

EAST INDIA (COUNCILS).

RETURN to an Address of the Honourable The House of Commons,
dated 4 June 1861;—for,

A COPY “ of the DESPATCHES from the Governor General of *India* to the
Secretary of State for *India*, dated the 9th of December 1859, the 15th
of January 1861, and the 26th of January 1861, respecting the CONSTI-
TUTION of COUNCILS in *India*.”

India Office,
5 June 1861.]

J. HAWKINS,
Secretary, Legislative Department.

(*Sir Charles Wood.*)

Ordered, by The House of Commons, to be Printed,
5 June 1861.

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COPY of the DESPATCHES from the Governor General of India to the Secretary of State for India, dated the 9th of December 1859, the 15th of January 1861, and the 26th of January 1861, respecting the CONSTITUTION of COUNCILS in India.

The Governor General of India to the Secretary of State for India.

Camp Agra, 9 December 1859,
No. 5, Home Department.

Sir,

I HAVE the honour to enclose a copy of a letter of the Lieutenant Governor of Bengal, dated the 14th of October. It is an answer to the call which Her Majesty's Government desired the Government of India to make upon the Honourable Mr. Grant for his opinion of the present plan for conducting the legislation of India, and regulating the proceedings of the Legislature, compared with the plan which immediately preceded it.

I also enclose an answer, dated the 3d ultimo, from the Chief Justice, Sir Barnes Peacock, to a like call made upon his Honour.

2. Although I am not able to give any help towards a comparison of the two plans, having had no experience of the earlier one, which from 1854 has ceased to be in operation, I entirely agree in the opinion of the Lieutenant Governor that it would be impossible to revert to it. To do so would be to throw back upon the Governor General in Council duties which are increasing in importance and weight, and which will continue so to increase; and the Governor General in Council must not, in fairness or in sound policy, be required to take upon him any addition to the burden which he already bears.

3. I share the opinion of the Lieutenant Governor that, for the reasons given by him, the Advocate General ought to have a seat in the Legislative Council; I consider this quite indispensable; and I agree in thinking that additional members, not in official employment, should be nominated to it.

These are the first changes which I should wish to see made, if it be assumed that the present constitution of the Legislative Council is to be maintained.

4. I can confidently confirm the statement of the Lieutenant Governor that much important work has been done by the Legislative Council in a very satisfactory manner; but this does not lead me to the conclusion that the Council, in its present form, is the best legislative machinery that can be given to India. I will, therefore, state what appear to me to be the chief faults of the existing system, premising that I draw my opinions from observation of the working of the Council during a time when it has had to deal with questions of more than ordinary importance to local as well as to general interests in India.

5. I think it is to be regretted that the Legislative Council was, on its first creation, invested with forms and modes of procedure so closely imitating those of Parliament.

It can scarcely be contended that the 136 standing orders by which the proceedings of the Council are ruled are necessary for the guidance of an assembly so small in number, and composed as this Council is composed. Observances which are indispensable to securing order and opportunities of complete discussion in a House of 656 Members, free to come and go at their pleasure, are not needed in a Chamber of 12, nearly all of whom must be always at their posts. They have a tendency to delay business, which in a body so limited as the Legislative Council, would be better conducted by following in the main the simpler forms of a Select Committee of Parliament, or of a Royal Commission. These forms would equally admit of oral discussion. Dissentient

opinions would be recorded as easily as now, and more clearly than by speeches. Work of detail, such as the correction or preparation of Bills, and the examination of petitions and representations, would still be entrusted to select committees of the Council.

There are some delays which could not be curtailed so long as legislation is confined to Calcutta; those, for instance, which arise from the necessity of giving ample notice to every part of India of any measure which will specially affect its interests: but there are others which are needlessly prolonged by the operation of the Standing Orders.

6. Moreover, I am of opinion that the application of so much of Parliamentary form to the proceedings of the Council has not only been of no advantage in the conduct of business, but has placed the Legislative Council in a false position. More is expected from it in the way of debate and exposition than is ordinarily possible in so small a number of members, most of whom are in constant official communication with each other. Even within the Council itself, the assumption of the procedure of the House of Commons seems to have had a misleading effect, and to have caused an impression that reports and returns should be ordered by the Council from the local administrations, and that measures should be introduced independently of the Executive Government.

Certainly the Standing Orders which, on the formation of the Council, were passed in India and approved in England, do not bar this: but I believe that it was not intended that such action should be given to the Legislative Council when the last change in it, or rather the enlargement of it, was enacted by Parliament in 1853.

7. You are aware that, in 1856, the Legislative Council demurred to carry out the orders of the Home Government in legislating regarding the office of the Administrator General. I do not know in what light the position then taken by the Legislative Council has been viewed by the Home Government, and I am not prepared to say that that position was, as the law stands, an unsound one; but, if it is not intended that the Council should retain it, the sooner this is declared authoritatively the better.

8. With regard to the Standing Orders, so far as they affect publicity, I think that, if it be assumed that the present mode of transacting business by formal debate is the best, the admission of both strangers and reporters for the press is right; although, as suggested by the Lieutenant Governor, security should be had for the competency of the reporters. But if the simpler forms of a committee are adopted, publicity should be given to the proceedings of the Council by periodical, but frequent, official reports of the measures in progress or passed, of amendments proposed, of evidence taken, of dissentient opinions recorded, and of other points of interest. The debates of the Council would no longer be reported in full, and only the official reporters would be present; but oral discussion, to which too much importance cannot be attached, would be at least as free as at present, and I see no reason why strangers should not generally be admitted.

9. But the constitution of the Legislative Council is still more important than its forms of procedure; and although a return to the system which existed before 1854 is impossible, I think that it well deserves to be considered whether a partial return to the still earlier system which prevailed before 1834 is not advisable.

There is difficulty in ascertaining precisely the recognized relations of the Governments of Madras and Bombay to the Governor General in Council, in matters of legislation, previously to the Act of 1833. A memorandum on this subject by the Secretary is enclosed. It is clear, however, that, practically, the two Governments exercised much authority in legislating for their respective Presidencies, and that the interference of the Government of India was not frequent; and I recommend that this system, with certain checks, be revived.

10. Of the whole Legislative Council, it is very improbable that, under its present constitution, more than two members will at any time be found possessed of practical knowledge of either of the Presidencies of Madras and Bombay. One representative member for each is secured; and, at the present time, Bombay has the unusual advantage of contributing two members of its

16. The main expense consists of the four salaries of 5,000 *l.* a year each paid to the representative members of Madras, Bombay, Bengal, and the North-West Provinces; the eight members holding their seats *ex officio*, and receiving no salaries as Legislative Councillors.

Measured by the labour and responsibility which falls to a member of the Legislative Council, either absolutely or in comparison with the labour and responsibility of other posts of like emolument, I think that the salary of 5,000 *l.* is unnecessarily high. In saying this, I must not be supposed to under-rate the value of the aid which the Council has received from its representative members who, from the first, have taken the labouring oars, and to whose intelligence and earnest assiduity it is mainly owing that so much recent good work appears on the pages of the Indian statute book. But it deserves to be considered, whether representative members may not fairly be obtained at a less cost; the more so, because, so long as a salary of 5,000 *l.* is given for the discharge of no other duty than that of a Legislative Councillor, it cannot be expected that gentlemen independent of the Government, and engaged in their own business or professions, will receive with goodwill an invitation to take upon themselves that duty without salary, or with a very insignificant one. For myself, I should feel that, in asking them to do so, I made an illiberal and unfair proposal.

17. I know no good reason for assigning any salary to a representative member, as such. The Government may claim to be served by its officers in any part of the country as may be most expedient; and if fair provision be made against the officer being a loser, immediately or prospectively, by the temporary transfer of his services from his own province to Calcutta, no difficulty will be found in obtaining efficient representation.

Therefore, where a representative member of a local Government is required in the Council, I recommend that the following course be adopted:

That the head of the local Government should select one from amongst the civil officers of his province, and that this officer should join the Legislative Council in Calcutta, carrying with him the salary of the appointment from which he is withdrawn, and receiving, in addition to it, a deputation allowance of 740 *l.* a year,* that being the amount which an officer summoned to officiate in an appointment of which the salary is 5,000 *l.* a year, would now receive.

That the seat in the Legislative Council should be held for a period less than five years. I think that two years would suffice; and that, at the end of that time, the officer should return to his own Government, and resume his appointment, or one at least equivalent to it, his own appointment having been held during his absence by an officiating officer.

18. The cost of this mode of representing a local Government in the Legislative Council would be confined to the deputation allowance, say, 750 *l.* a year, and to the increase of the salaries of the officers who would be called to officiate in higher grades than their own during the absence of the representative. This last item would vary accordingly as the representative might be taken from a higher or lower post; but, taking the extreme case, even if he were of the rank of a Judge of the Sudder Court, or a member of the Revenue Board (and it might often be expedient to take him from a much lower rank), the expense would not exceed 2,500 *l.* a year. The average probable expense may be reckoned at 2,000 *l.*† a year. Thus the cost of a representative member would stand

* Note.—Or so much less as would suffice to make up his emoluments to 5,000 *l.*, and no more.

+ Deputation Allowances.				
Commissioner acting for member of Board	-	-	-	Rs. 550 a month.
Judge acting for Commissioner	-	-	-	500 "
Collector and magistrate acting for Judge	-	-	-	450 "
Joint magistrate acting for collector and magistrate	-	-	-	400 "
Assistant acting for joint magistrate	-	-	-	200 "
Total - - - Rs.				2,100 a month.

service to the Council of the Governor General; but as regards Madras, there is no member of the Legislative Council who has had experience of its systems and requirements, except its representative, one amongst 12.

There is no doubt that the introduction of a single member from each local government has been, as the Lieutenant Governor of Bengal observes, a great advantage. But, although an improvement has thus been made in the system antecedent to 1854, I do not think that it has been carried far enough. I do not think that, the principle of representing the local governments in the Council being once admitted, the Governments of Madras and Bombay can be reasonably expected to be satisfied with the share which they at present have in any legislation directly concerning their own Presidencies; and I believe that, by giving them a much larger share in it, useful local measures may be facilitated and expedited, without leading to any interference with measures of a general character, or with the authority and responsibilities of the Governor General in Council.

11. In India it is quite as important that a law should be administered in a hearty and willing spirit as that it should be a good law; and it will not tend to promote this hearty administration, if executive officers feel that they are working a law of which their own government does not wholly approve, or in framing which it has had little part. It may be said that this feeling must have existed in the Madras and Bombay Presidencies for the last five-and-twenty years, ever since legislation was concentrated in Calcutta. I believe that it has existed; but so long as the legislation was conducted by the Supreme Executive Government closely within its own Council Chamber, the feeling was comparatively a suppressed one; whereas, now that a representation of the two Presidencies in the legislative body is recognized by law, the feeling that the modicum of representation admitted is insufficient has become strong and unconcealed. Without attaching weight to hasty and mistaken complaints made of the proceedings of the Legislative Council, I cannot be surprised that Madras and Bombay should see with impatience their questions of internal administration, municipal questions, and matters of police, discussed and decided in the minutest detail by a body in which officers of Bengal, or acquainted with Bengal alone, have so strong a preponderance.

12. There appear to be only two modes of giving to Madras and Bombay a larger share of local legislation; either by increasing in the present Legislative Council the number of members drawn from those Presidencies, or by breaking up the Council into three Councils.

13. The first mode is open to the objection that the cost of the Legislative Council would be greatly augmented by it. You cannot bring Madras and Bombay civilians, or English gentlemen engaged in commerce or at the bar in those Presidencies, or natives of them, to Calcutta, without paying them high salaries. In fact, unless considerations of expense are to be put aside, a Council sitting in Calcutta admits of no extension beyond the addition to it of a certain number of residents in or near to Calcutta. This addition is in itself desirable; but it will not render the Council more competent to deal with the affairs of the distant Local Governments, nor will it reconcile the communities, official and non-official, of the other Presidencies, to the authority of that body.

This inaptitude for expansion is a very serious defect of the present system.

14. The second mode is, therefore, the one which I recommend; and I will take the liberty of suggesting how, as it appears to me, it might be most conveniently and effectively adopted.

15. Before doing so, however, I wish to say a few words on the present expenditure in legislation. The annual cost of the Legislative Council is shown in an accompanying paper. Speaking roundly, it amounts to nearly 30,000 £, of which 20,000 £ represents the salaries of the four paid members, and the remainder goes to defray the expense of clerks, clerical establishment, servants, house rent, &c.

Without contesting the opinion of the Lieutenant Governor of Bengal, that, considering the value of good legislation to India, the Legislative Council cannot be pronounced a costly machine, it is right to examine whether the expenditure actually incurred is necessary, and whether it is judiciously applied. I

16. The main expense consists of the four salaries of 5,000 £ a year each paid to the representative members of Madras, Bombay, Bengal, and the North-West Provinces; the eight members holding their seats *ex officio*, and receiving no salaries as Legislative Councillors.

Measured by the labour and responsibility which falls to a member of the Legislative Council, either absolutely or in comparison with the labour and responsibility of other posts of like emolument, I think that the salary of 5,000 £ is unnecessarily high. In saying this, I must not be supposed to underrate the value of the aid which the Council has received from its representative members who, from the first, have taken the labouring oars, and to whose intelligence and earnest assiduity it is mainly owing that so much recent good work appears on the pages of the Indian statute book. But it deserves to be considered, whether representative members may not fairly be obtained at a less cost; the more so, because, so long as a salary of 5,000 £ is given for the discharge of no other duty than that of a Legislative Councillor, it cannot be expected that gentlemen independent of the Government, and engaged in their own business or professions, will receive with goodwill an invitation to take upon themselves that duty without salary, or with a very insignificant one. For myself, I should feel that, in asking them to do so, I made an illiberal and unfair proposal.

17. I know no good reason for assigning any salary to a representative member, as such. The Government may claim to be served by its officers in any part of the country as may be most expedient; and if fair provision be made against the officer being a loser, immediately or prospectively, by the temporary transfer of his services from his own province to Calcutta, no difficulty will be found in obtaining efficient representation.

Therefore, where a representative member of a local Government is required in the Council, I recommend that the following course be adopted:

That the head of the local Government should select one from amongst the civil officers of his province, and that this officer should join the Legislative Council in Calcutta, carrying with him the salary of the appointment from which he is withdrawn, and receiving, in addition to it, a deputation allowance of 740 £ a year,* that being the amount which an officer summoned to officiate in an appointment of which the salary is 5,000 £ a year, would now receive.

That the seat in the Legislative Council should be held for a period less than five years. I think that two years would suffice; and that, at the end of that time, the officer should return to his own Government, and resume his appointment, or one at least equivalent to it, his own appointment having been held during his absence by an officiating officer.

18. The cost of this mode of representing a local Government in the Legislative Council would be confined to the deputation allowance, say, 750 £ a year, and to the increase of the salaries of the officers who would be called to officiate in higher grades than their own during the absence of the representative. This last item would vary accordingly as the representative might be taken from a higher or lower post: but, taking the extreme case, even if he were of the rank of a Judge of the Sudder Court, or a member of the Revenue Board (and it might often be expedient to take him from a much lower rank), the expense would not exceed 2,500 £ a year. The average probable expense may be reckoned at 2,000 £ a year. Thus the cost of a representative member would stand

* Note.—Or so much less as would suffice to make up his emoluments to 5,000 £, and no more.

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Commissioner acting for member of Board	-	-	-	Rs. 550 a month.
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Joint magistrate acting for collector and magistrate	-	-	-	400 "
Assistant acting for joint magistrate	-	-	-	200 "
Total				Rs. 2,100 a month.
Or				£. 2,520 a year.

stand at 2,750*l.* instead of at 5,000*l.* a year. No high salary would be attached to a seat in the Legislative Council; and the Government might, with a better grace than it can now assume, invite the aid in legislation of independent unpaid gentlemen. I am sure that such aid will lose much of its efficacy if it be not unpaid.

19. It would probably be a consequence of this plan that the post of representative member would be sometimes filled by civil officers less advanced in the service than has hitherto been the case; and so far, there would be some loss of useful experience in the representative members; but I think that this advantage will be more than counterbalanced by the larger field of choice which will be opened to the head of the local Government for the practical effect of the high salary is to cause the appointment to be viewed as a fit conclusion of a long and honourable career, and so to narrow that field; and by the fact that each representative member, whilst advising on the law, will feel that he will before long have to resume his function of administering it. Moreover, it will, I think, be found that, under the system which I have proposed, there will be no difficulty in securing representative members whose length of service shall range up to 20 years.

20. I now proceed to suggest how the breaking up of the present Legislative Council into three Councils can be most conveniently and effectively carried out.

The Legislative Council, as now existing, is composed of—

The Governor General.

The Commander in Chief.

The four ordinary members of the Governor General's Council.

The Chief Justice.

A puisne Judge.

Four representative members (paid) from Bengal, Madras, Bombay, and the North-Western Provinces.

Twelve members in all, besides the two members which the law allows the Governor General, with the sanction of the Home Government, to appoint from the service, but who have never yet been appointed.

I propose that the Legislative Council in Calcutta, presided over by the Governor General, which would legislate on all matters of Imperial and general policy, as well as on local matters relating to Bengal and to the Provinces, under the direct supervision of the Governor General in Council, should consist of,—

The Governor General.

The Commander in Chief.

The four ordinary members of the Governor General's Council.

The Chief Justice.

The Lieutenant Governor of Bengal.

The Advocate General.

A Judge of the Sudder Court.

An officer of the army staff at the Presidency.

A representative member from the North Western Provinces.

Three members not connected with the Government.

Making 15 members in all.

21. No remark is necessary as regards the first seven members. As regards the rest, I would observe as follows:—

(a.) *The Lieutenant Governor of Bengal.*—I can conceive no reason why this high officer, who must always be a man of mark and ability, and of the ripest experience, should not be called in to the Council which makes the laws for the vast and rich territory which he administers.

(b.) *The Advocate General.*—For the reasons given by Mr. Grant, I consider it absolutely necessary that, even if no other change be made, this officer should, now that the fourth member of the Governor General's Council is no longer of the legal profession, have a seat in the Legislative Council.

sufficiently represented, and because the want of a representative of Indian law, acquainted with Indian procedure, has been found inconvenient.

(d.) *An Officer of the Army Staff at the Presidency.*—The great increase of English troops on the Bengal establishment will make the continued residence of the Commander in Chief in Calcutta less practicable than ever; and it is occasionally useful to have the opinion of an officer actually engaged in carrying on the discipline of the army. But, as it would not be necessary to call an officer of this description into the Council, except when it is likely that the Commander in Chief will be long absent, it would suffice to leave it to the Governor General to nominate him when necessary. He should be eligible from the army of the line, or from the local army.

(e.) *A Representative Member from the North Western Provinces.*—This member would be nominated by the Lieutenant Governor of the North Western Provinces, under the arrangement proposed in the 17th paragraph of this Despatch.

(f.) *Three Members not connected with the Government.*—These should be nominated by the Governor General, who would find them amongst the English gentlemen engaged in commerce or at the bar in Calcutta, or amongst native gentlemen. It is expedient that the number which may be lawfully appointed (it ought not to be less than three) should be declared; but there should be no obligation to keep all the appointments full.

The term of appointment would be the same as that for which the representative member may be appointed.

22. A Legislative Council in Calcutta, thus composed, would, I believe, be found as efficient for its purposes as any that can be constructed in India. It would entail no expense beyond the deputation allowances consequent on sending an officer of the North Western Provinces to Calcutta, to represent his Government; and this expense of about 2,750*l.* a year would stand in the place of 5,000*l.*, the present salary of the member for the North Western Provinces. A representative member for Bengal would not be needed, seeing that the Lieutenant Governor and one of the sudder judges would have seats at the council, and thereby a further annual saving of 5,000*l.* would be effected; but it might be necessary, in consequence of the employment of part of a sudder judge's time in the Legislative Council, to give occasional assistance to the sudder court in the shape of an extra officiating judge. In that case, which would not always occur, the expense of deputation allowances would be about 2,000*l.* a year, in place of 5,000*l.*, the present salary of the member for Bengal.

23. When it shall be thought advisable to bring into the council a representative of the Punjab (which I do not at present recommend), the cost of doing so will be no greater than that of providing for the presence of a representative of the North Western Provinces.

24. The annual cost of the clerical establishment, and the other contingent expenses of the Legislative Council, come to a larger sum, more than 9,000*l.* This will be gradually reduced in Calcutta, if the Council sitting there ceases to be the sole Legislative Council for all India; but new expenses of the same nature, though much less in amount, will have to be met at Madras and Bombay.

25. The Legislative Councils for Madras and Bombay would, I think, be advantageously composed as follows:

The Governor.

The Commander in Chief.

The two members of the Governor's Council.

The Chief Justice.

The Advocate General.

A Judge of the Sudder Court.

Three members not connected with the Government.

Ten members in all.

26. I have not proposed an officer of the army staff as a member of these Legislative Councils; for, although the absence from the local Executive Councils of all military members, except the respective Commanders in Chief, might appear

to make the presence of such officers in the Legislative Councils more necessary than in Calcutta, I am of opinion that all legislation respecting the armies in India (and the occasions for such legislation are very rare) ought to proceed from the Supreme Government. Besides, the Commanders in Chief of Madras and Bombay have not the same strong and frequent reasons for being absent from the seat of Government as has the Commander in Chief in India.

27. Neither have I proposed representative members of any kind. At Madras I know no occasion for any; and Scinde does not appear to require one at Bombay, more than Oude or Pegu require them at Calcutta. But if, on account of the smaller number of members in the Councils of the Governors of Madras and Bombay, or for any other reason, the Governors of those Presidencies should find that additional aid in their Legislative Councils is necessary, I would recommend that they be empowered to give a seat in the Legislative Council to one officer of the civil staff of the Presidency resident at the seat of Government.

In any case, the whole of the 10,000 *l.* a year which now constitutes the salaries of the representatives of Madras and Bombay at Calcutta may be saved to the State; making, in the whole, a reduction of more than 15,000 *l.* a year.

28. It only remains for me to describe the line of demarcation which should be drawn between the functions of the local Legislative Councils, and those of the legislative body over which the Governor General would preside.

It is not easy to define this line closely in words, but I do not think it is difficult to provide, without vexatious interference, that in practice it shall be observed.

29. All measures relating to general finance, customs, relations with foreign or native States and their subjects, the Articles of War, the Indian armies, ecclesiastical matters, emigration, substantive civil and criminal law, judicial procedure, maritime and mercantile law, foreign trade, coinage, English law as administered in the Supreme Courts, post office, weights and measures, State offences and prisoners, railways and telegraphs, patents, copyright, and the like, should be introduced into and passed by the Legislative Council of the Governor General.

All measures of local administration which would affect the finances of the country, either by increase of expenditure or by loss of revenue, should be submitted in draft for the preliminary sanction of the Governor General in Council (not of the Governor General's Legislative Council), before being laid before the local Legislative Council for discussion.

All Bills whatever, after they have been passed, should receive the signature of the Governor General before they become law, as is the case at present, but with this difference, that in the event of the Governor General withholding his signature, or, in other words, putting his veto on the Bill, it should be incumbent upon him to communicate to the local Government his reasons for so doing. Under the law as it stands, the Governor General may veto a Bill, and give no reason.

30. The list of the subjects regarding which any laws that may be requisite should be introduced into, and passed by, the Legislative Council of the Governor General, seems long; but the majority are subjects upon which a necessity to legislate seldom occurs, and nearly all are such as to need that laws respecting them should be uniform throughout India. Cases, moreover, may present themselves, even under the first and most important head of general finance, in which it may be very expedient to commit the framing and enacting of a measure to the local Legislature; but this should be done on each occasion by the special direction of the Governor General in Council, who shall have power, as the occasion arises, to make over the legislation upon any subject to the local Legislative Council, with or without limitation as to the scope of the measure.

31. With regard to the preliminary sanction of the Governor General in Council to measures of local administration which affect the finances, it may be expected that the cases in which it would be withheld would be very rare indeed if the local Government, before framing its Bill, be careful to ascertain to what extent its principle or provisions, so far as these may affect the finances

or

or other general interests of India, will be admitted by the Governor General in Council; and if it be understood (as it ought to be clearly understood and provided) that the Governor General in Council takes cognizance of the Draft Bill only in so far as it touches the general interests of the empire, and not in its bearing upon local administration.

To take a recent and important example:—If the Madras Police Bill which was lately passed had come up for consideration under the system which I have described, the Governor General in Council would have examined the draft of it with reference only to the increase of expenditure which it would entail, and to any countervailing decrease of cost in the army of Madras. The views of the Governor General in Council, confined in this case to the financial bearings of the question, would have been obtained by the Government of Madras before drawing the Bill, and the draft, if it contained nothing contrary to those views, would have received the preliminary sanction immediately, and as a matter of course, without any question being raised as to the constitution or organization of the police, which would be a matter for the decision of the Government of Madras and its Legislative Council alone.

32. The occasions upon which the Governor General would withhold his signature from a Bill that had passed the local Legislative Council would be still more rare; probably none would ever arise, unless a Bill had been much changed in its passage through the local Council.

But I hold strongly to the principle, that no Act of any legislative body in India should become law without the cognizance and consent of the head of the Government of India.

33. It cannot be objected to the above scheme that it would cause delay. On the contrary, time would be saved by it, indirectly, by diminishing the occasions for correspondence between Calcutta and the other Presidencies upon the points of detail which arise during the progress of a Bill through the Legislative Council in Calcutta, and directly, by enabling the local Legislative Councils at once to curtail the period which, so long as all legislation proceeds from Calcutta, must be allowed for giving publicity to Bills affecting the other Presidencies before those Bills are carried through all their stages.

34. I have not proposed this scheme as calculated to improve our laws in India; I believe that the laws which would be made under it would be neither much better nor much worse than those which we now make; but I think that such a system would stimulate and expedite the amendment of the law in each Presidency, by giving larger and freer action to the Government of each, and that it would tend to convert jealousy and antagonism (no matter whether justly or unjustly felt) into wholesome rivalry and co-operation, without diminishing the responsibility of the Governor General in Council in any matter for which he ought to be responsible, and without weakening the power and authority which must never be separated from that responsibility.

I have, &c.
(signed) Canning.

The Lieutenant Governor of Bengal to the Governor General of India in Council.

My Lord,

Fort William, 14 October 1859.

I HAVE the honour, in obedience to the commands of your Lordship in Council, most respectfully to report the opinion which my experience has led me to form of the present plan for conducting the legislation of India and regulating the proceedings of the Legislature, compared with the plan which immediately preceded it.

2. The change introduced by the Act of 1853 was to enlarge the Council, when acting in its legislative capacity, by the addition of new members, called legislative members, of whom two are English judges of the Calcutta Supreme Court, and the others are appointed severally by the local Governments. At the same time, the fourth ordinary Councillor, who held before only the corresponding office of legislative member, was made a member in the executive branch as well as in the legislative branch. Thus, by the change in question, the Executive Government was enlarged by one member, and the Legislature by six members. The constitutional effects of this change are—

1st. That, in a full Council, if the Commander in Chief, the Governor General, or any single member of the Executive Government, is absent, a majority of the Legislative Council consists of members not concerned in the administration of the Government;

2d. That, on every legislative question, the Council has one member at least to inform it upon points of local bearing;

3d. That, in all cases where the convictions of a local Government and its representative member do not differ widely, that is to say, in the great majority of cases, every local Government has now a means of impressing upon the legislative body its own views on questions peculiarly affecting its own provinces, in a manner infinitely more lively and effective than by written communication; and—

4th. That what may be called the English law element of the Council is largely increased.

3. The following changes of practice in the conduct of legislative business have been introduced in consequence of the enlargement of the Council:—

1st. All discussion is oral, instead of being, as before, when there was any discussion at all upon legislative questions, chiefly in writing;

2d. For all the work of minute correction, and of examining the petitions and representations received from without concerning Bills in progress, also for much of the work of preparation, a small select committee is now available, instead of only a single member as before; and—

3d. The legislative business is now conducted in public, instead of in secret, as before.

4. I will speak of what I have called the constitutional effects of the change first.

5. The first in order, whereby the majority of the Legislature is no longer connected with the Executive Government, has more importance in appearance than in reality. As the Council is constituted, members of both classes must be presumed to have equally the Queen's service and the good of the whole country at heart, to be equally free from the bias of interest or class prejudice, and to be equally intelligent. Therefore, in all matters respecting which a member of the Supreme Executive Government has, from his position, no better means of information, and no other responsibilities than a merely legislative member, that is to say, in the great mass of legislative business, the point is wholly immaterial. In the remaining cases, numerically a very small minority, but, it must be admitted, a minority which may comprise cases of extreme political importance, the effect can be good or bad only in one of two ways: first, in the passing of a law which the Government members wish not to pass; and, secondly, in the not passing of a law which they wish to pass. The first evil is eliminated by the veto of the Governor General. As to the second, I can say that, in my experience, which includes a term of five years, from the first opening of the Council to the 1st of May last, no case of the kind occurred, or seemed the least likely to occur. I anticipate no real evil as ever likely to arise from this circumstance, with any constitution of the Council approaching the present.

6. The second of these effects, namely, the presence always of at least one member who has experience derived from service in any part of India to which any question applies, is manifestly an unqualified advantage. My experience leads me to the conclusion that, practically, this advantage is great.

7. The third of these effects, namely, the presence of members capable of enforcing in discussion the views and feelings of the local Governments, and of following a question in the same spirit through all its phases, is beyond doubt a very great advantage indeed. Whatever happens now to the project of a local Government, and whether the objections of a local Government to any law are maintained or not, it is certain that the arguments of the most distant of these Governments were intelligently discussed and fairly weighed before a conclusion was come to. And not only is the fact so; the local Governments know and must admit that it is so, which puts a stop to much provincial ill-humour. The other day, the Governor of Madras published a violent attack on what he called "the Calcutta Council." The answer given in debate was to remind him that the representative of his own Government was a member of the body attacked, and had been a consenting party to the proceeding found fault with. This seems to have put a stop to attacks in the same spirit, which would not have advanced the public service if they had become habitual. I am of opinion that, amongst many great improvements, this has been the greatest practical improvement effected by the change under review.

8. The fourth of the constitutional effects described, namely, the increased strength of the legal element, as far as my experience goes, has also been an unqualified advantage, and a very great one.

9. In all the above points, the practical results appear to me to have been so perfectly in accordance with what all persons who knew what the former system was, and understood the change made, expected, and could not but have expected, from this change, that it is enough for me to say that, in my opinion, experience proves that the objects of Parliament in making the late change have been successfully attained in practice.

11. The first of these is oral discussion. From the complete absence of all experience in oral argument amongst Indian official men, the introduction of the experiment was a cause of anxiety to many. But it was strongly felt (and by none more strongly, and upon more sound grounds, supported by large experience, than by Lord Dalhousie) that, with a large Council, the only real question was oral discussion, or no useful and effectual discussion whatever. The result has been that, whereas, before, most legislative questions passed in Council without any discussion, or with very little, now all such questions undergo real discussion. Nevertheless, discussion cannot be indefinitely protracted, but must come to an end when there is nothing new to be said on the subject, or at worst, not long afterwards. On the other hand, I do not believe that any member ever had anything material to say on any question which he was not able to express well enough. Had the case been otherwise, the presence of the legal member, whose professional business is oral discussion, would have made the defeat apparent enough by contrast.

12. The second change of practice is the employment of a small committee, selected for their peculiar fitness with reference to the particular matter in hand, to do what may be called the hard desk-work of legislation, instead of imposing the whole of that burden upon the shoulders of a single man, as formerly. I have had personal experience of five legislative or fourth ordinary members of Council, being all that have ever held that office. They have been gentlemen of the most different, indeed of the most opposite, intellectual qualities; but they have all been men of the greatest ability, devoted to their duties. Four of them are spared to us, and may be consulted. I am quite sure that all four will pronounce that to expect one man to do properly all the work of legislation for India is to expect what is impossible in the nature of things. My own experience certainly is to that effect. On the other hand, I do not wish to be understood as giving evidence that, considering the circumstance that four of the legislative members have had no other work to do, as much progress has been made as could possibly have been made; but I do mean to be understood as giving evidence that work of the first importance has been done in the most satisfactory manner since the new Council was instituted, to an amount altogether beyond what was ever done before. I aver that there is more hard and more useful work in the Acts passed within the last five years than in all those passed during the preceding 20 years. The book of Indian Acts is open, and every one can judge for himself.

13. The third change of practice is the admission of strangers to the meetings of the Council. Perhaps I am not an impartial witness upon this point, for it was upon my own motion (made with Lord Dalhousie's full approval) that this change was introduced. But I must say that nothing has occurred to make me believe that the measure was not a sound and judicious one. Experience, however, has brought me to the conclusion that newspaper reporters ought not to be admitted until they show their ability to report, with reasonable correctness, at least the substance of what is said; and that a qualified short-hand writer should be engaged from England as an official reporter, there being no one here who can write short-hand.

14. On the whole, the present system seems to me, in every point of view, to be an infinite improvement upon the former system, which was comparatively so unsatisfactory that I do not think it possible to revert to it. The present system is no doubt more expensive than the former system, inasmuch as it requires four paid legislative members instead of one. But the question is not, at least it ought not to be, which of the two systems is the cheaper; but, is the present system positively too expensive, considering the value of good legislation to a country so extensive and so populous as British India, which now pays a revenue larger, I believe, than that of any other country in the world, excepting Great Britain and France? In this view, I cannot think it possible to pronounce the Legislative Council a costly machine.

15. I may remark that, as the fourth ordinary member of Council is not now a lawyer, the legislature loses one of its law members, and there is no longer in the Council any lawyer connected with the Executive Administration. I think this will be found extremely inconvenient. There is a class of work to be done which a lawyer only can do, and which the judges of the Supreme Court, whose time is very fully occupied with the business of the Court, cannot be expected to devote themselves to doing. There are also many occasions when the advice and the debating power of a learned gentleman in connexion with the Government are of essential importance. This want might readily be supplied by making the Advocate General a member of the Legislative Council.

16. I may also say that, in my opinion, the addition of a few honorary members to the Council would be, on the whole, beneficial. One or two native gentlemen, and an equal number of European gentlemen not in official employment, would, be in my judgment, a valuable addition to the Council. It would probably cause views to be brought forward which it would be unjust and unsafe to act upon; but, from the free discussion of such views, little harm and much good might be anticipated. The power of creating honorary members should be with the Governor General, and should not ordinarily be used to its full extent.

opinion it would be greatly improved by the introduction of some non-official members; but this, perhaps, is rather going beyond the question.

The fourth ordinary member has now a right to sit and vote upon all subjects in the Executive Council; this, to a considerable extent, prevents him from devoting to legislation as much time as he otherwise would be able to do; but it enables him to become better acquainted with all that is going on, and to form a better judgment as to the policy or impolicy of passing a particular law.

Upon the whole, I consider this to be an advantage. Furthermore, under the present system, there is a clerk and clerk assistant to the Council; these offices are at present filled by gentlemen of great ability: the former by a barrister and an experienced draughtsman, well acquainted with the general principles of law and jurisprudence; the latter by a native gentleman intimately acquainted with the regulations of Government, with the various tenures of land, with the civil and criminal laws as administered in the mofussil, and with the regulations affecting the revenue and police.

The assistance which they are able to render cannot be over-rated, especially in the preparation of new laws, and in attending upon the select committees, when revising proposed laws, after they have been published for general information.

Another great advantage of the present over the former system is, the publicity of the discussions of the Council. These discussions are generally conducted in a calm, orderly, and business-like manner, and of course cannot be so attractive to the public as the discussions of a larger body, in which the warmth and earnestness of party are called into play. But still, I believe, it is a source of satisfaction to the public to know that any one can without difficulty obtain admittance upon the discussion of any public measure, and that reporters for the public press are always in attendance. Formerly, all discussions upon the subject of a proposed law were conducted in private, in the same manner as the deliberations upon executive matters. If a law were rejected after it had been published for general information, the public had no means of knowing the cause of its rejection: so, if a law were published for general information, and alterations or modifications were suggested which were not embodied in the law when passed, the public had no means of ascertaining whether the suggestions had been duly considered, whether due weight had been given to them, or whether they had been rejected without sufficient reason.

Under the present system the case is different. The suggestions are duly considered and weighed by the select committees to whom the Bill is referred, and in all cases of importance are specially noticed in the reports. These reports are printed and published, and are publicly sold. This I consider is also a great advantage which the present system has over that which formerly existed.

3 November 1859.

(signed) B. Peacock.

Fixed Establishment and other Charges of the Legislative Council.

	Rs.	a.	p.
Clerk of the Council - - - - -	2,500	-	-
Assistant clerk - - - - -	1,250	-	-
Register - - - - -	300	-	-
Clerical establishment, including reporter - - - - -	790	-	-
Servants - - - - -	233	-	-
Average printing charges from January to September 1859 - - - - -	1,395	-	-
Average contingent charges - - - - -	596	-	-
Add, for house-rent - - - - -	600	-	-
Total - - - - - Rs.	7,664	-	-
Add, salaries of four paid members - $4,166/10/8 \times 4 =$	16,666	10	8
TOTAL, per mensem - - - - - Rs.	24,330	10	8
Or, per annum - - - - - Rs.	2,91,968	-	-

MEMORANDUM by the Secretary of the Government of Bengal.

I CANNOT ascertain that the Governor General exercised any direct authority over the Governor in Council at Madras and Bombay in the matter of making laws.

By the 13th of Geo. 3, c. 63 (1773), the Governor General in Council was invested with power to superintend and control the government and management of the Presidencies of Madras and Bombay in political matters; and by the same law it was enjoined on those Governments to transmit to the Governor General in Council intelligence of all transactions

transactions relating to the government, the revenues, and the interests of the East India Company.

By the 33d of Geo. 3, c. 52 (1793), the supremacy of the Governor General in Council was more clearly expressed; he was vested with full power and authority to superintend, control, and direct the Governments of Madras and Bombay in all points, among others, being specified "the collection and application of the revenues;" and those Governments were declared bound to obey all orders and directions of the Governor General in Council in all cases whatsoever.

A certain power of legislation, "for the good order and civil Government of the settlement," had been given to the Governor General in Council, as regards the settlement of Fort William and its dependencies, by the law of 1773, and this power does not seem to have been extended to Madras and Bombay by Act of Parliament until 1807 (47 Geo. 3, Sess. 2, c. 68), though the power of making laws was practically exercised by those Governments before that date.

Laws passed in all the presidencies under these Acts were liable to be repealed by the King's Government, and they required also to be registered in the Supreme Court of the Presidency.

As regards taxation, the East India Company succeeded, I apprehend, to the revenue system and the revenues of their predecessors; but their power to impose new taxes does not appear to have been clearly defined until the 53d of Geo. 3, c. 155, (1813), and the 54th Geo. 3, c. 105. By the first of these Acts it was declared that no new imposition of any duty or tax on the import, export, or transit of goods made by the Government of any presidency should be valid, until the same should be sanctioned by the Home Government; but a full authority was given to the several Governments, with such sanction, to levy duties of customs and other taxes upon all persons whomsoever, and upon all goods, merchandise, &c., whatsoever. The latter Act was passed with reference to certain doubts which had arisen, and by it all duties and taxes previously imposed by the orders of any of the Governments, and all regulations for imposing and levying the same, were confirmed and made valid, as if they had been imposed under the provisions of 53 Geo. 3, c. 155.

A copy of every regulation passed at Madras and Bombay was sent to the Governor General in Council, but it does not appear that they were submitted for approval before being passed. It seems probable, however, that the legislative body being one and the same with the Executive Government of the Presidency, may have been practically under the control of the Supreme Government, in much the same degree that the central legislative body constituted at Calcutta by the Act 3 & 4 Will. 4, c. 85, was always under the control of the Home Government (irrespective of the express power given to that Government by law to disallow Acts), until the question of its independence was raised, after it was enlarged and re-modelled under the Act of 1853.

(signed) W. Grey.

Camp Jubbulpore, 15 January 1861.

No. 2 A, Home Department.

Sir,
On the 9th of December 1859, I had the honour to lay before you my opinion of the present mode of conducting the Legislation of India. During the past year, events have occurred, and experience has been had, which make me desire to recur to the subject, and to state how far I see reason to modify that opinion.

The events referred to are, chiefly, the passing of the Income Tax Act and the Arms Act through the Legislative Council, and the discussions on these measures; the differences which arose between the Supreme Government and the Government of Madras on the first of them; the doubts which have been raised as to the validity of laws introduced into Non-Regulation Provinces without enactment by the Legislative Council; and the address of the Legislative Council for the communication to it of certain correspondence between the Secretary of State and the Supreme Government of India.

2. The discussions on the Income Tax Bill, and the differences with the Government of Madras, have strengthened my conviction that a Legislative Council should be given to each Presidency, and that the Supreme Government should have power to create and sanction Legislative Councils in all Governments administered by Lieutenant Governors and Chief Commissioners.

3. The same discussions have set forth both the advantages and the disadvantages of publicity of debate, by which I mean, not only the printing of the proceedings of the Council for public information, but the debating in House of Commons forming an open chamber.

As regards the English community, the free publicity given to all that passed the framing of a large measure of direct taxation which was to affect that

community has been satisfactory to them and advantageous to the Government. As regards the natives of India, my conclusion is different. I believe that, with few exceptions in and about Calcutta, they value publicity of debate very little; and I know that errors as to the intentions of Government, founded upon incorrect reports of speeches in the Legislative Council, have influenced the minds of the people to a serious and even dangerous degree, in places distant from the seat of Government, and therefore out of the way of prompt correction.

But I am of opinion that it will be much better that open debate in the Legislative Councils of the three Presidencies should be the rule, than that dissatisfaction should be caused to any class by any departure from it, now that it has been established in Calcutta, at the same time each Presidency should take its own measures to secure the proceedings of its Council against being reported incorrectly.

4. I am of opinion that it will be better that no Judges, whether of the Supreme or of the Sudder Courts, should have seats in the Legislative Councils. The rule observed in England, which excludes Judges from the House of Commons, should be followed.

I would fill the places of the Chief Justice and of the Sudder Judge, who would thus be excluded from the Councils, as formerly proposed by me with two civil officers, covenanted or uncovenanted, chosen by the Governors; but as this would give a greater preponderance to the officers of the Indian Government than is desirable, I recommend that the number of members not holding office be increased from three to five, to be chosen from amongst Europeans or Natives, as the Governor may think proper.

5. Beyond this, I have no alteration to propose in the constitution of the Legislative Councils of Madras and Bombay, as described in paragraph 25 of my former Despatch.

6. But I would not, as there proposed, make the Council sitting in Calcutta a Council for Bengal and also a Council of the Governor General. I think that Bengal and the North-Western Provinces, and the Punjab, should each have its own Legislative Council.

These three Governments are carried on by Lieutenant Governors without Executive Councils, and I am opposed to giving Executive Councils to them. I do not think that there would be any gain in it which would make up for the tardiness of action which is the tendency of administration by Councils or Boards; and although, if measured by area, population, and revenue, Bengal has stronger claim to a Council than either Madras or Bombay, it has not got an army or a separate Civil Service to itself, and its interests and traditions are not so distinct from those around it as are those of the two other Presidencies.

But the absence of an Executive Council, a Commander in Chief, and an Advocate General in each of these three Governments, will render the number of *ex officio* Members of their Legislative Councils small, and I think that their respective requirements will be best met by enacting that each Lieutenant Governor may appoint to his Legislative Council any number of members, not exceeding 12, of whom one-third should be persons not holding office under Government. The appointments should be approved by the Governor General in Council, who would require that Law and Revenue should be efficiently represented in each Council.

7. If, as above recommended, the Legislative Council of Bengal be a body distinct from the Legislative Council of the Governor General, a change in the constitution of this last-named body also becomes necessary.

The Governor General, the four Members of his Executive Council, the Commander in Chief, the Accountant General, and the Advocate General, should be members of it. To these I would add the Lieutenant Governor or other head of the Province in which the Council may at the time be sitting, and any other heads of Local Governments (such as the Chief Commissioner of Oude, the Commissioner of Nagpore), who might be within reach. All such high officers should be *ex officio* Members of the Council. I would further add such nominated members, European or native, as the Governor General may, from time to time, appoint; the number of these must not exceed 12, and one half of the number to be persons not holding office under the Government.

8. Two things are essential in framing a body of advisers to the Governor General in legislative matters. One, that it should be capable of being assembled for business in other places than Calcutta; and the other, that it should so conduct its business as that the opinions and votes of natives not skilled in the English language can be taken.

9. To secure the first object, the appointment of members who are not members *ex officio*, should be for a short term; certainly not longer than two years, and, I think that a single year would be better. This would enable the Governor General to bring together an efficient body wherever in the plains of India he might be,—Benares, Allahabad, Agra, or even Lahore; and it would make eligible non-official persons, whether English or natives, much more disposed to lend their services than they will be if they are to be bound by duties of a longer duration.

10. The second object can be attained only by adopting for this Council forms of debate different from those which have been adopted in the present Legislative Council.

If discussion by speeches, and according to the rules of the House of Commons, be adopted, it will be hopeless to look for the co-operation of native gentlemen who cannot speak or understand a word of English, and who would have nothing to do in the Council but to sit and listen to what they could not comprehend.

In the Local Legislative Councils at Calcutta, Madras, and Bombay, with their comparatively large European communities, it is, as I have already said, advisable that these forms should continue to be followed. But at a distance from the Presidency towns, and in the Legislative Council of the Governor General, they should be avoided.

The North Western Provinces constitute a Government equal to the kingdom of Prussia in extent, and exceeding it by several millions in population. The Punjab is three times as large as Scotland, and its inhabitants are five times as numerous. But I doubt whether in the North Western Provinces there are half-a-dozen English gentlemen not connected with the Government, and who, by education, property, and their command of time, would be enabled to take any part in legislation. In the Punjab, I believe that there are none such. Under both Governments, however, there are intelligent, wealthy, and influential native gentlemen, many of them attached to our rule and having a large stake in its stability and power, although ignorant of our language and not familiar with our ways. Their participation with us in the making of laws for their Provinces would be a help to us, and acceptable to their own class and to the classes below them. To secure this we may be content to forego something of those formalities which would preclude all natives who cannot talk English fluently, and who are not accustomed to our modes of business, from taking a useful part in legislation.

For example—if there were occasion to assemble the Governor General's Legislative Council anywhere in the Upper Provinces, and if important measures, such as the Income Tax Bill, the Arms Bill, or the License Bill, were under consideration, there are no advisers whom I should more desire to take into Council than the Maharajah of Putteealla and the late Minister of Gwalior, Dinkur Rao; * and this not merely to obtain an expression of their opinions, which we can obtain already, but so as to make them a part of the legislating body, and to give them a sense of responsibility and a share of real power.

I could name many others whose nomination to the Legislative Council of the Governor General would, upon occasion, be very beneficial; and the number of those whose presence in the Local Legislative Council of the North Western Provinces or of the Punjab would be useful, is still greater.

But the presence of these gentlemen in a room in which debates should be conducted

* The Maharajah of Putteealla, though a Sovereign Chief in his own State, holds lands under the British Government, and Dewan Dinkur Rao is also possessed of property in British territory. Their views upon some of our recent measures have been very shrewd and just. The open participation of such men in making laws for India is scarcely second in importance to the co-operation of the native gentry with us in administering the law.

conducted according to the forms of the present Legislative Council would be worse than useless, even if they consented to it, for it would make a mockery of a responsibility, which, if we are wise, we shall lose no time in establishing as real.

For these reasons, I recommend that in the Legislative Councils of the North Western Provinces and the Punjab, as well as in that of the Governor General, the business should be conducted as in a Committee, or Commission, and not in the form of set Parliamentary debate, and that the reports of the proceedings be made under the authority of the Government.

11. In respect to the functions to be given to the several legislative bodies, I retain the opinions expressed in my former Despatch. I think that it would be found quite practicable to divide measures of legislation in India into two classes: those of general administration, and those of local administration.

12. In regard to the latter, which would be those of most frequent occurrence, the rule would be, that if the revenue of the Local Government were to be directly affected by the Bill, the sanction of the Governor General in Council should be first obtained to its introduction, and that after this had been received, and the Bill had been passed by the Local Legislative Council, it should be sent up to be accepted, or rejected (in the latter case with reasons assigned), by the Governor General's Legislative Council. This precaution of a preliminary sanction is absolutely indispensable, if the public credit and financial responsibility of British India as a whole are to remain intact; and I do not know how the liabilities of the Empire can be broken up and distributed between several Local Governments, without breach of faith to the national creditor.

Measures of local administration not affecting the revenue would need no sanction from the Governor General in Council previously to being brought before a Local Legislative Council; and as to the liberty of introducing measures of any kind, there would, of course, be no distinction between official and non-official members; but, in all cases, a member should first obtain leave from his own Legislative Council to bring in his Bill.

13. As regards the other class of measures—those of general administration—I have, in my former Despatch, * mentioned such as would come under this head. If it should not be deemed advisable to enumerate them in detail in the Act of Parliament which shall constitute, or which shall give power to the Governor General in Council to constitute the new Councils, it would suffice to authorise the Governor General in Council to prescribe, subject to the approval of Her Majesty's Secretary of State, the classes of measures which, as affecting British India generally, shall be initiated only in the Legislative Council of the Governor General. But, in some way or other, I think it important that Parliament itself should recognise a distinction between measures which are, and measures which are not, to be initiated by local legislatures.

The list which I gave, though apparently long, would, in fact, leave the great majority of measures of interest in the hands of the local legislatures. At the present time, it is probable that the measures of the greatest importance and interest which could be introduced into the Legislative Council would be a Police Bill; a Bill regulating anew the functions and jurisdiction of native judges and magistrates; a Bill for extending the registration of deeds and contracts; a Bill for enforcing contracts for agricultural produce. I pronounce, here, no opinion whether such measures are necessary; but probably every one of them, except the Police Bill, in which financial considerations might be largely involved, would, under the system which I have proposed, be treated *ab initio* in the Legislative Council of Bengal, or of any other Province which required the measure, and would come up to the Legislative Council of the Governor General only to be accepted and registered as law, or to be rejected with explanation of the reasons for rejection.

14. Of measures at this moment before the Legislative Council, and which would come under the other head, and would, therefore, have to be initiated and made law in the Legislative Council of the Governor General, I can call to mind

mind only two—the Paper Currency Bill and the License Tax Bill. The mode in which such measures would be dealt with would be, by sending to each Local Legislative Council, for its consideration, the draft or skeleton of a Bill framed under the authority of the Legislative Council of the Governor General. Each Local Legislative Council would go into an examination of the Bill, very much as if it were a Bill of its own in Committee, and would report upon it to the Legislative Council of the Governor General. And, upon the receipt of all the reports, the general measure would be framed and made law by that Council.

15. The making of laws for those provinces which would have no legislative councils (that is, for non-regulation provinces) should be vested in the Legislative Council of the Governor General.

16. I will not go again into the question of cost. It is comparatively unimportant. The scheme, as I have now enlarged it, will be somewhat more expensive than that which I proposed in 1859; but the five Local Councils and the Governor General's Legislative Council will not, together, cost so much as the present Council.

17. I have referred, at the beginning of this Despatch, to the recent address of the Legislative Council to the Government of India, for the communication of certain correspondence between the Secretary of State and the Government, and also to the doubts raised in the Legislative Council as to the validity of laws introduced into the non-regulation provinces without enactment by the Council.

I hope that Her Majesty's Government will see, in these two incidents, reason for hastening to determine what the future machinery of Legislation in India, and its functions, shall be. Matters cannot long remain as they are without producing great inconvenience, and perhaps exciting heats which it will be difficult to allay, and which will injure and discredit us as a governing power.

It is now of little consequence whether, in giving effect to the Act of 1853, the Government of India did, or did not, overstep the intentions of its framers, and of Parliament, as regards the functions of the Legislative Council, or whether the view which the Governor General in Council has lately taken of the claims of the Legislative Council is constitutionally correct or not. The important object is, that an end should be put to all doubts, and that this should be done speedily.

I have, &c.
(signed) Canning.

Camp Sleemanabad, 26 January 1861.

No. 3 A., Home Department.

Sir,

In my Despatch of the 15th instant, I considered the question of a change in the Legislative Council of India. I now proceed to offer my recommendations in regard to a change in the Executive Council of the Governor General.

2. The fault of the present constitution of that Council is the waste of labour and the delays that it entails. This has been mitigated of late, but not so much as it might be. It has arisen chiefly from the fact that the wording of the law and long usage appear to prescribe, that every act of the Governor General in Council, beyond those of mere routine (and not always excepting these), must be done with the actual consideration and concurrence of all the Members of the Council. This tradition was not long ago broken through, but not without misgivings on the part of some Members of the Government, as to whether they were not unduly divesting themselves of a responsibility fixed upon them. A division of departments has, however, to some extent taken place, and the result has been good.

3. I would recognize this division by law, and I would carry it out more distinctly.

4. For this purpose the law should declare that it shall be in the power of the Governor General to charge each Member of the Council with the direction of such department of the Government as he may think fit; and that, subject

to any regulations which the Governor General in Council may lay down, the orders of that Member of the Council should in that department be held to be the orders of the Governor General in Council.

5. It is not possible or desirable to define by law what questions should be submitted to the whole Council. Subjects constantly arise upon which it is quite right that a Member of Council should consult the Governor General, but which it would be a waste of time to bring before every Member of the Council. The practice should be regulated as in the English Cabinet, by good understanding and common sense, and by the paramount authority of the head of the Government. There is no fear that any important questions would be kept from the consideration of the whole Council by such a change.

6. The change would certainly not diminish the dignity and weight which should attach to a seat in the Governor General's Council.

7. No alteration would be necessary in the arrangements which are now made when the Governor General leaves Calcutta. One of the Council would become President, as now, but it would be more easy and more fitting than it is at present that the Governor General should take with him from time to time one or other Member of his Council, according to the objects of his tour, or the provinces he might be going to visit; and so long as care were taken not to weaken the President in Council too much for the discharge of the business left to be carried on in Calcutta, there would be great advantage in his doing so.

And this not to the Governor General alone; for it is most desirable that the Members of his Council, as well as himself, should see something more of India than Calcutta and those provinces only in which their early service may have been passed.

8. In respect to the appointment of the Members of the Governor General's Council, I have nothing to suggest, except that the old practice of selecting its Civilian Members from the Bengal service alone, should not be reverted to. You cannot concentrate in a body of two or three Members a general experience of all parts of India, but I know that no amount of individual ability and efficiency will compensate the disadvantage of a restricted field of choice.

I am sure that my Colleagues of 1856, 1857, and 1858 were as sensible as I was of the disadvantage under which we then laboured, from no one of us having practical knowledge of any Non-regulation Government whatever, or of any Regulation Government except that of Bengal.

9. I think it desirable that the Council of the Governor General should contain a member of the English bar. I should prefer one who had no other duties to one who was also Advocate General, though this would be no reason for not placing the Advocate General in the Supreme Legislative Council, as I have before proposed.

The difficulty of finding fit occupants for high legal offices in India is very great, and the salary will be an addition to the present cost of the Council. But I recommend that Her Majesty's Government take power from Parliament to appoint to the Governor General's Council two Members (instead of one), who shall not be Members of the Indian Civil Service, and one of whom shall be a barrister.

10. I am of opinion that with the new and distinct departmental responsibility which, if the foregoing proposals are adopted, will be fixed upon individual Members of the Council, the salaries of some of the secretarieships will admit of reduction. Those which now stand at 5,000 £. each might reasonably be reduced to 4,000 £.

I have, &c.
(signed) Canning

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