatta grants were made as rewards for service or to engage help in maintaining tranquillity in a wild, unsettled country which could not easily be brought under authority. They were on various conditions, such as bringing the waste under cultivation, keeping down wild beasts, preventing thefts and apprehending criminals, guarding hill-passes, and the like. Two of them were grants to Bairágis, devotees or family priests. The old Gond grants were for similar purposes: some of them were reward grants for bravery in killing wild beasts, one grantee having accounted for 120 tigers. The *thákurs* of the Sátpura range (known as the Chhindwára *jágírdárs*) were preserved from the usual complete subjection to the Marhattas by the unproductiveness of their hills and forests and the natural strength of their country. The Marhatta policy was to support one of the most powerful of them to keep the rest in check and be responsible for their conduct. But it had little success, for they lived almost entirely by plunder. They were mostly too poor to pay any



tribute or revenue; but where it was excused, annual offerings of bamboos or honey were exacted. Indeed, towards the end of the Marhatta times some of them were made stipendiaries to enable them to live, if possible, without depredation.

Sir Richard Temple massed together 115 of the holdings or territories just described in a report, which, as Indian reports go, is not a particularly long one. Diverse as these chiefships or *zamindáris* were, they had a good deal in common. Many, but not all, of them originated in the actual grant of the ruler of the day; a fact which shows that the raja was considered competent to dispose of waste lands. The chiefs or *zamindárs* were nearly all of them required to make some payment to the Marhattas or their predecessors, which usually fluctuated according to the strength or weakness of the over-lord. With few exceptions, no government, native or British, had ever maintained at its own cost any establishment whatever, police, fiscal, or other, within these chiefships. The chiefs or *zamindárs* had been expected to save the central government all trouble by managing their own affairs, civil, criminal, and revenue, as best they might. No doubt this was rather shocking to some of our energetic officers when we first began to intervene; and by the time Sir Richard Temple reported, the rough powers of justice, formerly freely exercised, had been greatly restricted; and even the rajas of Bastar had been required to submit their death sentences for the confirmation of the Chief Commissioner. Occasionally these possessions had been broken up under the sanction of the Marhatta Government, or divided *inter vivos* amongst sons or other relatives. But, as a rule, they devolved by a very loosely applied rule of primogeniture, an eldest son having the preference, if there was no particular reason for setting him aside.

The mass amalgamated in Sir Richard Temple's report was duly triturated in the official sieve; and in the sequel, after much further disquisition, fifteen of these holdings were recognised as feudatory states. In the rest the chief or *zamindár* had to accept a position little removed from that of an ordinary subject. Nor was this decision surprising. Many of the possessions were obviously mere proprietary holdings, some consisting of a single village. Even the tracts finally recognised as feudatory states varied greatly in extent, from Sakti with 115 to Bastar with 13,062 square miles.

In our everyday ideas the distinctions are clear enough between sovereign powers and the powers which a landlord may exercise over his property, and between territory which is British and that which is subject to the jurisdiction of a foreign ruler. But in the history of the recognition of these feudatory states of the Central Provinces we see how hard it may sometimes be to draw the line between tracts which must be regarded as under British laws and those which must be considered foreign for purposes of legislation and internal government. Before the submission of Sir Richard Temple's report of 1863 this difficulty was, if not at its height in this part of India, at any rate in a fair way to be solved in the manner least agreeable to the chiefs or *zamindárs* and most expensive to the central administration. But the chief point of interest about the past of the Central Provinces is that we can trace a complete chain of political subordination down from the Delhi emperor through the raja to the hereditary holder of two or three hundred villages on condition of military service. We have, indeed, somewhat similar chains of authority to this day, for intermediate between the supreme government and almost all the chiefs in India are Lieutenant-Governors, or Chief Commissioners, or Governor-General's Agents. And we see how the usual tendency of petty chiefships to form groups under the leadership of some successful state exhibits itself in practice. Supremacy may not be hard to win if the conqueror is content with a light payment from a man who manages his own affairs and is prepared to leave him alone in their future management. In early days rulers have few nice scruples about their moral responsibilities; busied with the really serious affairs of plunder and aggression, they may easily leave the trifles of civil government to chiefs who will do them sufficient homage and perhaps join them in their forays, or to refractory subjects whom it would be difficult or imprudent to coerce. Thus jurisdictions are formed ripe to become independent states, if there is no one strong enough to control them; but ready to be part of a group under a supremacy, if that seems politic, or cannot be helped, or is likely to lead to profitable adventures. The recklessness of primitive rulers about internal administration fosters its usurpation by their nominal subordinates; and it is with actual or potential states as it is with village communities; so long as the fairly sufficient home rule is not destroyed, the mere change of allegiance is of little import. All this



goes to explain how readily, in primitive times, empires are formed, and how readily they fall to pieces.

The history of the Marhattas, to which we may next turn, illustrates the facility with which a successful adventurer may found an empire in the East. The first glimpse that we get of Marhatta institutions shows us a system of rural government of a familiar Indian type which has, indeed, with certain modifications lasted to our own day. In Maharáshtra —the country where Marhatti is spoken, roughly the space between the Sátpura range, above the Tapti, and the neighbourhood of Goa—we find, as in most other parts of India, the village headman and the village accountant, and a remarkably full array of village officers and servants. Between the village headman and the raja, over several villages, there were always two hereditary officers, the *deshmukh*, *desai* or *zamindár*, and the *deshpandya*, *deshlekuk* or *kánúngo*. *Desh* means country, and *mukh*, mouth, and *mukhya*, chief; and, according to the Marhattas, the word *deshmukh* implies not that the officer is the district or local chief, but that he is the spokesman of the district. The functions of the *deshmukh* and *deshpandya* seem to have been the same for their circles as were those of the village headman and the village accountant respectively for the villages under them. They were paid by grants of land estimated at a value of 5 per cent. on the revenues they collected; but this gives merely a general idea of their allowances, which were exceedingly variable and often complicated. These hereditary officers, before the Muhammadan conquest of the Deccan, had often obtained more or less power and independence, and assumed the titles of *naik* or leader, *poligár* or raja, according to circumstances.

Sivaji, whose civil arrangements, like his military organisation, exhibit systematic policy, probably perceiving the difficulty of controlling such hereditary local officers, did not allow the *deshmukhs* and *deshpandyas* to interfere in the management of the country, though he maintained them in the enjoyment of their emoluments. Similarly though he confirmed many *jágírs* he bestowed few new ones. He appointed civil officers, *tarafdárs* or *talukdárs*, over small districts, and *subadárs* or *mámlatdárs* over considerable tracts comprising one or more forts. Starting with the prestige of being the son of a great *jágírdár* and officer of the Bíjapur kingdom, he acquired his power by plundering expeditions and the seizure of hill forts; and it was these

forts especially which enabled him to maintain and extend his acquisitions. They received proportionate care. Each was placed in charge of a separate establishment maintained by permanent assignments of rent-free lands in the neighbourhood. The members of these establishments described the fort as 'the mother that fed them'; and this hereditary provision for their support gave them every inducement to be active in the duties of bringing in supplies, watching passes, and misleading or cutting off the spies or parties of the enemy. Sívaji stopped the farming of the revenue, which he assessed by his own agents on the actual state of the crop, claiming two-fifths of the produce as the government share. After the death of his father in 1664 he assumed the title of raja, and—always a sign in India of the assertion of kingly prerogative—struck coins in his own name. But Aurangzíb, the Delhi emperor, specially provoked by the robbery of holy pilgrims proceeding to Mecca, sent a strong army to the Deccan under Raja Jai Singh, a Rájpút prince, and Diler Khan, an Afghán commander. Sívaji, after some hostilities, thought submission his best policy, and, surrendering a great part of his territory, accepted the residue as a *jágír* dependent on the emperor, at the same time obtaining certain revenue assignments on the kingdom of Bíjapur and the rank or *mansab* of 5,000 horse for his son, then eight years old. A little later, in 1667, when Prince Sultan Mauzum, a son of Aurangzíb, had been reappointed Viceroy of the Deccan, Sívaji procured by his intervention, amongst other favours, the grant of the title of raja from the emperor. The year before this Sívaji had in person presented his *nazr* at Delhi; that is to say, made to his superior, the emperor, the complimentary offering in money which betokens fealty or submission. He had been disgusted with his reception and the rank assigned to him, and escaped from Delhi by a stratagem. He subsequently turned the tables on his adversaries; had many successes against the Moghal armies and the kingdom of Bíjapur; and in 1674, when strong enough, again assumed the title of raja, this time without the emperor's leave. On this occasion the names of some of the principal offices under his government which had been expressed in Persian were altered into their Sanskrit equivalents; and Sívaji being weighed against gold, which was distributed to Bráhmans, thus purchased Rájpút rank, the Bráhmans now pretending to prove that he was by descent a Rájpút.



The list of the eight great officers of the Marhatta principality given by Grant Duff (from whom I take most of these particulars) is interesting as showing the degree of advance in the business of civil government, so far as that can be inferred from the severance of official functions and their assignment to different ministers of state. There was a *peshwa* or prime minister, with the new title of *mukh pardhán*; a general superintendent of finance and accounts; a general record keeper and superintendent of correspondence; a sort of private secretary, who also superintended the household troops; a commander-in-chief; a foreign minister; a superintendent of judicial affairs; and an expounder of Hindu law and the Shástras. This description of the well-known eight *pardháns* or ministers of the Marhattas might, indeed, if we omit the last, serve as a sort of typical description of the headquarter establishment of an Indian raja or nawáb at the present day. Both now and in the history of the last two or three centuries in India we constantly perceive the distinctions between civil and military command; the household of the prince and the general arrangements of government; revenue, finance, and the administration of justice; and home and foreign affairs. The ministers also being servants of the raja, the list indicates some of the functions which the raja, through his subordinates, is expected to discharge. But here, as in most things Indian, we must not expect either uniformity or precision in arrangement or consistency in practice. We may recognise a pretty frequent tendency towards a tolerably civilised distribution of the functions of government; an ideal, so to speak, more or less consciously accepted, never fully attained, and forgotten or ignored without the slightest pang whenever the pursuit of it would be practically inconvenient.

Sambhaji and Rája Ram, who in succession wielded the power of the Marhattas after Sívaji's death, imitated the example of their father and declared their independence. But Shao, at the end of whose time all real power passed into the hands of the Peshwa, acknowledged himself a vassal of the throne of Delhi and affected to consider himself merely as a *zamindár* or head *deshmukh* of the empire. He was appointed to the rank of 10,000 horse by the emperor Ferokhsír; an empty compliment to the head of a confederacy far more powerful than any force at the disposal of the emperor, and significant only as showing the vitality of

the ideas connected with the Delhi empire in the very hour of its dissolution.

Ballaji Wiswanáth, the first of the great Peshwas, was raised to his commanding position by Shao. The discipline enforced by Sívaji had long been relaxed, and the Marhatta armies had become the well-known gigantic predatory bands, demanding or about to demand tribute or plunder at the point of the spear from almost every province that had owned the sway of the house of Timur. The problem which that exceedingly astute Bráhman, Ballaji Wiswanáth, had to face was how to direct this prodigious force to the making of a Marhatta empire without allowing the control of it to depart from Bráhman hands. He solved the problem by a scheme most characteristically Hindu, and for complexity and ingenuity perhaps unrivalled in Indian annals.

The more we look into Indian institutions the more often do we find that they are at the root connected with the possession of land or of the revenue derived from it. The principle of the Marhatta military confederacy was a complicated system of land revenue assignments. The full details of that system may be studied in Grant Duff by those interested in the subject. I have only to refer to them here as briefly as I can, consistently with clearness, in order to show what a tangled network sovereignty in India became before the failing and already merely theoretical supremacy of Delhi had been succeeded by the effective over-lordship of the present paramount power.

*Chauth* means one-fourth, and *sirdeshmukhi* one-tenth of the total land revenue demand of a given tract of country. I mentioned that Sívaji obtained from Aurangzíb certain revenue assignments in the kingdom of Bíjapur. These were the *chauth* and *sirdeshmukhi* of certain districts above the Ghauts. The first imposition of *chauth* in a province immediately subject to the Moghals dates from the incursion in 1670 of one of Sívaji's generals into Khandeish. In this raid the village authorities were made to promise in writing to pay to Sívaji or his officers one-fourth of the yearly revenue due to government. Receipts were promised which would exempt them from pillage and ensure them protection. Such was the origin of the Marhatta claims which eventually embraced the *chauth* of the whole of India.

In 1720 Ballaji Wiswanáth obtained from the emperor Muhammad Shah three imperial grants. The first was for the *chauth* of the whole revenue of the six *subahs* or provinces



of the Deccan, including the Hyderabad and Bíjapur Carnatic and the tributary states of Tanjore, Trichinopoly, and Mysore. This was on condition that the Marhatta Raja should maintain 15,000 horse to assist the military governors in preserving tranquillity. The second was for the *sirdeshmukhi* of the six *subahs*, or 10 per cent. over and above the *chauth*. The third confirmed the raja in the possession of the districts, principally those held by Sívaji at the time of his death, which were the seat of the actual sovereignty of the Marhatta power.

Outside these grants there were conquests in Berar and claims to tribute in Guzerat and Málwa. The Marhattas knew very well that they could not at once overcome the provincial governors, some of them, especially the Nizam, already far on the way to independence. Their policy therefore was to bleed as freely as possible where they could not or dare not kill. The plan of Ballaji Wiswanáth was to buckle a set of Bráhman reins on the whole team of free-booter generals. The raja, some of the principal officials, and the military chiefs were to have a sort of joint interest in certain nominally fixed shares of the revenues of other states; it was proper, of course, to affect that the interest was legitimatised by an imperial grant; but where letters patent did not apply, a district was easily placed under tribute by usage. As for the shares, the rules were two, that every chief should take as much as he could, and—honour among thieves—that the booty should be fairly distributed according to custom. This supposed custom of distribution was exactly what Ballaji Wiswanáth invented. In the co-operative society for the pillage of the empire the raja was honorary chairman and the Peshwa, with Bráhman assistants, the real director-in-chief. The *sirdeshmukhi*, the 10 per cent. of the revenue, was first set aside. That was the raja's *watan*, his hereditary property—name soothing to a Marhatta ear. Of the remaining claims one-fourth was appropriated to the head of the state in addition to the *sirdeshmukhi*: this was known as the raja's *bábti* or item of revenue. The balance was termed *mokassa*. Nine per cent. of the *mokassa* was at the disposal of the raja in two shares; namely, 6 per cent., called *sahotra*, which was assigned by Shao to the minister above described as the general record keeper and superintendent of correspondence; and 3 per cent. as *nargounda*, which was granted by the raja to different persons at his pleasure. The rest of the *mokassa* was

distributed to a great number of chiefs as military *jágír*, burdened, according to circumstances, with dues to the head of the state, both in money and in troops. The old Marhatta *jágírdárs* had districts assigned to them subject to military service and the payment of *sirdeshmukhi*, but not of *chauth*. Particular quarters of the country were assigned to particular officers, who were also allowed particular claims on portions of revenue or on whole villages in the districts of each other. There were separate sets of agents for the collection of the *sirdeshmukhi*, the *bábti*, the *sahotra*, the *nargounda*; and any number of places, therefore, for Bráhmań clerks. Of course none but Bráhmans could deal with the almost infinite intricacy of accounts and claims which resulted from this complicated system. In the Moghal provinces one-fourth of such revenue as remained after realisation of the *chauth* and *sirdeshmukhi* went to the Moghal local officer, the *faujdár*. The rest was either collected for the imperial treasury or more often alienated in *jágír* to some Moghal commander for the support of troops.

Such, in very general terms, was, in 1720, the theory in Western India and the Deccan upon which conquests were to be shared—a theory more or less reduced to practice according to the chances of usurpation and the fortunes of war. The Peshwas soon usurped the authority of the raja, and made him first their pageant to give weight to their authority with recalcitrant generals in the field, and finally their prisoner at Sattára. The Nizam asserted his independence in the Deccan, and on one occasion, when the emperor had secretly instigated a *subadár* to oppose him with the promise of his place, defeated his rival in a decisive battle, and, with an admirably Oriental adherence to forms, sent the *subadár's* head to court with a congratulatory letter on the victory of the emperor's army thus successfully commanded by himself. Throughout the greater part of the eighteenth century the Peshwas and Nizam-ul-mulk and his successors stand confronting each other as the chief figures on the scene in Western India, often in open conflict, never either of them quite strong enough to beat the other down. It was natural that the Marhattas should turn their arms to Málwa and Guzerat—indeed, the admission of their claims on the Nizam's territory ought theoretically to have saved it from depredation—and it is easy to see that the localisation of the assignments of the military leaders would sooner or later give them opportunities of founding separate states. Thus Báji Rao, the Peshwa, when he began his incursions into Málwa, about 1725, 'by virtue of the authority vested in him by Shao, granted deeds to Powar, Holkar, and Sindhia to levy *chauth* and *sirdeshmukhi*, and to retain half the *mokassa* in payment of their troops.' Though the pretence of the raja's authority was maintained, these chiefs, the founders of the present Marhatta houses of Dhár, Indore, and Gwálior, were officers of the Peshwa, acting under his commission. The origin of the Baroda family was not dissimilar. Dabári, the hereditary commander-in-chief, who had made conquests in Guzerat, assembled an army of 35,000 men and set out for the Deccan to deliver the raja from the thraldom of his ministers. Báji Rao in 1731 defeated his army. Dabári fell, and the Peshwa left his infant son in nominal possession of the Marhatta rights in Guzerat, under the guardianship of Pilaji Gaekwar, the ancestor of the Gaekwars of Baroda.



I mentioned in a former chapter that Sindhia obtained from the Delhi emperor a patent granting to the Peshwa the hereditary office of *vakíl-ul-mutlak* (a term, by the way, which Wilks translates 'absolute vicegerent'). Sindhia brought the insignia down to the Deccan, and the Peshwa was invested with the *khillat* or dress of honour under unusually elaborate ceremonies. The condition of the grant was that the Peshwa was to appoint Sindhia and his posterity his perpetual deputies. The Peshwa, a usurping minister, thus in theory became the deputy of a powerless emperor, and all the real power was vested in a military chief of a practically independent territory, who affected to be the deputy's deputy for the management of the imperial affairs. Add to this that the Marhattas still had their claims on the adjoining territory of the Nizam, where sovereignty had been acquired by successful rebellion. It was these claims that led to the last general reunion of the Marhatta chieftains, who, notwithstanding the establishment of their separate governments, had been taught to hold that all and each were interested in what could be exacted from the Nizam. There were outstanding balances for *chauth* and *sirdeshmukhi* extending over a series of years. The Nizam, taking advantage of the alliance against Tippoo, had procrastinated and met claims by counter-claims, and generally evinced a determination not to pay. The prospect of sharing in the expected advantages brought to the standard of Nana Farnavís, the Poona minister, all the chiefs of importance.

Sindhia and Holkar were on the spot. The Raja of Berar set out to join. The Gaekwar sent a detachment of his troops, and the great southern *jágírdárs* attended the summons. 'This,' says Grant Duff, 'was the last time the chiefs of the Marhatta nation assembled under the authority of their Peshwa.'

I need not further pursue Marhatta history. Enough has been said to show that the Marhatta military confederacy was a conspicuous illustration of the genius of Hindu institutions, especially as moulded by Bráhman hands, and to afford some instances of the formation of states connected by some real ties and some political fictions; while the fiction—for such it had become—of the supremacy of the house of Delhi was still used by the most formidable of the half-confederated and often hostile military chieftains as an instrument of his power alike in the original territory of Marhatta dominion and in the portions of the fallen empire over which he asserted or had obtained direct or practical authority. We must now pass to the other side of India, and consider the nature of the sovereignty of the Moghals.



# CHAPTER IX

## THE SOVEREIGNTY OF THE MOGHALS

'By the theory of the Muhammadan law,' says Elphinstone ('History of India,' p. 482), 'the ruler of the faithful should be elected by the congregation, and might be deposed for any flagrant violation of the precepts of the Koran; but in practice the king's office was hereditary and his power absolute.' Elphinstone further explains that the king was considered bound to observe the Muhammadan law, but that there was no authority which could enforce his obedience to it, and that 'when he was determined to persevere there was no remedy short of rebellion.' A sort of common law, however, 'not derived from the Koran but from the custom of the country and the discretion of kings,' the existence of great officers and departments of state, and of village and other rural institutions were doubtless checks upon the royal prerogative.

It is certain that the sovereign could and did interfere in the decisions of courts of justice. The emperors, like the rajas, were regarded as a sort of ultimate court of appeal in cases of every description, judicial and others. And while the emperor was at the apex of power in his own realm, he was entirely independent of any other authority. Rajas, as we have seen, were frequently tributary without loss of internal sovereignty. The Delhi emperor was tributary to no one. He held by right of conquest and right of descent. It is said that Mahmúd of Ghazni, who possessed but a small part of India, received a letter from the Khalif of Baghdad congratulating him upon his successes against the infidels; and more than two centuries later Muhammad Tughlak, undoubtedly an Indian emperor, went through the form of acknowledging the sovereignty of the nominal Khalif in Egypt, and solicited investiture from him. But this is mentioned by Elphinstone as the whim of a man who was probably in some degree insane. I have traced no similar act on the part of any later

emperor; and I think it may be safely said that the Delhi empire, from the middle of the fourteenth century onwards up to the time of its fall, was not even theoretically dependent on any other power.

The position of the emperor was thus much more the result of what he found practicable and of what was expected of him in the country than of any application, as constitutional principles, of the doctrines of Muhammadan law. It was indeed the application of one such doctrine, the re-imposition of the *jizía* or poll-tax on infidels, which contributed in the days of Aurangzíb to the approaching dissolution of the empire. The emperor may, I think, be considered as holding the place of a raja, who was also a *rájadhiráj*, that is, who not only directly ruled his own territories, but also received the submission or tribute of other dependent kings. One continual element of weakness was the absence of any fixed rule of succession. 'The Koran,' says Colonel Wilks, 'recognises no rule of inheritance to kingdoms; and although the succession of the firstborn seems among Muhammadans, as among most other sects, to have been considered as the order of nature, the sword is nevertheless the only legal arbiter universally acknowledged.' The whole history of the Moghal empire at the height of its strength illustrates the truth of this observation. The sickness or death of the reigning emperor was almost uniformly the signal for an internecine contest among his sons.

Notwithstanding the checks imposed by the custom of the country, the general frame of the imperial government differed, or perhaps I should say was meant to differ, in some important respects from any Hindu model. In Hindu governments office was usually hereditary; under the Moghals it was a matter of personal appointment in the case of the more important posts, though the hereditary claims of the minor rural officials were recognised by their Moghal masters. The *sipah salars*, afterwards called *subadárs*, of the great provinces or *subahs* into which the empire was divided, were frequently changed; and the emperors were as well acquainted as are the governors of our own provinces with the expediency of transferring local officers from one post to another as a means of escaping an official difficulty or bringing about an official improvement. The Hindu aristocracy, the Bráhmans and Rájpúts of high position, are an aristocracy of tribe and birth; the new aristocracy, if such it can be called, created by the Muhammadan emperors, was an aristocracy of office.



No doubt the sons of distinguished men obtained important appointments, and provinces and great commands were habitually bestowed upon princes of the blood. Rájpút dependent princes were also, as I have said, freely employed as governors and generals. But the *mansab*, the military rank which was conferred upon individuals by the direct act of the sovereign, did not pass by inheritance from father to son. On the death of a *mansabdár*—a commander, as already explained, nominally of so many thousand or hundred horse or even less, but actually furnishing some specific number, sometimes not a tenth of his nominal command—the emperor conferred some rank—'generally' (so Elphinstone tells us) 'a moderate one at first—on his son, and added a pension if the father's merit entitled him to it.' *Mansabdárs* often obtained assignments on the revenue of villages for the support of troops; and on the weakness of the central authority *jágírs* of this description may have become hereditary. But where this happened there was a departure from accepted theory. It appears also that an officer exclusively employed on civil duties might hold the military rank of a *mansabdár*.

As is well known there were fifteen *subahs* or provinces in Akbar's time, but the number varied with the fluctuation of the imperial boundaries. Of course a mere enumeration of the provinces does not go far towards any general idea of the Moghal empire in the days of its strength. But the provinces, as a rule, were smaller than ours; and, with our vastly improved means of communication, we can doubtless afford to unite larger territories under single local governments or administrations. Thus Bengal (including Orissa) formed one *subah*; but Behar, which, with these two provinces, is now under one lieutenant-governor, was then a separate charge. In the list in the 'Ayín Akbari' Oudh stands as a separate *subah*; and with us it was under a Chief Commander of its own till almost the other day. The *subahs* of Allahabad, Agra, and Oudh, taken together, correspond with the Lieutenant-Governorship of the North-West Provinces and Oudh. The Delhi, Lahore, and Mooltan *subahs* cover the territory of the Punjab; Tatta coincides with Sindh, Málwa with the Central India, and Ajmír with the Rájpútána Agency. The position in Ajmír corresponded closely with that which now exists—that is to say, Ajmír itself, with some small territory in the neighbourhood, was directly administered, and the adjoining states were under Rájpút chiefs, feudatories, as already

said, of the empire. In Málwa, however, where there is now no direct administration, if we exclude the Jhánsi division of the North-West Provinces, the position has been altered by the intrusive conquests of the Marhattas and the rise of the state of Bhopál. Bundelkhand, then, as now, mostly held by old Rájpút families, was tributary at the time of Akbar's accession. The boundaries of the *subah* of Berar are difficult to trace; but it probably included part of the Central Provinces as well as the Berar of the present day. Khandeish and Guzerat occupied what is now the northern part of the Bombay Presidency, excluding Sindh. It must not be supposed that these correspondences of area are at all exact. I merely endeavour to give a slight sketch of the Moghal distribution of territory as compared with our own. The *subah* of Kashmír, including Kábul, must have comprised an enormous area; but probably most of it was very loosely held.

As to the character of the direct administration, the *subadár* had command of the troops and administered justice, exercising powers of life and death. He was, in fact, invested with all the executive powers of the state. It was part of his duty to increase cultivation, to befriend the industrious husbandman, to appoint collectors of revenue, and, as we should say, to supervise public works, amongst which were the reservoirs, wells and watercourses, gardens and rest-houses for travellers. As the province was in charge of the *subadár*, so several *parganas* (tracts more or less resembling our *tahsíls* or sub-collectorates, but usually smaller) were in charge of the *faujdár*. The duties of this officer within his district were somewhat similar to those of the *subadár*, whom he was bound to assist. It is particularly mentioned that he was to coerce refractory *zamindárs*. There were separate judicial officers, the *mír ádil* and the *kázi*, but they probably left to the executive branch cases affecting the safety of the state, the public tranquillity, the land revenue, and the possession of land. The *ámil* or *ámilguzár* appears to have approached most nearly to the modern district officer. He was charged with the collection of revenue and the management of the land, including its valuation, the grant of agricultural advances, the promotion of the cultivation of the waste, and some miscellaneous functions, the nature of which may be inferred from the contents of his monthly reports, which were to include 'the condition of the subjects, *jágírdárs*, neighbours, and rebels, together with the market prices of goods, the rent of houses and shops, the state of dervishes and artificers, and every other remarkable occurrence.' The *tepukchi* was a sort of revenue assistant to the *ámil*, and had to obtain information from the *kánúngo* as to revenues for past years and the nature and capacity of the country. In cities the *kotwál* was an officer of police who saw to the protection of the inhabitants and to the execution of minute regulations resembling municipal bye-laws. Where there was no *kotwál* the duties of the post fell to be discharged by the *ámil*. There were other officials such as treasurers and clerks, and, of course, the village accountants. But further detail is not required.



The territorial divisions of which *subahs* were made up were known by various names, but the primary division was into *sirkárs*, and of the *sirkár* into *parganas*. We are familiar with the term Northern Sirkárs in the history of the Madras Presidency.

These particulars are mainly taken from the 'Ayín Akbari,' but a further insight is afforded by the description given by Grant Duff (vol. i. p. 294) of the manner in which the Moghals took possession of a conquered district at the time when the Deccani kingdoms of Bíjapur and Golconda were succumbing to the mistaken policy of Aurangzíb. The Moghal conquests in the Deccan were arranged in six *subahs*; there were several *faujdárs* to a *subah*, and the *ámil* of Akbar's time appears now to have been termed the *khálsa dewán*. Akbar abolished, or tried to abolish, the system of farming the revenues, and his instructions to *ámils* insist on their transacting business with each husbandman separately, thus anticipating by two and a half centuries the *ryotwári* system of Madras. But these district *dewáns* of the Deccan farmed out the lands to *deshmukhs* and realised the amounts from them. They also collected the revenue alike in lands paying revenue to the state and in those of which the revenue was assigned in *jágír*. The tenure of the *jágírs* granted to Moghal commanders in the newly acquired territories was seldom permanent; they were usually for a term of years, on specified districts, for support of troops. The Marhatta commanders, on the other hand, had a permanent tenure. The *faujdár* was allowed about 25 per cent. of the government collections for the maintenance of the district establishment.

In Bengal, about a century later, before we had made the native government a mere instrument in our hand, the

raja or *zamindár* of the district was the judge of the *faujdári* or criminal court; but he had to refer cases of a capital nature for the orders of the government at Murshidabad. He was also the judge of the civil court, and had been the judge of a special court for dealing with cases relating to the revenue or rent of lands; but the jurisdiction was transferred to a district deputy of the *dewán* or revenue minister at headquarters. This distribution of judicial business under the heads of *faujdári* or criminal, *dewáni* or civil, and *mál* or revenue, has lasted to the present time.

I have frequently used the expression *zamindár*, and it is now proper that I should define it. In the Punjab *zamindár* means simply a peasant proprietor, generally a member of one of the land-holding tribes who possess the country parcelled out amongst village communities. In the Gonda district of Oudh there are *village zamindárs* who differ from the *zamindárs* of the Punjab, because their tenures appear to have usually originated in the grant of the rája's rights over groups of villages. In the absence of any rule of primogeniture the expanding families of these grantees found it necessary to take to cultivation. There are also *village zamindárs* of Benares, referred to in the Bengal regulations of 1795, and identified by the authors of the Fifth Report with the headman of villages in other parts of India. And in the official parlance of British India *zamindár* means a person with whom a permanent settlement has been made, or who has acquired an estate permanently settled under the Bengal or Madras regulations. Not one of these meanings is that which the word conveys when the *zamindár* is considered as one of the institutions of the Moghal empire.

Apart from feudatory Rájpút states and others that were tributary, there were in most provinces of the Moghal empire Hindu chiefs who retained hereditary jurisdiction; 'the most submissive of this class,' Mountstuart Elphinstone tells us ('History,' p. 485), 'paid their revenue and furnished the aid of their troops and militia to the governor' (*i.e.* the *subadár*), 'and were subject to his control in cases where he thought it necessary, but were not interfered with in the ordinary course of their administration. The most independent only yielded a general obedience to the government, and afforded their aid to keep the peace; but these last were confined to strong countries, or large tracts bordering on a province.' These half-subdued chieftains were sometimes the descendants of ruling families who had sought refuge in



hills or wilds when Hindu dynasties were overturned by Muhammadan conquests; sometimes tribal chiefs of savage or semi-savage communities never brought under real control; sometimes the governors and officers of broken Hindu kingdoms who had asserted a precarious independence when aggression, strong enough to destroy but not to rule, had been followed by confusion and anarchy. Such were some of the *zamindárs* of the empire; and the theory was that they collected the revenue, both what they could be made to pay and what they were permitted to retain, on behalf of the government. In the 'Ayín Akbari' the *zamindárs* whom the *faujdár* was instructed to coerce when necessary were in general of these descriptions—men holding a fort or forts of their own, and with a rough militia, theoretically part of the imperial forces, but often as likely to be employed against them as with them. To these classes must be added farmers of the revenue, employed to carry on administration from motives variously corrupt, of greed on the part of government or its servants, or of reckless and cynical dislike of trouble, or sometimes, less ignobly, from the sheer impracticability of getting in revenue in any other way. The farmers might be petty rajas, no longer sovereign, and more or less ousted from their domains, compromising the theory of their complete dispossession by a sort of heavy quit-rent to the governor; or they might be hereditary Hindu officials of the country side, like the *deshmukhs* of the Marhatta country, who, we have seen, were sometimes made revenue contractors, and are identified by Grant Duff with the *zamindárs* of Bengal. Or, again, the worst kind of farmer might be a mere moneyed man, some merchant who took over the business of oppression as a trade to fill his purse. This does not, of course, exhaust the list. Court favourites, successful officials, and generally persons of influence might obtain the appointment of *zamindár*. The emperors, no doubt, affected to apply the name of *zamindár* to the feudatory or tributary chiefs; for instance, to the Punjab Hill rajas and to the rajas of Tanjore and Trichinopoly. But it is well to distinguish between chiefs or rajas who were sovereign in their own territories and paid tribute, and *zamindárs* proper, who were, by appointment officers of the empire, paid revenue, and were remunerated for the trouble of collection by a percentage on the revenue or by grants of land, or by both.

As time went on the general duties of the office became well defined. Besides paying the revenue, the *zamindár*

undertook to increase cultivation, prevent robberies ai murders, make good stolen property, keep high roads repair, and refrain from unauthorised exactions. Like other men, he seldom acted up to the ideal that was set before him. The article under the head ZAMINDÁR in the glossary to the Fifth Report prepared by Sir Charles Wilkins, the orientalist, though mainly applicable to Bengal, will serve as a summary of this subject:—A *zamindár*, he says, is 'an officer who, under the Muhammadan Government, was charged with the superintendence of the lands of a district financially considered, the protection of the cultivators, and, the realisation of the government's share of its produce, either in money or kind; out of which he was allowed a commission, amounting to about 10 per cent., and occasionally a special grant of the government share of the produce of the land of a certain number of villages for his subsistence called *nánkár*. The appointment was occasionally renewed; and as it was generally continued in the same person so long as he conducted himself to the satisfaction of the ruling power, and even continued to his heirs, so in process of time and through the decay of that power and the confusion which ensued, hereditary right, at best prescriptive, was claimed, and tacitly acknowledged, till at length the *zamindárs* of Bengal in particular, from being the mere superintendents of the land, have been declared the hereditary proprietors of the soil, and the before fluctuating dues of government have, under a permanent settlement, been unalterably fixed in perpetuity.'

The term *nánkár*, from the Persian *nán* bread, and *kár*, business, literally bread for work, was applied also to assignments of land or revenue made for the subsistence of village or *pargana* officers. Besides these grants for subsistence there were throughout the empire many other land revenue assignments, under a great variety of names in different parts of the country. Most of these could be brought under the heads of religious or charitable endowments or of service grants, like the *jágírs* granted on the condition of providing a certain number of troops when required. The authors of the Fifth Report trace the office of *zamindár* itself as far back as the time of the Hindu rajas. They say it originally went by the name of *chaudari*, which was changed by the Muhammadans for that of *krori* or collector of a *kror* of *dams* (Rs. 250,000) in consequence of the land being divided into charges yielding that amount; and it was not, they represent,



till a late period of the Muhammadan Government that the term *krori* was superseded by that of *zamindár*. But it seems quite clear from the manner in which *zamindárs* are spoken of in the 'Ayín Akbari' and other evidence, as, for instance, the information given in the Fifth Report itself regarding the *zamindárs* of the Northern Sirkárs, that the *zamindári* status originated in other ways besides the conversion of the old Hindu *chaudaris* into Muhammadan officials.

On what was really Hindu in the status of the emperors something more remains to be said. The evidence of Abul Fazl, a highly esteemed officer of the latitudinarian Akbar, is perhaps open to some suspicion on such a point; but it is worth mentioning that in the exordium of the 'Ayín Akbari,' after enumerating the four kinds into which the people of the world may be distributed, namely, warriors, artificers and merchants, the learned, and husbandmen—a classification evidently suggested by the Rájpúts, Vaisyas, Bráhmans, and Sudras of the Hindus—he goes on to describe the king as a person who puts each of these classes in its proper place. This entirely accords with the spirit of the Institutes of Manu, so rigidly conservative of the limits of caste; and with the conception of the king in the Institutes as the protector of the several castes.

The Institutes of Manu, now commonly described as a Bráhmanical account of Hindu institutions, as, in Bráhmanical opinion, they ought to be, are accepted by Elphinstone as giving a correct view of those institutions in some remote age; and in this estimate of their historical value we may be content to follow him. They obviously reflect Bráhmanical ideas which prevailed in some part of the country during some far distant period long antecedent to Muhammadan supremacy. We may therefore usefully note that some of the ideas which they express were still more or less operative in the time of the Moghal empire, and indeed that some of them have lasted on right through that time to our own day. The king, according to Manu, must be a man of the military class, or, as we should now say, a Rájpút. The emperors did exactly what a modern raja does whose pedigree is open to criticism; they married into Rájpút families. In the forefront of the duties of the king Manu places the administration of criminal justice—the king is indeed described as the god of criminal justice. To this day the exercise of criminal jurisdiction is popularly regarded as the chief mark of governmental authority. The

*hákim*, the giver of orders, the local administrator, whatever else he may be, is at all events a magistrate or a judge. The local distribution of officials, the distinction between civil and criminal justice and the division of public business amongst several ministers are all inculcated in Manu ; and all are features of the British system and were features of the system of the Moghals. The Institutes prescribe that the king shall appoint a lord of one town with its district, a lord of ten towns, a lord of twenty, a lord of a hundred, and a lord of a thousand. 'Let the lord,' it is said, 'of one town certify of his own accord to the lord of ten towns any robberies, tumults, or other evils which arise in his district and which he cannot himself suppress; and the lord of ten to the lord of twenty. Then let the lord of twenty towns notify them to the lord of a hundred; and let the lord of a hundred transmit the information himself to the lord of a thousand townships.' Do we not see here the *zamindár* reporting to the *ámil* or *faujdár*, and the *ámil* or *faujdár* reporting to the *subadár*? Nay, at the present time does not the village headman report to the *tahsíldár*, the *tahsíldár* to the deputy commissioner, and the deputy commissioner to the commissioner of division? The lords of towns are to enjoy the produce of certain portions of land, very much as the village and *pargana* officials and *zamindárs* had their *nánkár* and the *subadárs* their *jágírs*. There are to be superintendents for large towns, the forerunners, perhaps, of the Muhammadan city superintendents—the *kotwáls*. We see in the Institutes traces of taxes on petty shopkeepers and of forced labour—both of them things with which we have had to deal. The king, it is ordained, is to take 'of grain an eighth part, a sixth, or a twelfth, according to the difference of the soil and the labour necessary to cultivate it.' The principle of the land-revenue settlement made by the Hindu minister Todar Mal under Akbar was to ascertain the quantity of produce due to the government, and to commute it for a money payment; and for this purpose lands were classed according to their fertility, and allowance was made for the expense of reclamation. Our own land revenue settlements proceed on a principle which is fundamentally the same, though we have obscured it by describing our due as a share of the rent instead of a share of the produce, and have rightly striven to avoid discouraging agricultural improvement.

In the earlier days of our rule the question whether the king or the *zamindár* was the proprietor of the soil was an absorbing matter of official controversy. The issue was really a false one; for in truth neither the king nor the *zamindár* was the sole proprietor. Proprietary rights were in general shared between the king and the cultivator or immediate occupant; and the *zamindár* was employed for political or administrative reasons to exercise certain rights of the king in an assigned tract of country. It is right, however, to note that the authorities for the opinion that the sovereign was the owner of the soil are arrayed by Mill ('History of India,' i. 308); and Wilks remarks that the European travellers who visited the court of Aurangzíb in the latter part of the seventeenth century unanimously denied the existence of private landed property in India.



Here, as in many other difficulties, I seem to have found precisely the clue which I wanted in Mr. Benett's report on the Gonda district of Oudh. From the proximity of Oudh to the seat of the empire and the long duration of native rule under the protectorate, that province is likely to supply good evidence of the working theory of the Moghals. The Nawábs of Oudh were originally *subadárs* or governors of a province under the Delhi emperor. The theoretical position of the Muhammadan government of Oudh 'was accurately formulated,' says Mr. Benett (p. 53), 'by the maxim that the state was the sole *zamindár*; the problem was how to reduce this to practice, in spite of the existence of a numerous and powerful body of *zamindárs* already in possession.' The *zamindárs* already in possession were the old rajas and the so-called village *zamindárs*, to whom the rajas had assigned their rights. The rights claimed by the Moghals were therefore the ancient rights of the Hindu rulers of the country. These were the rights which they deputed their official *zamindárs* to exercise on their behalf and in their interest; and the case was the same whether they left an old raja in possession as *zamindár* or *talukdár*, or put in a speculator.

The emperors no doubt assumed the right of dealing with the waste, as is clear from the instructions to officers in the 'Ayín Akbari' and the terms of the *zamindári sanad* of appointment. When in the extensive plains of India one-third of the land capable of cultivation lay waste, it was unlikely that the power of government or its officers to make grants of the waste lands at pleasure would be called in question by anyone. I need not enter here on problems

subsequently arising from pressure of the population on the soil, or where large tracts of country have been completely parcelled out by tribes, retaining tribal cohesion and settled in village communities. It is easy to see how, under such circumstances, a sense would be felt of property in the village waste; and how, where that sense of property was felt, village boundaries, like the boundaries of petty principalities, under different conditions, would be well known and jealously guarded. Apart from the rights over the waste assumed by the emperors, the position seems to me to have been very accurately summed up in the answer made by Ghulam Husain Khan, the author of the 'Siyár-ul-Mutuákharín,' to one of the interrogatories of Sir John Shore, afterwards Lord Teignmouth. The emperor, said this intelligent witness, the son of a Názim of Behar, is not so far lord of the soil as to be able, consistently with right and equity, to sell or otherwise dispose of it at his mere will and pleasure. He is proprietor of the revenue, but he is not proprietor of the soil. Hence when he grants *jágírs* (and other analogous tenures) he only transfers the revenue from himself to the grantee. Assuming that the revenue was a share of the crop commuted for a money payment—and we have seen that this was actually the case in the settlement made by Todar Mal under Akbar—these words substantially describe the status of a Hindu raja. It will be easily seen that they imply a joint proprietorship. I know of no stronger proof of the vitality of the old Hindu idea that the cultivator, duly meeting the demand of the state, must not be dispossessed of the land he occupies than the fact that in Bengal, after centuries of Muhammadan rule, after the old *zamindárs* had been ousted in a wholesale way by one of the emperor's viceroys, and their successors had been ousted in an equally wholesale way by our sale laws, and we had omitted for about ninety years to give the needful protection to the cultivator, we have been compelled to recognise by the legislation of 1885 the occupancy rights of settled *ryots*.

After all, notwithstanding the immense variety in detail of forms of government, the political imagination of mankind does not seem to be very fertile in the invention of radically distinct types; or perhaps we should rather say that in the arrangements of states, as in the organisation of species, there are certain leading types of structure which underlie individual variations of form in vast groups or families. Thus in countries where the idea of representative



government has fixed its hold, we see it regulating not merely sovereign assemblies, but also the governing bodies of colonies and dependencies, local and municipal boards and committees, and the innumerable companies and societies which are formed on principles of voluntary association, for trade and political objects, for instruction, charity, relaxation, and the propagation of religion. So it is also with countries where administration is bureaucratic or centralised, based on the principle of territorial charges assigned to or it may be inherited by a hierarchy of individual officers. In the Indian village the hereditary headman, the *patel, lambardár*, or *mukaddam*, as he is variously called, is the principal executive functionary, and the *karnam*, or *patwári*, the village accountant, is theoretically acquainted with all particulars relating to the occupation of the village lands, their capabilities, produce, and revenue, and the manner in which the produce is shared. For Marhatta districts, comprising a good many villages, similar functions, as we have seen, were discharged by the *deshmukhs* and *deshpandyas*. These were identified by Abul Fazl with the *chaudaris* and *kánúngos* of the Moghal provinces. The same distinction between police and general management on the one hand, and revenue affairs on the other, is perceptible in the appointment of *faujdárs* and *ámils*, or of *faujdárs* and local *dewáns*, for subdivisions of *subahs*; and of *nawáb názims* and *subadárs*, and principal *dewáns* for provinces. The *zamindár*, it is true, united some of the functions of both *faujdár* and *ámil*. But he merely represented an extremely old idea applied in a novel fashion. He stood in the place of the old petty tributary raja. Sometimes he was such a raja by descent. Within his *zamindári* he took the government dues, arranged for the cultivation of waste lands, and, so far as he acted up to his duties, protected the people. The Muhammadans, though they destroyed many principalities and ousted the rajas, or reduced them to merely official positions, did not invent very much. In the *zamindáris* they copied the old Hindu *ráj*; in other subordinate territorial charges they copied the old hereditary village and rural offices of the Hindus. Naturally as foreigners and conquerors, they gave the most important posts—as a rule, though not invariably—to men of their own races and faith; and they resisted the hereditary tenure of office, except in the lower ranks, where Hindus were in possession; though in the end the hereditary prin-

ciple was too strong for them and led to the peculiar status of the *zamindár*, as we found him, and to the actual or substantial independence of the great provincial governors.

We are now able to bring before our minds a general idea of the Moghal empire at the time of its vigour. It consisted of extensive provinces under high officers of the state, portioned out into districts and other subdivisions, administered by local officials, the higher authorities amongst them being appointed by government, while the village officers held by the hereditary tenure which had come down from Hindu times. In addition to the provinces thus directly administered, there were a great number of dependent principalities of varying size and importance, not disputing the theory of their allegiance, but usually measuring their obedience by their strength or remoteness and other opportunities of resistance, and thus exercising various degrees of power. In many hilly or broken parts of the country there were wild tribes, never really subdued, who not infrequently disturbed the neighbouring settled tracts by raids and depredations. In the directly administered territory the land revenue of large tracts was often alienated on conditions of military service, and other grants of land revenue were made as remuneration for services of a civil nature, and in support of religious persons, or of religious or charitable institutions. The village officers also enjoyed their hereditary assignments. Attempts were made, sometimes successfully, to settle the land revenue for terms of years on a system which had prevailed in the country in Hindu times, and does not differ greatly in principle from that which is followed now. But in the difficulties which arose in the government of so vast and various an empire resort was often had to that conclusive proof of administrative incapacity or indifference, the adoption of the plan of farming the revenue; and in many parts of the country the administration, such as it was, came to be in the main carried on by the *zamindárs* whose status and functions have been described.

If Aurangzíb, instead of first undermining and then overturning the Muhammadan states of the Deccan, had brought them into the imperial system, as a bulwark against the rising Marhatta power, the empire thus composed might have had a longer existence. It was, however, dismembered during the course of the eighteenth century by the incursions and conquests of the Marhattas, the invasions of Nádir Shah and Ahmad Shah Durání, the turbulence of the Sikhs, and



the rebellions of the provincial governors. We thus received a shattered framework of the pattern sketched above; and in putting together the pieces on a new model we have retained a good deal of what is old. Now, as then, the empire is constituted of great provinces officially administered and of dependent states exercising various degrees of sovereignty. In the directly governed territory there are still in many places large *jágírs* and other assignments of land revenue. The *zamindárs*, changed into proprietors of permanently settled land, still survive, but without administrative functions. The Governors, Lieutenant-Governors, Chief Commissioners, and Governor-General's Agents have taken the places of the *subadárs*, the district officer has superseded the *ámil*. The villages with their petty officers live on. The *kánúngo*, after being abolished as useless in Bengal, has been revived elsewhere and made much of as part of the latest revenue policy of the government of India. The Boards of Revenue and Financial Commissioners may be compared with the old provincial *dewáns*; in the supreme government itself the secretary in the revenue department may be fairly enough described as the head *kánúngo* of the empire. The Foreign Office is known as the *múnshi khána*, a name that may be said to show its connection with the *mir múnshis* or foreign ministers of native states. It is hardly necessary to add that in some matters—in the recognition and application of principles, in precision of ideas distinguishing and conferring or acknowledging sovereign or delegated powers, in the discriminating definition of responsibilities, in the automatic co-operation of departments and local authorities, which is efficient in proportion to the excellence of official discipline, in military strength, and in the command of the country derived from railways and telegraphs and other public works—between the present and the past there can be no comparison.

# CHAPTER X

## INDIAN INSTITUTIONS AND FEUDALISM

ALMOST everywhere in the India of our predecessors we see the land as the basis of political institutions. If I am asked why sovereignty was territorial or tending to become so, why it was based on the land, and why it often included some vague notion of suzerainty, the most general answer I could give would be to say that the Indian evidence I am about to set forth seems to confirm the remark of Bishop Stubbs that, though feudalism was of distinctly Frank growth, the principle that underlies it may be universal. In previous chapters I have avoided as much as possible the discussion of the numerous cases where some intermediate authority was interposed between the ruler and the people, because I wished to take first the simpler cases where the nature of the tie between prince and peasant was particularly clear. Here, however, we shall frequently have to encounter the more difficult analysis of complicated facts which were the Indian substitutes for sub-infeudation or the formation of fiefs. And as we follow that analysis I hope it will be sufficiently proved that, though there was not anywhere in India a completed feudal system, there were, in almost every part of the country, strong tendencies making for feudalism, or, if I may say so, for various types of feudalism, the types differing from one another in different regions.

Towards the end of the last century Mr. Lionel Place was the officer in charge of that part of the possessions of the East India Company on the Madras coast which now forms the Chingleput district. In the course of a well-known report published in the collection of papers on *mirási* right he writes, on June 6, 1799: 'Were I called upon to define the term *mirási* and its properties, I think it bears an exact analogy to a *fee*. I would call *mirási* a freehold estate of inheritance, and a *mirásidár* a tenant in fee simple, holding of a superior lord on condition of rendering him service.



His lord is the *sirkár* (or government), his estate the usufructuary right of the soil, and the service he owes, a renter of a stated portion of the produce of his labour.' The elder Mill is extremely severe upon a somewhat similar application of feudal terms. In 1773, as a part of the long series of discreditable occurrences which culminated in the imprisonment and death of the governor, Lord Pigot, the officers of the Madras Presidency attacked and took Tanjore. The dispossessed Raja of Tanjore had assigned the seaport town of Nagore to the Dutch as security for money lent to him. An excuse was sought to oust the Dutch, and it was argued that, as the Raja of Tanjore held his lands of the Nawáb of Arcot in fee, he could not, agreeably to the feudal system which, it was said, prevailed all over India, alienate any part of his country to any other power without the consent of his liege lord, the ruler of the Carnatic. On this, James Mill observes that such an idea as that of land held in fee could hardly enter into the mind of a native Indian, and that such a thing as a feudal system or a liege lord never had a moment's existence in India, nor was ever supposed to have, except by a few pedantic and half-lettered Englishmen, who knew little more of the feudal system than the name. Colonel Tod, however—who was anything but a pedant, and studied the European part of his subject in Montesquieu and Gibbon's miscellaneous writings and Hallam—persists, with an express acknowledgment of the danger of seeming resemblances, in describing the Rájpút system as a 'pure relation of feuds,' and devotes five chapters of his invaluable work to a sketch of a feudal system in Rájpútána. Mountstuart Elphinstone, also, after explaining that the Marhattas had fiefs but no feudal system, goes on to say that it is impossible not to give the name of feudal to the institutions of the Rájpúts. 'With them,' he says, 'the founder of a state, after reserving a demesne for himself, divided the rest of the country among his relations, according to the Hindu laws of partition. The chief to whom each share was assigned owed military service and general obedience to the prince, but exercised unlimited authority within his own lands. He, in his turn, divided his lands on similar terms among his relations, and a chain of vassal chiefs was thus established, to whom the civil government, as well as the military force of the country, was committed.' With characteristic insight Elphinstone adds: 'This plan differs from the feudal system of Europe as being founded on the principle of family partition.' Finally, Sir

Alfred Lyall (' Asiatic Studies,' pp. 211–13), with admirable force and clearness, points out how and why Colonel Tod was wrong. What held together Rájpút political society was the tie of blood, not the tie of contract as between vassal and lord; and the institutions described were by origin primitive and, in fact, præ-feudalic.

In the comparison of feudalism with Indian political institutions these passages show very clearly phases of thought which may often be successive. On first examination of some part of the chain of relations linking the Indian peasant with the prince or his representative, and the prince with the paramount power, we are prone enough to assume in what we discover identity with things we have known or heard of in Europe. Presently we find out our mistake, condemn our fancied analogies as wholly unreal, and perhaps are even tempted to believe that it is positively mischievous to try to decipher any analogy. In the end, we probably come to the conclusion that the likeness which first attracted our attention is more than superficial; that there are sound analogies of a certain kind, but that they differ very materially from those of which we originally imagined the existence.

The degree of value which we are likely to attach to discoverable analogies depends a good deal on the view we take as to the object of historical studies. History itself has a growth of its own; the annalist gives place to the literary historian, who intersperses narrative with general reflections, or makes it the means of intellectual enjoyment by the attractions of picturesque description and style. In its later development history becomes philosophical; assigns greater prominence to the causes of characters and occurrences; deals with the influence of ideas and the general political condition of nations at different epochs; and attempts to portray the origin and nature of civilisation in the progressive societies of the West. Then, as in many other departments of research, the whole field is seen to be too wide for the span of individual effort; and the co-operation on which further progress depends is secured by the specialisation of study. Extraordinary elaboration is bestowed upon comparatively limited periods of national growth; constitutional history is more decisively separated from political history; numerous works appear which are professedly or practically histories of, or historical studies upon, philosophy and intellectual development, art and architecture, language and



literature, commerce, agriculture and land tenures, laws, customs, and institutions. All this development is going on with prodigious rapidity in our own day in an intellectual atmosphere charged with ideas generated by the investigations of physical science. We thus begin to feel that the old notions of the objects of history are changing; that history may ere long be transformed into a handmaid of science; and that the materials provided by historians may be used for the construction of theories of social progress. We are looking, in fact, for a new unity of mankind founded on laws of human development believed to be common to the whole race. We are, perhaps, prepared to accept the ideas that there are successive phases in the passage from mere savagery to civilisation; that these phases are ascertainable; and that they will show a certain general resemblance to each other in whatever continent they occur. At the same time, if this is our view, we should not suppose that, in the history of every society, every possible stage of progress will be distinctly marked, or that the growth in any particular instance will in every detail exactly resemble the growth in any other. On the contrary, we should provisionally conjecture that it is with societies as with other organisms; similar circumstances will produce similar capacities, and preserve them by the law of the survival of the fittest; but no two societies will be exactly alike; and particular institutions, like organs in the animal frame, will be fully developed in one case, rudimentary in another, atrophied in a third, and in a fourth perhaps wholly absent. Still these varieties will not be such as to leave us in a wilderness of single instances; and we should believe that as inquiry advances we shall see more and more clearly the types to which the varieties of social growth tend to conform.

Taking such a view, we should neither expect to find the exact parallel of feudal institutions anywhere in India, nor should we be surprised to find institutions so nearly resembling those of feudal Europe that the likeness has deceived even learned investigation. But on any theory of human society which admits that the same causes under different conditions will not produce the same effects, it is easy, after reading what has been written by Sir Henry Maine and Sir Alfred Lyall, to point out precisely why it is that what we may term the nascent feudalism of India does not and cannot exactly resemble feudalism properly so called.

I have not been able to find any compendious de-

scription of feudalism better or shorter than that given by Bishop Stubbs in his Constitutional History; I will therefore quote it in this place. 'In the form,' he says (vol. i. pp. 251, 252), which feudalism 'has reached at the Norman conquest it may be described as a complete organisation of society through the medium of land tenure, in which from the king down to the lowest landowner all are bound together by obligation of service and defence, the lord to protect his vassal, the vassal to do service to his lord, the defence and service being based on and regulated by the nature and extent of the land held by the one of the other. In those states which have reached the territorial stage of development the rights of defence and service are supplemented by the right of jurisdiction. The lord judges as well as defends his vassal; the vassal does suit as well as service to the lord. In states in which feudal government has reached its utmost growth the political, financial, judicial, every branch of public administration is regulated by the same conditions. The central authority is the mere shadow of a name.'

It is probable that a full explanation of the origin of this complex system of proprietary, personal and public law has yet to be written. But it is certain that, though the spread of feudalism was at one time rapid, its growth was extremely slow. It was historically the product of the Frankish conquest of Romanised Gaul; and the events and circumstances which gradually gave it shape extend from at least the fifth to the tenth century. Indeed, if we endeavour to separate into its component materials the amalgam formed in these ages by the fusion of customs and institutions of diverse origin, we see that the materials of feudalism date back to far earlier times. Teutonic usage itself exhibited a spontaneous impulse towards feudal arrangements. The history of the Roman law, which was combined with the barbaric customs, carries us back to a tribal stage of society comparable with, if not similar to, the social formations described by Cæsar and Tacitus, or those in Ireland and Scotland which have been encrusted with a new political surface in very recent historical times, or others again now open to view in many parts of our Indian empire. The old personal relations between chiefs of warrior bands and their immediate followers, the Roman law of patron and client, the practice of commendation, the conquests and colonisations of German tribes in their own country, the military tenure of the



Roman veterans on the river frontiers of the empire, the great Roman estates cultivated by gangs of slaves, the spread of primogeniture, and the grants of immunity uniting the possession of land with the right of judicature—all these elements may have had their part in the resulting combination.

It is one thing to perceive some of the ingredients into which feudalism may be resolved; it is another far more difficult thing to say which of the ingredients is Roman and which barbaric in origin. But it is safe to assert that nothing in feudalism which clearly belongs to the influence of late Roman law could possibly appear, as a consequence of that cause, in the political institutions of India before British rule. In any feudalising tendency which these institutions may show, that influence at least is entirely absent. For this reason alone the nascent feudalism of India could not precisely resemble the perfected feudalism of the West. And there is another influence which has had no share in the formation of Indian political institutions, but which powerfully affected society in the centuries when European feudalism was growing, and that is the influence of the Christian Church. It was natural that the protection of the Church should be sought in days of tumult and anarchy; it was consonant with the principles of the Church that slavery should at least be mitigated. Much more than this, the Church preserved the Latin language and contributed to the preservation of the idea of formally enacted law. The three things which most clearly distinguish the inchoate feudalism of India from the perfected feudalism of Europe are the absence of the influence of Roman law, the absence of the influence of the Church, and the absence of the idea that society ought always to be governed by enactments of some kind. This idea, I think, was a heritage from the Roman empire; and the Church was probably a principal agent in preserving it.

Though the growth of institutions of a feudal type cannot have followed the same course in India and in Europe, because the beginnings of feudalism in India were not subjected to the influences of the late Roman law and the Christian Church, it is not safe to use coincidence between Indian and Teutonic customs as a touchstone to discriminate between what is barbaric and what is Roman in the composition of Western feudalism. We may be tempted to argue that, because a given practice is certainly Indian, therefore it is not

Roman; and that if it is part of feudalism, it must have been imported into the feudal system by the German conquerors of the empire. But the argument is not sound; for early Roman customs might coincide with Indian customs, and, surviving in the late Roman law, might reach feudal Europe by that route. The coincidence, however, of a Teutonic and Indian custom will always suggest hesitation in admitting the purely Roman origin of the feudal institution in which the custom is embodied. The fact is that such coincidences really point to probable similarities in modes of social advance at least as wide as the spread of Indian and European races; and these indications are strengthened where the analogy can include the early Roman law. I take it that for those who believe that the principles of evolution apply to human society the special value of the Indian evidence consists in its capacity for pointing the way towards general laws of human development, or, at all events, to laws of growth common to the most remarkable societies of the East and West.

We may regard feudalism from the separate points of view of the jurist or economist on the one hand, or of the constitutional historian on the other. We may look into the interior of the manor or fief and endeavour to decipher the condition of the peasantry and their relations to the *seigneur* or lord of the manor; or we may inquire how feudalism determined the relations of vassals and suzerains; how the great fiefs were related to one another and to the central power; in what sense feudalism supplied for a time the place afterwards filled in Europe by international law and constitutional law. Or, again, we may take some of the leading characteristics of feudalism, such as tenure by military service, some of the well-known feudal incidents or the general scheme of basing all public and some personal relations on property in land. From all these points of view India will supply us with analogies. The comparison of the manor with the Indian village community has been carried to a certain length by Sir Henry Maine; and, though more remains to be said on that subject, this treatise is not the place for any full discussion of it. In Indian history and in India of the present day tenures abound in which one element is the condition of military service; we may instance the Muhammadan *jágírs* of the Deccan, the interior arrangements of the Marhatta Confederacy, and of some of the Punjab Hill states, and the tenures of the Rájpút *thákurs* or



barons; but tenure on condition of military service does not by itself make feudalism. The supposed similarity of certain Rájpút customs to the feudal incidents of relief, escheats, aids, and wardship was one of the circumstances that misled Tod when he made his positive assertions as to feudalism in Rajasthán. The comparison of the native states of India with the præ-feudal or feudal states of Europe has not, so far as I know, been regularly attempted; but it is perhaps one of the next objects which should engage attention in the process of illustrating problems of Western history by experience gained in the East. At one end of the scale is the village community or the Roman *villa* or farm, changing in Europe into the manor, and then finally melting away in the vast landed estates of an existing aristocracy. At the other end of the scale are the gradually consolidated monarchies of France and England, and the great empires of Charlemagne and the Moghals, of Rome and Great Britain. Between the village or manor and the monarchy or empire stand the dukedoms, the counties, the actually or nominally dependent principalities, or others destined to dependence or absorption in course of time, the Saxon kingdoms vaguely acknowledging the supremacy of a Bretwalda, the counts of Flanders, Champagne, and Vermandois, the dukes of Normandy, Brittany, Burgundy, and Aquitaine regarding themselves as the peers of Hugh Capet, the Rájpút states paying tribute or rendering service to the Delhi empire, the rebellious governors of that empire affecting to legitimatise revolt by the language of submission, and the hundreds of protected and dependent states forming part of that highly complex result of the fusion of modern ideas with archaic or quasi-mediæval customs which is known by the name of the British empire in India.

In this wide field of research I shall only attempt to follow up a few topics of interest not too remotely connected with the general subject of this book. I shall first mention certain Indian analogies to some of the constituent elements of feudalism in the interior structure of the manor or fief; and I shall then compare at some length various Indian grants of rights over land with the benefices, that is, with fiefs in their early form before feudalism was fully developed. The next step will be to point to some Indian practices quite distinct from commendation, but nevertheless producing or tending to produce similar political results; and lastly I shall sum up some results of feudal tendencies in India and

briefly indicate in what relation they stand to our Indian protectorate as it now exists.

In the account of the Punjab Hill raja extracted in a previous chapter from Sir James Lyall's Kángra Settlement Report it will have been noticed that the raja is described as, in a certain sense, the manorial lord of his whole country, and that the regular landowners, no less than the artisan classes, were liable to be pressed into service of some kind, military or menial. In looking more closely into the tenures in the part of the country to which this description applies—that is to say the Kángra Hills and Kulu—we find a great deal of evidence which may be usefully considered in connection with Sir Henry Maine's book on 'Village Communities,' and Mr. Seebohm's excellent work on the 'English Village Community.' In particular, in many of the territories far back in the Himalayas, some of them bordering on Thibet, in parts of Chamba, in Bangáhal, in Kanáwar, in Spiti and Lahaul, in parts of Ladákh, in Núrpur and Jaswán, a tenure or traces of it have been noticed which may be described as a family holding of an allotment from the arable lands. In Kulu the theory appears to have been that each head of a household was entitled, in return for rent or service due to the state, to a lot or share of arable land sufficient to support one household. In Bangáhal, where we probably have the primitive type of the tenure, it is known as a *vand*. Each household has an equal share in each of the patches of cultivation which are scattered over the steep hill sides and made up of small terraced compartments. To ensure equality the share is taken in several little plots situated in every corner of the cultivated patch; and if the patch was injured by landslip, flood, or avalanche it was re-divided by lot. The people of the village are not of one stock. They do not hold on ancestral shares like, for instance, the old Velláler *mirásidárs* of the Madras Presidency. In language which has now become popular, the village is not a mark. Under the rajas the *vands* were held almost rent free, in consideration of the holder furnishing one man for each *vand* for military service. The people, however, were frequently impressed to carry loads. The *vands* were not divided among sons; the elder sons went out into the world or were provided by the raja with other *vands*. The youngest son stayed at home to succeed his father. In Kulu the tenure was called a *jeola*. Usually half of it was held revenue-free in lieu of military service; but sometimes a family holding only



one *jeola* furnished two men for service and got the whole *jeola* revenue-free. Here also the lot was handed down undivided from generation to generation and the paternal house and land passed to one son only.

Sir James Lyall notices in his report that this tenure bears some resemblance to the Saxon hide, and adds that it was probably popular in origin, 'the theory of the land belonging to the raja being superinduced, as the right of the feudal lord was in England.' The tenure is certainly like the hide in so far as that was originally the normal holding of a free family. It also resembles the hide in being used as a unit of assessment, both for military service as above explained and, when the Moghals asserted themselves in the hills, to a certain extent by the officers of the Moghal empire for purely fiscal purposes. At all events in Jaswán and elsewhere, Todar Mal, the already mentioned finance minister of Akbar, is said to have invented as a means of assessment the *bher* which paid twenty-six rupees and a small grain rent, and was nearly, though not quite, identical with the *vand*. The tradition is worth mentioning because it suggests that a Roman official making his assessment in Britain might easily take the family holding, which afterwards became the hide, as the handiest unit of assessment instead of the more usual unit of the *jugum*, that is, the area which was supposed to be ploughed by a single or double yoke of oxen. In the mode of descent the tenure resembles the servile *virgate* or yard-land, which, as defined by Mr. Seebohm, was 'the normal holding of the *villanus* with two oxen in the common plough of eight oxen—a bundle of mostly thirty scattered strips in the open fields.' But though in impartibility and in composition from scattered plots the *vand* or *jeola* and the *virgate* are alike, the *vand* or *jeola* is not a servile tenure. Mr. Seebohm relies much on the argument that the permanent succession, generation after generation, of a single holder to the indivisible bundle of strips called a yard-land or *virgate* seems to have implied the servile nature of the holding. The village communities taking equal lots would, he thinks, have made equal division among heirs. The *virgate* appears to have been kept undivided in the lord's interest; he did not want more than one man at a time to till the allotment. It is at all events remarkable that we find the same indivisibility in a place where the tenure is undoubtedly free. The *jeolas* of Kulu are held by Kanets, and by Bráhmans who have taken to the plough; and the Kanets,

though not a high caste, are not serfs, but the owners of an inheritance, a *wárisi*, in the soil. The *jeola* is their property. Below them socially are the Dághis, bound to menial service, but also owning property in the same way.

Mr. Seebohm points out the connection between the tenure of the Saxon *gebur* or serf and the custom of his being provided by the thane with an outfit of which the most important part was a yoke of two oxen. Possibly this clue, if followed up, might lead us back to the times when society was tribal and pastoral, and its wealth consisted almost entirely of cattle; when, perhaps, as in the Irish tribe, the free tribesman by taking stock became the vassal or man of his chief, owing him not only rent but service and homage. However this may be, the *jeola* tenure appears to be entirely unconnected with the gift or loan of cattle. A class of people is, indeed, found in Kángra who are employed to cultivate the lands of Bráhmans, or Rájpúts, or traders with ploughs and oxen furnished by the landholder. They are known by various names taken from the share of the gross outturn which they are allowed to retain. But these men are engaged for the year only and have no tenant right. The case is one of the beginnings of contract, not of a status arising out of any sort of commendation. The single succession in the *jeola* tenure may have originated in the equality of tribal families and the difficulty, as the families increased, of finding fresh allotments in a mountainous country where cultivation is restricted to the practicable slopes. But it was certainly manipulated by the Kulu rajas to serve their own purposes, to regulate and simplify the demands for rent and service, and to make these demands correspond with the amount of land held by different people. There are traces of impartibility of tenure in the Welsh tribe. On the death of the free owner of a family holding the heirs retained it jointly for three generations, and the homestead went to the youngest son, the others having new homesteads found for them on the family lands. If the Romans when they came to settle on tribal lands in Britain found customs of this kind in existence, it is not hard to see that the officials administering the *ager publicus* and the owners of the *villæ* into which some of the cultivated lands would be divided, might seize upon such customs and more or less authoritatively give them a new shape to suit their own views and interests as to the conditions of cultivation.

The arguments of Mr. Seebohm are directed to show that



there is no room for the theory that the Saxons introduced everywhere free village communities on the system of the German mark, which afterwards sank into serfdom under manorial lords. The Kángra evidence and a great deal of other evidence from other parts of India at least suggest the possibility that institutions of a manorial type with distinctions not unlike those between the lord's *demesne* and the land in *villenage*, or, in Saxon times, between the *thane's inland* and the *geneat-land*, may arise in tribal territories, in which the early tribal tenures still prevail, and the later village community, settled on the land and held together by the tie of common descent, real or imagined, has not yet been developed. It has been supposed that in England the manorial group succeeded the village group, and that one element in the change was that the waste or common land of the community became the lord's waste. But that the waste, actually or potentially, belongs to the lord's domain, subject to the rights of pasture and gathering firewood, enjoyed by certain tenants, hardly differs, if allowance be made for the importance of other kinds of forest produce besides firewood in the Kángra and Kulu Hills, from the theory of the Kángra and Kulu rajas; and one of the chief characteristics of that part of the country is the absence, in the interior of the hills, of the true village community found in great numbers and almost typical perfection in the adjoining Punjab plains.

I will not here pursue any speculations as to the origin of the English manor. If I were to do so I should probably be led to the conjecture that the Romans like ourselves came upon a variety of tenures in different places, some of them still purely tribal, some of them perhaps village holdings with a tribal and sectional connection of descent amongst the villagers; and that the Romans again like ourselves, by the application of their law and the strength of their grip upon society, crushed varying tenures into single types over great ranges of country. But any such conjectures apart, we can plainly see in the Kángra and Kulu Hills not, indeed, feudalism itself, but many of the elements which go to make up feudalism. There seems no reason to reject the local tradition that the Rájpúts, Bráhmans and Khatris of these hills are the descendants of invaders or settlers from the plains, and that the Thákurs, Ráttis, Kanets, and Girths are either indigenous in the hills or of mixed race and indigenous by the half blood. There are at least

traces here of the conquest of race by race or of tribe by tribe that lies at the root of feudalism. While tribal organisation still for many purposes prevails, the land has superseded kinship as the basis of society. Military service is exacted in lieu of land rent; and the unit of assessment—for military tenure, as shown by later money commutations, is really a form of taxation in kind—is, as in early Saxon times, the family holding. All these elements of feudalism co-exist or lately co-existed in a part of the country where, so far as is known, there never were any village communities, and where there never was any Roman occupation, nor ever could have been any Roman estates.

I may add, with reference to the great share taken by the churches and monasteries in the process of European feudalisation, that the hill rajas freely alienated lands as endowments in perpetuity to temples and idols. The theory was that the raja divested himself of his lordship or proprietorship and conferred it upon the idol or shrine, and the cultivators thenceforward paid rent and did service in respect of the alienated lands to the shrine, and not to the raja. I gather from Mr. Seebohm's work that in a somewhat similar way when surrenders were made to the Church in the eighth century under the Alamannic laws, the old Roman *tributum*, which appears to have been still payable to the Frankish king, was transferred from the king to the Church.

It will not escape recollection that the idea of suzerainty was not absent in these hills, and that the rajas who were manorial lords might be grouped in circles more or less vaguely acknowledging some rather theoretical over-lordship of a chief of Jammu or Katoch Raja of Kángra. To this extent there was at least some semblance of the completion of the feudal hierarchy. But enough has been said on comparatively minute details relating to an exceptional and out-of-the-way part of the country. It is time to look more broadly to India as it was in the period which just preceded the establishment of British supremacy.



## CHAPTER XI

### FEUDAL TENDENCIES IN INDIA

In Europe the benefices which were in the end converted into fiefs were often in the first instance temporary holdings. Guizot maintains that, at all epochs when feudalism was forming, benefices are met with for every period—at will, for a term, for life, and in perpetuity—and he will not go further than to say that they were at first usually for life, and throughout tended to become, and at last were acknowledged to be, hereditary. I am about to compare the benefices with the *jágírs* and *zamindáris* of India, and the first point in the comparison is that in the eighteenth century there are many instances of *jágírs* of different periods of duration, and that some *jágírs* and most *zamindáris* tended to become hereditary.

In the Marhatta country *jágírs* were usually held on a permanent tenure, and some of them have become petty states under the protectorate. There were grants held by military chiefs on conditions of service, some of them from the time of the Muhammadan kings of the Deccan; other grants enjoyed by the descendants of the original ministers of the Marhatta rajas, and continued under the rule of the Peshwas; and, lastly, grants made by the Peshwas themselves to Marhattas and Bráhmans. By the Sattára treaty of 1819, the possessions of the *jágírdárs* within the territories of the raja were guaranteed by the British Government, and there are now six chiefs, known as the Sattára *jágírdárs*, with territories of which the largest has an area of 885 square miles. These chiefs have not powers of life and death, and serious criminal cases, involving the punishment of death or transportation for life, are tried in a court over which a British officer presides in association with the *jágírdár*. The grant of adoption sanads in 1862 to all the Sattára *jágírdárs* except one shows that they were regarded as possessing a measure of sovereignty.

To the south and east of the Marhatta country lay the Muhammadan kingdoms of Bíjapur and Golconda. When these fell before the arms of Aurangzíb in the last half of the seventeenth century, the Moghal commanders, as I have mentioned in a previous chapter, received from the newly acquired territories *jágírs*, which were assignments for a term of years, on specified districts, for the support of their troops. The administration was entrusted to other officers of the Moghal empire, the *faujdárs* and *dewáns*. The *jágírs* of the Muhammadans were, however, more often granted for the lifetime of the holder, lapsing on his death to the state, though not infrequently renewed to his heir on payment of a fine, and sometimes specified to be hereditary assignments. In the absence of this specification the *jágír* was considered to be held by a life tenure. Mr. J. Grant, in his 'Analysis of the Finances of Bengal'—one of the papers taken into consideration in making the Permanent Settlement—mentions, as the only heritable *jágír* known in that province, the grant of a *pargana* to two doctors learned in the Muhammadan law. But in Bengal the greatest *jágír* of all, assigned on 296 entire or broken *parganas* in twenty-one of the thirty-four *sirkárs* or districts into which the country was divided, remained under the management of the family of the Nawáb-Názims for the full space of a century; and in the successions which took place we see the working of a vague hereditary principle, and of the prevalent habits of usurpation.

The story of this *jágír* may be briefly told as an illustration of the violence of the time and of the way in which independent power might be acquired by individuals. Jáfir Khan, a Bráhman by birth, who had been brought up in the Muhammadan faith, was appointed Dewán of Bengal when Azím-us-Shán, the grandson of Aurangzíb, was viceroy of that province. After the death of Azím-us-Shán, Jáfir Khan acquired the province for himself, partly by purchase, partly by resisting in the field two rival *subadárs*, who were successively deputed from Delhi to supersede him; but he did not entirely throw off his allegiance, and continued to make the usual payments to the emperor. His desire was to leave his power to his grandson Sarafráz Khan; but on his death, in 1725, his son-in-law Shúja Khan, father of Sarafráz, seized on the subadárship and obtained patents from Delhi. On the death of Shúja Khan, in 1739, Sarafráz Khan succeeded him, but was dispossessed and killed in an action with Ali Verdi Khan, who had been the deputy of his father in the government of Behar. This *jágír* was intended to defray a large part of the military expenses of the government, the household expenses of the nawáb, and the greater part of the civil charges.



Other *jágírs* in Bengal were assigned to the dewán of the province and to the commander-in-chief of the empire for the support of their ranks of 4,000 and 6,500 horse; to the *faujdárs* of the frontier provinces; to twenty-one persons of inferior rank bound to perform military services when required to do so by the názim, each with a small established number of followers; and, in small allotments, to certain religious and learned men for their subsistence. Revenues were also assigned for a naval establishment of cruisers and boats to guard the coasts of Bengal, for a military establishment of guards and garrisons for the eastern frontier provinces, and in Tipperah and Sylhet, for the expense of catching elephants. It is noticeable that at one time the *jágírs* assigned for the general service of the nawáb and for the support of the rank of the dewán were transferred to fresh lands for financial reasons.

'The duchies and counties of the eighth and ninth centuries,' writes Bishop Stubbs, 'were still official magistracies, the holders of which discharged the functions of imperial judges or generals. Such officers were of course men whom the king could trust, in most cases Franks, courtiers, or kinsmen, who at an earlier date would have been *comites* or *antrustions*, and who were provided for by feudal benefices. The official magistracy had in itself the tendency to become hereditary, and when the benefice was recognised as heritable the provincial governorship became so too.' Reading this, and making allowance for variations in the working of similar tendencies in different continents, we almost seem to be reading an account of Indian *jágírs* and *zamindáris*. I have traced nothing in India that is truly analogous to the *comitatus*, the chosen band of trusted dependents immediately surrounding the chief or king, that so largely influenced the growth of feudalism in England and was merged, on the Continent, in vassalage. The practice of entertaining *bárgírs*, troopers supplied with a horse by the state or individuals, instead of *silahdárs*, who provide their horses and arms at their own expense, more nearly resembles the rudiments of a standing army substituted for a feudal militia than the old German gifts of horses, weapons, and food to the comrades of the chieftain. Depredators who made plunder

the means of wealth, and wealth the means of military and then of territorial power; leaders in the uprisings of indigenous races and creeds against Muhammadanism brought by the sword from Afghanistan and Central Asia; chiefs of mere banditti or of bands of free lances selling their services to territorial hereditary despots—all doubtless must have had some chosen folk around them. And the picture that Bernier draws of the *omrah*, the great nobles of the Delhi empire, in constant attendance at the emperor's daily durbárs, and taking their turns of duty to watch his gate, though it wears a mediæval look, is clearly no representation of the *comitatus*. In all this we see military association, combination for purposes of plunder or adventure, and the ceremonial of a settled government. We do not see a principle like that of the *comitatus* traceable through several ages and at length culminating in a territorial nobility.

But it was in the ninth century that the empire of Charlemagne broke up; and when the Moghal empire fell to pieces the stage of Indian history became full of Marhatta generals and Musalmán governors, asserting practical independence and establishing hereditary rights, while they continued to pay lip service and homage to a distant Peshwa or emperor. In Europe just before the great spread of feudalism which occurred in the tenth century, and in India just after the strong hand of the last of the great emperors had ceased to hold the reins of power, the transition was common from the province to the principality, from military leadership to more than semi-sovereign power, from delegated official authority to the exercise of substantial independence, covered, so far as the fiction might serve any practical purpose, by professed allegiance to a former superior. Throughout, it will be observed, both in India and in Europe, the land or the right to a share of its produce or revenue was the basis of political institutions. The analogies between the dissolution of the Moghal and the dissolution of the Karolingian power noticed by Sir Henry Maine hold good to a remarkable extent, not only in the social effects which produced a vast number of petty principalities, but also in the actual process by which the change was effected.

The Bengal *jágírs* were given to supply both the military and the civil service of the country. Amongst the causes which led to the grant of benefices Guizot enumerates the practice of remunerating all sorts of services by the distribution of large domains; and Montesquieu notes that the counts



in the eighth century were equally civil and military officers, and that, in the ninth century, they had benefices annexed to their counties and had vassals under them. The *jágírs* of the Moghals were, however, sometimes unconditional; there were technical terms which distinguished *jágírs* granted on conditions or for specified purposes from those which were exempt from conditions. The celebrated *jágír* of Lord Clive was a *siyúr-ghál* or unconditional grant; application may have been made for it on the ground that when the Nawáb of Murshidabad obtained for Clive a high title from Delhi, no *jágír* had been assigned for the support of the dignity; but the *jágír* was undoubtedly intended as a reward to Clive for his valuable services to the native government; and it was not a military tenure, nor was it encumbered with any conditions as to services to be performed. So also, looking back to the tendencies towards feudalism in Anglo-Saxon England, we find that the bestowal of folkland or public land by the king was made in consideration of past services, without giving rise to a new connection, like the later obligation of military service derived from the grant of a fief.

The case of Clive's *jágír* is interesting because it shows that the self-same lands could be granted both in *jágír* and as a *zamindári*. In December 1757 the East India Company obtained from the Nawáb-Názim of Bengal the grant of the *zamindári* of the Twenty-Four Parganas, subject to the payment of the land revenue thereon assessed. This grant was confirmed by a *sanad* from the Dewán of Bengal made out in the next year; and for the short period during which the *zamindári* was in possession of the Company before the grant of Clive's *jágír*, this revenue was payable and was actually paid to the native government by the Company. The effect of the *jágír* grant was that the revenue became payable to Clive instead of to the Nawáb, Mir Jáfir. As is well known, a claim was set up on the part of the Company to Clive's *jágír* in addition to its own *zamindári*; and the dispute was compromised by a ten-years tenure to Clive with reversion in perpetuity to the Company, all being duly comfirmed by fresh *sanads* or written grants from the Nawáb and the Delhi emperor. The fact is a *jágír* is the converse of a *zamindári*, and a *zamindári* the converse of a *jágír*. In both cases an individual was interposed between the sovereign and the cultivator or peasant proprietor. If the middleman was a *zamindár*, he had to pay over to the state the amount of the land revenue less his own remuneration for collecting it,

which might be assigned to him in money or land. If he was a *jágírdár*, it was the right to receive the amount of the land revenue that constituted his tenure; and he might have, and usually had, services to perform in consideration of this emolument. The administrative authority exercised by *jágírdár* or *zamindár* would vary with the purposes of the grant and the history of the connection between the intermediary and the lands which were the subject of it. The authority would be greatest where the beneficiary was the representative of a depressed or conquered line of rajas, or of old hereditary officials who had been governors or deputies in times gone by; or, again, where the weakness of the central power and the general turbulence of an unsettled society practically compelled every strong man to attempt independence. Either the *jágír* or the *zamindári* might be a sort of survival of sovereign or semi-sovereign rights. The *zamindári* revenue might be the fullest tribute that exaction could extort from a conquered raja; the *jágír* might be an assignment for the support of a raja out of possession. One large class of *jágírdárs* in the Punjab at the present day consists of the representatives of the Cis-Sutlej chiefs who misbehaved in the first Sikh War and were deprived of the police and other jurisdiction which they had previously exercised, but were allowed to continue in receipt of the revenue of their former territories. From both *jágírdárs* and *zamindárs* fidelity, especially in time of war, was expected by their political superiors.

These grants thus more resembled the benefices which preceded feudalism than the fiefs which constituted it. But though there are points of analogy they did not exactly resemble either the benefice or the fief. Both in mediæval Europe and in India there was a double ownership of the soil; but the severance was effected on different lines, in a different manner, and with different consequences. In India proprietary rights were shared, as I have often said, between raja and *praja*, between the king and the peasant proprietor. The theory, though frequently violated on both sides, was that the raja was entitled to a fixed share of the crop, and that the peasant duly paying his tax should not be dispossessed of the land he occupied. Grants made by a raja or emperor therefore dealt with the chief rights of the state in an agricultural country under an essentially tax-gathering rule. In the *jágír* one assortment, in the *zamindári* another assortment of the rights of the state were made over to



an intermediary, often with the object of arranging for the military or civil service of the government. The peasant was in theory unaffected, though in practice, when the tract assigned came into the hands of speculators or others who had no hereditary connection with it, he was often exposed to new and closer oppression. In Europe the peasant was commonly a serf, attached to the soil, and granted with it. The double ownership existed as between the suzerain and vassal, between vassal and rear-vassal. It had nothing to do with sharing the crop; nor did it presuppose on the part of the vassal any hereditary rights other than those which were derived from the feudal compact. It was, indeed, in that compact itself that the double ownership originated; and in the maturity of the system it exhibited its character in some of the well-known feudal incidents, in the reliefs payable on successions, in fines upon alienation, escheats, aids, and wardship. Generally it may be said to have entitled the superior to certain services, particularly military services, to certain perquisites, and to re-entry, temporarily or permanently, in certain cases, notably on breach of conditions of the tenure or failure of heirs.

The Indian grants resembled benefices in their revocability, in their appropriation for the support of services, military or civil, in their occasionally unconditional character, and in their tendency to grow into hereditary possessions and to become the basis of territorial power. They further resembled benefices in so far as the king transferred what was originally his, not what was surrendered to him for the purpose of restoration on new conditions.

Montesquieu sees the origin of the feudal jurisdictions in the fact that the *freda*, the payments made by the criminal for protection against the person injured or his family, were amongst the most considerable emoluments of the holder of the fief. When the king's judges could no longer make any demand in a district, they never entered it. Justice, therefore, had to be administered by the lord who took the profits. Thus the *freda* were a part of the king's revenue, and in granting them he granted what was his. In the Indian grants also the king granted what was his; there was no commendation, no contract. The emperor or the raja paid his public servants, arranged for some part of the administration, provided for his troops, his nobles, his relations, his favourites by the grant of certain rights of his own over the land. I have nowhere traced in India anything

which could be rightly described as the surrender of an allodial property to be received back in the form of a fief.

Such surrenders, however, were intimately connected with the practice of commendation, and it is possible to point to certain Indian practices which at least show that the principle of commendation is deeply embedded in human nature, though its operation may take very different forms according to the circumstances which call it into exercise. Personal relations more or less resembling those of lord and serf or of lord and vassal, and based either on conquest and its results, or on self-surrender for the sake of security, appear to have existed in Europe from a remote antiquity. Speaking of feudalism, Sir Henry Maine tells us that 'the duty of respect and gratitude to the feudal superior, the obligation to assist in endowing his daughter and equipping his son, the liability to his guardianship in minority, and many other similar incidents of tenure, must have been literally borrowed from the relations of patron and freedman under the Roman law.' There was also another relation under that law in which *patronus* was one of the terms, the relation of patron and client. The *libertus* or Roman freedman was the *cliens* of his *patronus*, and any Roman citizen who wanted a protector might establish this relation by his own act. It appears that the client contributed to the marriage portion of the patron's daughter, if the patron was poor; and to his ransom, or that of his children, if they were taken prisoners. The clients, it is also said, accompanied their *patroni* to war as vassals. Two of the three feudal aids retained by Magna Carta were the contributions for the marriage of the eldest daughter of the lord and for the redemption of his person from prison.

These resemblances between Roman law and feudal incidents do not seem strange if we look to the early history of commendation. Mr. Seebohm traces self-surrender into actual or approximate slavery in Gaul in the time of Cæsar, and, six centuries later, in the history of Gregory of Tours, the motives being to escape debt or excessive taxation or oppression. He quotes from Salvian to show how in the fifth century the pressure of Roman taxation caused multitudes to become rebels and outlaws, and many who could not fly from the Roman districts, to surrender themselves to the care and protection of great men, accepting the position of their *dedititii*. In the same century, but at an earlier date, the Theodosian code had forbidden the fiscal officers of



the empire to induce tenants on the public lands of their districts to place themselves under their *patrocinium* or overlordship; and in the seventh century the laws of the Alamanni, framed in ecclesiastical interests, permitted freemen to surrender themselves and their property to the Church, and expressly referred to the restoration of the property in the character of a benefice.

Now, in Roman districts the estates of the powerful men to whom poor people surrendered themselves in the time of Salvian must have been Roman *villæ*, cultivated by slaves and *coloni*. We know that there were also freedmen upon such estates; and, at all events in the south and east of France, the historical connection between the Roman *villa* and the feudal manor is demonstrated by the fact that the Visigothic and Burgundian invaders shared the *villæ* and lands of the Romans like legionaries quartered on a district. By Roman laws enacted in the first twenty years of the Christian era, freedmen whose emancipation was defective in certain particulars were placed on the footing of *Latini*; that is, they might marry and trade with Romans as citizens, but could not vote at elections or fill public offices; or if they had been punished in certain ways, they could only be raised to the level of *dedititii*, or of people who had been conquered and had yielded unconditionally without being actually enslaved. In both these cases, though the *Latinus* is said to have been able to make a will by an old and cumbrous form, it seems clear that the property of the emancipated slave reverted on his death to his former master. In the legislation of Justinian the *Latini* and the *dedititii* had disappeared; and certain rights of succession, the patron still having a large share except when the property was trifling, had been conferred on freedmen who were Roman citizens. In both of the cases I have quoted, on the authority of Mr. Seebohm, from Salvian and the Alamannic laws, the person who surrendered his land took back only the possession of it for life, and could not pass it to his heirs. Thus throughout the patron or protector takes the whole or part of the property on the death of the person under his care; a legal position which deserves to be weighed with the feudal escheats and the feudal fines on succession.

We must not, of course, forget that the ties uniting serf and vassal, vassal and lord, lord and suzerain were composed of many strands derived from German as well as Roman repertories. The old German tribesmen, besides their house-

hold slaves, had semi-servile cultivators, compared by Tacitus with the *coloni* of his day, probably men of other tribes or races who had been vanquished in war. The gifts of arms and horses conferred upon the *comites* reverted to the giver on the death of the recipient, just as the property of a freedman under the early Roman law reverted to the patron, or the property of the *dedititius*, described by Salvian, was lost to his heirs. More than this, the feudal relation of vassal and lord had its religious sanctions and its moral ideal. While the humanity and delicacy of what was truly chivalrous in feudalism owed much to the Christian Church, the courage, the military ardour, the spirit of adventure, the soldierly fidelity of lords and men, assuredly derived an unbroken descent from the old German assemblies. Making allowance for all this, it seems impossible to doubt that commendation, and the particular consequences that grew out of it in Europe, were largely due to Roman conquest, to the Roman systems of administration and property, and to Roman law.

These Roman elements in the final composition were entirely wanting in India; and that, I think, is the reason why in India commendation with the Western set of feudal consequences is not to be found; though, as I have said, we do find arrangements based on a similar principle. It has, for instance, been conjectured that the *clientela* was an old Italian institution that existed amongst the people from whom the Romans arose, and that the *clientes* were originally Italians who had been conquered and reduced to subjection. Evidence can be adduced from the north-west frontier of India which suggests that the germs out of which may grow such relations as those of patron and client, patron and freedman, lord and vassal, may be common to many societies. The Yusafzais, Muhammadzais, and others settled on the Pesháwar plain towards the end of the fifteenth or beginning of the sixteenth century. They first begged and obtained land from the Dilázáks, the previous occupants, and soon afterwards fought and expelled them. The Pathán families of these tribes located themselves in adjacent villages, the rest of the tribal tract being held in common, and used chiefly for pasturage. In course of time these Patháns allowed cultivators from other parts, who had no share in the tribal inheritance, to settle amongst them. These settlers were called *fakírs* or *hamsáyas*, persons under the same shade; and lands were given them on a service tenure. They were required to attend the land-owning Pathán tribesman in his raids and fights, to furnish grain and grass for his guests, to provide the guest-house with beds and blankets, to keep turn in watch and ward, and occasionally to work in building and reaping. As clan encroached on clan, hamlets were established on the boundaries of tribal tracts, occupied partly by poorer tribesmen, partly by these *hamsáyas* or *fakírs*, who held on condition of warding off attacks and joining expeditions, the other services being excused on account of the distance from the original settlements. No tax, no rent, no share of the crop, was paid. But in course of time *kháns*, strong men, tribal leaders, assumed the right of collecting fees from these *hamsáyas* on the occasion of births and marriages. We thus see in a primitive tribal society some of the characteristic marks of serfage, side by side with a purely military tenure curiously like the tenure of a vassal. Here there is no Roman influence, no ecclesiastical influence; but unquestionably there is feudalism in the making.



It seems a paradox to say that the principle of commendation may sometimes be the same as the principle of blackmail. Yet in both cases a sacrifice is made to a stronger party for the purpose of averting a greater evil. In commendation some mutual benefit may be supposed to ensue, the weaker party obtaining protection in exchange for the surrender of himself and his land. In blackmail the advantage is entirely on one side, the stronger party having exacted some payment as the price of forbearing to seize lands or plunder goods or cattle. Unfortunately, the weaker party may have no choice, and the motives of the plunderer and the protector may be the same. Oppression and protection may come from the same hand. One plunderer may agree to keep others at bay if assured of steady fruits from his own violence. For instance, in the Carnatic the *desha cavel* or district watching fees were levied by *poligárs* from defenceless villagers as the price for forbearing to plunder them. To explain the manner in which the *rekwali* of Rájpútána—taxes paid or services rendered in consideration of protection—came to be imposed upon parts of the country, Colonel Tod quotes Lord Lovat's Report on the Highlands of Scotland in 1724: 'When the people are almost ruined by continual robberies and plunders, the leader of the band of thieves, or some friend of his, proposes that for a sum of money annually paid he will keep a number of men in arms to protect such a tract of ground, or as many parishes as submit to the

contribution. When the terms are agreed upon, he ceases to steal, and thereby the contributors are safe; if anyone refuses to pay, he is immediately plundered.' The consideration in *rekwali* took various forms; there were payments in money or kind at harvest; personal services in agriculture, the husbandmen finding implements and cattle and attending whenever ordered; fees on marriages; dishes of good fare at wedding feasts; and portions of fuel and provender. Sometimes the person protected sank into a position hardly distinguishable from that of a serf. Often the arrangement was based on the grant by the villagers to the chief of their ancient proprietary rights in a portion of their lands. Tod identifies *rekwali* with the *salvamenta* of Europe, paid by those who had preserved their allodial property to ensure its defence. The true nature of *rekwali* is clear from its being levied from passing caravans wherever they halted for the day. Further down in Western and Central India, similar principles were in operation on a vaster scale. Out of the claims, conquests, and military assignments of the Marhattas arose their loose though complex military confederacy; and, in the end, a still surviving group of territorial despotisms. In its origin the Marhatta *chauth* was a payment to obtain protection as well as exemption from pillage. And in this case the difference between East and West is striking and characteristic. In Europe, an individual, by voluntary compact, assumes a new personal status; he takes upon himself a new legal clothing of German make and Roman materials. In India, a community agrees to pay to a new master a part of that share of the crop, or its cash equivalent, which by immemorial custom had been taken by the ruler of the day.

In the Punjab Maharaja Ranjít Singh in some of his annexations placed some of the chiefs whom he subdued in positions which would not be altogether misdescribed if we were to say that they held fiefs under the Sikh power. Here, however, there was no voluntary submission. The fiefs, if such they may be called, resulted, as a sort of compromise or concession, from a conquest in arms. The case of the Nawábs of Dera is a good illustration of these arrangements. The territories of these nawábs included a large tract of country on both sides of the river Indus near Dera Ismail Khan. The nawábs had been governors under the Duráni kingdom, and had become practically independent as it broke up. In 1821 the then Nawáb, Háfiz Ahmad Khan,



was besieged by Ranjít Singh in Mánkhera, a town to the east of the Indus. The Nawáb surrendered on condition of retaining a part of his dominions, with a suitable *jágír*. The country to the east of the Indus and the southern tracts on the west of that river were annexed to the dominions of the Maharaja. When Nawáb Háfiz Ahmad Khan died the Sikhs exacted from his son on succession a fine of a lakh of rupees. The annexed country was administered partly by *kárdárs*, or Sikh fiscal officers, partly by the bailiffs or agents of Sikh *sardárs* to whom a great part of it was granted in *jágír*. Each of these Sikh *sardárs* possessed judicial and executive authority within his *jágír*, and was uncontrolled by the local Sikh officials. Here we see side by side in the same part of the country results of conquest which almost amount in one tract to a fief and in other tracts to a number of benefices. One part of the conquered territory is suffered to remain in the possession of its chief as a dependent principality subject to a fine on succession. In other parts of the territory there was merely a grant of revenues and jurisdiction which by conquest had come into the hands of the sovereign. A good many instances might also be adduced from the Punjab Hills of the Sikh practice and policy of providing for deposed rajas or inducing their submission by the grant of *jágírs*.

We may now pass on to some of the results of the processes tending to feudalism which have been described. The English manorial group in its perfect form consists of persons holding land of the lord by free tenures, and of others holding land of the lord by tenures which were servile in origin, the lands held by these two classes respectively being known as tenemental lands and the lord's domain. The Punjab principalities in the interior of the Hills, where a sense of peasant ownership in the village wastes had not grown up, may be regarded as having been truly manorial in so far as they exhibited a somewhat similar distinction. The forests and wastes may be considered to have been a kind of *folkland* converted into a *terra regis*, and in this sense may be held to have been the domain of the raja; while the cultivated lands, heritable by the occupants, may be looked upon as *bocland*, appropriated by the actual or theoretical grant of the raja to particular families, or as tenemental lands held by a free tenure. These comparisons, I admit, are very incomplete; there are, for instance, in Kulu and Kángra extensive and complicated rights of the settled peasantry and of partly nomad shepherds and graziers over the forests and

wastes which would require explanation were the comparisons pursued. I make them in this slight and imperfect way because at all events in many parts of India, if not in all, there is, notwithstanding the double ownership of raja and ryot, of the state and the village community, in cultivated lands and village wastes, a real and very practical distinction between the lands which are held to belong to peasant proprietors, or *ryots*, and the larger forests or wastes which are held to belong to the *sirkár*, or government; and further, because the manorial character of the claims of the Punjab Hill raja upon the waste explains some of the imposts which were formerly levied in territory now become British, and which vividly recall certain aspects of feudalism.

In addition to the rent or revenue immemorially due extra cesses were taken in these hills which varied greatly in different parts of the country, but generally took the form of percentages in cash or grain calculated on the regular demand. Some of these were the army tax; the war tax; a tax for the cost of writing receipts for the revenue; a weighman's cess; a watchman's cess; a *kanúngo's* cess; and a cess to cover the cost of conveying the government grain collections to the state granary. Besides these cesses, and included in the forest dues, were taxes on the houses or implements or stock-in-trade of shopkeepers and artisans, a hide from the tanner, so much per loom or per press from the weaver or oil-presser, so much per house on barbers, washermen, potters, blacksmiths, carpenters, tailors, sawyers, goldsmiths, and shopkeepers generally. These classes lived on the raja's land, got timber and firewood from his forests, and grazed their cows and goats on his waste. Moreover, of every kind of income from produce the rajas took or claimed a share. They asserted a right to the best hawk netted in the forest, to the largest fish caught in a weir, to a share of the honey of the beehives and of the fruit of the best fruit-trees.

Does such a list, we might almost ask, come from the Punjab Hills before British rule, or from France before the Revolution? The list of *Droits Seigneuriaux* given by De Tocqueville is doubtless far from identical in detail. This is to be expected; but we can see easily enough the same principle at work. In the Punjab Hill states and in the feudal manors of the *Ancien Régime* there was the crude taxation of petty sovereignties in a society where rights over land formed the mould to which social and political institutions alike shaped themselves. Reading over the list of seignorial dues in De Tocqueville we are tempted to believe that, if we had not known, as an historical fact, that France was at one time full of small semi-sovereign states, we should have been able to infer it from the nature of the imposts which the Revolution swept away. De Tocqueville, with characteristic caution, expressly declines to attempt any research into the origin of the dues which he enumerates; but the name at least of the *cens*—the perpetual quit-rent in kind or money annexed to the possession of certain lands—suggests that it may have been a survival of the Roman *tributum*, just as the *capitatio* survived in the *taille*. *Servage*, giving the lord the right to reclaim his quasi-servile dependent wherever he might go, and the *corvée*, enabling the lord to employ for his own profit a certain number of the days of labour or of the oxen or horses of his peasants, look as though they were connected with the mediæval serfdom, and through it with slavery on the Roman *villa* and perhaps also with the *sordida munera* of the *colonus*. Then there is a long list of dues consisting of a certain portion of the produce, or more rarely of money, which the lord of the manor levied upon lands subject to the *cens* or upon those who held them; the names by themselves convey little, but they were *terrage*, *champart*, *agrier*, *tesque*, *bordelage*, and *marciage*, the last consisting of certain payments due on the natural death of the lord. Similar to these was the *parcière* on crops of fruit and the *carpot* on the vineyards. Almost any officer of Indian experience would, I think, identify these dues with the *abwáb*, the extra cesses which we see in Kángra, and which have had so famous and so odious a history in Bengal. Without following the whole detail, I must bring together, for reasons which will presently appear, some of the rights or dues which belonged to those *seigneurs* only who were also *hauts justiciers*. Those I will name are (1) *droit de blairie*, empowering the *seigneur*, upon the theory that the whole territory originally belonged to him, to grant permission for the grazing of cattle; (2) *droit de leyde*, a tax levied upon merchandise brought to fairs or markets, and the police fines levied in connection with it; (3) *chemins*; the *seigneurs*, *hauts justiciers*, had rights of police on the bye-roads, and their judges took cognizance of all offences committed on them, except in royal cases; (4) *eaux et la pêche*; these *seigneurs* were lords of the non-navigable rivers; they alone had the right of erecting water

mills; no one could fish, even with a rod, in these rivers without their permission. *Péages*, tolls on bridges, rivers and roads, and *bacs* on ferries, do not appear to have been limited to the *hauts justiciers*, but they had to be authorised by the king. I shall return to the significance of some of these rights or dues below; but meanwhile I may point out that in Kulu and Kángra, though landholders and others had certain rights of use in the forests and wastes, the old rajas levied a grazing-tax on all classes, reserved certain blocks of forests as shooting preserves, granted Gújars and Gaddis—professional herdsmen and shepherds—exclusive grazing rights in particular runs or beats at certain seasons, and often imposed a prohibition of grazing in all forests for three months during the rains, partly as an assertion of authority, partly with an idea of benefit to trees and game. Further, as already mentioned in a former chapter, the right to work a water-mill or put a fish weir in a stream was held direct of the raja.

Such was the extent of the great Bengal *zamindáris* that, if we look particularly to area, they should be compared rather with the fiefs of dukes and counts and viscounts than with manors corresponding to townships or parishes. According to the estimates in the Fifth Report and its appendices, the *zamindári* of Birbhúm contained 3,858, that of Dinájpur 3,519, that of Burdwán 3,280 square miles; the *zamindári* of the Company in the twenty-five parganas was, by the same estimate, 882 square miles in area. These estimates are very rough, and indeed in one of the appendices to the report the Burdwán *zamindári* is said to be larger than that of Birbhúm. But even these rough estimates will suffice to show that many of the Bengal *zamindáris* were territories rather than townships. Their usually official origin is another point that they have in common with the greater fiefs. Still they exhibited some of the characteristics of the manor in the distinction between the *raiyati* lands, occupied by settled peasants, and the *khámár* lands, originally waste but brought under cultivation and retained by the *zamindár* or let out at grain rents; in the *nánkár*, or portion of land or revenue assigned to the *zamindár* for his subsistence; in the possibly identical *nijjot*, or lands cultivated for his own benefit on which no revenue was assessed; and in his official undertaking on his appointment that he would increase the cultivation, the implication being that he must have had authority over the waste.



It has been doubted whether any of the Bengal *zamindáris* were originally principalities; but the point can be set at rest from the paper written by Mr. J. Grant in 1786, and published with the Fifth Report. The *zamindári* of Bishanpur appears to have been the inheritance of a Rájpút family for more than a thousand years, under a regular succession of fifty-five rajas, subject only to a small tribute to the ruler of Bengal. This was its condition till 1715 A.D., soon after the commencement of the administration of Jáfir Khan, when the country was reduced, and conferred again in *zamindári* tenure on the heir of the line of rajas. In Burdwán there were traces of an ancient line which may have had an official origin; in Rajshahye there had been two ancient lines, of which one became extinct by the suicide of the last representative, and the other was proscribed for rebellion. In Tipperah a *jágír* of the yearly value of 45,000 rupees was granted to the representative of the family from whom that *zamindári* had been conquered in the reign of Shah Jehán. Pachít, the most westerly *zamindári* of Bengal, resembled Bishanpur, which it adjoined, in having been held by a Rájpút family. It was at first in great part subject only to a fixed tribute. The fact is, that the ruthless proceedings of Jáfir Khan, who became Dewán of Bengal in 1707, and died (as already mentioned) in 1725, had greatly confused and obscured the old condition of the country. Feeling that his reputation and continuance in office depended upon financial success, he resorted to the hardest severities in exaction. He dispossessed nearly all the former *zamindárs*; employed his own officers to scrutinise the lands and their produce; and presently in many cases put new men—Bráhmans, Kayasths (or men of the writer caste), Khatris, and (at least in one case) a Pathán. Many of the dispossessed *zamindárs* were restored by Shúja Khan, his successor. But the confusion which Jáfir Khan, in the attempt to introduce reformation and regularity, had certainly produced, was maintained by the rapacity and notorious corruption of those who followed him.

I have already alluded to the police jurisdiction of the *zamindárs*. Of the criminal courts (to adopt the language of the Seventh Report of 1773) the *zamindárs* or rajas were judges. Capital sentences might not be executed till orders had been received on a report of the case to the government at Murshidabad; the most frequent mode of punishment was fine, and the fines were the perquisite of the

*zamindárs*. So, too, the *zamindár* or raja was the judge of the civil court, and took a fourth or a fifth of the value of the property recovered by civil action. Doubtless, in order to increase their own power or as a consequence of their position, these men entertained or obtained the command of considerable followings. In Burdwán, for instance, there were 2,400 armed constables under *thánadars*, or officers in charge of small police divisions, and some 19,000 *zamindári paiks*—a rabble, probably very badly armed, who were allowed lands in lieu of pay, and were liable to be called out in aid of the police. Birbhúm was organised as a sort of frontier province to be held against Hindu incursions from the West by means of a warlike Muhammadan peasantry maintained as a standing militia with suitable territorial allotments. Lands were here held free of revenue and appropriated for the support of troops. The first recorded settlement of the land revenue in Bengal was made by Akbar's minister Todar Mal in 1582. This was called the original standard assessment; and long before the time of Jáfir Khan the *zamindárs* and officers under the *subadár* levied many imposts from the *ryots* over and above this standard tax. The native government knew of these impositions, and probably connived at them; and at least from the period of Jáfir Khan's administration followed the example thus set. We have a full list of the *abwáb* or extra cesses imposed by Jáfir Khan and his successors upon the *zamindárs*. It is unnecessary to go through the whole of it; but amongst the items were fees for the renewal of annual leases; payments to secure exemption from inquiries into assets and the superintendence of officials, made ostensibly as contributions to the cost of presents periodically sent to Delhi as tokens of homage; a commission on treasure brought to headquarters; a contribution to the cost of feeding elephants; a tax supposed to represent the *chauth* due by the grant of the emperor to the Marhattas, who had, however, been really paid off by cessions in Orissa; and imposts to defray the expense of bringing lime from Sylhet to repair the fort of Murshidabad, of dismantling the city of Gaur, and of building a palace for Suráj-ud-daula. In other ways also the *subadárs* drew into their own grasp the profits which *zamindárs* and *faujdárs* made out of their respective charges; sometimes claiming for their treasury taxes which the *faujdárs* of frontier districts had imposed of their own authority; sometimes by the resumption of *jágirs*, and their re-grant in less profitable localities; and in



at least one remarkable case, that of Birbhúm, by the reannexation of the territory of a *zamindár* who had imitated the example of his superiors and set up as an independent prince. Many of these impositions were passed on by the *zamindárs* to those under them; but, as the exactions of the *zamindár* were usually limited only by the ability of the *ryot* to meet them, it did not necessarily follow that an extra cess imposed by the *subadár* was also levied from the cultivators. If the *zamindár* had already taken all he could get, the object of the *subadár*, to reap a profit for himself by exactions which he winked at, was all the same attained. In fact, the governors left it to the discretion of the *zamindárs* to make new demands upon the *ryots*, with the well-understood intention of sharing the plunder in due time. Amongst the pretences on which the *zamindárs* levied new cesses were the death of a *zamindár*, the birth of a son, and any increased demand made by the government on the *zamindár* himself. The *zamindárs* also obtained income from tolls, markets, and fairs.

We can see, then, that the greater Bengal *zamindárs*, in point of fact, possessed many of the attributes of internal sovereignty; police jurisdiction with responsibility for the peace of the country; civil and criminal jurisdiction with liberty to appropriate the fines and court fees; the command of a rude following more or less armed, and *de facto* the power of taxation. Sir John Shore would not admit that the *sanad* or written grant, often given to the *zamindár*, was the foundation of his tenure. 'The origin of the possession of some *zamindáris*,' he said, 'may be traced to a grant, but the inheritance goes on without it.' Elsewhere he says that since the arrival of Jáfir Khan in Bengal one half of the country had been transferred for defalcations; and he refers also to the wholesale dispossessions effected by that dewán. The Bengal case was, I think, the most difficult that any British Indian Government ever had to deal with. It was most unfortunate that the maximum of difficulty had to be faced with the minimum of Indian experience. In addition to the circumstances I have already noticed, which tended to obscure the real meaning of the institutions we found, the *subadárs*, by exacting annual presents and making supposed annual renewals of grants do duty as a sort of homage, and in other ways, were constantly on their guard against their *zamindárs* following their own example of rebellion. We may throughout discern tendencies with which we are now

familiar in other parts of India; the tendency of petty states to preserve a certain autonomy in political subjection; the tendency of usurping officials to form petty states out of the charges committed by their superiors to their care. But these tendencies were struck and twisted into courses altogether at variance with their direct line, first by Moghal exaction and the degree of political strength possessed by our immediate predecessors; and then by the impact of European legal ideas thrust along with undue precipitancy by the force of some not unnatural indignation at home and of colossal misapprehensions in the country.

The type connecting the Punjab Hill principality, the Bengal *zamindári*, and the French fief, occurs, I think, in Oudh, where the practices and traditions of Moghal dominion lasted till annexation in 1856. This will appear from an examination of the list of miscellaneous dues levied by the various petty rajas of the Gonda district—a list which varied slightly from state to state, but was essentially of the same nature in all. These dues included (1) a charge on inhabitants of neighbouring *parganas* who came to cut wood in the unappropriated forests, the inhabitants of the same *pargana* taking fuel gratis, but paying a slight due on building timber; (2) dues on beasts of burden coming to fairs, on goods sold at fairs, on tradesmen in bazaars; (3) tolls on ferries, fords, bridges, and roads; (4) a still head duty on spirits; (5) a duty of eight annas per annum on each cart and on each loom; (6) the fines imposed by the raja in criminal cases; (7) an arbitrary contribution towards any public expense, but chiefly for war; (8) the right of escheat, all property without legal heirs reverting to the raja; (9) occasional demands, each with a separate name, for clothes for a new-born son, for money to celebrate the first shaving of his head, for the price of a horse or of an elephant, or for the cost of repairs to the fort of the raja; and (10) payments which had to be made to the raja when a well-to-do subject lost a relation or married a wife. If we compare this list with the list I gave just now of the rights of *seigneurs* who were also *hauts justiciers*, and with the rest of De Tocqueville's list of feudal dues, surely, so far as such exactions are an index to status, we may say that the Gonda raja was a *seigneur*, or the *seigneur* a Gonda raja. In the first, second, and third items we see an assertion of authority over the wastes, markets, rivers, and roads comparable with that of the *hauts justiciers*. In the rest of the list we recognise an



unrelenting grasp, on almost every possible occasion, upon almost everything that the peasantry could call their own.

I have elsewhere mentioned the theory of the Muhammadan Government in Oudh, that the state was the sole *zamindár*. It must be remembered that the Oudh governors were *subadárs* of a province of the Delhi empire, who became practically independent as it declined. As to the rajas or *zamindárs* in possession, the Muhammadans in some cases contented themselves with an annual lump payment in lieu of their claims. In other cases, very much after the fashion of Ranjít Singh's dealings with the Nawáb of Dera, they divided the lands of the *ráj*, taking as much as they could for themselves and reserving the remainder for the support of the raja. This remainder was known as the raja's *nánkár*, and in it he took the whole of the government share of the produce, which was sometimes supplemented by an annual allowance in cash from the proceeds of the rest of the principality. Lands, both those in the possession of village *zamindárs* and others, were usually farmed out to contractors, who were either local capitalists or the dispossessed rajas themselves. With an accuracy which will presently appear, the circle of villages included in a contract was known as a *taluka*, and the contractor as a *talukdár*. 'Where the contractor,' the Settlement Report tells us, 'as was generally the case, was also a raja, he occupied a compound position, being raja and in receipt of his old rights in his relations with the tenantry, and *talukdár*, or simple contractor, from the point of view of the court. The capitalist was in theory a contractor only, but in the realisation of the land revenue he exercised for the time the powers of a raja, was bound by the same rules, and worked on the same principles.' Here we see the raja substantially identified with the *zamindár*; for, under the pressure of the Muhammadan Government, he was forced to accept, with the designation of *talukdár*, a position identical with that of the Bengal *zamindárs* of Jáfir Khan's creation. I have already dwelt at length on the resemblances between the Gonda states and the old Rájpút states of the Punjab Hills; and I may repeat here that the Moghal emperors, in addressing the Hill rajas, gave them the title of *zamindár*.

It remains to explain what I have called the accuracy of the use of the term *taluka* in Oudh. In Bengal one of the Indian equivalents for sub-infeudation stands out very clearly. The *zamindárs* frequently made over divisions of their terri-

tories to farmers or contractors, known, as in Oudh, by the name of *talukdárs*; the word *taluk*, or *taluka*, meaning a dependency, and the *talukdár* being a person who holds property in dependence on another. In some cases in Bengal *talukdárs* paid their rents or revenue to government direct; they were then in all material respects on the footing of *zamindárs*. But the best general notion of a *taluk* is, I think, conveyed by saying that it was a holding of the same type as a *zamindári* enjoyed in subordination to a *zamindár*. It is probable that in Bengal the dependent *talukdárs* obtained these tenures by grant or purchase from the *zamindárs*, whereas in Behar they may have been men with certain original proprietary rights over the land placed under the jurisdiction of *zamindárs*, who were also rajas, by the act of authority. On the theory that the government of the *subadár* of Oudh was, or ought to be, the *zamindár*, the rajas and speculators who actually collected the revenue in that province were called *talukdárs* with great propriety.

It has been said that the feudal monarchy was a counterpart of the feudal manor, and Montesquieu makes a remark of the same tenor in respect of the fiefs of the *seigneurs* and the jurisdictions of the French counts. Of these he says: 'The counties, in the several variations that happened at different times, always followed the variations of the fiefs; both were governed by the same plan and on the same principles.' 'The counts in their counties were lords, and the lords in their seignories were counts.' In the Moghal empire, though not in India generally, we can perceive a whole chain of similar resemblances; as though, when once a society had caught a political air, it delighted in repeating it high and low with appropriate variations; or, more truly, perhaps, as if, when once a political type has become implanted in any society, it propagates itself wherever it can gain a footing, with those variations which adapt it best to particular local environments. As the *zamindár* had *talukdárs* under him, so the *talukdárs* might have below them other contractors and farmers, down to the village head-men. As the *zamindár* held certain lands revenue free for his subsistence, and paid over, or was supposed to pay over, the revenues he collected to the *subadár*, so the *subadár* had a big *jágír* assigned in his province for the support of his rank, and theoretically accounted for the revenue collections to Delhi. *Zamindár* and *subadár* were also alike in the practice of imposing fresh taxes on their own account on a variety of



quasi-feudal excuses. And deep in the foundations of the empire, but manifesting itself in ceremonial, in the various forms of enjoyment of rights over land, and through them in the political regulation of society, was the idea of the old Hindu *ráj*, assigning to the ruler the property in the unappropriated wastes and his share of the produce of the lands brought under cultivation.

We may now bring together in one view the indications of feudal tendencies which we have traced in various parts of India. In remote hills, little affected by Moghal or Sikh conquest or Gurkha incursions, there were and are manorial principalities exhibiting, in some characteristics, curiously close analogies to a fief; and there are substantial traditions of hegemonies ranging many of these principalities under the suzerainty of a particular chieftain. On the far-off Punjab frontier, in lands occupied by free tribes, we have observed practices which may represent some of the possible beginnings of vassalage. Under Sikh rule in the Punjab we have seen how conquests were sometimes facilitated by restorations of territory, which left the subjugated khan or raja with some remnants of sovereignty in forced allegiance to his overlord. In the ancient Hindu states of Rájpútána there is the overlordship of tribal chieftains, who, themselves rendering tribute and allegiance, first to the Moghals and then to the British, are the acknowledged superiors of their baronial clansmen; while these clansmen, in their turn, owe military service, proportioned to their lands, to their tribal chiefs and rajas. In the west of India the complicated network of Marhatta claims and assignments bound to the hereditary Peshwa the Marhatta military chiefs, already well on the way to territorial dominion. In the south, *poligárs*, officials of broken empires or states, descendants of old royal families, robber chiefs fighting their way up to power, founded numerous petty states by plunder and oppression. In the great provinces of the Moghal empire the *jágírs* and *zamindáris* have borne comparison with the benefices which, as feudalism grew, turned into fiefs. In India generally we have noted how often overlordships have come to be acknowledged, how occasionally a strong power will hold together an extensive empire—in the south a Vijayanagar empire, in the Deccan a Bahmani kingdom; in Hindustan the Moghals; in the Punjab the Sikhs—and how, when the capacity of an able ruler, or of a few generations of able rulers, has exhausted itself, these empires or kingdoms are shattered into numerous

fragments, and the work of consolidation has to begin over again.

Thus in almost every part of the country we have found some conditions which may be compared with those of Europe in the eighth and ninth centuries. But we have nowhere found any general system which can properly be termed feudal in the European sense of the term. There were materials of feudalism almost everywhere, and different sorts of materials in different parts of the country. The uniformity of the East has often been remarked, but any acquaintance with India that is more than superficial produces an abiding sense of its vast variety; and I say this while fully bearing in mind the sameness of the institutions of the Moghal empire and their connection with the Hindu institutions that preceded them. If the fiefs and counties varied together, so also—if we make a pretty liberal allowance for particular states being earlier or later than others in putting forth the particular sprout or bud that was to grow into the leading stem—did all the states of Western Europe. They were all provinces of the Roman Empire; they were all overrun or subjugated by German tribes; they were all feudalised; in all or most of them absolute monarchies have arisen and been abolished; and in all we now have either a republic or a constitutional queen or king. There are obvious reasons, of course, why such principles as those of feudalism or constitutionalism, when once quickened into active messengers of change, should leaven the whole mass of these European states with great rapidity. Great local variety really belongs to that old world which civilisation supersedes. Hence it is that when we look at the beginnings of feudalism in India we see one type in the Punjab Hills, another on the Punjab frontier, a third in the Punjab plains, a fourth in Rájpútána, a fifth with the Marhattas, a sixth with the *poligárs*, and a seventh in the institutions of the Moghal empire. In Europe there was the common heritage of Roman dominion and Roman ideas, which is altogether wanting in India. Nor had India any Catholic Church to capture political forces and put them to work, partly, no doubt, in corporate interests, but partly also in honourable resistance to savagery and oppression. In Europe, too, the spread of feudalism was furthered by the roving, adventurous spirit of Germans and Norsemen—a spirit which has never died out, which has discovered new worlds, colonised continents, and may yet bring some of the real benefits of



civilisation to the darkest regions of the earth; and which in those early days carried French feudalism to England with William the Conqueror, and to Syria as a result of the Crusades. To at least three races in India has some of that roving, adventurous spirit belonged: to the Patháns who followed the Moghal emperors, to the Marhattas, and to the Sikhs. All three, it will be observed, worked out an extended political system, though each political system differed from the other two.

The distinction between stationary and progressive societies has, I suppose, for some time been a commonplace. But the evidence I have attempted to review in this chapter will perhaps suggest to some minds the preliminary question, whether there are or have been any stationary societies at all. Are we not extending geological time to animal nature? The most approved theories of the development of animal forms postulate, as I understand, an accumulation of centuries beside which historic time shrinks into insignificance. All we really know of the rate of advance of human societies is that it is prodigiously slow at some periods and prodigiously rapid at others. May we not have mistaken for stationary societies some whose rate of progress, like that of the secular subsidence or elevation of continents, is so slow that in an ordinary way we can perceive no progress at all, and can only arrive at the fact of progress by complicated and converging inferences? Scholars will tell us that ages ago there must have been in parts of India a degree of civilisation more advanced than that which characterised the times of the best and greatest of the Moghal emperors. If so, India has, in parts at least, both advanced and retrograded. At any rate the accounts of travellers, and other sources of information, show a considerable degree of civilisation in the India of Akbar and Aurangzíb, of which much was temporarily lost in the turbulence and anarchy which preceded British rule. Europe, too, has had its periods of retrogression as well as of advance. There was civilisation, disgraced, it may be, by many barbarous cruelties, but still civilisation, in the age of the Antonines. There was barbarism, mitigated, no doubt, by Roman and Christian influences, but still barbarism, in the age of the Merovingians. Later on the empire of Charlemagne gave a promise of advance which was belied by its speedy disruption. The suggestion that in India even of the eighteenth century there were principles at work which might have

led to progress is, if admitted, of some consequence. For, in a political sense, there can be no safer goals of progress which we could deliberately adopt than those towards which a dependent society would have spontaneously pressed if its forces had been left to their unguided operation. Nor need we fear that any consideration of this kind, if accepted, would prove too stiff a drag on the wheels of our very effective machinery. There is a danger of an opposite description; the danger that in our dislike of practices and institutions offensive to a moral judgment, formed under conditions entirely absent in the East, or in our zeal for the extension of our latest home-made improvements, we may press on the pace so rapidly as to produce alarm in the more conservative sections of native society, and in the more advanced sections a giddiness that may be even more fraught with future trouble than the alarm.

Amongst the remarkable facts connected with the organisation of feudal society were the isolation of the different vassals of the same suzerain and the absence of any peaceful expedients for the execution of the judgments of the vassals acting in the court of the suzerain in their capacity of *pares* or compeers. The suzerain might convoke his vassals to make war, to administer justice, to celebrate some festival; but they had no obligatory habitual relations amongst themselves apart from the action of their suzerain; their relation to him was their only principle of association. The general rule was that a man should be judged by the assembly of his peers; and there were some subsidiary rules for giving effect to it. There was also a system of appeal from the lord to his superior lord *en faux jugement* and *en défaut de droit*. But if we may rely on Guizot, there was nothing short of war, or the threat of war, to enforce the judgment that might be passed, and the isolation of the vassals was accompanied by the severance of jurisdictions. The holders of the fiefs, great or small, so Guizot tells us, exercised all the rights of internal sovereignty in their respective domains. 'No external or distant power,' he says, 'gave laws there, established taxes, or administered justice; the proprietor alone possessed all this power.'

Ideas of law derived from Rome, the great source of European law, and carried along in Romano-Gallic traditions, in the Leges Barbarorum, in the capitularies of the Frankish kings, deeply influenced the archaic, tumultuous society which had broken down the Roman empire of the West. In



India almost exactly the converse has happened of that which happened in Gaul. In what is now France the semi-barbarous German tribesmen overmastered the mature, though failing, civilisation of Romanised Gaul. In India the mature and strong civilisation of our own country has acquired supremacy over a vast assemblage of semi-civilised states and races and tribes. Looking to Western Europe as a whole, and to India as a whole, our situation in India is as though the old Roman empire risen from the dead had conquered the broken empire of Charlemagne. But the contact between early and late ideas of politics and morality, between a number of societies or states on the verge of feudalism and a governing body steeped in modern theories, full of modern precision, and, above all things, reverencing law, has produced some striking analogies between the political system of India and the feudal system established in Europe by the fusion of Germanic custom with Roman law.

If the fiefs were isolated, so are the native states. If the holders of the fiefs enjoyed immunity from the laws of any external or distant power, so in general do the chiefs exercising various degrees of internal sovereignty under the protectorate enjoy immunity from British law. No doubt we have suppressed private war; and there are now other and better means for determining disputes between different states or their subjects. No doubt the paramount power has far greater strength than ever belonged to any feudal suzerain. But this is a natural consequence. It follows as of course from the reversal of the old, early mediæval position. The paramount power is a strong and pacifying power because it is civilised. It is for this reason that it can hold in check those impulses which the surviving traditions of Roman law and the attempts of semi-barbarous kings to rule in Roman fashion were alike impotent to restrain.

Even in the methods by which the system of the protectorate has been gradually formed we see likeness to the process of feudalisation. One great agent in that process was commendation. As I have said, I have found nothing in India which precisely resembles commendation; but I will mention two famous historical examples of great groups of states seeking the protection of the British Government against an external enemy. The Sikh states of the Cis-Sutlej territory sought our protection against Ranjit Singh and it was afforded. Our policy in the matter of protecting the

states of Rájpútána against the Marhattas and free companies generally unfortunately vacillated; and in the end the Marquis of Hastings proceeded on the principle that in the operations against the Pindáris no one could be suffered to be neutral, and that many of the Rájpút states should be required to join the league which had that measure for its object. The case, therefore, was not quite the same as that of the Sikh chieftains; but no Rájpút state failed in obedience to the summons, and indeed, before this policy was determined upon, these states had repeatedly applied for the aid of the British Government. 'When I reply to these applications,' said Sir Charles Metcalfe, the Resident at Delhi, under date June 20, 1816, 'I find it difficult to obtain even a confession that the moderate policy of the British Government is just. People do not scruple to assert that they have a right to the protection of the British Government. They say that there has always existed some power in India to which peaceable states submitted, and, in return, obtained its protection; that then their own governments were maintained in respectability, and they were secure against the invasions of upstart chiefs and armies of lawless banditti; that the British Government now occupies the place of the great protecting power, and is the natural guardian of the peaceable and weak; but, owing to its refusal to use its influence for their protection, the peaceable and weak states are continually exposed to oppressions and cruelties of robbers and plunderers, the most licentious and abandoned of mankind.'

These arguments of the old Hindu states of Rájpútána in the early years of this century confirm the opinion that the Indian protectorate rests on ideas which are fundamentally indigenous; that there were many tendencies making for feudalism in the India of our predecessors; and that our protection has been sought in India as vassals sought the protection of their lords. Feudalism, however, implied a contract between lord and vassal, and that contract carried with it a number of consequences largely derived from surviving influences of Roman law. Where are the contracts of the new variety of feudalism established in the Indian protectorate? They are in the six massive volumes of Aitchison's treaties, engagements, and *sanads* relating to India; and they carry with them consequences which have been slightly touched by international law, and are much more largely moulded on modern ideas of political morality.



# CHAPTER XII

## NATIVE RULE UNDER THE MARHATTAS

It is one of the objects of this treatise to contribute, however humbly and imperfectly, to the strength of the British Indian protectorate by facilitating the practical application of recognised principles and furthering the development of a body of clear and reasonable subsidiary rules framed in harmony with those principles. If the protectorate itself were incapable of adequate moral justification, no such aim could rightly be entertained. It would be iniquitous to seek to strengthen an engine of political oppression or to elaborate a mechanism for producing the miseries of misrule. If we do not believe that, on the whole, the preponderance of British influence has done good in native states, we can hardly rejoice in the consolidation of the protectorate.

Apart from this, there are solid political reasons why we should not forget—as we are very apt to do—the true character of native governments when as yet unmodified by Western ideas. The Indian Government must be judged not merely by what it does, but largely by what it prevents; and if the British nation desires to pass a just judgment on the manner in which some of its most onerous responsibilities are fulfilled, it is only right to bear in mind what a vast store of the political forces of the Indian Government is used up in the mere prevention of the commonest evils incident to immature civilisation.

No one can understand the actual position of our fellow-countrymen who are engaged in the business of Indian administration without first grasping some of the elements of native society and then realising the permanence of these elements and the persistence of the old types of character under British rule. It is palpable enough that many Englishmen have forgotten, many more have never known, what native India—India before British rule or the preponderance of British influence—was really like. It is not so palpable,

but it is equally true, that many educated Indians are in a like condition of forgetfulness or ignorance; and it is as well that they should not merely profess to acknowledge, but actually know, what they have gained by the efforts of British soldiers and statesmen. The hereditary teachings of despotism are strong; and it is really often hard for those whose mental stock is largely composed of Oriental traditions to see anything better than a transparent piece of cant in the expression of a disinterested wish to govern for the good of the country. The transfer of the Indian Government to the Crown has here produced some improvement; and in course of time we may hope that it will be more widely recognised that most British soldiers and statesmen, when they profess this wish, as a matter of fact actually entertain it.

In this way, in part as a moral justification of the present position, and in part because facts important to be known are often ignored or forgotten, it comes to be part of the argument to describe native rule in its indigenous condition. In such a work as this no description of the former state of India can be more than a sketch; but in attempting to present the mere outline of a few salient features I shall hope at least to convey an impression which shall be true so far as it goes.

With the object of arriving at a true impression we may consider what is the best evidence now available. I think the best evidence is that which relates to the condition of a number of British provinces in the times immediately preceding annexation. In the records of the early investigations of the circumstances of annexed territory we have detailed accounts of the governments of our predecessors much more full and exact than it has usually been possible to obtain in regard to the governments of native states until the character of them has already been changed by the preponderance of British influence. It may be said that the value of this evidence is sometimes diminished by the fact that British interposition has been directly due to a climax of misgovernment. That is true; and due allowance must be made for the circumstance in weighing the evidence, particularly in the case of Oudh and, in a less degree, of Nágpur. For this reason I shall in the main confine myself to the Marhatta country, the Punjab, the North-West, Bengal, and parts of the old kingdom of Mysore, in none of which provinces was misrule the particular ground of annexation. But in the broadest



sense it must be allowed that general anarchy in India led to the whole series of annexations; and indeed the causes of the disorders which became rampant in the land upon the disruption of the Moghal Empire lay deep in the constitution and character of Indian society. The operation of those causes is now restrained by the British system; but were the controlling hand uplifted, the strength and violence of the forces held in check would be visible again.

Fortunately there has been drawn by a master hand a very vivid picture of a native system of government as it existed just before British rule. In Mountstuart Elphinstone's report on the territories conquered from the Peshwa there is an account of Marhatta institutions in the early years of the present century so clear, so simple, so concise and yet so full, that the perusal of it immensely facilitates the task of examining other similar expositions relating to other parts of India. It is difficult to compress what is already a model of official precision and terseness; but I shall try to convey, as briefly as possible, the impression which the perusal of that report may leave upon the mind.

There is also another circumstance which facilitates the attempt to describe native rule. In comparatively early stages of society the elements of government are necessarily fewer and simpler than they are under the complex conditions of advanced civilisation. In a society either without courts of justice or with courts of justice not worthy of the name, without legislatures, without representative institutions, without manufactories, a society in which inland commerce was hampered by transit duties and the chief occupations were agriculture and warfare, our modern problems have no place. There are, in such a society, no projects for improving the law of property, the criminal law, the law of private conditions; there are no questions of parliamentary reform, of protection and free trade, of capital and labour. Colonial policy there could not be without dependencies; and as for foreign policy, apart from the feudal tendencies which I have described, we may appeal to the almost contemporary testimony of Lord Minto. In a despatch of April 14, 1810, Lord Minto argues that no system of a balance of power is discoverable at any period of Indian history or is compatible with the character, principles, or constitution of Indian states. With these states, he says, 'war, rapine, and conquest are avowed principles of action, a just and legitimate pursuit, and the chief source of public

glory, sanctioned and even recommended by the ordinances of religion, and prosecuted without the semblance or pretext of justice, with a savage disregard of every obligation of humanity and public faith, and restrained alone by the power of resistance. Under the successful impulse of these principles the vast empire of the Muhammadans was established over more than the continent of India. On its ruins arose the power of the Marhatta states, which subsequently branched out into a confederation of chiefs, professedly directed to objects of conquest and universal exaction, the fruits of which, by regular convention, were to be divided in specific proportions. The same views and principles animated and extended the usurpations of Haidar Ali and his successor. The checks which the Marhattas and the ruler of Mysore occasionally received from the power of the Nizam, and from different combinations among these three states, were the result, not of a pre-established federation and balance of power, but of the prevalence of a system of conquest, violence, and usurpation. The efforts of the contending parties were directed, not to the just limitation, but to the subversion of each other's power and the aggrandisement of their own; and it is unnecessary to refer to the testimony of specific facts with a view to demonstrate the self-evident proposition, that the permanent existence of a balance of power is incompatible with reciprocal views of conquest and ambition.'

Remembering that before our day the Indian political ocean was crowded with piratical craft, and that many of the states we have displaced or preserved were essentially predatory, we find that the analysis of their internal organisation resolves itself into an account of the character of taxation, the means, such as they were, of dispensing justice, and the general degree of personal freedom from molestation and of security of life and property. The fact that taxation often originates in rapine partly explains why primitive empires may commonly be described with justice as tax-gathering empires. A Resident at Hyderabad, in an official report dated June 22, 1859, states that most natives entertain the idea that we have only governed them in order to exact as much revenue from them as we can, without reference to their interests. This conception of the objects of a government seems to me merely the natural fruit of centuries of experience of uncivilised rule.

We come now to the consideration of Mountstuart



Elphinstone's report. In the territories conquered from the Peshwa the *ryots*, or petty occupants, were found to be proprietors of their holdings, subject to the payment of a fixed land tax to Government. The tax, though fixed, was loaded with other impositions, but the lands appear to have been saleable at ten years' purchase. The Peshwa himself, when he wanted land so owned, paid the price of it. At the time of conquest the whole country had been surveyed, and each field classed and assessed according to its circumstances and quality. There had been partial and imperfect attempts at surveys by the Marhattas. The northern districts had been surveyed by Malik Amber, and the southern by the Adil Sháhi kings.

The Muhammadan rulers who preceded the Marhattas had appointed district revenue officers of their own, but had not entirely ousted the old hereditary revenue officers of previous Hindu Governments, the *deshmukhs* and *deshpandis* already described. The Marhatta arrangements were not uniform, but in general there was a revenue officer for a large district, called a *mámlatdár*, under whom were *tarafdárs*, or *karkúns*, who had charge of a considerable number of villages, and under them *shaikhdárs*, who had four or five. There were other officers also, who were bound to give information of all malpractices on the part of the *mámlatdárs*.

These *mámlatdárs* made large unauthorised profits, often with the connivance of the Government. They found means to engage on their side the officers who were set to watch them. Accustomed to be mulcted when they submitted their accounts, on the score of embezzlements assumed against them without much proof or investigation, the *mámlatdárs* made money by concealing the receipt of fees and fines, by false charges for remissions of revenue, false musters, non-payment of pensions, and other frauds. An extra assessment was imposed for the purpose, amongst other things, of bribing the ministers and auditors. This expenditure was known as *Durbár Kharch*; and by degrees the bribes became established fees, and the account of them was audited like the rest. 'As bribes,' it is said, 'were still required, another increase of collection took place for this purpose; and as the auditors and accountants did not search minutely into these delicate transactions, the *mámlatdár* generally collected much more for himself than he did for his patron.' The complicated Marhatta system of dividing

the revenue in grants to various recipients added to the trials of the peasant occupant. As many as five different grantees might have claims on the collections from a single village. If there was a defalcation, each endeavoured to secure his own share in full and throw the loss on his neighbour; and a general struggle ensued, in which the *ryots* suffered from the violence of the combatants. When the time of payment came round, a foot soldier was sent by the *shaikhdár* to assist the village headman, and if a *ryot* refused, or was unable to pay his revenue, the soldier confined him in the village watch-house, exposed him to the sun, put a heavy stone on his head, and prevented his eating and drinking till he paid. If this did not succeed, the *ryot* 'was carried to the *mámlatdár*, his cattle were sold, and himself thrown into prison or into irons. This rigorous treatment was seldom necessary for the regular revenue, it was more employed in exacting extraordinary taxes; and under the farming system the practice of it was frequent and severe.' So long as the *mámlatdárs* had an interest in the prosperity of their charges the *ryots* probably suffered less by all this corruption and exaction than might be supposed. But eventually this check was removed. The office of *mámlatdár* was put up to auction year by year among the Peshwa's attendants. *Mámlatdárs* thus appointed had neither time for inquiry nor motive for forbearance. 'A man's means of payment,' writes Mountstuart Elphinstone, 'not the land he occupied, were the scale on which he was assessed. No moderation was shown in levying the sum fixed, and every pretext of fine and forfeiture, every means of rigour and confiscation, were employed to squeeze the utmost out of the people before the arrival of the day when the *mámlatdár* was to give up his charge; amidst all this violence a regular account was prepared, as if the settlement had been made in the most deliberate manner.'

In the matter of police, Elphinstone testifies that the country to which his report relates was, amidst all the abuses and oppressions of a native Government, in a state superior to that of our oldest possessions at that time. Gang robbery was common, but had never, since he had been in the country, reached such a pitch as it had reached in Bengal. These robberies were almost always committed by Bhíls and other predatory tribes, who scarcely formed part of the society. The Bhíls, probably aborigines, differing in colour, manner, and language from the other inhabitants, lived in



the northern Ghauts and eastern branches of the range, in the wastes dividing Guzerat from Málwa, and in the east of Guzerat. Below Poona the Bhíls were succeeded by the Ramúsis, who had the same thievish habits as the Bhíls, but were less separated from the generality of the people.

There was no prescribed form of trial. Men were seized on slight suspicions. Presumptions of guilt were freely made. Torture was employed to compel confession. Prisoners for theft were often whipped at intervals to make them discover where the stolen property was hidden. Ordinarily no law was referred to, except in cases affecting religion. In punishments a greater distinction was made on account of the caste or means of the criminal than the nature of the crime. Probably no other punishment than fine was ever inflicted on a man who could afford to pay one, and any offender, it is said, could purchase his release if he had money enough to pay for it. False accusations were used to extort money from the innocent. *Jágírdárs*, *zamindárs*, and village headmen made a trade of harbouring robbers and shared their profits. Highway robbery was generally punished with death, because it was generally committed by low people. A principal rebel, or a head of banditti, would be executed as soon as he was caught; any Bhíl captured in a part of the country where Bhíls were plundering the road would be hanged immediately. Most *mámlatdárs* would hang a Bhíl or a Ramúsi without reference to any higher authority. But at Poona all officers would pay the Peshwa the compliment of asking his sanction to a capital sentence. Murders were usually punished by fine; but in cases of treason and rebellion, birth was no protection. Besides hanging, other punishments were trampling to death by an elephant, blowing away from a gun, beheading, cutting to pieces with swords, crushing the head with a mallet. 'Bráhman prisoners, who could not be executed, were poisoned or made away with by deleterious food; bread made of equal parts of flour and salt was one of these. Women were never put to death; long confinement and the cutting off of the nose, ears, and breast, were the severest punishments inflicted on them. Mutilation was very common, and the person who had his hand, foot, ears, or nose cut off, was turned loose as soon as the sentence was executed, and left to his fate. Imprisonment in hill forts and dungeons was common; and the prisoners, unless they

were people of consideration, were always neglected, and sometimes allowed to starve.'

Under a police administration so corrupt and so tyrannical, how was it that crime was not specially rife? To a certain extent the people protected themselves. They had arms, and were hardy and warlike. Village police was committed to the village headmen and the village watchman. The footsteps of a thief were tracked from village to village, and the village officers, and inhabitants of the village outside the boundaries of which the track could not be carried on, were held responsible for the property lost. Besides the hereditary village watchmen, other watchmen were often entertained from plundering tribes in the neighbourhood, partly to assist in repelling open force, partly as a measure of blackmail convenient to both parties concerned in it. But probably the success of barbarous methods of repressing crime is best explained by their origin in and close connection with a primitive state of society. Because punishments were inhuman, they struck terror where no other motive would deter from crime. The *mámlatdárs* and other officers were careless of small disorders in society; great ones they put down with a strong, unsparing, undiscriminating hand. Born and bred in the country, they had a keen insight into the probabilities of each case, which at least helped men who had few scruples to a speedy decision. 'If robberies were committed, they seized all the suspicious characters in the neighbourhood, and if they succeeded in restoring quiet they did not care, though a hundred Ramúsis suffered imprisonment and torture without a fault.'

In the Marhatta system of civil justice the most important institution was the *panchâyat*. This has been described as a village council or court of arbitration; but in the country here under consideration it does not appear to have been closely connected with the village organisation, though the village headman was one of the functionaries in whom resided the power of summoning these courts. In one period of the development of Roman law the magistrate defined the issue between the parties to a civil case, and referred it for decision to a judge or *judex*. The *judex* was a private citizen, and had no power to pronounce judgment unless authorised by the magistrate. The written directions given by the magistrate to the judge were called *formulæ*; and the whole system was comparable in point of precision and almost in technicality with the pleadings of an English



court of law. The Marhatta references to *panchâyats* bore some slight resemblance to Roman references to *judices*, if we can suppose the latter stripped of all precision, technicality, and system, and directed, without advertence to any law except the popular notions of customary law, to selected groups of people—never less than five, and sometimes as many as fifty in number. Many officers of the native government, and other persons of good position, had authority to order a *panchâyat* to be called; and in any doubtful case it was considered a gross injustice to refuse to make this order. The persons chosen to serve were in general those likely to understand the subject in discussion: as bankers in a matter of account; *deshmukhs* and *deshpandis* in land-suits; in caste disputes, members of the caste from an unprejudiced part of the country. The members of a *panchâyat* might be openly paid by the parties for their trouble. The decisions of *panchâyats* were reported to, and supposed to be enforced by, the public officers. But in truth there was no finality where a superior officer, or the same officer or his successor in office, might be induced by a bribe or the expectation of a recognised fee to reopen the matter. Sums were levied from the parties; the fine on the loser varied with his means; one-fourth of the property was the price paid for justice by a successful plaintiff; and this was, in fact, a standing bribe to invite the assistance of the magistrate. The *panchâyats* were quite unmethodical in procedure, and usually dilatory in making an award. Sometimes their counsels were divided by partisanship with the litigants. Sometimes one of their members was stimulated by a bribe to suggest the decision and persuade the rest to assent. With all their liability to corruption and delay, these rudimentary juries, in default of better courts, commanded the confidence of the people, as is witnessed by the proverb, *pánch parmeshwár*—'The judgment of the *panchâyat* is the judgment of God.' Private redress, patronage, and presents played a very large part in the whole arrangement. Readers of Sir Henry Maine's 'Early History of Institutions' are familiar with the transformation of the foray of primitive times into the legal remedy of distraint, and with the analogy between the Indian practice of sitting *dharna* and the rule of the Brehon law that a creditor who requires payment from a debtor of higher rank than himself shall 'fast upon him' Elphinstone's description of the Marhatta system of civil justice exhibits, I think, a transitional state of society in

which a primitive institution, probably originating in a caste, tribal, or village council, has been utilised, with modifications, for purposes of administration and to provide in part for the remuneration of officials; while private duress is accepted, just as the seizure of cattle was tolerated under early English law, as a means of inducing the defendant to submit to the jurisdiction. In all claims, except for land, the first step in the suit was *takáza*, or dunning; nor would the Government concern itself in the case unless the defendant complained of excessive or unjust *takáza*. This might consist of placing a guard over a man, preventing his eating, tying him neck and heels, or making him stand on one leg, with a heavy stone on his head, under a vertical sun. It was employed intentionally to bring about the acquiescence of defendants in the appointment of *panchâyats*. Such was the process when the demand was made against an inferior or an equal. 'If,' says Elphinstone, 'the debtor were a superior, the creditor had first recourse to supplications and appeals to the honour and sense of the other party: he laid himself on his threshold, threw himself on his road, clamoured before his door, or he employed others to do all this for him; he would even sit down and fast before the debtor's door, during which time the other was compelled to fast also; or he would appeal to the gods and invoke their curses upon the person by whom he was injured. It was a point of honour with the natives not to disturb the authors of these importunities so long as they were just, and some satisfaction was generally procured by means of them. If they were unjust, the party thus harassed naturally concurred with the plaintiff in a wish for a *panchâyat*.'

The employment of the interest possessed with any great neighbour or connection to intercede with the debtor or stir the authorities to do justice was so extended that scarcely any man was without some patron. This circumstance, so far as it goes, seems to support the conjecture that the Roman *clientela* was an old Italian institution, dating from times when Roman citizenship was yet unknown. At all events, in primitive times the spokesmen of the groups which are the prominent units of society are the headmen of the villages, the headmen of tribes, and the chiefs of plundering bands; and in periods of habitual warfare the disposition of individuals, villages, or towns to seek the protection of any lord or leader who is strong enough to afford it, plays an active



part in the process of feudalisation. In this Marhatta society we can perceive at work some of the motives which went to form two of the most famous legal relationships in legal history, those of patron and client under Roman law and of lord and vassal under feudalism.

As for presents, though we are right to detest venality and to punish severely an offence that is easily screened, we must not forget how deep in primitive human nature lies the conviction that any powerful people and the gods, too, if the gods are any way in question, had better be conciliated, lest they do one an injury; and that, later on, the fair remuneration of the judge for his trouble was paid by the parties like a court fee. In our early days when the government of the East India Company was still conducted on oriental principles, it permitted its servants to reap the fruits of the native system of presents to those in authority. When we look into states that have not been Anglicised, we should hardly err if we expect to find judicial corruption held in popular estimation to be no worse a failing than in our country parliamentary corruption was held to be only a generation ago.

I must add that under the Marhattas ordeals were not uncommon, especially in boundary disputes. In other cases they were chiefly resorted to when other means of ascertaining the truth had failed. On the whole, some justice was obtainable. The *panchâyats* being drawn from the people could act on no principles that were not generally understood; and they could readily grasp the facts before them, and often knew the character of the parties very well. There was a special term, however,—*tali*,—for robbery, arson, or murder committed to oblige a Government officer or village to satisfy the claims of the perpetrator. As Elphinstone points out, the frequency of this offence shows that justice was often denied. It is easy to see that such advantages as there were in the old Marhatta system could scarcely be maintained under British rule. It was *takáza* that gave, in many cases, its impulse to the system of *panchâyats*; and *takáza*, under British administration, perished forthwith. It is no point of honour with our courts to refrain from interference with clamouring creditors. If clamour goes beyond mere importunity and reaches to personal molestation or threats of divine vengeance, there are the law courts and there is the penal code. Assuredly in these days the man assailed will, if possible, have the law of his adversary. And our magistrates must act as their codes direct, if the applica-

tion made to them is supported by sufficient evidence. They cannot, like an old Marhatta *mámlatdár*, blankly refuse to take up a case if they think its investigation too troublesome or inexpedient, or no one has made that investigation worth their while.

So far the description applies to the places and times in which the Marhatta government was strongest and best. In the days of the last of the Peshwas the state of things was much worse. 'The farming system,' so the report runs, 'made over each district to the highest bidder, who was generally the most unprincipled man about the court; and, as full support was requisite to enable him to pay his revenue, it consigned the people to his oppression without a remedy. The farmer's whole time and thoughts were occupied in realising his revenue. Justice was openly sold, and, except as a marketable commodity, it was never thought of. The party in the wrong could always by a bribe prevent his cause going to a *panchâyat*, or overturn the decision of one. An appeal lay from the under farmer to the upper, whose income depended on the exactions of the authorities below him, and from him to the minister, who never received a complaint without a present, or to the Peshwa, who never received one at all. In consequence, the Government afforded little justice to the rich and none to the poor.'

I will supplement the particulars I have taken from Mountstuart Elphinstone's report of 1821 by some extracts from a report, dated August 16, 1867, by the late Mr. W. G. Pedder, then Superintendent of Revenue and Survey Assessment, Khandeish. Mr. Pedder had been employed for many years in Guzerat on duties connected with the settlement of the land revenue, and had thus had special opportunities of making himself acquainted with the early records of all the Guzerat collectorates. At a distance from the seat of Marhatta power, on the coasts and in the northern districts, there was less in vigour in Marhatta rule than in the Deccan; and there were special circumstances which conduced to great insecurity of life and property. If the state of taxation was bad in the Deccan, 'it was much worse in Guzerat, where the people, in race and language, were foreign to their Marhatti rulers, where the farming system was introduced earlier and more systematically, and where districts were portioned out between the Moghals, the Peshwa, the Gaekwar, and Sindhia, which powers were continually at war, so that a single village was often called on to pay revenue to



two or more at once.' In some districts 'the revenue was only collected by sending round a *mulk-giri* army while the crops were standing; and, as the chiefs made resistance a point of honour, the collection of the Government demands was annually attended with bloodshed and wide devastation, the result being that the most powerful chiefs paid little, the weaker were crushed by the exaction.' *Mulk-giri*, as I have explained elsewhere, literally means taking possession of a country; and it is significant that a special term was in use to denote the periodical progress or incursion of a force for the collection of tribute or revenue by violence or intimidation. The Rájpút chiefs, who resided mostly on the frontiers, made a regular practice of levying blackmail. This was called *torágrás*, from *tora*, composition, payment, adjustment, and *grás*, literally a mouthful, applied sometimes to the assignment of a small portion of the produce of a village or villages in remuneration for military service, and in Guzerat and Málwa denoting the price paid for immunity from plunder. If the *torágrás* was not regularly contributed, the villages were burnt and the headmen carried off and held to ransom. In many districts of Guzerat not a single village was exempt from the imposition. 'Besides the sufferings of the province from robber tribes, every petty chief and every village during the eighteenth century waged war with their neighbours at discretion.' 'The coasts of Guzerat and the Konkan suffered dreadfully during the eighteenth century from the ravages of pirates. On one occasion all the women of a Bráhman town were carried off by Muhammadan pirates, who not only violated them, which perhaps was not thought of so great consequence, but deprived them of caste by forcing beef into their mouths. In Khandeish, the Bhíls, or aboriginal tribes, sallying from their fastnesses in the hills, committed great ravages upon the villages of the plains. The policy of the Marhattas towards these people was cruel in the extreme. A common punishment for a Bhíl, whose only crime was perhaps his being a Bhíl, was to be tied to a red-hot gun. Numbers of them, with their wives and children, betrayed by treachery, after being flogged or mutilated by the amputation of their noses, ears, and the breasts of the women, were thrown down precipices or into dry wells. They, of course, retaliated when they could by similar atrocities.' 'Khandeish is full of dismantled hill-forts. These were supposed to curb the hill tribes, but during Marhatta rule they were occupied by Arab

and other mercenary troops, who laid the whole country under contribution.' The older report of Elphinstone states that women were never capitally punished. But where nothing was systematic and no general rules were consistently observed, there seems no reason, in the case of Bhíl women, to doubt the testimony of Mr. Pedder.



# CHAPTER XIII

## NATIVE RULE IN THE PUNJAB

Our three greatest predecessors in Indian dominion were the Marhattas, the Delhi emperors, represented by their usurping viceroys, and the Sikhs. When the Company first became a political power, the Marhatta confederacy had thrown its close and intricate network of predatory claims over Western, Central, and a great part of North-western India. The rest of Northern India and the Deccan and most of the eastern coast districts were in the hands of practically independent Muhammadan governors. Later on, about the time when the British Government became the paramount power in the rest of India, to the north and west of the Sutlej arose the compact Sikh kingdom of Maharaja Ranjít Singh. Neglecting a vast number of petty jurisdictions within the enormous masses of territory subject to Marhatta, Sikh, or Moghal domination, neglecting also the far southern states of Cochín and Travancore, I must add that in the south of the peninsula we succeeded to a great part of the dominions of Haidar Alí and Tippoo, the Muhammadan rulers of the Hindu state of Mysore. Rájpút India, extending from Guzerat to the distant petty principalities in the Punjab Hills, from Bikanír on the west to the borders of Rewa on the east, was never, as a whole, regularly annexed by any conquerors; though an intrusive arm of Marhatta conquest divides the Western from the Eastern Rájpúts, and the northern Rájpút States are separated from the States of Rájpútána proper by a like obtruding block of territory once overrun and now still partly held by Sikh chieftains. It is interesting to note that our main conquests followed the line of least resistance. The Delhi Empire was altogether in fragments; but the Marhatta confederacy, though very loose, was held together in a way by ties of race and religion, by something like a common system and common aims; and the Sikh power of Ranjít Singh

was better consolidated than any barrier that opposed our course before we reached the Sutlej.

It will be remembered that we are dealing at present with the condition, prior to British rule, of territory that is now British. As I have described Marhatta administration in the last chapter, I turn now to Sikh administration, leaving the Muhammadan governments for another chapter.

Before the irruptions of Turks, Afgháns, and Moghals established a Muhammadan government in the Punjab, and laid the foundations of Muhammadan supremacy in Upper India, the Punjab territories appear to have been held by Rájpút princes. To Rájpút dominion eventually succeeded that of the Delhi emperors, whose hold upon the Punjab was at one time strong. From 1584 to 1598 A.D. the great Akbar seems to have made Lahore his head-quarters; and the mosques and gardens of Lahore and its neighbourhood still bear witness to the ostentation and luxury of the Delhi court. It was the decay of Muhammadan rule in the Punjab that led first to the partition of the country amongst numerous Sikh chieftains; and afterwards to the rise, in the country west and north of the Sutlej, of the consolidated kingdom of Ranjít Singh.

Sikhism, an eclectic religion combining with some Hindu tenets and observances a monotheism probably derived from Islám, arose in the Punjab during the sixteenth century. Its birthplace was a border-land between the Hindu countries of India and the Muhammadan countries which stretch away from a point not far west of Lahore till they blend with Christian countries in the European provinces of the Turkish Empire. The Sikh religion, originally a tolerant quietism, became, under the impulse from within of political ambition and the impact from without of a persecution that was both political and religious, a warlike and aggressive political power. It was probably during the long absence of Aurangzíb in the Deccan that Guru Govind Singh, the last of the ten great Gurus, or recognised heads of the faith, conceived the idea of founding a Jat principality along the skirts of the hills between the Sutlej and the Jumna. His chosen disciple, Banda, attacked, defeated, and slew the Moghal governor of the province of Sirhind; and Banda was, after further successes, eventually captured and put to death at Delhi under circumstances of great barbarity. It is said that he was compelled to take the life of his own son, and that his flesh was then torn with red-hot pincers. A price was put upon the



heads of Sikhs; and persecution, which was probably the more relentless and bloodthirsty because political issues were involved in the struggle, suppressed for a generation the exhibition alike of Sikh fervour and of Sikh turbulence.

The Delhi Empire, however, was already being torn to pieces by its open enemies and faithless adherents; and ruthless pressure upon one nucleus of political power did nothing to retard the catastrophe. The notorious confusion of the time invited the invasion of Nádir Shah; and the march of the Persian army through the Punjab, followed by the capture of Delhi, gave the Sikhs another opportunity. Bands of armed men, in tens and twenties, infested the roads, plundered indifferently the stragglers of the Persian army and the inhabitants of the country; and, as troubles thickened, these robbers extended their depredations to villages and towns. Again and again Ahmad Shah Duráni, the mace-bearer and successor of Nádir Shah, repeated, with varying success, the blows of his predecessor. The Muhammadan governors, who still lingered in the Punjab, could make little head against the Persians on the one side and the Sikhs on the other; and the Muhammadan rulers of Upper India, who were now asserting independence, already felt the formidable menace of Marhatta power. The bands of highwaymen began to collect in *dehras* or encampments under *sardárs* or chiefs; the robbers, now mounted and better armed, began to regard themselves and to be regarded as free-lances, ready to take any side that offered a prospect of booty. Adína Beg Khan, the last governor on behalf of the Moghals in the Jullundur Doáb, assumed independence, and, refusing to bow to the Duráni yoke, took Sikhs into his pay, and called in the Marhattas. Mulhar Rao Holkar, and other Marhatta chiefs came with alacrity, and a swarm of Sikh plunderers advanced with them on Lahore. The son and the governor of the Duráni chief retired to the Indus; and a detachment of Marhattas remained at Lahore till Ahmad Shah reappeared on the scene, when they retreated before him, pillaging and laying waste the country to Delhi. Then followed, in 1761, the last great battle of Pánipat, the last great battle in India between Muhammadans and Hindus, in which the Muhammadan powers formed or forming on the ruins of the empire joined the invaders, who had contributed to its ruin and their rise, in temporarily crushing the great Marhatta power of Western India, which practically threatened

every Muhammadan state in the land with either subjection or extinction.

The defeat of the Marhattas at Pánipat gave a very severe shock to the only Indian political authority in Northern and Western India that was then capable of withstanding for any length of time the growing strength of the East India Company; and it may be said to have prevented a Marhatta conquest of the Punjab, which would in all probability have ensued had Ahmad Shah Duráni and his Indian allies been vanquished by the Peshwa's cousin, Sedásheo Rao Bháo. Ahmad Shah Duráni quickly returned to Kábul, leaving governors in Lahore and Sirhind. For some few years the Sikhs attacked his governors when he was absent, and on his approach to the assistance of his dependents eluded his vengeance by breaking up their camps and dispersing in different directions. Once he surprised them already in action with his Sirhind governor, Zain Khan, and defeated them with great slaughter. They avenged this defeat by the destruction of Sirhind and the capture of Lahore; and at length the sudden desertion of 12,000 men of the Shah's army, who marched back to Kábul without orders, compelled him, in 1764, to quit the Punjab for the last time.

The Delhi Empire had fallen. The Marhattas were defeated. The Persians and Afghans were gone. The field was thus clear for the martial bands of Sikhs now formed into a number of confederacies, known as *Misls*, which speedily acquired territorial power. It was a principle of these associations that the lands they conquered should be divided amongst the confederates in proportion as each had contributed to the acquisition. The portion of the chief or *sardár* having first been divided off, the remainder was parcelled out to leaders of troops, usually according to the number of horsemen they brought into the field. The theory was that every one took and held his share in full independence; became, indeed, to the extent of his holding in the jointly conquered lands, a petty prince of a petty sovereignty. We may reasonably suppose that the leaders of the *Misls* soon arrived at a common understanding due to community of race amongst Jat Sikhs, and amongst all Sikhs to community in religion and in antipathy to the Muhammadans alike of Delhi and Persia and Afghanistan. A practice was established whereby the chiefs of the *Misls* and their followers met once or twice a year at Amritsar, and usually



held *gurumattas* or councils on their common affairs. So far as the idea of the mystic *Khálsa* had at that time any concrete realisation, its embodiment, I think, is to be traced in these assemblages. The *Khálsa* appears to me to have been a sort of vague personification of the Sikh people in its warlike and religious aspect. At all events, if the forces of several *Misls*, after a *gurumatta*, joined in a predatory enterprise or in the levy of blackmail, they assumed the title of the army of the *Khálsa*. Before the rise of Ranjít Singh there does not appear to have been any central political authority controlling the chiefs of the *Misls*, who were held to be equal amongst themselves.

In a society full of violence an immense number of petty chieftaincies just won by the sword could by no means maintain inviolate for any long period of time either their boundaries or their authority. North and west of the Sutlej they were welded into a mass by the lucky alliances and unscrupulous craft of Ranjít Singh. South and east of that river they fell under the petrifying, if preserving, hand of British authority. Some of these states lapsed to the British Government. Many were sequestrated for taking the wrong side in the first Sikh war. Some are still substantive protected dependent states of the British Empire.

From the first there were tendencies at work which made it pretty certain that before long some bold adventurer would outstrip his compeers in the race for power and subjugate numbers of these lesser chiefs, who in the unquiet times could hardly stand alone without protectors. It is unlikely that the theory of the full independence of those who shared in the acquisitions of a *Misl* was ever consistently acted on. Indian experience, at least, suggests that the vague acceptance of a theory as a sort of counsel of perfection that no one seriously supposes will be followed universally or unless convenient, is just one of those distinctive marks which form part of the contrast between imperfectly civilised and fully civilised societies; and the popular capacity for modifying general rules according to practical exigencies is one of the circumstances that make generalisation on Indian history and Indian affairs eminently hazardous unless fortified by modifications and exceptions. A Sikh *sardár* in the lands assigned to him might grant *jágírs*—that is, assign the revenue of specified lands—to relations, dependents, or retainers, on condition of personal service with contingents

according to the extent of the grant. In other cases a disputed succession, a quarrel between brothers or between father and son, or the probable helplessness of the widow or orphan when a tenure fell to a woman or a child, might invite interference or attack; and when one *sardár* had conquered another, it may be after a well-balanced fight, it was a ready expedient either to grant to the vanquished chief some of his own villages, or perhaps better still, some other villages in another part of the country, as a *jágír*, to be held in dependence on the conqueror and subject to the usual condition of service in war.

This last expedient was frequently employed by Ranjít Singh, and was part of the means whereby he raised himself to the headship of the Sikhs. His grandfather, Charat Singh, rose from being a common highwayman to the *sardári* or chiefship of a separate *Misl*, with a territory computed to yield three lakhs of rupees. The circumstances of the career of Ranjít Singh are matters of history which need not be repeated here. It is acutely remarked by Baron Charles Hügel, who travelled in the Punjab in 1835, that causes similar to those which operated to extend the dominions of the East India Company contributed to the establishment of the kingdom of Ranjít Singh. Where there was a free fight for power, there was also a premium on subordinate alliance with the most formidable competitor; if submission cut off the hope of supremacy, the stronger party probably had the strength and might be persuaded to have the will to confirm one's possession, at all events for one's own lifetime. Lapses, rightly or wrongly claimed, also afforded easy means of extending acquisitions. But the spirit in which Ranjít Singh reaped the fruit of political confusion was not that in which lasting empires are formed. It is said that Ranjít Singh never felt a moment's anxiety as to what would be the fate of the Sikh kingdom after his death; and his whole history confirms this view of his character. It is certain that he never gave the Punjab any fixed form of government, or laid down written laws, or established courts of justice. The *gurumattas* were discontinued. The last was held when Lord Lake pursued Holkar into the Punjab in 1805. The government of the Maharaja was a pure despotism. The standing army, the revenue farmers, the *kardárs* and *jágírdárs*, and certain governors of large provinces, were almost the whole machinery of the administration.



To get a clear idea of the condition of the Punjab before British rule we must distinguish between the Cis-Sutlej and the Trans-Sutlej territory. It was from the Cis-Sutlej territory that we warned away the aggressive power of the Sikh Maharaja by the treaty of 1809. But six years before that date we had acquired the eastern portion, known as the Delhi territory, by conquest from the Marhattas. A great part of the Karnál district, near Delhi, was acquired in that way, and there is a very good description of the state of that neighbourhood in the 'Karnál District Gazetteer.' The Karnál district lay between the conquests of the Sikhs and the conquests of the Marhattas; it was a prey to both, and a highway for the ravaging armies of Nádir Shah and Ahmad Shah Duráni as they marched to and fro. At the end of the last and the beginning of the present century the people, exposed to attack from marauding bands, concentrated in strongholds. In one part of the district, out of 221 villages the inhabitants of 178 were wholly driven from their homes and fields. Villages were usually protected by brick forts and surrounded by ditches and walls. Every group of villages was at enmity with its neighbours. The royal canal had dried up. Forest had taken the place of cultivation, and gave shelter to robbers and wild beasts. Many Sikh *sardárs* had seized upon the northern part of the country. Towards the south the occupying chiefs were usually feudatories of the Marhattas. But whatever ruling power or chief local authority there was, concerned itself with criminal justice or police only so far as the pretence of either could bring in money; and, in fact, the chiefs usually shared the proceeds of the depredations committed by the villagers. Cultivators followed the plough sword in hand, and when any revenue was collected it was taken at the sword's point.

In the Sikh states between the Sutlej and the Jumna brought under protection in 1809, the establishment of a British protectorate did not for very many years result either in pacification or in good government. There is an account of the condition of society in these states in a report by Captain Murray, who was political agent at Umballa for some fifteen years ending about 1830. In the avarice of the ruling authorities, their denial of justice, the use of private redress, *panchávats* and ordeals, the picture he draws recalls that of the Marhatta Government reproduced in the preceding chapter from Elphinstone. But in these Sikh states not

under the rule of Ranjít Singh it is easy to see that we are several degrees nearer anarchy.

Such administration of civil and criminal justice as can be said to have existed at all, was, in each state, vested in the *sardár* or chief. Arbitrary fines, levied according to the means of the offender, were the usual form of punishment. They brought money into the coffers of the chief, and were a fruitful source of peculation to his officers, who often used cruel means to elicit confessions and extort money for real or imaginary offences. The successful suitor paid *shukarána*, a present of gratitude; the prosecutor in a case of theft had generally, as a preliminary, to pay a *chaháram*, or fourth of the value of the lost property, to the chief or his officer; the unsuccessful suitor paid a fine. 'The wealthy,' says Captain Murray, 'may secure justice, but the indigent are likely to obtain something less. The larger the bribe, the more chance of success. A case where the right is clear and undeniable is often allowed to lie over, that the present may be augmented. All officers under the chief and employed by him in districts or departments follow his example, but are ultimately thrown into a *bora*, or dungeon, and required to refund, and when they have satisfied the cupidity of their superior they are generally permitted to resume their functions, honoured with the shawl as a mark of favour. Capital punishment is very seldom inflicted. The most incorrigible culprits are punished with the loss of either one or both hands and deprivation of nose or ears; but mutilation is rare, for whoever has the means to pay, or can procure a respectable security to pay for him within a given time, may expiate the most heinous transgressions.'

Claims for justice being thus recognised as opportunities for exaction, it is not surprising that petty chiefs and their officers harboured thieves and shared their plunder. When the parties were subjects of different chiefs, and, I suppose, in many other cases also, failure to obtain redress or its cost or probable denial was often the cause of a foray, cattle being driven off and detained in the hope of procuring satisfaction. Bloodshed, which was common in village boundary disputes, might be atoned by the price of blood—*khún-baha*—or by a *náta*, the gift of a daughter in marriage to a relative of the deceased. A life was redeemed at 150 to 200 rupees or a few score acres of land. Vengeance, however, on the principle of a life for a life, was probably more frequent than these



adjustments. *Panchávats* were held, consisting, in the case of boundary disputes, of committees of neighbours chosen by the parties, who would pay and feed the members while they prolonged their sittings for weeks. Disputes as to betrothals and breaches of promise of marriage were also referred by the orders of the chief to *panchávats* selected from the caste or tribe of the disputants. In criminal cases resort was sometimes had to ordeals by water, by boiling oil, by bearing a heated ploughshare. Captain Murray sums up the chief forms of oppression as the exaction of extraordinary imposts, the pressing of labour without recompense, and the violence of licentious armed dependents who preyed on the country, sallying out of the forts and towers which covered it on every side.

Reports by Sir Henry Lawrence, shortly after the lapse of the Sikh state of Kaithal in 1843, and by Captain Abbott five years later, when the protected states on the Umballa and Karnál border had just been confiscated, show the substantial continuance of the misrule above described. In these reports we read of more than a hundred men having been killed in a single boundary dispute between two villages, probably in 1840; of armed resistance to the collection of revenue; of states setting the example of remorseless plunder; of villagers forced by want of security to plunder in self defence; of cultivation protected by towers; of cattle at pasture attended by bodies of armed men. It must be remembered that the Sikh states were till the annexation of the Punjab a frontier protectorate; but we certainly pressed the principle of non-intervention very far, and clearly did not in those days and in that part of the country hold ourselves responsible for the prevention of turbulence and anarchy.

I have gone through a mass of evidence on the former state of the Punjab north and west of the Sutlej, annexed in two great blocks after the first and second Sikh wars, and on this subject I know nothing better than the excellent historical retrospect in Mr. D. C. J. Ibbetson's Punjab Census Report of 1881, where many striking passages have been brought together from the best Settlement Reports. I shall quote largely from Mr. Ibbetson or his authorities in what I now have to say.

On the north-west frontier, under Sikh rule, the *mulk-giri* of the Marhattas reappears, though not under that name. In Bannu 'each group of villages was a little independent

state, now warring with its neighbours, now at peace, now gaining, now losing territory. Between 1823 and 1845 the country was every second or third year invaded by a large Sikh army, which harried their fields, trod down their harvests, burnt their houses, and inflicted injuries which it took the intervals of peace to repair.' In Pesháwar 'the periodical visits of the Sikhs were calamities to the people; their approach was the signal for the removal of property and valuables, and even of the window and door-frames from the houses; crowds of women and children fled frightened from their houses, and the country presented the appearance of an emigrating colony. As the hated host advanced they overran the neighbourhood, pillaging and destroying whatever came within their reach, and laying waste the fields.' There was, it is said, scarcely a village from the head of the Pesháwar Valley to the Indus that was not burnt and plundered by the Sikh commanders. One chief, Karím-ud-dín Khan of Chamkanni, held his *jágír* from the Sikhs on a stipulation that he should produce annually twenty Afridi heads. Across the Indus in the Murree Hills it is said that Raja Guláb Singh used to let loose his Dogra troops upon recusant villages and pay rewards for any hill man killed, at first of a rupee a head, then of eight and finally of four annas. In the Salt Range the high roads were universally unsafe. Passing through the limits of different tribes, 'travellers and caravans had to satisfy the rapacity of each by paying blackmail, or they had to submit to be plundered, outraged, and ill-treated, happy sometimes to escape with life.'

In the central districts the Sikh grasp was much firmer; and as Ranjít Singh extended his power open marauding was very generally suppressed. Service in his army was popular; and the warlike spirit of the Sikhs of his part of the country had, under his guidance, full play in the expeditions he undertook against the Pathán colony of Kasúr, or the Duráni governors of Mooltan, or against Kángra, or Kashmír, or the Deraját, or Pesháwar, or other Sikh territories across the Sutlej. When he had provinces to distribute, Ranjít Singh was not averse to assigning them to local governors whose functions resembled those of the *subadárs* of the Delhi Empire; in this way the Majíthia *sardárs*, Deva Singh and Lehna Singh, were governors of the Jullundur Doáb, Motí Ram and Hari Singh of Kashmír, Dewán Sáwan Mal of Mooltan and the Southern Punjab, and Avitabile of Pesháwar. The policy was uniform; but effect was given to it in different ways according to local circumstances and the degree of political strength attained in different parts of the country. Like the old Hindu rajas, the Sikh conquerors claimed a share of the crop; but wherever they were strong enough they exercised an unusually free hand in arranging for the cultivation. Sikhs favoured Sikhs; but it was an object to make all, Sikhs and others alike, politically subordinate, and to crush down pre-existing rights and pre-existing prestige, so as to produce the maximum revenue with the minimum of political resistance. A tract first granted in *jágír* might presently be resumed; and the classes and families with any old pretensions to ruling power would be allowed a fourth share of the revenue for their subsistence; later this would be taken from them, and small allowances out of the revenue substituted for it. The supposed government share of the produce varied; it was often a half, sometimes a fourth, rarely a sixth. In practice, except where there were political reasons for concessions, the amount taken was as much as could be exacted without actually ruining the cultivators or driving them away in despair. This is what is meant by the grinding policy of the Sikhs.



The motive for any self-restraint was not compunction, but fear of the loss of revenue. *Jágírs* were, however, largely granted, and were of different kinds. Sometimes a conquered chieftain was allowed to retain a part of his own territory in *jágír*. Sometimes he was removed and given a *jágír* in another part of the country. Where the former chiefs or ruling families or tribes had been more completely beaten down, large tracts were assigned in *jágír* to high officials or court favourites. Certainly in some cases, probably as often as he was resident and strong, the *jágírdár* exercised all the powers of government in those villages, to the revenue of which he was entitled. If the *jágírdár*, as often happened, was not resident, he leased out his villages or employed *kárdárs* to collect for him. The opportunity of the death of a *jágírdár* was commonly used to seize his *jágír*, which, if restored at all, would only be re-granted on the payment of a heavy fine.

The same tract might, at different times, be assigned in *jágír*, or farmed out to some leading dependent of the Maharaja. These farms, perhaps of several hundred villages, were known as *ijáras*, and the man who thus took the lease

of the Government share of the produce and its concomitant emoluments was called an *ijáradár*. North of the Rávi, the term *kárdár* appears to have been sometimes used to denote these farmers of revenues on a large scale; but it conveys, I think, a true idea of the actual state of things to say that the *ijáradárs*, like the *jágírdárs*, employed *kárdárs* under them.

These *kárdárs* corresponded in a way with the *mámlatdárs* of the Marhattas. The *kárdár* might be a farmer of the revenue, required to pay a lump sum and left to make what he could, or he might be ordered to give an account of his collections. In either case he was regarded as an official of the state or *jágírdár*, or *ijáradár*, as the case might be. The instructions of Dewán Sáwan Mal to his *kárdárs* in the Muzaffargarh district are extant, and show well the official theory of the functions of a *kárdár*, though they throw less light on his actual proceedings. The circle of a *kárdár* in that part of the country may be supposed to have comprised some thirty villages and some 130 square miles. He was directed to treat the subjects well, to collect the revenue with acuteness, and to increase the revenue and the cultivation year by year. He was to protect his charge, to punish theft with imprisonment, and, above all things, to cause restitution to be made to the complainant. He was to attend personally and settle accounts once a year. A clerk and a few soldiers were at his disposal; he was told to subsist on his pay, and to pay the soldiers with his own hand. These instructions do not explain how the revenue was to be increased; but that point was very well understood and fully attended to. The Dewán did not alter the old rate of the Government share of the crops; but he added cesses, a few where the share was large, many where it was comparatively small. He equalised the demand by extra imposts, so that it was heavy on all alike. 'Sáwan Mal's government,' says Mr. O'Brien (now Deputy Commissioner of Kángra), whose knowledge of the Muzaffargarh district is probably unequalled, 'was better than anything which had preceded it. Its sole object was the accumulation of wealth for the Dewán. The execution of public works, the administration of justice, and security of life and property, were a secondary consideration, and were insisted on only because without them agriculture would not prosper, and the revenue would not be paid. When one examines his numerous cesses and sees how he levied dues to pay the people's alms



and perform their religious duties, and then paid the poor and the Bráhmans what he thought a fair amount and pocketed the rest; how he levied a cess in return for keeping his word, and how he encouraged his officials to take bribes and then made them duly credit the amount in the public accounts, one's admiration for the great Dewán is less than it would be if based on history.' The recognised receipt of presents and articles in kind for subsistence went on, notwithstanding the warning against extortion in the written instructions; and the *kárdárs* interfered closely with the cultivators. They 'made them cultivate, made the Hindus lend them money, and made the borrowers re-pay. The agriculturists were pitted against one another to cultivate. If one man did not cultivate his land, it was given to another who did.'

It may safely be said that Sikh rule was nowhere better than it was under Sáwan Mal. The fact is that no antecedent proprietary rights in the soil, no claims of individuals to hold any intermediate position between the Government and the cultivator, were acknowledged as a matter of principle. As a matter of expediency, it was very desirable to retain industrious cultivators, to pacify people whom it was not practicable to crush, and to conciliate or reward powerful men who were used, or might be used, to carry on the really important business of acquiring territory and amassing revenue.

It will have been noticed that the *kárdárs* discharged some functions of officers of justice and police; but no doubt private redress of the primitive sort must have been common in the Maharaja's dominions, as in the Cis-Sutlej states, particularly in such matters as cattle lifting, breach of betrothal, and the conjugal infidelity of women. Reprisals, the mutilation or murder of women for adultery, and the *vendetta*, must have been frequent in parts of the country in Sikh times, as, indeed, they are now. Certain measures taken to prevent theft were effective, and well suited to the conditions of society. The early English laws, Sir James Stephen tells us ('History of the Criminal Law of England,' vol. i. p. 66), are full of provisions as to the hue and cry and the tracking of thieves and stolen cattle. The rule was that if the track of stolen cattle was followed into a shire, it must be followed out or the cattle paid for. Just the same customary track law was enforced in the dominions of the Maharaja and the Sikh states. If the track of thieves or

cattle could be carried to a particular village, and the men of the village could not clear themselves of the presumption thus raised against them by carrying on the track outside their limits, there was nothing inequitable, according to primitive ideas, in demanding restitution from the village as a whole. When village might go to war with village, and tribe with tribe, and one petty ruler with another, this track law was a step in advance, an incipient limitation on private vengeance. To commit a comprehensible anachronism, it was a part of the international law of the then independent political communities. The groups in a state of nature one with another were tiny; but then, as now, the recognised payment of indemnity was better than going to war. I am glad to say that in the Punjab we have preserved the track law, though with modifications which deprive it of a great part of its utility.

There are some credible anecdotes of Avitabile which illustrate very well both the character of the administration and the state of society in Sikh times. Avitabile was a Neapolitan by birth, and a pupil of the Polytechnic School at Paris. He was an officer of Murat's army and court, and before coming to the Punjab had served some time in Persia. At one time six Sikh robbers, who had escaped, were captured and sent to him at Wazírabad, where he was employed as governor of the Rechna Doáb. With these captives came a command from the Maharaja that they should not be allowed to escape again. That same hour Avitabile caused them to be hanged. The Maharaja summoned him and asked how he had dared to hang six Sikhs. Upon Avitabile replying that he thought this the surest means of preventing their escape and obeying the Maharaja's command, the Maharaja laughed and took no further notice of the matter. Avitabile was afterwards sent as governor to Pesháwar, and administered that recent acquisition with a ferocity which was in keeping with its barbarism. 'In cases of murder'—I quote a letter dated March 26, 1841, from the then Political Assistant at Pesháwar—'a thirst for private vengeance is encouraged, contrary to the spirit of true law, by the relations of the deceased being permitted to kill the guilty person. One revolting instance of this took place a short time back. A man had assassinated another. To obtain the price of blood, Avitabile kept him in prison for some time, and then exposed him, stark naked, to the scorching heat of the sun, the attacks of insects, &c., with half his body painted red. As he continued obstinate, the mother of the slain was permitted to use her right of slaughtering him with a knife, which she not only did, but, in her delirious and savage joy, stooped down and drank two handfuls of his blood as it welled from the death-wound.' The Political Assistant goes on to say that when he was lately riding with Avitabile an old woman whose two sons had been murdered assailed the governor with cries for justice and entreaties that she might be allowed to kill the murderers. Avitabile coolly told the Political Assistant that, as he had no hopes of extracting any money from the murderers, he would probably grant the woman's request, and invited the Assistant to come and see her carry out the execution. The conditions of the frontier were, however, then, as now, exceptional. The most frequent vice of the Sikh *kárdárs* was not ferocity, but avarice.



In this chapter on native rule in the Punjab I must not omit all reference to Rájpút rule in the Punjab Hills. Here, however, I can be very brief, as I have already described at some length the hill principality. It will suffice to quote again the Kángra Settlement Report of Sir James Lyall. Speaking of the rulers of Kulu, 'the rajas,' he says, 'were petty despots in league with the priests, often cruel and avaricious, and recognising very faintly any law or custom; and they and their favourites did much as they liked, or as their jealousy or avarice prompted them. A man's ancestral house and lands were sometimes confiscated and transferred for no fault. To seem to be well-to-do or influential was to be in danger. As an example, in 1862 a large sum of money was accidentally exhumed. On inquiry, it appeared that it belonged to a family of which the women were hereditary foster-mothers to the royal family, and which had thus acquired wealth and influence. Three generations ago, on some slight pretext, the raja suddenly seized the whole family and buried them all alive—men, women, and children—probably because the hidden treasure was not forthcoming. The only survivors were a woman and her infant, who escaped because the mother happened to be serving at the time as wet-nurse in the palace. The number of women burnt at a raja's funeral was often prodigious. Quite as great tyranny, however, prevailed in other petty hill states.'

The governments of Ranjít Singh and of the Marhattas in the central Marhatta districts during the times which preceded that of the last of the Peshwas were certainly favour-

able specimens of native rule. In origin and in principle both governments were very much alike; in the west, as in the north, the weakness of a decaying empire gave freebooters the opportunity of establishing territorial power; and, in the altered circumstances, motives remained unchanged when the strength acquired by depredation was directed to a persistent course of aggression. In relation with other states, the Sikh and Marhatta governments belonged to a period in the development of society earlier than any in which international morality appears. In internal affairs the Marhatta administration was of a rather more advanced type than that of the Sikhs; there were, at all events, some courts of justice, there was more distribution of authority amongst various departments of state, the measurement of the land points to a certain degree of care and skill in revenue management, and in many public arrangements we see traces of the great cleverness of the Marhatta Bráhmans in devising plans well fitted to last beyond the lifetime of an individual. In military affairs there was some similarity. If Sindhia had his disciplined battalions under French officers, his Perrons and his Bourquins, Ranjít Singh had in his service Court and Allard and Ventura and other Europeans, and organised his army more or less in a European style. But no Marhatta chieftain ever became without question supreme in the Marhatta confederacy in the same way as Ranjít Singh became supreme in the Punjab; no one Marhatta ever had the same command of the resources of the several Marhatta chiefships as the Sikh Maharaja had of the men and material of his own dominions. There was also in the Sikh army greater fighting power and a deeper enthusiasm derived from the militant Sikh faith. Soon after the death of Ranjit Singh the supremacy passed to the army, which, in Prætorian fashion, set up and deposed the nominal rulers at will. The formidable might of the army was due to the conquests of Ranjít Singh, because he gathered under one chiefship the whole military strength of the Sikh people in his own territories, which might otherwise have been frittered away amongst numerous petty states. For a second time the *Khálsa* found its embodiment, its *avatár*. The army now identified itself and was identified in popular opinion with the Sikh people; and it freely exercised its power by means of *panchávats*, committees of soldiers who determined the distribution of the troops and settled their relations to the nominal government.



It is possible that the success of these *panchávats* and the strain that was put upon our strength by the two Sikh wars may have been amongst the incentives of the Sepoy mutiny. The Sepoys of Hindustan had seen how the Sikh soldiers had acquired and wielded political power, and some of their leaders may have thought their own chances of success not indifferent when victory over a worse disciplined army had cost the paramount power so dear.

# CHAPTER XIV

## NATIVE RULE UNDER MUHAMMADAN AND OTHER GOVERNMENTS

In the chapter on the annexation of Oudh and in the discussion of the sovereignty of the Moghals, I have anticipated a good deal that might be said on the subject of native rule under Muhammadan governments. It will be remembered, however, that the larger part of the dominions of the Nawáb Wazir of Oudh was annexed by Lord Wellesley in 1801, and that Lord Dalhousie in 1856 annexed the residue. Of districts annexed in 1801 which surround the present province of Oudh, something remains to be said in this place. The condition of these districts was probably worse than that of Bengal and Behar, as may be gathered from the well-known Fifth Report of the Select Committee on the affairs of the East India Company, dated July 28, 1812. Mr. H. C. Irwin, in the 'Garden of India,' gives good reasons for considering that Saadat Ali Khan, who was Nawáb of Oudh from 1798 to 1814, was a very capable ruler. He kept a strong hand on turbulent Rájpút chiefs and successful revenue farmers, and indeed abolished the farming system, which was again established by his successors. But the cession of more than half his territory was made at the beginning of his career as Nawáb; and no doubt what is said in the Fifth Report must apply to the condition of the country before the introduction of his too short-lived reforms. After describing the internal administration of Bengal, the authors of the Report distinctly speak of the internal administration of Oudh as exhibiting the worst features which they had delineated as existing elsewhere. In support of this view they allude to the farming of the whole territory to the *ámils* or native collectors; to the complete authority, civil and military, committed to these men; and to the conduct of the tributary rajas, exercising absolute dominion, who frequently withheld the sums demanded of them till forced to pay or compromise the claim by the appearance



of a military force. So long, it may well be believed, as the *ámil* paid the revenue, he was in no danger of being called to account for abuses. Writing in 1808 of Allahabad, one of the ceded districts, the judge of Benares says: 'According to every account which I have heard of the Nawáb's government, its only object was the collection of money; all care of justice, civil or criminal, was utterly abandoned.'

In the Lower Provinces there appears to have been less turbulent resistance to the principal authority, and some slight pretensions to an administration of justice, which was, however, very corrupt. The Committee of Secrecy of 1773 reported, as the general sense of the accounts they had received of the old courts under native rule, 'that the administration of justice during the vigour of the ancient constitution was liable to great abuse and oppression; that the judges generally lay under the influence of interest, and often under that of corruption; and that the interposition of Government, from motives of favour and displeasure, was another frequent cause of the perversion of justice.' In the part of Oudh first annexed, there is good reason to believe that no one could get justice at all; the redress of injuries and the punishment of crimes depended on the tyranny and caprice of the *ámil*, who either entirely disregarded his duty in their behalf, or, by corruption and abuse, made it a source of profit.

The first appendix to the Fifth Report is the celebrated minute on the permanent settlement by Sir John Shore, afterwards Lord Teignmouth. His description of Muhammadan rule in India is very well known, but will bear repetition. 'The Moghal dominion,' he says, 'in the best of times and under the wisest princes, was a government of discretion. The safety of the people, the security of their property, and the prosperity of the country depended upon the personal character of the monarch. By this standard his delegates regulated their own demeanour; in proportion as he was wise, just, vigilant, and humane, the provincial viceroys discharged their *kists*' (that is, paid the periodical instalments of revenue due from them), 'with zeal and fidelity; and as they possessed or wanted the recited qualifications, the inferior agents conducted themselves with more or less diligence and honesty; a weak monarch and corrupt minister encouraged and produced every species of disorder, for there was no law paramount to the sovereign's will, few of the officers of Government were liberally paid,

and property was left to accumulate from breach of trust, abused patronage, perverted justice, or unrestrained oppression. This description I conceive to be applicable to all Muhammadan governments, where practice is for ever in opposition to the theory of morals; and a few remarkable instances of distinguished virtue or forbearance are exceptions which deduct little from the universality of the remark.'

It has long been a commonplace that the goodness or badness of an Indian native government depends on the personal character of the ruler of the day. The information collected in this book will, I trust, enable any one who looks into it to add something to the explanation of this well-known fact given by Sir John Shore. In the case of a small territory, a few square miles in extent, no explanation is necessary. In a very petty state the inhabitants are likely to thrive under a good chief, just as tenants are likely to thrive under a good landlord, and for much the same reasons. A good and able man, who attends to his business, will personally know all his important officials and the local peculiarities of every part of his little dominion. He will habitually seek its improvement; and his minute local knowledge will enable him to adjust his legitimate demands to the capabilities of the peasantry, varying with their caste or tribe or local history or the vicissitudes of the seasons.

The case of a large state or empire is not so clear. Why should the deputies of the chief or emperor regulate their demeanour by his? and why should weakness in the monarch produce every species of disorder? I think the answer is that Sir John Shore is speaking of native governments as yet quite unaffected by British influences; and that where we observe like facts nowadays they are probably due to the persistence of political habits and types of character formed under old conditions, changed, indeed, in some places, but in others still existing in considerable force. The effect, I take it, as observed in the old days, should be ascribed to the objects then practically acknowledged by native governments, and to the methods of administration and distribution of power which they usually adopted. In so far as the effect is observed now, it should be attributed to the survival of the old causes.

In the India of the Moghals, the Marhattas, and the Sikhs, I suppose the great objects of a chief were his own political security and a large revenue; he would commonly be careless, like Ranjít Singh, of everything that did not



directly touch his authority or his finances. To his agents he would farm out large tracts of many villages, to courtiers, it may be, or strong soldiers of fortune, or rich, sleek, calculating Hindu traders, with a much greater capacity for grinding money out of the poor than their obsequiousness of demeanour to their social superiors would suggest to a casual observer. Such men as these would agree to produce by a stipulated date a stipulated sum, or even pay in advance into the state treasury the revenue which they would proceed to collect from the peasantry, with additions and with that degree of harshness which was, in their judgment, required. Other tracts would be 'managed direct'—that is, the revenue would be collected by officials desired to account for all ostensible taxes, but allowed to supplement their slender salaries by various irregular practices and perquisites. Other lots of villages would be granted out in *jágír* to people whom the chief had reason to conciliate; or a half-subdued tribal chieftain, or raja, or *poligár*, or a set of sturdy villages, lying at the edge of the desert or away in the hills, not to be easily controlled without some risky use of steel and gunpowder, would be left in enjoyment of their hereditary claims, subject to some light quit-rent or tribute which the chieftain or the villages would alike refuse to pay at the earliest symptom of weakness in the central authority.

As regards dependent chieftains and revenue farmers and officials, there would be two tests of efficiency and the sort of loyalty expected. Will the revenue farmer or official make good the required sum? Are those whose tenures so prescribe prepared whenever summoned to attend the Durbár, or court of the chief, and to follow him into the field with the customary number of adherents? If so, questions would rarely be asked as to the manner in which these different sets of people kept order in their respective local charges, or gathered the taxes for which they were responsible or which they were permitted to enjoy. No doubt now and then the chief would coerce some refractory dependent, and perhaps resume the whole or part of his *jágír*, or move him and his assignment of revenue or part of it to some fresh place. But that meant war if the tributary chief dared risk it; and no such measure was to be attempted without troops to back it up. Officials, who had no following in the country, could be treated more cavalierly; the chief would fully expect to share the fruits of unusual exactions; or he might call for an account, and

then waive it, as a sort of pull at the reins, to assure himself and others that his team was well in hand.

In these ways there would be everywhere a large delegation of the powers of the chief, if such an expression can be applied to a loose irregular condition of things in which intermittent action depended on the expediency of the moment, and there was no written law or system of precedents defining the limits of authority, and even custom itself might be overridden by the caprice of the chief. Officials he would select himself; others, who practically discharged the functions of officials, might be forced upon him by pre-existing social conditions. As for officials, he would have no scruple in dismissing or imprisoning them, or, if necessary—I am speaking of the old days—flogging, torturing, or executing any whose obedience was suspected, or who failed in the prime duty of producing a sufficient revenue. In these circumstances even dependent and tributary chiefs and villages would readily feel the spell of bold, energetic, unscrupulous personal character. But the potency of this spell, where conduct was dictated not by moral principle but by personal ambition and desire of gain, would depend rather upon fear than upon any amiable disposition to imitate possible virtues. The penetration, the activity, the reputation of the chief for stern and prompt vengeance, would breed terror in his local deputies. He would usually be well served in proportion as he was feared. With the removal of this check a reasonably moderate course of conduct would speedily be reversed, and the well-known disorders would reappear. The opportunity for gain would be quickly seized whenever profitable misdeeds had a good chance of immunity. Such an opportunity might occur when a Ranjít Singh or Haidar Ali died, or when some weak boy succeeded to the chiefship and was seduced from all business by debauchery. In such a case, the junto of headquarter officials who, in league with some of the women of the palace, had corrupted him for the sake of their own power, might fall out among themselves or might not have weight enough in the state to pursue the policy of a vigorous despot. Exactions might then be multiplied on every side; frauds in cash and grain, in the falsification of accounts, in the pay, supply, and muster of troops, in the construction of buildings, might become unusually frequent and unusually barefaced; old tribal chiefs in out-of-the-way places might set up for independence, which would mean that they



would appropriate for themselves all they were able to collect; perhaps their example might be followed by an official or two who had amassed a big sum with which he could pay horsemen; strong tribal villages might pluck up heart and refuse to render revenue to any authority whatsoever, prepare to resist any summons to pay by force of arms, and begin to levy blackmail on as wide an extent of country as was within fair reach of their depredations. Presently peasants of weak villages ruined by oppression, soldiers with their pay months in arrears, and generally hundreds of sturdy loons who might be either cultivators or graziers and cattle lifters or mere freebooters according to circumstances, might gather in bands under venturesome desperadoes; and in no long time there would be literal anarchy, fire and sword being rife in the land, fields falling out of tillage for dread of raids, and no man being able to call any more of his few chattels, his cattle, his grain, his silver ornaments, or even his land his own, than he was able, with his brethren, to defend at any hour from any plunderers.

Lest I be thought to exaggerate this description I will produce two vivid pictures of native life where conditions had not been changed by British pacification. One is from Southern India. I take it from a note at pages 191–2 of Lieutenant-Colonel Mark Wilks's 'History of Mysore.' 'On the approach,' he says, 'of a hostile army the unfortunate inhabitants of India bury underground their most cumbrous effects, and each individual man, woman, and child above six years of age (the infant children being carried by their mothers), with a load of grain proportioned to their strength, issue from their beloved homes, and take the direction of a country (if such can be found) exempted from the miseries of war, sometimes of a strong fortress, but more generally of the most unfrequented hills and woods, where they prolong a miserable existence till the departure of the enemy; and if this should be protracted beyond the time for which they have provided food, a large portion necessarily dies of hunger. The people of a district thus deserting their homes are called the *Wulsa* of the district. A state of habitual misery, involving precautions against habitual war and unpitying depredations of so peculiar a description as to require in any of the languages of Europe a long circumlocution, is expressed in *all the languages of the Deccan and the South of India* by a *single word*. No proofs,' he adds, 'can

be accumulated from the most profound research which shall describe the immemorial condition of the people of India with more authentic precision than this single word.'

The other picture is a more recent one, drawn from the life on the north-west frontier. In March 1871, Mr. Fryer, lately Financial Commissioner in Burma, accompanied an expedition across the frontier of the Dera Gházi Khan district into a part of the country which, as a consequence of the Afghán War and the career of Sir Robert Sandeman, has now been greatly pacified. Amongst other places, he visited the Khetran village of Mat, and I extract the following passage from his report: 'The Khetráns are a peaceable and unaggressive tribe, but are kept in a constant state of anxiety by the Marris. As we approached Mat through a gorge which leads into the small valley in which it is situated, we saw the gleam of swords from a small look-out tower situated on a rock at the end of the gorge. We sent on those Khetráns who were with us to reassure the garrison of the little tower, who were blowing the fuses of their matchlocks and making ready for an onslaught from a supposed party of Marri raiders. Only three months before the date of our visit to Mat, twelve Khetráns belonging to that village were grazing cattle in a valley behind the village. The Marris surprised and killed the graziers, and carried off 180 head of cattle in sight of the village. The villagers were too few in number to venture down from the ridge on which the village stands to the assistance of their sons and brothers, who were butchered before their eyes.'

It may be objected that this is an account of an ordinary frontier raid; and that occurrences more or less similar have been reported in numbers from half a dozen British frontier districts since annexation. I admit it; but go to the heart of British territory, to the Karnál district, near Delhi. The scene that Mr. Fryer saw at Mat was a daily scene in the Karnál district at the end of the last century, when, in the dissolution of the authority of the Delhi emperors, the overlordship was seized by Sikhs and Marhattas and anyone else who was able to strike in. A few years ago the territory in the neighbourhood of Ferozepore, also in the heart of British territory, was still dotted with the remains of mud or brick towers built by the wells as watch-towers against invaders, and as places of refuge against small predatory bands.

If history be an account of the growth and mutual



relations of progressive communities, then in primitive times, among societies that are apparently stationary, or where progress is so slow that it is ordinarily imperceptible, there is no history, but there are many typical events —events, that is, typical of the stage in the advance towards civilisation which the particular society has reached, and at which it seems to have paused awaiting some internal or external stimulus to further development. On the smaller scale, for instance, if we look at the tribal societies on the north-west frontier, we see that one frontier raid resembles another; and that there is a common, continuous round of acts of bloodshed which civilisation treats as heinous crimes; there is cattle-lifting by armed men and, as the villagers swarm out on the hue and cry, firing by pursuers and pursued; there is perhaps a pitched battle between tribe and tribe on account of some disputed right to the water of a hill stream; there are murders to avenge the seduction or punish the unchastity of women, murders of paramours, of wives by husbands, of daughters by fathers; there are murders of headmen by smaller leaders seeking the headship for themselves, or of any member of a hostile family from which a life is due by the *vendetta* handed on from generation to generation. In all these cases each crime in its essential features closely resembles most of the others where the motive is of the same class. So also in the larger contests of primitive states, the establishment of one big chieftaincy, of a state founded by a Sívaji, a Haidar Ali, a Ranjít Singh, very much resembles the establishment of any other, the usual foundations of political power being laid in wholesale pillage. Or if we look to the political superiority of race over race rather than to the rise of individuals, each movement of armed hordes upon rich plains where plunder can be had recalls former instances of ravaging invasion; and a Mahmúd of Ghazni, a Bábar, a Nádir Shah, an Ahmad Shah Duráni appears each to tread in the actual footsteps of his predecessor. Again and again, as we read what, for want of a better word, we must call Indian history, we see the familiar scenes repeating themselves; it is only the names and places, sometimes only the names and dates, that are changed. For purposes of narrative, for efforts of literary skill, this sameness diminishes the interest and narrows the opportunity; but it possesses, in the scientific analysis of social progress and in the practical business of government, this great advantage—that it teaches both the

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 Rájpút 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 Marhattas, of Sikhs or Punjábis 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 Bráhman 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 *ráj*, 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, Asad Ali Khan, died in 1772 under torture inflicted to extort money which he did not possess. Another minister, the Bráhman 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, Junagarh, and Jáfirabad, 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), Bilaspur, Patiála, and Jhind (1847), Chamba (1848), Patiála and Jhind (a second time), and Nábha (1860), and Faridkot (also for a second time in 1863), prohibit *sati*, female infanticide, and slavery or slave dealing. The Mandi, Suket, and Bilaspur 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 Bráhmans 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 Rájpút 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, or to distinguished houses naturally jealous of the reputation of their former chiefs. Moreover, in cases where there has been misgovernment in native states, it would be a breach of trust for an official like myself to publish, with all particulars of names, places, and dates, accounts of the occurrences. 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. 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. 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 *samádh*, 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 *nazrána*—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 *ráj*,' 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, Kashmír, 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 *nazrána* 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

pervaded 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 col-

league 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 *nâzim* 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 pro-

perty 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

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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. Viceroys 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*, *samádh*, 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 endurable, 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, *tahsíldárs*, 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 *tahsíldárs*, 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 administrations 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 leaven 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 Bráhman dispute it on the ground that, according to the clear teaching of his religion, a Bráhman 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, Bráhmans and sweepers, Rájpúts and Chumárs 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 Department 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 sequestrate 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 *bonâ-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 *bonâ-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 *bonâ-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 practically 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 ascendency 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 ascendency 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 have undoubtedly been too much restricted; but I need not go into that subject here further than to say that one well-known defect in the law on this point has been remedied by the Indian Councils Act, 1892. 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 Marhatta 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 Diwáni and Sadr Faujdári Adálats. 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 Rájpútána 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 Rájpútána 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 Rájpútána, 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.

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 Kashmír. Excluding the Baluchistan agency, which does not fall within the scope of this book, the second sub-class includes the twenty states of Rájpútána 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



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 *zamindárs*, 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 *jágír* 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 *Nasír-ud-Daulat*, which is perpetuated in the name of the cantonment of Nasírabad. 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 medium 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 Kolhápur 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 *mizáj 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.[1]

The very fact that these states are not on the equal footing of the independent powers of Europe 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

[1] 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 boundar of British and native state territory coincide for enorm distances, and the jurisdictions are often intimately int laced. I am unable altogether to pass by a subject wh fills so large a space in Indian political law; but I sh touch upon it very slightly for the reasons, amongst othe that I am confident that its present stage is not its last, a that if its present stage were likely to be its last I sho much regret the circumstance.

In the case of states over which the British Governm claims no supremacy, such as the frontier state of Ne 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, if it is considered necessary to make the demand, demand the extradition of any person 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 *primâ 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 Rájpútána, 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 Rájpútána 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 Rájpútána 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 favourite 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. *Vakíls*, or representatives of the several Rájpútána 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 *vakíl* of the state against whose subjects a complaint was made, adopted the plan of assembling a *panchávat* or committee of the *vakíls* 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 *vakíls* in Rájpútána. 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 Rájpút 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 Málwa it appears to have been the practice till quite lately for the political agent or resident, as representing 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 Gwálior 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 Bhopál, 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 *primâ 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 *primâ 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 *primâ 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: '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 Gwálior durbár 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 Ranjít 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 feudator[illegible]tes 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 administrative 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 acceptation, 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 an extravagant 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 are almost 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 appraisement 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 conferences 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

Imperial 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 & 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 appraisement 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 thousand 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 Patiála 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 Kashmír, the Punjab States, the Rájpút States, Gwálior, 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 Bengáli and a Punjábi 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 petrifaction 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 Manu, 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 Manu 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 Chumárs 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 Vaishnava Hindus. Nor are the tribal and caste boundaries coterminous with language boundaries. Rájpúts and Bráhmans, Chumárs



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 guild, 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 Baluchis, 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 Rájpúts, though certain, is a matter of some nicety. Rájpúts 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 guild 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 guild, 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 philologer 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 Punjábi; in the hills a number of hill dialects. Hindustan is full of [illegible]ving dialects of Hindi. Assam has a language of its own, a[illegible]s fringed with hill tribes speaking different dialects or languages. In the Bengal Lieutenant-Governorship, besides dialects of Hindi, we find Bengáli 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 Punjábis in the Punjab, Hindustanis in Hindustan, Bengális 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 late Lieutenant-Governor of the North-West had 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 requirements 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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# INDEX


ABWAB

ABWAB, cesses levied in excess of the proper rent or revenue, 227
Administration, connection between former institutions and British-Indian, 128; character of, under the Moghals, 188, 198; similarity between the Moghal system and our own, 194, 199; Marhatta system of, 245; of the Sikhs, 256; of Oudh before annexation, 272; composition of Indian executive service, 348; resemblance of Roman and Indian, form of, 399-402
Adoption, involving succession to chiefships was before 1860 subject to great diversity of practice, 84, 85; cases of Sattára, Karauli, Oorcha, Jhánsi, Nágpur, 85, 89, 90, 91; among Sikhs did not confer right of succession to chiefships, 84; Rájpút system, 85; Lord Dalhousie's views, 87, 93; nature of Lord Canning's policy of, 104-9; consequences of his policy, 112; terms of *sanads*, 111
Afghanistan, wars with, have not affected Indian protectorate, 22
Agreements, *see* 'Treaties'
Ahmad Shah Abdali, 25
Aitchison, Sir Charles, acknowledgments to, preface, vi; collection of treaties, engagements and *sanads*, 10; on the position of native states, 11; on the date from which the British became supreme in India, 33; on adoption, 103, 112; on the regulation of the armies and armaments of native states, 374
Akbar, Moghal provinces under, 187
Ala-ud-Din of Delhi, 174
Allegiance defined, doctrine of double allegiance of subjects of native states, 354-5
Alliances, policy of subsidiary, 39; their object and model on which

AUSTRALIA

formed, 40; as an instrument for the acquisition of territory, 44
Alwar, a protected state, 50
Amherst, Lord, his conquests, 44
Amils, local revenue officials of Oudh, 65; Government agents under the Deccani kings, 158; district officers under the Moghals, 188; how replaced at the present day, 199
Amir Khan, the Pathán commander, 51
Amirán Jadída, the new nobility under the House of Baber, 158
Amnesty proclamation of 1858, 102; its declarations confirmed at the Delhi Assemblage of 1877, 124-5
Annexation as a result of foreign influence, 45; of non-interference, 59; in consequence of misrule, 63; motives for, other than those of ambition, 83, 97; instances of annexations due to lapse, 84-5; Lord Dalhousie's views, 87, 93; impolicy of, 92, 97, 98; its effects on the mutiny, 101; policy of non-annexation at the present day illustrated, 126
Appa Sahib, 52, 95
Avitabile, anecdotes of, 268-9
Armaments, regulation of, of native states, 374-5
Armies, instance of the necessity of imposing a limit on native states', 59; regulation of, of native states, 374-5; organisation of portions of native states', for imperial defence, 392
Asaf Jah, Nizam of the Deccan, 23
Assam, conquest of, 56
Auckland, Lord, his declaration regarding successions, 105
Austin, on sovereignty, 13-4; on jurisprudence, 322; on constitutional law, 332
Australia, India's interest in military strength of, 388

BAHMANI kings of the Deccan, 155
Báji Rao, the Peshwa, 52
Balance of power, Lord Cornwallis's attempts to establish, 29; policy of supremacy supplants policy of, 35
Ballabgarh, Nawáb of, executed for rebellion, 6
Ballál, dynasty of, 154
Baluchis, tribal organisation, 133; their pacification, 133
*Bane*, in Kanara and Malabar, waste or forest land attached to the holding of rice-fields for the supply of wood, grass and vegetable manure, 163
*Bábti*, an item of revenue assigned to the raja in the Marhatta country, 181
*Bárgirs*, troopers supplied with horses by the state or individuals as distinguished from *silahdárs*, who provide their horses and arms at their own expense, 215
Baroda, principle of good government in native states maintained by deposition of Gaekwar, 23; circumstances which led to the deposition of the Gaekwar of, 114; restoration of a native administration in, 117; origin of, family, 183
Bassein, treaty of, 33
Bednur, kingdom of, 165
Benefices compared with *jágirs* and *zamindáris* in India, 213; causes which led to the grant of, 216
Bengal, *jágirs*, 214, 216; the great *zamindáris* of, 228; independent *talukdárs* of, 234
Benett, Mr., on the rajas of Gonda, 145; on the position of the Muhammadan Government of Oudh, 195
Bentinck, Lord William, his reforms, 53
Bernier, Mons., nobles mentioned in his travels, 158; his description of *Satí*, 287
Bhartpur, a protected state, 50; capture of, 55
*Bhatta*, in the Gonda district of Oudh, deductions from the grain heap which is shared between the Government, the cultivator, village servants and others, 147
*Bher*, in the Kángra district of the Punjab, an arbitrary group of fields, perhaps sixty acres in extent, on which one lump sum and a small grain rent were imposed as the assessment, 209
Bhopál, alliance with, 52
Birbhúm, Bengal *zamindári* of, 228
Birth, effect of high, in producing willing obedience, 311
*Birtias* in the Gonda district of Oudh, persons to whom the raja had assigned certain of his rights, 147
*Birt* in the Gonda district of Oudh, the thing or rights granted to a *birtia* by the raja, 147
Bishanpur, Bengal *zamindári* of, 229
Blackmail compared with commendation, 223
Board of Control, creation of the, 28
*Bora*, in the Cis-Sutlej states, a dungeon, 262
Bourquin, Louis, defeated by Lord Lake at Delhi, 32
British Government, position held by the, towards native states, 11, 12, 13; the only independent sovereign in India, 18; supremacy in India forced upon the, by pressure of events, 33 7; compared with the Moghul system, 196
Bundelkhand, states of, as a barrier against the inroads of Holkar, 20
Burdwán, Bengal *zamindári* of, 228
Burma, wars with, have not affected the Indian protectorate, 22; annexation of Upper, 45

CANADA and the Indian protectorate compared, 352
Canning, Lord, his adoption policy, 104
Cantonments, British laws applied to, in native states, 15; establishment of in native states, 374
Capital, investment of, by, and in, native states, 328 81
Caste is the distinctive characteristic of Indian society, 394; distinction between caste and tribe, 395
Castlereagh, Lord, remark of, that our sovereignty in India was a matter of necessity, 32
Cattle lifting, track law connected with, under the Sikhs, 268
Central India, condition of parts of, in 1867, 296
Centralisation, objections to over-, 407
Central Provinces, traces of suzerainty in, 153; states of, and their status, 173-7
Ceremony, value of show and, 309, 401; attendance at a ceremonial assemblage in India is an acknowledgment of allegiance, 361
*Chaháram*, literally fourth, in the Cis-Sutlej states a fee of the fourth of





the value of the lost property paid by the prosecutor in a case of theft to the chief or his officer, 262
*Chaudari*, original name for *zamindár*, 192
*Chauth*, means one-fourth of the land revenue demand of a tract of country, 180; the Marhatta, 224
Cis-Sutlej, formation of, protectorate against the incursions of Ranjít Singh, 21
Civil justice, means for facilitating the administration of, where native states are concerned, 363-5; native chiefs may sue in the courts of British India, 364; and under certain conditions may be sued in British courts, 364; services of summonses and execution of decrees between British India and native states, 363, 365
Clive, Lord, his conquests, 44; his views on extension of territory, 54; *jágir* of, 217
Cochin, jurisdiction over European British subjects in, 367
Coinage, right of, in native states, 358, 362
Colonies, official classification of British, 342; utilisation of colonial forces for common defence of empire, 393
*Comitatus*, no trace of the, in India, 215
Commendation and Roman law, 220; early history of, 221; not to be found in India, 222, 239; as distinguished from blackmail, 223
Conquest, *see* 'Annexation'
Constitution, meaning of constitutional Government, 332; of constitutional law, 332-3; the British Empire is a constitutional empire, 334; constitutional position of native states, 334-56; Indian constitutional law, 336, 340, 341; constitutional ties of the British Empire, 341
Coorg, annexation of, 57; rise and character of the rajas of, 165
Cornwallis, Lord, his attempts to establish a balance of power, 29; his policy of non-intervention, 41
*Cottam*, probably means fort or stronghold used to designate certain old territorial districts in what is now North and South Arcot, Madras, 167
Criminal jurisdiction, exercise of, is a mark of governmental authority, 198; in respect of trial of European British subjects, 365
Cruelties of Haidar Ali, 284-5; of Tippoo Sultan, 285; evidence of barbarous practices in the old regulations, 287

DADA KHASJIWALA, a Gwalior usurper, 58
Dághis, people of low caste in Kulu, part of the Kángra district of the Punjab, bound to perform menial service, 210
Dalhousie, Lord, his annexations, 44; on succession, adoption and annexation, 87; his public works policy, 98
Dandhu Pant (Nána Sahib), 52
Dattia, a protected state, 50
Daulat Rao Sindhia, 30
Deccan, Muhammadan kings of the, 157
Decentralisation, advantages of, 408-9
*Dehras* means encampments, 257
Delhi, King of, tried as rebel and traitor, 5; supremacy of the House of, 24; political position of emperors not assumed by Lord Wellesley, 38, 39; traces of suzerainty in relations of certain chiefs to the emperors, 153
Delhi Assemblage, political significance of, 123; spirit in which proclamation was received, 125
Departmentalism in British India, 315
Dera, Nawábs of, 224, 225
*Desha cavel*, fees levied from villages in the Carnatic by *poligárs* as the price of abstaining from plunder, 223
*Deshmukh*, an hereditary local official under the Marhattas whose functions were of a general executive character, 177
*Deshpandya*, an hereditary local official under the Marhattas whose functions were connected with the land revenue system and accounts, 177
Despotism, Colonel Wilks on the causes of, in the East, 159; Patton on the same problem, 159; how land tenures contributed to the maintenance of, 160
De Tocqueville, on certain parish assemblies in France, 152; on seignorial dues, 227
*Dewán* means Revenue Minister, more correctly *Diwán*, but the popular spelling has been kept in the text, 190; former office of, replaced by Boards of Revenue and Financial Commissioners, 199

*Dewáni* means pertaining to the business of administering civil justice, 190
Dhár, origin of House of, 183
*Dharna*, practice of sitting, 288
Dholpur, a protected state, 50
Dialects in India, 403
Dicey, A. V., his book 'The Law of the Constitution' quoted, 342
Dilázáks, a tribe which occupied the Pesháwar plain before the Yusafzais, 222
Dinájpur, a *zamindári* of Bengal, 228
Diplomacy, the term, is inappropriate as applied to native states, 6, 7
Discipline, subordination of rank and office essential to civil, 400
*Droits seigneuriaux*, De Tocqueville's list of, 226
Dufferin, Lord, his annexation of Burma, 45
Dupleix, his intrigues for supremacy in the Deccan, 26; as Governor of the country between the Kistna and Cape Comorin, 31
Durand, Sir Mortimer, in connection with the development of Indian political law, 10
*Durbár*, the court of a native chief, 275; political value of *durbárs* or levées, 309
*Durbár Kharch*, bribes paid by Marhatta officials to ministers and auditors, 245
Dutch, the raja of Tanjore and the, 201

EAST INDIA COMPANY, earlier methods of servants of, were oriental in character, 27; distinction between the acts of, and the acts of the British Parliament and Crown, 28; the Company's *zamindári* of Bengal, 228
Education, effect of Western, in India, 406
Ellenborough, Lord, his conquest of Sindh, 44
Elphinstone, Mountstuart, on the position of Muhammadan sovereigns, 185; on the feudal system of Rájpútána, 201; his report on the territories conquered from the Peshwa, 243; abstract of this report, 245–52
Emperor, position of a Delhi, 185–6
Empress of India, assumption of title of, 123
Equality, theory of, 320
Excise, administration of, in native states, 375
Exterritoriality, doctrine of, applied to native states, 15
Extradition from native states to foreign powers, 354; with independent states such as Nepal, 368; treaties with native states, 368; between British India and native states generally, 368-9; between one native state and another, 370

FAKIRS, settlers amongst the Patháns, 222
Famine relief, 319
Farakhnagar, Nawáb of, executed for rebellion, 6
*Faujdár*, a local officer under the Moghals, 182, 188
*Faujdári* means pertaining to the business of the administration of criminal justice, 190
Federation, movement of modern countries from feudalism to federalism, 338; principle of, 339, 345; imperial federation defined, 380; interest of India in imperial, 388
Feudalism in India, 201, 213; James Mill on feudal system in India, 201; in Rájpútána, 201; under the Marhattas, 201; Bishop Stubbs's description of European, 204; origin of European, 204; summary of feudal tendencies in India, 235; movement of modern countries from, to federalism, 338; contrasted with federalism, 345
Feudatory, as applied to native states, 4; extent of territory, 46
*Firmán*, a document making a royal grant under the Delhi emperors, 24
Fitzpatrick, Sir Dennis, in connection with the development of Indian political law, 10
Foreign territory, discrimination between British and, 176
Fortresses, establishment of, in native states, 374
France, menaces of French influence, 31; invasion of India by, how avoided, 32; French interference in Burma, 45; *droits seigneuriaux* in, 226–8
*Freda*, 219
Fryer, Mr., on the Khetráns of Mat, 278

GADDIS, a tribe of shepherds in Kulu and Kángra, Punjab, 228
Gaekwar, *see* 'Baroda'





Golconda dynasty, 157
Gonda, status of rajas in the district of, 145; dues levied by petty rajas of, 232
Government, officers of the Marhatta, 179; connection between Hindu, Moghal and British systems of, 194, 199; native, in the Punjab, 255–71; native, under the Muhammadans, 272–88; native, as affected by the personal character of a ruler, 274; characteristics of native, before British rule, 288–90; superstition and cruelty under native rule, 283; some advantages of native rule, 308–31; popularity of native, 308; form of Indian, 336–7; the position of the Indian, is defined by Indian constitutional law, 340
Governor-General, legislative and other powers of the, 343
Government of India, *see* 'Indian Government'
Grant-Duff on the Moghal administration of conquered districts in the Deccan, 189
*Granth*, the Sikh scripture, 283
Grant, Sir J. P., on the annexation of Oudh. 79
Griffin, Sir Lepel, his 'Punjab Rajas' quoted, 84; on adoption *sanads*, 103
Guizot, on benefices, 213, 216; on the isolation of vassals, 238
Gújars, a great tribe scattered over many parts of the Punjab, its occupation in the Himalayas being chiefly pastoral, 228
Gurkhas, *see* 'Nepal'
*Gurumattas*, councils of the Sikhs, 259
Guzerat, administration of, under the Marhattas, 252
Gwalior, possibility of Sindhia acquiring supremacy in India, 31; the war of 1843, 58; origin of House of, 183

HAIDAR ALI, some of his cruelties, 283
*Hákimi hissa*, the share of the crop which belongs to the ruler, 137
*Hamsáyas*, literally persons under the same shade, dependent settlers amongst Pathán tribes of the North-West Frontier, 222
Hardinge, Lord, his annexation of the Jullundur Doáb, 44
Hasan Gángu of Delhi, founder of the Bahmani dynasty in the Deccan, 154
Hastings, Lord, his conquests, 44
Hindu political institutions, how far maintained, 130; status of a, raja, 136, 141, 196; in, governments office was hereditary, 186; aristocracy, 186; elements in the Moghal Empire, 190; law administered in certain cases at present day, 403
*Hissa Rayati*, the share of the crop which is taken by the cultivator, 147
*Hissa Sirkári*, the share of the crop taken by the *Sirkár* or Government, the same as *hákimi hissa*, 147
History, its growth, 202; in primitive times no, but many typical events, 279
Hobhouse, Lord, in connection with the development of Indian political law, 10
Holkar, *see* 'Indore'
Hyderabad (Deccan), how it became a protected state, 20; a factor in the policy of a balance of power in India, 34; under management, 98

IBBETSON, Mr. D. C. J., on former state of the Punjab, 263
*Ijáradár*, under the Sikhs, the holder of an *ijára* or lease of the dues of the state from a large tract of country, 266
*Ijárás*, a farm or lease of state dues in a large tract of country under the Sikhs, 265
Ilbert, Mr. C. P., his help acknowledged, preface, viii; in connection with the development of Indian political law, 10
Imperial Service Corps, organisation and object of the movement, 392
Independence, distinction between sovereignty and, 18
India, Lord Cornwallis's attempts to establish a balance of power in, 29; events and causes leading to British supremacy, 33, 35, 37; aim of subsidiary alliances, 40; result of policy of non-intervention, 42; and imperial federation, 377; independence of, impossible, 386; consequence of relinquishing British supremacy in, 386; nationality does not exist in, 394
Indian Government, form of, 336; position of, 340; constitution, 342; aims and tendencies and responsibilities, 378, 391
Indian penal code, probable testimony to its value, 824

Indian political law, the term as applied to the relations between the British Government and native states, 6, 7, 9; its sources and development, 9, 10; principles, aims and objects, 11; origin, 63; in the making at annexation of Oudh, 74; danger of its being ignored, 80; is conservative of Indian states, 92; amnesty proclamation of 1858 determined its development, 102
Indian protectorate defined, 2; its growth and development, 20, 21, 22, 48; little affected by wars with Nepal, Burma, Afghanistan, 22; originated by Lord Wellesley and Lord Hastings, 22, 41; preserved by events following the mutiny and since affirmed, 23; principle of good government established within, 23; present extent and character, 46; formed without reference to international law, 60; confirmed at Delhi Assemblage, 123; feudal elements in the, 239; official organisation of, 349
Indore, origin of House of, 183
Institutions, connection between present and past, in India, 128; of the Marhattas, 177; of the Moghals, resemble ours, 194; land the basis of political, 200, 216
International law, definition of, 2; attributes necessary for subjects of, 2; its origin and development in Europe, 3; its application in dealings with Indian powers in earlier days, 3, 60; is applied with modifications in dealings with Asiatic powers at the present day, 4; inapplicable in respect of the relations between the British Government and native states or between the states themselves, 4-5, 77; but it can be applied in special cases, 8; reasons why it cannot be generally applied in India, 36
Interstatal law, the term is inappropriate to denote the relations between the British Government and native states, 7
Irwin, Mr. H. C., on the annexation of Oudh, 81
*Izzat* means dignity and reputation, 303, 309

JAGIR, a grant of the ruler's share of the crop usually estimated in money, 137
*Jágirs* under the Marhattas, 213; in Bengal, 214, 216; of the Moghals, 217; Lord Clive's *jágír*, 217; and *zamindáris* compared, 217-8; compared with benefices, 219; under the Sikhs, 224, 265
*Jágírdárs* are assignees of land revenue, 135; orders of Sir Charles Wood regarding certain, 111; under the kings of the Deccan, 158; under the Marhattas, 182; status of, under the Sikhs, 265
Jaipur, relations with, in 1818, 50
*Janm* (*Jenm*), literally birthright, a strong form of private property on the west coast of the Indian peninsula, 162
*Jeola*, in Kulu a family holding of an allotment from the arable lands, 208
Jhabua, case of mutilation and punishment inflicted on chief, 295
Jhajjar, Nawáb of, executed for rebellion, 6
Jhánsi, lapse of state, 91
Jhind chief's services in the mutiny, 103
*Jirga*, a tribal council of elders on the North-West Frontier, 134
*Jizia*, a poll-tax on infidels reimposed by Aurangzíb, 186
Jodhpur, relations with, in 1818, 50
*Jugum*, term explained, 209
*Jumma* means land revenue, 65
Jumna, as a boundary to British possessions, 21
Jurisprudence, Austin's conception of, 322
Jurisdiction, British, exercised in certain cases in foreign territory, 15; residuary, defined, 17; limited, of native states, 17; discrimination between British and foreign territory, 176; over European British subjects in Travancore and Cochin, 367; of native states over European British subjects in native states generally, 365; over railway lands in native states, 375
Justice, civil, under the Marhattas, 248; under the Sikhs, 262; constitution of Indian judicial service, 347

KACHAR, annexation of, 56
Kángra, *vand* tenure of same as the *jeola* tenure of Kulu, *q.v.*, 208
*Kanom* or *Kanike*, literally a fee paid to a Nair chief in token of allegiance on receiving a family allotment of land, applied to a form of land tenure amongst the Nairs, 164





*Kánúngo*, revenue officer under the Moghals, 189; office of, exists at the present day, 199
Kapúrthalla chief's loyalty in the mutiny, 103
Karambas, ancient inhabitants of Tondeimandalam country, 167
Karauli, an instance of uncertainty in regard to succession, 90
*Kárdars*, Sikh fiscal officers, 225, 266
*Kárkúns*, subordinate Marhatta officials under *Mámlatdárs*, 245
*Karnam*, in Southern India, a village accountant, 197
Karnál, former condition of district, 261, 278
Karolingian, break up of empire, 216
Kashmír, restoration of powers of chief as a proof of non-annexation policy, 124
Káthiawár, British intervention in, 49
Kayasths, a writer caste, 229
*Kázi*, judicial officer among the Moghals, 188
*Khálsa* of the Sikhs, described, 259
*Khámár*, lands originally waste but brought under cultivation and retained by the *zamindár* or let out by him at grain rents, 228
*Kháns*, tribal leaders amongst the Patháns, 223
*Khán Khel*, sources of information regarding, acknowledged, preface, viii; institution amongst Patháns described, 134
*Khetráns*, the, of Mat, 278
*Khillat*, a dress of honour, 183
*Khún baha*, the price of blood, 262
Kinnear, Mr. J. Boyd, on Indian Government, 391
Kine-killing, a criminal offence in certain native states, 293-4
*Kists*, instalments of revenue, 273
*Kombus*, petty chiefdoms of Coorg, 165
*Kotwál*, police officer under the Moghals, 189
*Krori*, a former term for *zamindár*, 192
Kulu, *jeola* tenure of, 208
Kulu, position of rulers, 269
Kurdla, treaty of, 30
*Kurh*, a circular enclosure used for human sacrifice, 288
Kutb Shahi, or Golconda dynasty, 157

LAHRI BASI, garden plots of Kulu villagers, 142
Lake, Lord, 32
*Lambardár*, a village headman, 197
Land, connection between certain land tenures and the maintenance of despotism, 160; ancient tenures in Malabar, 162; and in the Tamil country, 167; Sir Thomas Munro on the right of the Government to waste land, 172; neither king nor *zamindár* the sole proprietor of, 195; controversy in earlier days as to proprietary right in, 195; rights of Delhi emperors over waste, 196; recognition of occupancy rights of settled *ryots* in Bengal, 196; the basis of political institutions, 200, 216
Languages in India and Burma, 403
Lapse, doctrine of, as an instrument for acquisition of territory, 44; endangered extinction of all native states, 83; policy not attributable to desire for conquest, 83; Lord Dalhousie's views, 88, 93; unnecessary doctrine at the present day, 99
Laws, to what extent British, apply to native states, 14, 15; immunity of native states from foreign law, 7, 15; instances where British have been introduced, 16; early administrators in India had no distinct, theory of public, 23; want of constitutional, in India caused frequent civil wars, 289; relation of British legal principles to native ideas, 320; meaning of constitutional law, 332; Indian constitutional law, 336
Legislation, principles of Indian, allusion to, 323; advantages of the exemption of native states from British-Indian, 323; effect of British legal theories on native society, 324; legislative powers of Governor-General, 342; of Local Governments in India, 344; history of Legislative Council, 347
Local Governments and their powers, 344
Loyalty, political importance of, to native chiefs, 310
Lyall, Sir Alfred, help derived from his 'Asiatic Studies' acknowledged, preface, vii; on frontiers and protectorates, 1; on the Karauli succession case, 89; on the political dissolution of [illegible] in the eighteenth century, [illegible] Rájpút political institutions, Rájpútána, 147, 202
Lyall, Sir James, help derived from his official writings acknowledged, preface, vii; on the principalities of the Punjab hills, 138, 141-3; on land tenures in Malabar, 162; on the character of the government of the Kulu rajas, 269

MAHDAJI SINDHIA, 38
*Mahánádu*, traditional popular assembly in the Tondeimandalam country, 169
*Mahsúl*, the ruler's share of the grain produce, 138
Maine, Sir Henry, help derived from his books and minutes acknowledged, preface, vii; in connection with the development of Indian political law, 10; on the divisibility of sovereignty, 18; on sovereignty, 131; on feudalism, 220; on the principle which should guide legislation, 321; on the consequences of relinquishing British supremacy in India, 387
*Mál*, means revenue, one of the heads of distribution of judicial business, 190
*Málguzárs*, properly revenue-payers, applied to the chiefs of certain Cis-Sutlej Sikh states that were substantially tributaries of the Delhi emperors, 85
*Maliki*, amongst Patháns the headship of elders of tribal sections, 134
*Málikt*, in Kulu, denotes proprietorship or lordship, 142
*Mámlatdárs*, principal local officials amongst the Marhattas, corresponding with the *kárdárs* of the Sikhs and the *tahsíldárs* of Northern India at the present day, 177
Manipur, principle of maintaining native states defined in case of, 11; non-annexation policy illustrated in case of, 127
*Mansab*, under the Moghals, military rank, expressed as the command nominally of so many horse, conferred by the direct act of the sovereign on individuals without right of inheritance, 158, 187
*Mansabdár*, a person invested with rank as above, 187
Manu, Institutes of, 193, 194; fourfold classification of castes, 394
Marhattas, the, as a factor in maintaining a balance of power in India, 34; the Peshwa becomes a political dependent of the British, 35; their organisation illustrates connection between sovereignty and share in land, 153; their institutions, 177; ministers under the, 179; principle of Marhatta military confederacy, 180; had fiefs but no feudal system, 201; *jágirs* under the, 213; revenue administration, 245; police, 246; justice, 248; punishments, 247, 253; comparison of Sikh and Marhatta Governments, 270
*Mauzas*, villages, technically estates paying land revenue to Government, 141
*Melváram*, in Southern India, the raja's head-rent or share of the crop, same as *mahsúl*, *hákimi hissa* and *sirkári* in Northern India, 172
Metcalfe, Sir Charles, views of, on extension of territories, 54
*Mian*, a member of the family or clan of a ruling chief in the Punjab hills, 144
Mill, James, on any supposed feudal system in India, 201
Mints in native states, 362 3
*Mir Adil*, judicial officer under the Moghals, 188
*Mirási*, Mr. Place's exposition of the term, 200
*Mirásidárs*, peasant proprietors in the Tamil country, 168
Mír Jáfir Ali, 24
Mír Kásim Ali, 24
*Mizáj-pursi*, Indian custom of, an inquiry by formal deputation after the health of a distinguished visitor on arrival, 361
*Misls*, martial confederacies of the Sikhs, 258
Misrule, Oudh was annexed solely on account of, 64; causes of, in India, 288; instances of, 296–300
Moghals, decline of their empire, 25, 216; in conceptions of sovereignty in India, the British are the heirs of the, 128; sovereignty of the, 185; absence of fixed rule of succession to kingdoms, 186; office under, a matter of personal appointment, 186; distribution of territory under the, 187–8; character of administration of, 188 98; Hindu elements in the government of, 193–4; enumeration of certain offices under the, 197; similarity between their system and ours, 194, 196, 199, 337; *jágirs* under the, in Bengal, 216; elements of feudalism under the, 235; Sir John Shore's description of their government, 273
*Mokassa*, under the Marhattas, the balance of the land revenue after deducting the shares that were appropriated to the raja, 181
*Mokassadárs*, high local officials under the Bijapur Deccani kings, 158
Montesquieu, on the origin of feudal





jurisdictions, 219; on the jurisdictions and fiefs of French counts and *seigneurs*, 234
Muhammad Ali, Nawáb of the Carnatic, 23–4
Muhammad Ali Shah, Nawáb of Oudh, 64
Muhammadan government influenced by Hindu institutions, 130; sovereign's position, 185; succession to kingdoms, 186; aristocracy, 187; Government described by Sir John Shore, 273; law, administered in certain cases at present day, 403
Muhammad Bahádur Shah of Delhi, 5
Muhammad Tughlak of Delhi, 154
*Mukh pardhán*, title of the Prime Minister under the Marhattas, 179
*Muxaddam*, village headman, 197
*Mulk-giri*, literally country-taking, epithet applied to the periodical expeditions of the Marhattas for enforcing their claims, 51, 253
Munro, Sir Thomas, on the ancient state of landed property in India, 169; on the right of Government to waste land, 172
*Múnshi-khána*, literally a writer's house or department, a secretariat, applied to the Indian Foreign Office, 199
Mutiny, its immediate cause, 100; effect of previous annexations on, 101; native chiefs mostly remained loyal, 101; amnesty proclamation, 102
Mysore, how Tippoo's destruction affected the balance of power in India, 34; formerly in subsidiary alliance, 49, 50; taken under British management for misgovernment, 57, 120; nature of British administration, 120; restored to native rule, 121; conditions of transfer, 122

NABHA chief's services in the mutiny, 103
Nádir Shah, 25
*Nádus*, districts in Tondeimandalam country, 169
Nagore assigned to the Dutch by the raja of Tanjore, 201
Nágpur annexed on grounds of policy, 95
Nairs, system of land tenure amongst the, 164
*Nánkár* lands, a grant of the Government share of the produce made to a *zamindár* for his subsistence, 192; a portion of land or revenue assigned to a *zamindár* for the same purpose, 228
*Nargounda*, part of the *mokassa* (*q.v.*) which might be assigned by the raja at his pleasure, 181
*Náta*, a betrothal, the gift of a daughter in marriage, 262
Nation, what constitutes a, 396; many nations might arise in India in course of time, but a single nation is impossible, 404; tendencies that go to form a, 404
Nationality does not exist in India, 393; meaning of, 396–7
Native states, position of, according to Dr. Travers Twiss, 4; relations with, and between, are not governed by international law, 4, 5, 7; but it can be applied in special cases, 8; are feudatory states of which the British Government is the suzerain, 4; relations with, are governed more by usage than compact, 4; power of intervention, 4; hold no political relations with one another or with foreign powers, 4, 5, 7, 330; liable to punishment, 5; relations with, are political, not diplomatic, 6, 7; their position towards the British Government defined, 11, 12, 13; adoption of British laws in some, 15; immunity from foreign law, 7, 15, 323; sovereignty of, is limited, 17; in the eighteenth century, readiness of, to accept military assistance, 28; and its effect on British supremacy, 28; instances of, created by the British Government, 47; non-intervention in, and its results, 42, 56, 57; Oudh as an instance of annexation for misrule, 63; doctrine of lapse threatened extinction of native states, 83; adoption in, subject to great diversity of practice before 1860, 84–5; former anxiety of, in matter of succession, 91, 94, 105–6; present position of, 99; loyalty in the mutiny, 101; amnesty proclamation and its effect, 102; are a source of strength, not weakness, 108, 302, 317; Lord Canning's policy in regard to adoption in, and its consequences, 112; present policy towards, 114 *ff.*; assured of sincerity of Queen's proclamation by restoration of native government in Baroda, 118; likewise by rendition of Mysore, 118–22; declaration regarding, at Delhi Assemblage, 124; British Government has preserved many, both new and old,

NATIVE

151; tendency of petty chiefships to form groups under the leadership of some successful state, 176; instances of barbarous practices of recent times in, 292; the case of Jhabua, 295; the limits of British interposition in, 301 *ff.*; objections to interference, 302–3; importance of maintaining a chief's responsibility, 303; reasons for interfering in, 304; no native state may attack another, 304; when aid should be given by the British Government to suppress internal disorders in, 304; oppression, disorder and gross misrule necessitate interference, 305; advantages of permanence of official staff in, 315; departmentalism in, 315; loan of British officials to, 316; advantages of the exemption of, from British-Indian legislation, 323; have the option to adopt British-Indian laws and measures, 323–6; posts, telegraphs and railways, 327; investment of capital by, and in, 328; and European capitalists, 329; constitutional position of, 334, 356; classification of, and official organisation for their control, 350; duties of political officers in connection with, 351; questions requiring the orders of the Government of India, 352; extradition from, to foreign powers, 354; some obligations of native rulers, 357 *ff.*; recognition of titles rests with supreme power, 358 *ff.*; also the regulation of salutes, 358; right of coinage in, 358, 362; ceremonial privileges of, 361; mints, 362; means for facilitating the administration of civil justice in, 363; service of summonses of British courts in, 363; commissions for examination of witnesses in, 364; acquisition of immovable property by native chiefs in British territory is undesirable, 364; native chiefs may sue in the courts of British India, 364; native chiefs may be sued in British courts, 364; service and execution of summonses or decrees of, by British courts, 365; jurisdiction over European British subjects, 365; extradition between British India and, 368; between one state and another, 370; responsibility of, for security of imperial mail, 373; establishment of cantonments and forts in, 374; passage of British troops, 374; regulation of

PACHÍT

armies and armaments, 374; fiscal obligations of, 375; smuggling of opium, agreements of, to prevent, 375; excise administration, 875; cession of land and jurisdiction for railways, 375; telegraphs and telephones in, 376

*Náttán*, the headman of a *nádu*, *q.v.*, 169

Navy, importance to India of British naval supremacy, 388

*Nawáb Nazim*, office of, 197; of Bengal, 214

*Náyaks*, rulers of Coorg, 165

*Nazr*, a tributary offering, 90

*Nazrána*, a relief or fine on the accession of a chief, 293

Nepal, war with, did not affect the Indian protectorate, 22; relations with, in 1813, 50; extradition between British India and, 368

*Nijjot* in Bengal, lands cultivated by a *zamindár* for his own benefit on which no revenue was assessed, 228

Nizam, *see* 'Hyderabad (Deccan)'

Non-intervention, result of policy of, 42, 56, 57; a mistake if it leads to anarchy, 126

OFFICE, subordination of, essential to civil discipline, 400

Omichand, his treachery, 27

*Omrah*, the great nobles of the Delhi Empire, 158, 216

Oorcha and Tehri, a protected state, 50; an instance of uncertainty in regard to succession, 90

Opium, agreements to prevent the smuggling of, in native states, 375

Order of the Indian Empire, 360

Order of the Star of India, 360

Orissa, Tributary Mahals of, included in protectorate, 48

Oudh, a barrier against the Marhattas, 20; principle of good government in native states maintained by annexation of, 23; annexed for misrule, 64; condition before annexation, 68–72, 272; alternative measures to annexation, 66; theoretical position of Muhammadan government of, 195; *zamindárs* and *talukdárs*, 233

PANCHAYATS or juries under the Deccani kings, 158; under the Marhattas, 248; under the Sikhs, 263

Pachít, *zamindári* in Bengal, 229

PAIKS

*Paiks*, a rabble of foot, something like a very bad police, maintained by lands in lieu of pay in old Bengal *zamindáris*, 230

Pándyan kingdom, the, 155

Paramount power, theory of a, in India, 318

*Pardháns*, Ministers of the Marhattas, 179

*Pargana*, a small subdivision of a district, 158; under the Moghals, 188

Parliament, the supremacy of, in relation to India and the colonies, 342, 353

Partiality and its effects, 317

Patel, village headman, 197

Patháns, elements of feudalism amongst, 222–3

Patháns, tribal organisation of, 133–4

Patiála chief's loyalty in the mutiny, 103

*Pattah*, in Kulu, a grant from the raja, 142

Patton, on the causes of despotism in the East, 159

*Patwári*, village accountant, 197

Pedder, Mr. W. G., on Marhatta government in Guzerat, 252

Perpetuation of native states, *see* 'Native states,' 'Successions'

Perron, General, 31

Pesháwar, condition of, under the Sikhs, 264

Peshwa, Prime Minister and eventually the sovereign of the Marhattas, 179; *also see* 'Marhattas'

Phulkián states of the Punjab, 84

*Pindáris*, power of, destroyed, 51

Place, Mr. Lionel, on *mirási* right, 200

Police, under the Marhattas, 246

*Poligárs*, what they were, 155–6

Political agents, their position, 8

Political Department, composition of Indian, 349; duties of political officers, 351

Political law, *see* 'Indian political law'

Posts in native states, 327; responsibility of native states for security of imperial mail, 373

*Praja*, a subject, a state tenant or peasant proprietor, 218

Precedence, regulation of, rests with British Government, 358; necessity of a warrant of, 400

Primogeniture, recognition of claims of, 110

Prinsep, Mr. H. T., his 'History' referred to, 10; on subsidiary alliances, 39; on the political condition of India in 1813, 49, 50

RANK

Proclamations, *see* 'Amnesty,' 'Delhi Assemblage'

Protectorate, what constitutes a, 1; Indian, defined, 2

Public works in native states, 328

Punishment under the Marhattas, 247–53; under the Sikhs, 262; *see also* 'Sikhs'

Punna, a protected state, 50

Punjab, services of chiefs of, in mutiny, 103; native rule in the, 252 *ff.*

Punjab frontier, type of feudalism on, 222–3, 235; condition under Sikh rule, 264

Punjab hill states, geographical description of, 139; afford evidence of the primitive Hindu *Ráj*, 143; manorial character of principalities, 225; extra cesses in, 226; type of feudalism in, 235; Rájpút rule in, 269

Purandhar Singh of Assam, 56

RAILWAYS, their effect on conditions of government in native states, 98; construction of, in native states, 327; cession of land and jurisdiction for, in native states, 375

*Raiyati*, in old Bengal *zamindáris raiyati* lands were those occupied by settled peasants, 228

*Ráj*, a principality or petty state, also means rule or kingdom, 138, 141, 143, 146

Raja, status of a, in the Punjab hills, 141; *ibid.* in the Gonda district of Oudh, 145–6; status of a Hindu, 136, 141, 196

*Rájadhiráj*, a raja who has other rajas under him, 186

Rájpútána, Rájpút states a barrier against the Pindáris, Sindhia and Holkar, 21; completion of the, protectorate, 21; elective system on successions, 85; distinction between Eastern and Western States of, 148; feudal system in, 201; elements of feudalism, 235; Court of Vakils, 371

Rajshahye, Bengal *zamindári*, 229

*Rakh*, forest or waste land in possession of Government or of some individual or community, in Kulu a shooting preserve, 142

Rampur, a protected state, 50

Ranjít Singh, his rise among the Sikhs, 260; his superstition, 283

Rank, official, under the Moghals was not hereditary, 186, 197; it was usually hereditary in Hindu gov-

ernments, 186; subordination of, essential to civil discipline, 400
Raymond, Mons., 31
Rebellion, instances of, among native chiefs, 6
*Rekwali*, in Rájpútána, taxes paid or services rendered in consideration of protection, 223
Religion, Sikhism, an eclectic, 256; religious neutrality, 311
Residencies, British laws may be applied to, in native states, 15
Residents, position of, in native states, 8, 351–2
Residuary jurisdiction defined, 17
Revenue administration, under the Marhattas, 245; in Guzerat in Marhatta times, 252; under the Sikhs, 266; present land, is a native system improved, 319
Revenue settlement, similarity in, of Moghals and our own, 194, 198
Rewa, a protected state, 50
Ridgeway, Sir West, in connection with the development of Indian political law, 10
Roman Empire, its theory and decline, 2, 3; influence of Roman law, 222, 238; this influence absent in institutions of India, 205, 222; conjecture as to Roman treatment of tenures in Britain, 210, 211; commendation and Roman law, 220 *ff.*; possible connection of Roman taxes and practices with seignorial dues, 227; resemblance between the Indian and Roman Empires, 239, 337, 399
*Ryot*, peasant proprietors, 226; recognition of occupancy rights of, 196

SAADAT ALI, Nawáb of Oudh, 64
*Sahotra*, meaning of term, a share of the *mokassa*, *q.v.*, 181
Salisbury, Lord, on imperial federation, 381
Salt, lease of Sambhur Lake, 375
Salt Range, condition under the Sikhs, 264
Salutes, regulation of, rests with British Government, 358; distinction between personal and dynastic, 362
*Samadh*, the practice of burying alive, 293
*Sanads*, adoption, to native chiefs, 104; their form, 111; *sanad* means a written grant, 230
Sandeman, Sir Robert, his pacification of the Baluch tribes, 133
*Sardárs*, among the Sikhs petty chiefs or barons, lower in status than rajas, but above common men, 257
Sarúp Singh, raja of Jhínd, 103
*Sati*, the self-immolation of women, 53, 286
Sattára, grounds for annexing, 89; *jágírdárs*, 213
Seebohm, Mr., his work on the 'English Village Community,' 208, 209, 210, 212
Sequestration, temporary, of Mysore, 99
Seringapatam, peace of, and its objects, 29, 30
*Shaikhdárs*, under the Marhattas, officials subordinate to *tarafdárs* or *kárkuns*, 245
Shore, Sir John, his description of Muhammadan rule in India, 278
Shuja-ud-Daula, the Nawáb Wazír of Oudh, 24, 64
*Shukarána*, a present given by a successful suitor in Sikh times, means a thankoffering, 262
Sikhs, chieftains between Jumna and Sutlej as protected states, 50; adoption amongst, conferred no right to chiefship, 84; *jágírs* under the, 224, 265; elements of feudalism, 235; religion of, 256; their rise, 258; their system of administration, 262; revenue administration under Sáwan Mal, 266; comparison of Sikh and Marhatta Governments, 269–70
*Silahdárs*, troopers who provide horses and arms at their own expense, 215
Sindhia, *see* 'Gwalior'
*Sipah Salár*, under the Moghals, an early designation of the provincial governors, afterwards called *Subadárs*, now means a Commander-in-Chief, 187
*Sirdeshmukhi*, one of the Marhatta claims, literally one-tenth of the land revenue demand of a given tract of country, 180
*Sirkár* means Government, the term is also used to denote the districts into which the country was divided under the Moghals, 158, 189, 201
Sívaji, rise and policy of, 177
*Siyúr-ghál* under the Moghals, an unconditional grant of land revenue, 217
Societies, subject societies and foreign domination, 128; distinction between



stationary and progressive, 237; Indian, of the present day and caste, 395–6
Sovereignty, divisibility of, 13, 340; a sovereign government, 14; features of Indian, 14, 15; limitation of, of native states, 17; distinction between, and independence, 18; early Indian ideas of, 128 *ff.*; territorial, 130, 131, 151, 166, 200; no symptom in India of the change from the absolute monarch to the constitutional king, 152; in India, based on land, 130, 166; of the Moghals, 185; of great Bengal *zamíndárs*, 231
Stephen, Sir Fitzjames, in connection with the development of Indian political law, 10
Stokes, Mr. Whitley, in connection with the development of Indian political law, 10
Strategy, considerations of, in consolidating the Empire, 42
Stubbs, Bishop, on feudalism, 204; on the duchies and counties of the eighth and ninth centuries, 215
*Subadárs* of the Moghals, 187, 188; replaced by Governors, Lieutenant-Governors and Chief Commissioners of present day, 199
*Subahs*, the provinces of the Deccan, 180; and of the Delhi Empire generally, 186
Subinfeudations, an Indian equivalent for, in Bengal, 233
Succession of collaterals in the case of the Phulkián States, 84; system of election in Rájpútána, 85; Lord Dalhousie's views, 87, 93; diversity of practice on questions of, 84, 91; consequent anxiety of chiefs, 91; uniformity secured by policy of adoption, 113; every, requires confirmation and recognition by paramount power, 113, 352; to kingdoms among Muhammadans, 186
Summonses, service of, of British courts in native states, 363, 365
Superstition, under native rule, 282–3, 294
Supremacy, how British, in India, was brought about, 33, 35, 37; subsidiary alliance as an instrument to, 40, 44; British, finally declared at Delhi Assemblage, 126; consequence of relinquishing British, in India, 387
Suraj-ud-Daula, 24
Suzerainty, British Government is the suzerain of native states, 4; traces of, in India before British rule, 153

TAHSILDARS, native officials in charge of sub-divisions of districts, 313
*Tahsils*, sub-collectorates, 188
*Takáza*, literally dunning, private duress to induce a defendant to submit to the jurisdiction of a *Panchá-yat*, 250
*Tali* in Marhatta times, robbery or other violent crime committed to put pressure on a Government officer, 251
*Taluk* or *Taluka* of Oudh explained, 233, 234
*Talukdár* of Oudh defined, 233, 234; of Bengal, 234
Tanjore, the raja of, and the Dutch, 201
*Tarafdárs* or *Talukdárs*, civil officers under Sívaji, 177; governors under the Bahmani kings of the Deccan, 157; under the Marhattas, 245
Taxation, a sign of a settled government, 136
Tehri, a protected state, *see* 'Oorcha'
Telegraphs, their effect on conditions of native states, 98; in native states, 327, 376
Telephones in native states, 376
Telingána, its locality, rajas of, 154
Tenures, *see* 'Land'
*Tepukchi*, revenue assistant under the Moghals, 189
Territorial sovereignty, *see* 'Sovereignty'
*Thagi*, professional murder by strangulation or poison for purposes of plunder, 53
*Thákuráin*, period of government by *Thákurs*, who, in Kulu, were petty chiefs of a few villages, 142
*Thákurs*, the great barons or chiefs subordinate to the rajas in Rájpútána, 140, 206
*Thánadárs*, officers in charge of small police divisions, 230
Theories, their value in governing India, 312
Tipperah, the *zamindári* of, 229
Tippoo Sultán, how his destruction affected the balance of power in India, 34; some of his cruelties, 285
Titles conferred on Marhatta chiefs by Deccani kings, 158; recognition of, rests with British Government, 358; political and official value of, 401
Tod, Colonel, on feudalism in Rájpútána, 201; on *rekwali* in Rájpútána, 223
Tondeimandalam, land tenure in, 167

*Torágrás*, blackmail levied by Rájpút chiefs in Guzerat, 253
Trade, extent and value of Indian, 389
Travancore, in subsidiary alliance in 1813, 50; jurisdiction over European British subjects in, 367
Treason, instances of, among native chiefs, 6
Treaties with native states must be ratified by Governor-General in Council, 344; regarding extradition with native states, 368
Trial, procedure regarding native chiefs, 118
Tribal organisation amongst the Baluchis, 132; amongst the Patháns, 133
Tribe, distinction between caste and, 395
*Tumandárs*, chiefs of Baluch tribes, 132–4
Twiss, Dr. Travers, on the position of native states, 4

VAKIL, an agent of a native state, 371; Rájpútána Court of *Vakils*, 371
*Vakil-ul-mutlak*, the office of executive Prime Minister of the Moghal Empire conferred on the Peshwa by the King of Delhi, 38, 183
*Vand*, tenure of, in Kángra, *see* '*Jeola*'
Vellálers, tradition of their settlement in Tondeimandalam, 167
Viceroy, legislative powers of the, 343
Vijayanagar, traces of suzerainty in empire of, 153; empire founded, 154; its extent and collapse, 154, 155
*Villanus*, his normal holding, 209
*Virgate*, meaning of, 209

WADEYARS, Governors under the Vijayanagar Empire, 155
Wájid Ali Shah, the last King of Oudh, 72
Warangal, capture of, by the Delhi Patháns, 154
*Wárisi*, inheritance, a heritable right of occupancy or peasant proprietary right in Kulu and Kángra, 210
Warren Hastings, the charges against him viewed in the light of Indian public morality, 27; acquired Benares, 44
Waste land, *see* 'Land' and '*Rakh*'
*Watan*, means hereditary property, 181
Wellesley, Lord, condition of India when, assumed the Governor-Generalship, 30; as the founder of the Indian political system, 41; and the policy of subsidiary alliances, 39; his conquests, 44
Wellington, Duke of, on oriental policy, 36
Wilkins, Sir Charles, on *zamindárs*, 192
Wilks, Colonel, his definition of *poligárs*, 155; on the causes of despotism of the East, 159; on succession to kingdoms among Muhammadans, 186; on native government, 277, 278; on the cruelties of Haidar and Tippoo, 283–6
Witnesses, commissions for examination of, in native states, 364
*Wulsa*, in Southern India, Wilks's description of, 277
Wynaad, original state of property in the, 165

ZAMAN SHAH, 80
*Zamindár*, different meanings of the term, 190; under the Moghals, 191, 197; Sir Charles Wilkins's definition, 192; origin of the office, 192; some were originally rajas, 229; sovereignty of great Bengal *zamindárs*, 231
*Zamindáris* and *jágirs* compared, 217; the great, of Bengal, 228

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